

Ali Ahmad vs Deputy Custodian Of Evacuee Property ... on 18 February, 1952

Equivalent citations: AIR1952ALL813, AIR 1952 ALLAHABAD 813

JUDGMENT

Bind Basni Prasad, J.

1. This is an application under Articles 226 and 227 of the Constitution by one Ali Ahmad. The prayer is that this Court may issue to the Deputy Custodian and the Additional Custodian of Evacuee Properties a direction or order or a writ in the nature of certiorari and prohibition forbearing them from dispossessing or in any manner interfering with the applicant's right to manage the waqf properties or grant such other and further relief as this Court may deem fit. The relevant facts are as follows:

2. On the 12th March 1913 one Srimati Mariana Begam, widow of Syed Niaz Ali, brother of the applicant's grand-father, Wajid Ali, executed a deed of waqf-alal-aulad and appointed two minors as co-mutwallis under the guardianship of their mother, Srimati Sardar Dulhan. One of these mutwallis was the applicant and the other was his brother, Ali Asghar. The waqf was in respect of certain Zamindari shares in two villages. The applicant attained majority in the year 1918 and was appointed a lambardar in respect of the said property. The applicant's younger brother, Syed Ali Asghar, entered military service and does not appear to have taken any interest in the management of the waqf property. The Deputy Custodian of the Evacuee Properties treating the property in dispute as evacuee property attached it on the ground that Syed Ali Asghar had opted for Pakistan and was living there. The applicant filed an objection contending that the management of the waqf property could not be taken out of his hands. The objection was dismissed by the Deputy Custodian. The applicant appealed to the Custodian. The appeal was decided by the Additional Custodian of Evacuee Property. The order of the Deputy Custodian was upheld.

3. Sri Prem Mohan Varma, learned counsel for the applicant, contends that the Administration of Evacuee Property Act, 1950, makes no provision for the contingency which has arisen in the present case. He refers to Sub-section (2) of section 11 and argues that the Custodian can take over the management of a property which is the subject-matter of a waqf alal-aulad only when there is a sole mutwalli and he is an evacuee, or where there are more than one mutwalli and all of them have become evacuees; but the Act does not make any provision where one of the mutwallis is an evacuee and the other is a non-evacuee. It is contended that in such a case the right of management vests solely in the non-evacuee mutwalli and the Custodian has no right of management. He concedes that, so far as the interest of Syed Ali Asghar as a beneficiary is concerned, the Custodian has a right to it and the applicant is willing to give half of the income of the property in dispute to the Custodian.

4. A perusal of the definition of the expression "Evacuee Property" as contained in Clause (f) of Section 2 will show that the property which is the subject of waqf-alal-aulad can also become an evacuee property. The definition runs as follows :

" 'Evacuee Property' means any property in which an evacuee has any right or interest (whether personally or as a trustee or as a beneficiary or in any other capacity),"

The term 'Evacuee' is defined in Clause (d) of the same section as "Any person 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."

There can be no doubt that Syed Ali Asghar is an evacuee nor do we feel any manner of doubt that the property in dispute is an evacuee property because Syed Ali Asghar, an evacuee, had a right to manage the property and had an interest in it as a beneficiary.

5. It is not disputed that the property in dispute has been declared as an evacuee property under Section 7. Under Section 8 of the Act it vests in the Custodian for this State. The powers and duties of the Custodian are set out in Section 10 of the Act. They are very wide. Sub-section (1) of Section 10 of the Act authorizes the Custodian 'to take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property."

Sub-section (2) particularises certain powers without prejudice to the generality of the provisions contained in Sub-section (1). The right to manage an evacuee property is one of such powers.

6. Sub-section (2) of Section 11 makes a special provision in respect of waqf-alal-aulad. It runs as follows:

"(2) In respect of any wakf-alal-aulad--

(a) where the mutwalli is an evacuee, the property forming the subject matter of the wakf shall vest in the Custodian subject to the rights of the beneficiaries under the wakf, if any, who are not evacuees;

(b) where not all the beneficiaries are evacuees, the rights and interests of such of the beneficiaries as are evacuees shall alone vest in the Custodian."

7. A perusal of the scheme of the Act will show, that its intention is to take over all the interests and the rights of an evacuee and to administer them. The words "the mutwalli" appearing in Clause (a) of Sub-section (2) of Section 11 do not mean the sole mutwalli or the entire body of Mutwallis, as contended on behalf of the applicant. It means the mutwalli who has become an evacuee. Where there are several mutwallis and some of them become evacuees and others remain non-evacuees then the rights and interests of the evacuee mutwallis vest in the Custodian and the vesting of such

rights and interests includes the power to manage the property. The action taken by the Custodian, therefore, was not against the law.

8. Sri Dhawan, learned counsel for the opposite party has invited our attention to the recent Act passed by the Parliament, viz. Evacuee Interest (Separation) Act 1951. According to this Act it is possible now for the applicant to have his rights and interests separated from those of Syed Ali Asghar the evacuee, and when this is done he can have no reasonable grievance. He can have his full remedy by taking action under that Act. We do not think that this is a case in which the extra-ordinary procedure of issuing a writ should be resorted to.

9. The application is dismissed. Parties will bear their costs.