

Sm. Dulari vs Addl. Custodian, Evacuee Property And ... on 28 April, 1953

Equivalent citations: AIR1953ALL718, AIR 1953 ALLAHABAD 718

JUDGMENT

Mukerji, J.

1. This is an application under Article 226 of the Constitution by Shrimati Dulari praying that this Court may issue a writ of prohibition or in the alternative appropriate directions, or orders under Article 226 of the Constitution of India prohibiting opposite party 1, i.e., the Additional Custodian Evacuee Property, Lucknow from reviewing his 'Judgment' dated 30-1-1951, passed in Appeal No. 276 of 1950. There is a further prayer that opposite party 2, namely, the Custodian Evacuee Property at Lucknow be prohibited from issuing any notification under Section 7 of Act 31 of 1950 in respect of a certain house, details of which are given in the petition, and treating it as "Evacuee Property".

2. The facts, briefly stated, which gave rise to this petition, were that on 16-10-1947, the applicant purchased the property in dispute, which is situated at Ghaziabad, from one Shubratn, who made a sale of the property to the applicant for a sum of Rs. 2,500/- on her behalf and on behalf of her minor children and on behalf of another Naboo wife of one Allah Diya. The vendors left India for Pakistan as "Evacuees" on 16-10-1949, and consequently the property in dispute assumed the character of "evacuee property".

3. Under Ordinance 27 of 1949, namely, the Administration of Evacuee Property Ordinance, it became necessary under Section 38 to have the confirmation of a sale, which had been made after the 14th day of August, 1947, by or on behalf of an evacuee. Section 38 of the Ordinance is in these words:

"No transfer of any right or interest in any property made in any manner whatsoever after the 14th day of August, 1947, by or on behalf of an evacuee or by or on behalf of a person who has become an evacuee after the date of the transfer, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian."

Under this section an application for the confirmation of such a transfer had to be made either by the transferor or by the transferee within a period of two months from the commencement of the Ordinance. The Ordinance came into force on 18-10-1949. It is important to notice that by sub-Section (3) of Section 38, the provisions of Section 5, Limitation Act were made applicable to applications which were to be made under Sub-section (2) of the section. Ordinance 27 of 1949 was superseded by Act 31 of 1950, namely the Administration of Evacuee Property Act. By Section 40 of

this Act a similar provision to Section 38 of the Ordinance was made. By Section 40(2) an application for confirmation of such transfer had to be made within two months of the date of transfer or within two months from the commencement of this Act or within two months from the date of the notification or declaration referred to in Sub-section (1), whichever was later. The provisions of Section 5, Limitation Act were again made applicable to applications which were to be moved under this section for confirmation of transfers.

4. An application for the confirmation of the transfer dated 16-10-1947, made in favour of the applicant, was made by the applicant on 4-5-1950, to the Deputy Custodian, Meerut -- within whose jurisdiction the subject-matter of the transfer was situate. The Deputy Custodian, Meerut, refused to confirm the transfer on the ground that the application, which had been made by the petitioner, had been made beyond limitation. An appeal was preferred against the decision of the Deputy Custodian, Meerut, to the Additional Custodian, Lucknow, who apparently had appellate jurisdiction over the Deputy Custodian, Meerut. By an order dated 30-1-1951, the Additional Custodian allowed] the application of the petitioner and directed the confirmation of the sale. It is necessary to notice that the Deputy Custodian, Meerut, had by his decision held the transfer in favour of the petitioner to be bona fide and for consideration.

5. After the aforesaid order of confirmation had been made by the Additional Custodian, it appeal's that a certain decision of the Custodian General was brought to his notice, which according to the Additional Custodian conflicted with the view which he had taken in appeal of the question of limitation, which he had decided on 30-1-1951. In the result the Additional Custodian made the following order:

"At the time when I delivered this judgment the decision of the Custodian General on the point in question was not within my knowledge. It has subsequently come to my knowledge and in the circumstances I consider it necessary that the judgment should be reviewed.

Let a notice be issued to the appellant to show cause why the judgment dated 30-1-51 be not reviewed and set aside."

This application under Article 226 of the Constitution is in effect directed against the aforequoted order of the Additional Custodian. Learned counsel appearing for the petitioner has contended that the Additional Custodian has no power of review under the circumstances of the present case. The power of review conferred on the Additional Custodian is to be found in Section 26(2) of Act 31 of 1950. The words of Section 26(2) which gives this power, are these:

"The Custodian, Additional Custodian or authorized Deputy Custodian (but not a Deputy or an Assistant Custodian) may, after giving notice to the parties concerned, review his own order."

It was argued that confirmation of a sale as contemplated by Section 40 of the Act, was not an "order" and consequently there could be no review possible where there has been only a

confirmation of a sale. Mr. Ram Bharosey Lal contended that the word 'order' in Sub-section (2) of Section 26 contemplated a decision where there were two parties and an issue was raised between those parties and was determined by the Court. Mr. Bam Bharosey Lal's contention was that an act of confirmation of a sale was not an "order" inasmuch as, there was no opposite party contending against such a confirmation and, therefore, there could be no review possible of. an order of confirmation even if there was an order. We are unable to agree with this contention, because in our judgment the word 'order' in Section 26(2) is used in its widest connotation.

6. A reference to Section 40 of the Act will indicate that the question of confirmation of a sale has to be raised by an application by either the vendor or the vendee, as the case may be, and the Custodian has to consider the question judicially at an inquiry which has to be held in a prescribed manner. A period of limitation is also prescribed for making the application. The Custodian has, therefore, to give a decision on many matters before he can confirm the sale or deny its confirmation. In either case, he has to give effect to his decision by means of an order. In proceedings of this nature there is in effect an opposite party also, namely, the Custodian in whom the law normally vests all the properties of evacuees and it is he who notionally at any rate, contends against the confirmation of the sale. The position of the Custodian in proceedings under the Administration of Evacuee Property Act is more or less analogous to the position of the Income-tax Officer in proceedings under the Income-tax Act. It is important to notice that by Section 24 appeals have been provided against orders under Sections 7, 16, 19 and 40 in terms. Section 40 nowhere uses the word 'order' and if the contention of Mr. Ram Bharosey Lal were sound, then there could be no appeal under Section 24 from anything which was done under the powers conferred on the Custodian under Section 40, unless the things that he did -- and he must be deemed to be doing things in writing -- had the effect of an order. Section 22 of the Act gives the right to the Custodian to declare properties of intending evacuees to be "evacuee property" in certain cases. By S- 25(2) an appeal is provided against a declaration, made under Section 22. Section 22 does not use the word "order" and yet we find that the declaration is made appealable.

7. In our judgment, if the import of the word 'order' in Section 26(2) were to be confined within the narrow limits within which Mr. Ram Bharosey Lal wishes us to confine it, then it would not be possible for the Custodian to correct his own mistakes -- mistakes which may be obvious on the face of the record -- and this position in our judgment would lead to serious anomalies and hardships, a situation which we do not think was ever contemplated. As we have said before, a judicial authority or a quasi-judicial authority, whenever it gives effect to its decision does so either by means of an order or a judgment, We are, there-fore, of the opinion that the Additional Custodian had the power to review his own decision of 30-1-1951, and that the order of the Additional Custodian, Lucknow dated 2-2-1951, was not without jurisdiction or in excess of jurisdiction.

8. Learned counsel for the petitioner argued no other point before us. The only point which was argued must, in view of what we have stated earlier, be decided against the petitioner.

9. In the result we dismiss this application with costs. There is an order of stay which was granted by this Court at the time when the petition was admitted. That stay order must be discharged, now that the petition has been unsuccessful, and we accordingly discharge that order.

10. Mr. Ram Bharosey Lal prays for a certificate under Article 132(1) of the Constitution, to the effect that this case involves a substantial question of law as to the interpretation of this Constitution.

We have given this prayer our consideration and we are of the opinion that this case involves no substantial question of law as to the interpretation of this Constitution nor was any such question argued or even attempted to be argued before us.

We, therefore, refuse the certificate prayed for.