

Sirajul Haq Khan And Anr. vs Custodian, Evacuee Properties, ... on 9 November, 1955

**Equivalent citations: AIR1956ALL161, AIR 1956 ALLAHABAD 161, 1956 ALL.
L. J. 130**

JUDGMENT

M.L. Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.
2. The two petitioners and Mohammad) Nazim are brothers and the three owned certain tenancy plots in the district of Saharanpur. Mohammad Nazim migrated to Pakistan and his 1/3rd share was declared to be evacuee property. The case was then reported to the Competent Officer appointed under Evacuee In-terest (Separation) Act of 1951. The Competent officer issued notices to the petitioners and the Custodian, and the petitioners submitted their claim.

They fixed the price of these plots at Rs. 50/-per Bigha and wanted the share of the evacuee to be sold to them at that price. The Competent Officer heard the parties and he passed an order on 18-2-1955 holding that the share of the two petitioners came to 2/3rd and that of the evacuee to 1/3rd and that, because none of the parties was willing to purchase the share of the other, the shares were to be separated by actual partition. As regards the valuation, he said that he would determine it at the time of the "final separation."

The petitioners went up in appeal against this order and the Appellate Officer decided the appeal by his judgment dated 11-5-1955. The main argument addressed on behalf of the petitioners before him was that the petitioners were willing to purchase the evacuee's share in the land and the Competent officer was not justified in ordering a partition thereof. His attention was drawn to the proviso to S, 10 of the Act, which says that the Competent Officer is to take into account the order of preference filed by the claimant under Clause (f) of Sub-section (2) of Section 7. The Appellate Officer, however, was of the opinion that Rule 11B of the Rules framed under the Act laid it down as a condition precedent to the transfer of the evacuee's share that the Custodian should agree to the transfer of property to the claimant.

The Assistant Custodian stated before him that he was not willing to transfer the evacuee's interest and wished to retain the land for the use of displaced persons. He held that, under the circumstances, it was not open to the Competent Officer to compel the Custodian to transfer the evacuee's share to the petitioners.

As regards the proviso to Section 10, he says that it only requires the Competent Officer to take into consideration the wishes of the claimants (the petitioners) and that the case was to be decided after taking into account this preference and also all other facts and circumstances of the case. It was then argued before him that there was a conflict between the rules and the Act, but he was of the opinion that there was no such conflict, as Section 10 of the Act lays down the various modes of separation of evacuee's interest, while the rules regulate the method in which the actual separation is to be effected.

In the end, he dismissed the appeal. In the present petition, it is prayed that the orders passed by the Competent Officer as also the Appellate Officer be quashed and a writ of mandamus be issued to the Competent Officer, Meerut, to dispose of the petitioners' objections according to law.

3. The order passed by the Competent Officer is not very satisfactory and he has decided issue No. 3 simply by saying that none of the parties was willing to purchase the share of the other. This is not quite accurate. The petitioners were willing to purchase the share of the evacuee on payment of the price determined by themselves, namely, Rs. 50/- per Bigha. The Appellate Officer, however, was entitled to correct the mistakes of the Competent Officer, and the question now before me is whether this appellate judgment is in accordance with law or not.

The learned counsel for the petitioners has argued that there is a mistake apparent on the face of the judgment, inasmuch as the Appellate Officer has held that, if the Custodian is not willing to transfer the evacuee's share, it is not open to the Competent Officer to direct the transfer of that share to the claimants. For a determination of this point, reference may be made to certain sections of the Evacuee Interest (Separation) Act, and to Rules framed under that Act. The relevant Section is Section 10, which begins by saying:

"Notwithstanding, anything to the contrary in any law or contract or any decree or order of a civil court or other authority, the competent officer may, subject to any rules that may be made in this behalf, take all such measures as he may consider necessary for the purpose of separating the interest of the evacuees from those of the claimants in any composite property, and in particular may.....".

The rest of the section lays down the modes in which this separation may be effected. The Competent Officer has been given the authority to direct the Custodian to pay to the claimant the amount of money assessed in respect of his share in the composite property, or to transfer the property to the claimant on payment by him of the amount of money assessed on the evacuee property, or to sell the property and distribute the sale proceeds, or to partition the property according to shares of the evacuees and the claimant.

Sub-section (b) deals with cases where mortgage has been executed, and Sub-section (c) authorises, the Competent officer to adopt a combination of all or some of the aforesaid measures. There is then the proviso on which reliance has been placed by the learned counsel for the petitioners which is to the effect that before taking any measure under this section, the Competent officer is to take into account the order of preference filed by the claimant.

4. There can be no doubt that this section does confer on the Competent Officer an authority to separate the interest in one or the other of the modes laid down in Clauses (a), (b) and (c) of the section. But this power has been made subject to any rules that may be made in this behalf. A reading of the section shows that the authority of the Competent Officer to take measures for the separation of the property has been specified and the different modes given therein are the modes in which a separation can be effected. But the very power to select one or the other of the modes has been made subject to any rules that may be made in this behalf.

5. The relevant rule on the point is Rule 11B, which is headed as "Mode of: separation of interests of evacuees". This rule says that a Competent Officer, having regard to the provisions of the proviso to Section 10 of the Act, shall, for the purpose of separating the evacuee interest, adopt any of the measures in the order of preference set out in the rule.

Clause (a) then deals with the case of any claim by a cosharer or a partner, and-in Sub-clause (i) it is said that a partition of the property is to be effected, as provided in Sub-clause (iv) of Clause (a) of Section 10 of the Act, If such partition can reasonably and conveniently be made.

Sub-clause (ii) then says that where such partition cannot reasonably and conveniently be made and if both the Custodian and the claimant agree, the Competent Officer can exercise the power conferred upon him under Sub-clause. (ii) of clause (a) of Section 10. Where neither of the above two sub-clauses applies, the property is to be sold and sale proceeds to be distributed in the manner provided in Sub-clause (iii) of Clause (a) of Section 10 of the Act.

6. A reading of this Rule makes it quite clear that the powers mentioned in Section 10 are to be exercised in the order given in the Rule and, according to the order given in the Rule, partition of the property should first be effected, as provided in Sub-clause. (iv) of cl, (a) of Section 10. If the partition cannot reasonably and conveniently be effected and- if both the Custodian and the claimant agree, it is only then that the power for transferring the property in favour of the claimant can be exercised by the Competent, Officer.

The Appellate Officer, in my opinion, has correctly read the rule and there cannot be much doubt about the interpretation of. it. If the Rule is a valid one it clearly directs that a partition is to be made in the first instance, and it is only if the partition would not be reasonable and convenient and also if both the parties agree, only then the power of transferring the property to the claimant can be exercised by the Competent Officer.

7. The learned counsel for the petitioners then argued that this Rule is invalid) inasmuch as it is inconsistent with the provisions of Section 10. I do not think that this argument has any force, because Section 10 itself has made the powers, conferred by it on a Competent Officer, subject to any rules that may be made in this behalf. The Rule lays down the order in which the powers given in Section 10 are to be exercised and I do not see any inconsistency between the Rule and the section.

8. The other argument of the learned counsel is that the delegation of power by the Legislature to the rule-making authority of making such rules as may override the section, is an improper and

unauthorised delegation. I do not think that the power conferred on the rule-making authority in this case, in any way, authorises that authority to do anything which is inconsistent with the provisions of the Act itself.

The Legislature in Section 10 has enumerated the powers" which the Competent Officer may exercise while dealing with the case of a claimant of a composite property, but it is not laid down, in what manner or in what order those powers are to be exercised, and it left it to the rule-making authority to lay down the manner and the order in which the powers, enumerated in Section 10, were to be exercised by the Competent Officer. I do not think that the Legislature was not competent to confer this limited power on the rule-making authority and that there was any delegation of an unauthorised power.

9. Another contention of the learned counsel for the petitioners is that the valuation of the property should have been determined by the Competent Officer under Section 8 of the Act, before passing any orders under Section 10. Under Section 8, the Competent Officer has been directed to determine the interest of the evacuee and of the claimants of the property, and that order is to contain all or any of the matters enumerated in the section.

The use of the word "any" shows that it is not necessary that the order must contain all the matters enumerated in Clauses (a) to (d) of Sub-section (1) of Section 8. Whatever matters are necessary to be decided should be determined in the order. Determining the money value of the property is one of the matters which may be determined under Section 8. But as it is not necessary to determine all the matters, the determination may not become necessary in some of the cases, and there is no direction in that section that the Competent Officer must determine all the above matters.

10. Reference was then made to B. 11A of the Rules made under the Act, but this Rule merely says that the Competent Officer shall, for the purpose of determining the money value of any composite property under Section 8 of the Act, admit in evidence certain specified documents.

This Rule would only apply where the Competent Officer proceeds to determine the value and, as Section 8 does not make it obligatory on the Competent Officer to determine the money value of the property in each and every case, Rule 11A will have no application to those cases where he does not consider it necessary to determine the money value of the property under Section 8 of the Act. In view of what I have stated above, I think the decision of the Appellate Officer does not contain any error apparent on the face of the record.

11. The other argument of the learned counsel for the petitioners is that no appeal lay to the Appellate Officer at all in this case and his judgment is, therefore, without jurisdiction. To say the least, it is somewhat, unusual for the appellant himself to argue that he filed an appeal which was not maintainable, when the result of the appeal went against him. He tried to take the benefit of a hearing of his case by the Appellate Officer and filed the appeal and had his say before him.

The decision went against him and now his contention is that the appeal was not maintainable. In any case, this contention has no force. Section 14 of the Act is the section which lays down what

orders are appealable, and Sub-section (1) of this section says that any person aggrieved by an order of the Competent Officer made under Section 8 or Section 10 may file an appeal. This order of the Competent Officer was under Section 10, because it directed the partition of the property under Clause (a), Sub-clause. (iv).

The learned counsel for the petitioners says, that an order actually partitioning the property is the order which can be appealed against and not an order which directs partition of the property. I do not think that this contention of the learned counsel is sustainable. Section 10 enumerates different modes in which the property of the claimants is to be separated from the share of the evacuee, and one of the modes is the partition of the property. .

The Competent Officer considered the question whether the property should be partitioned or not and he passed an order saying that it should be partitioned. The Officer who will actually partition the property by metes and bounds, is not nominated in the Act and I do not think that any appeal would be possible against the act of putting the boundary posts between the shares of the claimants and the evacuee. It is the order directing the partition, which is the order contemplated by Section 10 and, if such an order has been passed, I think it was appealable under that section.

12. In view of what I have stated above, this petition fails and is dismissed with costs.