

# **State Of Jammu & Kashmir & Ors vs Mahmood Ahmed & Ors on 13 April, 1989**

**Equivalent citations: 1989 AIR 1450, 1989 SCR (2) 470, AIR 1989 SUPREME COURT 1450, (1989) 2 JT 151 (SC), 1989 SCC (SUPP) 2 319, (1989) 1 RRR 367**

**Author: Kuldip Singh**

**Bench: Kuldip Singh**

PETITIONER:

STATE OF JAMMU & KASHMIR & ORS.

Vs.

RESPONDENT:

MAHMOOD AHMED & ORS.

DATE OF JUDGMENT 13/04/1989

BENCH:

NATRAJAN, S. (J)

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NATRAJAN, S. (J)

KULDIP SINGH (J)

CITATION:

1989 AIR 1450                      1989 SCR (2) 470

1989 SCC Supl. (2) 319 JT 1989 (2) 151

1989 SCALE (1) 994

ACT:

Evacuee (Administration of Property) Act 2006 of J & K  
State: Sections 6, 8, 9 and 14--Necessity for continuance of  
provisions-Emphasized.

HEADNOTE:

Respondent No. 1, who claimed to be the owner of the evacuee property in dispute, sold it to respondents 2 and 3 in 1970. In 1973, the Custodian, Evacuee Property, held that the sale was invalid since the property belonged to one Shah Mahmood, and after Shah Mahmood's migration to Pakistan during 1947 became evacuee property under the Evacuee (Administration of Property) Act 2006 of J & K State. The Custodian General, while dismissing the respondents' appeal against the Custodian's order, observed inter alia, that if

any application had been made by the first respondent under s. 8 of the Act regarding the house, the Custodian may dispose of the same in accordance with law. Thereafter, the respondents made an application under section 8 of the Act, and the same was rejected by the Custodian. The appeal against rejection was dismissed by the Custodian General. The respondents filed second appeal before the High Court. While declining to interfere with the concurrent findings of fact rendered by the Custodian and the Custodian General, the High Court expressed concern over the abuse of section 8. The High Court observed that sections 8 and 14 of the Act had outlived their utility and directed that the authorities should not in future entertain any application made under section 8.

Allowing the appeal filed by the State on the question of continued utility of section 8, the Court,

HELD: (1) There was no need or necessity for the High Court to have gone into the question whether section 8 had outlived its utility and whether it continued to have relevance. [474B]

(2) Section 8 is closely inter-linked with section 6 of the Act which deals with the powers of a Custodian to notify a property as evacuee property under the Act, and as long as section 6 has relevancy and operative force and in as much as notifications could still be made under  
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that section in appropriate cases, section 8 also will have to be retained and made use of by genuinely affected parties. [473G-H]

(3) A portion of the State is still in the hands of an alien Government and hence the possibility of a property becoming an evacuee property even now is very much there. [473H; 474A]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2395 of 1989.

From the Judgment and Order dated 21.7.88 of the Jammu & Kashmir High Court in Second Appeal No. 2 of 1978. Altar Ahmed and S.K. Bhattacharya for the Appellants. D.D. Thakur, E.C. Agrawala, Atul Sharma and Miss Purnima Bhatt for the Respondents.

The Judgment of the Court was delivered by NATARAJAN, J. Leave granted.

Though the High Court has accepted the ease of the State and dismissed the second appeal preferred by the respondents herein, the State has been prompted to file this appeal because of the observations made by the High Court that Sections 8 and 14 of the Evacuee (Administration of Proper- ty) Act, 2006 (hereinafter referred as to the Act) have outlived their purpose and hence the

concerned officers of the State need not entertain any applications made in future under Section 8 of the Act by persons laying claim to properties which have been notified as evacuee property under the Act.

To appreciate the grievance of the State over the pro- nouncement of the High Court about the relevancy and opera- tional force of Section 8 of the Act, a few facts require mention. Respondent No. 1 claimed to be the owner of Evacuee Property House No. 437 situate in Talab Khatikan, Jammu and sold the same to respondents 2 and 3 for a total considera- tion of Rs. 16,000 under a sale deed dated 12.12.1970. By an order dated 5.2.1973, the custodian (third appellant) held that the sale was invalid since the property was evacuee property and belonged to one Shah Mahmood who had migrated to Pakistan during the disturbances of 1947 and continued to live there as an evacuee. Against the order of the custodian the respondents preferred an appeal to the Custodian General (second appellant). The Custodian General dismissed the appeal but observed that if any application had been made by the first respondent under Section 8 regarding the house, the Custodian may dispose of the same in accordance with law. He also observed that if the respondents felt that they were entitled under law to make a claim under Section 25 of the Act, they may move the appropriate forum in that behalf. Thereafter, the respond- ents made two applications one under Section 8 on 14.3.1974 and another under Section 25 on 24.4.1974 to the Custodian. The Custodian noticed that the application under Section 8 had been presented beyond the prescribed limitation period of two months after the order dated 5.2.1973 had been passed but even so he considered the application on merits and rejected it. Likewise, the application under Section 25 was also rejected. Once again, an appeal was preferred to the Custodian General and he dismissed the appeal holding that there was no need for the custodian to have gone into the merits of the case when the direction given in the earlier appeal was only to see if any application under Section 8 had already been presented and was pending consideration. Against the order of the Custodian General, the respond- ents filed Second Appeal No. 2/78 before the High Court and sought reliefs in their favour. The High Court saw no merit in their contentions as the Custodian and Custodian General had rendered concurrent findings on questions of fact and had held that the property claimed by the respondents was unquestionably evacuee property. The High Court noticed that the findings had been rendered after proper appreciation of evidence and hence there was no warrant for interfering with those findings and dismissed the second appeal. However, while declining to interfere with the findings of fact rendered by the Custodian and the Custodian General, the High Court frowned upon the attempts of unscrupulous ele- ments to misuse and abuse the provisions of Section 8 of the Act in order to grab evacuee property for themselves. Feel- ing concerned over the abuse of Section 8 of the Act, the High Court thought it necessary that resort to Section 8 in future should be put an end by declaring that Sections 8 and 14 have served the purpose for which they had been provided in the Act and since they have outlived their utility, the authorities should not in future entertain any application made under Section 8 for a claim being made to any evacuee property.

The declaration made in Sections 8 and 14 and the direc- tions given by the High Court which have given rise to this appeal by the State are in the following terms.

"There is no justification for entertaining any application by any person in the State of Jammu and Kashmir under Section 8 of the Act after about 39 years of its passing.

Sec. 8 of the Act in my opinion has outlived its utility and is a redundant piece of legislation still existing on the statute book regarding which the legislature of the State may pass appropriate legislation directing its deletion from the provisions of the Act. The Custodian in the instant case has rightly held the application/objections of Mahmood Ahmed to be barred by time. There being no justification for entertaining an application under Section 8 of the Act, the authorities under the Act are directed not to entertain any application under Section 8 of the Act hereafter which may actually result in the deprivation of the evacuees of their properties. It cannot be conceived that a person whose property was declared or vested in the Custodian would keep silent for a period of about 39 years and not prefer a claim, if he had any. Claims preferred hereafter should be deemed to be fictitious, concocted and mala fide, intended to destroy and eliminate the evacuee properties to the detriment of the evacuees who may ultimately be restored such properties if they return to the State under a valid law in existence or to be enacted for the purpose."

Mr. Altar Mohammed, learned Advocate-General appearing for the appellants stated that the High Court went too far in making the above pronouncement and therefore the observations made and the directions given by the High Court as extracted above should be set aside. The learned counsel stated that when the High Court saw no grounds to interfere with the concurrent findings on questions of fact rendered by the Custodian and the Custodian General, there was no need or necessity for the High Court to have gone into the question whether Section 8 has outlived its utility and whether it continues to have relevance after more than 40 years have passed by since the Act was enacted. Another argument was that Section 8 is closely interlinked with Section 6 of the Act which deals with the powers of a Custodian to notify a property as evacuee property under the Act and in as much as Section 6 has currency even now because notifications could still be made under the Section in appropriate cases to notify a property as evacuee property, Section 8 also will have to be on the Statute Book. It was pointed out that still a portion of the State is in the hands of an alien government and hence the possibility of a property becoming an evacuee property even now is very much there. The learned Advocate-General therefore stated that as long as Section 6 has relevancy and operative force and notifications could still be made under that Section, Section 8 also will have to be retained and made use of by genuinely affected parties and as such the High Court was wrong in taking the view that Section 8 has outlived its utility and the State should delete it by appropriate legislation.

We find the contentions of the learned Advocate-General to be well founded. Mr. Thakur, learned counsel for the respondents did not controvert the contentions of the Advocate-General and in fact he placed reliance on Sec. 8 and sought to contend that the Custodian and Custodian General ought to have considered the first respondent's application under Section 8 as one made within time and sustained his claim to the property.

Consequently, confining over scrutiny to the limited question we are called upon to decide, in the appeal, we hold that the observations of the High Court extracted above are not legally correct and sustainable and also accordingly, set aside. The appeal is allowed in the manner indicated above.

There will be no order as to costs.

R.S.S.  
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Appeal al -