

Md. Sharfuddin vs R. P. Singh And Others on 10 March, 1961

Equivalent citations: 1961 AIR 1312, 1962 SCR (1) 239, AIR 1961 SUPREME COURT 1312, 1961 BLJR 524, 1963 (1) SCJ 339, 1962 (1) SCR 239, ILR 40 PAT 389

Bench: Raghubar Dayal, J.R. Mudholkar

PETITIONER:

Md. SHARFUDDIN

Vs.

RESPONDENT:

R. P. SINGH AND OTHERS.

DATE OF JUDGMENT:

10/03/1961

BENCH:

SUBBARAO, K.

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SUBBARAO, K.

DAYAL, RAGHUBAR

MUDHOLKAR, J.R.

CITATION:

1961 AIR 1312

1962 SCR (1) 239

ACT:

Appeal--Person aggrieved--Property held to be not evacuee property--Whether Assistant Custodian can Prefer appeal against order--Administration of Evacuee Property Act, 1950 (31 of 1950), S. 24(1)(a).

HEADNOTE:

The Assistant Custodian, Giridih, passed an order holding that the properties of the appellant were not evacuee properties. The Custodian, acting under S. 26(1) of the Administration of Evacuee Property Act, 1950, called for the records of the case, and after hearing the appellant dropped the proceedings. Subsequently, the Assistant Custodian, Head-quarters, Patna, filed an appeal before the Custodian under S. 24(1)(a) of the Act, against the order of the Assistant Custodian, Giridih. In appeal the Custodian declared the shares of the brothers of the appellant in the property to be evacuee property and referred the matter for

separation of their shares. The appellant contended that no appeal lay under S. 24(1)(a) at the instance of the Assistant Custodian, Head-quarters.

Held, that the appeal filed by the Assistant Custodian, Headquarters was incompetent. The Assistant Custodian, Headquarters, was not a 'person aggrieved' within the meaning of S. 24 of the Act, by the order of the Assistant Custodian, Giridih, and he could not prefer an appeal.

Ebrahim Aboobakar v. Custodian-General of Evacuee Property, [1952] S.C.R. 696, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 458 of 1958. Appeal by special leave from the judgment and decree dated September 3, 1956, of the Patna High Court in M. J. No. 603 of 1955.

M. K. Ramaraurthi, R. K. Garg, S. C. Agarwal and D. P. Singh, for the appellant.

R. C. Prasad, for the respondents.

1961. March 10. The Judgment of the Court was delivered by SUBBA RAO, J.--This appeal by special leave is directed against the order of the High Court of Judicature at Patna dismissing the application filed by the appellant under Art. 226 of the Constitution to quash the order dated August 4, 1955, passed by Shri R. P. Singh, Custodian of Evacuee Property, Bihar.

The facts relevant to the question raised in this appeal may be briefly stated. On information supplied by one Qurban Ahmad, the Assistant Custodian, Giridih, issued a notice under s. 7(1) of the Administration of Evacuee property Act, 1950 (Act 31 of 1950), (hereinafter called the Act), to the appellant to show cause why he should not declare holdings Nos. 326, 774 and 654 in his possession as evacuee properties. The Assistant Custodian, after making the necessary inquiry, held that the said holdings were evacuee properties. The appellant filed a revision petition under s. 26 of the Act against the said order to the Deputy Custodian, Hazaribagh, who set aside the order of the Assistant Custodian and remanded the matter to him for disposal in accordance with law. On April 26, 1954, the Assistant Custodian, Giridih, on a consideration of the evidence placed before him, held that the said properties were not evacuee properties, and on that finding he released them. Thereafter, the Custodian, acting under s. 26(1) of the Act, called for the records of the case and, after hearing the appellant, by his order dated January 27, 1955, dropped the proceedings. On February 22, 1955, the Assistant Custodian, Head-quarters, Patna filed an appeal before the Custodian, under s. 24(1)(a) of the Act, against the order of the Assistant Custodian, Giridih, dated April 26, 1954, releasing the holdings of the appellant. On August 4, 1955, the Custodian set aside the order of the Assistant Custodian, Giridih, and declared the shares of the brothers of the appellant in the holdings to be evacuee properties and referred the matter to the appropriate authority for the separation of their interest. Thereafter, the appellant filed an application to the High Court under Art. 226 of the Constitution to quash the said order, but that was dismissed. Hence the appeal.

Though many questions were raised before the High Court, only the following four questions were pressed before us by learned counsel for the appellant (1) No appeal lay to the Custodian from the order of the Assistant Custodian, Giridih, at the instance of the Assistant Custodian, Headquarters, Patna. (2) Under s. 7-A of the Act the Custodian has no power after May 7, 1954, to declare any property to be evacuee property unless proceedings are pending on the said date for declaring such property as evacuee property, and that in the present case, as the appeal against the order of the Assistant Custodian was filed only on February 22, 1955, no proceeding was pending on the prescribed date and, therefore, the Custodian illegally made the order in direct contravention of the provisions of B. 7-A of the Act. (3) The Custodian acted perversely in condoning the delay in filing the appeal to him without assigning any reasons. (4) The notice issued to the appellant under s. 7(1) of the Act was defective and, therefore, the proceedings taken pursuant thereto were void. The appellant lost before the High Court on all the four points. Though learned counsel for the appellant raised all the four contentions before us, he seriously pressed only the first two contentions.

To appreciate the first contention and to give a satisfactory answer thereto, it would be necessary to consider the scope of the relevant provisions of the Act. Section 2(c) defines "Custodian" to mean the Custodian for the State and to include any Additional, Deputy or Assistant Custodian of evacuee property in that State. Section 6 authorises the Central Government to appoint for any State a Custodian and as many Additional, Deputy or Assistant Custodians of Evacuee Property as may be necessary for the purpose of discharging the duties imposed on the Custodian by or under the Act. By sub-s. (3) of that section, the Additional, Deputy and Assistant Custodians of Evacuee Property shall discharge the duties imposed on them by or under the Act under the general superintendence and control of the Custodian of the State, but the Central Government may, by general or special order, provide for the distribution of work among them. The said provisions indicate that whatever the designations of the said officers be they are all Custodians within the definition of "Custodian" in the Act, though for convenience their duties are either statutorily or administratively defined. Under s. 7 a Custodian-it may be noted that the Custodian may be any one of the aforesaid categories-if he is of opinion that any property is evacuee property within the meaning of the 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. Sub-s. (3) thereof enjoins on him the duty to publish in the Official Gazette all properties declared by him to be evacuee properties. After such declaration the said properties vest in the Custodian for the State. Section 9 empowers the Custodian to take possession of evacuee property vested in him. Section 10 confers powers on the Custodian to take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any property. Section 24 confers a right on any person aggrieved by an order made under s. 7 to prefer an appeal to the Custodian where the original order has been passed by a Deputy or Assistant Custodian and the amount or value of the property which is the subject-matter of the order does not exceed two thousand rupees, and to the Custodian-General in any other case. Section 26, which was deleted from the Act by s. 8 of Act 91 of 1956, conferred a revisional jurisdiction on the Custodian, Additional Custodian or Authorized Deputy Custodian against the orders of subordinate officers. Section 27 gives to the Custodian-General a plenary power of revision to correct the orders of any Custodian at any time. The scheme of the foregoing provisions may be briefly stated thus: A Custodian, as defined in the Act, after

necessary inquiry, may declare a property to be evacuee property; on such declaration the property vests in him; after such vesting, the Custodian manages the said property; if a Custodian wrongly or illegally declares a property to be evacuee property, the person aggrieved by his order can prefer an appeal to the appropriate authority prescribed under s. 24; the Custodian or the Custodian. General, as the case may be, in appropriate cases, can also, in exercise of his revisional jurisdiction, set aside that order; if a Custodian illegally or improperly releases a property on the ground that it is not evacuee property, it is liable to be revised by the Custodian or the Custodian- General, as the case may be, under s. 26 or s. 27 of the Act.

Learned counsel for the respondents contends that the words "any person aggrieved" under s. 25 of the Act are comprehensive enough to include a Custodian and, therefore, a Custodian can prefer an appeal against an order of a Custodian releasing properties under s. 7 of the Act. Realizing that an obvious anomaly is implicit in the argument, learned counsel concedes that an appeal can be filed only by a Custodian other than the Custodian who made the order releasing the properties. It is said that the Central Government may, under s. 6 of the Act, provide for the distribution of work among the various Custodians, namely, Additional, Deputy and Assistant Custodians, and in such allocation the power to inquire whether a property is an evacuee property or not may be conferred on one Custodian and the power to manage it on another, and that, in that event, the Custodian on whom the power to manage is conferred will be a person aggrieved within the meaning of s. 24 of the Act. In our View this argument is not consistent with the scheme of the Act. Though for the purpose of convenience of management or judicial determination of disputes the Act provides different categories of Custodians, all of them fall within the definition of "Custodian" in the Act. The Act further provides a hierarchy of tribunals under the superintendence and control of the Custodian-General. It would be anomalous were it to be held that a Custodian could prefer an appeal against the order of a Custodian. The Act does not contemplate one officer preferring appeals against the orders of another officer. If an Assistant Custodian or a Custodian went wrong in the matter of declaring a property to be an evacuee property, the Act provides that the Custodian or the Custodian-General, as the case may be, before 1956, and the Custodian-General thereafter, may set right the wrong. In the premises the words "any person aggrieved" in s. 24 of the Act can only mean a person whose properties have been declared to be evacuee properties by the Custodian, or a person who moved the Custodian to get the properties so declared or any other such aggrieved person. The words "any person aggrieved" in the context of the Act cannot include any Custodian as defined in the Act.

Strong reliance is placed upon the decision of this Court in *Ebrahim Aboobaker v. Custodian-General of Evacuee Property* (1) in support of the contention of the respondents. In that case, on information supplied by one Tek Chand Dolwani to the Additional Custodian of Evacuee Property, the latter started proceedings under the Bombay Evacuees (Administration of Property) Act, 1949, against one Aboobaker. The Additional Custodian, after recording the statement of Aboobaker and examining the evidence produced by Tek Chand Dolwani, held that the said Aboobaker was not an evacuee. Tek Chand Dolwani filed an appeal against the said order to the Custodian-General of India. One of the questions raised was whether the said Tek Chand Dolwani was a person aggrieved by the order of the Additional Custodian within the meaning of s. 24 of the Central Ordinance XXVII of 1949, and was entitled to appeal against the said order. This Court held

that the said person was a person aggrieved within the meaning of the said section. It was provided in rule 5(5) of the rules made under the Ordinance that any person or persons claiming to be interested in the inquiry or in the property being declared as evacuee property, might file a written statement in reply to the written statement filed by the persons interested in the property claiming that the property should not be declared as an evacuee property; and that the Custodian should proceed to hear the evidence, if any, which the party appearing to show cause might produce and also the evidence which the party claiming to be interested as mentioned (1) [1952] S.C.R. 696.

above might adduce. The rule, therefore, authorized the Additional Custodian to adjudicate between the person moving the Custodian to declare a property as evacuee property and the person denying that fact. In that context, this Court held that the person moving the Custodian was a person aggrieved within the meaning of s. 24. This decision or the decisions relied upon by this Court in the aforesaid case in coming to the said conclusion are not relevant to the present enquiry. Where a statute or rules framed thereunder provide for a dispute between two parties to be decided by a tribunal, it is implicit in that provision that the defeated party is one aggrieved by that decision. But the same cannot be said of a Custodian and the party in whose favour he gave a decision; nor can another subordinate officer of the Custodian, who made the decision and who has no statutory duty to appear before the Custodian to put forward the case of the department or lead evidence in support thereof, be equated to a party in a lis. We, therefore, hold, having regard to the scheme of the Act, that the Assistant Custodian, Headquarters, Patna, is not a person aggrieved within the meaning of s. 24 of the Act. The appeal to the Custodian, therefore, was not competent. In this view, the second question does not fall to be considered. In the result, the order of the High Court is set aside and we direct the issue of a writ of certiorari to quash the order of the Custodian of Evacuee Property Bihar, dated April 26, 1954 setting aside the order of the Assistant Custodian, Giridih, releasing the holdings Nos. 326, 774 and 654 in Giridih belonging to the appellant. The appeal is allowed with costs throughout.

Appeal allowed.