

Haji Siddik Haji Umar & Others vs Union Of India on 18 January, 1983

Equivalent citations: 1983 AIR 259, 1983 SCR (2) 249, AIR 1983 SUPREME COURT 259, 1983 (1) SCC 408, 1983 BBCJ 80, 1983 UJ (SC) 196

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, A.P. Sen, R.B. Misra

PETITIONER:

HAJI SIDDIK HAJI UMAR & OTHERS

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 18/01/1983

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

SEN, A.P. (J)

MISRA, R.B. (J)

CITATION:

1983 AIR 259

1983 SCR (2) 249

1983 SCC (1) 408

1983 SCALE (1) 48

ACT:

Administration of Evacuee Property Act, 1950 -Sub-s. (2A) of s. 8 and ss. 28 and 46-Property taken over as evacuee property under any repealed law-Sub-s. (2A) of s. 8 operates even if there is no defect in previous law and cures all defects in taking over-ss. 28 and 46 bar jurisdiction of civil court to interfere in any matter determined by Custodian General or Custodian.

HEADNOTE:

Sub s. (2A) of s. 8 of the Administration of Evacuee Property Act, 1950 states that all property which under any law repealed by the Act purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in, or the

invalidity of such law or any judgment, decree or order of any Court be deemed for all purposes to have validly vested in that person, as if the provisions of such law had been enacted by Parliament and such property shall, on the commencement of the Act, be deemed to have been evacuee property declared as such within the meaning of the Act and accordingly, any order made or other action taken by the Custodian or, any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken.

The properties which were the subject matter of the suit from which this appeal arose were situate in the erstwhile State of Junagadh and belonged to one Haji Umar Kasam who had sailed from Bombay on October 8, 1947 on a pilgrimage to Mecca. On May 1, 1948 a notice in respect of these properties was issued under the Junagadh State Evacuee (Administration of Property) Act XII of 1948 but it was withdrawn on May 31, 1948 on receipt of a reply from his son that he had not gone away from Junagadh out of fear of civil disturbances but in fact had gone on Haj and was expected to return shortly. Since he did not return till September, 1948 the Custodian took possession of the suit properties. Thereafter the territory of Junagadh became integrated with the United States of Saurashtra and the Junagadh Act was repealed by a Saurashtra Ordinance which in turn was repealed by a Central Ordinance. The Administration of Evacuee Property Act, 1950 replaced the Central Ordinance.

An order declaring Haji Umar Kasam as an evacuee was issued on May 20, 1949 by the Custodian purporting to act under the Junagadh Act. The appeal filed against this order before the District Judge, Junagadh was transferred by him to the High Court of Saurashtra which in turn sent the same to the Custodian of Saurashtra for disposal. Haji Umar Kasam returned to India

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during the pendency of that appeal and filed a petition under the provisions of the Central Ordinance-which had come into force by then-before the Custodian General requesting him to transfer the appeal to his file for disposal. Before this petition could be heard, the appeal was dismissed by the Custodian of Saurashtra on June 2, 1950. A revision filed against this order was dismissed on August 9, 1950 by the Custodian General along with the petition for transfer of the appeal which had been filed earlier. Haji Umar Kasam's application under s. 16 of the Central Ordinance for restoration of his property was also turned down when the Central Government declined to grant the certificate contemplated under the proviso to sub-s. (1) thereof on the ground that, contrary to his claim that he had gone to Mecca and stayed there, there was evidence suggesting that he must have been in Karachi for a major part of the period during which he was away from India. A notification was also issued in respect of the suit properties under s. 12 of the

Displaced Persons (Compensation and Rehabilitation) Act, 1954.

The heirs and legal representatives of Haji Umar Kasam filed the suit contending that he was not an evacuee; that the taking over of possession of the properties after the withdrawal of the notice on May 31, 1948 without issuing further notice was illegal; that an order directing restoration of the properties to Haji Umar Kasam had been passed on March 1, 1949 and therefore the order of May 20, 1949 declaring him an evacuee without issuing notice or holding an inquiry was illegal; and that the orders passed by the Custodian and the Custodian General on June 2, 1950 and August 9, 1950 respectively as well as the refusal by the Government of India to grant the certificate under s. 16 were all contrary to law.

The Union of India which contested the suit did not deny that an order was made on March 1, 1949 as stated above but pleaded that the order dated May 20, 1949 had been passed in accordance with law after making necessary inquiry at which the plaintiffs had been given sufficient opportunity to prove that Haji Umar Kasam was not an evacuee. It placed reliance on the order passed on the application made under s. 16 and the notification issued under s. 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and on s. 46 which barred the jurisdiction of the civil court to decide the questions raised in the suit.

The trial court dismissed the suit and the appeal against its dismissal was rejected by the High Court. On the question relating to the existence of the order of March 1, 1949 directing the restoration of properties of Haji Umar Kasam, while the trial court was of the view that there was no such order, the High Court held that such an order had been made;

Dismissing the appeal,

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HELD :Sub-s. (2A) of s. 8 operates even if there is no defect in any previous law under which action is taken and cures all defects, if any, in the taking over of the properties as evacuee properties. The words "notwithstanding any defect in or the invalidity of, such law or any judgment, decree or order of any

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Court" found in this sub-section do not cut down the operation of the clear words of the sub-section which validate the vesting of any property which purports to have vested as evacuee property even if there was any irregularity in the procedure. The non-obstante clause referred to above is not intended to whittle down the operation of sub-s (2A) of s. 8. It is introduced only out of abundant caution. In the context in which this sub-section appears it is not correct to hold that it would operate only where there is any defect in or invalidity of

any previous law or where there is any judgment, decree or order of any court to the contrary. [267 A-E]

The Dominion of India & Anr. v. Shrinbai A. Irani & Anr., [1955] 1 S.C.R. 296; Azeemunnisa & Ors. v. The Deputy Custodian Evacuee Properties, District Deoria & Ors., [1961] 2 S.C.R. 91 and M/s. Haji Esmail Noor Mohammed & Co & Ors. v. The Competent Officer, Lucknow & Ors., [1967] 3 S.C.R. 134, referred to.

Ahmedbhai Abdulkadar & Ors. v. The Custodian of Evacuee Property and Regional Settlement Commissioner, Bombay & Ors., A.I.R. 1971 Gujarat 181, approved.

In the instant case it cannot be disputed that the suit properties had been taken over under the Junagadh Act as evacuee properties in September, 1948 and had continued to be in the possession of the Custodian till the Act was passed and therefore it is not possible to hold that they were not evacuee properties. [268 H, 269 A]

(ii) Whereas under s. 7 of the Act an enquiry had to precede the declaration that a property was an evacuee property, under the Junagadh Act no such enquiry was contemplated. The Custodian was required by s. 7 of that Act to take possession of any property which had been left in Junagadh by an evacuee. The suit properties had been taken over as evacuee properties in September, 1948 because Haji Umar Kasam had not returned to Junagadh for over one year. Such taking over was an administrative act. By reason of the combined effect of ss. 4 and 16 (1) of the Junagadh Act the properties continued to be vested in the Custodian. The order dated March 1, 1949 under which it is claimed that the properties were ordered to be returned has not been produced. Even if such an order was there unless it is shown that such an order had been passed by the State Government and published in the Official Gazette, the suit properties would not cease to be evacuee properties. By virtue of s. 5 of the Saurashtra Ordinance they became vested in the Custodian of Saurashtra and by virtue of s. 8 (2) of the Central Ordinance they became vested in the Custodian appointed under that Ordinance. All properties vested under the Central Ordinance became evacuee property in the hands of the Custodian appointed under the Act by virtue of sub-ss. (2) and (2A) of s. 8. Any doubt that existed about the vesting of the properties in the Custodian under the Act as evacuee property was removed by enacting sub-s; (2A) of s. 8 with retrospective effect. [261 E-H, 262 A-E, 266 E-F]

(iii) It is only after the Central Ordinance came into force that Haji Umar Kasam preferred his petition for restoration of his properties under s. 16 (1) of

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that Ordinance, and also applied for a certificate as per proviso to that sub-section to the Government of India. Again it is only after the Act came into force replacing the Central Ordinance that the Custodian General disposed of the petition for transfer of the appeal pending before the

Custodian of Saurashtra and the revision petition filed against his order dated June 2, 1950. The effect of these proceedings have to be considered in the light of the provisions of the Act. [263 G-H, 264 A-B]

(iv) Section 28 bars the jurisdiction of any court to entertain any suit or proceeding with respect to any order passed by the authorities mentioned therein. Section 46 which is worded very widely bars the jurisdiction of civil or revenue courts in regard to matters mentioned therein. No such court can entertain any suit or proceeding in which the question whether any property is or is not evacuee property arises or in which the legality of any action taken by the Custodian General or the Custodian under the Act is questioned. Any matter which the Custodian General or the Custodian is empowered to determine by or under the Act is also outside the jurisdiction of any such court. In view of these provisions it was not open to the civil court to decide whether the suit properties were evacuee properties or not. It was also not open to it to decide the correctness of the order of the Custodian General dated August 9, 1950 declining to interfere with the order of the Custodian dated June 2, 1950. The question whether a certificate should have been issued by the Central Government also was by implication barred as it was the Custodian who had to restore the property after holding an inquiry into the title of the evacuee when an application was made to him along with a certificate issued by the Central Government and a certificate of that nature by itself would be of no use. Neither Haji Umar Kasam, nor after his death, his heirs and legal representatives, questioned these orders before the High Court under Art. 226 or before this Court under Art. 32 or Art. 136. Thus they became final and were beyond the jurisdiction of the civil court. [269 C-H, 270 A]

Custodian of Evacuee Property, Punjab & Ors. v. Jafran Begum, [1967] 3 S.C.R. 736, referred to.

Fazalbhoy Currimbhoy etc. v. Official Trustee of Maharashtra & Ors., [1979] 2 S.C.R. 699 and Dr. Rajendra Prakash Sharma v. Gyan Chandra & Ors., [1980] 3 S.C.R. 207, distinguished.

(v) On the publication of the notification under s. 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 the right, title or interest of Haji Umar Kasam in the suit properties became extinguished and they vested absolutely in the Central Government free from all encumbrances by virtue of s. 12 (2) of that Act. [270 D-E]

Basant Ram v. Union of India, [1962] Supp. 2 S.C.R. 733, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2279 of 1970.

From the Judgment and Decree dated the 28th/29th July, 1970 of the Gujarat High Court in First Appeal No. 438 of 1962.

T.U. Mehta and R.P. Kapoor for the Appellant. P.A. Francis, S.N. Chaudhary and R.N. Poddar for the Respondent.

R.N. Sachthey for the Intervener.

R.H. Dhebar for the Intervener.

The Judgment of the Court was delivered by VENKATARAMIAH, J. This appeal by certificate is filed against the judgment and decree dated July 29, 1970 passed by the High Court of Gujarat in First Appeal No. 438 of 1962 affirming the judgment and decree dated August 27, 1962 passed in Special Civil Suit No. 254 of 1959 on the file of the Civil Judge (Senior Division), Junagadh dismissing the suit of the plaintiffs for possession of the properties mentioned in Schedule-I attached to the plaint and for damages and other reliefs against the Union of India.

The properties in question which are situated in the area which formed part of the former princely State of Junagadh originally belonged to one Haji Umar Kasam, a resident of Junagadh who died on May 22, 1956. The plaintiffs are his heirs and legal representatives.

The Nawab of Junagadh accepted the accession of his State to Pakistan on August 13, 1947. On September 23, 1947 Haji Umar Kasam left Junagadh for Haj and sailed from Bombay by "S.S. Akbar" on October 8, 1947. On October 24, 1947, the Nawab of Junagadh fled to Pakistan. The State of Junagadh was taken over by its people and a Council of Administration was set up to administer it. Thereafter the State acceded to India. On February 13, 1948 Junagadh State Evacuee (Administration of Property) Act XII of 1948 (hereinafter referred to as 'the Junagadh Act') was enacted. It provided for the administration of the properties belonging to evacuees. Under that Act the expression 'evacuee' was defined as a person ordinarily resident in or owning property or carrying on business in any village or town within the Junagadh State who had on account of civil disturbances or the fear of such disturbances left that village or town and did not personally occupy or supervise his property or business. All property in which an evacuee had any right or interest other than any moveable property in his immediate physical possession which was called 'evacuee property' situated within the Junagadh State came to be vested in the Custodian appointed for the purpose of that Act and was directed to continue to be so vested until the Junagadh State Government by notification otherwise directed. There were detailed provisions in that Act relating to the management of evacuee properties. Section 16 (1) of that Act however provided that on being satisfied that evacuees had returned or were returning to the Junagadh State, the Junagadh State Government might by notification in the State Gazette authorise return of the property to the owners in accordance with the aforesaid section 16. Any person claiming to be entitled to any such property could apply in writing to the Custodian who had after giving public notice to hold a summary enquiry into the claim and to pass a formal order declaring the person to whom the possession of the property might be delivered. A notice was issued by the Assistant-Custodian who also exercised certain specified powers of the Custodian under the Junagadh Act on May 1, 1948 in

respect of the properties of Haji Umar Kasam as he had not returned to Junagadh and was away for more than six months. On May 5, 1948 his son Haji Mohamed Siddik Haji Umar sent a reply to that notice stating that his father Haji Umar Kasam had not gone away from Junagadh out of fear of civil disturbances; that he had gone on 'Haj'; that all his heirs were living in Junagadh and that he was returning shortly and therefore his properties might not be treated as evacuee properties. No specific reason was, however, given in the said reply for the long delay in the return of Haji Kasam. On receipt of his reply that notice was withdrawn on May 31, 1948. Since Haji Umar Kasam had not returned till September, 1948 the possession of the suit properties was taken by the Custodian between September 23, 1948 and October 1, 1948 as evacuee properties. By the Saurashtra Ordinance III of 1949, the territory of the Junagadh State was integrated with the United States of Saurashtra. It is alleged that by an order dated March 1, 1949 Haji Umar Kasam was declared to be a non-evacuee and the ice factory, one of the suit properties, was ordered to be returned to his sons. This fact is disputed by the Union of India although the High Court of Gujarat has held that there was such an order. The possession of the ice factory was not, however, returned. It continued to be with the Custodian. But again on May 20, 1949, the Custodian purporting to exercise his power under the Junagadh Act treated Haji Umar Kasam as an evacuee and directed that his ice factory should be taken possession of as an evacuee property. The ice factory was leased out by the State Government in favour of a refugee called Suraji Krishan Nandlal Chowdhary in May, 1949. Since Haji Umar Kasam had not yet returned to India, his sons filed an appeal in July, 1949 before the District Judge, Junagadh against the order declaring him as an evacuee. On August 4, 1949 the Saurashtra Ordinance XLIII of 1949 (hereinafter referred to as the 'Saurashtra Ordinance') was passed repealing the Junagadh Act and under that Ordinance the properties vested in the Custodian under the Junagadh Act came to be vested in the Custodian of the United States of Saurashtra. This Ordinance was repealed and replaced by the Administration of Evacuee Property Ordinance No. XXVII of 1949 (hereinafter referred to as the 'Central Ordinance') which applied also to all the acceding States except Cooch- Behar, Manipur and Tripura with effect from October 18, 1949. The Central Ordinance was repealed and replaced by the Administration of Evacuee Property Act, 1950 (Act XXXI of 1950) (hereinafter referred to as 'the Act') which came into force on April 17, 1950. Haji Umar Kasam returned to India on December 23, 1949 after the Central Ordinance had come into force.

Now reverting to the appeal preferred by the sons of Haji Kasam filed in July, 1949 before the District Judge, Junagadh it is seen that the said appeal was transferred by the District Judge to the High Court of Saurashtra State without deciding it. The High Court in its turn as per its order dated March 22, 1950 sent the appeal to the Custodian of Evacuee Property of Saurashtra on a joint submission made by the counsel appearing for the appellants as well as the counsel for the Custodian with which the High Court agreed. When the said appeal was pending before the Custodian, a petition purporting to be under sub-section (2) of section 6 and section 27 of the Central Ordinance was presented by Haji Umar Kasam himself to the Custodian General of Evacuee Property requesting him to withdraw the appeal to his file and to dispose it of. That petition dated April 17, 1950 was actually presented on April 19, 1950. Before the above petition could be heard by the Custodian General, the Custodian dismissed the appeal on June 2, 1950 on two grounds viz. (i) that the appeal had been filed after the expiry of the period of limitation and

(ii) that Haji Umar Kasam having left the Junagadh State limits after August 15, 1947 and having not returned by the time the order under appeal was passed i.e. May 20, 1949 he had been rightly treated as an evacuee.

Against the order passed by the Custodian on the appeal on June 2, 1950 a revision petition was filed before the Custodian General under section 27 of the Act. The Custodian General took up for consideration the petition filed on April 19, 1950 requesting him to withdraw the appeal then pending before the Custodian and the revision petition filed against the order passed in appeal by the Custodian together. After hearing the counsel for Haji Umar Kasam the Custodian General disposed them of by his order dated August 9, 1950. Though he agreed with the submission made on behalf of Haji Umar Kasam that the appeal filed against the order passed by the Custodian, Junagadh on May 20, 1949 could not be disposed of by the Custodian of Saurashtra State, who was of the same rank as the Custodian who had passed the order under appeal, he found it difficult to go behind the order of the High Court of Saurashtra which had transferred the appeal to the Custodian of Saurashtra by its order agreeing with the joint submission made by the counsel for the appellants therein and the counsel for the Custodian. That Judicial order according to the Custodian General, having become final could not be interfered with by him. He also felt that it was not possible for him to set aside the order of May 20, 1949 passed by the Custodian, Junagadh as the office of the Custodian General was not in existence then, even if he could interfere with the appellate order passed by the Custodian of Saurashtra holding that the appeal was barred by time. For these and other reasons, the Custodian General dismissed both the petition dated April 19, 1950 and the revision petition by his order dated August 9, 1950. That order was allowed to become final.

Haji Umar Kasam also made an application in January, 1950 to the Custodian for restoration of his property under section 16 of the Central Ordinance. That Section read as:

"16. Restoration of Property: (1) the Custodian may, on application made to him in this behalf in writing by an evacuee or any person claiming to be an heir of an evacuee, restore subject to such terms and conditions as he may think fit to impose, the evacuee property to which the evacuee or other person would have been entitled if this Ordinance were not in force:

Provided that the applicant produces in support of his application a certificate from the Central Government or from any person authorised by it in this behalf, to the effect that the evacuee property may be so restored if the applicant is otherwise entitled thereto.

(2) On receipt of an application under sub-section (1), the Custodian shall cause public notice thereof to be given in the prescribed manner, and, after holding a summary inquiry into the claim in such manner as may be prescribed may-

(a) make a formal order declaring that the property shall be restored to the applicant:
or

(b) reject the application; or

(c) refer the applicant to a civil court for the determination of his claim and title to the property:

Provided that no order for restoration shall be made under this section, unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof.

(3) Upon the restoration of the property to the evacuee or to the heir, as the case may be, the Custodian shall stand absolved of all responsibilities in respect of the property so restored, but such restoration shall not prejudice the rights, if any, in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored:

Provided that every lease granted in respect of the property or on behalf of the Custodian shall have effect against the person to whom restoration is made until such lease is determined by lapse of time or by operation of law." (Underlining by us) [Note: Section 16(1) of the Act which replaced the Central Ordinance on April 17, 1950 was in the same terms.] On receipt of that application filed by Haji Umar Kasam, the Custodian informed him on February 25, 1950 that in order to proceed with it, it was necessary that he should produce a certificate of the Central Government as contemplated under the proviso to section 16(1) set out above. Accordingly he applied to the Custodian General for such a certificate on March 19, 1950. That application was sent to the Custodian of Saurashtra for enquiry and report. The Custodian submitted his final report on June 30, 1953. In his application Haji Umar Kasam had claimed that he had left India for the purpose of Haj and had gone to Mecca where he fell ill necessitating a prolonged stay there. He also claimed that he had stayed all along there from September 1947 to December 1949 when he returned to India. In support of his case he produced certificate dated December 3, 1949 issued by the Indian Consul at Jeddah (Saudi Arabia) saying that he had been unavoidably detained there and could not be repatriated earlier. On enquiry the Custodian found that apart from the other circumstances, such as earlier statements made by the sons of Haji Umar Kasam, certain remittances sent from the Bank of India, Junagadh Branch to him which were encashed at Karachi suggested that Haji Umar Kasam must have been in Karachi for a major part of the period during which he was away from India.

The following was the list of remittances: "THE BANK OF INDIA JUNAGADH BRANCH Amount remitted by various individuals and firms to parties residing in Karachi (Pakistan) through this branch .

Sr.	Date of	Name of remitter	Amount	Name of Receiver	No. remittance	remitted in
P	a	k	i	s	t	a
						n

1	2	3	4	5
24 3-11-47 Haji Ibrahim Ayub 12,000 Haji Umar Kasam 70 22-11-47 Haji Ibrahim Ayub 4,500 Haji Umar Kasam 167 27-11-47 Haji Ibrahim Ayub 3,500 Haji Umar Kasam 488 23-1-48 Baramain H. Mian 1,000 Haji Umar Kasam 573 10-4-48 Alibhai Haji Hakim- 2,000 Haji Umar Kasam bhai 592 1-5-48 Haji A. Haji Umar 5,000 Haji Umar Kasam 617 7-6-48 Haji A. Haji Umar 5,000 Haji Umar Kasam 620 9-6-48 Abdreman Kasam 1,800 Umar Kasam"				

The Custodian reported that the evidence before him revealed that Haji Umar Kasam had received the payments through the above bank remittances at Karachi and that the case that Haji Umar Kasam had stayed in Mecca throughout was not believable. After considering the entire matter before it and the report referred to above the Government of India declined to grant a certificate referred to in the proviso to section 16 (1) of the Act as it stood then and communicated its decision to Haji Umar Kasam through the Custodian, Saurashtra on July 3, 1954 This decision again was not questioned in any court. A notification under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 was issued in respect of the properties in question on June 8, 1955. No further effective action appears to have been taken by Haji Umar Kasam against this notification except writing letters to the ministers of the Government of India, some of which are produced before this Court by way of answer to a question put by the Court as to whether any such action was taken before the institution of the suit.

As mentioned earlier Haji Umar Kasam died on May 22, 1956. Thereafter his heirs and legal representatives filed the suit out of which this appeal arises in the year 1959 after issuing the required notice dated January 2, 1959 under section 80 of the Code of Civil Procedure. In that notice, it was stated that the Special Custodian Officer had taken possession of the suit properties between September 23, 1948 and October 1, 1948 illegally acting in abuse of his power. The plaintiffs demanded the return of the suit properties and also damages for illegal possession from October 1, 1948 to January 1, 1959.

The main contention of the plaintiffs in the suit is set out in paragraphs 4 and 5 of the plaint. It is pleaded therein that Haji Umar Kasam was not an evacuee ; that the first notice issued by the Custodian Officer was withdrawn on May 31, 1948 ; that again in September, 1948 the Special Custodian Officer had taken possession of the ice factory belonging to Haji Umar Kasam without issuing any notice to him and later on a representation made by the plaintiffs, the Special Custodian Officer passed an order on March 1, 1949 directing the restoration of the properties of Haji Umar Kasam to him and that again on May 20, 1949 the Custodian of Evacuee Property, Junagadh had made a declaration that Haji Umar Kasam was an evacuee and directed the taking over of his properties. It is contended that the order of May 20, 1949 which was passed without issuing notice and without holding an enquiry after the order of March 1, 1949 was illegal and in excess of jurisdiction. In paragraphs 6 and 7 of the plaint, it was alleged that the order passed by the Custodian on June 2, 1950 was bad in law and the rejection of the petition by the Custodian General

on August 9, 1950 and the refusal by the Government of India to grant the certificate under section 16 of the Act were again contrary to law. The suit was filed by the heirs and legal representatives of Haji Umar Kasam on the above basis for possession of the twelve properties mentioned in Schedule-I attached to the plaint which originally belonged to him. The defendant, Union of India, which contested the suit while not denying that an order was made on March 1, 1949 as stated above, inter alia pleaded that the order dated May 20, 1949 had been passed in accordance with law after making necessary inquiry at which the plaintiffs had been given sufficient opportunity to prove that Haji Umar Kasam was not an evacuee. Reliance was also placed by the Union of India on the orders passed on the application made under section 16 of the Act, the notification issued under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and section 46 of the Act which barred the jurisdiction of the civil court to decide the questions raised in the suit.

On the aforesaid pleadings, the trial court framed as many as fifteen issues and at the conclusion of the trial recorded its findings on them. Ultimately the suit was dismissed. The High Court in appeal discussed the effect of some of the provisions of law applicable to the case and dismissed the appeal. It did not, however, deal with all the issues. It may be noted that on the question relating to the existence of the order of March 1, 1949 while the trial court was of the view that there was no such order, the High Court held that such an order had been made.

In order to deal with the contentions of the parties before us it is necessary to deal with the effect of the orders passed from time to time under the various provisions of law applicable to the case. These orders can be classified into two groups viz. those passed prior to the coming into force of the Central Ordinance i.e. prior to October 18, 1949 and those passed after the Central Ordinance came into force.

We shall first deal with the orders passed prior to the coming into force of the Central Ordinance. It is now necessary to consider the provisions of the Junagadh Act which came into force on February 13, 1948. It did not provide for any enquiry before treating any property as evacuee property. Section 2 (b) of the Junagadh Act defined the term 'evacuee' and section 2

(c) defined the term 'evacuee property' as all property in which an evacuee had any right or interest. The object of the Junagadh Act was to make provision for the preservation and the management of evacuee properties. Section 4 of that Act provided that an evacuee property situated within the Junagadh State would vest in the Custodian for the purpose of that Act and would continue to be so vested until the Junagadh State Government by notification otherwise directed. Section 7 of that Act required the Custodian to take possession of all evacuee properties. Section 8 of that Act provided for an enquiry by the Custodian into the claims of any person in respect of property taken possession of by him as evacuee property. If the Custodian was satisfied that the claimant had any right to it, he had to give effect to it. But if he rejected the claim, the aggrieved party could file an appeal before the High Court. Section 16 (1) of that Act empowered the Junagadh State Government by notification in the State Gazette to authorise the return of any evacuee property on being satisfied that the concerned evacuee had returned or was returning to the State of Junagadh after holding an enquiry into the title of such evacuee to the property in question. It is thus clear that the pattern of the provisions of the Junagadh Act was different from the provisions of the Act. Whereas under

section 7 of the Act an enquiry had to precede the declaration that a property was an evacuee property under the Junagadh Act no such enquiry was contemplated. But the provisions of the Junagadh Act did not allow any unjust results to follow. The Custodian was required to take possession of any property which had been left in Junagadh by an evacuee and to preserve and manage it until the evacuee returned and on his return the possession was to be restored to him. There was no violation of any principles of natural justice as such involved in the process. On the other hand it provided for a machinery for preventing the properties of evacuees being occupied by trespassers and for their preservation. The suit properties had been admittedly taken over by the Custodian as evacuee properties in September, 1948 because Haji Umar Kasam had not returned to Junagadh for over one year. Such taking over was an administrative act. The properties taken over as evacuee properties under the Junagadh Act by reason of the combined effect of section 4 and section 16 (1) thereof continued to be vested in the Custodian until the Junagadh State Government by notification published in the Official Gazette authorised their restoration to the owner. No Gazette notification authorising such restoration is produced before the Court. The order dated March 1, 1949 under which it is claimed that the properties were ordered to be returned is also not produced. Even if such an order was there unless it is shown that such an order had been passed by the State Government and published in the Official Gazette, the evacuee properties taken over under the Junagadh Act would not cease to be evacuee properties. The order dated May 20, 1949 did not, therefore, in any way alter the situation. It only reiterated the true character of the properties namely that the properties in question were evacuee properties which had been taken over in exercise of the powers under the Junagadh Act. It is admitted by Haji Ahmed Haji Umar, plaintiff No. 2 in his deposition that they were in the possession of the Custodian when the Saurashtra Ordinance came into force on August 4, 1949. Section 4 of that ordinance provided that the provisions contained in that Ordinance and the rules and orders made thereunder would have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force in the United States of Saurashtra of which Junagadh was a part. Section 5 of that Ordinance provided for the vesting of all evacuee properties situated in the United States of Saurashtra in the Custodian under the Ordinance. Thus the properties vested in the Custodian of Junagadh came to be vested in the Custodian of the United States of Saurashtra. The properties of Haji Umar Kasam also accordingly became vested in the Custodian of the United States of Saurashtra.

The Central Ordinance came into force on October 18, 1949 and it was applicable to the State of Saurashtra also. Section 55 of that Ordinance reads as follows ;

"55. Repeals and saving. (1) The administration of Evacuee Property Ordinance, 1949 (XII of 1949), as in force in the Chief Commissioners' Provinces and the Province of Madras and the United Provinces is hereby repealed.

(2) If, immediately before the commencement of this Ordinance, there is in force in any Province other than any of the Provinces specified in sub-section (1) or in any Acceding State any law corresponding to the Administration of Evacuee Property Ordinance, 1949, that law also shall stand repealed.

(3) Notwithstanding the repeal by the Ordinance of the Administration of Evacuee Property Ordinance, 1949, or of any corresponding law, anything done or any action taken in the exercise of any power conferred by that Ordinance or law shall be deemed to have been done or taken in the exercise of the powers conferred by this Ordinance, and any penalty incurred or proceeding commenced under that Ordinance or law shall be deemed to be a penalty incurred or proceeding commenced under this Ordinance as if this Ordinance were in force on the day on which such thing was done, action taken, penalty incurred or proceeding commenced."

Sub-sections (2) and (3) of section 55 extracted above treated all actions taken under the Saurashtra Ordinance which also came to be repealed as actions taken under the Central Ordinance. By section 8 (2) of this Ordinance all evacuee properties vested in the Custodian of the United States of Saurashtra became vested in the Custodian appointed or deemed to be appointed under it. That sub-section reads as.

"8. Vesting of evacuee property in the Custodian (1) (2) Where immediately before the commencement of this Ordinance any evacuee property in a Province had vested in any person exercising the powers of a Custodian under any law repealed hereby, the evacuee property shall, on the commencement of this Ordinance, be deemed to have vested in the Custodian appointed or deemed to have been appointed for the Province under this Ordinance, and shall continue to so vest."

It is only after the Central Ordinance came into force that Haji Umar Kasam who had returned to India in December, 1949 preferred his petitions for restoration of his properties under section 16 (1) of the Central Ordinance and also applied for a certificate as per proviso to that sub-section to the Government of India. Again it is only after the Act came into force on April 17, 1950 replacing the above Central Ordinance, the Custodian General disposed of the petition for transfer of the appeal pending before the Custodian of Saurashtra and the revision petition filed against his order dated June 2, 1950. The effect of these proceedings have to be considered in the light of the provisions of the Act. The relevant provisions of the Act which have to be considered are section 8 (2), section 8 (2A), section 16 (1), section 28, section 46 and section 58. It may be mentioned here that section 8 (2A) of the Act was inserted into the Act by the Administration of Evacuee Property (Amendment) Act, 1960 (Act I of 1960) on February 27, 1960 but section 2 of that Act declared that new sub-section "shall be inserted and shall be deemed always to have been inserted" thus giving it retrospective effect from the date of the commencement of the Act. Section 16(1) of the Act was in the same terms as section 16 (1) of the Central Ordinance extracted above. The other relevant provisions of the Act are given below :

"8. Vesting of evacuee property in the Custodian.

(1) (2) Where immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising the powers of Custodian under any law repealed hereby the property shall,

on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act, and shall continue to so vest :

Provided that where at the commencement of this Act there is pending before the High Court, the Custodian or any other authority for or in any State any proceeding under section 8 or section 30 of the Administration of Evacuee Property Ordinance, 1949 (XII of 1949), or under any other corresponding law repealed by the Administration of Evacuee Property Ordinance, 1949 (XXVII of 1949), then notwithstanding anything contained in this Act or any other law for the time being in force, such proceeding shall be disposed of as if the definitions of 'evacuee property' and 'evacuee' contained in section 2 of this Act had become applicable thereto.

(2A) Without prejudice to the generality of the provisions contained in sub-section (2), all property which under any law repealed hereby purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in, or the invalidity of, such law or any judgment, decree or order of any court, be deemed for all purposes to have validly vested in that person, as if the provisions of such law had been enacted by Parliament and such property shall, on the commencement of this Act, be deemed to have been evacuee property declared as such within the meaning of this Act and accordingly, any order made or other action taken by the Custodian or, any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken.

28. Finality of orders under this Chapter-Save as otherwise expressly provided in this Chapter, every order made by the Custodian-General, District Judge, Custodian, Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding.

46. Jurisdiction of civil courts barred in certain matters. Save as otherwise expressly provided in this Act, no civil or revenue court shall have jurisdiction-

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

(b)

(c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) in respect of any matter which the Custodian-

General or the Custodian is empowered by or under this Act to determine.

58. Repeals and savings-The Administration of Evacuee Property Ordinance, 1949 and the Hyderabad Administration of Evacuee Property Regulation are hereby repealed.

(2) If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law which corresponds to this Act and which is not repealed by sub-section (1), that corresponding law shall stand repealed.

(3) The repeal by this Act of the Administration of Evacuee Property Ordinance, 1949, or the Hyderabad Administration of Evacuee Property Regulation or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or corresponding law and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken."

The effect of the provisions of the Act in so far as this case is concerned may be summarised thus: All properties vested in the Custodian under the Central Ordinance became evacuee property in the hands of the Custodian appointed under the Act by virtue of sub-sections (2) and (2A) of section 8 of the Act. Any doubt that existed about the vesting of the properties in the Custodian under the Act as evacuee property was removed by enacting section 8 (2A) of the Act with retrospective effect. It says that all property which under any law repealed by the Act purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in or the invalidity of such law or any judgment, decree, order of any court be deemed for all purposes to have validly vested in that person as if the provisions of that law had been enacted by Parliament and such property shall on the commencement of the Act be deemed to have been evacuee property declared as such within the meaning of the Act and accordingly any order made or other action taken by the Custodian or any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken. This provision operates even if there is no defect in any previous law under which action is taken and cures all defects, if any, in the taking over of the properties as evacuee properties. The words 'notwithstanding any defect in or the invalidity of, such law or any Judgment, decree, or order of any court' found in sub-section (2A) of section 8 of the Act do not cut down the operation of the clear words of that sub-section which validate the vesting of any property which purports to have vested as evacuee property even if there was any irregularity in the procedure. The non-obstante clause referred to above is not intended to whittle down the operation of sub-section (2A) of section 8. It is introduced only out of abundant caution. Omitting the non-obstante clause, sub-section (2A) of section 8 would read:

"without prejudice to the generality of the provisions contained in sub-section (2), all property which under any law repealed purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall be deemed for all purposes to have validly vested in that person....."

In the context in which sub-section (2A) of section 8 of the Act appears, it is not, therefore, correct to hold that sub-section (2A) would operate only where there is any defect in or invalidity of any previous law or where there is any judgment, decree or order of any court to the contrary. This view receives support from the rule of construction adopted by this Court in *The Dominion of India & Anr. v. Shrinbai A. Irani & Anr.*(1) The High Court of Gujarat also has taken the same view of sub-section (2A) of section 8 of the Act in *Ahmedbhai Abdulkadar & Ors.v. The Custodian of Evacuee Property and Regional Settlement Commissioner, Bombay & Ors.*(2) Dealing with this provision, this Court observed in *Azimunissa & Ors.v. The Deputy Custodian Evacuee Properties, District Deoria & Ors.*(3) at pages 103-104 thus:

"The word "purport" has many shades of meaning. It means fictitious, what appears on the face of the instrument; the apparent and not the legal import and therefore any act which purports to be done in exercise of a power is to be deemed to be done within that power notwithstanding that the power is not exercisable; *Dicker v. Angerstein* [1876] 3 Ch. D.600. 603. Purporting is, therefore, indicative of what appears on the face of it or is apparent even though in law it may not be so. This means that at the time when the Act purported to vest the property in dispute in the Custodian even though the power was not exercisable, s. 8(2A) by giving a retrospective effect to s. 8(2) of the Act makes the vesting as if it was vesting under s. 8 (2) of the Act and therefore the attack on the ground of invalidity cannot be sustained.....

The effect of s. 8 (2-A) is that what purported to have vested under s. 8 (2) of Ordinance XXVII of 1949 and which is to be deemed to be vested under s. 8 of the Act which repealed that Ordinance, notwithstanding any invalidity in the original vesting or any decree or order of the Court shall be deemed to be evacuee property validly vested in the Custodian and any order made by the Custodian in relation to the property shall be deemed to be valid. Thus retrospective effect is given to the Act to validate (1) what purports to be vested; (2) removes all defects or invalidity in the vesting or fictional vesting under s. 8 (2) of Ordinance XXVII of 1949 or s. 8 (2) of the Act which repealed the Ordinance; (3) makes the decrees and judgments to the contrary of any court in regard to the vesting ineffective; (4) makes the property evacuee property by its deeming effect; and (5) validates all orders passed by the Custodian in regard to the property."

Following the above decision, this Court in *M/s. Haji Ismail Noor Mohammad & Co. Ors. v. The Competent Officer, Lucknow & Ors.* (1) held that where vesting of evacuee properties had taken place under any corresponding law prior to the coming into force of the Central Ordinance and of the Act, no question of making a fresh declaration under section 7 (1) of the Central Ordinance would arise. The Court further held that by reason of the deeming provisions in sub-sections (2) and (2A) of section 8 of the Act, there would be automatic vesting of such properties and such a vesting could not be reopened after the Act came into force. In view of the foregoing since it cannot be disputed that the suit properties had been taken over under the Junagadh Act as evacuee properties in September, 1948 and had continued to be in the possession of the Custodian till the

Act was passed, it is not possible to hold that they were not evacuee properties. We are of the view that they have to be dealt with under the Act as evacuee properties which has duly vested in the Custodian under the Act.

Section 16 of the Act provides for restoration of evacuee property by the Central Government. Section 27 of the Act gives power of revision to the Custodian General either on his own motion or on application made to him to call for the record of any proceeding in order to satisfy himself as to the legality or propriety of any order passed therein and to pass such order in relation thereto as he thinks fit. Section 28 of the Act bars the jurisdiction of any Court, of course other than the jurisdiction of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 and Article 136 of the Constitution to entertain any suit or proceeding with respect to any order passed by the authorities mentioned therein. Section 46 of the Act which is worded very widely bars the jurisdiction of civil or revenue courts in regard to matters mentioned therein. No such court can entertain any suit or proceeding in which the question whether any property is or is not evacuee property arises or in which the legality of any action taken by the Custodian General or Custodian under the Act is questioned. Any matter which the Custodian General or the Custodian is empowered to determine by or under the Act is also outside the jurisdiction of any such Court. (see Custodian of Evacuee Property Punjab & Ors. v. Jafran Begum (1). In view of the above provisions, it was not open to the civil court in this case to decide whether the suit properties were evacuee properties or not. It was also not open to it to decide the correctness of the order of the Custodian General dated August 9, 1950 declining to interfere with the order of the Custodian dated June 2, 1950. The question whether a certificate should have been issued by the Central Government also was by implication barred as it was the Custodian who had to restore the property after holding an enquiry into the title of the evacuee when an application was made to him alongwith a certificate issued by the Central Government and a certificate of that nature by itself would be of no use. Neither Haji Umar Kasam nor after his death his heirs and legal representatives questioned these orders before the High Court under Article 226 of the Constitution or before the Supreme Court under Article 32 or under Article 136 of the Constitution. They thus became final and were beyond the jurisdiction of the civil court.

The decision of this Court in Fazalbhoy Currimbhoy etc. v. Official Trustee of Maharashtra & Ors. etc.(1) is of no assistance to the plaintiff since in that case the Court was not concerned with any question of law similar to the one which has arisen for consideration in this case. So is the decision of this Court in Dr. Rajendra Prakash Sharma v. Gyan Chandra & Ors.(2) in which the evacuee concerned migrated to Pakistan in the year 1967 after the insertion of section 7A of the Act.

There is a further hurdle in this case which has arisen on account of the publication of the notification under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 in respect of the suit properties on June 1, 1955. On the publication of such notification, the right, title or interest of Haji Umar Kasam in the suit properties became extinguished and they vested absolutely in the Central Government free from all encumbrances by virtue of section 12 (2) of the said Act. (see Basant Ram v. Union of India)(3) It is perhaps for this reason that the Central Government could not make any order on the petitions filed by Haji Umar Kasam or his heirs for restoration of the suit properties to them after the publication of the said notification.

In the circumstances, the High Court was right in dismissing the appeal before it.

In the result the appeal fails and it is dismissed. There shall be no order as to costs. The plaintiffs are also exonerated from the liability to pay the costs of the defendant in the trial court. We, however, make it clear that the dismissal of this appeal does not bar any other remedy available to the appellants in law.

H.L.C.

Appeal dismissed.