Rajasthan High Court
Satya Dev Cheema vs Additional Deputy Custodian, ... on 19 March, 1956
Equivalent citations: AIR 1956 Raj 193
Author: Wanchoo
Bench: Wanchoo, Bapna
JUDGMENT Wanchoo, C.J.

1. This is an application by Satya Dev Cheema under Article 226 of the Constitution for a writ, direction or order prohibiting the Additional Deputy Custodian Bharatpur from proceeding against the applicant in an evacuee property matter.

2. The case of the applicant is that he was given agricultural land measuring 353 bighas and 4 biswas in village Kaproli, Tehsil Bharatpur, under the orders of the Ruler of the former State of Bharatpur, on 25-12-1947, on payment of Nazrana, and the applicant got possession of the land.

In June, 1950 the land was declared evacuee property. The applicant brought that matter to this Court by Writ Petition No. 66 of 1951, when he failed to get redress from the Custodian Evacuee Property, Rajasthan. That petition was accepted, and the order declaring the land evacuee property was set said, and the Assistant Custodian was directed to proceed according to law under the Administration of Evacuee Property Act 31 of 1950 (hereinafter called the Act).

Thereupon a fresh notice was served on the applicant & four of his tenants under Section 7 of the Act By the Assistant Custodian Evacuee property, Bharatpur. This notice was withdrawn as it was not in proper form, and another notice served on the applicant on 17-7-1954. The proceedings started by this notice came to an end on 15-11-1954, the Assistant Custodian taking the view that there was no necessity of taking action in the matter as the order of the Ruler of the former State of Bharatpur could not be challenged without the sanction of the Rajpramukh.

The applicant's case further is that, on 12-1-1955, the Additional Deputy Custodian, Bharatpur, made an order transferring the case to his file holding that the matter was still pending. He also ordered that a fresh notice be issued under Section 7 of the Act to the applicant and to all persons concerned. In pursuance of this order, notices were Issued to the applicant and others, and the applicant submitted a reply on 28-3-1955, and raised objections regarding jurisdiction, limitation and res judicata based on the order of the Assistant Custodian dated 15-11-1954, etc. Various dates were fixed, and the last date was 31-5-1955, On that date, the applicant could not be present in the Court of the Assistant Custodian and had applied that as he was ill an adjournment should be granted. This application was rejected by the Additional Deputy Custodian, and that officer closed the evidence of the applicant, and fixed 9-6-1955, for arguments. Thereupon, the present application was made on 6-6-1955, and the proceedings before the Additional Deputy Custodian were stayed.

3. The main contention of the applicant is that the Additional Deputy Custodian has no jurisdiction to proceed in the matter, and therefore this Court should prohibit him from doing so. This contention is based on four main grounds which are as follows: --

(1) There is no such officer as an Additional Deputy Custodian under the Act, and therefore the officer who is dealing with this matter and who is called Additional Deputy Custodian has no authority in law to deal with the matter, (2) In view of the provisions of the Administration of Evacuee Property (Amendment) Act. 42 of 1954 (hereinafter called the Amendment Act), no proceedings for declaring any property as evacuee property can be taken after 7-5-1954, unless they came within the proviso to Section 4 of the Amendment Act, and that this case does not come within the proviso.

(3) The Additional Deputy Custodian had no power to transfer this case to himself as that power did not vest in him.

(4) The Additional Deputy Custodian could not deal with the matter at all till the order of the Assistant Custodian dated 15-11-1954, was set aside as that order had the force of res judicata.

4. The application has been opposed on behalf of the opposite party namely the Additional Deputy Custodian, Evacuee Property, Bharatpur, and his reply to the four points raise on behalf of the applicant is as follows:

(1) The opposite party is a Deputy Custodian, and that he is designated Additional Deputy Custodian in order to distinguish him from the Collector of the district who is ex-officio Deputy Custodian. He has, therefore, jurisdiction to deal with matters arising under the Act.

(2) The case comes under the second proviso to Section 4 of the Amendment Act, by which Section 7A has been inserted in the Act, and the opposite party has therefore jurisdiction to issue a fresh notice, and proceed with the case.

(3) The opposite party has not transferred the case to himself, but has issued a fresh notice. Further even if it is considered to be a case of transfer, the transfer has been made under the general orders of the Custodian.

(4) The order of the Assistant Custodian dated 15th November did not decide anything, and, in any case, principles of res judicata do not apply to proceedings under the Act.

5. We shall take these points one by one. So far as the designation of the officer is concerned, there is no doubt that he is called Additional Deputy Custodian. Further Section 2(c) of the Act only mentions the Custodian, the Additional Custodian, and the Assistant Custodian and makes no mention of an Additional Deputy Custodian. The argument, therefore, based on this section is that no officer bearing the designation 'Additional Deputy Custodian' can be appointed, and exercise jurisdiction under the Act.

We are of opinion that there is no force in this contention. The Additional Deputy Custodian is nothing more or less than a Deputy Custodian. The word Additional has been added to distinguish him from the Collector, because all Collectors of Districts have been appointed ex-officio Deputy Custodians in Rajasthan. In some districts, however, where the work is heavy, the Collector could

not find time from his other duties to do this work assigned to him ex-officio, and therefore Extra Deputy custodians were appointed in such districts.

In order to distinguish them from the Collector who was ex officio Deputy Custodian, they were called Additional Deputy Custodians, but in fact they are, in our opinion, Deputy Custodians and nothing else. The notifications appointing the particular officer in Bharatpur make this quite clear. The officer concerned is Shri M.H. Rai, He was formerly Deputy Custodian Ganganagar. He was transferred to Bharatpur by Notification No. P. 4 (13) Appts. (A)/53, dated 30-4-1953, published in the Rajasthan Gazette of 9-5-1953, Part I page 100 as Deputy Custodian Bharatpur.

Thus Shri Rai is a Deputy Custodian, and has powers to take action under the Act. As after this notification there were two Deputy Custodians in Bharatpur, namely (1) the Collector who was ex-officio Deputy Custodian, and (2) Shri Rai, the Custodian issued a notification on the 15-6-1953, No. Jd./33/3114, published in the Ra)asthan Gazette (Part II), dated 20-6-1953, page 338, conferring powers on Shri Rai. In the notification, Shri Rai has been designated Additional Deputy Custodian, and certain powers were conferred on him including the power to issue notice under Section 7 of the Act. That notification also mentions all ex-officio Deputy Custodians namely Collectors of districts, and confers powers on them as well.

It is clear therefore that the word 'Additional' has been put before the words Deputy Custodian' in order to distinguish Shri Rai from the Collector of the district who is also ex officio Deputy Custodian. Shri Rai, in our opinion, is a Deputy Custodian as provided in Section 2(c) of the Act, and has jurisdiction to deal with matters under the Act, because of powers conferred upon him under the second notification mentioned above by the Custodian.

The addition of the word 'Additional' before the words 'Deputy Custodian' under the circumstances has no significance, and does not take away the jurisdiction of Shri Rai. It is merely a distinguishing word, and no more. There is no force, therefore, in this contention, and it is hereby overruled.

6. The next contention is based on the Amendment Act. Section 4 of the Amendment Act has inserted Section 7A in the Act. Section 7A provides that no property shall be declared evacuee property on or after 7-5-1954. There are, however, two exceptions to this provision. The first (a) relates to pending actions. The second (b) is as follows:

"Provided that nothing continued in this section shall apply to the property of any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances had left on or after the 1st day of March, 1547, any place now forming part of India and who on the 7th day of May, 1954, was resident in Pakistan."

There is further proviso which says that no notice under Section 7 for declaring any property to be evacuee property with reference to Clause (b) of the proceeding proviso shall be issue after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954,

7. It is not disputed that this case is covered by proviso (b). What is urged is that under the proviso to proviso (b) no fresh notice could be issued after the expiry of six months from the commencement of the Amendment. Act. It is urged that Section 10 of the Amendment Act brought the amendments made in the principle Act by Section 4 into force from 7-5-1954; and therefore no fresh notice could be issued under Section 7 of the Act after 7-11-1954.

As the present notice was admittedly issued on 12-1-1955 it is invalid, and the opposite party has no jurisdiction to proceed under it. The reply on behalf of the opposite party, however, is that the proviso to proviso (b) of the new Section 7A added to the Act gives six months from the date on which, the Amendment Act came into force, and that date was 8-10-1954. It was, therefore, open to the opposite party to issue a fresh notice up to 8-4-1955.

The dispute thus is as to the effect of the proviso to proviso (b) of the added Section 7A. The argument on behalf of the applicant is that as Section 4 of the Amendment Act. by which Section 7A was added to the Act came retrospectively in force by virtue of Section 10 of the Amendment Act from 7-5-1954, the period of six months should count from 7-5-1954, and not from 8-10-1954, on which date the Amendment Act came into force.

We are of opinion that there is no force in the argument either. The proviso bars issue of notice after the expiry of six months from the commencement of the Amendment Act. What we have to find out is the date of commencement of the Amendment Act. That date undoubtedly is 8-10-1954. Section 3(13), General Clauses Act says that the word 'commencement' used with reference to an Act, or Regulation shall mean the day on which the Act or Regulation comes into force. Therefore, the day on which the Amendment Act came into force can only be 8-10-1954, on which date it re-received the assent of the President.

The fact that Section 10 of the Amendment Act makes Section 4 of the Amendment Act retrospective does not change the date of the commencement of the Amendment Act. The reason why Section 4 was made specifically retrospective was to cover those cases where property might have been declared evacuee property after 7-5-1954, but before the Amendment Act came into force, even though the case might not be covered by the two provisos.

But the fact that Section 4 of the Amendment Act was given retrospective operation does not mean that the Amendment Act commenced on 7-5-1954. The Amendment Act under all circumstances could only commence on 8-10-1954, though certain parts of it were deemed to have commenced on an earlier date by virtue of Section 10 of the Amendment Act. There is nothing extraordinary in certain parts of an Act coming into force from an earlier date, while the whole Act itself comes into force from a later date.

Where one has to see the date of the commencement of the Act, that date can only be the date on which the whole Act came into force. Further, if it was the intention of the Legislature that the proviso to proviso (b) of the added Section 7A should only be available upto 7-11-1954, there was no reason why the legislature should not have said so instead of using the words "after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act,

1954".

We are therefore of opinion that the Amendment Act came into force on 8-10-1954, and this is the date of its commencement, and notices could be issued up to six months from that date namely up to 8-4-1955. There is no force therefore in this contention,

8. We now come to the contention about the transfer of the case by the opposite party to his own file. This contention is contradictory to the contention relating to the issue of a fresh notice with which we have just dealt. The applicant is not clear in his mind what his case is. In one breath he says that a fresh notice was issued by the opposite party, and that he could not issue that fresh notice in view of Section 4 and Section 10 of the Amendment Act. In the other breath he says that the opposite party had no jurisdiction to transfer this case to his file thus presuming that the case was a pending case, The opposite party in his order dated 12-1-1955, does not say that he was transferring this case to his file. What he has done is to unearth this case which was filed by order of the Assistant Custodian on 15-11-1954, and to issue 3 fresh notice under Section 7 of the Act. This is therefore not a case of transfer, but of the issue of a fresh notice.

We need not therefore consider whether the opposite party had the power to transfer this case to his file as he did not do so. What he has done is to issue a fresh notice. There is thus no force in the contention that the opposite party had no power to transfer this case to his file for this is not a case of transfer.

9. The last point that is urged is about the effect of the order of 15-11-1954. Assuming but not deciding that that order has the force of res judicata, the point in our opinion has to be raised before the officer who has issued the fresh notice under Section 7. It will be considered by the various authorities to whom appeals and revisions go from the order of the opposite party. It is only thereafter that the applicant may come to us for adjudication on this matter. The point of res Judicata has been raised before the opposite party by the applicant in his objections, and we feel that we should not intervene till the objections have been decided.

We, therefore, leave this question open for decision by the opposite party and the officers to whom appeals and revisions lie from the order of the opposite party. Questions relating to res judicata do not negative the inherent jurisdiction of the Court, and at this stage we do not propose to interfere with the opposite party proceeding with the case, as he has, in our opinion, inherent jurisdiction to do so.

10. The application is hereby dismissed with costs to the opposite party.