Mohd. Ali Hasan Khan And Ors. vs Bhagirathlal And Ors. on 12 January, 1962

Equivalent citations: AIR1964AP126, AIR 1964 ANDHRA PRADESH 126, (1962) 1 ANDH WR 364, (1962) 2 ANDHLT 22, ILR (1963) ANDH PRA 223

JUDGMENT

Kumarayya, J.

1. These two appeals arise out of an award made by the Jagirdars Debt Settlement Board in case No. 159 of 1953. They raise two questions of law of some importance. The first question is, whether the debt due to an evacuee vested in the Custodian under the Administration of Evacuee Property Act (31 of 1950) is beyond the- reach of the Hyderabad Jagirdars Debt Settlement Act, 1952 (hereinafter referred to as the Act). The second is, whether, on the facts and circumstances of the case failure to comply with the provisions of Sections 27 to 29 of the Act would vitiate the award.

2. In order to appreciate the arguments advanced in this behalf, it is expedient to make a brief statement of facts. Nawab Fakhar Nawas Jung, Ex-Jagirdar, had run into huge debts. Some of his creditors had obtained decrees from the courts. There were also others, both secured and unsecured creditors. After the abolition of the Jagirs and the advent of the Hyderabad Jagirdars Debt Settlement Act, one Sayeda Hafeesunnissa Begum applied for a settlement of her debts amounting to O.S. Rs. 6,000/-. She filed her application under Section 11 on Form No. 1. Thereupon, a notice was issued to the debtor and also a general notice was directed to be published under Section 21(2) of the Act. Various creditors made their applications, one of them being the applicant, P. Rajagopalarao, creditor No. 9, who had obtained a decree in his favour. His decree under the provisions of the Act was also transferred to the Board. The mortgagee-creditor shown as creditor No. 3, and Nawab Fakhar Nawas Jung, the Jagirdar-debtor having come to terms made an application under Section 15 on form No. 2 on 7-8-1953.

The debtor in response to the notice issued to him also took care to show in his application filed on Form No. 3 on 18-8-1953 all his various creditors including Haji Dawood Nasir, who had migrated to Pakistan and whose debt consequently became vested in the Custodian. The debt to Haji Dawood Nasir was in fact the subject matter of an award which was made the rule of the Court in O.S. No. 70 of 1950 on the file of the erstwhile Hyderabad High Court. After Haji Dawood Nasir had migrated to Pakistan, the Custodian sought to recover this sum due from Fakhar Nawaz Jung by attachment and sale of his properly. The latter took exception to it and approached the Board. The Board issued notice. Thereupon, the Custodian on 9-9-1953 sent a letter stating that the debt in question having vested in him was due to him and could be recovered by him as arrears of land revenue under Section 48 of the Administration of Evacuee Property Act. The Board did not pursue the matter further at that stage; on the other hand on 15-9-1953 while rejecting, on ground of limitation, the

Form III filed by Fakhar Nawaz Jung showing the evacuee as one of the creditors, they (the Board) declared that with it the proceedings started in relation to the Custodian got automatically cancelled as the evacuee was no longer a party before them. The interim orders already passed against the Custodian to stay his hand were also revoked. Form No. 2 filed by the debtor and Creditor No. 3 -- mortgagee for want of verification could not be recorded under Section 15 of the Act. Nevertheless, it was directed to be treated as an application under Section 11. Similarly, form No. 3 which as shown above, was rejected on 15-9-1953 was subsequently on 17-11-1953 treated as an application under Section 11.

Notices were then directed to be issued, but from the proceedings on 29th December, 1954, it appears that they were not in fact issued to all the creditors. At any rate, it is common ground that no notice under Section 21 was in fact issued to the Custodian. Nawab Fakhar Nawaz Jung died during the pendency of the proceedings. His legal representatives were sought to be brought on record. At that time, it was represented to the Board that the Custodian as representative of the creditor, Haji Dawood Nasir, had auctioned the properties of the debtor in Medak District and had also written to the Jagir Administrator for commutation amount and a request was made that he may be given notice. Accordingly, a notice was sent to the Custodian along with a copy of the application to show cause why the applicant's request should not be granted. The Custodian was directed to represent his case before the Board on the next date of hearing. In response to this notice, the Custodian filed a counter stating therein that he was entitled to recover the debt as it was payable to him under Section 13 of the Administration of the Evacuee Property Act being the debt due to the evacuee and that he had already recovered a sum of Rs. 14,758-5-6 and that a sum of Rs. 75,241-10-6 was still due to him in respect of which he was preferring his claim. The proceedings for settlement of debts were then continued. Eventually, the Board passed an award on 27-11-1957 holding inter alia that the appellants, Mohammed Farooq Hussaini and the other comortgagee-creditbrs were entitled to a sum of O.S. Rs. 15,000/-as admitted by Nawab Fakhar Nawaz Jung its, form No. 2 and in two agreement deeds executed by him and that the Custodian had power to recover by attachment and sale of the assets of the debtor under the provisions of the Administration of Evacuee Property Act. They recognised the priority of the debt vested in the Custodian over all the unsecured debts and said that in view of the extent of the amount due, it was not possible to make any provision for discharge of any other unsecured debts. On this basis, settlement of debts was effected and the amounts due to the various creditors who had established their claims were determined.

3. Against this award, the present appeals have been preferred, one by Rajagopal Rao a creditor who had obtained a decree, his appeal being Appeal No. 61 of 1958 and the other by the legal representatives of the debtor, their appeal being appeal No. 24 of 1958. The questions that these appeals raise have been set out earlier. We take up the question No. 1 first. As already noticed, the Custodian of the evacuee property did not make an application under Section 11. Though Form No. 3 was treated as an application under Section 11, no notice as contemplated by Section 21(1) was sent to him. He appeared in the proceedings only in connection with certain notices given to him on the application of the debtor first, and thereafter of his legal representatives. His contention has always been that the debt due to the evacuee which had vested in him, could not be brought within the purview of the Hyderabad Jagirdars Debt Settlement Act, so that it may be liable to be scaled

down, or the recovery thereof may be subjected to the provisions of the said Act. It is the correctness of this contention that is strenuously challenged in these appeals.

4. For the proper appreciation of the contention, it is necessary to notice some of the material provisions of Act No. XXXI of 1950. The Administration of Evacuee Property Act was brought into force on 17-4-1951. There were several amendments thereafter, some of them being effected in the years 1954 and 1956. But we are not concerned with those amendments, as the proceedings before the Jagirdars' Debt Settlement Board were started in 1953. This Act, as would appear front the preamble, is intended to be an Act to provide for the administration of evacuee property and for certain matters connected therewith. According to that Act, "evacuee property" means any property in which an evacuee has any right or interest (whether personally or as a trustee or as a beneficiary or in any other capacity) and includes the property specified in Sub-clauses (1) and (2) of Section 2(f) Property has been defined to mean property of any kind and includes any right and interest in the property. The procedure to be followed in notifying the evacuee property, has been prescribed in Section 7. When any property, has been declared to be an evacuee property, Section 8 says that it shall be deemed to have vested in the Custodian for the State. Sub-section (4) of Section 8 says that "where, after any evacuee property has vested in the Custodian any person is in possession thereof he shall be deemed to be holding it on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in that behalf."

Section 9 gives power to the Custodian to take possession of the evacuee property vested in him. It provides that if any such person in possession of any evacuee property refuses or fails on demand, to surrender possession thereof to the Custodian or to any person duly authorised by him in this behalf, the1 Custodian may use or cause to be used such force as may be necessary for taking possession of such property. Section 10 refers to the powers exercisable by the Custodian for purposes of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him or under 'the Act. Sub-section (2) of the said section in Sub-clause (i) gives power to the Custodian to take such action as may be necessary for the recovery of, any debt due to the ^evacuee and in Sub-clause (j) gives power to institute, defend, or continue any legal proceeding in any civil or revenue court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or compromise any claims, debts or liabilities on behalf of the evacuee. The rules framed in this behalf prescribe the mode of taking possession of tangible movable property and immovable property. Rule 12 which is maferial for our purpose as it relates to debts, reads thus:

> "(1) Where property to be taken possession of is a debt or a legacy or interest payable on a debt or a legacy, possession may be taken by serving the party liable with a notice, requiring such party to pay the same to the Custodian or any person authorised by him to receive the payment.
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> XX XX XX"
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> The other important provision is Section 13 which enjoins that amounts due to an evacuee and vested in the custodian should be paid by the person liable only to the

Custodian and to no other person. Section 15 casts a duty on the custodian for maintenance of accounts and Section 16 provides for cases where the evacuee property may be restored. Section 17 provides that the evacuee property as long as it remains vested in the custodian shall not be liable to be proceeded against in any manner whether in execution of any decree or otherwise by any court or other authority. Section 28 gives a sort of finality to the orders made by the Custodian and other authorities. Section 46 reads thus:

"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) x x xx

(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 the Act to determine." Section 48 as it stood before the amendment in 1954 reads thus:

"Any sum due to the State Government or to the Custodian under the provisions of this Act may be recovered as if it were an arrear of land revenue."

Section 4 is another important provision which has a material bearing on the point in question and it reads thus: "

"The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law."

Thus it would appear from the above provisions that when once the property has been declared evacuee property, it becomes vested in the Custodian and the Custodian has to take such measures as he considers necessary for the purpose of securing, administering, managing and preserving that property. The property so vested is not liable to the processes of the court or any other authority. He can himself take possession of both movable and immovable property as provided in that Act. The debts vested in him are payable by the debtor only to him. Under the rules, he can take possession by notice to the party concerned requiring him to pay the same. Besides any sum which may be due to him under the provisions of that Act can lawfully be recovered as though it were an arrear of land revenue. Further finality is attached to the orders made by the Custodian General, Authorised Custodian etc., in exercise of power expressly given by that Act and the jurisdiction of civil and revenue courts has also been taken away to the extent warranted by Section 46. In case of

inconsistency, at any rate, the provisions of that Act have to prevail over all other laws for the time being in force.

5. In this state of law, the contention of the learned Government Pleader is that since the debt of the evacuee vests in the custodian for the State and it being due to him is recoverable as the arrear of land revenue, the over-riding effect of Section 4 of the Administration 'of Evacuee Property Act would render the provisions of the Hyderabad Jagirdars Debt Settlement Act (XII of 1952) inapplicable to this debt. The argument of the learned Government Pleader proceeds primarily on the assumption that the property declared evacuee property becomes the property of the Government and its vesting in the Custodian is for the State and not for the benefit of the evacuee. But such an assumption, in our opinion, is not warranted by Act 31 of 1950. That Act, as noticed above, has been enacted for the purpose of duly securing, administering, preserving or managing the evacuee property i.e., the property left by persons who had gone or intend to go permanently to the territory known as Pakistan. Its provisions would show that it does not render the property of the evacuee an escheat to the Government. All that it provides for" is how best to administer the same for the benefit of the evacuee. The fact that there is a provision for maintenance of accounts and also a provision (Section 16) for its restoration to the evacuee or his heirs makes the intendment clear that it is not the object of the Act to make the Government or the Custodian proprietor or the owner of the property declared as evacuee property. Notwithstanding such a declaration, the property shall continue to be the property of the evacuee and the vesting thereof in the Custodian would only mean that the Custodian has stepped into his shoes as a statutory agent or manager for due rid ministration, preservation and management of the same. That such is the position in law is also clear from. the reported cases. In M.B. Namazi v. Deputy Custodian of Evacuee Property, Madras, such a question arose for consideration before a Division Bench of the Madras High Court. It was no doubt a case under the Ordinance but the Ordinance in its terms or scheme did not differ widely from the enactment. . After a discussion of the relevant provisions viz., Sections 8, 9, 10, 16 and 38, Rajamannar C. J. who spoke for the court observed thus:

> "It will be seen that the entire scheme of the Ordinance in respect of what is called "Evacuee Property" is a provision for the custody and administration of such property and not for confiscation. The evacuee's title as such is never affected. Even the tights of an heir are recognised. Restoration of the property is contemplated. The Custodian acts practically as a statutory agent with large powers, but under a duty to keep accounts."

We are in respectful agreement with these observations of the learned Chief Justice. The Punjab High Court while dealing with the object of the East Punjab Evacueds (Administration of Property) Act, 1947 which has got similar provisions observed in Abda v. Yusaf Khan, 50 Pun L R 210 at p. 211 thus:

> "From the above it will be clear that the evacuee does not lose all his rights. He does not, as it were, suffer a civil death by virtue of the provisions of the Act. For certain purposes a Custodian steps into his shoes and has the right to manage his property."

In 1the Supreme Court, after discussing the various provisions of the Act clearly stated at page 303 the actual position of an evacuee in relation to his property thus:

> "These provisions far from suggesting that the person declared an evacuee suffers a civil death and remains an evacuee for all time show on the other hand that the person may cease to be an evacuee under certain circumstances that he is reinstated in his original position and his properly restored to him subject to certain conditions and without prejudice to the rights, if any, in respect of the property which any other person may be entitled to enforce against him. These provisions also establish that the fact of a property being evacuee property is not a permanent attribute of such property and that it may cease to be so under given conditions. The property does not suffer from any inherent infirmity but becomes evacuee because of the disabilities attaching to the owner. Once that disability ceases, the property is rid of that disability and becomes liable to be restored to the owner."

These authorities clearly show that as and when the property is vested in the Custodian, neither the Custodian nor the Government becomes its absolute owner. The property continues to be the property of the evacuee. In fact the very expression that it is evacuee property connoles that the property is of the evacuee and the Custodian is merely a statutory agent to act on his behalf during his absence. Further, this property, as provided in Section 16 can also be restored to either the evacuee or his heirs as the case may be.

6. The learned Government Pleader refers, in support of his contention, to the following passage of their Lordships of the Supreme Court in :

> "The object and the scheme of the Act leave little doubt that the Act was intended, as its title shows, to provide for the administration of evacuee property and it is common ground that this property has ultimately to be used for compensating the refugees who had lost their property in Pakistan."

From the latter sentence, the learned Government Pleader seeks to draw an inference that the evacuee property becomes the property of the Government to be available for compensating the refugees who have lost their property. The first sentence does not permit of any inference of loss of title of the evacuee and its merger in the Government. The latter sentence which is based on common ground perhaps has a veiled reference to the provisions analogous to those in the Displaced Persons Compensation and Rehabilitation Act,1954 which received the assent of the President on 9-10-1954. Section 12 of that Act reads:

> "(1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may, at any time, acquire, such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this

section.

(2) On the publication of a notification under Sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.

(3) x x x"

This is the provision which makes the evacuee's property available for the purpose of compensating the refugees. There is nothing in this provision which may support the contention of the learned Government Pleader that the evacuee ceases to have any interest in the property as soon as it is vested in the Custodian. On the contrary, the provision clearly shows that the evacuee has still interest and it has to be acquired by the Central Government as any other property by following the procedure necessary for acquisition. That is consistent with the position that the title of the evacuee still enures for the benefit of the evacuee even though the property is vested in the Custodian.

7. The learned Government Pleader then relied on the expression "shall be deemed to have vested in the Custodian for the State" employed in Section 8 and argued that this expression in contradistinction to the bare expression "Custodian" employed in all other provisions of the Administration of the Evacuee property Act must be pregnant with meaning and the deliberate use of such an expression must suggest that the property has vested in the Custodian for the State and not for the evacuee. In other words, it is urged that this section gives the clue to the fact that the State acquired all the rights which the evacuee had possessed. To our mind, the distinction based as it is on the expression used is a distinction without much difference. The terms "Custodian" and "Custodian for the State" according to Section 2(c) are interchangeable terms, as they mean one and the same. The word 'Custodian' may further include Additional, Deputy" or Assistant Custodian. The use of the expression "Custodian for the State" therefore cannot mean anything except that only Custodian for the State and not his Deputy or Assistant etc., are contemplated by that provision. That apart, in order to give to that expression a meaning different from the one in which it is ordinarily used in the enactment which the learned Government Pleader would like us to give, there should have been sufficient context. Not only the authorities cited above but also the clear provisions of the enactment, to it, Sections 10, 15, 16 etc. make the intendment of the enactment clear that the property is vested in the Custodian as the statutory agent of the evacuee. We cannot therefore accept the contention of the learned Government Pleader that the expression "for the State" is not a further description of the Custodian contemplated by that provision but only qualifies the vesting in the Custodian. The contention therefore that the Custodian or the Government acquires proprietary rights in the property of the evacuee or the property ceases to be the property of the evacuee to all intents and purposes must fail.

8. It is then argued that the Administration of the Evacuee Property Act being a special enactment and the provisions of Section 4 having an overriding effect on all laws, the property vested in the Custodian cannot be subjected to the operation of any other enactment. Section 4 has already been extracted above. All that it means is that if any particular provision in the Act or the rule or the order made thereunder is inconsistent with any other law for the time being in force, then. the court must give effect only to the provisions of and the rules or orders made under that Act. It follows that the provisions of that Act have to prevail over all other Acts in case of inconsistency. It does not give nor is it intended to confer an/ more or higher powers upon the Custodian than those which are already given under the provisions of that Act. To ascertain whether the Custodian has larger powers, than the evacuee himself, we have to look to the provisions of that enactment. The provisions relied on in this behalf are Sections 10, 13, 17 and 48. It is not disputed nor can it be disputed that the property in question which is a debt payable to the evacuee is the evacuee property within the meaning of the enactment and has vested in the Custodian. The right vested in the Custodian is a right to recover the debt. It is not an immovable property nor tangible movable property. A right to recover the debt therefore is not the same as the property itself which can be taken possession of directly by the Custodian. Section 9 gives power to Custodian to take possession of the immovable properly in the manner provided. He need not therefore have recourse to any court of law or outside agency for effecting this purpose since the special enactment itself gives such power to him.

The rules make provision for taking possession of tangible moveable property and the power conferred may be exercised accordingly. But so far as the debt is concerned, the Custodian cannot rush into the house' of a debtor or evacuee and take possession of the cash lying in the house of the debtor on the ground that the debt which N evacuee property has vested in the Custodian.

Rule 12 which provides for taking possession by giving notice to the person liable requiring him to pay does not confer any such power. Section 10(i) which gives general powers cannot be construed to mean that he can exercise any powers apart from the special enactment. Sub-clause (2) in Items (i) and (j) clearly states that the Custodian may take such action as may be necessary for the recovery of any debt due to the evacuee and may institute, defend or continue any legal proceedings in any civil or revenue court on behalf of the evacuee. In other words, he can take only such action as is open to him under law. It follows that he has to take such action as may be necessary for recovering the debt from the third party who is a debtor. He is not exempt from instituting or defending the suit to effect this purpose. So, then, it is manifest that his powers, in the absence of any specific provisions in the Act are the same as were exercisable by the evacuee himself. It, cannot be otherwise in that he is only a statutory agent of the evacuee. Just as an evacuee creditor has to take action against his debtor, so also the Custodian, in the absence of any specific provision in the Act has to resort to the legal remedies open to him under law. This aspect of the case has been elaborately discussed by the Bombay High Court in S. Benjamin v. Ebrahim Aboobaker, ILR 1955 Bom 84. It was observed by Shah, J. at page 88 thus:

> "The Legislature has made a clear distinction between the rights of a Custodian in respect of tangible immovable evacuee property and incorporeal right which are vested in the Custodian. When a custodian makes a declaration that any property is evacuee property, whatever the nature of the property, it vests in him. If the property

> is tangible immovable property the Custodian may under Section 8(4) read with Section 9 take possession of the property, without recourse to a court of law, but there is no power conferred upon Custodian authorising him to adjudicate liability to a debt and to recover the same."

At page 89 he further observed:

> "It is difficult to see what there is in the Act which enables the Custodian by his own determination to convert a mere right to obtain an account into a conclusive liability for an ascertained debt and to enforce that liability determined by him by executive action."

It was held in that case that the right to recover debt being a chose in action, the Custodian must enforce it in accordance with law.

9. The learned counsel relying on Sections 13 and 48 argued that the debt being payable to the Custodian, the recovery can as well be effected by resort to the provisions of Section 48 by the Custodian himself and that in fact, that is the mode prescribed by that statute which must be adopted in preference to any other mode prescribed by any other law. Section 48 as it stood before the amendment of 1954 ran thus:

> "Any sum due to the State Government or to the Custodian under the provisions of this Act may be recovered as if it was an arrear of land revenue."

It it manifest that this is only a procedural section determining the mode of recovery for any sum due to the Government or the Custodian under the provisions of the Act, it by itself does not create any right or impose any liability. The liability must be due under the provisions of the Act. It is then that the Custodian has power to recover the same. We look in vain for any provision under which the Custodian is empowered to determine the liability of a third party. Of course, there are provisions for recovery of tangible movable or immovable property of the evacuee. The legislature has given drastic power to the Custodian to take possession of such property by taking all necessary steps by giving due notice. But there is no similar provision with regard to the recovery of a debt due to the evacuee. The Custodian therefore can recover the debt only by having recourse to the ordinary remedy open in law. It is therefore clear that the Custodian, in the absence of any provision empowering him to determine the liability of a third person in relation to a debt is left with no other course than to seek the remedies open to him under ordinary law. That is also the view of the Bombay High Court in D.B. Godbole v. Kunwar Rajnatfi, . Therein the learned Judges further observed that the amendment of 1954 in Section 48 did not make any difference in this behalf.

10. It is then argued that the debt due to the evacuee creditor had already been ascertained by reason of the decree of the High Court which was passed in terms of the award. This argument fails to take into account the fact that there is a special enactment concerning the Jagirdar debtors under which such debts have to be scaled down. Reliance however has been placed on the provisions of Section 17 of Act 31 of 1950 which exempts the evacuee property from the process of the court. What

it provides is that so long as the property remains vested in the Custodian, it will not be liable to be proceeded against in any manner it execution of any decree or order of any court or other authority. It also invalidates the orders of attachment, injunction or appointment of receiver. The prohibition contained therein does not extend to the operation of the provisions of the Jagirdars Debt Settlement Act. The settlement of this debt is therefore within the province of the Jagirdars Debt Settlement Act which came into force on 18-3/-1952. This Act no doubt exempts some of the debts from its operation but they are only those as are referred to in Section 3. Section 3 provides-

> "Save as otherwise expressly provided, nothing in this Act shall affect the debts and liabilities of a debtor falling under the following heads, namely:-
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> (i) any revenue or tax payable to Government or any other sum due to it by way of loan or otherwise,
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> (ii) any tax payable to a Local authority or any other sum due to it by way of loan or otherwise;
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> (iii) any sum due to a co-operative society,
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> (iv) any sum due under a decree or order for maintenance passed by a competent court, and
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> (v) any sum due to a scheduled bank." Whereas the amounts due by way of revenue or tax to Government or any other sum due to it by way of loan or otherwise and also taxes payable to local authority or loans due to that authority and sums due to the co-operative society and the scheduled bank have been left unaffected by the provisions of the Jagirdars Debt Settlement Act, there is no provision in relation to the exemption of the debt due to the evacuee vested in the Custodian. The Jagirdars Debt Settlement Act is a subsequent enactment and there is no reason why this was left out unless it was the clear intention of the Legislature that it should be within the purview of this Act Under the Act for settlement of debts, an application under Section 11 has to be filed in the prescribed form by the debtor or creditor. The Act contains also provisions for submission of statements by the creditor at the requisition of the debtors and also for application for recording of settlement of debts. It also provides for submission of statements within the prescribed period on receipt of notice of application for settlement of debts. Non-compliance with certain provisions has been visited with penalties including the extinguishment of debt as shown in Section 22. The Act prescribes a detailed procedure for taking of accounts, examination of witnesses and scaling down the debts etc. Admittedly, the Custodian did not submit any application as contemplated by Section 11. As already shown, he entered appearance in obedience to the notice issued, not under Section 21 but apart from it. The only plea that he took was that the debt due to him is exempt from the operation of the Jagirdars Debt Settlement Act It was open to the Board to decide this question under Section 6 of the said Act. In fact it has decided the matter in his

> favour and refused to scale down the debt. This decision of the Board is erroneous in that the debt in question, as already noticed, is not one exempted from operation of the Act under Section 3. Ordinarily, if a creditor does not make an application under Section 11 or otherwise fails to bring the matter within the cognisance of the Board or is guilty of defaults shown in Section 22, the debt shall, under the provisions of that section stand extinguished. But the circumstances of the case do not attract the provisions of Section 22. The Custodian was under the impression that the Act had no application. That was also the view of the Board. It is also manifest that the debtor had filed form No. 3 showing the debt due to the evacuee. Though this form No. 3 was rejected in the beginning, it was thereafter accepted and treated as an application under Section 11 and notices were directed to be given. It is common ground that no notice in fact was issued to the evacuee with the result that he could not submit any statement in pursuance of the said notice.

Section 21 is mandatory in character and enjoins the issue of notice on receipt of an application for settlement of debts. When once the application filed by the debtor has been treated as an application under Section 11, the Board ought to have given notice to the individual creditor, in addition to the publication of the general notice. Failure to do so would not affect the rights of the evacuee whose debt has already been shown m line application filed by the debtor. The result is that the Custodian is entitled to get the settlement of his debt in the manner prescribed by the provisions of the Jagirdars Debt Settlement Act. The result is the case has to be remanded for this purpose.

11. Then there is the case of the mortgagee-creditors. It is obvious from the award that the Board has not in effecting the settlement of the debt of these creditors, complied with the provisions of Sections 27 to 29. The debt due is a secured debt. It is a mortgage with possession which was executed in Aban 1345 F. i.e., September 1935. The principal amount advanced was Rs. 10,000/- and it was agreed to be repaid within three years but it is said that the period has been extended from time to time and the last extension was given under Ex. 19 D/- 27-6-53. It is also stated that a rental deed for three years was executed by the mother of the Jagirdar debtor on the very day of registration of the mortgage deed and that she continued in possession agreeing to pay a monthly rent of Rs. 125/.- till her death on 1-3-1937. It is also said that the debtor too was residing with her and after her death, under a rental agreement he continued to reside in the same house. The mortgage deed and the rental agreement that was executed by the debtor's mother are duly registered but not the rental deed alleged to have been executed by the debtor himself. The deed executed by his mother was only for three years. All that is said is that Fakhar Nawaz Jung from time to time had been accepting his tenancy and extending the period of mortgage. No such documents have been produced. The only document that has been produced is dated 27-6-1953 i.e., two days prior to the date on which form No. 2 signed by the debtor and creditors was filed before the Board. This document of 27-6-1953 not being properly stamped was not admitted in evidence. This is the only document wherein the debtor is alleged to have admitted that he had renewed the lease transaction after the death of his mother and that as a result of rendition of accounts, a sum of Rs. 5,000/- was found due from him by way of arrears of rent and that he acknowledged the same thereunder. But this document being an acknowledgement not stamped according to law, would be inadmissible in evidence according to Section 35 of the Stamp Act. The Board, as a matter of fact,

had held it inadmissible in evidence. The fact therefore remains that there is no evidence either oral or documentary to show that Fakhar Nawaz Jung was a tenant and that he had to pay Rs. 5,000/- towards arrears of rent.

Ex. 19 is the other document wherein the debtor has admitted the transaction of the mortgage and the extension from time to time of the period of redemption. In the note at the end, he had stated that he (the debtor) had also applied to the Jagirdars Debt Settlement Board, that instead of filing form No. 3 he effected a settlement of the mortgage amount plus rental amount at Rs. 15,000/- O.S. and that after he files form No. 2 and the Board settles the matter and the entire amount is paid off, that document will become ineffective Form No. 2 was filed on 29-6-53. That could not be recorded under the provisions of Section 15 owing to the death of the debtor and some other grounds with the result that the document could not be used as a settlement within the meaning of Section 15. The matter was therefore open to further inquiry. Nevertheless, during the settlement proceedings, no evidence was adduced either in relation to the mortgage deed or registered rental deed and no statement of accounts was filed. No evidence with regard to the tenancy of the debtor also was adduced. The only evidence adduced was with respect to Ex. 19 which contains the admission of Fakhar Nawaz Jung that the matter had been settled at Rs. 15,000/-. It is only on that basis that the Board came to the conclusion that the interest was payable to the creditors as the hypotheca continued to be in possession of the debtor and his mother and there was no proof that the rental amounts have been paid. Since the creditors were shown to have accepted only Rs. 5,000/- as interest, the Board declared them entitled to a sum of Rs. 15,000/-, Rs. 12,857-2-3 1 G. in all.

This procedure adopted by the Board for settlement of mortgage debt is not in accordance with the provisions of the Act. When there was no settlement recorded under Section 15, it was necessary to follow the procedure laid down in Sections 27 to 29. But the creditors were not examined and their accounts were not taken. When it is obvious from the mortgage deed that no interest was stipulated, it is not easy to see under what provision the interest was charged and allowed. The amounts due as arrears of rent were not treated as separate debt. If that was so, there could be no foundation for allowance of such debt as no rental agreement was executed or produced before the Board. When the mortgage amount did not carry any interest, no interest in law could be directed to be paid. The creditors were entitled only to the principal amount and if Section 29 is applied, as it should, in that the tenant in the beginning was the mother of the debtor who was not the mortgagee himself, it was incumbent on the Board to follow the provisions of Section 29 and take an account of the rent paid by the mother. The decision on the basis of Ex. 19 was therefore erroneous and against law. The case has therefore to be remanded to be dealt with in accordance with law by the Board. (12) In the result, both the appeals are allowed and the case is remanded to the Board so that, subject to the above directions, the Board may dispose of the case in accordance with the provisions of the Hyderabad Jagirdars Debt Settlement Act. The appellants in each appeal will be entitled to costs in this court. The advocates's fee is fixed at Rs. 250/- for each appeal. This amount shall be paid by the Custodian and the mortgagee-creditors. The Custodian will pay Rs. 200/- and the mortgagee-creditors will pay Rs. 50/- in each of the appeals. Court fee paid will be refunded.