

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Faisal Arab
Mr. Justice Ijaz ul Ahsan

28/17

(AFR)(D.J.)
6. **Civil Appeal No.799 of 2007**
(Against the judgment dated 26.3.2001
of the Lahore High Court, Lahore
passed in W.P.No.367-R/1986)

Sh. Abdul Waheed

...Appellant(s)

Versus

Custodian Evacuee Property, Lahore etc.

...Respondent(s)

For the appellant(s):

Mr. M. Akram Sheikh, Sr. ASC
Mr. Muhammad Aslam Zar, ASC
Syed Rifaqat Hussain Shah, AOR

For Federation:

Ch. Aamir Rehman, Addl.A.G.P.

For Govt. of Punjab:

Barrister Qasim Ali Chohan
Addl.A.G.

For respondents No.2 to 8,
10, 12, 15 to 45:

Ex-parte

For respondents No.9 & 11: Nemo

For respondent No.13:

Mr. Rehan Nawaz, ASC

For respondent No.14:

Mr. Muhammad Amir Malik, ASC

Date of hearing:

14.02.2019

JUDGMENT

Faisal Arab, J.- Built-up properties bearing Nos. 52-R-91 and 57-R-89 situated at 7-Nisbat Road, Lahore are in dispute in the present proceedings. These properties were owned by Lala Roshan Lal Kapoor, who had mortgaged it against a loan obtained from Bank of India. The deceased had given the property in question on rent. He died in present day India on 19.03.1945. The deceased left behind a widow Mst. Santosh Lata and three sons

Vinod Kumar, Anod Kumar and Permod Kumar who were living with him when he died. After the Partition of British India in 1947, the property was declared evacuee and allotted to various displaced persons. In 1948, the family of the deceased came to Pakistan and moved an application under Section 17 of the West Punjab Protection of Evacuee Property Act (VII of 1948) declaring it not to be evacuee and restoring it to them to which they succeeded vide order dated 07.09.1948 passed by the Additional Custodian. This order of restoration was subject to the conditions that the owners would not alienate the property nor would dispossess the tenants and upon failure to reside in Pakistan, the order of restoration would stand annulled and the property would regain the status of evacuee property.

2. On 04.03.1950, the widow of Lala Roshan Lal, Mst. Santosh Lata filed eviction proceedings on behalf of her minor sons who were heirs of their late father against one of the tenants and obtained an order of ejectment. Upon an objection taken by the tenant in execution proceedings that the property was evacuee, the executing Court made a reference to the Custodian under section 34 of the Pakistan (Administration of Evacuee Property) Ordinance (XV of 1949) for confirming the status of the property. The Deputy Custodian, vide his order dated 03.05.1955 held that the property was not evacuee, but on appeal, the Custodian vide his order dated 30.11.1955 observed that once the property was taken possession of as evacuee property in 1947 and having vested in the Custodian, it does not cease to be evacuee property. As the property had been restored to the heirs of the original owner in 1948 on certain conditions referred above, the Custodian formulated two issues, namely, (1) Does evacuee property continue to be evacuee property after its restoration to the owners and if so (2) Can a Civil Court or the Rent Controller pass an order of ejectment from such property against the occupant thereof. On 06.12.1955, the Custodian finally held that the property once declared evacuee would continue to remain so. The owners challenged his decision by filing Writ Petition No. 375-R of 1958, however, during the

pendency of their petition, the Central Government in exercise of the power contained in section 55 of the Pakistan (Administration of Evacuee Property) Act LXII of 1957, issued Notification No. SRO-1025 (K), dated 12.08.1960, which exempted all evacuee property which may have been restored under any law for the time being in force, to any evacuee or any person claiming to be the heir or survivor of an evacuee, from all the provisions of the said Act, with effect from the date of restoration.

3. In a parallel litigation, the Bank of India as mortgagee of the property obtained a decree 28.02.1952 and in the execution proceedings the property was ordered to be auctioned. On 27.10.1956, the owners objected to the sale on the ground that the property was evacuee property. However, the objection did not prevail and the property was sold in auction held on 17.11.1956 which was purchased by three persons, one of them was Sheikh Muhammad Saeed. The sale was also confirmed in favour of auction purchasers by the executing Court on 22.07.1960. This led to the filing of revision applications in the High Court by the allottees (displaced persons) who challenged the validity of the confirmation of the sale. The case of the allottees (displaced persons) was that the matter should have been referred to the Custodian for a declaration as to the status of the property. The High Court held that the Custodian's order of 06.12.1955 declaring the property to be evacuee was a final and conclusive order. Late Sheikh Muhammad Saeed in whom the other two auction purchasers transferred their interests by then appealed to this Court (case titled *Sheikh Muhammad Saeed v Muhabbat Ali and others* PLD 1966 SC 781) and this Court held that by virtue of Central Government's Notification dated 12.08.1960, property once restored by the Custodian to its owners would cease to be evacuee and gave further direction that a reference should be made to the Custodian for deciding the matter by way of review of the orders passed in 1955 on the question whether the property after being restored to its owners on 07.09.1948 re-acquired the status of

being evacuee in consequence of any action or movement by some or all of the owners after the property was restored to them.

4. The Deputy Custodian examined the case in the light of the directions of this Court and came to the conclusion that after restoration of evacuee property to the owners the same ceased to be evacuee and vested absolutely in the owners. This order was challenged by the auction-purchaser Late Sh. Muhammad Saeed in Writ Petition No. 6-R of 1977. The allottees (displaced persons) also challenged it in Writ Petition No. 145-R of 1977. The learned Judges of the High Court held that the property in question was still evacuee and declared that the order of the Custodian was without lawful authority. Thereafter the allottees filed Civil Appeals No. 230 and 231/1979 which were partly allowed by this Court on 30.05.1982 and remitted the case to the Notified Officer, who by virtue of his office possessed all the powers of Custodian, to decide the question whether the property has re-acquired the status of evacuee in consequence of any action or movements of the evacuee owners. This decision of this Court is reported as *Begum Darab Sultana etc. v Custodian* (PLD 1982 SC 330). The Custodian vide his decision dated 18.06.1986 held that the property in dispute to the extent of the shares of Permod Kumar and Vinod Kumar, who did not make Pakistan as their place of residence had re-acquired the status of evacuee property and shall be deemed to have been validly allotted in favour of the displaced persons. Against such decision, Writ petition No. 367-R/1986 was filed, which was dismissed by the Lahore High Court on 26.03.2001. Hence this petition under Article 184(3) of the Constitution.

5. Learned counsel for the appellant argued that in view of the Notification dated 12.08.1960 whereby the disputed property was exempted from the provision of Pakistan (Administration of Evacuee Property) Act 1957 the conditions imposed by the Custodian on 07.09.1948 at the time of the restoration of the disputed property had lost its efficacy and subsequent action or

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movements of the owners could not alter the status of the property which had ceased to be evacuee property; that the owners were Pakistanis and the Custodian misconstrued the law and the evidence in declaring that the property has re-acquired the status of evacuee. Learned counsel for the respondents on the other hand supported the impugned judgment.

6. The main issue in these proceedings is whether once a property declared as evacuee, which was later restored to the original owners by removing the status of evacuee property had re-acquired the status as evacuee property due to any movements of some or all of the owners. We are of the opinion that in such a situation the status can revert back to that of an evacuee property if it seems that the return of the heirs of the original owner to Pakistan in 1948 after the property was already declared evacuee in 1947 was temporary and intended to avoid the consequence of evacuee laws. Judgment of this Court in the case of *P.G. Bhandari v The Rehabilitation Authority, Lahore (PLD 1961 SC 89)* can be referred with considerable advantage in which it was held as under:

"Mr. Suhrawardy next urged that the Custodian was both an administrative as well as a judicial officer, and an order of restoration being an administrative order, it could be withdrawn at any time at the discretion of the officer who made it. The argument was not pressed with any great force, and this was natural, for under the Constitution, rights in property cannot be sequestered except by due process of law, and having once restored property to an evacuee, if by that act the property ceased to be evacuee property and appertained in full right of ownership to the owner, then the Custodian could not purport to exercise powers in respect of it, as if it were evacuee property unless the necessary conditions were satisfied, i.e. that the owner was shown to have been absenting himself or to be absenting himself from West Punjab, and then only by due process. To take back the property at discretion would be entirely outside the Custodians power."

Mr. Suhrawardy next urged that a condition imposed by the Custodian upon the restoration of the property had been infringed, namely, that after the restoration, Mr. Bhandari

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had gone away to India and had stayed there for a considerable time. He urged that this breach should be held sufficient to enable the Custodian to treat the property as if it were evacuee property once again. As to whether there was any breach, the facts are by no means clear, and what is clear is that efforts made by the Rehabilitation Authorities to take advantage of allegations of such breaches ended in failure. At the same time there was in the Act, then applicable, provision for action to be taken against persons not complying with the orders of the Custodian, and reference was made to section 7 of the West Punjab Act VII of 1948, which made a non-compliance with an order made by the Custodian a cognizable offence punishable with two years' imprisonment. Moreover, it could not be urged with any force that every breach of a condition imposed by the Custodian whether or not the owner remained in West Punjab, would be deemed to render him a person who "has been or is absenting himself from West Punjab" which was the condition of his being an evacuee and consequently of his property being treated as evacuee property."

7. What basically prevailed with the learned High Court in holding that the property in question is to be treated as evacuee was the shifting stands and contradictory statements made before the Deputy Custodian as regards to the permanent residence of the owners in whom the estate of Late Lala Roshan Lal Kapur vested. Relevant portion of the impugned judgment is reproduced as under:-

"8. The evidence on record shows that Mst. Santosh Lata, mother of the petitioners, made contradictory statements at different stages before the Deputy Custodian. On 11.5.1950 she stated that her three minor sons were residing at Lahore. In her second statement recorded on 30.3.1955 she admitted that her son Permod Kumar had gone to India in the year 1951 and did not return to Pakistan. He passed his junior Cambridge Examination from Bishop Cotton School, Simla and was receiving education in India with permission of the Guardian Judge, Lahore. She further stated that her other two sons were studying in Lahore. Again said that Venod Kumar had left his studies and doing nothing. On 11.6.1955 she made another statement and produced before the Deputy Custodian two Pakistani passports, one in the name of Venod Kumar issued on 28.9.53 and the other in the name of Amod Kumar issued on 13.8.1953 respectively. At the same time she admitted that Permod Kumar had no

Pakistani passport he was in India. Her last statement was recorded on 8.5.1972 wherein she admitted that Permod Kumar and Venod Kumar were residing in England. According to her Venod Kumar left for England in 1957 while Permod Kumar followed him a year later. She further deposed that Permod Kumar was residing in England since 1958. She admitted that a portion of West End Building was sold without obtaining permission from the custodian evacuee property. In support of her version she produced two witnesses namely P.E. Singha and Amod Kumar. P.E. Singha is her second husband and he stated before the Deputy Custodian on 5.12.1972 that Venod Kumar left for England in 1957 while Permod Kumar followed him in 1958. They were doing business there. On 15.2.1972 Amod Kumar appeared as RW.15 and deposed that his other two brothers were residing in England since 1957-58. He admitted that he was not aware of their addresses in England nor could state as to when he received last letter from them.

9. The allottees produced 12 witnesses in support of their case namely Bashir Ahmed, Muhammad Aslam Record Clerk, Shaukat Ali Record Keeper, Habib Ahmed Settlement Inspector, Bashir Ahmed Clerk, Nawaz UDC, Ghulam UDC, Habib Ahmed Clerk, Mumtaz Hussain Clerk and Nazir Ahmed Record Keeper. Most of them are formal witnesses. Hakim Ali (PW-2) deposed that he was residing in the neighborhood of owners but did not see anyone else residing with Mst. Santosh Lata. Similarly Shaukat Ali, Special Attorney of Mst. Durab Sultana, stated that three sons of Lal Roshan Lal Kapur namely Venod Kumar, Permod Kumar and Amod Kumar were permanent residents of India. Mst. Santosh Lata at one time was directed by the Guardian Judge, Lahore to produce the minors in Court but she failed to do so as they were not residing in Pakistan."

8. In addition to the above-referred contradictions and shifting stands noted in the impugned judgment, which have not been refuted even in the memo of this appeal, we have noticed that when the mortgagee bank filed suit in 1952 for the sale of the property in question, the owners resisted the sale on the ground that property was evacuee though their case throughout had been that they have become Pakistanis permanently. Even if the property had not been declared evacuee, the fact that it was mortgaged with a bank and on account of the fact that it was not redeemed sold in auction proceedings, no right, title or interest remained in the successor-in-interest of the original owners.

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Additionally, even prior to the partition of British India late Lala Roshan Lal Kapur was permanently residing in the present day India along with his family and died there on 19.03.1945. For the first time after partition (in the year 1948) his widow came to Pakistan and claimed that family intends to permanently settle in Lahore and on that basis the property was restored in 1948 on certain conditions. In view of the fact that she failed to establish that her sons made Pakistan their permanent place of residence, we are of the opinion that the property has to be regarded as an evacuee property and the High Court rightly held to be so. This appeal, therefore, fails and is hereby dismissed.

Islamabad, the
14th of February, 2019
Approved for Reporting
Khuram *AmD*

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