

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Shamsher Bahadur, JJ.

LACHHMAN DASS,—*Petitioner.*

versus

UNION OF INDIA, AND OTHERS,—*Respondents.*

Civil Writ No. 1151 of 1961.

1964

October, 23rd

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 13—Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rules 25 and 30—Two evacuee properties belonging to two Muslim owners—Whether can be treated as one unit—Question of divisibility—When arises—Administration of Evacuee Property Act (XXXI of 1950)—Ss. 2 and 15—Effect of.

Held, that there is no provision in the Displaced Persons (Compensation and Rehabilitation) Act, 1954, or the Rules framed thereunder which authorises the Department or the authorities constituted under it to amalgamate the two properties of two different evacuees and treat as one. In fact section 13 of the Act keeps the distinction between the property or properties of each evacuee and does not permit the jumbling up of properties of different owners as it provides that the compensation shall be paid to an evacuee in respect of his property acquired under section 12, in accordance with such principle and in such manner as may be agreed upon between the Governments of India and Pakistan. The Administration of Evacuee Property Act, 1950, also maintained a clear distinction between the property or properties of each evacuee and did not jumble up the properties as one property belonging to all the Muslims or evacuees who had left for Pakistan. Each individual evacuee property was treated as a separate unit and a separate account in regard to it had to be maintained.

Held, that under Rule 25 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, the allotable evacuee property in the occupation of a person holding a verified claim has to be transferred to him in lieu of that claim. The mere fact that two properties are contiguous to each other is of no consequence and Rule 30 has no application to such a case.

Held, that the Administration of Evacuee Property Act and the Displaced Persons (Compensation and Rehabilitation) Act have both treated each property as an individual unit and there is no scope for two evacuee properties to be treated as one unit for the purpose of allotability. An allotable property under clause (a) or rule 22 is "any residential property in the occupation of a displaced person, the value of which does not exceed ten thousand rupees". In the context and setting of the evacuee legislation, there can be no manner of doubt that the property which is allotable is to be treated as a separate and independent unit and more so when it is in the occupation of "a" displaced person.

Held, that the question of divisibility of an evacuee property arises only under rule 30 where it is in occupation of more than one verified claimant. It may be that the evacuee property unit is large enough to accommodate more than one person and it is in such cases that the question of allotability is related to its divisibility. Where an evacuee property is in the possession of more than one verified claimant it is only then that the question of divisibility assumes importance.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 7th May, 1963, to a larger Bench for decision of any important question of law involved in the case...The case was finally decided by a

Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, and the Hon'ble Mr. Justice Shamsher Bahadur, on 23rd October, 1964.

Petition under Articles 226, 227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued quashing the order passed by respondent No. 1 dated the 27th February, 1961.

H. S. WASU AND B. S. WASU, ADVOCATES, for the Petitioner.

PREM CHAND, H. L. SARIN AND MISS ASHA KOHLI, ADVOCATES, for the Respondents.

ORDER

Mahajan, J. MAHAJAN, J.—This order will dispose of Civil Writ petitions Nos. 1151 of 1961 and 1355 of 1962.

The short question that falls for determination in both of these petitions is identical. The property in these two petitions belonged to two Muslim evacuees, it being two units in Civil Writ No. 1151 of 1961, numbering 1612 and 1613-14. Property No. 1613-14 belonged to Ramzan Khan whereas property No. 1612 belonged to Abdul Majid. On their becoming evacuees, the properties were allotted as follows :—

No. 1613-14 to Lachhman Dass petitioner and No. 1612 to Durga Dass respondent No. 4.

In Civil Writ No. 1355 of 1962 the properties are Nos. 552 and 552-alif. The department has numbered them as 552-A and 552-B respectively. Property No. 552-A belonged to Mohd. Aqal Khan and No. 552-B to Mohd. Kamal Khan. This fact is apparent from the copy of the Assessment Register of the Municipal Committee, Shahabad, for the years 1945-46 to 1947-48 and 1951-52. Both these properties are assessed to separate house-tax. Property No. 552-A was allotted to Rakha Singh and No. 552-B to Daya Wanti.

When the matter of transfer came for consideration, the department treated the properties in both these civil writs as one unit in each petition and transferred the same

in Civil Writ No. 1151 of 1962 to Durga Dass and in Civil Writ 1355 of 1961 to Rakha Singh. The attempt of the other allottees of these properties, namely, Lachhman Dass and Daya Wanti, before the department to have them allotted to themselves, on the ground that they were separate properties, failed. Hence the present petitions in this Court.

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These petitions came up for hearing before my learned brother who by his orders dated 7th May and 13th May, 1963, referred them for decision by a larger Bench, and that is how both these petitions have been placed before us.

The question that requires determination is whether the department can treat the properties belonging to two Muslim evacuees as one property. If they can be treated as one property, no fault can be found with the decision of the department, but if it cannot be done, obviously, the decision of the department would be wrong.

Before the Displaced Persons (Compensation and Rehabilitation) Act, 1954, came into force, these properties were taken possession of and dealt with by the authorities under the Administration of Evacuee Property Act. Section 2(d) of that Act defines an "evacuee" in the following terms :—

"2(d) 'evacuee' means any person,—

- (i) 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, leaves or has, on or after the 1st day of March, 1947, left any place in a State for any place outside the territories now forming part of India, or
- (ii) who is resident in any place now forming part of Pakistan and who for that reason is unable to occupy, supervise or manage in person his property in any part of the territories to which this Act extends, or whose property in any part of the said territories has ceased to be occupied, supervised or managed by any

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person or is being occupied, supervised or managed by an unauthorised person, or

- (iii) who has, after the 14th day of August, 1947, obtained, otherwise than by way of purchase or exchange, any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan; or
- (iv) who has, after the 18th of October, 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situate in any part of the territories to which this Act extends; or
- (v) who has, after the 18th day of October, 1949 acquired, if the acquisition has been made in person, by way of purchase or exchange, or, if the acquisition has been made by or through a member of his family, in any manner whatsoever any right to, interest in, or benefit from, any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan.

Explanation (i) For the purposes of sub-clause (iii), the acquisition of any right to, interest in or benefit from any such property as is referred to in that sub-clause by a firm, private limited company or trust of which any person or any member of the family of such person wholly dependent on him for the ordinary necessities of life is a partner, member or beneficiary as the case may be, shall be deemed to be an acquisition by that person within the meaning of that sub-clause.

- (ii) For the purposes of sub-clause (iv), the transfer to Pakistan by any person of any reasonable sum of money in accordance with the rules made in this behalf by the Central

Government for the purpose of financing any transaction in the ordinary course of his trade or for the maintenance of any member of the family of such person shall not be deemed to be a transfer of his assets within the meaning of that sub-clause

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- (iii) For the purposes of sub-clause (v) the acquisition of any right to, interest in, or benefit from, any such property as is referred to in that sub-clause by a firm, private limited company or trust of which any person is a partner, member or beneficiary, as the case may be, shall be deemed to be an acquisition by that person of such right, interest or benefit within the meaning of that sub-clause."

Section 2(f) defines evacuee property in these terms:—

"2(f). 'evacuee property' means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person *by* from any evacuee after the 14th day of August, 1947, ~~or~~ any mode of transfer which is not effective by reason of the provision contained in section 40. * * * *"

Section 15 of the Act provides for maintenance of accounts by Custodian about each evacuee, that is, a separate account has to be maintained about each evacuee property. Rules made under the Act provide as to how these accounts have to be maintained and kept. The relevant rules are 39, 41, 42 and 44. Rule 39(ii) provides that a personal account shall be maintained in Form No. 15 for each evacuee. Rule 41 provides for debiting the expenses incurred on repairs etc., to each evacuee property. Similarly, rule 42 provides vis-a-vis the taxes, and rule 44 provides for amalgamation of accounts of an evacuee where he has left a number of properties. It will be apparent from the aforesaid provisions that the Act maintained a clear distinction between the property or properties of each

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an other, and in view of this distinction the only rule that was applicable under which the cases of the petitioners as well as the respondents could be dealt with was rule 25 and no reference could have been made to rule 30 for that purpose. We are, therefore, clearly of the view that the department has erred in clubbing the properties of two separate evacuees into one on the ground that the properties are contiguous or adjoin one another. In this situation there is no option but to allow the petitions and quash the order of the Department.

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Before parting with the matter I may advert to an argument that was raised by Mr. Sarin in Civil Writ No. 1355 of 1962. His contention was that in Annexure 'B' the Regional Settlement Commissioner had found that the two properties belonged to one individual. On a reference to the relevant document, on which he based his decision, it is apparent that he has misread the same. The document shows that the owners of the two properties were Mohd. Aqal Khan and Mohd. Kamal Khan, whereas he has read these names as Mohd. Iqbal Khan. Therefore, no argument can be based on this order Annexure 'B'. When the matter went to the Chief Settlement Commissioner in appeal, he proceeded on the clear basis that the properties belonged to two different evacuees, but he took the view that they being so situated as to form one unit, they should be treated as one unit. This argument, we have already held, has no basis in law. That being so, the argument of Mr. Sarin must be rejected.

For the reasons given above both these writ petitions are allowed. The order of the Chief Settlement Commissioner clubbing the properties involved in both these petitions is quashed. In the circumstances of the case, the parties are left to bear their own costs.

SHAMSHER BAHADUR, J.—I agree generally with the views and conclusion of Mahajan, J., but as I took a different opinion in Civil Writ No. 1112 of 1959, *Sahibditta Mal v. Central Government* decided on 5th of December, 1960, I want to add a few words of my own.

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Rules 25 and 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, deal with different situations. Under rule 25, "an acquired evacuee property",

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in sole occupation of a verified claimant may be allotted to him in lieu of compensation and the direction is of a mandatory nature. Rule 30, on the other hand, is concerned with "any acquired evacuee property" which is in occupation of more than one verified claimant. Evacuee property may be acquired by Central Government for rehabilitation of displaced persons under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and according to sub-section (2), on the publication of the notification, the right, title and interest of any such evacuee property shall vest absolutely in the Central Government free from all encumbrances. Compensation is to be paid for such acquisitions in respect of each evacuee property individually. The emphasis throughout is on "an evacuee property" and "any evacuee property". The Administration of Evacuee Property Act and the Rules framed thereunder dealt with evacuee properties and a detailed reference to rules made by Mahajan, J. makes it clear that the accounts of each separate property had to be maintained throughout. The Administration of Evacuee Property Act and the Displaced Persons (Compensation and Rehabilitation) Act have both treated each evacuee property as an individual unit and there is no scope for two evacuee properties to be treated as one unit for the purpose of allotability. An allottable property under clause (a) of rule 22 is "any residential property in the occupation of a displaced person, the value of which does not exceed ten thousand rupees". In the context and setting of the evacuee legislation, there can be no manner of doubt that the property which is allotable is to be treated as a separate and independent unit and more so when it is in occupation of "a" displaced person. The question of divisibility of an evacuee property arises only under rule 30 where it is in occupation of more than one verified claimant. It may be that the evacuee property unit is large enough to accommodate more than one person and it is in such cases that the question of allotability is related to its divisibility. Where an evacuee property is in possession of more than one verified claimant it is only then that the question of divisibility assumes importance. In these petitions properties belonging to two different evacuees and in occupation of two different persons must be treated as independent units to be dealt with under Rule 25.

In *Sahibditta Mall's* case, reliance was placed on clause (2) of rule 22, as it then existed, requiring that a portion of

a building having no independent access shall not, unless the Central Government otherwise directs, be allotable. In that case, it appears, there was no independent access and the Settlement authorities took the view that the property became indivisible for purposes of rule 30. The conclusion at which I reached in *Sahibditta Mal's* case appears to have been mainly influenced by this consideration. I think that the decision in *Sahibditta Mal's* case does not lay down the legal position accurately.

In these cases, the property units had belonged to different evacuees and had been in possession of different displaced persons and, in my opinion, the departmental authorities in determining the question of divisibility have tried to create a complication which in fact does not exist on the plain construction of rules 25 and 30. It may be observed that rule 30 has now been deleted but it is agreed at the Bar that this makes no difference to the question which had to be determined under the reference. I am of the view that rules 25 and 30 are intended to cover two different types of properties and in both the petitions before us, the question of allotability has to be determined under rule 25.

I, therefore, agree with the conclusion reached by Mahajan, J. that the petitions should be allowed.

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