

CIVIL WRIT.

Before Falshaw and Dulat, JJ.

GURPARSHAD AND OTHERS,—Petitioners.

versus

THE ASSISTANT CUSTODIAN-GENERAL OF EVACUEE
PROPERTY P. BLOCK, NEW DELHI AND OTHERS,—

Respondents.

Civil Writ No. 244 of 1954

Administration of Evacuee Property Act (XXX of 1950)—Section 46—Jurisdiction to decide whether a certain property is evacuee property or not—Whether vests exclusively in the Custodian—Jurisdiction of Civil Court—Whether barred.

1958

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Held, that it is not correct to say that the exclusive jurisdiction to decide whether a property is evacuee property or not is conferred on the Custodian only where there is no dispute about the matter. The Custodian is charged with the duty of taking over and administering all evacuee property. He is authorised to decide whether certain property is or is not evacuee property and in arriving at that conclusion he is entitled to consider various claims and decide all questions raised before him. It may be that the Civil Courts are not debarred from deciding some of those questions if properly raised in those Courts, but that can in no sense mean that the Custodian is debarred from deciding any of the matter relevant to the question before him.

The case referred by Hon'ble Mr. Justice Bishan Narain on 14th December, 1955, to a larger bench for decision of the legal points involved in it and finally decided by a Division Bench consisting of Hon'ble Mr. Justice Falshaw and Hon'ble Mr. Justice Dulat on 31st July, 1958.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari or mandamus

be issued quashing the orders of the Assistant Custodian-General, dated 26th February, 1954 and 24th April, 1954.

A. N. GROVER, for Petitioner.

S. M. SIKRI, Advocate-General for Respondents.

ORDER

BISHAN NARAIN, J. These two writ petitions Bishan Narain,
J. under Article 226 of the Constitution have arisen in circumstances which as stated by the petitioners are these. Gurparshad, petitioner was the owner of seven houses Nos. 578 to 584 situate in Lakkar Bazar, Ludhiana. He and his ancestors, according to him, have been in possession of these premises since 1926-27 in assertion of their right as owners and had matured their title by adverse possession by lapse of time before 1947. In December, 1947, Gurparshad sold two of these houses to Atma Ram. In January, 1949, one Hakim Singh reported to the Assistant Custodian, Ludhiana, that all these houses were evacuee properties but the Assistant Custodian by his order, dated 24th of June, 1949, came to the conclusion that they belonged to Gurparshad. Thereafter Gurparshad sold the remaining five houses to various persons. In February, 1951, Ram Parkash, an informant, applied to the Assistant Custodian that these properties were evacuee properties as in 1947, they belonged to Muslim evacuees who had mortgaged them with Narain Dass and Lachhman Das for Rs. 3,000 on 11th of May, 1889. On receipt of this application the Assistant Custodian started enquiries under section 7 of the Administration of Evacuee Property Act, 1950. While this enquiry was going on, the Assistant Custodian sent the case on 22nd of April, 1952, to the Competent Officer under section 6 for separating the evacuee interest in a composite property under the Evacuee Interest (Separation)

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Act, 1951. The competent authority, however; ordered the case to be returned to the Custodian to determine if the property was evacuee property at all. On appeal, however, the appellate authority held that this matter could not be decided by the Custodian and could be decided only by the Competent Officer under the Evacuee Interest (Separation) Act. This order was passed on 28th of April, 1953, and Civil Writ No. 245 of 1954, is directed against this order and has been filed by Gurparshad and the five transferees from him.

Gurparshad then applied on 5th of May, 1953, to the Custodian that as proceedings under section 7 were still pending before the Assistant Custodian, these properties should be deleted from the list of composite properties. This application was granted on 4th of July, 1953, and proceedings before the Competent Officer were ordered to be withdrawn. Enquiries under section 7 of the Administration of Evacuee Property, Act, it appears, were also stopped on 8th of July, 1953. The informant then filed a revision petition against this order and ultimately on 24th of April, 1954, the Assistant Custodian-General set aside the order, dated 4th of July, 1953, and refused to delete these properties from the list of composite properties. Civil Writ No. 244 of 1954, has been filed by Gurparshad and the transferees from him against this order.

The most important question that is raised in this case is that these properties were not evacuee properties and that this question could be decided only by the Custodian under the Administration of Evacuee Property Act and not by the Competent Officer under the Evacuee Interest (Separation) Act. Shri A. N. Grover arguing for the petitioners has relied on certain observations made by Weston, C. J., in *Custodian, Evacuees Property, Punjab v.*

Gujar Singh and others (1), which go a long way to support the contention of the learned counsel. The learned Advocate-General, however, doubted the correctness of that decision and in any case he distinguished it on the ground that Weston, C. J., did not consider the effect of the Evacuee Interest (Separation) Act on the Administration of Evacuee Property Act. According to him the effect of section 3 of the Evacuee Interest (Separation) Act is that being a later Act it *pro tanto* overrides section 7 of the Administration of Evacuee Property Act. As at present advised I am inclined to think that only Custodian can decide whether the property is evacuee or not and the Competent Officer gets jurisdiction only when part of such a property has been held to be evacuee and part of it has been held not to be evacuee property.

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Another question that arises in this case is whether the Custodian has any jurisdiction to decide the question of title when the person in possession claims the property as his own in opposition to the claim of the evacuee. It is argued that the property of an evacuee vests in the Custodian for the purposes of its administration and he cannot be a judge in his own cause when a title hostile to the evacuee is claimed by another person. It is further urged that in the circumstances it is the civil Court only that can decide this matter and the Custodian must file a suit in civil Court for that purpose. Similarly, whether the evacuee had any subsisting title in 1947 is to be decided only by a civil Court and cannot be decided by the Custodian under the Administration of Evacuee Property Act.

These are important questions of law and it is proper that they should be decided authoritatively by a larger Bench. I, therefore, direct that

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these papers be placed before the Hon'ble the Chief Justice for constituting a larger Bench for this purpose.

JUDGMENT.

DULAT, J. Civil Writs Nos. 244 and 245 of 1954, are connected and have been referred by a Single Judge of this Court for decision.

The dispute concerns 7 houses bearing Nos. 578 to 584 and situated in Lakkar Bazar, Ludhiana. Gur Parshad, who is the petitioner before us, was in possession of these houses and he sold two of them to Atma Ram in December, 1947, and sold the other five to different persons about two years later. In February, 1951, one Ram Parkash gave information to the Assistant Custodian that these houses were evacuee property. He alleged that the houses originally belonged to two Muslim ladies and they had been mortgaged in 1889 with Narain Dass and Lachhman Dass, and that the Muslim owners had become evacuees on partition in 1947 and thus the equity of redemption had vested in the Custodian. Gur Parshad in opposition to these allegations claimed that he and his ancestors had been in possession of these houses ever since 1926 and their possession was adverse to the real owner, if any, and by lapse of time his title to the property was perfected. The Assistant Custodian dealing with this complaint started some enquiries but later came to the conclusion that the matter ought to be dealt with by the Competent Officer appointed under the Evacuee Interest (Separation) Act, 1951, and on this view he sent the case to the Competent Officer. That Officer, however, on considering the matter came to the conclusion that he was not competent to decide whether the Custodian did or did not have any interest in the properties and that such a question could be settled by the Custodian

and he, therefore, returned the case to the Custodian. Against this order of the Competent Officer an appeal was taken to the Appellate Authority under the Evacuee Interest (Separation) Act, and the Appellate Authority held by order, dated the 28th of April, 1953, that the Competent Officer could decide the question himself and, therefore, remanded the case for decision to the Competent Officer. Civil Writ No. 245 is directed against that order of the Appellate Authority and the petitioner's claim in this respect is that the question whether the properties were or were not evacuee property in the sense that the Custodian had or had not any interest in these properties could not be settled by the Competent Officer under the Evacuee Interest (Separation) Act.

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The matter, however, did not rest there because Gur Parshad himself approached the Assistant Custodian and asked that the properties be deleted from the list of composite property. The Assistant Custodian agreed and made an order accordingly. Ram Parkash informant, however, filed a revision petition against that order which was heard by the Assistant Custodian-General and that officer held a detailed enquiry into the matter and on the evidence before him came to the conclusion that Gur Parshad's claim was unfounded and that the houses in question were evacuee property as the Custodian had interest in those properties in the form of the equity of redemption. This order was passed on the 24th of April, 1954, and Civil Writ No. 244 of 1954 is directed against that order—the contention being that even the Custodian was not competent to decide the questions which he did.

As far as Civil Writ No. 245 of 1954 is concerned, it is clear that events subsequent to the impugned order make the writ petition pointless.

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The order made by the Appellate Authority was under the Evacuee Interest (Separation) Act and it amounted to a direction to the Competent Officer to proceed to determine the question whether the disputed properties were or were not evacuee property. That officer, however, never did so, and the question has actually been determined by the Custodian. To urge, therefore, that the Competent Officer had no jurisdiction to act in the matter is futile for the simple reason that the Competent Officer has not in fact done so.

There remains the other Writ No. 244 of 1954. Mr. Mahajan in support of it contends that in view of the case set up by the present petitioner the civil Courts alone could decide the dispute and the Custodian was not competent to do so. He concedes that ordinarily the Custodian alone is competent to decide whether certain property is or is not evacuee property and that under section 46 of the Administration of Evacuee Property Act, 1950, a civil Court is not competent to decide such a question, but suggests that this ordinary rule holds goods only where there is no claim made to the disputed property by another person. Section 46 of the Act is in these terms—

“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.”

Mr. Mahajan's argument is that this exclusive jurisdiction is conferred on the Custodian only where there is no dispute about the matter. I am wholly unable to agree because quite clearly if

there is no dispute as to whether any property is or is not evacuee property there is nothing requiring adjudication and it is unthinkable that the legislature should have taken the trouble of conferring exclusive jurisdiction on the Custodian to decide certain matters when in fact there would be nothing to decide. Mr. Mahajan then urged that, in any case, even if the Custodian alone has jurisdiction to settle the question whether a property is or is not evacuee property, the civil Courts are not debarred from deciding other questions of title that may arise between the parties which, even if accepted, leads no where as the question before us is not whether any civil Court is competent or not to act in a particular matter but whether the Custodian was competent to make the order which he has done in this case. In support of his contention Mr. Mahajan mentioned three decided cases of this Court— *Custodian-General of Evacuee Property v. Harnam Singh* (1), *Narendar Kumar and others v. Custodian-General of Evacuee Property* (2), and *Kailash Chand v. The Additional Deputy Custodian-General* (3). The first of these decisions which is by a Division Bench of this Court has nothing to do with the matter as what was considered there was the scope of section 48 of the Administration of Evacuee Property Act. In the second case, *Narendar Kumar and others v. Custodian-General of Evacuee Property* (2), one of us sitting alone was dealing with a case in which certain property was sold to a Muslim lady who later became an evacuee. The heirs of the vendors filed a suit in the civil Court claiming that the sale was invalid having been made without legal necessity and succeeded in obtaining a decree on certain terms. Subsequent to this, the matter was

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(1) A.I.R. 1957 Punj. 58
(2) A.I.R. 1956 Punj. 163
(3) 57 P.L.R. 440

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taken up by the Custodian, and one of the questions agitated there was whether the decree of the civil Court was binding or not. The Custodian took the view that the decree of the civil Court was invalid and proceeded to make an order on that basis. In the writ petition before the High Court the question was whether the civil Court's decree could be ignored, and it was held that it could not as that decree had nothing to do with the question whether any property was or was not evacuee property. The present case before us raises no such issue for here the Custodian, properly seized of the question whether certain properties were or were not evacuee property, went into the claims made by the contending parties and decided on the evidence before him that the houses were evacuee properties. The third case cited by Mr. Mahajan largely resembles the second already mentioned and is of no assistance to Mr. Mahajan's argument.

The main point of Mr. Mahajan's argument, as I understand it, is that the present petitioner had asserted a right to the ownership of the disputed properties on the ground that he had been in adverse possession for more than twelve years, and that such a question could be properly settled in a civil Court and the inference, therefore, should be that the Custodian was debarred from settling I do not see how the suggested inference follows even if it be that such a question could be agitated in a civil Court. It is clear that the Custodian is charged with the duty of taking over and administering all evacuee property. He is authorised to decide whether certain property is or is not evacuee property and in arriving at that conclusion he is entitled to consider various claims and decide all questions raised before him. It may be that the civil Courts are not debarred from deciding some of those questions if properly raised in

those Courts, but that can in no sense mean that the Custodian is debarred from deciding any of the matters relevant to the question before him. Considering the provisions of the Administration of Evacuee Property Act, 1950, therefore, I am unable to agree with Mr. Mahajan that the Assistant Custodian-General was not competent to decide what he has in fact decided.

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Mr. Mahajan finally submitted that in any case the decision of the Custodian in respect of some of the matters, decided by him, cannot be final and must be capable of being reopened before a civil Court. I wish to say nothing about this matter at this stage as we are not now concerned with it. The question whether any particular matter can or cannot be decided by a civil Court can only be settled when any civil Court is in fact called upon to decide such a question, and Mr. Mahajan can test the validity of his submission only if he takes the disputed matter to a civil Court. In the present petition we are only concerned with one question, and that is whether the Assistant Custodian-General acted without jurisdiction in deciding that the disputed properties were evacuee property. I cannot say that he did. The present petition must, therefore, fail.

The result is that Civil Writs Nos. 244 and 245 of 1954, are both without force and both must be dismissed with costs.

FALSHAW, J.—I agree.

Falshaw, J.

B.R.T.