

Raja Ram and decree passed in civil appeal No. 302 of 1945 on
 v. the 9th of January, 1947, and dismiss Regular
Arjan Singh Second Appeal No. 807 of 1947.
 and others

Harnam Singh, Having regard to the circumstances of the
 J. case, I would leave the parties to bear their own
 costs in this Court.

KHOSLA, J. I agree.

1952

June 23rd

REVISIONAL CIVIL

Before Eric Weston, C.J.

CUSTODIAN, EVACUEES PROPERTY, PUNJAB,—
Petitioner,

versus

GUJAR SINGH AND OTHERS,—Defendants-Respondents.

Civil Revision No. 598 of 1950.

Administration of Evacuee Property Act (XXXI of 1950) Sections 7 and 46—General proclamation issued by Custodian vesting evacuee property in Custodian—Whether sufficient—Enquiry by the Custodian—Whether necessary to determine if a property is evacuee or not—Civil Court—Jurisdiction—Whether can determine if a person is evacuee or not.

Held, that a general proclamation issued by the Custodian vesting evacuee property in the Custodian is not sufficient. The several enactments relating to Administration of Evacuee Property from time to time provided that while there should be no enquiry by the Civil Courts there was to be an enquiry by the Custodian in the case of specific items of property said to be evacuee property. Where the Custodian assumed physical possession or assumed control by express notification, the enquiry was contingent upon objection raised by claimants, but in case of property of which no possession was taken, no control assumed by express notification or no enquiry made such as is contemplated by Section 7 of the Act, clearly there has been no determination that the particular property is evacuee property. Before an application is made under Section 17 of the Act to require the court to set aside orders affecting the evacuee property it must be a condition precedent to such application that there has been determination that the particular property is evacuee property. As this determination cannot be made by the Court it must be made by the Custodian himself under Section 7 of the Act or similar provisions of the earlier enactments.

Held further, that where the Custodian approaches the court with a mere pleading or assertion that the property is an Evacuee Property and does not base his application upon a considered finding arrived at by a competent officer of his department, the court has no option but to dismiss the application as such an application is not competent.

Held also, that in this case it is not possible to accept that the Subordinate Judge had no jurisdiction to determine whether the person is or is not an evacuee.

Petition under section 44 of Act VI of 1918 read with Article 227, Constitution of India, for revision of the order of Shri D.P. Sodhi, Sub-Judge, Ist Class, Moga, dated the 8th August, 1950, dismissing the petition with costs to respondents Nos. 1 to 4.

H. L. SARIN, for Petitioner.

H. S. GUJRAL, for Respondents.

JUDGMENT

ERIC WESTON, C. J. This is an application by Eric Weston the Custodian of Evacuee Property against an order made by the Subordinate Judge, first class, Moga. There are seven respondents. Eric Weston
C. J.

The facts are that on the 14th of October, 1947, respondents Nos. 1 and 2 filed an application under section 14 of the Arbitration Act for filing of an award made between them and one Jodhi, son of Chuhar. The award was made a rule of the Court on the same day and a decree passed in terms thereof. These terms were that respondents Nos. 1 and 2 were to recover an amount of Rs 482 by sale of a flour-mill engine which was situate in Ajitwal village in Moga Tehsil. Execution was taken out and the flour-mill was sold on the 21st of February 1948 and this sale was confirmed on the 3rd of April 1948. Respondents Nos. 3 and 4 were the purchasers at the sale and they paid an amount of Rs 605. Later these respondents sold the flour-mill to respondent No. 5 who subsequently sold it to respondents Nos. 6 and 7 for an amount of Rs 4,900. On the 6th of October 1949, the Assistant Custodian, Ferozepur, filed an application under section 15 of Ordinance No. IX

Custodian, of 1949, asserting that the engine was evacuee
 Evacuees Pro- property and asking that the decree, sale and sub-
 property, Punjab sequent transfers set out above should be set
 v. aside and possession be given to the Custodian.
 Gujar Singh The grounds of the application were that Jodhi
 and others was an evacuee, that the award of the 14th of
 Eric Weston, October 1947, was collusive and that the decree
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 effective against the Custodian.

The application was resisted on the ground that Jodhi was not an evacuee. It was also claimed that in any event respondents Nos. 3 and 4 were *bona fide* purchasers for valuable consideration and that after the purchase improvements had been made and in any event compensation must be paid for those improvements.

The learned Subordinate Judge heard evidence on the issue whether Jodhi was or was not an evacuee and holding on this evidence that the Assistant Custodian had failed to prove that he was an evacuee dismissed the petition.

It is claimed on behalf of the Custodian that the learned Subordinate Judge had no jurisdiction to decide the question whether or not Jodhi was an evacuee and therefore whether or not the property was evacuee property.

It is necessary to consider the history of legislation enacted to deal with the property of evacuees. It is enough to begin with the East Punjab Evacuees' (Administration of Property) Act, Act XIV of 1947, although there was an earlier Ordinance, namely the East Punjab Evacuee (Administration of Property) Ordinance, Ordinance No. IV of 1947. The situation which occasioned this legislation was unprecedented. Much property abandoned by persons who left India after the 1st day of March 1947, clearly was evacuee property, but there was also much property abandoned, particularly movable property, the nature of which had been obscured by possession of it having been taken either with or without some ostensible claim to title by persons

other than evacuees. It is not surprising that frequent amendments of the law dealing with the matter were found necessary. Section 6 of the Act of 1947, gave power to all Custodians appointed under the Act by general or special order with reference to the location or description of a specific or any class of evacuee property to assume possession of or control over the property mentioned in the order which shall be published in the official Gazette. From the date of such order the holder of such property, if any, was to be deemed to be holding it on behalf of the Custodian and was required to surrender possession on demand. On the 4th of May 1948, a notification, dated the 1st of May 1948, was published in the *East Punjab Government Gazette* which notification was as follows :—

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“In exercise of the powers vested under section 6(1) of the East Punjab Evacuee (Administration of Property) Act, 1947, as amended by the East Punjab Evacuees (Administration of Property) (Amendment) Act, 1948, the Custodian of Evacuees' Property, East Punjab, assumed possession of and control over all such other immovable and movable evacuee properties situate in the Province of East Punjab, of which possession or control had not already been taken over by him.”

Section 4 of the Act of 1947 provided that all evacuee property situated within the Province vested in the Custodian for the purposes of the Act. Section 7 of the Act provided for inquiry into claims to evacuee property of which the Custodian had either taken possession or assumed control under section 6. Such claims had to be made by application within thirty days from the date on which the possession of the property was taken or control of it assumed.

The position in regard to property of which the Custodian had taken actual physical possession was simple. It was for any claimant to make

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an application under section 7. If he failed he had a right under the section to appeal to the District Judge and there was also provision for revision to the High Court. In respect of property which had been sufficiently described by general or special order made under section 6 the position also was that it was incumbent upon a claimant to make an application under section 7. The notification published in the Gazette on the 4th of May 1948, however, did not attempt to particularise properties, and this notification cannot be construed as an assumption of possession of or control over all movable and immovable properties existing in the Punjab, requiring every owner of property to vindicate his title by application under section 7. This notification and the vesting under section 4 of the Act could do no more than ensure that the rights of the Custodian in property subsequently found to be evacuee property should not be affected by transfers made after the date of the coming into force of the Act. Section 17 of the Act barred the jurisdiction of the Civil Courts *inter alia* to entertain any suit for declaration or for any other relief with regard to evacuee property. There were certain amendments to the Act made by the East Punjab Ordinance No. II of 1948, East Punjab Act XXVI of 1948, East Punjab Ordinance No. XVI of 1948, East Punjab Ordinance No. XVIII of 1948 and East Punjab Act XLIX of 1948, but the provisions of the Act I have set out were not materially affected.

An Ordinance, Ordinance No. IX of 1949, entitled the East Punjab Evacuee Property (Administration) Ordinance, 1949 was promulgated on the 10th of July 1949, which repealed the Act of 1947 and the subsequent amending Acts and Ordinances. Section 5 of this Ordinance of 1949 continued the vesting in the Custodian of any property which had vested in the Custodian under the 1947 Act. Section 6 empowered the Custodian to notify either by publication in the official Gazette or otherwise evacuee properties which vested in him under the Ordinance, and upon such notification

any person in possession was to be deemed to be holding it on behalf of the Custodian and was required to surrender possession on demand. Section 7 gave power to the Custodian to take forcible possession on refusal of demand made under section 6. Section 8 provided for claims in respect of any property notified under section 6 or in respect of which a demand had been made or of which possession had been taken or control assumed by the Custodian. Section 15 of the Ordinance was as follows:—

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“ 15. *Exemption from attachment, sale, etc—*

(1) No property which has vested in the Custodian shall be liable to attachment, distress or sale in execution of a decree or order of a Court or any other authority, and no injunction in respect of any such property shall be granted by any Court or other authority.

(2) Any attachment or injunction subsisting on the commencement of this Ordinance in respect of any evacuee property which has vested in the Custodian shall cease to have effect on such commencement, and any transfer of such property under the orders of a Court or any other authority made after 15th August 1947, shall be set aside by such Court or authority on such terms as it thinks fit, provided an application is made in this behalf to such Court or authority by or at the instance of the Custodian within three months from the commencement of this Ordinance ”

Section 30 made certain provisions for appeal, review and revision from orders made by various grades of Custodians, and section 31 barred the jurisdiction of the Civil Courts—

“ (i) to entertain or adjudicate in any suit application or other proceedings as to whether any property is or is not evacuee property or whether an evacuee

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has or has not any right or interest in any evacuee property ; or

(ii) to question the legality of any action taken by the Custodian including an order of cancellation, termination or modification of a lease, or an order demanding possession; or

(iii) in respect of any matter which the Custodian is empowered to determine by or under this Ordinance or rules made thereunder."

On the 18th of October 1949 this Ordinance was superseded by a Central Ordinance, Ordinance No. XXVII of 1949, entitled the Administration of Evacuee Property Ordinance, 1949. Section 7 of this Ordinance gave power to the Custodian after such inquiry as the circumstances of the case permitted and after notice to be given in a prescribed manner to the persons interested, to pass an order declaring any specific property to be evacuee property. Subsection (3) required the Custodian from time to time to notify, either by publication in the official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under subsection (1). Section 8 of the Ordinance provided for the vesting in the Custodian of any property declared to be evacuee property under section 7. Subsection (2) of this section provided for the continuance of the vesting in the Custodian of any property which had vested in the Custodian under any law repealed by the Ordinance. Section 9 gave power to the Custodian to take possession of evacuee property which vested in him. Section 17 provided that save as otherwise expressly provided in the Ordinance, no property which had vested in the Custodian shall be liable to attachment, distress or sale in execution of an order of a Court or of any other authority, and provided that on application made within three months from the commencement of the Ordinance any transfer of evacuee property under orders of a Court or any other authority made after the 14th day of August,

1947, shall be set aside. Section 24 provided for appeals and section 26 for review or revision. Section 28 provided for finality of orders save as provided by section 24 and barred the jurisdiction of the Civil Courts to call in question such orders in appeal or revision or in suit, application or execution proceeding. Section 43 barred the jurisdiction of the Civil Courts—

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(a) to entertain or adjudicate upon any question whether any property is or is not evacuee property or whether an evacuee has or has not any right or interest in any evacuee property ; or

(b) * * *

(c) * * *

(d) * * *

On the 17th of April 1950 the Administration of Evacuee Property Act, Act XXXI of 1950, received the assent of the President and was published in the *Gazette of India* on the following day. This Act repealed the Ordinance of 1949. This is the latest enactment on the subject of evacuee property. Section 7 of the Act which provides for notification after inquiry of evacuee property is for the present purposes practically identical with section 7 of the Ordinance. Clause (3) of the section provides that the Custodian shall, from time to time, notify, either by publication in the official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under subsection (1). Section 8 is the vesting section providing for vesting in the Custodian of the property declared to be evacuee property under section 7 from certain dates depending upon the date when the evacuee left India or upon the date of notice issued under section 7. Section 17 of the Act as it stood originally prohibited attachment, distress or sale in execution of an order of a Court or of any other authority of property vested in the Custodian, and clause (2) provided that any attachment or injunction subsisting on the commencement of the Act

Custodian, in respect of any evacuee property which has vested in the Custodian shall cease to have effect on such commencement, and for setting aside of any transfer of evacuee property made under orders of a Court or any other authority after the 1st day of March, 1947, on application to such Court or authority by or at the instance of the Custodian within six months from the commencement of the Act. This section has been amended by Act XXII of 1951, and section 17 now reads as follows :—

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“17. *Exemption of evacuee property from processes of court, etc.*—(1) Save as otherwise expressly provided in this Act, no evacuee property which has vested or is deemed to have vested in the Custodian under the provisions of this Act shall, so long as it remains so vested, be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any court or other authority, and any attachment or injunction or order for the appointment of a receiver in respect of any such property subsisting on the commencement of the Administration of Evacuee Property (Amendment) Act, 1951, shall cease to have effect on such commencement and shall be deemed to be void.

(2) Where, after the first day of March 1947, any evacuee property which has vested in the Custodian or is deemed to have vested in the Custodian under the provisions of this Act has been sold in execution of any decree or order of any court or other authority, the sale shall be set aside if an application in that behalf has been made by the Custodian to such court or authority on or before the 17th day of October 1950.”

Section 25 of the present Act makes certain provisions for appeals and section 26 makes provisions for review or revision from orders of the Custodian. Section 46 of the Act follows section

43 of the 1949 Ordinance and bars the jurisdiction of the Courts *inter alia* 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.

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In *Civil Revision No. 90 of 1951* decided by me on the 23rd of April 1952, a point was raised that section 46 of the Administration of Evacuee Property Act, 1950, did not bar the jurisdiction of the Civil Courts to decide the question whether a particular person was or was not an evacuee. This contention was repelled by me on the ground that as "evacuee property" is defined in section 2 of the Act as "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)" the bar to the determination by the Civil Courts must bar the jurisdiction to determine whether a particular person was or was not an evacuee. This applies equally to cases falling under Ordinance No. XXVII of 1949 or under East Punjab Ordinance No. IX of 1949. It seems to me not possible to accept that the Subordinate Judge in the present instance had no jurisdiction to determine whether or not Jodhi was an evacuee and that he was in error in dismissing the Custodian's application on this ground.

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There is, however, another aspect of the matter which has not been considered by the learned Subordinate Judge and which furnishes the main occasion for setting out the history of the law at some length as I have done. There is no suggestion of this particular property having been specified in any notification or order issued by the Custodian or any officer of his Department. I am not able to accept that the general proclamations issued together with the provisions for the vesting of evacuee property in the Custodian made in the various sections of the various Acts and Ordinances can be taken as determination that any particular property which the Custodian now chooses to name is evacuee property. The several enactments provided that while there should be no inquiry by the Civil Courts, there was to be

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 present Act or section 7 of the Central Ordinance
 clearly there has been no determination that the
 particular property is evacuee property. The
 application under section 17 of the present Act or
 section 13 of the Ordinance of 1949 is an applica-
 tion to require the Court to set aside orders affect-
 ing evacuee property, and it must be a condition
 precedent to such application that there has been
 determination that the particular property is
 evacuee property. As the Custodian himself
 maintains, this determination cannot be made by
 the Court, and that determination therefore must
 have been made by the Custodian himself under
 section 7 or similar provision of the earlier enact-
 ments. In the present instance there is no sug-
 gestion made by the Custodian of inquiry made or
 finding arrived at, such finding of course being
 after notice required by section 7 or similar pro-
 vision and carrying with it certain limited rights
 of appeal or revision. The Custodian in the
 present case approached the Court with what was
 not more than pleading or assertion that the pro-
 perty was evacuee property. He did not base
 his application upon a considered finding arrived
 at by a competent officer of his department. In
 my opinion in these circumstances the application
 must have been dismissed. The Court, to allow
 such application, although debarred from making
 determination itself, must be satisfied that the
 property has been determined to be evacuee pro-
 perty. This the application of the Custodian did
 not establish and the application therefore was
 not competent.

On these grounds, therefore, I think the rule
 must be discharged in the present case and the
 application dismissed.

No order as to costs.