DEPUTY CUSTODIAN, EVACUEE PROPERTY, NEW DELHI AND OTHERS

v.

OFFICIAL RECEIVER OF THE ESTATE OF DAULAT RAM SURANA, DELHI

September 3, 1964

(P. B. GAJENDRAGADKAR, C.J., J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Administration of Evacuee Property Act (31 *of* 1950), *s.* 7(1) *and Provincial Insolvency Act* (5 *of* 1920), *ss.* 27 *and* 28(7)—*Emigration to Pakistan—Emigrant declared insolvent and thereafter as evacuee—Whether his property could be declared evacuee property.*

An Indian emigrated to Pakistan in February, 1950. In March, 1950 a petition was presented by his creditors for adjudicating him an insolvent and it was ordered. Thereafter in 1951 the Assistant Custodian of Evacuee Property issued a notice under s. 7(1) of the Administration of Evacuee Property Act (31 of 1950) to the interested persons to show cause why the emigrant's property should not be declared evacuee property. In spite of objections of the respondent (Official Receiver), the declaration was made in 1954, and the order was confirmed by the Deputy Custodian and the Custodian General. The respondent then moved the High Court under Art. 226 of the Constitution. The High Court held that it must be shown at the time of the declaration that the property in question *is* evacuee property, and as the insolvent lost his title to the property which had vested in the Official Receiver, the property could not be declared evacuee property. The Deputy Custodian appealed to the Supreme Court.

HELD : The appeal should be allowed.

The construction of s. 7(1) presents a problem which can be resolved not merely by the adoption of the mechanical rule of construction based on grammar, but by a liberal construction which takes into account the bearing and purport of the relevant words used in the section considered in the light of the relevant provisions of the Act and the principal object of the Act. So construed, all that the section requires is, that the appropriate authority should consider whether the property in respect of which a declaration is about to be made was evacuee property under s. 2(f) of the Administration of Evacuee Property Act and the fact that the property had vested in the Official Receiver before proceedings were commenced under s. 7(1) of the Act, would not affect the character of the property. [225G-H; 226A-B; 229E-F].

Ebrahim Aboobakar and another v. *Tek Chand Dolwani*, [1953] S.C.R. 691, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 489 of 1962.

Appeal from the judgment and order dated April 18, 1960, of the Punjab High Court (Circuit Bench) at Delhi in Civil Writ No. 200-D of 1955.

R. Ganapathy Iyer and *B. R. G. K. Achar*, for the appellants.

G. S. Pathak and *B. C. Misra*, for the respondent.

A The Judgment of the Court was delivered by

Gajendragadkar C. J. What is the relevant date by reference to which the character of the property has to be determined in issuing a notification of evacuee property under section 7(1) of the Administration of Evacuee Property Act, 1950 (No. 31 of 1950)
B (hereinafter called the Act)? That is the short question which arises in this appeal. The decision of this question lies within a very narrow compass, because it has to be found on a reasonable construction of the material words used in s. 7(1) itself; but the determination of the scope and effect of these material words presents a somewhat difficult problem of construction and it has to be resolved
C after reading the said provision in the light of other relevant circumstances.

An Indian citizen named Daulat Ram Surana was carrying on business at Delhi as a jeweller in the name of Sardar Singh Daulat Ram. He had a Muslim mistress and it appears that by
D reason of his affection for the said mistress he migrated to Pakistan in the first week of February, 1950. He was possessed of extensive properties, both movable and immovable, but apparently, he was involved in financial difficulties about that time, and so, before he migrated to Pakistan he transferred his ½ share in his ancestral house in Baidwara Street, Delhi for a consideration of Rs. 26,000.
E On the 14th March, 1950, Nanak Chand and certain other persons claiming to be his creditors, filed a petition of insolvency against the firm of Daulat Ram and against Daulat Ram himself. On June 17, 1950, both the firm and Daulat Ram were adjudicated insolvents and the respondent, the Official Receiver, was appointed the Receiver of the estate of the insolvents. In August, 1951, the
F Official Receiver wanted to sell some items of the insolvents' property and the sale was fixed to be held on the 18th August, 1951. Two days prior thereto, however, the Assistant Custodian of Evacuee Property issued a notice under s. 7(1) of the Act to Daulat Ram and other interested persons to show cause why he should not be declared an evacuee under s. 2 (d)(i) of the Act.
G The respondent came to know of the said proceedings, appeared before the Assistant Custodian and raised objections to the property of Daulat Ram being declared as evacuee property. These objections were overruled by the Assistant Custodian and the property of Daulat Ram was declared evacuee property on the 15th February, 1954. The respondent challenged this order by preferring an
H appeal before the Authorised Dy. Custodian, and when the appeal was dismissed, he moved the Custodian General in his revisional jurisdiction. The revision application filed by the respondent was

also dismissed. The respondent then moved the Punjab High Court by a writ petition and challenged the validity of the orders passed by the respective authorities under the Act, declaring the property of Daulat Ram as evacuee property. To this petition, the Dy. Custodian, Evacuee Property, the Authorised Dy. Custodian and the Assistant Custodian were impleaded as respondents. These are the appellants before us.

When this matter was taken up before Bishan Narain J. of the Punjab High Court, he took the view that the point raised for his decision was of considerable importance, and so, he thought that it should be decided by a larger Bench. That is how the writ petition was placed before a Division Bench of the said High Court. The Division Bench has upheld the plea raised by the respondent and has directed that the orders made by the Custodian Department that the entire property of Daulat Ram vests in the Custodian are illegal and should be quashed by a writ of *certiorari*. It is against this order that the appellants have come to this Court with a certificate granted by the High Court.

The dispute between the parties in the present proceedings centres round the competing claims based on the retrospective operation of the two relevant orders. The appellants contend that when a notification is issued under s. 7(1) of the Act, the vesting of the evacuee property in the Custodian takes effect in the present case from the date when the evacuee migrated to Pakistan. The date of Daulat Ram's migration to Pakistan is February 7 or 8, 1950, and the appellants' case is that though the declaration that Daulat Ram's property is evacuee property was made on February 15, 1954, the vesting must be deemed to have taken place as from February 7 or 8, 1950. The appellants concede that the order of adjudication made against Daulat Ram on the June 17, 1950 would, by virtue of the provisions contained in s. 28(7) of the Provincial Insolvency Act relate back to the date of the presentation of the petition made by his creditors in that behalf, and that takes us to March 14, 1950. Thus, one of the arguments which was urged before the High Court on behalf of the appellants and which has been placed before us is that though both the declaration of the evacuee property and the adjudication as to Daulat Ram's insolvency have retrospective operation, the said retrospective operation places the declaration made under s. 7(1) earlier than the date of adjudication, and so, the declaration made under s. 7(1) must prevail over the adjudication of Daulat Ram as insolvent. If that be the true position, the fact that the property vested in the Official

A Receiver under s. 28 of the Provincial Insolvency Act will not matter, because by virtue of the declaration made, the property of the evacuee must be deemed to have vested in the Custodian on an earlier date and that gives priority to the title claimed by the Custodian.

B The argument thus presented for the appellants *prima facie* appears to be attractive, but on a close examination of the relevant provisions of sections 7 and 8 of the Act, it becomes plain that the said argument proceeds on a misconception of the effect of the two sections read together. It is true that s. 8(1)(a) provides that any property declared to be evacuee property under s. 7 shall C be deemed to have vested in the Custodian for the State in the case of the property of an evacuee as defined in sub-clause (i) of clause (d) of section 2, from the date on which he leaves or left any place in a State for any place outside the territories now forming part of India. It has been found by the appropriate authorities that Daulat Ram became an evacuee under s. 2(d)(i) D of the Act, and so, there can be no doubt that after the declaration was made in respect of his property under s. 7(1), the vesting in the Custodian will be deemed to have taken place on the date of his migration. But this position does not assist the appellants in the matter of construing s. 7(1), and the decision of the point raised by the appellants must ultimately depend upon the con- E struction of the said section. If the view taken by the High Court is right, that before a declaration can be made under s. 7(1), it must be shown that the property which is the subject-matter of the proceedings under the said provision is, at the date of the declaration, evacuee property, then the result would be that if the said property is not property of the evacuee at the relevant time, no F declaration can be made under s. 7(1), and there would be no scope for the retrospective operation of the vesting of the property in the Custodian under s. 8(1). Section 8(1) can come into operation only if and after a notification has been validly and properly made under s. 7(1). In other words, s. 8(1) provides for a statutory consequence of a valid declaration made under G s. 7(1). That is why the said section cannot be pressed into service for construing s. 7(1).

There is another argument which should be dealt with before we address ourselves to the question of construing s. 7(1). It is pointed out that s. 4(1) of the Act provides that the provisions H 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. The suggestion is that if the material provisions of sections 27 and 28 of the Provincial Insolvency Act on which the respondent's case about the retrospective vesting of the insolvents' property in the Official Receiver is based, are inconsistent with s. 4(1) of the Act, section 4(1) prescribes that the relevant provisions of this Act will prevail over the said provisions of the Provincial Insolvency Act. This argument is misconceived. The relevant provisions of the two sections of the Provincial Insolvency Act do not disclose anything inconsistent with the relevant provisions of the Act. and so. there is no occasion to invoke the provisions of s. 4(1) in order to establish the conclusion that the provisions of the Act will prevail over the said provisions of the Insolvency Act. Section 28(7) read with s. 27 of the Insolvency Act merely provides that when an order of adjudication is made under s. 27, the insolvent's property vests in the Official Receiver as from the date of the presentation of the petition made against the debtor. Neither s. 7(1), nor s. 8 of the Act can be said to be inconsistent with these provisions. That is why we do not think any argument can be validly based on the provisions of s. 4(1) of the Act in repelling the claim made by the respondent in the present proceedings.

That takes us to the question about the construction of s. 7(1). Section 7(1) which was in operation at the relevant time reads thus :

> "Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property."

In substance, the High Court has held that when a declaration is sought to be made in respect of the property of an evacuee, it must be shown at the time of the declaration that the property in question *is* evacuee property within the meaning of the Act. "Evacuee property" is defined by s. 2(f) as 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 from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provisions contained in section 40. The rest of the definition excludes certain properties from the purview of s. 2(f), but with those excluded' properties

A we are not concerned in the present proceedings. The respondent's contention is that at the time when the declaration was made under s. 7(1), the adjudication order against Daulat Ram had been made and his property had vested in the Official Receiver. The inevitable consequence of this vesting is that the insolvent had, as a result of the statutory provisions contained in ss. 27 and
B 28(7) of the Provincial Insolvency Act, lost his title to the property and the title had vested in the Official Receiver. That being so, it could not be said that the property was evacuee property at the time when declaration was made under s. 7(1). It is significant, says Mr. Pathak for the respondent, that what s. 7(1) requires is that the Custodian *is* of opinion that any property *is*
C evacuee property. In other words, when the Custodian forms the opinion about the character of the property, the property must be evacuee property; and if that is so in the present case, the property was not evacuee property at the relevant time, and so, the declaration is bad and inoperative in law.

D There is considerable force in this argument. The rules of grammar may suggest that when the section says that the property is evacuee property, it *prima facie* indicates that the property should bear that character at the time when the opinion is formed. But Mr. Ganapathy Iyer for the appellants has strenuously contended that the construction of s. 7(1) should not be based solely
E or primarily on the mechanical application of the rules of grammar. He urges that the construction for which Mr. Pathak contends and which, in substance, has been accepted by the High Court, would lead to very anomalous results; and his argument is that it is open to the Court to take into account the obvious aim and object of the statutory provision when attempting the task of
F construing its words. If it appears that the obvious aim and object of the statutory provisions would be frustrated by accepting the literal construction suggested by the respondent, then it may be open to the Court to enquire whether an alternative construction which would serve the purpose of achieving the aim and object of the Act, is reasonably possible. Mr. Ganapathy Iyer argues that
G what s. 7(1) requires is that the property should be evacuee property, and on his construction, all that the appropriate authority is required to consider is whether the property in respect of which a declaration is about to be made was property of the evacuee. Evacuee property has been defined by the Act and its definition imports the consideration as to whether it is property of an evacuee.
H Daulat Ram is undoubtedly an evacuee and at the time of his migration, the property in question was his property. In that sense, when the Custodian declared that it was evacuee property,

he was fully justified in making the declaration, because the property was that of the evacuee. A

If this construction is not accepted, it would clearly lead to very anomalous consequences. We have already noticed that the inclusive part of the definition prescribed by s. 2(f) brings within the scope of the definition properties which are transferred by an Indian citizen before he migrated to Pakistan. The scheme of s. 40 is clear. The provisions of s. 40(1) read with the other relevant clauses of the said section indicate beyond any doubt that the legislature intended to prohibit transfers made by intending evacuees with the object of converting their properties into cash and taking it away from India. It was thought that unless this drastic measure was adopted, the economic interests of the country would be put in great jeopardy because intending evacuees could openly and conveniently dispose of their properties and leave the country with cash in their pocket thereby materially affecting the national economy of our country. That is why in defining evacuee property, it has expressly provided that this definition would take in properties which had been transferred by the intending evacuees prior to their migration from India after August 14, 1947, and the inclusive part of the definition covers all modes of transfers which become ineffective by reason of the provisions contained in s. 40. Thus, it is clear that if the intending evacuees transferred their properties before migration, their properties would be deemed to be evacuee properties for the purpose of s. 7(1) and the transferees would have to submit to the vesting of the said properties in the Custodian under s. 8(1) of the Act. B C D E

Similarly, s. 7(1A) and s. 7(2) deal with other cases of transfer and make them ineffective for the purpose of s. 7(1). Section 7(1A) provides that if during the pendency of any proceedings under sub-section (1) any person interested in the property dies, the proceedings shall, unless the Custodian otherwise directs, be continued and disposed of as if such person were alive. This clause was added by section 5 of Act 42 of 1954 with retrospective effect to meet the problem raised by this Court in *Ebrahim Aboobaker and Anr.* v. *Tek Chand Dolwani.*(1) In that case, this Court held that where a Mohammedan against whom proceedings are commenced under the Act for declaring him an evacuee and his properties evacuee properties, dies during the pendency of the proceedings, he cannot be declared an evacuee after his death, and his properties which on his death vest in his F G H

(1) [1953] S.C.R. 691.

A heirs under the Mohammedan law cannot be declared evacuee properties. This decision was based substantially on the ground that the material provisions of s. 7(1) require an enquiry to be made into the character of the properties before they are declared to be evacuee properties and it was held that if pending such an enquiry the person in respect of whose property the enquiry is B proceeded with dies, the enquiry becomes impossible, and so, the proceedings must come to an end. The death of the evacuee opens up succession to the property and the successors could not be compelled to appear in an enquiry and raise pleas which the deceased evacuee might have raised. "If the Custodian cannot take possession of the property of a living person before the C declaration," observed Ghulam Hasan J. who spoke for the Court, "by the same token he cannot take possession after the death of the alleged evacuee when the property had passed into the hands of the heirs." The enquiry contemplated by s. 7, it was thought, was a condition precedent to the making of the declaration under s. 8 and since the right of the Custodian to exercise dominion D over the property cannot arise until the enquiry is over, the death of the alleged evacuee brings to an end the entire proceedings under s. 7.

It was no doubt urged before this Court in that case that the Act aims at fixing the nature of the property from a particular E date and that the proceedings taken are against the property and not against the person. This argument was, however, characterised as fallacious on the ground that there can be no property, evacuee or otherwise, unless there is a person who owns that property. It will thus be clear that the main reason which weighed with this Court in coming to the conclusion that the proceedings F under s. 7(1) are automatically terminated on the death of the alleged evacuee was "that the property cannot be notified as evacuee property unless and until the person claiming interest in it has been given notice." (p. 704).

In order to provide for the continuance of proceedings initiated against an alleged evacuee even after his death, the G legislature stepped in and made an amendment to the Act by inserting s. 7(1A) retrospectively. It would thus be seen that s. 7(1A) would come into operation in cases where the alleged evacuee dies pending the enquiry under s. 7(1). It does not, however, authorise the commencement or institution of the enquiry under s. 7(1) after the death of the alleged evacuee. Such a case H would still be governed by the principles laid down by this Court in *Ebrahim Aboobaker's* case(1).

(1) [1953] S.C.R. 691.

Incidentally, it would be pertinent to observe that the High Court thought that this decision afforded substantial guidance in determining the question of construction with which it was concerned in the present appeal. After quoting the material observations made by Ghulam Hasan J. in *Ebrahim Aboobaker's* case(1), the High Court has observed that in view of the law laid down by their Lordships of the Supreme Court it must be held that as soon as the order of adjudication was made on the 17th June, 1950, the property of the insolvent vested in the Official Receiver for the purposes mentioned in the Provincial Insolvency Act, and so, it was not open to the Custodian to issue a declaration under s. 7(1) of the Act. With respect, we are unable to see how the decision of this Court in *Ebrahim Aboobaker's* case(1) can have any relevance or materiality in construing s. 7(1) of the Act for the purpose of deciding the dispute between the parties before us. The main test on which the validity of the proceedings taken against Ebrahim Aboobaker was successfully challenged was that the alleged evacuee having died, a proper and valid enquiry could not be held. That test cannot be applied in the present case effectively. The alleged evacuee was alive at the date of the enquiry and there was no infirmity in the proceedings taken in that behalf. Having taken the view that the decision of this Court in *Ebrahim Aboobaker's* case(1) was decisively in favour of the respondent's contention, the High Court did not feel called upon to address itself to the question of construction of s. 7(1) in the light of the other relevant considerations to which we have referred.

Reverting then to s. 7(2) of the Act, it is noticeable that as a result of this provision, if a notice has been issued under sub-section (1) in respect of any property, such property shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being transferred or charged in any way, except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave. It is remarkable that the legislature has taken the precaution of prescribing a blanket ban on transfers of all properties in respect of which proceedings have commenced under s. 7(1). This ban operates even in respect of properties which may ultimately be found to be not evacuee properties, and that means the intention of the legislature clearly was to leave all properties as they were when proceedings have been commenced in respect of them under s. 7(1).

Thus, the position appears to be that transfers made by intending evacuees before they migrated from India come within

(1) [1953] S.C.R. 691.

A the definition of evacuee property, and declaration can be made in respect of properties so transferred under s. 7(1). Transfers made pending the proceedings cannot defeat the purpose of the enquiry under s. 7(1) and a declaration can be made in spite of such transfers pending the enquiry. The death of an alleged evacuee does not interrupt the continuance of the proceedings B and the declaration can be made even after his death that his properties were evacuee properties. If that be so, could it have been the intention of the legislature to permit transfers of their properties by evacuees between the date of their migration and the date of the commencement of the proceedings under s. 7(1)? If the view taken by the High Court is right, then it follows that wherever C properties have been transferred by evacuees after their migration and before the proceedings under s. 7(1) commenced, they would be beyond the reach of the Act. In our opinion, it is very difficult, if not impossible, to assume that such could have been the intention of the legislature. The risk posed by transfers which intending D evacuees were naturally inclined to make to save their fortunes was so grave at the relevant time that the legislature has taken the precaution of making appropriate provisions to save the economy of the country; and so, it seems to us that the consequence which inevitably flows from the adoption of the construction for which Mr. Pathak contends is so patently E inconsistent with the clear and unambiguous object of the Act that it would not be reasonable to accept that construction. In our opinion, the construction of s. 7(1) presents a problem which can be resolved not merely by the adoption of the mechanical rule of construction based on grammar, but by a liberal construction which takes into account the bearing and purport of the F relevant words used in s. 7(1), considered in the light of the other relevant provisions of the Act and the principal object of the Act.

Mr. Pathak no doubt attempted to suggest that the omission to deal with the category of transfers to which we have just referred may have been deliberate because he points out that the legislature G may have intended that if the properties of the evacuees were compulsorily acquired under the Land Acquisition Act, or had vested in the Official Receivers under s. 28(7) of the Provincial Insolvency Act, they should be exempted from the proceedings under s. 7(1) of the Act. We are not impressed by this argument. If the legislature wanted to save these categories of transactions H where the evacuees' title was lost, it could have easily made a suitable provision in that behalf. We feel no difficulty in holding that the legislature could not have intended to permit private

transfers of their properties by evacuees after they migrated from India, where these transfers were completed before the commencement of the proceedings under s. 7(1). We are, therefore, satisfied that the view taken by the High Court does not correctly represent the true scope and effect of the provisions contained in s. 7(1) of the Act. A

In the result, the appeal is allowed, the order passed by the High Court is set aside and the writ petition filed by the respondent is dismissed. In the circumstances of the case, there would be no order as to costs. B

Appeal allowed.