

Before J. M. Tandon, J.

GOPI NATH AND SONS,—Petitioners.

versus

THE ASSISTANT CUSTODIAN GENERAL HARYANA AND
OTHERS,—Respondents.

Civil Writ Petition No. 1820 of 1975.

October 27, 1983.

Administration of Evacuee Property Act (XXXI of 1950)—Section 16—Evacuee obtaining certificate from the Central Government under section 16(1) regarding his properties—Some of the properties subsequently sold by the evacuee—Vendee—Whether has a locus standi to move under section 16(2) for the restoration of properties sold to him.

Held, that an evacuee or a person claiming to be an heir of an evacuee could move an application for a certificate under section 16(1) of the Administration of Evacuee Property Act. Where the evacuee obtained the requisite certificate under section 16(1) and subsequently sold some of the properties, the vendee cannot be treated an heir of the evacuee. An application under Section 16(1) for a certificate can be moved either by an evacuee or by the heir of the evacuee. A person who has obtained a certificate under section 16(1) is competent to move an application under section 16(2) for the restoration of the property. In other words, if the vendee could not move an application for a certificate under section 16(1), it is understood that it shall have no *locus standi* to move an application under section 16(2) in that capacity. It is obvious that a vendee cannot be treated as an heir of the vendor by any stretch of imagination. The word 'heir' means one who actually succeeds to property on the death of its previous holder. The vendee of some properties of the evacuee may be his successor-in-interest but it is difficult to hold that he could be treated as an heir for the purpose of section 16 of the Act.

(Paras 7 and 8)

Petitioner under Articles 226/227 of the Constitution of India praying that :—

- ...
- (a) A writ of certiorari may be issued, quashing the impugned orders (Annexures P/10 and P/11);
 - (b) A writ of mandamus be issued, directing the respondents Nos. 1 and 2, to hand over the properties mentioned in the

Gopi Nath and Sons v. The Assistant Custodian General Haryana
and others (J. M. Tandon, J.)

sale deeds to the petitioner, after passing a formal order of restoration under the old provisions, which were in existence at the time of the grant of the certificate;

- (c) *Direct the respondents to transmit to this Hon'ble Court all the relevant records of the case;*
- (d) *The filing of the certified copies of Annexures P/1 to P/11 be dispensed with;*
- (e) *During the pendency of the writ petition, the operation of the impugned orders (Annexures P/10 and P/11) be stayed and status quo may be ordered to continue;*

AND

- (f) *The costs of the petition may be allowed.*
Dated the 27th October, 1983.

N. C. Jain, Advocate with S. S. Jain, Advocate, for the Petitioner.
Gopi Chand, Advocate, for the State.

D. S. Nehra, Advocate and Arun Nehra, Advocate, for respondent
No. 3.

A. K. Jaiswal, Advocate, D. S. Nehra, Advocate and Arun Nehra,
Advocates, for the respondents.

JUDGMENT

J. M. Tandon, J.

(1) Nawab Aijaz Ali Khan (now deceased) owned considerable immovable property such as houses, shops, vacant sites and agricultural land etc. at Karnal which was treated evacuee under the Automatic Vesting provisions and were administered by the Custodian Organisation. In 1953, the Nawab made an application for the grant of a certificate under section 16(1) of the Administration of Evacuee Property Act (hereafter the Act) alleging that he had not migrated to Pakistan. The Central Government issued certificate No. 2(28)-Rest/56(P)-RAJ/1524, dated September 11, 1956, under section 16(1) of the Act as it existed prior to its amendment of October 22, 1956. This certificate reads :

"Whereas Shri Mohammad Aijaz Ali Khan, son of late Nawab
Mohammad Umardraz has made an application to the

Central Government for restoration of his property which was vested in the Custodian ;

And whereas the Central Government is satisfied that it is just and proper to grant the applicant a certificate for restoration of the said property :

Now, therefore, in exercise of the powers conferred by subsection (1) of section 16 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) and the rules made thereunder, the Central Government hereby grants this certificate to the applicant to the effect that any evacuee property which has vested in the Custodian and to which the applicant would have been entitled, if the said Act were not in force, shall be restored to him, subject to the condition that :—

He shall not evict any allottee/tenant except in the circumstances in which lessees can be evicted under any law for the time being in force.

In respect of agricultural land, if the land is in possession of displaced person, he may be given either alternative land or compensation, or both, in lieu thereof."

(2) On October 15, 1956, the Nawab submitted an application to the Assistant Custodian for the restoration of 48 properties at Karnal which was partly allowed by the Deputy Custodian,—*vide* order, dated May 8, 1957 (P. 1). The case of M/s. Gopi Nath and Sons (petitioner) is that on November 13, 1957, it purchased some properties from the Nawab for Rs. 1,17,000 and on March 11, 1959, for Rs. 800. The properties purchased by the petitioner had not been restored to the Nawab by the Custodian authorities when they were purchased by it. The Nawab submitted two applications, dated October 10, 1957 (P. 4) and March 27, 1959, (P. 3) claiming the restoration of some other properties detailed therein in pursuance of the certificate already issued to him under section 16(1) of the Act. The claim of Nawab for restoration of the properties was still under consideration with the Custodian authorities when he died on March 4, 1963. On September 3, 1963, the Assistant Custodian passed the order P. 5 against which Karnal Co-operative Transport Society Limited, Karnal, filed a revision under section 27 of the Act which was accepted by the Deputy Custodian General,—*vide* order, dated

Gopi Nath and Sons v. The Assistant Custodian General Haryana
and others (J. M. Tandon, J.)

April 9, 1965, (P. 8). The order of the Assistant Custodian was set aside and the case was remanded for fresh decision under section 16(2) of the Act. The petitioner assailed the order of the Deputy Custodian General (P. 8) in C.W. No. 1718 of 1965, which was dismissed on December 23, 1966. Letters Patent Appeal against the order of the High Court in C.W.P. No. 1718 of 1965 was dismissed on March 21, 1967.

(3) The matter came up for decision before the Assistant Custodian in pursuance of the order of the Deputy Custodian General (P. 8). One of the issues before the Assistant Custodian for decision was :

Whether Messrs. Gopi Nath and Sons possesses the necessary *locus standi* to pursue the application put in by Shri Aijaz Ali Khan ?

The Assistant Custodian,—*vide* order, dated October 10, 1968, (P. 10) held that the petitioner had no *locus standi*. The proceedings pending before the Custodian authorities were held to have abated on account of the death of the Nawab. The petitioner assailed the order of the Assistant Custodian P. 10 in revision which was dismissed by the Assistant Custodian General,—*vide* order, dated December 20, 1974, (P. 11). It was held that the petitioner claiming to be successor-in-interest of the Nawab by virtue of the sale in its favour could not claim the restoration of the properties in terms of section 16(2) of the Act. The operative part of the order of the Assistant Custodian General (P. 11) reads :

“My present order is only in the nature of remanding the case to the Assistant Custodian for determining as to what properties besides 12 properties restored by the order of Shri Y. L. Taneja have to be restored to the Nawab or his heirs. The Assistant Custodian will naturally restore properties to the Nawab or his heirs. The petitioners in this case will have to obtain a decree from the civil Court to claim right over the properties which may be restored by the Assistant Custodian to the heirs of the Nawab.

— — — — —”

(4) The petitioner has assailed P. 10 and P. 11 in the present writ.

(5) The short point for consideration in this writ is whether the petitioner has a *locus standi* to move an application under section 16(2) of the Act for the restoration of the properties of the Nawab on the ground that the later after having obtained a certificate under section 16(1) had sold the same to it.

(6) The relevant part of section 16 of the Act before its amendment on October 22, 1956, reads :

“(1) Subject to such rules, as may be made in this behalf, the Central Government or any other person authorised by it in this behalf, may, on application made to it or him by an evacuee or by any person claiming to be the heir of an evacuee, and on being satisfied that it is just or proper to do, grant to the applicant a certificate stating that any evacuee property, which has vested in the Custodian and to which the applicant would have been entitled, if this Act were not in force, shall be restored to him.

(1-A) — — — —

(2) If the evacuee, or as the case may be, the person to whom a certificate has been granted under sub-section (1) applies to the Custodian in writing for the restoration of the evacuee property which has vested in the Custodian, and in respect of which the certificate has been granted th Custodian shall, on the production by the applicant of the certificate and subject to the other provisions contained in this section and in any rules that may be made in this behalf, restore the evacuee property to the applicant.

(2-A) — — — —”

(7) The contention of the learned counsel for the petitioner is that an evacuee or a person claiming to be an heir of an evacuee could move an application for a certificate under section 16(1). The Nawab obtained the requisite certificate under section 16(1) on September 11, 1956. The petitioner purchased some of the properties of the Nawab in 1957 and 1959. The petitioner should be treated an heir of the Nawab in terms of section 16(1) of the Act *qua* the properties purchased by it in 1957 and 1959 and as such shall have *locus standi* to seek the restoration thereof under section 16(2) of the Act. The contention is without merit. An application

Shamsher Singh v. Gandhi Singh and others (R. Mittal, J.)

under section 16(1) for a certificate can be moved either by an evacuee or by the heir of the evacuee. A person who has obtained a certificate under section 16(1) is competent to move an application under section 16(2) for the restoration of the property. In other words, if the petitioner could not move an application for a certificate under section 16(1) as vendee of the properties from the Nawab, it is understood that it shall have no *locus standi* to move an application under section 16(2) in that capacity.

(8) The next point that arises for consideration is whether the petitioner being a vendee of some properties from the Nawab could be treated his heir for purposes of section 16(1). It is obvious that a vendee cannot be treated as an heir of the vendor by any stretch of imagination. According to the Chambers Twentieth Century Dictionary, the word 'heir' means "one who actually succeeds to property etc. on the death of its previous holder". The word 'heir' as defined in Hindu Succession Act means "any person male or female who is entitled to succeed the property of an intestate under this Act". The petitioner being the vendee of some properties of Nawab may be his successor-in-interest but it is difficult to hold that it will be treated as his heir for the purpose of section 16(1) and (2) of the Act. The petitioner being not an heir of the Nawab cannot claim restoration of the properties alleged to have been purchased by it under section 16(2) of the Act. A similar finding recorded by the Assistant Custodian in order P. 10 and by the Assistant Custodian General in order P. 11 cannot be justifiably assailed by the petitioner.

(9) In the result, the writ petition fails and is dismissed with no order as to costs.

N. K. S.