

yet to be considered by the Insurance Board and a decree, if any, is to follow on the case coming back to the Tribunal and on the basis of the proposal made by the Board.

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I would, therefore, accept the preliminary objection and held that no appeal is competent. The appeal is dismissed, but the parties are left to bear their own costs.

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CIVIL MISCELLANEOUS

Before D. Falshaw and G. L. Chopra, JJ.

NAHINDER SINGH ALIAS WAHINDER SINGH AND
OTHERS,—*Petitioners.*

versus

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

Civil Writ No. 433-D of 1957.

Evacuee Interest (Separation) Act (LXIV of 1951)—Whether valid—Constitution of India (1950)—Articles 249, 379(1) and 392—Effect of—Evacuee Interest (Separation) Supplementary Act (Punjab Act No. XXI of 1953), and Pepsu Evacuee Interest (Separation) Supplementary Act (VI of 1953)—Effect of.

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Held, that the Evacuee Interest (Separation) Act, 1951, is a valid piece of legislation. This Act was passed by the Constituent Assembly, functioning as Parliament, on the 31st of October 1951, the Parliament duly constituted under Chapter II of Part V only coming into existence after the general elections held early in 1952, and it must be presumed that any order which was required under Article 392 had in fact been passed by the President. The resolution required under Article 249(1) of the Constitution was passed on 5th June, 1951, and was to remain in force until the 4th of June, 1952, and the Act passed in pursuance of it would automatically have expired on the 4th of December, 1952.

But the Evacuee Interest (Separation) Supplementary Act (Punjab Act No. XXI of 1953) and the Patiala and East Punjab States Union Evacuee Interest (Separation) Supplementary Act (VI of 1953), which came into force with effect from 15th of December, 1953, validated the continuance of the Evacuee Interest (Separation) Act, 1951, after that date.

Petition under Articles 226 and 227 of the Constitution of India, praying that the records of the case may be sent for and the order of the Appellate Officer and that of the Competent Officer which it confirms, may be quashed and respondents No. 1 may be restrained from interfering with the rights of the petitioners in the land in dispute.

GOPAL SINGH, for the Petitioners.

NARAIN SHANKAR and DINA NATH BHASIN, for the Respondents.

ORDER

Falshaw. J.

FALSHAW, J.—These two petitions under article 226 of the Constitution in which orders passed by a Competent Officer and an Appellate Officer under the Evacuee Interest (Separation) Act (No. LXIV of 1951) are challenged have been referred to a Division Bench on account of the fact that the validity of the Evacuee Interest (Separation) Act has been challenged.

The grounds on which the validity of the Act is challenged are that it is a Central Act, whereas rights in land and the transfer and alienation thereof are included only in List No. II in the Seventh Schedule to the Constitution and, therefore, can only be the subject of legislation by a State Legislature, and that in any case, although under certain conditions under article 249 of the Constitution, Parliament could legislate regarding matters included in the State List, the Act had

expired before the proceedings started in which the impugned orders were passed. Article 249 reads :—

[His Lordship read Article 249 and continued :]

The first point raised was one not actually raised in the petition, namely, that the resolution in pursuance of which the impugned Act was passed was carried by the Constituent Assembly and not by the Council of States as specified in article 249. The resolution carried was in the following form :—

“Whereas for the better management and disposal of certain evacuee property, it is necessary to make laws providing for the separation of the interest of evacuees from those of non-evacuees and such laws may, *inter alia*, relate to certain matters enumerated in the State List.

This House do hereby resolve in pursuance of article 249 of the Constitution as adapted by the President under article 392 thereof and as at present in force that it is necessary in the national interest that Parliament should for a period of one year from 15th January, 1951, make laws with respect to the following matters enumerated in entries 18 and 30 of the State List, namely, rights in or over land, transfer and alienation of agricultural land ; money-lending and money-lenders and relief of agricultural indebtedness.”

Article 392, Clause (1) reads :—

“The President may, for the purpose of removing any difficulties, particularly in

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relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary and expedient :

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V."

As this point was raised for the first time in the arguments there was nothing in the reply on behalf of the respondent to point out what orders the President might have passed under article 392(1) in this respect but in any case it seems to me that a complete answer is found in the provisions of article 379(1) of the Constitution which reads :—

"Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall be the provisional Parliament and shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

As a matter of fact the impugned Act itself was also passed by the Constituent Assembly, functioning as Parliament, on the 31st of October,

1951, the Parliament duly constituted under Chapter II of Part V only coming into existence after the general elections held early in 1952, and it must be presumed that any order which was required under article 392 had in fact been passed by the President.

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According to the grounds taken in the petitions the Act expired on the 31st of October, 1953, two years after it had been passed, but this is clearly based on a misreading of the provisions of article 249 according to which any law made in pursuance of a resolution passed under clause (1) was to expire six months after the period of one year for which the resolution was passed. Thus since according to the learned counsel for the petitioners who relied on an official copy of the proceedings of the Constituent Assembly, the resolution was carried on the 5th of June, 1951, the resolution itself would remain in force until the 4th of June, 1952, and any Act passed in pursuance of it would automatically expire on the 4th of December, 1952.

It has, however, been pointed out by the learned counsel for the respondents that this difficulty was realised by the Government and the position was regularized retrospectively by the enactment of the Patiala and East Punjab States Union Evacuee Interest (Separation) Supplementary Act (No. 6 of 1953), as regards Pepsu, where the property in these two cases was situated, and in the Punjab, with which Pepsu was merged as from the 1st of November, 1956, by the enactment of the Evacuee Interest (Separation) Supplementary Act (Punjab Act No. XXI of 1953). The Punjab Act received the assent of the Governor on the 30th April, 1953, while the Pepsu Act was enacted by the President on the 9th of October, 1953. A clause was included in section 1 of both these Acts that

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they should be deemed to have come into force on the 15th of December, 1952. The object of this legislation is set out in connection with the Pepsu Act as follows :—

“In pursuance of a resolution passed under article 249 of the Constitution the Evacuee Interest (Separation) Act was passed by Parliament in 1951, This law was enacted to make special provisions for the separation of evacuee interests from those of non-evacuees in properties in which both the evacuees and non-evacuees are jointly interested. As some of the provisions of the legislation may be relatable to matters in the State List, Parliament was empowered to enact the legislation by resolution under article 249 of the Constitution. The effect of this resolution expired on December 14, 1952.

Doubts may arise as to the validity of certain provisions (which are relatable to matters in the State List) with effect from the 15th December, 1952. This Act seeks to remove those doubts and validates all proceedings held after 14th December, 1952.”

Except for the necessary changes regarding the name of the State the Punjab and Pepsu Acts are identical, and I reproduce the terms of the relevant parts of the Pepsu Act :—

“Section 2. So much of the Evacuee Interest (Separation) Act, 1951, as relates to matters with respect to which the State Legislature has, and Parliament has not, the power to make laws for the

State of Patiala and East Punjab States Union, shall be as effective and valid in the State as if it had been enacted by the Patiala and East Punjab States Union Legislature.

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“Section 3. Anything done or any action taken (including any order made or inquiry held or jurisdiction exercised after the 14th day of December, 1952, and before the commencement of this Act under the provisions of the Evacuee Interest (Separation) Act, 1951 (LXIV of 1951), in so far as it relates to matters with respect to which the State Legislature has, and Parliament has not, the power to make laws for the State of Patiala and East Punjab States Union, shall be deemed to have been validly done or taken as if section 2 were in force in the State on the day on which such thing was done or action was taken.”

It seems to me that this is a complete answer to the case of the petitioners on this point, and the only possible points on which any difficulty might seem to exist is the discrepancy regarding the date on which the special resolution in pursuance of which the Act was passed by the Constituent Assembly functioning as Parliament expired, and such parts of the Act as the Parliament was not competent to legislate upon consequently expired after a further period of six months. According to the learned counsel for the petitioners the resolution itself expired on the 4th of June, 1952, and therefore, the Act expired on the 4th of December, 1952, six months later, whereas from both the Punjab and Pepsu Acts it appears to have been

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the view of the Government that the date of expiration was the 14th and not the 4th of December, 1952.

Putting the case at its worst it seems to me that if the learned counsel for the petitioners is right on this point the only effect would be that any orders purporting to be passed under the Act between the 4th and the 14th of December, 1952, would be invalidated but in any case I am of the opinion that it is extremely unlikely that in introducing retrospective legislation of this kind either the Punjab Legislature or the President, under whose rule the State of Pepsu was at the time, could possibly have made a mistake of this kind on such a point. I, therefore, consider that there is no force in the objections of the petitioners to the validity of the law under which the impugned orders were passed and would order that the writ petitions now be dealt with by a learned Single Judge in connection with any other point that may arise out of them.

Chopra, J.

CHOPRA, J.—I agree.

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APPELLATE CIVIL

Before S. S. Dulat and I. D. Dua, JJ.

SHRIMATI OM PRABHA JAIN,—*Appellant*

versus

GIAN CHAND AND ANOTHER,—*Respondent.*

First Appeal From Order No. 4-E of 1959.

*Representation of the People Act (XLIII of 1951)—
 Sections 33 and 36—Candidate's name not on the electoral
 roll on the date of nomination but on the roll at the time of
 scrutiny—Acceptance of nomination paper—Whether valid.*

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