

Sodagar Singh
v.
The State of
Punjab and
another
—
Dulat, J.

act in a judicial or *quasi-judicial* manner. His decision, therefore, cannot be disturbed by way of *certiorari*. It is, in the circumstances, not possible for this Court to disturb the decision made by the Director merely because he did not conform to some rule of natural justice. No other question is being raise in the case. The petition must, therefore, fail and I would dismiss it but, in the circumstances, make no order as to costs.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

BISAKHA SINGH AND OTHERS,—Appellants.

versus

UNION OF INDIA AND ANOTHER,—Respondents.

Regular Second Appeal No. 656 of 1960.

1962
—
April 19th

Evacuee Interest (Separation) Act, (LXIV of 1951)—Ss. 2(d) and 9—Administration of Evacuee Property Act (XXX of 1950)—S. 8—Competent Officer—Whether can extinguish the mortgage of composite property after the expiry of sixty years from the date of mortgage where the Act LXIV of 1951 came into force within that statutory period.

Held, that the Competent Officer has the power to order extinguishment of mortgage of composite property under section 9 of the Evacuee Interest (Seperation) Act, 1951, in a case where the said Act had come into force before the expiry of sixty years from the date of mortgage. If, however, the statutory period of sixty years had expired before the commencement of the said Act, the matter would have been different.

Regular second appeal from the decree of the Court of Shri Pritam Singh Pattar, Senior Sub-Judge, with enhanced appellate powers, Ambala, dated the 22nd day of

December, 1959, affirming with costs that of Shri Sadhu Ram, Goel, Sub-Judge, 2nd Class, Rupar, Camp at Ambala, dated the 25th June, 1959, dismissing the plaintiffs' suit and leaving the parties to bear their own costs.

K. C. NAYAR, ADVOCATE, for the Appellants.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—The question which falls for determination in this appeal is whether the Custodian can redeem a mortgage of composite property after the expiry of sixty years from the date of mortgage in cases where the Evacuee Interests (Separation) Act had come into force within that statutory period ?

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The undisputed facts of the case are that one Barkat Ali mortgaged with possession suit land measuring 14 *kanals* and 16 *marlas* in village Kot Kachhwar of Ambala Tehsil for a sum of Rs. 82 with Ram Chander and Jowahar on 5th of June, 1897. The successors-in-interest of the mortgagor have migrated to Pakistan and their ownership rights now vest in the second respondent who is the Custodian of Evacuee Property, Punjab. The plaintiffs, Baisakha Singh and others are the successors-in-interest of the mortgagees and admittedly the mortgage was not redeemed within sixty years which is the period prescribed under Article 148 of the Indian Limitation Act for the right of redemption by the mortgagor. But the Evacuee Interests (Separation) Act came into force on 31st of October, 1951, which vested all composite properties in which Muslim evacuees had an interest in the Custodian. A notice was sent by the Competent Officer, representing the Custodian, to the plaintiffs on 30th of July, 1957 that the mortgage stood extinguished and the claimants should file objections. The objections to this notice having been dismissed, the plaintiffs instituted the present suit for a declaration against the Union of India and the Custodian of Evacuee

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Property, Punjab, that they have become owners of the land in suit and for an injunction that the property should not be sold by auction. This suit was dismissed by the Subordinate Judge and the plaintiffs being unsuccessful in their appeal to the Senior Subordinate Judge have again agitated this matter before this Court in second appeal

It is contended by Mr. Nayar, the learned counsel for the appellants, that the plaintiffs as the successors-in-interest of the original mortgagees had become full owners, the property not having been redeemed within the statutory period of sixty years. It will, however, be observed that the enactment of the Evacuee Interest (Separation) Act, 1951 which came into force on 31st of October, 1951, made certain provisions for 'composite property' which under clause (d) of section 2 of the Act "means any property which, or any property in which an interest, has been declared to be evacuee property or has vested in the custodian under the Administration of Evacuee Property Act, 1950. . . . and in which the interest of the evacuee is subject to mortgage in any form in favour of a person, not being an evacuee". The Competent Officer, who is the appropriate authority under the Evacuee Interest (Separation) Act, issued a notice on 30th of July, 1957 to the plaintiffs under section 9 of the Act to show cause why the mortgage should not be extinguished as under sub-section (2) if a mortgagee of agricultural land has been in possession of it for a period of more than 20 years, the mortgage shall be deemed to be extinguished. Now, the objection taken by the plaintiffs before the Competent Officer was that the possession of the mortgage had ripened into a full ownership, the mortgage not having been redeemed before the expiry of sixty years. The property was dealt as a composite property, there being an interest of the evacuee mortgagor in it. It has been provided by the latest amendment in the Administration of Evacuee Property Act by Act No. 1 of 1960 in section 8 of the Administration of Evacuee Property Act, 1950 that "all property which under any

law . . . purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in, or the invalidity of, such law or any judgment, decree or order of any court, be deemed for all purposes to have validly vested in that person . . .". In the Supreme Court decision of *Azimunnissa and others v. The Deputy Custodian, Evacuee Properties* (1), it has been ruled that the effect of this amendment is that if the property had been dealt with as an evacuee property the question of its possessing the nature of evacuee property shall be unchallengeable. It, therefore, cannot be questioned at this stage that the interest of the mortgagor was evacuee interest and it is for this reason that it has to be treated as composite property to be dealt with by the Competent Officer. Section 18 of the Evacuee Interest (Separation) Act bestows finality to all orders made by an appellate officer or a Competent Officer under the Act and cannot be called in question in any Court by way of an appeal or revision or in any original suit, application or execution proceedings. No doubt the order of the Competent Officer has the effect of overriding section 28 of the Indian Limitation Act which extinguishes the right of the mortgagor in the property not redeemed within the statutory period of sixty years, but section 3 of the Evacuee Interest (Separation) Act enacts that "the provisions of this Act . . . shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force . . .". The overriding effect given to the provisions of the Evacuee Interest (Separation) Act renders the order of the Competent Officer extinguishing the mortgagee's interest in the property fully valid. It would, of course, have been a different matter if the statutory period of limitation had expired before the enactment of the Evacuee Interest (Separation) Act which, however, gives ample power to the appropriate authorities to send notices of and enforce extinguishment of a mortgage under section 9.

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(1) A.I.R. 1961 S.C. 365.

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I would accordingly dismiss this appeal but would leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

SAT NARAIN AND OTHERS,—Petitioners.

versus

THE DEPUTY COMMISSIONER, FEROZEPURE AND
OTHERS,—Respondents.

Civil Writ No. 1665 of 1961.

1962

April 25th

Punjab Municipal Act (III of 1911)—Ss. 12, 17 and 24—
Municipal Election Rules, 1952—Rules 5 and 41—Election
of all the members not held—Election of members elected—
Whether must be notified forthwith.

Held, that a combined reading of sections 12 and 17 of the Punjab Municipal Act, 1911, will show that a municipal committee can only function after all the members have been elected or nominated as the case may be. It cannot function if only part of the members have been elected. The only exception is when in a duly and properly constituted committee there occurs a casual vacancy. Section 24 of the Act and Rule 41 of the Municipal Election Rules do not oblige the Government to notify the election of members forthwith. All that these provisions require is that the Deputy Commissioner shall within seven days forward the result of the election to the Commissioner and thereafter the result is to be notified. No time limit is fixed either in the statute or in the Rules for such notification. Therefore, it must be held that the notification must be within a reasonable time. In the present case the Government is not notifying the result, because the entire election has not been completed and, therefore, it cannot be said that they are acting in any illegal or *mala fide* manner.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus or any other suitable writ, order or direction in the nature of mandamus be issued to respondent No. 1, directing him to notify the election of the petitioners to the Municipal Committee of Abohar in the Punjab State Gazette.

S. C. GOYAL, ADVOCATE, for the Petitioners.

H. S. DOABIA, ADVOCATE, for the Respondents.