

The Motor
and General
Insurance Co.
Ltd.

In view of the partial success of the appellant, the parties are left to bear their own costs in this Court.

v.

Hota Ram
and others

Gurdev Singh,
J.

FALSHAW, J.—I agree.
B.R.T.

Falshaw, J.

LETTERS PATENT APPEAL.

Before G. D. Khosla, C.J., and Shamsher Bahadur, J.

NAWAB ZAHIR-UDDIN AHMED AND ANOTHER,—
Appellants.

versus

THE APPELLATE OFFICER, DELHI PROVINCE AND
OTHERS,—*Respondents.*

L.P.A. No. 12-D of 1958.

*Evacuee Interest (Separation) Act (LXIV of 1951)—
S. 9 (I)—Benefit of the reduced rate of interest—Whether
available to evacuee mortgagor only in the composite mort-
gaged property—Object of the Act stated.*

1960

Sept. 7th.

Held, that the benefit of the reduced rate of interest as prescribed in section 9(1) of the Evacuee Interest (Separation) Act, 1951, can be availed of only by the evacuee mortgagor and not by the non-evacuee mortgagor of the composite mortgaged property. The evacuee mortgagors, being unable to supervise their properties, have been absolved from the duty of paying the contractual interest and the Custodian, who had taken charge of their properties, was, thus, required only to pay interest at the rate of five per cent per annum. The words "mortgaged property of an evacuee" can only mean the interest of an evacuee in the mortgaged property.

Held, that as a matter of principle, the integrity of a mortgage has to be respected but the Evacuee Interest (Separation) Act, 1951, is designed to split the evacuee and non-evacuee interests of a mortgage, thereby destroying the principle of the integrity of a mortgage. The Act was made for special and peculiar circumstances resulting from

the large scale migration of populations. The only practical way to deal with the situation was to determine what the evacuee interest was in a particular property and to separate it from that of a non-evacuee.

Appeal Under Clause 10 of the Letters Patent of the High Court, against the judgment of Hon'ble Mr. Justice Mehar Singh, dated 14th April, 1958 passed in Civil Writ No. 113-D of 1956, styled prayig that ;

(a) *that the order of the Single Judge dated 14th April, 1958, dismissing the Appellant's application be set aside.*

(b) *That a writ or order in the nature of certiorari or mandamus or any other writ be granted quashing the order of the Appellate Officer dated 12th July, 1956, and restoring the order of the Competent Officer dated 5th August, 1956 or commanding the Respondents to allow the claim of the appellant with future interest at the rate of 5 per cent per annum.*

(c) *Such other relief be granted as the court deems proper.*

TARA CHAND, BRIJMOHAN LAL, ADVOCATE, for the Appellants.

BISHAMBAR DAYAL, STANDING COUNSEL AND G. L. SETHI, ADVOCATE, for the Respondents.

JUDGMENT

The judgment of the Court was delivered by—
SHAMSHER BAHADUR, J.—This is an appeal from the judgment of Mehar Singh, J. who dismissed the petition of the appellants under Article 226 and 227 of the Constitution of India.

Shamsher
Bahadur, J.

Nawab Zahir-
Uddin Ahmed
and another
v.
The Appellate
Officer, Delhi
Province,
and others

Shamsher
Bahadur, J.

The question raised in this appeal is whether the benefit in the abatement of the rate of interest provided in Section 9(1) of the Evacuee Interest (Separation) Act is restricted to the interest of an evacuee mortgagor only in the composite mortgaged property ?

Before setting out the relevant provisions whose interpretation is called for in this appeal, the facts giving rise to the dispute may usefully be narrated. Nawab Bashir-uddin Ahmed Khan, resident of Hyderabad (Deccan) was owner of one-half share of the property consisting of 21 shops and 4 *bala khanas* constructed on land situated in Moti Bazar, Chandni Chowk, Delhi. Nawab Bashir-uddin Ahmed Khan mortgaged on 20th of February, 1926, his share of the property in favour of Shri Narain Dass, for a sum of Rs. 40,000. He died in the year 1931, leaving behind his two sons, Zahir-uddin-Ahmed Khan and Alla-uddin-Ahmed Khan, and a daughter Hamida Begam. On 26th of September, 1936, the two sons and daughter of Bashir-uddin Ahmed Khan mortgaged the property for a sum of Rs. 32,300 with interest at the rate of 10 per cent, per annum, with Narain Dass. Narain Dass died in 1944, leaving behind Jamna Devi, his daughter, as his heir. She is a respondent in this appeal. Allau-uddin left for Pakistan in 1947 and was declared as evacuee. Zahir-uddin and Hamida Begam, however, are residents of India and have not been declared evacuees. There can be no manner of doubt that Allau-uddin having become an evacuee, the property has become composite under the provisions of Evacuee Interest (Separation) Act, 1951 (hereinafter to be referred to as the Act). On 24th of September, 1952, Jamna Devi, as the surviving heir of Narain Dass, made an application to the Competent Officer under section 7(1) of the Act for separation of her interest in the composite property from that of

Zahir-uddin and Hamida Begam. Under section 7(1) of the Act, "any person claiming an interest in a composite property may.....submit to the competent officer a statement of his claim in writing and signed and verified in the prescribed manner." Under sub-section (2) of section 7, a statement of claim has to contain a variety of particulars, like the nature of the interest of the claimant in the composite property, the estimated money value of the composite property, the principal money and the rate of interest chargeable under the mortgage deed and other particulars of the mortgage.

Nawab Zahir-
Uddin Ahmed
and another
v.
The Appellate
Officer, Delhi
Province,
and others.

Shamsher
Bahadur, J.

It was pleaded on behalf of the appellants Zahir-uddin and Hamida Begam, who had also laid a claim as mortgagors for separation of their interests under section 7(1) of the Act, that as mortgagors they were entitled to the relief under section (1) of the Act.

The provisions of section 9(1), which call for an interpretation of this Court, may now be set out :—

- 9 "(i). Notwithstanding anything to the contrary in any law or contract or any decree or order of a civil Court or other authority, where the claim is made by a mortgagee, *no mortgaged property of an evacuee* shall, subject to the provisions of sub-section (2), be liable for the payment of interest at a rate exceeding five per cent. per annum simple on the principal money advanced or deemed to have been advanced."

Zahir-uddin and Hamida Begam claimed under this provision that they were liable to pay interest at five per cent only, whereas Jamna Devi as a

Nawab Zahir-
Uddin Ahmed
and another
v.

The Appellate
Officer, Delhi
Province,
and others

Shamsher
Bahadur, J.

mortgagee asked for contractual rate so far as the interest of the non-evacuee mortgagors was concerned. The Competent Officer by his order, dated 5th of August, 1955, held that the mortgagee was entitled to the balance of the principal amount of the mortgage with statutory interest at the rate of five per cent per annum from the date of the mortgage deed up to the date of confirmation of the sale. On an appeal preferred by Shrimati Jamna Devi, it was held by the Appellate Authority (Mr. R. L. Aggarwal) that the aid of section 9(1) of the Act could be invoked only by an evacuee and Zahir-uddin and his sister being admittedly residents of India, the rate of interest could not be reduced below the one which was fixed by contract between the parties. The case was accordingly sent back to the Competent Officer by Mr. Aggarwal on 12th of July, 1956, to be dealt with according to this interpretation. Thereafter, a writ was preferred by Zahir-uddin and his sister to this Court and Mehar Singh, J., by his order, dated 14th of April, 1958, upheld the view taken by the Appellate Authority and has accordingly dismissed the writ petition. Zahir-uddin and Hamida Begam have come in appeal under clause 10 of the Letters Patent.

The learned Single Judge has found that (1) the benefit under section 9(1) of the Act has been given and was intended to be given only to evacuees who have left for Pakistan, and (2) the statements made by the parties on 4th of July, 1955, to be bound by the decision of the Competent Officer or the Appellate Authority with regard to the question of interest precluded them from claiming relief in *certiorari* proceedings.

Mr. Tara Chand Brij Mohan Lal, the counsel for the appellants, has contended that the words

construed in the background of the accepted notion that a mortgage is an integral and indivisible transaction.

The relief is claimed in respect of mortgaged property a portion of which admittedly belonged to an evacuee and accordingly the rate of interest should be the one which is laid down by statute. It has been contended that the Courts should resolutely decline to construe "mortgaged property of an evacuee" as the mortgaged interest of an evacuee, for in doing so the Court would take upon itself the task of legislation.

In order to appraise the points which have been canvassed in this appeal, it would be necessary briefly to set out the purpose and the underlying provisions of the Evacuee Interest (Separation) Act, 1951, so far as they are germane to the present inquiry. According to the Objects and Reasons, the legislation was intended to provide an expeditious method for the assessment and separation of evacuee and non-evacuee interests in property where the interests of evacuee and non-evacuee were intermixed. The object of such separation was obviously to assist in the evaluation of the evacuee property pool. The properties in which an evacuee had any interest were taken over by the Custodian and it involved a hardship to many non-evacuee mortgagees who were deprived of the enjoyment of the benefit of their interests. The separation of evacuee and non-evacuee interests was essential to release the evacuee property pool from encumbrance and enable consolidation and better administration of the pool. In clause (3) of the Objects and Reasons, it was stated that "in assessing the respective interests of evacuees and non-evacuees, certain reliefs, e.g., reduction of interest, have been provided in favour

Nawab Zahir-
Uddin Ahmed
and another

v.

The Appellate
Officer, Delhi
Province,
and others

Shamsher
Bahadur, J.

Nawab Zahir-
Uddin Ahmed
and another
v.
The Appellate
Officer, Delhi
Province,
and others

Shamsher
Bahadur, J.

of evacuee mortgagors as they were unable to redeem their property on account of causes beyond their control, and their property might have deteriorated in the absence of their personal supervision." This clause, in our opinion, places the matter of relief regarding interest beyond any doubt. Evacuee mortgagors being unable to supervise their properties were absolved from the duty of paying the contractual interest and the Custodian, who had taken charge of their properties, was, thus, required only to pay interest at the rate of five per cent. per annum.

No doubt, as a matter of principle, the integrity of a mortgage has to be respected. It is, however, to be observed that the Act is designed to split the evacuee and non-evacuee interests of a mortgage, thereby destroying the principle of the integrity of a mortgage. The Act was made for special and peculiar circumstances resulting from the large scale migration of populations. The only practical way to deal with the situation was to determine what the evacuee interest was in a particular property and to separate it from that of a non-evacuee. In this setting and background of the legislation, it is not possible to accept the argument of the learned counsel for the appellants, based as it is on a doctrine which runs counter to the very object of the Act. A large number of authorities were cited by Mr. Tara Chand Brij Mohan Lal in support of his contention that a mortgaged property is one and indivisible. With that abstract proposition of law, there can be no dispute. We have, however, to construe the provisions of the Act according to the realities of the situation which the Legislature had to meet and which, in fact, were met by the Act. The learned counsel placed great reliance on the definitions of "principal money," "composite property" and "evacuee interest" to show that the important

determining factor was the mortgage deed itself. The definition of "evacuee interest" under clause (e) of section 2 of the Act is important. "Evacuee interest," in relation to a composite property, means the right, title and interest of an evacuee in that property. It seems to us that this definition equated evacuee interest with evacuee property. It is impossible to think of evacuee property independently of "evacuee interest". It is no doubt true that a portion of the composite property belonged to an evacuee. It cannot be deduced therefrom that the entire property has become evacuee property. It is in this light that the words "mortgaged property of an evacuee" in subsection (1) of section 9 of the Act have to be construed. In the first place, it seems to us that there is no ambiguity with regard to these words as the "mortgaged property of an evacuee" can only mean the interests in the mortgaged property of an evacuee. If, however, it is a case of *casus omissus*, the omission can easily be filled by Courts in the process of construction. In the objects and Reasons, it was plainly stated that the benefit with regard to interest was claimable only by evacuee mortgagors. If the words "mortgaged property of an evacuee" could be construed in the wider sense, which, according to the learned counsel for the appellants, ought to be given to them, then in our opinion, the Courts would be entitled to say that the word "property" should be construed as "interest" in the context of section 9 of the Act. As stated by Crawford in his treatise, *The Construction of Statutes*, (1940 edition) at page 269, "omissions in a statute cannot, as a general rule, be supplied by construction.....But, in as much as it is the intention of the legislature which constitutes the law of any statute, and since the primary purpose of construction is to ascertain that intention, such intention should be given effect, even if it necessitates the supplying of omissions,

Nawab Zahir-
Uddin Ahmed
and another
v.

The Appellate
Officer, Delhi
Province,
and others

Shamsher
Bahadur, J.

Nawab Zahir-
Uddin Ahmed
and another
v.
The Appellate
Officer, Delhi
Province,
and others

Shamsher
Bahadur, J.

provided, of course, that this effectuates the legislative intention. Some decisions seem to indicate a trend in this direction, and allow words omitted by oversight to be supplied, if the statute is otherwise meaningless.....”.

In the task of construction, it is legitimate for the Court to ascertain the legislative purpose or purposes which are to be served by the enactment. The reason for the enactment of a law must necessarily shed considerable light on the legislative intent and as pointed out by Crawford in the *Construction of Statutes*, at page 249, “when construing a statute, the reason for its enactment should be kept in mind, and the statute should be construed with reference to its intended scope and purpose. The Court should seek to carry out this purpose rather than to defeat it.” In the aims and objects of the legislation, it is stated in the most unambiguous and unequivocal manner that evacuee mortgagors alone are to be given the benefit of the provisions relating to relief. The learned Single Judge has rightly placed emphasis on the preamble of the statute and to the various definitions in the Act which lead to the inevitable conclusion that the object of section 9(1) of the Act is to bring within its ambit only the interests in the composite property of an evacuee. We find nothing in the old English decision in *The Attorney-General v. Sillem and others* (1), cited by the learned counsel for the appellants, which might induce us to take a different view regarding the construction of section 9 of the Act. The passage to which our attention has been invited is on page 216 of the English Reports, and is to this effect :—

“In endeavouring to discover the true construction of the 7th clause of the statute, the first matter to be attended to is no

• (1) 59 English Reports 178.

doubt the actual language of the clause itself as introduced by the preamble; secondly, the words or expressions which obviously are by design omitted; and, thirdly, the connexion of the 7th clause with other clauses in the same statute, and the conclusions which on comparison with other clauses may reasonably and obviously be drawn."

Nawab Zahir-
Uddin Ahmed
and another,
v.
The Appellate
Officer, Delhi
Province,
and others

Shamsher
Bahadur, J.

Applying all the three tests laid down by Pollock, C.B., in this judgment, it seems to us that the construction which has been put by the learned Single Judge is the correct one. The preamble has been given due consideration as also the language employed therein. We do not find that the omission of the word "interest" is by design; indeed, in the context of the case, it is apparent that "interest" is to be equated with "property", and lastly, when we read sub-section (1) of section 9 of the Act with the other provisions, the conclusion becomes irresistible that an evacuee mortgagor alone is intended to be benefited.

In the view we have taken in regard to the construction of the relevant provisions of the Act, it is not necessary to decide the second question whether the statements made by the parties that they would be bound by the decision of the Competent Officer or the Appellate Officer with regard to the question of interest, precludes the petitioners, from agitating this matter in these writ proceedings. The matter has been decided after full consideration by the Appellate Authority and it seems to us that there is no valid reason to allow this application for writ on any of grounds mentioned in the petition.

In this view of the matter, we must hold that the decision of the learned Single Judge is correct

Nawab Zahir- and we would, accordingly, dismiss this appeal
 Uddin Ahmed with costs.
 and another
 v. B.R.T.

The Appellate
 Officer, Delhi
 Province,
 and others

Shamsher
 Bahadur, J.

CIVIL MISCELLANEOUS.

Before D. Falshaw and Gurdev Singh JJ.

HARI KISHEN DASS AND ANOTHER,—*Petitioners.*

versus

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

Civil Writ No. 1119 of 1960.

Public Premises (Eviction of Unauthorised Occupants) Act (XXXII of 1958)—Provisions of—Whether offend against the principles of articles 19 and 14 of the Constitution.

1960

Sept.' 8th.

Held, that the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, do not offend the provisions of article 19(1)(f) of the Constitution nor does any question under article 14 arise. The Act provides for a full-dress inquiry (S. 8) and a regular hearing of an appeal by an experienced judicial officer (S. 9). Even if a question of disputed title arises out of the issue of a notice under section 4 by an estate officer, the affected person has every opportunity to present his case and the dispute can be properly adjudicated on before any final action is taken under section 5 of the Act.

Petition under article 226 of the Constitution of India praying that a writ of certiorari be issued quashing the order of the Military Estate Officer, Delhi Circle, Delhi Cantonment, dated the 18th May, 1960.

B. S. CHAWLA, ADVOCATE, *for the Petitioners.*

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL.

K. S. CHAWLA, ADVOCATE, *for respondent No. 3.*