FULL BENCH

Before S. S. Dulat, Inder Dev Dua and D. K. Mahajan, JJ.

MST. JAFRAN BEGUM,—*Appellant*

versus

CUSTODIAN EVACUEE PROPERTY AND OTHERS,—*Respondents*

Regular Second Appeal No. 1819 of 1959.

1962

May, 1st.

Administration of Evacuee Property Act (XXXI of 1950)—S. 46—Scope of—Matters to be determined by the Custodian finally stated—Suit concerning title to evacuee property—Whether triable by Civil Court.

Held, that when a question arises whether any property is or is not evacuee property, two matters have to be considered—

(1) Whether a particular person has or has not become an evacuee; and

(2) Whether the property in dispute belongs to him.

The first question, almost invariably, is a question of fact and such a question is to be determined, and determined finally, by the Custodian and the Civil Courts have nothing to do with it. The second question, however, may involve a simple question of fact, while, on the other hand, it may involve a complicated question of law or, as many of the decisions have put it, a 'question of title'. Although the question, whether a certain property is or is not evacuee property, is determinable by the Custodian, the determination of a question of title by the Custodian, if

such a question properly arises in such a case, is not final and the question of title can be reopened in the Civil Courts and is to be finally determined by those Courts. This does not, however, mean that a mere assertion of claim to any property raises a question of title, for such an assertion may rest on a simple allegation of fact which can be finally determined by the Custodian. Whether in a particular case a question of title does or does not properly arise has to be decided on the facts of each case as no general rule about it can be usefully laid down.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 17th April, 1961, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice I. D. Dua on 27th November, 1961, further referred the case to the Full Bench. The Full Bench consisting of Hon'ble Mr. Justice S. S. Dulat, Hon'ble Mr. Justice I. D. Dua and Hon'ble Mr. Justice D. K. Mahajan on 28th May, 1962, decided the law point involved in the case and returned it to the Single Bench for decision on merits.

Regular Second Appeal from the order of Shri Sewa Singh, Additional District Judge, Barnala, dated the 12th August, 1959, affirming that of Shri Kahan Chand Kalra, Sub-Judge, 1st Class, Malerkotla, dated the 31st December, 1958, dismissing the suit holding that his court had no jurisdiction to entertain the same.

H. L. SARIN, RAM RANG, K. K. KAKRIA AND K. C. SUD, ADVOCATES, for the Appellants.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Dulat, J.

DULAT, J.—We have in this case to consider the scope of section 46 of the Administration of Evacuee Property Act, 1950, and the occasion has arisen because, when this case was before the Division Bench, it was felt that in certain statements made in this Court concerning this particular section

there was some conflict. It appears now that the conflict was more apparent than real and it arose because of the difficulty of describing in general terms the line which divides matters which are to be finally decided by the Custodian alone and those others where the decision of the Custodian is not final but is open to examination and final decision by the civil courts. Section 46 of this Act says—

> "46. Save as otherwise expressly provided in this Act, no civil or revenue court shall have jurisdiction—
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> (a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or
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> (c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or
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> (d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine."

'Evacuee property' is defined in the Act 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)'. There are then some exceptions with which we are not concerned. An 'evacuee' is defined as a person who has in certain circumstances left India for a place outside India. It would appear, therefore, that when a question arises whether any property is or is not evacuee property, two matters have to be considered—

(1) Whether a particular person has or has not become an evacuee; and

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(2) whether the property in dispute belongs to him.

The first question, almost invariably, is a question of fact and there is general agreement before us that such a question is to be determined, and determined finally, by the Custodian and the civil courts have nothing to do with it. The second question, however, may involve a simple question of fact, while, on the other hand, it may involve a complicated question of law or, as many of the decisions have put it, a 'question of title'. It is about such matters that the controversy mainly arises. In a case decided in this Court, *Kailash Chand* v. *The Additional Deputy Custodian-General* (1), the question was whether a sale of certain property which had taken place in 1939 was in law valid or invalid because of certain provisions of Hindu law, and the ultimate question, whether the property was or was not evacuee property, turned on the decision of the first question. Kapur, J., held that the Custodian had no jurisdiction to decide such a question which was to be settled by the civil courts. In actual fact thus his decision was that a complicated question of Hindu law could not be left to be finally settled by the Custodian. While discussing this matter, however, he observed, "The jurisdiction of the Custodian is (i) to determine whether the property is evacuee property, which means that the Custodian has to determine whether the person who owned the property has become an evacuee, and (ii) whether he did own the property." This general statement apparently caused some embarrassment to Grover, J., in *Ram Gopal* v. *Banta Singh and others* (2), who thought that "if it is within the province of the Custodian to adjudicate on the second matter, namely, whether

(1) 1955 P.L.R. 440.
(2) 1958 P.L.R. 307.

the evacuee owned the property or not, it would seem that whenever a question of title arises between the evacuee and a non-evacuee, it is left to the Custodian to give adjudication on that point." This the learned Judge was not willing to accept and he held that it was not for the Custodian to decide a question of title of the kind involved in the case before him. The actual question in the case before Grover, J., was whether a certain exchange of land made in 1946 was, in view of the repeal of the Punjab Alienation of Land Act, valid or not, and he found that such a question of law had to be settled by the civil courts. The decision thus was on the same lines as the decision by Kapur, J., for in both cases it was held that if a question of title was involved the decision of the Custodian was not final.

In *Parkash Chand and others* v. *Custodian, Evacuee Property, Jullundur, and another* (3), the question was whether certain persons had or had not become evacuees, and the final question, whether certain property was or was not evacuee property, turned on that. A Division Bench of this Court, of which I was a member, held that such a question was determinable by the Custodian and his decision was final and the civil courts could not go into it. In *Gurparshad and others* v. *The Assistant Custodian-General of Evacuee Property, New Delhi, and others* (4), the question arose in another way. Proceedings were started before the Custodian for declaring certain properties as evacuee properties. Gurparshad claimed that the properties were not evacuee properties and, while the Custodian was investigating the matter, a writ petition was filed in this Court with the object of obtaining an order to prohibit the Custodian from deciding the question, the

(3) I.L.R. 1959. Punj. 1.=1958 P.L.R. 592.
(4) 1959 P.L.R. 137.

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argument being that such a matter was determinable by the civil courts and for that reason the Custodian had no jurisdiction to determine it at all. The Division Bench, of which I again was a member, held that the Custodian could not be prevented from investigating and deciding the question, but we did not say that such a decision by the Custodian was final, and, on the other hand, we said that "it may be that the civil courts are not debarred from deciding some of those questions if properly raised in those courts", but that it did not in any sense mean that the Custodian could not go into those questions; the reason being that the Custodian had to administer the evacuee property and for that purpose he had to arrive at his own conclusions which may or may not be final. The writ was, therefore, refused. That case is no authority for the view that a question of title concerning property, which may have been declared as evacuee property, cannot be reopened in the civil courts. It, therefore, comes to this that the view of this Court has been that although the question, whether certain property is or is not evacuee property, is determinable by the Custodian, the determination of a question of title by the Custodian, if such a question properly arises in such a case is not final and the question of title can be reopened in the civil courts and is to be finally determined by those courts. This does not, however, mean, and I do not intend to imply this in any manner, that a mere assertion of claim to any property raises a question of title, for such an assertion may rest on a simple allegation of fact which can be finally determined by the Custodian. Such a situation arose in *Custodian-General, Evacuee Property, Delhi* v. *Rikhi Ram and another* (5), Rikhi Ram in that case had mortgaged

(5) I.L.R. 1960 (1) Punj. 199=1959 P.L.R. 915.

a plot of land with one Feroze-ud-Din who later became an evacuee, and the question was whether the mortgagee rights were evacuee property or not. Rikhi Ram first denied the mortgage but later, when faced with evidence, he admitted the transaction. He, however, alleged that he had repaid the mortgage money, and the question was whether that allegation could be investigated into and finally decided by the Custodian. A Division Bench of this Court held that the Custodian was the final Judge of such a matter. It will be noticed that no question of title, properly speaking, arose or was raised in that case and the dispute was merely about a fact. It thus appears that the view expressed by Kapur, J., in *Kailash Chand* v. *The Additional Deputy Custodian-General* (1), and in substance followed by Grover, J., in *Ram Gopal* v. *Banta Singh and others* (2), has not been negatived in this Court, and the decisions, on the other hand, indicate that when a question of title concerning any property alleged to be evacuee property does arise the Custodian's decision on such a question is not final and the final Judge of such a question is the civil court. The further question, whether in a particular case a question of title does or does not properly arise, has to be decided on the facts of each case and no general rule about it can be usefully laid down. In the light of this view, it is possible now to turn to the facts of the present case.

A house in Malerkotla belonged to Murad Bux. He made a will in May, 1918, bequeathing the house to his wife Mst. Jafran Begum. Murad Bux died in 1922. At the time of the partition in 1947 Murad Bux's son Mohammad Rafiq went away to Pakistan and the Custodian, believing that the house in Malerkotla was his property, declared it as evacuee property. This was in June, 1952, Jafran Begum laid a claim to this property

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and sought to have it released, but her application was dismissed on which she preferred a revision petition before the Custodian-General. This was considered by the Deputy Custodian-General who came to the conclusion that the will made by Murad Bux in Jafran Begum's favour was under Mohammadan law invalid. He, however, held that Jafran Begum, as one of the heirs of Murad Bux, was the owner of one-eighth share in the house and he consequently released that one-eighth share, while he dismissed the claim regarding the seven-eighth share. Being dissatisfied with that decision, Jafran Begum brought a suit in the civil court claiming a declaration that the house was her property. The suit was resisted on several grounds, but one preliminary objection was that the civil court had no jurisdiction as the Deputy Custodian-General had held the property to be evacuee property. This preliminary matter was settled by the learned Subordinate Judge against the plaintiff, although the other issues on the merits were settled in her favour. The suit was, in the result, dismissed. Jafran Begum appealed, but the learned Additional District Judge, Barnala, affirmed the view of the trial court that the suit was not entertainable by the civil courts. On the merits also he found, that the will made in favour of Jafran Begum was not valid in law as far as the seven-eighth share in the house was concerned. The learned Additional District Judge, therefore, dismissed the appeal with costs. Jafran Begum then preferred a second appeal in this Court which came before Shamsher Bahadur, J., in the first instance who referred it for decision to a larger Bench and that Bench decided to refer it to a Full Bench and the case has thus come before us.

It is quite clear that the disputed question in the present case turns on the validity of the will

of Murad Bux and the question is whether, according to the rule of Mohammadan law, such a will is or is not valid. This, in my opinion, raises a question of title very closely resembling the question which arose before Kapur, J., in *Kailash Chand* v. *The Additional Deputy Custodian-General* (1), and which arose before Grover, J., in *Ram Gopal* v. *Banta Singh and others* (2), and it seems to me hardly possible to agree that the decision of the Custodian or the Custodian-General on such a question is intended by the Administration of Evacuee Property Act to be final. As I have said, the question is essentially one of title and such a question must, in my opinion, be settled by the civil courts. The learned Additional District Judge felt that he was bound by the decision of this Court in *Parkash Chand and others* v. *Custodian, Evacuee Property, Jullundur, and another* (3), and he took that to lay down that the civil courts have no jurisdiction to decide whether certain property was or was not evacuee property. I have, however, pointed out that in that case no question of title had arisen and the only question was whether certain persons had or had not become evacuees which was merely a question of fact determinable with reference to the rule contained in the Administration of Evacuee Property Act. In the present case, the question is vastly different and it has to be decided with reference to the principles of Mohammadan law. It is, in my opinion, a question of title and cannot be finally determined by the Custodian and the learned Additional District Judge was wrong in holding that the civil courts had no jurisdiction to decide the question raised by Jafran Begum in her suit. It follows that Jafran Begum's suit cannot fail on that preliminary ground and must be decided on the merits. Finding, therefore, that the suit in this case falls within the jurisdiction of the civil

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courts, I would return the appeal (Regular Second Appeal No. 1819 of 1959) to the learned Single Judge for disposal on the merits. The costs incurred before us will be costs in the appeal.

Dulat, J.
Dua, J.

INDER DEV DUA, J.—I agree.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

CRIMINAL MISCELLANEOUS

Before S. B. Capoor and R. P. Khosla, JJ.

TARLOCHAN SINGH,—*Petitioner*

versus

THE STATE,—*Respondent*

Criminal Miscellaneous No. 599 of 1961

1962

September, 17th

Code of Criminal Procedure (Act V of 1898)—S. 107(1)—Action under—Whether can be taken in respect of activity per se *lawful.*

Held, that an activity *per se* lawful does not come within the mischief of the provisions of sub-section (1) of section 107 of the Code of Criminal Procedure, 1898, merely on the ground that other persons with a view to stop such activity threaten to commit a breach of the peace.

Case referred by the Hon'ble Mr. Justice Gurdev Singh on 7th February, 1962, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Capoor and Hon'ble Mr. Justice R. P. Khosla returned the case to the Single Judge for disposal of the case on merits after deciding the law point referred to it. The case was finally decided by Hon'ble Mr. Justice Dua on 1st November, 1962.

Petition for quashing the proceedings pending against the petitioner under sections 107/151, Criminal Procedure