

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 227 of 2007

Date of Decision : December 31, 2009

Gurbax Singh

Petitioner

Versus

The Secretary (Revenue) Union of India & others

Respondents.

Coram:

Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner : Mr. Ajay Sharma, Advocate, for the petitioner.

For the respondents : Mr. Y. P. S. Dhaulta, Central Govt. Counsel for
respondent No. 1.
Mr. J.S. Rana, Asstt. A.G. for respondents No. 2
to 4.
Mr. T. S. Chauhan, Advocate, for respondent
No.5.

Sanjay Karol, J. (Oral)

In this present petition filed under Article 227 of the Constitution of India, the plaintiffs have assailed the judgment dated 30.6.2007 passed by the District Judge, Una, H.P. in Civil Misc. Appeal No. 18 of 2004, affirming the order dated 25.8.2004 passed by the Civil Judge (Junior Division), Amb, Distt. Una, H.P. in Civil Suit No. 110-I of 2003.

The appellants herein, as plaintiffs filed a suit for declaration to the effect that they are owners in possession of the suit land and that cancellation of the sale certificate by the respondents-State, to the extent of 37 Kanal 10 Marla out of the suit land is illegal and further allotment of

¹ Whether reports of Local Papers may be allowed to see the judgment?

the same in favour of respondent Sh. Lal Chand, who in turn exchanged the same with Sh. Roda Ram, predecessor-in-interest of respondents No. 6 to 9, be declared to be illegal and also mutation entries dated 9.4.1983 and 20.12.2001 in favour of the respondents be held to be illegal.

Undisputedly the suit land was a evacuee property and was purchased by Sh. Khushi Ram, predecessor-in-interest of the plaintiffs in an open auction held on 23.9.1966 by respondents No. 1 to 4. The entire sale consideration, according to the respondents was not paid, hence sale to the extent of 37 Kanal 10 Marla was cancelled and land allotted to the respondent Sh. Lal Chand.

On the pleadings of the parties the trial Court framed the following issue:

- “1. Whether the plaintiffs are owners in possession of suit land? OPP
2. Whether the defendants are interfering with the possession of plaintiffs over the suit land? OPP
3. Whether the suit is not maintainable? OPD
4. Whether this Court is having no jurisdiction? OPD
5. Whether the suit is barred by limitation? OPD
6. Whether the plaintiffs are estopped by their acts and conduct to file this suit? OPD
7. Whether the suit is bad for non-joinder of necessary parties? OPD
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction if so what is the valuation? OPD
9. Whether the plaintiffs have no locus-standi to file this suit? OPD
10. Relief.”

In view of Section 46 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the Act), the trial Court rejected the plaint for want of jurisdiction of the Civil Court to adjudicate the dispute. The plaintiffs appeal, assailing the same also stands dismissed by the District Judge, Una, H.P. in terms of judgment and decree dated 30.6.2007. The plaintiffs suit stands dismissed.

I have heard learned counsel for the parties and also perused the record.

In my view no case for interference is made out by the plaintiffs at all. The Act was enacted to make satisfactory arrangement for the management of the property left behind by the people having migrated at the time of partition and for efficient management and administration of the evacuee property.

It is the plaintiffs' own case that the property in question is an evacuee property. Admittedly the same was purchased by way of an open auction.

Sections 46 of the Act reads as under:

- "46. Jurisdiction of civil Courts barred in certain matters.-
Save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction –
- (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
 - (b) * * *
 - (c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or
 - (d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine."

It bars the jurisdiction of the civil Courts from entertaining suit relating to matters where exclusive jurisdiction is vested in the authority under the Act.

In the instant case there is a dispute as to whether complete sale consideration was paid by the purchaser of the evacuee property and also as to whether the orders with respect to cancellation and subsequent allotment of part of the suit land under the Act, in favour of the respondent is valid or not. It has not been disputed that the authority constituted under the Act is empowered to decide the question of confirmation/cancellation of the sale. In the instant case the challenge is to the action taken by the authority under the Act which question cannot be adjudicated by civil Court in view of a specific bar contained under the Act. The Act is a self contained Code in itself.

The Apex Court in *Custodian, Evacuee Property, Punjab and others versus Jafran Begum*, AIR 1968 SC 169 (V 55 C 43) has held that :

“Under Section 7 the Custodian has to decide whether certain property is or is not evacuee property and his jurisdiction does not depend upon any collateral fact being decided as a condition precedent to his assuming jurisdiction. In these circumstances Sec. 46 is a complete bar to the jurisdiction of civil or revenue courts in any matter which can be decided under S. 7. This conclusion is reinforced by the provision contained in Section 4(1) of the Act which provides that the Act overrides other laws and would thus override Section 9 of the Code of Civil Procedure on a combined reading of Section 4, 28 and 46. But Section 46 or Section 28 cannot bar the jurisdiction of the High Court under Article 226 of the Constitution, for that is a power conferred on the High Court under the Constitution.”

In *Haji Siddik Haji Umar and others versus Union of India*, (1983) 1

SCC 408 the Apex Court has again held as under:

"Section 16 of the Act provides for restoration of evacuee property by the Central Government. Section 27 of the Act gives power of revision to the Custodian-General either on his own motion or on application made to him to call for the record of any proceeding in order to satisfy himself as to the legality or propriety of any order passed therein and to pass such order in relation thereto as he thinks fit. Section 28 of the Act bars the jurisdiction of any court, of course other than the jurisdiction of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 and Article 136 of the Constitution to entertain any suit or proceeding with respect to any order passed by the authorities mentioned therein. Section 46 of the Act which is worded very widely bars the jurisdiction of civil or revenue courts in regard to matters mentioned therein. No such court can entertain any suit or proceeding in which the question whether any property is or is not evacuee property arises or in which the legality of any action taken by the Custodian-General or Custodian under the Act is questioned. Any matter which the Custodian-General or the Custodian is empowered to determine by or under the Act is also outside the jurisdiction of any such Court (see *Custodian of Evacuee Property, Punjab v. Jafran Begum*, AIR 1968 SC 169). In view of the above provisions, it was not open to the civil court in this case to decide whether the suit properties were evacuee properties or not. It was also not open to it to decide the correctness of the order of the Custodian-General dated August 9, 1950 declining to interfere with the order of the Custodian dated June 2, 1950. The question whether a certificate should have been issued by the Central Government also was by implication barred as it was the Custodian who had to

restore the property after holding an enquiry into the title of the evacuee when an application was made to him along with a certificate issued by the Central Government and a certificate of that nature by itself would be of no use. Neither Haji Umar Kasam nor after his death his heirs and legal representatives questioned these orders before the High Court under Article 226 of the Constitution or before the Supreme Court under Article 32 or under Article 136 of the Constitution. They thus became final and were beyond the jurisdiction of the civil court.”

The lower appellate Court has rightly appreciated the ratio of law laid down in the following decisions *Ramsharan versus Mahipatrao*, AIR 1987 Madhya Pradesh 29 and *Jamil Ahmad and others vs. Smt. Kumud Rajdeo Singh and others*, AIR 1997 Allahabad 374. The decisions are clearly distinguishable on facts.

The plaintiffs had filed a civil suit and not a petition under Article 226 of the Constitution of India.

In view of Section 46 of the Act, the lower Appellate Court was right in dismissing the plaintiffs’ suit being barred by law.

There is no illegality, irregularity which has resulted into miscarriage of justice. The present petition being devoid of merit is thus dismissed.

(Sanjay Karol),
Judge.

December 31, 2009
(PK)