have become final, because no appeal was filed against that determination. But it appears that the procedure laid down by s. 24(3) under which the Income-tax Officer has to notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of that section was not followed. No doubt, under s. 30 an appeal lies, if the assessee objects to the amount of loss computed and notified under s. 24; but inasmuch as the Income-tax Officer had not notified the loss computed by him by order in writing, an appeal could not be taken on that point. In our opinion, the assessee was, therefore, entitled to have the loss re-determined in a subsequent year. Learned counsel for the Commissioner stated that the Department was not very anxious for the decision, because this particular assessee has had only losses in the years following, and no loss would be occasioned to the Revenue, if the losses brought forward be re-determined. But that is a matter, with which we are not concerned. In our opinion, the judgment of the High Court impugned before us was correct in the circumstances of the case.

The appeals fail, and are dismissed with costs. One hearing fee.

Appeals dismissed.

BAWA HARIGIR

v.

ASSISTANT CUSTODIAN, EVACUEE PROPERTY, BHOPAL.

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Evacuee Property—Provisions regarding declaration of property as evacuee property—Confirmation of sale—Power of Custodian to refuse—Constitutionality of—Administration of Evacuee Property Act, 1950 (31 of 1950), ss. 2(d), 40(4)(a)—Constitution of India, Arts. 31(2), 31(5)(b)(iii).

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The petitioner purchased some land from R. R. was declared to be an intending evacuee and he left for Pakistan. The Assistant Custodian issued a notice to the petitioner to show cause why the land should not be declared to be evacuee property, and after hearing the petitioner he declared the land to be evacuee property. An appeal and a revision against the order were unsuccessful. The petitioner also applied to the Custodian under s. 40 of the Administration of Evacuee Property Act, 1950, for confirmation of the sale but his application was rejected under s. 40(4)(a) on the ground that the evacuee did not act in good faith in effecting the sale. The petitioner contended that s. 2(d) of the Act defining evacuee property and s. 40(4) empowering the custodian to reject an application for confirmation violated Art. 31(2) as they enabled the State to take away property without the authority of law.

Held, that the provisions of ss. 2(d) and 40(4) were not affected by Art. 31(2) in view of Art. 31(5)(b)(iii) of the Constitution. The protection of Art. 31(5)(b)(iii) was not limited to a law which itself declared any property to be evacuee property but extended to a law which empowered an authority to declare any property as evacuee property and laid down the criteria for the declaration. Section 40(4)(a) of the Act which empowered the Custodian to reject an application for confirmation on the ground that the transaction had not been entered into in good faith could not be challenged as conferring arbitrary powers on the Custodian. The power was in the nature of a judicial power and the absence of a standard for the determination of the question could not render the provision unconstitutional.

ORIGINAL JURISDICTION: Petition No. 87 of 1957.

Petition under Art. 32 of the Constitution of India for enforcement of fundamental rights.

B. D. Sharma, for the petitioner.

N. S. Bindra, *R. H. Dhebar* and *T. M. Sen*, for the respondents.

1961. March 7. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR, J.—In this petition under Art. 32 of the Constitution the petitioner contends that the provisions of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) and in particular those of s. 2 (d) and sub-s. (4) of s. 40 are unconstitutional. According to him the effect of the order passed against him by the Custodian of Evacuee Properties under sub-s. (4) of s. 40 of the Act is to take away his

property without the authority of law. He further contends that the order of the Custodian amounts to discrimination in practice against the petitioner. These are the two main heads under which the arguments advanced before us could be classified.

The relevant facts may now be stated. The petitioner purchased 195·51 acres of land in the former Bhopal State from one Babu Rehmatullah on June 23, 1950, for a consideration of Rs. 3,500. Rehmatullah was declared to be an intending evacuee by the Assistant Custodian of Evacuee Property. Eventually he left India for Pakistan on June 20, 1951.

On June 12, 1951, the Assistant Custodian of Evacuee Property issued a notice to the petitioner to show cause why the land which he had purchased from Rehmatullah should not be declared to be "evacuee property". After hearing the petitioner the property was declared to be evacuee property on August 8, 1951. The petitioner challenged that order in appeal as well as in revision as provided in the Act but was unsuccessful. A writ petition preferred by him before the Judicial Commissioner, Bhopal, was dismissed *in limine* on July 14, 1954. He has, therefore, come up to this Court under Art. 32 of the Constitution.

The first point pressed before us by Mr. B. D. Sharma, on behalf of the petitioner is that the provisions of the Evacuee Property Act and particularly those of ss. 2 (d) and 40 (4) are unconstitutional, because they enable the State to take away property without paying any compensation therefor as required by Art. 31 (2) of the Constitution. The short answer to this contention is that the provisions of a law made in pursuance of any agreement entered into between the Government of India and the Government of any other country or otherwise with respect to property declared by law to be evacuee property will not be affected by the provisions of cl. 2 of Art. 31. This is clear from the provisions of Art. 31(5)(b)(iii) which runs thus:

"Nothing in clause (2) shall affect—

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(b) the provisions of any law which the State may hereafter make—

.....

(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property."

Mr. Sharma, however, contends that the protection afforded by the aforesaid clause must be limited to a law which itself declares any property to be evacuee property and not to a law which empowers an authority to declare any property as evacuee property. We cannot accept the contention. The words "property declared by law to be evacuee property" would necessarily include property which could be declared as evacuee property. A law relating to evacuee property would concern itself with laying down the criteria for determining what property is to be considered as evacuee property and could not be expected to specify the particular properties which are to be treated as evacuee properties. The protection afforded by the constitutional provision which we have quoted above is not restricted as suggested by Mr. Sharma but extends to a law which provides for the determination of the criteria for declaring property to be evacuee property.

The next argument of learned counsel is that the property in question is not evacuee property and that the provisions of Art. 31(1) of the Constitution are a bar against taking it away. It is difficult to appreciate the argument. What Art. 31(1) prohibits is "deprivation of property save by authority of law". No doubt the petitioner can say that he is deprived of his property because of the declaration made by the Custodian that it is evacuee property. But then this declaration has been made in pursuance of a law enacted by Parliament. If, as contended by him, we had held that the law is unconstitutional the position would have been different.

The next contention of learned counsel is that cls. (a) and (c) of s. 40, sub-s. (4) are *ultra vires* because

they confer arbitrary power upon the Custodian. The reason for raising the contention is that an application made by the petitioner to the Custodian under s. 40 for confirming the sale in his favour was rejected by him on the ground that the evacuee did not act in good faith in effecting the sale. Sub-s. (4) of s. 40 reads thus:

> "The Custodian shall hold an inquiry into the application in the prescribed manner and may reject the application, if he is of opinion that:
>
> (a) the transaction has not been entered into in good faith or for valuable consideration, or
>
> (b) the transaction is prohibited under any law for the time being in force, or
>
> (c) the transaction ought not to be confirmed for any other reason."

We are concerned here only with cl. (a) of s. 40(4) to which the Custodian resorted and not with cl. (c). We would, therefore, limit our remarks to cl. (a). Subsection (4) of s. 40 enables the Custodian to hold an inquiry regarding the genuineness or validity of a transaction sought to be confirmed and cl. (a) empowers him to refuse to confirm it if he finds that it was not entered into in good faith. According to learned counsel the words "good faith" are vague and "slippery" and do not furnish any standard or a norm which has to be conformed to by the Custodian. Apart from the fact that the words "good faith" occur in a number of statutes and have acquired a definite meaning in courts of law, it may be pointed out that the power conferred by sub-s. (4) of s. 40 is in the nature of a judicial power and, therefore, the absence of a standard for the determination of the question would not render the provision unconstitutional.

Learned counsel wanted to contend that the absence of good faith on the part of the transferor was not sufficient and could not be regarded as a ground for refusing recognition to the transfer and that unless it is shown that the transferee was also lacking in good faith the transfer had to be confirmed under sub-s. (4) of s. 40. He, however, did not press the contention

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when it was pointed out to him that in *Rabia Bai* v. *The Custodian-General of Evacuee Property* (1), this Court has upheld the order of the Custodian refusing to confirm the transfer on the ground that the evacuee had effected it in bad faith.

The last contention of learned counsel is that he has been discriminated against by the Custodian in the matter of confirmation of the transaction. He said that prior to the sale of the land to him by Rehmatullah, the latter had sold a house to some nurses and that that sale was found to be for inadequate consideration but in spite of that it was confirmed by the Custodian while the sale in his favour, though found to be for an adequate consideration was not confirmed. We would repeat that the order of the Custodian is a judicial order and merely because he may have gone wrong in dealing with one case we cannot hold that the petitioner has been discriminated against. The petition is wholly without basis and is accordingly dismissed without costs.

Petition dismissed.

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March 8.

THE STATE OF ANDHRA PRADESH

v.

KANDIMALLA SUBBAIAH AND ANOTHER

(B. P. SINHA, C. J., J. R. MUDHOLKAR and T. L. VENKATARAMA AYYAR, JJ.)

Criminal Trial—Accused persons charged with more than three offences in the course of the same transaction, if could be jointly tried—Large number of charges spread over long period—Framing of—Duty of Judge or Magistrate—Conspiracy if distinct from abetment—Special Judge appointed under Criminal Law Amendment Act, if could try offences under Criminal Procedure Code, at the same trial—Indian Penal Code, 1860 (Act XLV of 1860), ss. 109, 120B, 463—Code of Criminal Procedure, 1898 (Act V of 1898), ss. 234, 239—Criminal Law Amendment Act (46 of 1952), ss. 6, 7—Prevention of Corruption Act, 1947 (II of 1947), s. 5.

(1) [1961] 3 S.C.R. 448.