

RAJA BHANUPRATAP SINGH

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v.

ASSISTANT CUSTODIAN EVACUEE PROPERTY U.P.

July 29, 1965

[K. N. WANCHOO, M. HIDAYATULLAH AND J. C. SHAH, JJ.]

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Administration of Evacuee Property Act (31 of 1950), ss. 10(1) and 10(2)(m) and (n)—Scope of.

The appellant was the holder of a money decree against an evacuee whose property had vested in the Custodian. Under s. 17 of the Administration of Evacuee Property Act, 1950, the property was not liable to be proceeded against in execution so long as it remained vested in the Custodian, and the appellant could not take steps to execute the decree. He therefore applied to the Custodian under s. 10(2)(n) of the Act, for satisfaction of his claim out of the assets of the evacuee. The application was rejected on the ground that the Custodian had no power to grant the relief and the order was confirmed by the Custodian General, in revision.

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In his appeal to this Court the appellant contended that the Custodian should have entertained his claim.

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HELD : The orders passed by the Custodian and the Custodian General must be set aside and the proceeding remanded to the Custodian to determine the questions, whether in the opinion of the Custodian, the appellant was entitled to any sum of money out of the funds in the Custodian's possession and whether, for the purpose of administration and management of the evacuee property or for enabling him satisfactorily to discharge his duties under the Act the Custodian should pay the amount claimed. [311 H; 312 A]

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Section 10(1) of the Act, sets out the powers of the Custodian generally, and the diverse clauses of s. 10(2) illustrate the specific purposes for which the powers may be exercised. These clauses are not mutually exclusive. Under cl. (m), before its amendment by Act 91 of 1956, express power to entertain a claim for satisfaction of debts due by the evacuee was conferred upon the Custodian. Clause (n) confers upon the Custodian power, coupled with a duty, to pay to the evacuee or to any member of his family or to any other person, who in the opinion of the Custodian is entitled, any sum of money out of the estate of the evacuee. The words "any other person" are not restricted to persons who are members of the evacuee's family, but include other persons as well who are entitled to receive money from the evacuee. Thus, the power to pay the evacuee's debts was derived both under cls. (m) and (n) of s. 10(2). Therefore, the deletion from cl. (m) of the Custodian's power to pay the debts, by the Amending Act of 1956, and the consequential deletion of r. 22 of the rules framed under the Act, by which a machinery was provided for exercising that power, did not affect the power which is conferred by s. 10(2)(n) and by s. 10(1). The power to administer, under s. 10(1), is not merely a power to manage on behalf of the evacuee so as to authorise the Custodian only to recover and collect the assets of the evacuee; it includes power to discharge his obligations as well, to pay such debts which, in the opinion of the Custodian, are binding upon the evacuee. [307 C; 309 C-D; 311 C-E]

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A A decree of the civil court is not decisive of the question whether a person making a claim is entitled to the money claimed by him; it is for the Custodian to determine whether he is so entitled. The Custodian has to form his "opinion" on this question, and in forming his opinion, he must act judicially and not arbitrarily. [311 F-G]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 124 of 1963.

Appeal by special leave from the judgment and order dated January 22, 1962, of the Deputy Custodian General of India, New Delhi No. 472/R/UP/1961.

S. S. Shukla, for the appellant.

C *Gopal Singh and R. N. Sachthey*, for the respondent.

The Judgment of the Court was delivered by

D **Shah, J.** Rani Manraj Koer obtained money decrees in two suits Nos. 9 of 1932 and 42 of 1932 filed by her in the Court of the Subordinate Judge, Lucknow against Nawab Mohammad Ali Khan Qazilbash Zamindar, Aliabad Estate, in Uttar Pradesh. From time to time execution applications were filed by the decree holder against the Zamindar, but nothing was recovered. Rani Manraj Koer died on October 1, 1941 and the appellant was brought on the record as her heir and legal representative. Nawab Mohammad Ali Khan Qazilbash also died and five persons **E** amongst whom was one Nawab Ali Raza Khan were impleaded as legal representatives in the execution proceedings.

In January 1950 Nawab Ali Raza Khan (Talukdar of Aliabad Estate) who was substantially the only judgment debtor from whose estate the amounts due were liable to be recovered, migrated to **F** Pakistan and he was declared an evacuee under the provisions of the Administration of Evacuee Property Ordinance 27 of 1949— which was later replaced by the Administration of Evacuee Property Act 31 of 1950. The Custodian of Evacuee Property took possession of the estate of the evacuee and applied to the Civil Judge, Lucknow for removal of attachment levied on the estate **G** by the Civil Judge, Bahraich in execution of the decrees at the instance of the appellant. The Civil Judge, Lucknow, by order dated July 22, 1950 directed that the "transfer certificates" issued in the two decrees be recalled and the papers be consigned to the record. Against the order passed by the Civil Judge, Lucknow **H** appeals were preferred by the appellant to the High Court at Allahabad. By order dated February 22, 1960 the High Court held that after the Custodian entered upon the management of the properties of the evacuee by virtue of s. 17 of the Administration

of Evacuee Property Act, so long as the property remained vested in the Custodian under the provisions of that Act it was not liable to be proceeded against in any manner whatsoever in execution of any decree or order of any court or other authority. A

On September 27, 1960 the appellant applied to the Custodian for an order under s. 10(2)(n) of the Administration of Evacuee Property Act, 1950, directing that his claim for Rs. 1,27,638/2/- under the two decrees in suits Nos. 9 of 1932 and 42 of 1932 be satisfied out of the assets belonging to the estate of Nawab Ali Raza Khan. The Assistant Custodian General, Evacuee Property, U.P. Lucknow, exercising the powers of the Custodian rejected the application holding that he had no power to grant relief to the appellant of the nature claimed. In exercise of his revisional jurisdiction, the Custodian General Evacuee Property, New Delhi, confirmed the order, and the appellant has, with special leave, appealed against that order. B C

The question which falls to be determined in this appeal is, whether the Custodian is entitled to entertain the claim of the holder of a money decree against the evacuee for satisfaction of his dues out of the assets vested in the Custodian by s. 7 of the Administration of Evacuee Property Act. The Custodian held that he had no such power, and the Custodian General agreed with him. Section 10 of the Act deals with the powers and duties of the Custodian generally. By sub-s. (1) it is provided : D E

“Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.” F

Sub-section (2) provides : G

“Without prejudice to the generality of the provisions contained in sub-section (1), the Custodian may, for any of the purposes aforesaid,—

(n) pay to the evacuee, or to any member of his family or to any other person as in the opinion of the Custodian is entitled thereto, any sums of money out of the funds in his possession.” H

- A By sub-s. (2) of s. 10 specific powers and duties of the Custodian are set out. It illustrates the general powers and duties under sub-s. (1). The argument that the expression "any other person" in cl. (n) must be construed *ejusdem generis* with "evacuee" or "any member of his family" has, in our judgment, no force. The rule of interpretation *ejusdem generis* applies where a general word follows particular and specific words of the same nature as itself : it has no application where there is no genus or category indicated by the Legislature. The clause is intended to confer upon the Custodian power coupled with a duty to pay to the evacuee or to any member of his family or to any other person who in the opinion of the Custodian is entitled to any sum of money out of the estate of the evacuee. The powers of the Custodian and the duties are undoubtedly to be exercised under sub-s. (2) for the purposes mentioned in sub-s. (1) *i.e.* for securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him. To ascertain the limits upon and extent of those purposes, the position of the Custodian *qua* the estate of the evacuee vested in him must first be determined. Section 7(1) authorises the Custodian to declare after enquiry any property as evacuee property within the meaning of the Act, and the property so declared is deemed to vest in the Custodian from the date specified in s. 8. But the vesting of the property in the Custodian is for the purposes of the Act *i.e.* for administration and management. By the vesting for purposes of the Act the Custodian does not become the owner of the property : he holds it for the evacuee and is bound to administer it in the manner provided by the Act. The appropriation of the property must depend upon statutory provisions enacted by the Parliament. By s. 17(1) of the Act as amended by Act 22 of 1951 with retrospective operation it was provided that :

G "Save as otherwise provided in this Act no evacuee property which has vested or is deemed to have vested in the Custodian under the provisions of this Act shall, so long as it remains so vested, be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any court or other authority, and any attachment or injunction or order for the appointment of a receiver in respect of any such property subsisting on the commencement of the Administration of Evacuee Property (Amendment) Act, 1951, shall cease to have effect on such commencement and shall be deemed to be void."

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The second part of the sub-section deals with avoidance of attachment, or injunction or order for the appointment of a receiver in respect of any evacuee property—subsisting on the date of the commencement of the Act of 1951, and the first part interdicts recourse to the evacuee property so long as it remains vested in the Custodian, by process of any court or authority for obtaining satisfaction of any claim against the property. It is clear from the language of the section that whether the claim be against the evacuee or it is against the Custodian arising out of any acts of administration done by him, the evacuee property cannot be attached in execution of any decree or order of any court or other authority. The Legislature has thereby completely excluded the jurisdiction of courts and authorities to execute decrees or orders passed against the Custodian or the evacuee to proceed against the property vested in the Custodian. The intention clearly is that the administration shall continue for the purposes of the Act without any interference by the process in execution of the decrees or orders of courts or other authorities. But it does not appear to be the intention of the Legislature that the Custodian should be entitled to collect the property of the evacuee and not be under an obligation to satisfy his debts and obligations. The argument of counsel for the Custodian that the Custodian is merely to manage the property and is not invested with power to pay the debts due by the evacuee or to discharge liabilities of the evacuee is not borne out by the terms and the scheme of s. 10. The powers conferred and the duties imposed by s. 10(1) are for the purposes of securing, administering, preserving and managing the evacuee property, and there is no reason to attribute to the Legislature an attempt at tautology by assuming that “administering” is used in the same sense as the expression “managing”. Again sub-s. (2) makes it abundantly clear that the powers conferred and the duties imposed are not merely incidental to management as a statutory agent of the evacuee. For instance, upon the Custodian is conferred the power to carry on the business of the evacuee with all the discretion which the carrying on of the business of the evacuee may necessitate: he is entitled to complete buildings which are required to be completed, to keep evacuee property in good repair, and to take action as may be necessary for the recovery of any debt due to the evacuee: see cls. (d), (e) and (i) of sub-s. (2) of s. 10. Power is also conferred upon the Custodian by cl. (j) to institute, defend or continue any legal proceeding in any civil or revenue court on behalf of the evacuee: he is given the power to refer disputes between the evacuee and any other person to arbitration or to compromise any claims, debts or liabilities on

- A** behalf of the evacuee. Clause (j) implies the power and its concomitant duty to satisfy the claim which may be determined in any legal proceeding instituted, defended or continued in any civil or revenue court, or awarded against the evacuee, or admitted or undertaken by virtue of the compromise. The argument of the Custodian, if accepted, would lead to the somewhat startling result
- B** that a decree or an award made in favour of the evacuee in a proceeding commenced or continued by or against the Custodian may be enforced by the Custodian, but the property of the evacuee remains free from all claims, obligations and liabilities of the evacuee, even if decreed by a competent court or undertaken and accepted by him. There is nothing in the statute which compels
- C** us to lend countenance to this inequity. The words used in cl. (n) empowering the Custodian to pay to "any other person" any sums of money out of the funds in his possession are not restricted to persons who are members of the family of the evacuee; they include other persons as well who are entitled to receive money from the evacuee.

- D** The decree of a civil or revenue court or an order of any other authority is, it must be observed, not decisive of the validity or admissibility of the claim against the evacuee property. It is for the Custodian to be satisfied about the genuineness of the claim. The Custodian must determine whether a person making
- E** a claim against the evacuee is entitled to the right claimed, and if he is satisfied, the claim may be discharged out of the funds in his possession. But by the use of the expression "in the opinion of the Custodian" it was not intended to invest the Custodian with arbitrary authority. It is for the Custodian to determine
- F** when a claim is made by the evacuee, or a member of his family or any other person for payment of a sum of money, having regard to all the circumstances, whether it is genuine and to satisfy it if in the opinion of the Custodian such a person is entitled to the payment. Where a claim is made by a person who claims to be a creditor of the evacuee and he satisfies the Custodian that he is entitled to any sum of money, then normally the Custodian
- G** would be justified in discharging the obligations of the evacuee out of the funds in his possession.

- H** But counsel for the Custodian relies upon the terms of s. 10(2)(m) as they originally stood before they were amended by Act 91 of 1956 and the deletion of Rule 22 framed under the Act, in support of the contention that the Parliament has deliberately taken away the power to entertain a claim for satisfaction of debts due by the evacuee. Section 10(2)(m), as it originally stood, provided :

“incur any expenditure, including the payment of taxes, duties, cesses and rates to Government or to any local authority; or of any amounts due to any employee of the evacuee or of any debt due by the evacuee to any person.”

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Under Rule 22 made in exercise of the powers under s. 56 of the Act, provision was made for registration of claims by persons claiming to receive payment from any evacuee or from any property of such evacuee, whether in re-payment of any loan advanced or otherwise, by presenting a petition to the Custodian. The Custodian was entitled to register a claim under cl. (2) where it was supported by a decree of a competent court or a registered deed executed and registered before 14-8-1947 or by a registered deed executed and registered on or after 14-8-1947, and the transaction in respect of which the deed was so executed and registered had been confirmed by the Custodian, or where an acknowledgment in writing was executed by the evacuee himself before the 1st March 1947 or where such claim was of the nature referred to in the Explanation to sub-rule (1) and the transfer of property in respect of which the claim was made was a *bona fide* transaction. If the claim did not fall under sub-rule (2) the Custodian had to direct the claimant to establish his claim in a civil court. Sub-rules (3) & (4) provided :

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“(3) The mere registration of a claim shall not entitle the claimant to payment and the Custodian may for reasons to be recorded refuse payment.

(4) No debt incurred by the evacuee before the property vested in the Custodian shall be paid without the sanction of the Central Government or Custodian General.”

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The Explanation to sub-rule (4) set out cases in which the sanction of the Central Government was not necessary.

The Administration of Evacuee Property Act, 1950 was amended by Act 91 of 1956 and the words “or of any amounts due to any employee of the evacuee or of any debt due by the evacuee to any person” in s. 10(2)(m) were deleted. The Central Government thereafter issued on February 20, 1957 an order deleting Rule 22. Relying upon this legislative development, it was contended, that an express power to entertain a claim for satisfaction of debts due by the evacuee was conferred upon the Custodian by s. 10(2)(m) and machinery was provided for effectuating the

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A exercise of that power in Rule 22, and the Legislature having deleted the clause which authorised the Custodian to exercise the power to pay debts and the machinery in that behalf, no such power remained vested in the Custodian.

B We are, however, unable to agree that because of the amendment made in s. 10(2)(m) and the deletion of Rule 22 the power which is vested in the Custodian under s. 10(2)(n) must be held restricted. Sub-section (1) of s. 10 sets out the powers of the Custodian generally, and the diverse clauses in sub-s. (2) illustrate the specific purposes for which the powers may be exercised, and there is no reason to think that the clauses in sub-s. (2) are mutually exclusive. If power to pay the debts was derived both under cls. (m) & (n) as it appears it was, deletion of the provision which authorised the Custodian to pay debts due by the evacuee to any person from cl. (m) and of Rule 22 setting up the machinery for registration of debts did not, in our judgment, affect the power which is conferred by cl. (n) by sub-s. (2) and also by s. 10(1). In our judgment, the power to administer is not merely a power to manage on behalf of the evacuee so as to authorise the Custodian merely to recover and collect the assets of the evacuee, but to discharge his obligations as well. The power to administer for purposes mentioned, having regard to the diverse clauses in sub-s. (2), includes the power to pay such debts which in the opinion of the Custodian are binding upon the evacuee. Specific enunciation of that power in cl. (n) authorising the Custodian to pay to any other person who in the opinion of the Custodian is entitled to any sum of money supports that conclusion.

F As already observed, the decree of the civil court is not decisive of the question whether a person making a claim is entitled to the sum of money claimed by him. It is for the Custodian to determine whether the claimant is entitled to receive the sum of money claimed by him out of the funds in his possession. He has to form his "opinion" on this question : of course, in forming his opinion he must act judicially and not arbitrarily. As the G Tribunals below have determined the claim raised before them only on the question of jurisdiction to entertain it and not on the merits, we are unable to pass any effective order in favour of the appellant. The orders passed by the Custodian and the Custodian General must therefore be set aside and the proceeding H remanded to the Custodian to determine the question whether in the opinion of the Custodian the appellant is entitled to any sum of money out of the funds in his possession and whether for the purpose of administration and management of the evacuee property

or for enabling him to satisfactorily discharge his duties under the Act the amount claimed should be paid. A

The appeal is therefore allowed. The appellant would be entitled to his costs in this appeal from the Custodian.

Appeal allowed. B