

For the reasons aforesaid it must be held that there is no merit in the application and the rule is accordingly discharged, and the application is dismissed.

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P. L. Laxmanpal
v.
The State of
Jammu and
Kashmir

Sinha J.

1955

October 28.

SADHU RAM

v.

THE CUSTODIAN-GENERAL OF EVACUEE
PROPERTY.

[S. R. DAS, ACTING C.J., VIVIAN BOSE, JAGANNADHA-
DAS, JAFER IMAM and CHANDRASEKHARA AIYAR JJ.]

Fundamental Rights, Infringement of—Transfer of evacuee property—Requirement of confirmation by Custodian—Retrospective effect, if amounts to deprivation of property—If a reasonable restriction—Refusal of confirmation by quasi-judicial order based on irrelevant material—Application under Art. 32, if maintainable—Constitution of India, Arts. 19, 31, 32—East Punjab Evacuees' (Administration of Property) Act, 1947 (East Punjab Act XIV of 1947) as amended by East Punjab Evacuees' (Administration of Property) (Amendment) Act, 1948 (East Punjab Act XXVI of 1948), s. 5-A.

The applicant purchased certain agricultural lands from a Muslim evacuee. The sale deed was executed, registered and possession was delivered to the applicant in September, 1947, before the East Punjab Evacuees' (Administration of Property) Act of 1947 came into operation on the 12th of December, 1947. By subsequent amendments a new section, s. 5-A, was inserted into the Act with retrospective effect from the 15th of August, 1947, rendering transactions in respect of evacuee property ineffective unless confirmed by the Custodian. The applicant applied for confirmation. The Assistant Custodian recommended such confirmation but the Additional Custodian, acting in terms of a circular issued by the Custodian-General enunciating a policy of non-confirmation with regard to agricultural lands, refused to confirm the applicant's purchase and this order was affirmed by the Assistant Custodian-General in revision. It was contended on behalf of the applicant, *inter alia*, that the retrospective operation of s. 5-A of the Act was in effect a deprivation of property without compensation and was hit by Art. 31 of the Constitution.

Held that s. 5-A of the East Punjab Evacuees' (Administration of Property) Act though retrospective in operation does not amount to deprivation of property in respect of past transactions and is valid. In respect of future transactions the requirement of con-

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firmation is clearly a restriction and not a deprivation. Such restriction was also reasonable having regard to the purpose and policy of the Evacuee Property Law. The requirement of confirmation being thus in essence only a restriction and not a deprivation, retrospectivity in the operation of that restriction does not make it deprivation.

That the applicant's loss was occasioned not by any unconstitutional law but by a quasi-judicial order of the Custodian refusing confirmation and, consequently, his contention that any fundamental right had been violated must be rejected.

That even if the contention that the order was itself illegal being based on irrelevant material be correct, that did not by itself raise any question of violation of any fundamental right and would be no ground for an application under Art. 32 of the Constitution.

ORIGINAL JURISDICTION : Petition No. 306 of 1954.

Under Article 32 of the Constitution for the enforcement of Fundamental Rights.

Kundan Lal Mehta and *B.R.L. Iyengar*, for the petitioner.

C. K. Daphtary, *Solicitor-General of India* (*Porus A. Mehta* and *R. H. Dhebar*, with him) for the respondent.

1955. October 28. The Judgment of the Court was delivered by

JAGANNADHADAS J.—This is an application under article 32 of the Constitution which arises under the following circumstances. The petitioner, *Sadhu Ram*, purchased from one *Imam-ud-Din*, a muslim evacuee, 43 Bighas 14 Biswas of agricultural land comprised in Khasra Nos. 2135 to 2139, 2158, 2159, 2171, 2204 and 2206 with *Shamlat* rights in village *Kaithal*, District *Karnal*, Punjab. The sale deed was executed on the 6th September, 1947, and registered on the 9th September, 1947, before *Imam-ud-Din* left for Pakistan. The consideration therefore was Rs. 3,000 and as much as Rs. 2,700 thereof appears to have been paid by the petitioner to the vendor before the Sub-Registrar. Possession also was transferred on the execution of the sale-deed. Mutation was made by the revenue authorities on the 23rd January, 1948. East Punjab

Evacuees' (Administration of Property) Act, 1947 (East Punjab Act XIV of 1947) came into force on the 12th of December, 1947. It was amended by East Punjab Evacuees' (Administration of Property) (Amendment) Ordinance, 1948 (East Punjab Ordinance No. II of 1948) which came into force on the 16th January, 1948. This gave place to East Punjab Evacuees' (Administration of Property) (Amendment) Act, 1948 (East Punjab Act XXVI of 1948) which came into force on the 11th April, 1948. By these amendments a new section, section 5-A, was inserted in the East Punjab Act XIV of 1947. It will be seen that these amendments were subsequent to the date of the execution and registration of the sale-deed and the transfer of possession thereof. Section 5-A, so far as it is relevant for our present purpose, is in the following terms :

"5-A. (1) No sale, mortgage, pledge, lease, exchange or other transfer of any interest or right in or over any property made by an evacuee or by any person in anticipation of his becoming an evacuee, or by the agent, assign or attorney of the evacuee or such person on or after the fifteenth day of August, 1947, shall be, effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

(2) An application for confirming such transfer may be made by any person claiming thereunder or by any person lawfully authorised by him".

This section purports to be retrospective. Hence an application for confirmation was made by the petitioner on the 23rd March, 1948. The Assistant Custodian, Karnal, on being satisfied about the genuineness of the transaction, recommended confirmation. But the Additional Custodian, Jullundur, by his order dated the 11th February, 1953, rejected the application for confirmation acting on the Custodian-General's circular dated the 9th March, 1950, under which a policy of not confirming transactions relating to agricultural property was enunciated. This was

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affirmed by the Assistant Custodian-General on an application to him for revision.

Learned counsel for the petitioner relies on the fact that his transaction which, on enquiry, was held to be genuine, was entered into before the East Punjab Act XIV of 1947 was enacted and before the amendment thereof by insertion of section 5-A came into operation. He contends that the retrospective operation of section 5-A in such circumstances amounts to deprivation of his property, without any compensation and is, therefore, hit by article 31 of the Constitution. Whatever may have been the position if this matter had to be dealt with much earlier, it seems doubtful whether any such contention can be raised by the petitioner before us, on this date, in view of the recent Constitution (Fourth Amendment) Act, 1955, which has come into force on the 27th April, 1955. It is unnecessary, however, to base our decision on this ground.

It appears to us clear that section 5-A cannot be read as a legislative provision depriving the owner of his property. There can be no doubt that so far as transactions subsequent to the date of amendment are concerned, it is nothing more than a restriction on the transfer of property by the owner thereof. Any transferee in such a situation takes the property subject to the requirement of confirmation. The case would, then, be one which falls under article 19 of the Constitution and not under article 31. There can be no doubt that having regard to the purpose and policy underlying the law relating to Evacuee Property and the abnormal conditions which arose from and after the 15th August, 1947, the requirement of confirmation with reference to transactions affecting Evacuee Property cannot but be considered a reasonable restriction. If this requirement was in essence not a deprivation but a restriction in respect of future transactions, there is no reason for treating it as deprivation by virtue of its having been given retrospective effect, such retrospectivity being within the competence of the appropriate legislature. The retrospectivity commencing from the 15th August, 1947, is

also not only reasonable but called for in the circumstances, which occasioned the Evacuee Property laws. In this case the petitioner is deprived of his bargain and incurs consequential loss, not by virtue of any unconstitutional law but by reason of the quasi-judicial order of the Custodian declining to confirm the transaction. The contention of the learned counsel for the petitioner that any fundamental right of his has been violated must, therefore, be rejected.

Learned counsel next urges that the action of the Custodian in basing his decision on some circular of the Custodian-General is illegal and that it is not relevant material under section 5-A. It is enough to say that even if this contention be correct, this does not raise any question of violation of fundamental rights. If this is the sole ground, this application is misconceived.

This petition accordingly fails and is dismissed but in the circumstances without costs.

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 Jagannadas J.

INDIRA SOHANLAL

v.

CUSTODIAN OF EVACUEE PROPERTY,
 DELHI & OTHERS.

[S. R. DAS, ACTING C. J., VIVIAN BOSE, JAGANNADHADAS, JAFER IMAM and CHANDRASEKHARA AIYAR JJ.]

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Evacuee Property—Custodian-General—Revisional powers—Administration of Evacuee Property Act, 1950 (XXXI of 1950), ss. 27, 58(3)—Transaction before the passing of the Act—Application for confirmation—East Punjab Evacuees' (Administration of Property) Act, 1947 (East Punjab Act XIV of 1947), ss. 5-A, 5-B—Order of confirmation after passing of Act XXXI of 1950—Revision—Validity—General Clauses Act (X of 1897), s. 6—Applicability.

The appellant, a displaced person from Lahore, was the owner of a house there and on the 10th of October, 1947, she arranged to have it exchanged with certain lands in a village in the State of Delhi, belonging to M, an evacuee. On the 23rd of February, 1948, she made an application to the Additional Custodian of Evacuee Property (Rural), Delhi, for confirmation of the transaction of ex-