1955

November 10.

RAI BAHADUR KANWAR RAJ NATH AND OTHERS

v.

PRAMOD C. BHATT, CUSTODIAN OF EVACUEE PROPERTY.

[B. K. MUKHERJEA C. J., VENKATARAMA AYYAR AND JAFER IMAM JJ.]

Evacuee Property—Lease granted by Custodian—Notice to cancel—Custodian's power—Administration of Evacuee Property Act, 1950 (XXXI of 1950), s. 12(1).

By s. 12, sub-s. 1, of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) as amended by Act XLII of 1954, "notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by a person, whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act".

The respondent who was the Custodian of evacuee property gratned a lease to the appellants and subsequently issued a notice to them, among other things, calling upon them to show cause why the lease should not be cancelled for committing breaches of the conditions on which the properties had been leased to them. The appellants contended that the respondent had no power to cancel the lease on the ground that under s. 12(1) of the Act the power of the Custodian to cancel the lease could be exercised only so as to override a bar imposed by any law but not the contract under which the lease was held and relied on the language of the *non-obstante* clause contained in the section.

Held, that the operative portion of the section which confers power on the Custodian to cancel a lease is unqualified and absolute and could not be abridged by reference to the *non-obstante* clause which was only inserted *ex abundanti cautela* with a view to repel a possible contention that the section does not by implication repeal statutes conferring rights on lessees.

Observations in *Aswini Kumar Ghose* v. *Arabinda Bose* ([1953] S.C.R. 1, 21, 24) and *Dominion of India* v. *Shrinbai A. Irani* ([1955] 1 S.C.R. 206, 213), on the scope of a *non-obstante* clause, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 205 of 1954.

On appeal from the judgment and order dated the

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13th April 1954 of the Bombay High Court in Appeal No. 49 of 1954 arising out of the order dated the 31st day of March 1954 of the said High Court exercising its Ordinary Original Jurisdiction in Misc. Petition No. 55 of 1954.

K. T. Desai, P. N. Bhagwati, Rameshwar Nath and *Rajinder Narain,* for the appellants.

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

1955. November 10. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—This appeal raises a question as to the powers of a Custodian of Evacuee Property to cancel a lease granted by him under section 12 of the Administration of Evacuee Property Act (XXXI of 1950), hereinafter referred to as the Act. Messrs Abdul Karim and Brothers owned, along with certain other properties which are not the subject-matter of the present appeal, three mills with bungalows and chawls at Ambernath in Thana District and the Bobbin Factory at Tardeo in Bombay. They have migrated to Pakistan, these properties were declared by a notification dated 12-9-1951 issued under section 7 of the Act as evacuee property, and under section 8(1) of the Act, they became vested in the respondent as the Custodian for the State. The appellants are displaced persons, and on 30-8-1952 the respondent entered into an agreement with them, Exhibit A, which is, as aptly characterised by learned counsel for the appellants, of a composite character, consisting of three distinct matters. There was, firstly, a demise under which the mills and the factory in question were leased to the appeallants for a period of five years on the terms and conditions set out therein. Secondly, there was a sale of the stock of raw materials, unsold finished goods, spare parts, cars, trucks and other movables which were in the mills and the factory, with elaborate provisions for the determination and payment of the price therefor in

due course. And thirdly, there was an agreement to sell the mills and the factory to the appellants in certain events and subject to certain conditions. There was also a clause for referring the disputes between the parties to arbitration.

In pursuance of this agreement, the appellants were put in possession of the mills and the factory on 31-8-1952. On 12-2-1954 the respondent issued a notice to the appellants, Exhibit C, wherein he set out that the appellants had systematically committed breaches of the various terms on which the properties had been leased to them, and called upon them to show cause why the lease should not be cancelled and why they should not be evicted. The notice then went on to state that the respondent considered it necessary to issue certain directions for the "preservation of the demised premises and the goods and stock in trade, etc., lying in the demised premises", and the appellants were accordingly required not to remove the stock or raise any money on the security thereof, and to send daily reports to the Custodian, of the transactions with reference thereto. Presumably, these directions were given under section 10 of the Act. On 13-2-1954 the appellants appeared before the respondent, and contended that he had no authority to issue the notice in question under section 12, and that it was therefore illegal. Apprehending that the lease might be cancelled, and that they might be evicted, the appellants filed on 16-2-1954 the application out of which the present appeal arises, for a writ of *certiorari* for quashing the notice, Exhibit C, and for a writ of prohibition restraining the respondent from taking any further action pursuant thereto.

In support of the petition, the appellants urged that section 12 under which the respondent purported to act authorised the cancellation of only leases granted by the evacuee and not by the Custodian himself, and that no directions could be given under section 10 as it applied only to properties of the evacuee, and that by reason of the sale, the movables in question had become the property of the appel-

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lants. The petition was heard by Tendolkar, J., who stated the points for determination thus :

(1) "Whether the Custodian has power under section 12 of the Administration of Evacuee Property Act, 1950, to terminate a lease granted by himself, and

(2) Whether the directions given by the Custodian are beyond the jurisdiction conferred upon him by section 10 of the said Act ?"

On the first question, he held that section 12 applied only to leases granted by the evacuee and not by the Custodian, and that therefore the notice, Exhibit C, was *ultra vires* the powers of the Custodian under that section. On the second question, he held that section 10 applied only to properties of the evacuee, and that the movables in respect of which directions were given, ceased to be the property of the evacuee by reason of the sale in favour of the appellants, and that in consequence, the directions with reference to them were unauthorised. In the result, the application was allowed.

The respondent took the matter in appeal, and that was heard by Chagla, C.J. and Dixit, J. By their judgment dated 13-4-1954, they held that on the plain language of section 12 it would apply whenever there was a lease, and that lease was in respect of property belonging to the evacuee, that there was no warrant for imposing a further limitation on that section that that lease should also have been granted by the evacuee, and that accordingly the Custodian had power to issue the notice, Exhibit C, for cancelling the lease. As regards movables, however, they agreed with Tendolkar, J. that for the reasons given by him the Custodian had no authority under section 10 to issue any directions with reference thereto. The appeal was accordingly allowed in so far as it related to the lease but dismissed as regards movables.

Against this judgment, the appellants have preferred this appeal on a certificate granted by the High Court under article 133(1) (b), and the only point that arises for determination therein is as to whether the Custodian has the power under section 12 to

cancel a lease granted by himself and not by the evacuee. But that question is no longer open to argument, as there has been subsequent to the decision of the court below legislation which concludes the matter. Section 5 of the Administration of Evacuee Property (Amendment) Act, 1954 (XLII of 1954) enacts the following Explanation to section 12 of Act XXXI of 1950 :

"In this sub-section 'lease' includes a lease granted by the Custodian and 'agreement' includes an agreement entered into by the Custodian."

And it provides that the Explanation "shall be inserted and shall be deemed always to have been inserted" in the section.

Mr. Desai, learned counsel for the appellants, concedes that this amendment which is retrospective in operation would govern the rights of the parties in the present appeal, and that under the section as it now stands, the Custodian has the power—and had always the power—to cancel leases created not merely by the evacuees but also by himself. But he contends that this power could be exercised only so as to override a bar imposed by any law but not the contract under which the lease is held, and this result flows according to him from the language of the *non-obstante* clause, which is limited to anything contained *in any other* law for the time being in force", and does not include "or any contract between the parties". This was a contention which was open to the appellants on the terms of the section as it stood even before the amendment, but it was not put forward at any stage prior to the hearing of this appeal and that by itself would be sufficient ground for declining to entertain it which it may be noted is now sought to be raised by a supplemental proceeding under Order 16, rule 4 of the Supreme Court Rules. On the merits also it is without any substance. The section expressly authorises the custodian to vary the terms of the lease, and that cannot be reconciled with the contention of the appellants that it confers no authority on him to go back upon his own contracts. The operative portion of the section which confers power on

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the Custodian to cancel a lease or vary the terms thereof is unqualified and absolute, and that power cannot be abridged by reference to the provision that it could be exercised "notwithstanding anything contained in any other law for the time being in force". This provision is obviously intended to repel a possible contention that section 12 does not by implication repeal statutes conferring rights on lessees, and cannot prevail as against them and has been inserted *ex abundanti cautela*. It cannot be construed as cutting down the plain meaning of the operative portion of the section. Vide the observations in *Aswini Kumar Ghosh* v. *Arabinda Bose*(1) and the *Dominion of India* v. *Shrinbai A. Irani*(2) on the scope of a *non-obstante* clause. We must accordingly hold that the respondent was acting within his authority in issuing Exhibit C in so far as it concerned the lease granted in favour of the appellants.

It was next contended by Mr. Desai that even if the Custodian had the power under section 12 to cancel the lease in favour of the appellants, he had no power under that section to cancel the agreement to sell the mills and the factory to them, which was one of the matters contained in Exhibit A, that the notice, Exhibit C, was to that extent without jurisdiction, and that the respondent should accordingly be prohibited from cancelling that portion of Exhibit A in pursuance of Exhibit C. But the notice in terms refers firstly to the lease which it is proposed to cancel, and secondly to the movables in respect of which certain directions were given. In their petition under article 226, it was the validity of the notice, Exhibit C, with reference to these two matters that the appellants challenged. Tendolkar, J. stated in his judgment—and quite correctly—that these were the two points that arose for determination. The question of the rights of the appellants in so far as they related to the purchase by them of the mills and the factory was not raised in the petition, and no contentions were put forward in support thereof at any stage of the proceedings. It is for the first time in the argu-

(1) [1953] S.C.R. 1, 21, 24. (2) [1955] 1 S.C.R. 206,213.

ment before us that those rights are sought to be agitated. Under the circumstances, we must decline to consider them. It will be sufficient if we observe that the rights of the appellants, if any, other than those arising out of the lease, are left open to the determination of the appropriate authorities, and that nothing in our decision should be taken as a pronouncement on those rights.

In the result, the appeal fails and is dismissed with costs.

SHRIMATI VIDYA VERMA, THROUGH NEXT FRIEND R. V. S. MANI

v.

DR. SHIV NARAIN VERMA.

[S. R. DAS, VIVIAN BOSE, BHAGWATI, JAGANNADHADAS and B. P. SINHA JJ.]

Fundamental Right, Infringement of—Detention by private person—Issue of writ—Power of Supreme Court—Constitution of India, Arts. 21, 32.

No question of infringement of any fundamental right under Art. 21 arises where the detention complained of is by a private person and not by a State or under the authority or orders of a State, and the Supreme Court will not, therefore, entertain an application for a writ of *habeas corpus*, under Art. 32 of the Constitution.

Consequently a petition under Art. 32 of the Constitution for a writ of *habeas corpus* founded on Art. 21 and directed against a father for alleged detention of his daughter does not lie.

A. K. Gopalan v. *The State of Madras* ([1950] S.C.R. 88) and *P. D. Shamdasani* v. *Central Bank of India* ([1952] S.C.R. 391), relied on.

ORIGINAL JURISDICTION : Petition No. 262 of 1955.

Under Article 32 of the Constitution for a Writ in the nature of *Habeas Corpus*.

R. V. S. Mani, the next friend, in person.

M. C. Setalvad, Attorney-General for India (*G. N. Joshi* and *Porus A. Mehta*, with him).

Naunit Lal, for the respondent.