

M. Prabhakar and Other Vs. Govt. of India and Others

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Court : Andhra Pradesh

Decided On : Apr-27-2000

Reported in : 2000(3)ALD667; 2000(3)ALT361

Judge : B. Subhashan Reddy and ;Vaman Rao, JJ.

Acts : [Administration of Evacuee Property Act, 1950](#) - Sections 7 and 27; Administration of Evacuee Property (Central) Rules, 1950 - Rules 6 and 28; Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 12(2), 24, 28 and 33; [Constitution of India](#) - Articles 14, 21, 31 and 300-A; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9; Haryana Urban (Control of Rent and Eviction) Act, 1973

Appeal No. : WP No. 17722 of 1990

Appellant : M. Prabhakar and Other

Respondent : Govt. of India and Others

Advocate for Def. : Mr. B. Adinarayana Rao, SC for Central Govt., Government Pleader for Revenue,;Mr. K. Prabhakar,;Mr. K.S. Murthy,;Mrs. K. Anasuya,;Mr. M.R.K. Chowdary and;Mr. S. Bharath Kumar, Advs.

Advocate for Pet/Ap. : Mr. A. Sudershan Reddy, Adv.

Judgement :

ORDER

B. Subhashan Reddy, J.

1. This writ petition has been filed to declare the Notification No.55, dated 11-12-1952 published in Hyderabad Government Gazette dated 25-12-1952 notifying the land in Survey Nos.9, 11, 47, 140 to 143, 151 to 153, 676 and 677 totally measuring Ac. 90.08 gts., situated at Kapra village, Keesara Mandal of Ranga Reddy District as evacuee property, as illegal.

2. On the ground that the said lands belonged to one Mr. Rahim Bux and his sons, who had migrated to Pakistan, they were declared as evacuee properties by the said notification.

3. The above lands are claimed to be the property belonging to late Mandal Bucham, who died on 20-3-1942 leaving behind the petitioners as his legal heirs. It is the case of the petitioners that the said evacuee was no way concerned with the above lands and neither he had any title over the above lands nor any other right, interest or claim; but the authorities had assumed that the said lands were auctioned in a Court decree in his favour. It is also the case of the petitioners that while it is true that the said lands were auctioned in a Court decree, but it was only on account of realisation of the decretal amount, when the decree was put for execution in Case No.41/2 of 1348 Fasli, it was dismissed on 18th Farwardi 1350 Fasli and again when EP No.11/C of 1350 Fasli was filed, the same was also dismissed on 6-3-1353-F; as such, the title remained with the ancestor of the petitioners and it was never divested from him. It is also claimed by the petitioners that no notice or opportunity was given to them at any time before declaring the above property as evacuee property under the provisions of the [Administration of Evacuee Property Act, 1950](#) (hereinafter referred to as 'the Act'). As such, they allege that the entire proceedings are totally baseless, misconceived, illegal and void.

4. When the petitioners came to know that their lands were declared as evacuee properties, firstly a protest was made with the authorities on 21-1-1955 followed by two later reminders dated 19-6-1957 and 3-8-1964. Then a notification was issued on 11-6-1966 seeking to auction the above lands on lease. Then, one of the landholders had filed WP No.1051 of 1966, but the same was dismissed on the

ground of non-availment of alternative remedy, on 14-6-1968.

5. Then, alternative remedy was availed of by invoking Section 27 of the Act in Case No.M6-E/Bom/69, before the Deputy Custodian General, New Delhi and the said authority, by order dated 25-9-1970 allowed the revision and remanded the matter back to the Deputy Custodian-cum-Collector, Hyderabad for fresh determination after giving opportunity.

6. On such remand, the District Collector-cum-Deputy Custodian of Evacuee Property, Ranga Reddy District, had enquired into the matter and gone into several aspects and then by his order dated 28-5-1979 in File No.D5/I2523/78 held that there was no material to show that the lands, which originally belonged to Mandal Bucham and others were auctioned and that the same were purchased by Rahim Bux and as such, the lands cannot be treated as evacuee property. But, he made an observation that before declaration that the properties are evacuee properties, notice was issued to the said petitioners.

7. The Chief Settlement Commissioner, Government of India, had initiated suo motu revision on the basis of the petition filed by some of the allottees and the same was taken cognizance of and by letter dated 27-10-1979 he has directed the 4th respondent i.e.. Collector, Ranga Reddy District, to send the records relating to the case and the said records have been sent by the Collector on 22-11-1979. The matter remained at that stage and no further.

8. The allottees had filed a revision under Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as 'Displaced Persons Act'), which was taken up by the 3rd respondent and by orders dated 11-5-1983 passed in Proceedings No.Spl.EP.1/306/83, revision was allowed setting aside the orders of the 4th respondent dated 28-5-1979.

9. Against this, the petitioners had filed a revision under Section 33 of the Displaced Persons Act before the 1st respondent and the same was forwarded to the State Government, but by its order dated 23-7-1983 the State Government did not take cognizance of the same; aggrieved by which, the petitioners had filed WP No.7517 of 1983.

10. Meanwhile, the petitioners had filed a revision under Section 27 of the Act before the Deputy Custodian General challenging the finding of the 4th respondent in his order dated 28-5-1979 to the effect that notice was issued to the petitioners before declaring the property as evacuee property and the same was taken up by him in CaseNo.23-R/AP/83(DCG) but was not adjudicated on the ground of pendency of WP No.7517 of 1983 and by order dated 20-6-1984 all Further proceedings in revision petition were stayed till the above writ petition was disposed of with a liberty to the petitioners to approach the said authority after the receipt of the High Court judgment.

11. The High Court judgment was rendered on 26-7-1988 dismissing the said writ petition on the ground that the Court cannot issue a direction to the authority compelling it to entertain the suo motu revision.

12. On 1-6-1989 the petitioners had filed representation to the Deputy Custodian General of India, New Delhi, to take up the revision petition which was stayed by him by orders dated 20-6-1984. As no action was taken, reminders were filed on 3-4-1990, 17-4-1990 and 11-7-1990. To the last reminder dated 11-7-1990, the Government of India, 1st respondent herein, in his letter No.3/SW/SO/GBD/RW/Misc. 1097/90, dated ...-8-1990 addressed to the 3rd respondent requested the latter to deal with the matter by sending the original representation received from the petitioners, in which a plea was made to release the property. This was in view of delegation of the powers to the State authorities vide notifications dated 2nd and 3rd September, 1986. Even then nothing has been done by the 3rd respondent and the petitioners had filed a representation dated 12-10-1990 narrating all the facts and requested to take up the matter and decide the same. But, there was no response from the 3rd respondent; as such, the petitioners were forced to file the instant writ petition on 13-11-1990. In this writ petition, respondent No.1 is Government of India, respondent No.2 is Government of Andhra Pradesh, respondent No.3 is Commissioner of Survey, Settlement and Land Records, Andhra Pradesh and respondent No.4 is the Collector, Ranga Reddy District. Other respondents have got themselves impleaded on the ground that they were allotted with the lands and a society came forward by impleading itself pleading purchase from some of the persons, who are said to be legal representatives of the

original allottees.

13. Orders were then passed on 15-11-1990 by the 3rd respondent communicated to the petitioners on 18-12-1990. Thereafter, there was an amendment petition seeking relief to declare the action of the authorities in issuing Notification No.55, dated 11-12-1952 published in Hyderabad Gazette, dated 25-12-1952 wherein the lands in question totally ad measuring Ac.90.08 gts., were declared as evacuee property holding the same as illegal, arbitrary and violative of Articles 14, 21 and 300A of Indian Constitution and to set aside the orders dated 15-11-1990 of the 3rd respondent passed in Ref. No.SEP 3/448/82. The said amendment petition was ordered and consequently, the writ petition was amended seeking the above prayers.

14. Counter-affidavits have been filed by all the respondents, both official and unofficial. The gist of the above counters is to the following effect:

That the property in question was already declared as evacuee property in 1952, that there was observance of all the requirements under law for such declaration, that the property has been allotted to the displaced persons, that the order in Spl.EP.1/306/83 passed by the 3rd respondent on 11-5-1983 had become final in view of the dismissal of WPNo.7517 of 1983, that no proceeding is pending pursuant to suo motu power exercised by the Chief Settlement Commissioner against the orders dated 11-5-1983, that the petitioners are guilty of laches, that the orders passed in both WPNos.1051 of 1966 as also 7517 of 1983 have become final and binding on the petitioners and the same operate as res judicata, that the matter cannot be reopened, that there are also no legal grounds to reopen the same and that the writ petition is liable to be dismissed with exemplary costs.

15. Mr. A. Sudershan Reddy, the learned Counsel appeared for the petitioners and Mr. M.R.K. Choudhary, the learned senior Counsel appeared for some of the allottees and the Co-operative Housing Society represented by Dr. P. Mallikarjuna Rao. Mr. M.R.K. Choudhary, the learned senior Counsel has made the principal submissions. The learned Standing Counsel for Central Government appearing for the allottees, the learned Government Pleader for the State of Andhra Pradesh and the learned Counsel for the impleaded unofficial respondents have adopted

his arguments.

16. Mr. A. Sudershan Reddy, the learned Counsel for the petitioners, strenuously contended that the property i.e., the lands in the instant case, admittedly, belong to the ancestors of the petitioners and inherited by the petitioners and the decree for realisation of money said to have been obtained by Mr. Rahim Bux, the evacuee, even though was put to execution and execution proceedings were initiated twice, the same were dismissed twice and as such, there was no sale and consequently. there was no transfer of title in the instant lands to anybody muchless to Mr. Rahim Bux. He also contended that even if the property would have been put to auction successfully the successful bidder would have purchased and it is a wrong assumption that Mr. Rahim Bux would have been the auction purchaser and the consequent owner. He submitted that there was no notice issued to the petitioners before declaring the instant lands as evacuee property and there was no opportunity afforded to the petitioners and the declaration, which has been made in the year 1952 that the lands in question are evacuee property, cannot sustain under law. He further submitted that ever since the petitioners came to know in 1955 that the lands have been declared as evacuee property, the petitioners had been tapping the doors of all the statutory authorities as also of this Court, that there are no laches on the part of the petitioners and in fact there are lapses on the part of the authorities in discharging their functions and that there is a gross violation of fair play and principles of natural justice. He also submitted that the declaration of the lands as evacuee property has been done in utter violation of Section 7 of the Act as also Rule 6 of the Rules framed thereunder and that the revisional power exercised by the 3rd respondent under the Displaced Persons Act annulling the order passed under the Act is palpably and apparently without jurisdiction and is a void order and is non est under law. He submitted that in the facts and circumstances of the case, there is no other remedy excepting the remedy, which has been invoked in this writ petition. He has also cited the judgments of the Supreme Court rendered in *Indira Sohanlal v. Custodian of Evacuee Property*, : [1955]2SCR1117 , *Zafar Ali Shah v. Asst. Custodian, Evacuee Property*, : [1962]1SCR749 , *Nasir Ahmed v. Assistant Custodian General, Evacuee Property, U.P., Lucknow*, : [1980]3SCR248 and *Sushil Kumar Mehta v. Gobind Ram Bohra*, : (1990)1SCC193 .

17. Mr. M.R.K. Choudhary, the learned senior Counsel appearing for the parties referred to above, has countered the arguments of the learned Counsel for the petitioners submitting that the declaration that the lands are evacuee property has been made way back on 11-12-1952 by a notification, which was gazetted on 25-12-1952 and the same has become final with the order passed on 11-5-1983 by the 3rd respondent in Spl.EP.1/306/83, that the said order is final and binding and cannot be reopened at this point of time and that this writ petition is liable to be dismissed on the ground of laches alone. He further submits that the orders, which have been passed earlier in WP No.1051 of 1966 rejecting the plea of the petitioners to interfere with the auction of lands for lease on the ground of non-availing of alternative remedy, had become final and that the later order passed by this Court on 26-7-1988 dismissing WP No.7517 of 1983 resulted in affirmation of the orders dated 11-5-1983 passed by the 3rd respondent in his revisional jurisdiction under Section 24 of the Displaced Persons Act. He also submits that the order passed by the 4th respondent on 28-5-1979 does not exist in law, as the same was nullified by a suo motu revision exercised by the Deputy Custodian General by his proceedings dated 27-10-1979. He submits that all the above proceedings operate as res judicata and that the writ petition is not maintainable. He also submits that the unofficial respondents are the legal representatives of the original displaced persons to whom the lands have been allotted, as they are the refugees from Pakistan area and their rights cannot be disturbed and that too at this juncture.

18. Right to property was a fundamental right under Article 31 of Indian Constitution. No person shall be deprived of his property save by authority of law. Even after deletion of the said Article from Part III by Constitution (Forty-Fourth Amendment) Act, 1978, which was brought into force from 20-6-1979, the same has been bodily lifted and treated as a Constitutional guarantee by inserting Articles 300A in Chapter IV. There is no difference in the language used.

19. In the instant case, the fact that the petitioners and their ancestors were the owners of the lands in question is not disputed. In fact, the plea is that the said lands were sold in execution of a money decree obtained by Mr. Rahim Bux, the evacuee and as such, he became the owner of the said property and the said

property is an evacuee property and that is how a declaration was made to that effect. If the petitioners have been deprived of their rights over the lands in question in accordance with law, then there cannot be any difficulty in negating their contention.

20. Let us now examine as to whether due process of law has been properly followed in the instant case. If the property was admittedly, an evacuee property owned by the evacuee, the matter squarely falls under the Act and then the person asserting that it is not an evacuee property, may have to disprove that the same is not an evacuee property. But, that is not the situation in the instant case. The lands were, admittedly, belonging to the petitioners and their ancestors and it is said that the ancestors of the petitioners owed money to Mr. Rahim Bux and that the latter had filed civil suit for realisation of money and a decree was passed and in execution of the said decree, the lands were auctioned and Mr. Rahim Bux became the owner of the lands. The Code of Civil Procedure, 1908 is analogous to the Hyderabad Code of Civil Procedure and there is no difference and both the provisions are in pari materia. The mandatory procedure is that while executing a money decree either moveable or immoveable property of the judgment debtor can be proceeded against and if the moveable property is attached, it is brought to sale and the procedure is somewhat different than immoveable property. If the immoveable property is to be sold, it has to be attached first, then upset price has to be fixed by affording opportunity particularly to the judgment debtor, then the sale notification has to be issued and if the bid is knocked down in favour of the highest bidder, then 1/4th of the amount has to be deposited immediately and the balance 3/4th after confirmation and there is time allowed in between the sale and confirmation. In the time allowed, there is also opportunity for the judgment debtor to seek to set aside the sale on grounds mentioned in the provisions. After confirmation of sale, a sale certificate is issued and pursuant to the sale certificate, the auction purchaser would be inducted into possession. There is absolutely no evidence, in the instant case, that either such procedure has been followed or a sale certificate has been issued. In fact, there is no trace of sale of the property. The above facts have to be proved with reference to records and there cannot be any oral evidence in that regard. Further, if an auction is held, the auction purchaser will be a different person and Mr. Rahim Bux would have been entitled

only for the decretal amount. In any event, there is absolutely no material to show that the auction was held or that a sale certificate was issued. Even if the proceedings regarding the sale were not made available, a sale certificate, which is a must, would have raised a presumption, but there was none. It is astonishing to note that de hors any such material, just on a report of a patwari, which was in turn transmitted to Tahsildar, who had in turn accepted the said report and sent it to the Deputy Custodian-cum-Collector, the lands were declared as evacuee property and a notification to that effect was issued and was gazetted. The petitioners emphatically claim that no notice was issued to them. There is a procedure for issuance of notice as provided in Rule 28 of Administration of Evacuee Property (Central) Rules, 1950, which prescribes the following modes for service of notice:

'(1) By giving or tendering it to the person concerned or his manager or agent, if any.

(2) By leaving it at the last known place of business of the person concerned or by giving or tendering it to some adult member of the family.

(3) By sending the notice, summons or order by registered post.

(4) By affixing the notice, summons or order on some conspicuous part of the premises concerned or at the last known place of business or residence of the person concerned or by publication in a daily or weekly newspaper or by proclamation by beat of drum in the locality.'

There is no record to show that such procedure has been followed. As such, the petitioners were agitating for their rights when they came to know in the year 1955 by making successive applications and when the lands were sought to be leased on Eksala (yearly) -basis, the petitioners had filed a writ petition in the year 1966. It is not correct to read the judgment dated 14-6-1968 rendered in WPNo.1051 of 1966 that this Court had negated the rights of the petitioners. A sentence here and there in a judgment cannot be picked up for construing it. A judgment has to be construed on reading and understanding as a whole and if so understood, the judgment in WP No.1051 of 1966 is to the effect that in the writ petition, the rights

of the parties cannot be adjudicated and more so in view of the fact that alternative remedy of appeal is available under the Act. By that, it cannot be assumed that this Court had upheld the notification issued under Section 7 of the Act. That apart, the petitioners had kept up their legal right and had invoked the revisional jurisdiction under Section 27 of the Act and the same was taken up in File No.M6-E/Bom/69 by the Deputy Custodian General, who had allowed the revision by order dated 25-9-1970 and remanded the matter back to the Deputy Custodian-cum-Collector, Hyderabad. The said Deputy Custodian-cum-Collector, Hyderabad had perused the records and has clearly recorded a finding that there is absolutely no legally accepted material that Mr. Rahim Bux was the owner of the property and in fact, it was emphatically held that the lands did not get transferred to Mr. RahimBux by any legal process and that the property was declared as an evacuee property just on the basis of a report of patwari and that too, the said report is a hearsay as the patwari himself had admitted that he was told by somebody that the property in question is an evacuee property and that he had reported the same. It is so distressing to note that such a report of the patwari became the basis to seek to deprive the petitioners of their valuable rights over the property.

21. If Section 7 of the Act was properly understood, it was not a case for initiation of proceedings and issuance of notice under Section 7 of the Act, as, formation of opinion by the Custodian is necessary, and for such formation of opinion, sufficient material to form the basis is necessary. Otherwise, it cannot be said as a bona fide exercise of power. It is apt to extract the provision contained under Section 7 of the Act:

'7. (1) Notification of evacuee property:--Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.'

To the same effect is the proposition laid down in Nasir Ahmed's case (supra), in which the Supreme Court has emphatically held that Section 7 of the Act requires

the Custodian to form an opinion that the property in question is evacuee property within the meaning of the Act before any action under that section is taken and also under Rule 6 of the Administration of Evacuee Property (Central) Rules, 1950, the Custodian has to be satisfied from information in his possession or otherwise that the property is prima facie evacuee property before a notice is issued and the Supreme Court has pointed that where the authority concerned did not apply his mind to the relevant material before issuing the notice under Section 7 of the Act, the notice is not valid.

22. As already stated above, there was no legally acceptable material before the authority when a notice was issued under Section 7 of the Act.

23. With regard to violation of principles of natural justice in not issuing notice, any action taken without notice would be void. It is pertinent to refer the Supreme Court verdict directly on the said point in Zafar Ali Shah's case (supra). In the said case, the Supreme Court held that no property of any person can be declared to be evacuee property unless that person had first been given a notice under Section 7 and in violation of the said mandate, the order declaring the properties to be evacuee properties would be without jurisdiction. In fact, the Supreme Court went to the extent of saying that no appeal need be filed in such a case and that even if an appeal is preferred and is dismissed as time-barred, the situation would not be different, as, any order passed without notice is void and non est. The Supreme Court further ruled that even publication of notification under Section 12(2) of the Displaced Persons Act, 1954 will be of no consequence in such case of violation of principles of natural justice. It is also apt to extract the said proposition laid:

'It was also said on behalf of the respondents that the properties had already been acquired under the Displaced Persons Act, 1954, and, therefore, the petitioners had, no longer, any claim to them. Sub-section (2) of Section 12 of this Act provides that 'on the publication of a notification under sub-section (1), the right, title and interest of any evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central

Government free from all encumbrances'. It was said that a notification mentioned in this section had been issued. It seems to us that this section does not affect the petitioners' rights. It only affects the rights of an evacuee which the petitioners, on the admitted facts, are not.'

24. Even though not obliged, the petitioners had been pursuing their legal remedies right from the year 1955 onwards. The arguments of the respondents that since appeal has not been filed as observed by this Court in WPNo.1051 of 1966, a finality is attached to the declaration that the lands are evacuee property is untenable. There was a choice for the petitioners to invoke the revisional remedy provided under Section 27 of the Act. A constitutional Bench of the Supreme Court in Indira Sohanlal's case (supra) held that Section 27 of the Act is very wide in its terms and it cannot be construed as being subject to any limitations such as filing of an appeal nor can the scope of revisional powers be confined only to matters of jurisdiction. The revisional authority had found that there was a case made out by the petitioners and allowed the revision and remanded the matter back for fresh enquiry by the Deputy Custodian-cum-Collector, who, as already stated above, held enquiry and emphatically recorded a finding of fact basing on the records that there was absolutely no material to hold that the title in lands was transferred to Mr. Rahim Bux and as such it did not become the evacuee property. Elaborate reasoning was given for arriving at the said finding of fact and the said reasoning and finding based thereon has never been set aside by any authority including that of 3rd respondent herein. The entire approach of the 3rd respondent in setting aside the order dated 28-5-1979 of the Deputy Custodian-cum-Collector is grossly erroneous and without jurisdiction. The substantive rights, which are involved, have not been gone into and the reason is obvious. Respondent No.3 was harping upon the rights of the unofficial respondents under the Displaced Persons Act, which is not at all an answer to the order dated 28-5-1979 of the Deputy Custodian-cum-Collector. The Displaced Persons Act does not deal with the substantive rights as to whether a particular property is an evacuee property or not and the said rights are dealt with only under the Act and that is so clear from Section 28 thereof. The Displaced Persons Act comes in when the rights under the Act are crystallised finally holding that the property is an evacuee property. In fact, there is no lis inter se two persons under the Displaced Persons Act and if at all if

there is any lis, that can be only between two displaced persons. As such, the order dated 11-5-1983 of the 3rd respondent is wholly without jurisdiction and it is apt to refer a Supreme Court decision in Sushil Kumar Mehta's case (supra), in which dealing with jurisdictional aspect in the context of plea of res judicata, it was held that when the order is without jurisdiction, the subsequent proceedings are not hit by res judicata. In the said case, ejectment decree was passed by the civil Court having no jurisdiction, as, for tenant's eviction, the landlord had to resort to the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and the Tribunal constituted thereunder and not the civil Court under Section 9 of CPC. The said ratio is squarely applicable in the instant case. That apart, the petitioners did not keep quiet and invoked Section 33 of the Displaced Persons Act for exercising the revisional powers by the Chief Settlement Commissioner, but he refused to exercise his powers and the petitioner did not even stop there, but filed WP No.7517 of 1983 and this Court held that the authority under Section 33 of the Displaced Persons Act cannot be compelled to entertain the revision.

25. From what is narrated above, the petitioners cannot be found fault with for any inaction or lapse and they had been waging tireless legal battle since last 45 years. Further, they did not even leave any chance in the litigation, as, even against an observation by the Deputy Custodian-cum-Collector in his order dated 28-5-1979 that the petitioners were issued with a notice, they had invoked the revisional jurisdiction under Section 27 of the Act to the Deputy Custodian General and the same was entertained and interim orders were passed and then ultimately transmitted to the 3rd respondent because of delegation of powers. But, the 3rd respondent did not even adjudicate on the said point of want of notice and rejected the revision on irrelevant considerations. Added to that, the suo motu revision, which was exercised by the Deputy Custodian General by his proceedings dated 27-10-1979 were frustrated by the unofficial respondents themselves and as such, there is no further proceeding beyond calling for the records by order dated 27-10-1979 and there was no adjudication one way or the other with regard to the validity or otherwise of the order passed by the Deputy Custodian-cum-Collector on 28-5-1979. Even according to the respondents, no such proceeding is still pending before the Deputy Custodian General. The consequence is that there is no suo motu revision exercised in the eye of law and the order dated 28-5-1979 of the

Deputy Custodian-cum-Collector insofar as the merits that there was no material that the lands in question were evacuee property is concerned, stood confirmed. Insofar as the principles of natural justice issue is concerned, there is no material to show that the notices were served on the petitioners. There is also no finding given by the 3rd respondent that any such notice has been served and as there was no material placed before this Court that any notice was served on the petitioners before declaring the property in question as evacuee property, we hold that not only that notice was served on the petitioners before declaring the lands in question as evacuee property, but even on merits, the lands are not the evacuee property for the reason that the title in the lands was never transferred in favour of Mr. Rahim Bux, the evacuee.

26. In view of what is stated supra, we set aside the order dated 11-5-1983 passed by the 3rd respondent in RP No.SPL.EPI/306/1983 and restore the order dated 28-5-1979 passed by the Collector-cum-Deputy Custodian, Ranga Reddy District in his Proceedings No.D5/12523/78. The writ petition is allowed as indicated above. No order as to costs.

27. After the judgment has been pronounced, Mr. M.R.K. Choudhary, the learned Counsel appearing for the unofficial respondents, has sought special leave to appeal to the Supreme Court.

28. We do not see any such substantial ground muchless of any public importance to grant leave.

29. Hence, the plea to grant special leave to appeal to the Supreme Court is refused.