

**Nahinder Singh and ors. Vs. Union of India (Uoi) and ors.**

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**Court :** Punjab and Haryana

**Decided On :** Aug-30-1960

**Reported in :** AIR1961P& H470

**Judge :** Shamsheer Bahadur, J.

**Acts :** [Administration of Evacuee Property Act, 1950](#) - Sections 7, 8 and 8(2); Administration of Evacuee Property (Amendment) Act, 1960; East Punjab Evacuees (Administration of Property) Act, 1947; Evacuee Interest (Separation) Act, 1951 - Sections 3

**Appeal No. :** Civil Writ No. 433-D of 1957

**Appellant :** Nahinder Singh and ors.

**Respondent :** Union of India (Uoi) and ors.

**Advocate for Def. :** Shiv Narain Shanker and; Dina Nath Bhasin, Adv.

**Advocate for Pet/Ap. :** Gopal Singh, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Shamsheer Bahadur, J.**

1. This judgment would dispose of two writ petitions, Nos. 433-D of 1957 and 434-D of 1957, raising identical questions of law though the parties in each case are different.

2. For the sake of convenience, I will only narrate the facts in Civil Writ No. 433-D of 1957. Ram Singh, father of Kishan Singh petitioner No. 3, and grandfather of petitioners Nos. 1 and 2, obtained 113 Bighas and 18 biswas of agricultural land on mortgage from Saida, father of Dulla respondent No. 4 in village Longwal of District Sangrur, for a sum of Rs. 1,200/-. The mortgagee was in possession of this land from 1893 and after the death of Ram Singh, his successors-in-interest have continued to remain in possession.

3. On 9th of June, 1947, 24 bighas out of this land was further mortgaged in favour of the petitioners by Dulla, respondent No. 4, by a registered deed. Although Saida had four sons, only one of those (Dulla) is surviving. The others died issueless. It is the case of the petitioners that Dulla continued to reside in India and never became evacuee. Still, the petitioners on receiving notices chose to submit their claims under Section 5 of the Evacuee Interest (Separation) Act, 1951, for separation of their interests in the agricultural land which had been mortgaged with their ancestors by Saida.

Such a claim could have been only preferred in case of separation of interests in a composite property portion of which belonged to an evacuee. Before the Competent officer, it was contended on behalf of the petitioners that they had acquired proprietary rights in the land as they had been in possession of it for more than 60 years. It was further claimed that Dulla was not an evacuee as he continued to remain in India after the partition and therefore the land was not amenable to the jurisdiction of the Competent Officer. The claim was filed by petitioners in November, 1954 and the Competent officer by his order dated 27th of November 1956 held that because the mortgage had been subsisting for more than 60 years, it stood extinguished under Sub-section (2) of Section 9 of the Evacuee Interest (Separation) Act. As regards the latter mortgage executed by Dulla on 9th of June, 1947, the claim of the petitioners was assessed at RS. 788/-. Aggrieved from this order, the petitioners filed an appeal but the order of the

Competent Officer was upheld by Mr. Ram Lal Aggarwal, Appellate officer, on 23rd of September, 1957.

4. The present petition has now been filed by the petitioners in which in addition to the two points raised before the Competent officer, the validity of the Evacuee Interest (Separation) Act was questioned. The question of the vires of the Evacuee Interest (Separation) Act, 1951, was settled by a Division Bench of this Court (Falschaw and Chopra JJ.), who by their judgment on 12th of January, 1960, rejected the objections regarding the validity of the Act. Mr. Gopal Singh, the learned counsel for the petitioner, in these writ proceedings has confined his attack to the two points which, were raised before the Competent officer. I will first deal with the question whether the subject-matter of the controversy has become evacuee property or not.

5. It has been argued by Mr. Gopal Singh that no notification had ever been made with regard to the property in dispute and there has been no proper adjudication for its declaration as evacuee property under the provisions of the Administration of Evacuee Property Act. It is no doubt true that the procedure prescribed in the Administration of Evacuee Property Act must be followed before the property can be declared to be an evacuee property or can be deemed to have been so declared.

All the same, it has to be remembered that under the East Punjab Evacuees (Administration of Property) Act, 1947, all evacuee properties automatically vested in the Custodian who assumed possession of all immovable evacuee properties situated in the province of East Punjab-The statement of Dulla also shows that his property had been taken over by Custodian. It is further pointed out in the order of the Competent officer dated 27th of November, 1956 that the petitioners who had been granted time to produce certificate under Section 16 of the Administration of Evacuee Property Act failed to procure it.

Under Section 16 of the Administration of Evacuee Property Act, the Central Government is empowered on an application made to it by an evacuee Or any person claiming to be his successor-in-interest to grant a certificate that the evacuee property which is vested in the Custodian shall be restored to him. The

petitioners unsuccessfully tried to get such a certificate of restoration.

6. The matter, however, is now concluded by the Administration of Evacuee Property (Amendment) Act, 1960 (Act No. 1 of 1960). According to the newly inserted Sub-section (2) to Section 8, which has retrospective operation, it is provided that 'without prejudice to the generality of the provisions ..... all property which under any law repealed hereby purports to have vested as evacuee property, in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in, or the invalidity of, such law or any judgment, decree or order of any Court, be deemed for all purposes to have validly vested in that person, as if the provisions of such law had been enacted by Parliament and such evacuee property shall, on the commencement of this Act, be deemed to have been evacuee property declared as such 'within the meaning of this Act ....' Thus, all property which is vested in the Custodian in spite of any defects or infirmities shall be deemed to be evacuee property.

Moreover, it is not within the jurisdiction of the Competent officer to declare whether a certain property belongs to an evacuee or not. Such adjudication falls within the exclusive competence of the Custodian. I would, therefore, repel the contention of Mr. Gopal Singh that the property in dispute is not evacuee property.

7. Having held that the property is evacuee, there can be no doubt about the applicability of the Evacuee Interest (Separation) Act, which deals with the separation of evacuee from other interests in a composite property. Section 3 of the Evacuee Interest (Separation) Act says that the provisions of the Act will override the operation of all other laws. Under Section 9, certain reliefs are provided in respect of mortgaged property of evacuees. Sub-section (2) of Section 9 says that where a mortgagee has taken possession on any terms whatsoever of any agricultural land, such mortgage shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed.

The Evacuee Interest (Separation) Act came into force in the year 1951. Admittedly, the mortgage had not acquired the age of 60 years when the Evacuee Interest (Separation) Act came into force. In this view of the matter, I do not think

there is any force in the submission made by the learned counsel for the petitioners that the mortgage had ripened into ownership of the petitioners. The provisions of the Evacuee Interest (Separation) Act Override those of the Indian Limitation Act.

It is worthy of note that the petitioners never demurred to the jurisdiction of the Competent officer and submitted a claim under Section 7 of the Evacuee Interest (Separation) Act. The petitioners having preferred the claim under Section 7 predicated the position that there was a subsisting mortgage. The Competent officer, in my opinion, was not in a position to declare that the property had vested in the petitioners as mortgagees by efflux of time.

8. In this view of the matter, I do not think there is any force in these petitions which must fail and are accordingly dismissed. I would, however, make no order as to costs.

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