

**Zia--uddIn Vs. Abdul Majid and ors.**

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**Court :** Delhi

**Decided On :** Mar-13-1972

**Reported in :** AIR1972Delhi251

**Judge :** Pritam Singh Safeer, J.

**Acts :** [Enemy Property Act, 1968](#) - Sections 9; [Code of Civil Procedure \(CPC\), 1908](#) - Order 21

**Appeal No. :** C.M. (M) No. 6 of 1972

**Appellant :** Zia--uddin

**Respondent :** Abdul Majid and ors.

**Advocate for Def. :** Ravinder Sethi, ; I.D. Garsh and ; J.M. Khanna, Advs.

**Advocate for Pet/Ap. :** H.K.L. Sabharwal and; Y.K. Sabharwal, Advs

**Judgement :**

ORDER

1. This is a petition under Article 227 of the Constitution of India preferred by Zia-ud-Din against Abdul Majid and five others. Abdul Majid has made the choice of remaining absent. The learned Sub-Judge who passed the impugned order dated 21st December, 1971 had been imp leaded as respondent No. 6. Respondent Nos. 1 and 6 being unrepresented the proceeding qua-them are ex parte in terms

of the order made on 10th of March, 1972.

2. The petitioner and Abdul Majit respondent No. 1 allegedly referred a dispute regarding the amount claimed by the petitioner on the basis of a promissory note to arbitration. An award was made on the 17th of March, 1971 in terms whereof a decree was passed in favor of the petitioner for the recovery of Rupees 40,000/- against respondent No. 1 on the 15th April, 1971.

3. The petitioner took out execution and the executing Court passed an order attaching the property bearing Municipal Numbers 177 and 183 to 188, Church Mission Road, Fateh Puri, Delhi as it was represented that the property belonged to the judgment-debtor. The attachment was made on 15th of May, 1971. The property was auctioned on 30th November, 1971. Before the sale could be confirmed, separate objection applications were filed by respondents Nos. 4 and 5. A copy of the objections filed by respondent No.4, under Order 21, Rules 58 and 90 and Section 151 of Civil Procedure Code has been placed on the record and I have gone through the relevant contents thereof. It was stated in paragraph 1 thereof that the disputed property originally belonged to Sheikh Feroz-ud-din who died on 14th of June, 1959 leaving behind 6 heirs. According to the averment in paragraph 3 the Succession Certificate was granted to the heirs on 19th July, 1960. In paragraph 6 it was stated that for a number of years after the grant of the Succession Certificate the heirs of deceased Sheikh Feroz-ud-Din had been residing in Pakistan. In paragraph 7 the information given was :-

'7. That after the Indo-Pak conflict of 1965, the properties belonging to Pakistani Nationals were declared by the Government to have vested in the Custodian of Enemy Property and since the referred property was owned by Pakistani Nationals the same also vested in the said Custodian.'

4. The trial Court was thus made aware that it had according to the allegations referred to above, attached the property which on the date of order of attachment vested in the Custodian of Enemy Property and was as such not liable to attachment and sale.

5. The impugned order deals with the controversy as to whether it could be inquired into or not that the property in dispute vested in the Custodian of Enemy Property and was not liable to be auctioned in execution of the concerned decree.

6. It was urged before the Court below on behalf of the petitioner that respondents Nos. 4 and 5 had no locus standi to file any objections under any of the provisions in the Code of Civil Procedure and the same could not be gone into. The respondents Nos. 4 and 5 relying on Section 151 of Civil Procedure Code contended that the objections raised by them could be adjudicated upon. They also relied on the law laid down in wherein it had been held that the inherent jurisdiction was of various kinds and that the Court could not be a party to any proceeding where it found that the purpose of law was being defeated by an under hand arrangement. The Punjab High Court was dealing with the grievance that the auction of the property had been collusive and deserved to be set aside.

7. The illegality in attaching the property which allegedly vested in the Custodian of Enemy Property brought to the notice of the executing Court in this case stood on a higher footing. The executing Court had without knowing it that the property allegedly vested in the Custodian of Enemy Property acted on the assumption that it belonged to Abdul Majid, judgment-debtor and was liable to attachment in execution of a decree which the petitioner had obtained against him, by the impugned order the Court below has affirmed that it will be investigated as to whether Abdul Majid was the owner of the property on the date of auction or not, and that it will be gone into whether property did vest or not in the Custodian of Enemy Property.

8. It was the ordinary Judicial function of the Court below to attend to the demands of law. A Court of justice has to see that the Rule of law is maintained. It is an intendment of judicial process that it must not transgress any law which requires compliance.

9. I have gone through the concerned provisions contained in 'The [Enemy Property Act, 1968](#)', Section 9 where of is :-

'9. Exemption of attachment etc. - All Enemy Property vested in the Custodian under this Act shall be exempt from attachment seizure, or sale in execution of decree of Civil Court or orders of any other authority.'

10. Howsoever, a Court dealing with the execution of a decree of a Civil Court was to come to know that the property sought to be attached and auctioned vested in the Custodian of Enemy Property it was to be its duty to institute an enquiry and discover for itself as to whether the property did vest in the Custodian of Enemy Property or not. Respondents 4 and 5 may have had no locus standi to prefer the objections but that did not relieve the Court of its judicial duty to give effect to the provisions of Section 9 of the Enemy Property Act. Having passed the order of attachment if the Court was to find that the property was exempted from attachment in view of the afore-quoted provision the Court had the jurisdiction on judicial satisfaction to revoke the order of attachment.

11. It is urged on behalf of respondents 2 and 3 the auction purchasers, that they have acquired the right of confirmation of sale and that the confirmation could only be dealt with in terms of the provisions contained in Order 21 of the Civil Procedure Code.

12. It is elementary that a successful bidder at an auction does not acquire any vested right in the property. Section 9 of the Enemy Property Act contained a substantive provisions of law. While complying with the procedural provisions contained in Order 21 of the Code an inquiry under Section 9 of the Enemy Property Act could not be ruled out.

13. The Court below is only to go into the controversy as to whether on the date a attachment and auction the property in dispute vested in the Custodian of Enemy Property or not and if so to what effect The Court will record evidence, hear the parties and then come to a decision.

14. The petition with the foregoing observations alongwith the Miscellaneous application filed in the course thereof is disposed of. There will be no order as to costs.

15. Order accordingly.

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