

THE INDIAN LAW REPORTS

PUNJAB SERIES

CIVIL WRIT

Before Khosla and Kapur JJ.

SHRI JANKI PARSHAD,—Petitioner.

versus

THE CUSTODIAN, EVACUEE PROPERTY, JULLUNDUR

ETC.,—Respondents.

Civil Writ No. 187 of 1953

Administration of Evacuee Property Act (XXXI of 1950) Section 26—Review—Additional Custodian, Whether has powers of review under section 26.

1954

Held, that the power of review was given to the Custodian for the first time by section 30(5) of the East Punjab Ordinance IX of 1949, and has been continued by section 26 of the Act and is available to the Custodian. Therefore the Additional Custodian could review his orders. October, 15th

Telu Ram Jain and Co., v. The Commissioner of Income-tax (1), The State of Bombay, v. Pandurang Vinayak Chaphalkar and others (2), Ex parte Walton, In re Levy (3), East End Dwellings Co., Ltd. v. Finsbury Borough Council (4), referred to.

Petition under section 226 of the Constitution of India praying that a writ of certiorari or any suitable orders and directions under Article 226 of the Constitution of India be issued calling for the records of the case before the respondent and to quash the same and prohibiting the respondents from proceeding with the case.

K. S. THAPAR and MANMOHAN SINGH, for Petitioner.

D. K. MAHAJAN, for Respondents.

ORDER

KAPUR, J. This is a rule obtained by the Kapur, J. petitioner Janki Parshad, under Article 226 of the Constitution of India for a writ of *mandamus* directing the Custodian-General to forbear from taking cognizance of the matter in dispute.

(1) I.L.R. 1955 Punjab 758

(2) 1953 S.C.R. 773

(3) 17 Ch. D. 746 at p. 756

(4) 1952 A.C. 109

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The case originally came before me sitting singly and I referred it to a Division Bench to determine whether the power of review under section 26 of the present Administration of Evacuee Property Act, XXXI of 1950, is applicable to the facts of the present case.

Three parties Rajeshwar Sahai, Allah Diya and two brothers Gopal Sahai and Khub Ram were partners in equal shares in a cinema business which was carried on as a registered partnership at Rewari as from the 23rd January, 1946. It is alleged that Allah Diya was indebted to Janki Parshad and Rajeshwar Sahai, father and son and on the 11th June, 1947, Allah Diya sold his one-third share to Janki Parshad for a part of the debt. Due to communal disturbances the cinema business remained closed up to the 4th December, 1947, when it reopened.

On the 18th March, 1949, a new firm was registered with the Income-tax Department of which the partners were Janki Parshad and his son Rajeshwar Sahai two-thirds share, and Gopal Sahai and his brother Khub Ram, one-third share. On the 30th of March, 1948, Janki Parshad applied for confirmation of the sale by Allah Diya in his favour under section 5-A of the East Punjab Act XIV of 1947, which was confirmed by the Assistant Custodian on the 25th February, 1949 under section 7 of that Act. Acting under section 7(4-A) of that Act the Additional Custodian on the 28th February, 1949, also confirmed the order of the Assistant Custodian.

One Jagan Nath Sapra started making applications with regard to the share of Allah Diya that it was evacuee property and his last application is dated the 22nd August, 1951. Notice was issued to Janki Parshad by the Additional Custodian as to why the order should not be reviewed. This was on the 10th September, 1952, and the

petitioner made the application which is now before us.

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The question for decision is whether the Additional Custodian has the power of review under section 26 of the present Administration of Evacuee Property Act. Under section 7(4-A) of Act XIV of 1947, the Custodian or Additional Custodian had the power to call for the record of the proceedings.....disposed of by an Assistant or Deputy Custodian to satisfy himself as to the legality or propriety of any order passed by such officer. Action was taken under this section on the 28th February, 1949. Act XIV of 1947, was repealed by section 40 of the East Punjab Evacuee Property (Administration) Ordinance IX of 1949. Subsection (2) of this section provided as under—

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“Notwithstanding such repeal, anything done or any action taken in the exercise of any powers conferred by the East Punjab Evacuees (Administration of Property) Act, 1947, shall be deemed to have been done or taken in the exercise of the powers conferred by this Ordinance, and any penalty incurred or proceeding commenced under that Act shall be deemed to be a penalty incurred, or proceeding commenced under this Ordinance as if this Ordinance were in force on the day when such thing was done, action taken, penalty incurred or proceeding commenced.”

By section 30 of this Ordinance appeal, review and revision were provided. Subsection (4) of this section corresponds to section 7(4-A) of Act XIV of 1947, and I shall quote the relevant part—

“The Custodian or Additional Custodian may, at any time either on his own

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motion or on application made to him in this behalf, call for the record of any proceeding under this Ordinance which is pending before or has been disposed of by an officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of any order passed in the said proceeding and may pass such order in relation thereto as he thinks fit : * * *

* * * * *

Subsection (5) gave to the Custodian or an Additional Custodian the power to review his own order and it was as follows—

“The Custodian or Additional Custodian but not a Deputy or an Assistant Custodian, may, after giving notice to the parties concerned, review his own order.”

If section 40(2) of this Ordinance gives retrospective effect to the provisions of this Act, then the order made under section 7(4-A) of Act XIV of 1947, would be deemed to be an order under section 30(4) of the East Punjab Ordinance IX of 1949, and the power of review under subsection (5) would become applicable.

As I read section 40(2) of Ordinance IX of 1949, the order passed on the 28th of February, 1949, by the Additional Custodian must be deemed to have been done under the powers conferred by section 30(4) of Ordinance IX of 1949, and it must be deemed to have been done as if the Ordinance were in force on the 28th February, 1949 because that is how I would interpret the words “shall be deemed to have been done.....as if this Ordinance were in force on the day when such thing was done.” The words “deemed to be” were interpreted by this Court in *Telu Ram Jain and Co. v. The Commissioner of Income-tax*,

(1), decided by Falshaw, J., and myself on the 29th of September, 1954, and we followed there a judgment of the Supreme Court in *The State of Bombay v. Pandurang Vinayak Chaphalkar and others* (2), where at page 778 Mahajan, J., said—

“When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. (*Vide* Lord Justice James in *Ex parte Walton: In re Levy* (3).”

The Supreme Court also quoted with approval the observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (4), where his Lordship said—

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

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The corollary of this interpretation is that the order passed on the 28th of February, 1949, must be taken to be an order passed under section 30(4) of Ordinance IX of 1949 and would be subject to review under subsection (5) of section 30, and section 40 of this Ordinance would give retroactive effect to the power of review given by subsection (5) of section 30 of the Ordinance.

By the Administration of Evacuee Property Ordinance XXVII of 1949, the East Punjab Ordinance IX of 1949, was repealed; see section 55 of the new Ordinance. Subsection (3) of section 55 of this Ordinance practically uses the same language as that used by section 40(2) of Ordinance IX of 1949, and therefore any action taken under section 30(4) or any order which would be deemed to be under that section would be deemed by the provisions of section 55(3) to be an order passed under section 26(2) of the Ordinance which gives to the Custodian, Additional Custodian or Authorised Deputy Custodian the power to review their own orders.

This Ordinance was repealed by section 58 of the Administration of Evacuee Property Act XXXI of 1950, where subsection (3) of section 58 was more or less in the same terms as section 55(3) of the Central Ordinance of 1949. By section 2 of Act LXVI of 1950, section 58 was replaced by another section, but the language in subsection (3) remains more or less the same and is as follows—

“The repeal by this Act of the Administration of Evacuee Property Ordinance, 1949 (XXVII of 1949), or the Hyderabad Administration of Evacuee Property Regulation (Hyderabad No. XII of

1359-F) or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken”

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Therefore, any order passed which would be deemed to be an order passed under section 55(3) of the Central Ordinance XXVII of 1949, would be deemed to be an order passed under section 58(3) of the amending Act of 1950, and therefore it cannot be said that the Custodian has not the power to review his own orders. The power of review which was given to the Custodian for the first time by section 30(5) of the East Punjab Ordinance IX of 1949, and which has been continued by section 26 of the Act of 1950, would be available to the Custodian, should he think it necessary in view of the facts proved before him to exercise that power. And when I say this it should not be taken that I am expressing any opinion as to whether the order of the 8th February, 1949, should or should not be reviewed. All that we are deciding in this case is that the power of re-review is vested in the Custodian. I would therefore dismiss this petition and discharge the rule with costs.

KHOSLA, J. I agree.

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