

Bhagwan Dass *v.* The Appellate Officer, etc. (Kapur, J.)

CIVIL MISCELLANEOUS

*Before S. K. Kapur, J.*

BHAGWAN DASS,—*Petitioner*

*versus*

THE APPELLATE OFFICER AND OTHERS,—*Respondents.*

Civil Writ No. 362-D of 1960.

April 4, 1966.

*Evacuee Interest (Separation) Act (LXIV of 1951)—Ss. 5, 8 and 10—Jurisdiction of the Competent Officer—Extent of—Composite property disappearing—Whether competent officer can determine the liability of non-evacuees in respect thereof.*

*Held*, that the Competent officer may take all steps to ascertain and separate the interest of the evacuee and claimant in the composite property and sell the same with a view to realise the amount, but where the property has disappeared he cannot decide which of the non-evacuees are liable to pay and how much personally. After the interest of an evacuee has been separated and the sum due ascertained, the amount becomes a sum certain payable to the Custodian and whether the person from whom it is sought to be recovered is liable to pay the same or not will have to be decided by the Custodian under section 48 of the Administration of Evacuee Property Act, 1950.

*Petition under Articles 226/227 of the constitution of India, praying that Your Lordships may be pleased to accept this petition, to quash the orders of the first respondent, dated 31st December, 1959 and 6th April, 1960, and restrain the respondents from taking any action in pursuance of the orders, dated 6th April, 1960, and from selling the property or claiming or recovering anything from the petitioner herein on account of the amount determined by the Appellate Authority to be due to the Custodian from respondent, No. 4, and further praying that such other or further writs, orders or directions may be issued in this behalf as may appear to Your Lordships to be just fit and proper in the circumstances of the case and costs of these proceedings may also be awarded in favour of the petitioner against the respondents.*

P. N. KHANNA AND S. S. CHADHA, ADVOCATES, for the Petitioner.

S. N. SHANKER, K. R. KHANNA AND YOGESHWAR DAYAL, ADVOCATES, for the respondents.

## ORDER

KAPUR, J.—The facts in this writ petition are numerous, but having regard to the limited question raised at the bar, it would be necessary only to state a few of them. The petitioner, along with his brother Panna Lal, the father of respondent Banwari Lal (respondent No. 4), was carrying on business in partnership under the name of Bijjamal Melaram. On 2nd January, 1949, the said two brothers entered into a partnership with one Abdul Rehman Haji Ghani, carrying on business as Moosa Umar and Company in Bombay and the new firm was named as Bijjamal Moosa Umar. The petitioner and Panna Lal, had one-fourth share each in the partnership, while Abdul Rehman Haji Ghani had one-half. On 16th May, 1949, there were certain variations made in the terms of partnership, the duration whereof was fixed at five years. It was agreed that the tenancy rights in the business premises, the goodwill and telephone shall, on dissolution, belong exclusively to Abdul Rehman Haji Ghani. Abdul Rehman Haji Ghani, died on 14th December, 1949, and since his heirs were all evacuees, the business including the stock-in-trade and tenancy rights of the firm Bijjamal Moosa Umar, being carried on at two different places in Bombay, was declared evacuee property. It is claimed by the petitioner that the business was still continued and carried on by Panna Lal, the father of respondent No. 4. Differences arose between the petitioner and Panna Lal and the dispute was referred to arbitration. The firm Bijjamal Melaram was dissolved. The arbitrator is alleged to have issued some interim directions, under which the control and business of the firm Bijjamal Moosa Umar in Bombay was taken over by Panna Lal, to the exclusion of the petitioner. According to the petitioner, a complete inventory of the stocks lying in the Bombay shops was prepared and possession taken by Panna Lal, to the exclusion of the petitioner. The arbitration of Dr. Gopi Chand Bhargava was, however, revoked and it appears that some new arbitrator was appointed. A notice under section 6 of the Evacuee Interest (Separation) Act, 1951, was issued to the petitioner and Panna Lal, on 7th November, 1952, and in response thereto the petitioner claimed one-fourth share in the firm Bijjamal Moosa Umar. Panna Lal, also filed a claim alleging that he was sole owner of the composite property, the suggestion being that the deceased's interest had been sold to him. The Deputy Custodian of Evacuee Property disputed Panna Lal's, claim as to the sole ownership and asked for accounts from Panna Lal. The Competent Officer issued interim directions to Panna Lal, to furnish security for Rs. 45,000, failing which the possession of the assets of

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the business, etc., shall be taken from him. Panna Lal, complied with that order and also undertook to maintain stocks in the shop of the value of not less than Rs.60000, which undertaking had also been called for from Panna Lal, by the Competent Officer. On 27th September, 1954, certain compromise terms were recorded to which the Assistant Custodian of Evacuee Property, Bombay, the petitioner and Panna Lal, were parties. It was, by the said terms, agreed that the accounts of the firm Bijjamal Moosa Umar be taken till 31st December, 1953, and thereafter the business will be run by Panna Lal, on his own account and the other partners will not be liable for profits or losses. It was further agreed that Panna Lal, will be liable to make good the value of the assets of the firm as on 31st December, 1953. The Competent Officer passed an order on 5th November, 1954, declaring that—

- (1) the petitioner and Panna Lal, had one-fourth share each in the firm Bijjamal Moosa Umar, while the interest of Abdul Rehman Haji Ghani, was one-half;
- (2) the interest of late Abdul Rehman Haji Ghani, had passed to the evacuees;
- (3) the goodwill, tenancy rights, fittings and furniture, and telephone exclusively belonged to the evacuees and the value of the said assets was fixed at Rs. 50,000; and
- (4) the interest of evacuees as on 31st December, 1953, was Rs. 68,510-7-0 and the Custodian was entitled to the amount with interest at 4½ per cent per annum from 31st December, 1953, till the date of payment.

By the said order, the Competent Officer invited the non-evacuee claimants to state if they desired to purchase the evacuees' interest in the property. The Competent Officer also drew up a balance-sheet as on 31st December, 1953, and the amounts owed by the dissolved partnership to the evacuees, the petitioner and Panna Lal, were set out therein. Both Panna Lal and the petitioner filed appeals against the order of the Competent Officer, Panna Lal, asking for reduction of the amount of Rs. 68,510-7-0, while the petitioner wanted an increase in the amount due to him.

Panna Lal, died on 15th July, 1957, and the Appellate Officer disposed of the appeal on 28th February, 1958. While summing up the findings of the Competent Officer, the Appellate Officer said, "He further held that a sum of Rs. 68,510-7-0 is due to the evacuee as his share in the property and directed the claimant to pay the amount

to the Custodian with interest at 4½ per cent per annum from 31st December, 1953, till the date of payment." I may mention here that, according to the petitioner, the entire tenor of the competent officer's order as well as the order of the Appellate Officer shows that both the authorities were, while disposing of the matter, acting under an assumption that the petitioner had no personal liability to pay and the extent of evacuee's interest in the firm was decided on that assumption. It has been suggested that it was for this reason that the Appellate Officer, in the quotation extracted above, used the word 'claimant' and not the word 'Claimants' and this was in conformity with the consent terms, dated 27th September, 1954, mentioned hereinabove, wherein it had been agreed that, "Shri Panna Lal will also be liable to make good the value of the assets of the firm as on 31st December, 1953." With these two orders, the petitioner has made no grievance before me so far as the determination of liability to pay to the Custodian is concerned, as, according to him, Panna Lal, alone had been held liable to pay. As a matter of fact, the learned counsel for the petitioner says that he is happy with the order of the Competent Officer and the Appellate Officer as it stands. The real trouble, according to the petitioner, arises by reason of the order, dated 31st December, 1959, made by Shri M. L. Vijh, Appellate Officer, on a review application made by the petitioner asking for review of the order dated 28th February, 1958. In paragraph 47 of the order, dated 28th February, 1958, the Appellate Officer says, "The Custodian is entitled to this amount and interest at 4½ per cent per annum from 31st December, 1953, till the date of payment. The non-evacuee 'claimants' should pay the amount by 30th April, 1958 and in default the property should be sold." Similarly, in an earlier part in paragraph 46, the Appellate Officer has said, "The learned Competent Officer had also valued goodwill, premises, telephone, furniture, etc., at Rs. 50,000 and had asked the parties if they wanted to purchase the premises. It is common ground now before me that on the dissolution of the partnership the goodwill, tenancy rights, fittings, furniture and the telephone exclusively belong to the Custodian. It is, therefore, not composite property. The Custodian may allot to any person, he likes. It may, however, be mentioned that the value of these rights has been estimated by the Competent Officer at Rs. 50,000. The Custodian before allotting these rights to any person should, however, insist on payment of the amount held as due from *the firm*." By review application, the petitioner asked for correction of the following accidental slips or omissions—

- (1) The words 'the firm', underlined in the quotation above, should be clarified so as to declare that Panna Lal, alone

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was liable to pay the amount found due to the Custodian,  
and

- (2) the word 'claimants' in paragraph 47, already mentioned above, should be changed to 'claimant' so as to bring the order in line with its earlier part holding that the petitioner had no liability to pay the amount.

The contention of the petitioner was that the word 'claimants' was a mistake and the Appellate Officer intended to use the word 'claimant'.

The Appellate Officer, while dealing with the review application, rejects the same holding that the words 'the firm' used in paragraph 46 of the order, dated 28th February, 1958, meant the firm of Bijjamal Melaram and that the Appellate Officer rightly used the word 'claimants' in paragraph 47. It does appear that the Appellate Officer, while dismissing the review application, was not quite correct in the reading of paragraph 46 of the order, dated 28th February, 1958. The words 'the firm' there, obviously, could not mean the firm Bijjamal Melaram, because the said paragraph was dealing with the property which was held not to be a composite property but as belonging to the evacuees exclusively. Since this property was to be taken away by the Custodian and allotted to somebody else, it appears that the Appellate Officer could not have intended to burden the firm Bijjamal Melaram for payment of this sum of Rs. 50,000. This controversy, however, does not very much arise now before me, though aid had been sought from this in support of the plea urged by the petitioner that the Appellate Officer's entire approach was vitiated by this finding inasmuch as it led him to believe that the liability to pay to the Custodian lay not only with Panna Lal, but with the petitioner as well.

On 6th April, 1960, a letter of demand was addressed by the Competent Officer to both Bhagwan Dass, petitioner and Panna Lal, demanding a sum of Rs. 65,585 together with interest at 4½ per cent per annum from 31st December, 1953. On behalf of the petitioner, it has been contended that this demand is unenforceable, based as it is on the order, dated 31st December, 1959, which, in effect, extended the liability to pay on the petitioner, though the order, dated 28th February, 1958, had held only Panna Lal, to be liable to pay the amount. The suggestion is that on the review application of the petitioner the Appellate Officer could not declare the petitioner liable in spite of Panna Lal, alone having been held liable under order, dated

28th February, 1958. The petitioner further says that the authorities maintain that though the petitioner was not liable under the order, dated 28th February, 1958, he has been made so liable by order, dated 31st December, 1959, and this extension of liability is without jurisdiction. The demand of the amount by letter, dated 6th April, 1960, is sought to be quashed on the ground that the same is based on the order, dated 31st December, 1959, and not on the basis of the order, dated 28th February, 1958. I am not quite clear whether the demand is based, as suggested by the petitioner. The said letter recites, "I am to state that an order has been passed by the Appellate Officer Shri M. L. Vijn in review application No. 21 of 1958 and in appeal No. 1129/547, wherein your application for review is rejected under his order, dated 31st December, 1959. You are, therefore, directed to pay the value of the evacuee's share....." May be that the letter merely recites the fact about the dismissal of the review application and does not base the demand thereon.

Mr. S. N. Shankar, learned counsel for respondents Nos. 1 to 3, does not dispute that, while disposing of the review application, the Appellate Officer could not travel beyond the order, dated 28th February, 1958, and if the petitioner had not been saddled with any liability under the first order, he could not be so burdened for the first time by order, dated 31st December, 1959. He, however, maintains that the petitioner had been held liable to pay the amount to the Custodian by order, dated 28th February, 1958. It is necessary to advert to the provisions of the Evacuee Interest (Separation) Act to resolve the controversy, for the Act shows that there is no power in the authorities to decide as to who is liable personally to pay to the Custodian where the composite property has disappeared. It appears that the assets of the partnership have disappeared which, according to the petitioner, were misappropriated by Panna Lal. "Claim" is defined in section 2(b) to mean assertion by any person, not being an evacuee of any right, title and interest in any property. Section 5, which is the jurisdiction conferring section, reads—

"A Competent Officer shall have jurisdiction to decide any claim relating to any composite property situate within the limits of the local area of his jurisdiction and such cases or classes of cases as may, by general or special order, be transferred to him under section 9 by the Central Government or the Appellate Officer."

By this section, therefore, the Competent Officer has to adjudicate upon any assertion of right by a non-evacuee in the composite property. This section obviously does not confer any authority on the

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Competent Officer to decide which of the non-evacuees are personally liable to the Custodian or the extent of such liability. Section 6 deals with notice inviting claims. Section 8 prescribes the scope of the orders to be passed by the Competent Officer. Sub-sections (1) and (2) thereof are as under:—

“8. (1) On receipt of a statement of claim under section 7, the Competent Officer shall, subject to the provisions of sub-sections (2) and (3), hold an inquiry into the claim in accordance with the procedure laid down in section 17 and pass an order determining the interest of the evacuee and the claimant in the property in question and the order shall contain all or any of the following particulars, namely,—

“(a) the money value of the property;

(b) in any case where the evacuee and the claimant are co-sharers or partners, their respective shares in the property and the money value of such shares;

(c) in any case where the claim is made by a mortgagor, the amount due to the evacuee;

(d) in any case where the claim is made by mortgagee, the amount due under the claim in accordance with the provisions of section 9.

(2) Where the Custodian under the Administration of Evacuee Property Act, 1950 (XXXI of 1950), has determined that the property in question or any interest therein is evacuee property, the decision of the Custodian shall be binding on the Competent Officer.

Provided that nothing contained in this sub-section shall debar the Competent Officer from determining the mortgage debt in respect of such property or any interest therein or from separating the interest of the evacuee from that of the claimant under section 10.”

I do not think that a Competent Officer acting under this section can go beyond determining the interest of the evacuee and the claimant in the property in question. In case of partnership, he has

further to determine the money value of the shares. Section 10 is also somewhat limited in its scope and authorises measures to be taken for separating the interest of the evacuee from those of the claimants. I am unable to read section 10 to mean that the Competent Officer, while acting thereunder, can decide the controversy as to which of the claimants is personally liable when the composite property is not available. His jurisdiction extends to separating the interest of the evacuee only. He may, therefore, determine the extent of the evacuee's interest in the composite property and take recourse to section 10 also for giving effect to that decision; one of the modes prescribed for the purpose being to transfer the property under section 10(a) (iii) and distribute the sale proceeds between the Custodian and the claimant. I am unable to read the words "take all such measures as he may consider necessary for the purpose of separating the interest of the evacuee from those of the claimants....." in section 10 as ample enough to include the power to decide the dispute about personal liabilities of the non-evacuees. The only other provisions of the Act deserving attention for this case is section 12 and it is sufficient to say that that section provides no indication, contrary to the view taken by me in this behalf. What emerges from the various provisions of the Act is this, that the Competent Officer may take all steps to ascertain and separate the interest of the evacuee and claimant in the composite property and sell the same with a view to realise the amount, but where the property has disappeared, he cannot decide which of the non-evacuees are liable to pay and how much personally. After the interest of an evacuee has been separated and the sum due ascertained, the amount becomes a sum certain payable to the Custodian and whether the person from whom it is sought to be recovered is liable to pay the same or not will have to be decided by the Custodian under section 48 of the Administration of Evacuee Property Act, 1950. This being the position, the two orders, namely orders, dated 28th February, 1958, and 31st December, 1959, must be read in the context of the jurisdiction of the concerned authorities. It would naturally follow that by the order, dated 28th February, 1958, the Competent Officer could not have pronounced upon the personal liability of the non-evacuee. If he did, that may be an erroneous order, but I am hardly concerned with it directly. I say directly because though the validity of the order, dated 28th February, 1958 has not been challenged before me, yet I have to attend to the order in so far as it touches upon the validity of the order, dated 31st December, 1959. In the order, dated 31st December, 1959, the Appellate Officer has in clear terms indicated that both the claimants were



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liable for the payment of the amount. In case the Appellate Officer passing the order, dated 28th February, 1958, was competent to pronounce upon the personal liability of the non-evacuees, it must then be held that to find out whether or not there was any clerical or arithmetical mistake, the Appellate Officer passing the subsequent order, dated 31st December, 1959, was enjoined to go into the question and find out whether or not as a fact the order, dated 28th February, 1958, imposed a liability on the non-evacuees. In that event, there would be nothing wrong with the order, dated 31st December, 1959, for the Appellate Officer could not have disposed of the application for rectification of clerical and/or arithmetical mistake without deciding upon the scope of the order, dated 28th February, 1958. If, on the other hand, the Appellate Officer and/or the Competent Officer were not authorised by the statute to fasten such a liability, and that is the view that I have taken of the statute, then the order, dated 31st December, 1959, would suffer from a patent mistake in so far as it goes to fix a liability on the non-evacuees.

From the above discussion it would emerge that—

- (a) The Competent Officer and/or the Appellate Officer were not competent to decide whether or not, and if so, which of the non-evacuees were personally liable to pay the amount to the Custodian;
- (b) In these circumstances the Appellate Officer passing the order, dated 31st December, 1959, could not hold that the non-evacuees, or any of them, were personally liable to pay the said amount to the Custodian;
- (c) It would be for the Custodian acting under section 48 to decide the controversy as to whether both or one of the non-evacuee partners were liable to pay the amount; and
- (d) Threat to sell the composite property as contained in the demand notice, dated 6th April, 1960, is justified by the terms of the statute".

In the result, the order, dated 31st December, 1959 must be quashed. So far as the demand contained in the letter, dated 6th April, 1960, is concerned, it cannot be quashed because this controversy as to whether or not the petitioner is personally liable would

fall for determination by the Custodian of Evacuee Property under section 48 of the Administration of Evacuee Property Act. As a consequence of quashing of the order, dated 31st December, 1959, it may be said that the application of the petitioner for rectification of the mistake remains undisposed of and the Appellate Officer should be directed in exercise of my power under Article 227 of the Constitution to hear and decide that application. That is, however, unnecessary because the said application merely requires the Appellate Officer to decide a controversy, which, in my opinion, he is not competent to decide, with the result that such proceedings may be useless.

In the result, the petition succeeds to the extent that the order, dated 31st December, 1959, is quashed. The parties will, having regard to the circumstances of the case, bear their own costs.

B.R.T.

LETTERS PATENT APPEAL

*Before D. Falshaw, C. J. and H. R. Khanna, J.*

THE PUNJAB STATE AND OTHERS,—*Appellants.*

*versus*

SUKHDEV SARUP GUPTA,—*Respondents.*

Letters Patent Appeal No. 143 of 1965.

April 6, 1966.

*Punjab General Sales-tax Act (XLVI of 1948)—Schedule B—Entry 37—Medicinal and Toilet preparations containing alcohol subject to excise duty under Punjab Excise Act—Whether continue to be exempted after the coming into force of the Medicinal and Toilet Preparations (Excise duties) Act (XVI of 1955)—General Clauses Act—S. 8—Interpretation of—“Any former enactment”—Whether refers to central enactment only.*

*Held*, that Entry No. 37, of Schedule “B” of the Punjab General Sales-tax Act exempted “all goods on which duty is or may be levied under the Punjab Excise Act, 1914” from payment of sales-tax. As medicinal or toilet preparations containing alcohol were subject to excise duty under the Punjab Excise Act, the same were exempt from sales-tax. These preparations