

that the order passed by the Revenue Officer comes within the ambit of the proviso to clause (h) of section 2 of the Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, and as the appellants had abandoned their tenancy they cannot be deemed to be occupancy tenants within the meaning of the Act. This appeal fails and is dismissed. I, however, make no order as to costs.

Bohga Singh
alias Kishan
Singh
and another
v.
Harnarain Singh
and others
—
Shamsher
Bahadur, J.

B.R.T.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

HAZARA SINGH,—Appellant.

versus

THE CUSTODIAN OF EVACUEE PROPERTY, PEPSU,
PATIALA, AND OTHERS,—Respondents.

Letters Patent Appeal No. 7 of 1957.

Administration of Evacuee Property Act (XXXI of 1950)—Section 48—Amendment of, by Administration of Evacuee Property (Amendment) Act (LXXXXI of 1956)—Scope of—Whether creates exclusive jurisdiction in the Custodian—Amendment—Whether retrospective—Interpretation of statutes—Amendment of an Act—Whether retrospective—Rules to determine—Curative, Remedial and procedural statutes—Meaning and scope of—Amendments of such Acts—Whether retrospective.

1959
—
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Held, that Section 48 of the Administration of Evacuee Property Act, 1950, as amended by the Amendment Act of 1956, confers exclusive jurisdiction on the Custodian to decide whether a sum is or is not payable to Government or to the Custodian and prescribed the administrative procedure which should be followed by the Custodian in arriving at a correct conclusion. Jurisdiction of the civil Court is completely barred. *Prima facie* therefore, it is within the power

of the Custodian and Custodian alone to determine whether any amount is payable and if so what amounts is payable.

Held, that it is an old and familiar principle that a statute or an amendment thereof enacted by the legislature operates prospectively only and not retrospectively, particularly where the effect of giving it a retrospective operation would be to take away or impair the vested rights acquired under existing laws, or to create a new obligation, or to impose a new duty, or to attach a new disability in respect of transactions or considerations already past. A retrospective operation is, however, given to a statute or amendment when the intent that it should so operate clearly appears from the terms thereof, or when such intention appears by necessary implication from the nature and words of the enactment, or when the statute or amendment is curative or remedial in its nature, or when it relates to procedure in Court and does not contain language clearly showing a contrary intention.

Held, that curative statutes are enacted with the object of curing or correcting errors or irregularities or with the object of validating judicial or administrative proceedings or private deeds and contracts. They operate on conditions already existing or on past facts or acts and are therefore, necessarily retrospective in their character.

Held, that the remedial statutes are statutes which are enacted in order to improve and facilitate remedies already existing for the enforcement of rights and for the redress of wrongs or injuries as well as to correct defects, mistakes and omissions in a former law. They do not create new or take away vested rights but they give a party a remedy where he had none or a different one before. They operate in furtherance of the remedy or confirmation of rights already existing. The right to a particular remedy is not a vested right.

Held, that statutes relating to procedure ought to be construed prospectively only. Procedural law includes within its meaning whatever is embraced by the three technical terms "pleading", "evidence" and "practice". Statutes which change the rules of pleading, change the rule as to parties to actions, make, modify and repeal rules

of evidence, and grant or transfer jurisdiction of cases may be construed retrospectively.

Held, that a statute or amendment which furnishes a new remedy without disturbing vested rights or which prescribes a new procedure, applies not only to actions which may be commenced after its enactment but also to actions which have already accrued or which are already pending. Its retrospective operation is not obnoxious to the spirit and policy of the law.

Held, that in the year 1956 the Legislature declared in clear language that all questions in regard to amounts payable to Government in respect of evacuee property shall be determined by the Custodian and that his jurisdiction shall be exclusive. It created a special administrative procedure for the determination of these questions and conferred exclusive jurisdiction on the Custodian to enforce and protect the public rights set out in the body of the section. The amendment remedies the defects in the former law and has for its purpose the protection of public revenues. It relates to the remedy, to rules of procedure and to means employed to enforce a right. It does not create new or take away vested rights. It only operates in furtherance of the remedy or confirmation of rights already existing. It is clearly remedial in nature and applies retrospectively to proceedings relating to acts done previous to its enactment.

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Mehar Singh of the Pepsu High Court, dated 1st August, 1956, passed in Civil Miscellaneous No. 52 of 1955.

R. K. D. BHANDARI, for Appellant.

CHETAN DASS DEWAN, ASSISTANT ADVOCATE-GENERAL, for Respondents.

JUDGMENT

BHANDARI, C.J.—This appeal under clause 10 of Bhandari, C. J. the Letters Patent raises the question whether the learned Single Judge was justified in directing the

Hazara Singh Custodian of Evacuee Property to afford the petitioner a reasonable opportunity of being heard before issuing a warrant of recovery against him.

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Owing to the communal disturbances which broke out in the year 1947, a large number of Muslims belonging to the erstwhile State of Kapurthala migrated to Pakistan, leaving their property behind them. A brick-kiln, an oil engine, 115 tons of coal, 50 logs of wood, 200 tiles and a large number of bricks which had been left by one of these Muslims were taken into possession by the State authorities. On the 27th October, 1947, Hazara Singh petitioner who claimed to be the President of the Co-operative Society of Nadala, presented an application in which he stated that the brick-kiln, etc., were the property of a co-operative society of which he was Chairman and that these articles should be delivered to him. On the 13th December, 1947, the Chief Minister, directed that these articles be made over to the Co-operative Society, and on the 19th December, 1947, Hazara Singh executed a receipt in which he acknowledged having received a brick-kiln, an oil engine, etc., from the Chief Engineer of the Kapurthala State.

On the 22nd June, 1950, the Assistant Custodian issued a notice to Hazara Singh to show cause why the property which was handed over to him should not be declared to be evacuee property. The petitioner appeared before the Assistant Custodian and claimed the property on behalf of the Co-operative Society of Nadala, but he was unable to substantiate his allegations either in regard to the existence of the Co-operative Society or in regard to the articles in question being the property of the said Society. He failed to produce the books of account before the Assistant Custodian and later failed to appear before the said officer. On the 29th December, 1950, the Assistant Custodian

declared the property in question to be evacuee property and his order was affirmed by the Custodian and later by the Deputy Custodian-General. A warrant of attachment was then issued to the Tehsildar of Kapurthala requiring him to recover a sum of Rs. 39,570 on account of the price of articles which had been entrusted to Hazara Singh. On the 18th October, 1955, the later presented a petition under article 226 of the Constitution in which he alleged that the entire proceedings declaring the property to be avacuee property as also the proceedings by which the value of the property had been fixed at a sum of Rs. 39,570 were void and of no effect. The learned Single Judge before whom this petition came up for hearing, came to the conclusion that no opportunity was afforded to the petitioner to appear before the Assistant Custodian when the value of the property in dispute was being assessed by him. He accordingly allowed the petition, set aside the orders which had been passed against the petitioner and directed the Custodian to recover the value of the property from the petitioner after following the procedure prescribed by law. The petitioner is dissatisfied with this order and has come to this Court in appeal.

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Mr. R. K. D. Bhandari who appears for the petitioner contends that although it was within the competence of the Custodian to declare certain property to be evacuee property he had no jurisdiction to assess the value of the property or to recover the said value as arrears of land revenue under the provisions of section 48 of the Administration of Evacuee Property Act. A number of decisions were cited in support of this proposition such as *Gangadhar v. The State of Rajasthan and others* (1), *D. B. Godbole v. Kunwar Rajnath* (2),

(1) A.I.R. 1953 Raj. 71

(2) 58 B.L.R. 779

Hazara Singh and Haripada Dey v. *The State of West Bengal and another* (1). These authorities, however, expound the law as it was in force before section 48 was amended by the Administration of Evacuee Property (Amendment) Act, 1956. The amended section which came into force on the 28th December, 1956, is in the following terms :—

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- “48. (1) Any sum payable to the Government or to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue.
- (2) If any question arises whether a sum is payable to the Government or to the Custodian within the meaning of subsection (1), the Custodian shall, after making such inquiry as he may deem fit, and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question ; and the decision of the Custodian shall, subject to any appeal or revision under this Act, be final and shall not be called in question by any Court or other authority.
- (3) For the purposes of this section, a sum shall be deemed to be payable to the Custodian, notwithstanding that its recovery is barred by the Indian Limitation Act, 1908, or any other law for the time being in force relating to limitation of actions.”

This section confers exclusive jurisdiction on the Custodian to decide whether a sum is or is not payable to Government or to the Custodian and prescribes the administrative procedure which should be followed by the Custodian in arriving at a correct conclusion. Jurisdiction of the civil Courts is completely barred. *Prima facie*, therefore, it is within the power of the Custodian and Custodian alone to determine whether any amount is payable and if so what amount is payable. The question is whether this section can apply retrospectively to proceedings which were pending on the 26th December, 1956.

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It is an old and familiar principle that a statute or an amendment, thereof, enacted by the legislature operates prospectively only and not retrospectively, particularly where the effect of giving it a retrospective operation would be to take away or impair the vested rights acquired under existing laws, or to create a new obligation, or to impose a new duty, or to attach a new disability in respect of transactions or considerations already past. A retrospective operation is, however, given to a statute or amendment when the intent that it should so operate clearly appears from the terms thereof, or when such intention appears by necessary implication from the nature and words of the enactment, or when the statute or amendment is curative or remedial in its nature, or when it relates to procedure in Court and does not contain language clearly showing a contrary intention.

Curative statutes are enacted with the object of curing or correcting errors or irregularities or with the object of validating judicial or administrative proceedings or private deeds and contracts. They operate on conditions already existing or on past facts or acts and are, therefore, necessarily retrospective in their character.

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Remedial statutes which constitute an exception to the general rule against retrospective laws are statutes which are enacted in order to improve and facilitate remedies already existing for the enforcement of rights and for the redress of wrongs or injuries as well as to correct defects, mistakes and omissions in a former law. They do not create new or take away vested rights but they give a party a remedy where he had none or a different one before. They operate in furtherance of the remedy or confirmation of rights already existing. The right to a particular remedy is not a vested right.

Statutes relating to procedure form another exception to the general rule that statutes are to be construed prospectively only. Procedural law includes within its meaning whatever is embraced by the three technical terms "pleading", "evidence" and "practice". Thus statutes which change the rules of pleading, change the rule as to parties to actions, make, modify and repeal rules of evidence, and grant or transfer jurisdiction of cases may be construed retrospectively (Statutory Construction by Mc Caffrey section 71).

A statute or amendment which furnishes a new remedy without disturbing vested rights or which prescribes a new procedure, applies not only to actions which may be commenced after its enactment but also to actions which have already accrued or which are already pending. Its retrospective operation is not obnoxious to the spirit and policy of the law.

Section 48 as originally enacted had created certain doubts whether it was within the competence of the Custodian or of an ordinary civil Court to determine disputed questions in regard to amounts payable to Government in respect of evacuee property. The legislature removed these

doubts by amending this section in the year 1956 by declaring in clear language that all such questions shall be determined by the Custodian and that his jurisdiction shall be exclusive. It has created a special administrative procedure for the determination of the question—a procedure which provides for notice and hearing. In other words, the legislature has conferred exclusive jurisdiction on the Custodian to enforce and protect the public rights set out in the body of the section; the amendment remedies the defects in the former law and has for its purpose the protection of public revenues. It relates to the remedy, to rules of procedure and to means employed to enforce a right. It does not create new or take away vested rights. It only operates in furtherance of the remedy or confirmation of rights already existing. It is clearly remedial in nature and applies retrospectively to proceedings relating to acts done previous to its enactment.

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The dispute in the present case is still existing between the petitioner on the one hand and the Custodian on the other; and it seems to me, therefore that it is within the competence of the Custodian in exercise of the powers conferred upon him by sub-section (2) of section 48 to decide this dispute after making such enquiry as he may think fit and after giving the petitioner an opportunity of being heard. A similar view was taken by Mehar Singh, J., in Civil Writ No. 108 of 1958 decided on the 26th December, 1958.

For these reasons I would uphold the order of the learned Single Judge and dismiss the appeal preferred by the petitioner. There will be no order as to costs.

FALSHAW, J.—I agree.

B.R.T.