

CIVIL WRIT

Before Falshaw and Kapur, JJ.

1952
July 7th

FIRM PARITESHAN-SADASHIV, AMRITSAR, - Petitioner,

versus

THE ASSISTANT CUSTODIAN OF EVACUEE PROPERTY,
ETC.,—Respondents.

Writ Application (Civil) No. 41 of 1951.

Administration of Evacuee Property Act (XXXI of 1950)—Sections 4, 13 and 48—Debt due from non-evacuee to an evacuee—Debt barred by time—Power of Custodian to order its payment, in spite of the debtor's objection that it is time barred—Section 48—Due— meaning of.

Rs 5,280-0-6 were due by the petitioners to certain evacuees. On the 21st June 1951, a notice was issued to the petitioners to deposit the amount with the Custodian. The petitioners disputed that the amount was due and that the claim in any case was barred by time. On 10th November 1951, the objections of the petitioners were rejected and so also their appeal to the Additional Custodian. The petitioners moved the High Court under Article 226 of the Constitution of India.

Held, that the Custodian has not the power of deciding the question whether a debt is or is not barred by time or of ordering the recovery of such a debt. A debt which is

Set off at

barred by time is not a debt due within the meaning of section 48 of the Administration of Evacuee Property Act. Moreover, there is no provision in the Act which gives the Custodian the power to determine disputed questions, particularly of time barred debts nor does section 4 of the Act repeal or in any way make nugatory the provisions of the Limitation Act.

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In re *European Life Assurance Society* (1), In re *Stockton Malleable Iron Company* (2), *Nijamuddin v. Mahammadali and another* (3), *M. B. Namazi v. The Deputy Custodian of Evacuee Property, Madras and others* (4), *Firm Sahib Dayal-Bakshi Ram through Avasti Ram v. The Assistant Custodian of Evacuee Property, Amritsar* (5), *Ram Dutt-Ram Kissendas v. F. D. Sessoon and Company* (6), relied upon.

Petition under Article 226 of the Constitution of India, praying that—

- (a) that a Writ in the nature of *Certiorari* may be issued by this Honourable Court for quashing the proceedings taken out by respondent No. 1 against the petitioner Firm.
- (b) that a Writ in the nature of Prohibition be issued to the respondents restraining them from enforcing their orders under the provisions of section 48 of the Administration of Evacuee Property Act and from illegal realization of the debts alleged to be due to the evacuees from the petitioner Firm.
- (c) that a writ in the nature of *Mandamus* may be issued directing the respondents to proceed in accordance with law and get the matters in dispute decided by a competent Court ;
- (d) that such other directions may be made as this Honourable Court deems just and proper in the circumstances of the case ;
- (e) that necessary interim orders may be made and that the petitioner Firm may be awarded costs of this petition.

A. N. GROVER, for Petitioner.

I. D. DUA, for Respondent.

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- (1) L. R. 9 Equity 122
 - (2) (1875) 2 Ch. D. 101
 - (3) 4 M. H. C. R. 385 at p. 391
 - (4) (1951) 2 M. L. J. 1.
 - (5) C. W. No. 146 of 1951
 - (6) 56 I. A. 128

JUDGMENT

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KAPUR, J. This is a petition for the issue of an appropriate writ against the opposite party for quashing the order calling upon the petitioners to deposit a sum of Rs 5,280-0-6. This order was passed on the 15th October and 15th November 1951, by the Assistant Custodian of Evacuee Property, Amritsar.

Before the 21st June 1951, a *munib* of the Custodian Department went through the account books of the petitioners and found that a sum of Rs 5,280-0-6 was due by the petitioners to certain evacuees. On the 21st June 1951, a notice was issued to the petitioners to deposit the amount within a week. An application was then filed by the petitioners in the office of the Assistant Custodian, Amritsar, in which it was alleged that this sum of money was not due to any evacuees, that the amount had become barred by time and that the Custodian had no right to recover the same. It was alleged that one of the evacuees had stood surety with the petitioners for a sum of Rs 6,000. In August 1951, the petitioners were called upon to produce documentary proof but they requested for further time as they had sent away their books to some place outside Amritsar, due to panic in that town, but this request was not granted, and on the 15th October 1951, the Assistant Custodian, Amritsar, passed the order complained against.

By an order, dated the 10th November 1951, the petitioners were told that their objections had been considered and rejected and they were called upon to deposit the money within a week. The petitioners then took an appeal to the Additional Custodian, Jullundur. They also produced before him two letters purporting to be from Abdul Ghani, one of the evacuees, asking the petitioners to advance Rs 5,000 to Walishah Gulambhussain as loan on his security. The appeal was decided by an order, dated the 25th February 1952, and on the question of limitation the Additional Custodian relied on a judgment of the

Custodian-General in *Messrs Birbaldas-Tekchand v. The Authorised Deputy Custodian, Punjab*, and held against the petitioners. The above-mentioned amount is now being demanded from the petitioners. In their petition several objections have been raised by the petitioners as to the legality of the order.

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Most of the allegations are admitted but it is denied that the petitioners were not given a proper hearing. It is also pleaded that by a notification dated the 3rd March 1948, the Custodian assumed control of all evacuee property and as no objection was raised by the petitioners it could not now be contended that the debt in dispute was not evacuee property. It was further pleaded that according to sections 13 and 48 of the Evacuee Property Act, 1950, the amount was due and recoverable and that the Custodian was empowered under the Act to determine the amount and to recover the same as arrears of land revenue. Other pleas are not necessary for the purposes of decision of this case.

Mr Grover has taken us through the scheme of the Act. Section 2 (i) of the Administration of Evacuee Property Act, 1950, hereinafter termed the Act, defines property to mean "property of any kind" including any right or interest in such property.

Section 4 provides that the provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Section 7 deals with notification of evacuee property and prescribes the manner in which it has to be determined whether any property is or is not evacuee property. Section 8 is the vesting section and it provides that any property which is declared to be evacuee property shall be deemed to have vested in the Custodian, and section 8 (2) says that any property which had vested in the Custodian under any previous law shall be deemed to have vested in the Custodian under this section.

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Section 9 gives to the Custodian the power to take possession of evacuee property vested in him. But this section must relate to immovable property from the very wording which has been used because the Custodian is empowered to use force and also is required to give facilities to any woman not appearing in public to withdraw, etc. etc.

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Section 10 prescribes the powers and duties of the Custodian generally. Section 10 (2) (f) gives power to the Custodian to call upon any person to furnish returns, accounts or other information in relation to any evacuee property. Section 10 (2) (i) empowers the Custodian to take such action as may be necessary for the recovery of any debt due to the evacuee and section 10 (2) (j) gives the power to the Custodian to institute, defend or continue any legal proceedings or to "compromise any claims, debts or liabilities on behalf of the evacuee".

Section 13 upon which reliance is placed by the opposite side is as follows :—

"13. Payments to Custodian to be valid discharge —

- (1) Any amount due to any evacuee in respect of any property which has vested in the Custodian or in respect of any transaction entered into by the evacuee, shall be paid to the Custodian by the person liable to pay the same.
- (2) Any payment made otherwise than in accordance with subsection (1) shall not discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Custodian to enforce such obligation against any such person."

Section 45 of the Act gives the powers of the Custodian while holding an enquiry and confers upon

him the power of enforcing the attendance of any person and examining him on oath and compelling the discovery and production of any documents. Section 46 bars the jurisdiction of civil courts in regard to certain matters which include the adjudication upon the question whether property is or is not evacuee property and to question the legality of any action taken by the Custodian under the Act as also in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.

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Section 48 provides as follows :—

“ 48. *Recovery of arrears.* Any sum due to the State Government or to the Custodian under the provisions of this Act may be recovered as if it were an arrear of land revenue.”

Mr Grover has further submitted that the debt in dispute was not notified to be evacuee property as required by section 7 nor did it vest in the Custodian as the provisions of section 7 were not complied with, but it is not necessary to go into the matter. The real question which arises is whether the Custodian has the power to determine that debt is due and to order its payment even though objection is taken that the debt is barred by time. For the Custodian reliance was placed on sections 13 and 48 which I have quoted *in extenso*.

In my opinion section 13 does not provide for anything more than this that the sums which are due to any evacuee in respect of any transaction entered into by the evacuee have to be paid to the Custodian only and to no one else, and even if the payment is made to the evacuee himself, it will not amount to payment of the debt. It means nothing more than that.

Section 48 no doubt provides that if any sum is due to the State Government or to the Custodian under the provisions of this Act, it may be recovered

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as arrears of land revenue. Mr Grover has tried to draw a distinction between sums due to the Custodian and sums due to the evacuee. In my opinion this distinction does not really exist. Power of the Custodian to recover only arises after he has notified the property to be evacuee property and it has vested in him under section 8. By operation of section 13 any debt which is due to an evacuee cannot be paid to him but must be paid only to the Custodian in whom it vests under section 8, and therefore when it is said that any sum is due to the Custodian, it must in my opinion comprise any sum which was originally due to the evacuee. There can be sums which become due to the Custodian and were never due to the evacuee, e.g., rents payable to Custodian for properties which have become vested in him.

In order to determine whether the amount which is being claimed by the Custodian and which is sought to be recovered as the amount "due" within the meaning of section 48 we have to see what that word exactly means. Mr Grover submits that "due" means "legally due."

The dictionary meaning of this word as given in "Webster" is "whatever custom, law or morality requires to be done or paid."

In 28 Corpus Juris Secundum at p. 572, the word "due" has been defined as :—

"That which belongs or may be claimed as a right * * * *, that which custom, statute or law requires to be paid * * * *, that which law or justice requires to be paid or done."

In its narrower sense it has been defined as "a debt immediately payable * * * *." As an adjective it has been defined as meaning "justly claimed * * * * or owing and demandable or presently payable when legally enforceable."

In re European Life Assurance Society (1),
James, V.C., said—

“A debt is due when it is payable.”

In re Stockton Malleable Iron Company (2),
the Articles of a Company provided that the Company
should have a first and paramount lien upon all shares
of any member for any money due to the Company
from him * * * * *. The Company were the
holders of a bill of exchange which had been accepted
by the shareholders but which had not matured. It
was held by Jessel M. R. that the word “due” meant
“due and payable”. Construing the words “debts
due” Sir George Mellish L.J. in *Kemp v. Fastnedge*
(3), observed as follows at page 387—

“Now, the words ‘debts due to him’ are
certainly words which are capable of a
wide or a narrow construction. I think
that *prima facie*, and if there be nothing in
the context to give them a different con-
struction, they would include all sums
certain which any person is legally liable
to pay, whether such sums had become
actually payable or not. On the other
hand, there can be no doubt that the word
“due” is constantly used in the sense of
“payable” and if it is used in that sense,
then no debts which had not actually
become payable when the act of bank-
ruptcy was committed would be included.
Lastly, the expression “debts due” is
sometimes used in bankruptcy proceedings
to include all demands which can be prov-
ed against a bankrupt’s estate, although
some of them may not be strictly debts at
all.”

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(3) 1873 Ch. A 363.

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In *Nizamudin v. Mahammadali and another* (1), it was observed by a Division Bench of the Madras High Court—

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“In speaking of a debt, the word “due” is not unfrequently used in the sense of ‘Payable’, but its proper signification does not require that it should be understood to mean more than that the debt is owing—that there is an existing obligation to pay it, and we think that this is the sense in which it is used in the section.”

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In Wharton's Law Lexicon “due” is defined as anything owing, * * * * * that which law or justice requires to be paid or done.

Reliance was placed by Mr Grover on *M. B. Namazi v. The Deputy Custodian of Evacuee Property, Madras and others* (2), but that case is not of very great assistance to us in deciding the matter which is now in controversy.

In Firm Sahib Dayal Bakshi Ram, through *Avasti Ram v. The Assistant Custodian of Evacuees' Property, Amritsar* (3), a Bench of this Court has held that the Act does not empower the Custodian to proceed against a debtor under section 48 of the Act where objection taken is that the debt is barred by time. The learned Chief Justice put this in the following words :—

“There is nothing in this, however, which requires either that the Custodian has jurisdiction to determine a disputed question whether a debt is time-barred or not, or that, as has been urged, the Custodian can recover a debt admittedly time-barred and is an authority entirely outside the law of limitation. Clauses (i) and (j) of section 10 (2) of the Act show sufficiently

(1) 4 M. H. C. R. 385 at p. 391

(2) (1951) 2 M. L. J. 1

(3) Civil Writ No. 146 of 1951

that the scheme of the Act is so that the Custodian should have powers above all laws, and section 4 of the Act in no way requires such a conclusion. Section 48 no doubt gives a summary remedy for recovery of sums due to the State Government or to the Custodian but I have no hesitation in accepting that the powers given by this section must be restricted to sums otherwise legally recoverable."

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And Harnam Singh, J., who gave the leading judgment had held the same. With the observations of my Lord I most respectfully agree.

As far as I see there is no provision in the Act which gives to the Custodian the power to determine disputed questions, particularly of time-barred debts. Nor does section 4 of the Act repeal or in any way make nugatory the provisions of the Limitation Act.

Mr Grover refers to certain cases under the old Arbitration Act when in spite of the fact that there was no provision in regard to limitation in the Arbitration Act, their Lordships of the Privy Council applied the statutes of limitation to arbitrations. One such case is *Ramdutt-Ramkissendas v. F. D. Sessoon and Company* (1), where Lord Salvesen relied upon an English case, *In re Astley and Tyldesley Coal and Salt Co.* (2).

For the opposite party reference was made to *Birbaldas-Tekchand v. The Authorised Deputy Custodian, Punjab*, which was decided by the Custodian-General, but that case in my opinion is no authority for the proposition which the opposite party is contending for, because there the matter was decided on concession made by counsel. And in any case, in view of what I have said above I am unable to agree

(1) 56 I. A. 128

(2) 63 L. J. (Q. B.) 252

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with the proposition that the Custodian has the power of deciding the question whether a debt is or is not barred by time or of ordering the recovery of such a debt.

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I am therefore of the opinion that this petition must succeed and I would therefore allow the petition and quash the order demanding the debt from the petitioners and make the rule absolute. The petitioners will have their costs in this Court. Counsel fee Rs. 100.

FALSHAW, J. I agree.