

same and similarly the rules of eviction regarding the commercial premises will govern the commercial portion of the same as laid down in the Act.

Moti Lal
and another.
v.
Nank Chand
and others

Mahajan,
J.

For the reasons given above, I see no ground to interfere in revision. The order passed by the District Judge is perfectly in order.

This petition fails and is dismissed with costs. September 9, 1963.

K.S.K.

CIVIL MISCELLANEOUS

Before Gurdev Singh, J.

THE AMRITSAR IMPROVEMENT TRUST,—*Petitioner*

versus

THE CUSTODIAN EVACUEE PROPERTIES AND OTHERS,—
Respondents.

Civil Writ No. 1780 of 1962.

*Evacuee Interest (Separation) Act (LXVI of 1950)—
S. 17—Competent officer—Whether entitled to issue injunction restraining a person, not a party to the proceedings from interfering with the possession of composite property.*

1963
Sept., 9th.

Held, that section 17 of the Evacuee Interest (Separation) Act, 1950, makes a clear distinction between the powers of a competent officer and the procedure to be adopted by him in discharge of his functions. So far as the powers are concerned, they are contained in sub-section (1) while sub-section (3) refers to the procedure which he is to follow. Sub-section (1) does not authorize the competent officer to issue injunction and unless that power is conferred on the competent officer, the provisions of order XXXIX of the Code of Civil Procedure will not come into play to govern the proceedings and regulate the manner in which the power

to issue an injunction will be exercised. The competent officer has also no power to issue injunction under the provisions of the Specific Relief Act or section 151 of the Code of Civil Procedure as he is not a Court.

Petition under Articles 226/227 of the Constitution of India praying that a writ of certiorari or any other appropriate writ, order or direction be issued quashing the order of the Competent Officer, Amritsar, dated 14th February, 1962.

K. S. CHAWLA, ADVOCATE, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, H. S. WASU,
AND S. S. DHINGRA, ADVOCATES, for the Respondents.

ORDER

Gurdev Singh, J. GURDEV SINGH, J.—The decision of this writ petition by which the validity of the order of the Competent Officer, Amritsar, dated 14th February 1962, and the order of the appellate Officer, dated 5th July 1962, affirming the above order is assailed, turns upon the determination of the question:—

“Whether the Competent Officer appointed under the Evacuee Interest (Separation) Act LXVI of 1950 has the jurisdiction to issue an injunction restraining a person, who is not even a party to the proceedings before him, from interfering with the possession of the composite property, as defined in section 2 of the above Act?”

The facts giving rise to these proceedings, in brief, are as follows :—

By East Punjab Government notification No. 3412-B & C-48/19962, dated 10th April, 1948, the walled city of Amritsar was declared as a damaged area. On coming

into force of the Punjab Development of Damaged Areas Act X of 1951, the petitioner (The Amritsar Improvement Trust) framed a scheme for development under section 3 of the said Act, which was duly published under section 4 of the Act in the official Gazette on 1st April, 1956, and also in some of the newspapers. In the absence of any objections that scheme was duly sanctioned by the State Government under section 4 of the Act,—*vide* its notification No. 7071-LB-57/81883, dated 11th September 1957, and the damaged sites bearing municipal Nos. 336 to 342/1 situate within the areas affected by the scheme were acquired by the Improvement Trust along with other properties (A copy of the relevant notification forms annexure D to the petition.)

The Amritsar
Improvement
Trust
v.
The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

Notices under section 9 of the Punjab Development of Damaged Areas Act X of 1951 (hereinafter referred to as the Act) were issued inviting objections and claims to compensation. Thereupon, Sham Singh, Teja Singh, Jagtar Singh and Sudarshan Singh (Respondents 3 to 6) put in claims for compensation before the Land Acquisition Collector in respect of the properties referred to above, and the Collector by his award, dated 17th February 1961, awarded them Rs 18,440 as compensation for the properties bearing Municipal Nos. 336 to 342/1. On 14th March, 1961, the Improvement Trust deposited this amount with the Land Acquisition Collector under section 15 of the Act, and out of this Rs 16,340 were paid to the said respondents 3 to 6.

Later, on 19th April 1961, the Custodian, Evacuee Property, informed the Competent Officer,

The Amritsar
Improvement
Trust

v.

The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

Amritsar, that Nos. 336/1, 337/1, 339/1 and 342/1 were listed for separation for realization of Rs. 15,000 and the Respondents 7 to 10 (Manohar Lal and others) who claimed to be occupiers of these four properties, applied to the Competent Officer for temporary injunction restraining the petitioner (Improvement Trust) from taking possession of these properties. On 15th September 1961, the Competent Officer issued interim injunction (copy annexure E to the petition) restraining the Improvement Trust from taking possession of the property in dispute. Though originally this injunction operated till 10th October 1961, it was subsequently extended. On 24th October, 1961, the Improvement Trust put in objections before the Competent Officer contending *inter alia* that he had no jurisdiction or authority to issue the injunction especially at the instance of respondents 3 to 6 who were mere occupiers of the premises in question and had no *locus standi* to move the Competent Officer. The Competent Officer by his order, dated 14th February 1962 (copy of which forms annexure G to the petition), overruled the objections and confirmed the interim injunction. Against this order the Improvement Trust preferred an appeal, which was rejected by the Appellate Officer, Shri Parshotam Sarup, by his order, dated 5th July, 1962 (copy of which is annexure H). Aggrieved by this the Amritsar Improvement Trust has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution for quashing the order of injunction issued by the Competent Officer on 14th February, 1962, and the Appellate Officer on 5th July, 1962.

Before examining the powers of the Competent Officer to issue injunctions, it is necessary to dispose of the preliminary objection raised on behalf of Respondents 7 to 10. It is contended by their learned

counsel, Shri H. S. Wasu, that the petition is liable to dismissal as the proper orders had not been challenged, and the Appellate Officer had not been impleaded as a party to the proceedings. On reference to the petition, I, however, find that the petitioner has assailed not only the order of the Competent Officer granting the injunction but also that of the Appellate Officer, dated 5th July 1962. It is true that the Appellate Officer has not been impleaded as a party, but the Competent Officer is a Respondent in the case. It is his order granting injunction (which was confirmed by the Appellate Officer) that has been assailed in these proceedings, as being without jurisdiction. In these circumstances, the failure of the petitioner to implead the Appellate Officer who upheld the order of the Competent Officer would not justify the rejection of petition without reference to the merits of the case.

This brings us to the consideration of the question whether the Competent Officer had the jurisdiction to issue an injunction restraining the petitioner Improvement Trust from taking possession of the property that had been acquired under section 6 of the Punjab Development of Damaged Areas Act X of 1951. As would be evident from the statement of facts given above, which is not disputed, the properties in dispute have not only been acquired by the petitioner through the Collector in accordance with the provisions of section 6 of the Punjab Development of Damaged Areas Act, 1951, but the compensation with regard to the same has also been received by the owners without any objection from any of the respondents, including respondents 3 to 6 who claimed to have put up stalls thereon. Section 30 of the Punjab Development of Damaged Areas Act, X of 1951 provides that no suit, prosecution, or other legal proceedings shall lie against the State Government or an

The Amritsar
Improvement
Trust

v.

The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

The Amritsar
Improvement
Trust

v.

The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

Improvement Trust or any person for anything done or purporting to have been done in pursuance of this Act or in the framing, supervision or execution of any scheme thereunder. It is claimed by the Respondents that the properties in respect of which the injunction order was issued by the Competent Officer were "composite property" as defined in clause (1)(d) of section 2 of the Evacuee Interest (Separation) Act, LXVI of 1950. Assuming that it was so, the question that remains to be examined is "what are the powers of the Competent Officer appointed under the Act in respect of this property". Section 4 of this Act provides for the appointment of a Competent Officer who has to perform the functions as assigned to him under the Act. The jurisdiction which vests in a Competent Officer is specified in section 5 of the Act, which runs as follows :—

"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 19 by the Central Government or the appellate Officer."

On perusal of sections 6 to 10 it will be apparent that the functions of a Competent Officer are to determine the interest of various persons in an evacuee property and to separate the evacuee interest after inviting claims from persons claiming any interest in the property such as cosharer, partner, mortgagee, mortgagor, etc.

Section 10 of the Act refers to the measures to which the Competent Officer can resort for purpose of separation of the interests of evacuees from those of

the claims in composite property. He can direct the Custodian to pay the claimant or transfer the property to the claimant or partition the same or sell it and distribute the sale-proceeds between the Custodian and the claimant in accordance with their shares. There is nothing in the Act which empowers a Competent Officer to interfere with the possession of the person in occupation of the composite property or to authorize him to issue injunctions. On behalf of respondents 3 to 6 (who are alone contesting the petition), reliance is placed upon section 17 of the Evacuee Interest (Separation) Act, 1951, in defence of the impugned orders. This provision of law runs as follows:—

The Amritsar
Improvement
Trust
v.
The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

“17. *Powers and procedure of competent officers and appellate officers.*—(1) A competent officer or an appellate officer shall, for the purpose of holding any inquiry or hearing any appeal under this Act, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) issuing commissions for the examination of witnesses;
- (d) any other matter which may be prescribed;

and any proceeding before the competent officer or the appellate officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the

The Amritsar
Improvement
Trust
v.
The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

competent officer or the appellate officer shall be deemed to be a civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

- (2) Any appellate officer shall, subject to the provisions of this Act, have such further powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), when hearing an appeal.
- (3) Subject to any rules made in this behalf, the competent officer and appellate officer shall follow the same procedure as a civil Court does in regard to civil suits including recording of evidence *and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) shall, as far as may be, apply to such proceedings.*"

It is apparent that Sub-section (1), which specifies the powers that the Competent Officer can exercise in discharging his functions under the Act, does not authorize him to issue injunctions. On behalf of the contesting respondents reliance is, however, placed on sub-section (3) of this section. Emphasizing the words "and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) shall, as far as may be, apply to such proceedings," it is argued that this clearly implies that all the provisions of the Code of Civil Procedure are applicable to the proceedings before a Competent Officer, and he can pass any order which a Civil Court is competent to make under the provisions of the Code of Civil Procedure, including the issue of injunctions under Order XXXIX of the Civil Procedure Code. This argument is specious and not at all tenable. Section 17 of the Act, on which reliance is placed makes a clear distinction between

the powers of a competent officer and the procedure to be adopted by him in discharge of his functions. So far as the powers are concerned, they are contained in sub-section (1), while sub-section (3) refers to the procedure which he is to follow. It is significant that whereas in sub-section (3) the Parliament had provided that the Competent Officer shall adopt the same procedure as a Civil Court does in regard to civil suits, including the recording of evidence, and the provisions of the Civil Procedure Code would, as far as may be, apply to such proceedings, in dealing with his powers under sub-section (1) the legislature in its wisdom specifically stated that the powers vesting in the Civil Court under the Code of Civil Procedure when trying a suit shall be exercised by the Competent Officer only in four cases stated therein, namely, the summoning and enforcing the attendance and examination of any person, discovery and production of documents, issuing of commissions for examination of witnesses and other matters which may be prescribed. It is admitted that under clause (d) of sub-section (1) of section 17 which relates to "other matters which may be prescribed," the power to issue injunction has not been conferred on the Competent Officer.

The contention that since the Code of Civil Procedure as a whole has been made applicable to the proceedings before the Competent Officer by virtue of sub-section (3) of section 17, the provisions of Order XXXIX of the Civil Procedure Code would enable the Competent Officer to issue injunctions must be rejected on the short ground that if such was the intention of the legislature, there could have been no necessity of introducing sub-section (1) of section 17 or making a specific mention of the powers to summon and examine witnesses, etc. The distinction between powers and procedure is real and the argument

The Amritsar
Improvement
Trust

v.

The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

The Amritsar
Improvement
Trust

v.

The Custodian
Evacuee
Properties
and others

Gurdev Singh,

J.

raised on behalf of the contesting respondents ignores it. Order XXXIX of the Civil Procedure Code will come into play to govern the proceedings and regulate the manner in which the power to issue an injunction will be exercised, provided the Competent Officer has the power to issue an injunction. This provision of law does not invest the Competent Officer with the power to issue injunctions, which is not one of the powers conferred on him under sub-section (1) of section 17. If the interpretation, which is sought to be put by the respondents' counsel on sub-section (3) of section 17, is accepted, it means that a Competent Officer would have the authority to make all sorts of orders which a Civil Court can make under the various provisions of the Code of Civil Procedure, including the power to appoint a receiver, to pass a decree for payment of money, for possession, for redemption of mortgaged property, and even for the execution of its various orders. This certainly is not what the legislature intended and even the respondents' counsel was constrained to admit that the Competent Officer would not be entitled to exercise these powers.

In dealing with this matter it must not be forgotten that the Evacuee Interest (Separation) Act, under which the Competent Officer has come into being, is a special Act by which the jurisdiction of the Civil Court to deal with the property, which is declared as composite property, in respect of certain matters has been curtailed. The Act has to be construed strictly and unless there is clear indication of the fact in the Act itself that the Competent Officer has the jurisdiction to pass the impugned orders, the same cannot be inferred.

It was then argued that since the Code of Civil Procedure has been made applicable to the proceedings before the Competent Officer by virtue of sub-section (3) of section 17 a Competent Officer was a

Civil Court, and as such apart from the provisions of Order XXXIX it possessed inherent powers under section 151 of the Civil Procedure Code to issue the necessary injunctions to preserve the composite property with which it has to deal. Reliance in this connection is placed on a decision of the Additional Judicial Commissioner of Sind, reported as *E. D. Sassoan and Company v. Mangalchand and others* (1), where it was held that the power to grant injunctions is inherent in the Court and is certainly recognized and declared independently of the Civil Procedure Code by section 52 of the Specific Relief Act. This authority, however, does not advance the respondents' case as the observations made by the learned Additional Judicial Commissioner relate to the powers of the Court which is admittedly competent to grant relief under the Specific Relief Act. In the case before us admittedly the Competent officer has no jurisdiction to grant relief under the Specific Relief Act, or any other Act excepting the Evacuee Interest (Separation) Act, 1951, under which he is appointed. That the Competent Officer does not have the same jurisdiction as the Civil Court cannot be disputed. Learned Counsel for the respondents conceded that there was no authority in which it may have been held that the Competent Officer was a Civil Court.

The Amritsar
Improvement
Trust

v.

The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

Section 45 of the Administration of Evacuee Property Act (XXXIX of 1950), which defines the powers of the Custodian while holding an enquiry under that Act, is almost in identical words as sub-section (1) of section 17 of the Evacuee Interest (Separation) Act, 1951, except for the fact that the power to examine witnesses on commission, which is contained in clause (c) of sub-section (1) of section 17 of the

(1) 4 I.C. 609.

The Amritsar
Improvement
Trust
v.
The Custodian
Evacuee
Properties
and others
—
Gurdev Singh,
J.

Evacuee Interest (Separation) Act, 1951, is not specifically mentioned therein. It was contended before the Supreme Court in *Ebrahim Aboobakar and another v. Tek Chand Dolwani* (2), that in view of section 45 of the Administration of Evacuee Property Act and section 141 of the Civil Procedure Code, the Custodian enjoyed all the powers of a Civil Court, including the power to order substitution of the legal representatives of a deceased evacuee. Rejecting this contention, Ghulam Hasan J., who delivered the judgment of the Court, observed:—

“Section 141, Civil Procedure Code, which makes the procedure of the Court in regard to suits applicable in all proceedings in any Court of civil jurisdiction does not apply, as the Custodian is not a Court, though the proceedings held by him are of a *quasi*-judicial nature. Section 45 of the Act applies to the provisions of the Code only in respect of enforcing the attendance of any person and examining him on oath and compelling the discovery and production of documents.”

These observations are fully applicable to the case before us. It is true that section 45 of the Administration of Evacuee Property Act does not contain any provision similar to that which is found in sub-section (3) of section 17 of the Evacuee Interest (Separation) Act, 1951, yet that will not make any difference as sub-section (3) of section 17 of the Evacuee Interest (Separation) Act relates not to the powers of the Competent Officer but only to the procedure that he has to follow, and no rule investing him with the powers to issue injunctions has been framed under that provision, assuming that such a rule

(2) A.I.R. 1953 S.C. 298.

can be framed. I accordingly, find that the prohibitory order issued by the Competent Officer respondent No. 2 is without jurisdiction and quash the same. The petitioner shall have the costs of this petition, which are assessed at Rs 200 from respondents 7 to 10.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover, J.

SHARBATI DEVI,—Appellant.

versus

PT. HIRA LAL AND ANOTHER,—Respondents.

Regular Second Appeal No. 1611 of 1959

Hindu Succession Act (XXX of 1956)—S. 41—Scope and applicability of—Widow holding property in lieu of maintenance before the passing of the consent decree under which she was allowed to retain possession of that property during her life-time without any right of alienation—Whether becomes full owner thereof after the coming into force of the Act.

Held, that the language of section 14 of the Hindu Succession Act, 1956, is quite clear and leaves no room for doubt that if any property is possessed by a female Hindu which will include immovable property acquired in lieu of maintenance, then she would become the full owner thereof by virtue of sub-section (1). Sub-section (2) in that event cannot come into operation. It will apply only if for the first time a female Hindu acquires it in any of the ways mentioned in that sub-section, i.e., by a gift or under a will * * or under a decree * * *. It will, therefore, depend on the facts of each case as to whether any property had already been acquired under sub-section (1). If the answer be in the affirmative, then sub-section (2) cannot apply. If it is in the negative, sub-section (2) will become applicable provided the property is acquired in any of the several ways mentioned therein.

The Amritsar
Improvement
Trust

v.

The Custodian
Evacuee
Properties
and others

Gurdev Singh,
J.

1963

Sept., 16th.