

however, be necessary to submit a fresh charge-sheet, and the proceedings cannot certainly continue on the present one. I am not expressing any opinion about the other objection raised, namely the validity of the sanction, which is a matter still to be investigated by the learned Special Judge. The revision petition of the State is accordingly accepted to the above-limited extent.

The State
v.
Madan Lall
———
Falshaw, J.

CIVIL WRIT

Before Khosla, J.

S. HARNAM SINGH,—Petitioner

versus

THE CUSTODIAN-GENERAL, EVACUEE PROPERTY,
GOVERNMENT OF INDIA, AND OTHERS,—Respondents.

Civil Writ No. 296 of 1952

Administration of Evacuee Property Act (XXXI of 1950), sections 10 and 48—Code of Civil Procedure (Act V of 1908), Section 9—Constitution of India, Article 226—Liability to pay lease money disputed—Custodian whether has power under the Administration of Evacuee Property Act to determine the amount of the lease money and liability of the lessee to pay the same—Section 9 of Code of Civil Procedure whether modified by the Administration of Evacuee Property Act—Filing of an appeal or revision under the Evacuee Property Act whether debars the High Court from giving relief under Article 226 of the Constitution.

1953
August 21st.

Held, that the Administration of Evacuee Property Act merely provides a machinery whereby the evacuee property can be administered and any dues which are not disputed or which have been determined by a competent Tribunal can be recovered. There is nothing in sections 10 and 48 of the Administration of Evacuee Property Act which modifies section 9 of the Code of Civil Procedure, or bars a civil suit or confers powers upon Custodian to determine liabilities. The determination of liability is not part of the process of administering or managing evacuee property, and the only way in which it can be determined is by a civil suit and thus no writ of demand could be made by the Custodian on the petitioner.

Held also, that the filing of an appeal and a revision petition, however, does not debar him from seeking the assistance of this Court in a case where an authority has

acted wholly without jurisdiction. He has never assumed contradictory positions and his case has throughout been that nothing was due from him.

Petition under Article 226 of Indian Constitution, praying that a writ of certiorari may be issued quashing (i) the writ of demand for the payment of Rs. 7,221-8-0 issued by Assistant Collector, 1st Grade, Ambala District, dated the 20th March 1950, (ii) the order of Shri S. D. Midha, Additional Custodian, Evacuee Property, dated the 31st May 1951, including the report of Provincial Assistant Custodian, dated the 16th May 1951 on which the said order is based, (iii) the order of Custodian-General Evacuee Property, dated the 26th June 1952. Further a writ of prohibition may be issued restraining the above-noted respondents from recovering any amount from the petitioner on account of rent or damages for use and occupation for the Flour Mill in question. Any other relief may be granted which may be just and convenient in the circumstances of the case. Pending the decision of this case an interim writ of prohibition may be issued, staying all proceedings by the respondents in respect of recovery of the above-noted demand for rent or damages for use and occupation.

A. N. GROVER and H. S. GUJRAL, for Petitioner.

S. M. SIKRI, Advocate-General, and A. M. SURI, for Respondent.

ORDER

Khosla, J.

KHOSLA, J. This is a petition under Article 226 of the Constitution praying for an order quashing a writ of demand issued by the Assistant Collector, Ambala, at the instance of the Custodian under section 48 of the Administration of Evacuee Property Act.

The petitioner's contention is that no amount is due from him to the Custodian's Department and that the Custodian acted without jurisdiction in holding him liable for the payment of the amount stated in the writ of demand.

The facts briefly are that tenders for the annual lease of an evacuee flour mill were invited by the Custodian's Department in December, 1947. The petitioner made an offer of Rs. 7,300. This offer being the highest was accepted and on the 23rd January 1948, the mill was handed over to the petitioner. Subsequently the tender was cancelled and the mill was sealed. There is no dispute with regard to the period for which the petitioner remained in possession of the mill and the period

for which he worked it. The contention of the petitioner is that no lease deed was executed and no lease in fact came into existence. The mill was sealed on the 16th July 1949, and after that date the petitioner had no access to it. On the 20th March 1950 a writ of demand was issued at the instance of the Custodian's Department calling upon the petitioner to pay the sum of Rs. 7,221-8-0. The petitioner resisted this demand and appealed to the Custodian's Department. The appeal was allowed in part but the ultimate result was that the writ remained in force and the petitioner was held liable for the sum of Rs. 10,800.

Sardar Har-
nam Singh
v.
The Custodian
General Eva-
cuee Property,
Government of
India and
others.
—
Khosla, J.

The petitioner's contention is that the Custodian is not competent to hold him liable for the payment of any money. The Custodian has not been given any powers to determine the extent of liability which is denied in part or in whole. The Administration of Evacuee Property Act, merely provides a machinery whereby the evacuee property can be administered and any dues which are not disputed or which have been determined by a competent tribunal can be recovered. In the present case the petitioner has throughout denied his liability to pay anything on account of lease or on account of use of the mill. The Custodian without any jurisdiction held him liable for the payment of a certain sum of money and proceeded to recover it.

I have no doubt whatsoever that there is nothing in the Evacuee Property Act, which modified section 9 of the Civil Procedure Code. In the present case there is a dispute between the Custodian's Department and the petitioner with regard to the liability of the petitioner to pay a sum of money. The liability is denied by the petitioner and the only way in which it can be determined is by a civil suit. Civil suits are not barred by the Administration of Evacuee Property Act, and section 10 or section 48 to which a reference has been made by the learned Advocate-General do not confer any powers upon the Custodian to determine liabilities. The determination of a liability which is denied is not a part of the process of administering or managing evacuee property. The learned Advocate-General drew my attention to

Sardar Har- *Megh Raj and another v. Allah Rakha and others*
 nam Singh (1) in which their Lordships of the Privy
 v. Council held that an assessment under the
 The Custodian Income-tax Act meant assessment made by the
 General Eva- use of the machinery provided by the Act. But the
 cuee Property, Income-tax Act empowers an Income-tax Officer
 Government of to assess the income of an assessee and he is charg-
 India and ed with the duty of doing so. The Administration
 others. of Evacuee Property Act does not empower the
 Custodian to determine what amounts are due to
 Khosla, J. him from tenants or occupiers of evacuee property.
 It only empowers him to recover these amounts in
 a certain manner if they are proved to have been
 due to him. The Custodian must prove that a debt
 is due to him before he can proceed to recover it.
 A reference has been made to two Division Bench
 decisions of this Court. *F. Sahib Dayal Bakshi
 Ram v. The Assistant Custodian of Evacuee's Pro-
 perty, Amritsar and another* (2) and *Firm Parite-
 shah Sadashiv, Amritsar v. The Assistant Cus-
 todian of Evacuee Property and another* (3). It is
 clear that the Custodian acted wholly without
 jurisdiction in determining the amount due from
 the petitioner.

The learned Advocate-General next argued that the petitioner had accepted the machinery provided by the Act for redressing his grievances. Instead of coming to this Court in the original instance he had chosen to file an appeal and a revision petition. The filing of an appeal and a revision petition, however, does not debar him from seeking the assistance of this Court in a case where an authority has acted wholly without jurisdiction. He has never assumed contradictory positions and his case has throughout been that nothing was due from him.

For the reasons given above I allow this petition and quash the writ of demand issued by the Assistant Collector, Ambala, calling upon the petitioners to pay Rs. 7,221-8-0 in respect of the flour mill. The petitioner will also recover costs of this petition.

(1) A.I.R. 1947 P.C. 72

(2) 1952 P.L.R. 318

(3) 1952 P.L.R. 468