

CIVIL MISCELLANEOUS

*Before S. K. Kapur, J.**NETRAM AND OTHERS,—Petitioners.**versus*THE CUSTODIAN-GENERAL OF EVACUEE PROPERTY,—
Respondent.

Civil Writ No. 208-D of 1959.

*Administration of Evacuee Property Act (XXXI of 1950)—
S. 40—Whether retrospective—"Transfer"—Meaning of—Sale-deed
not registered—Whether amounts to transfer of which confirmation
can be sought—Interpretation of Statutes—Other sections of the Act—
whether can be looked into for construing particular provision of
the Act.*

1964

November, 18th

Held, that the language of section 40 of the Administration of Evacuee Property Act, 1950, clearly shows that it has retrospective operation and applies to all transfers made after 14th August, 1947, whether or not there was any evacuee legislation in force on the date of transfer.

Execution

Held, that the word "transfer" has been used in section 40 of the Act in a comprehensive sense precluding narrowness and technicality. Transfer of property involves a series of steps, first an agreement to sell, then the ~~execution~~ of the deed of conveyance and finally the registration. The ordinary meaning of "transfer" is simply to hand over or part with something. The context must determine in what sense a word is used and where the conveyance deed has been executed, there is a transfer within the meaning of section 40 even if the conveyance deed has not been registered. An application for confirmation of the transfer by a duly executed sale-deed is competent under section 40 of the Act even though the sale-deed is not registered.

Held, that when construing the terms of any provision found in a statute, the Court is entitled, and indeed bound, to consider any other parts of the Act which throw light on the intention of the legislature and may serve to show that the particular provision may not be construed as it would be if considered alone and apart from the rest of the Act.

Civil Writ Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to quash the illegal and ultra vires order dated the 28th February, 1959, passed by the learned Deputy Custodian-General, Evacuee Property, India, whereby he declined to confirm under Section 40 of the Administration of Evacuee Property Act the transfer of agricultural land bearing Survey Nos. 315, 316, 317 and 324, situated at Mauza Cheetwar, Indore, by Abdul Gafoor to the petitioner by document dated the 1st May, 1948, on the ground of its being unregistered and to issue a writ in the nature of certiorari, mandamus or any other order or direction of an appropriate nature directing the respondent to confirm the aforesaid transfer.

BHIWANI LAL, ADVOCATE, for the Petitioner.

P. NARAIN, ADVOCATE, for the Respondent.

ORDER

Kapur. J. KAPUR, J.—This writ petition is directed against the order of the Deputy Custodian-General, dated 28th February, 1959, rejecting the application under Section 40 of the Administration of Evacuee Property Act, 1950, and declining to confirm a sale in favour of the petitioners. Agricultural land measuring 14.30 acres bearing survey Nos. 315, 316, 317 and 324, situate in village Chhitawar, Indore, was owned by Abdul Ghafoor. On 10th April,

1948, Abdul Ghafoor is alleged to have sold the land to the petitioners for Rs. 30,000. A sum of Rs. 1,001 was paid as earnest money by a cross-cheque. On May 1st, 1948, the balance of the sale-price was paid and Abdul Ghafoor executed the document, which has been held by the Custodian General to be a sale deed. The sale deed was not got registered. Under Indore Land Revenue and Tenancy Act, 1931, the sale required confirmation by Suba. On April 22, 1948, the vendor applied to Suba for confirmation and on November 18, 1948, the sanction was given and mutation attested in favour of the petitioners. Shortly thereafter Abdul Ghafoor left for Pakistan and in 1955 proceedings started for declaring him as evacuee. On October 22, 1955, he was declared evacuee and on December 20, 1955, the petitioners made an application under Section 40 of the Administration of Evacuee Property Act, 1950, for confirmation of the transfer. The application was heard by the Assistant Custodian, and he rejected the same. An appeal was taken to the Custodian-General. The Deputy Custodian General heard the appeal and dismissed the same. He held that the sale deed required registration and since the deed was not registered, there was no transfer in favour of the petitioner, which could be confirmed under Section 40.

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The learned counsel for the petitioners has raised two contentions before me—

- (a) evacuee legislation came into force after the sale deed had been executed; and
- (b) application for confirmation of transfer under section 40 was competent even though the sale deed was not registered.

Regarding (a)—According to the learned Counsel for the petitioners, restriction on transfers was introduced for the first time in 1949 when the Evacuee Property Management Act 20 of 1949 came into force in Indore and any transfer made before 1949 is not within the purview of any evacuee legislation. There is no force in the contention of the learned counsel. Section 40 of the said Act in terms requires confirmation of every transfer made after the 14th of August, 1947, but before the 7th of May, 1954. Admittedly Abdul Ghafoor was declared evacuee on October 22,

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1955. The language of section 40 clearly shows that it has retrospective operation and applies to all transfers made after 14th August, 1947, whether or not there was any evacuee legislation in force on the date of transfer.

Regarding (b)—In my opinion the order of the Deputy Custodian-General in declining to confirm the transfer on the ground that there is no completed sale is erroneous. Mr. Parkash Narain, appearing for the respondent, submits that under section 40 of the said Act, it is only a 'Transfer' that can be confirmed. There is, according to Mr. Parkash Narain, no transfer till the sale deed is registered. He relies for this proposition on section 54 of the Transfer of Property Act, which *inter alia* provides that transfer in case of tangible immovable property of the value of rupees one hundred and upwards can be made only by a registered instrument. The whole question, therefore, turns on the meaning to be given to the word "transfer" in section 40. It is not disputed by the learned counsel for the petitioners that Indore Registration Act, section 16 whereof corresponds to section 17 of the Indian Registration Act, was in force in Chhitawar when the sale deed was executed. It is also not disputed that the sale required registration. What is contended is that the application for confirmation was competent even without registration or in the alternative the sale was effective without registration in view of section 54 of the Transfer of Property Act as in force in Indore which corresponds to section 53A of the Indian Transfer of Property Act.

No doubt, section 54 of the Transfer of Property Act, and I am informed the corresponding provision of the Indore Act is in the same terms, requires a transfer to be made by a registered instrument and it is for this reason that at first sight it struck me very strongly that the Deputy Custodian-General was right, but on looking little more critically I have arrived at a different conclusion. I think that it cannot be denied that if the view put forward by the respondent be correct, the result will be strangely anomalous. It is beyond dispute, too, that I am entitled, and indeed bound when construing the terms of any provision found in a statute to consider any other parts of the Act which throw light on the intention of the legislature and may serve to show that the particular provision may not be construed as it would be if considered alone and apart from the rest of the Act. It is

contended by the petitioners that if I thus seek the aid to be derived from other provisions of the Act, I shall be led to the conclusion that the view presented by the respondent is erroneous. I, am, therefore, remitted to and called on to decide, whether, on elaborate review of the other provisions of the Act, the term "transfer" is to be given a wider meaning or is to be limited to what is canvassed by the learned counsel for the respondent. This survey at once takes me to the provisions of section 41 of the Act as it was originally enacted. Thereafter I shall consider if the amendment therein has any such significance as to change the construction of section 40. I now come to section 41, as originally enacted. It *inter alia*, provides that where a document requiring registration under the Indian Registration Act, 1908, purports to transfer any rights or interest in any property, in contravention of the provisions of section 20 or 40, no registering officer shall register a document unless the transaction has been confirmed by the Custodian. Upon that the argument on behalf of the petitioners has been that it clearly appears from section 41 that the term "transfer" in section 40 was used in the most generic sense for to say that a sale cannot be confirmed unless it is registered and it cannot be registered unless it is confirmed would be going in a circle. I agree with the learned counsel for the petitioners that an application for confirmation was competent even though the sale deed was not registered, at least, on the construction of the statute as it originally stood. Transfer of property involves a series of steps, first an agreement to sell, then the execution of the deed of conveyance and finally the registration. The ordinary meaning of "transfer" is simply to hand over or part with something. The context must determine in what sense a word is used and where the conveyance deed has been executed, there is, in my opinion, a transfer within the meaning of section 40. Word "transfer" has been used in a comprehensive sense precluding narrowness and technicality. In this view I am fortified by the decision of the Judicial Committee in *T. V. Kalyanasundaram Pillai v. Karuppa Mooppanar & others* (1). There the donor of immovable property had handed over to the donee an instrument of gift duly executed and attested, and the gift had been accepted by the donee. The question was whether the donor had the power to revoke the

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(1) A.I.R., 1927. P.C. 42.

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gift. It was held that the provisions of section 123 of the Transfer of Property Act could be reconciled with section 47 of the Registration Act only upon the view that, while registration was a necessary solemnity in order to the enforcement of a gift of immovable property, it did not suspend the gift until registration actually took place.

In my view the amendment in section 41 also does not alter the construction of section 40. Section 41, as amended in 1953 (by Act 11 of 1953) does not affect the sale in question, since the transaction took place before any proceedings were taken for declaring Abdul Ghafoor as an evacuee. In this view, it is unnecessary to decide the effect of section 53-A.

In the result, the petition succeeds and is allowed with costs. It will, however, be open to the authorities to consider all other aspects relevant to the confirmation in deciding the application for confirmation.

B.R.T.