

PETITIONER:
ABDUL QADIR

Vs.

RESPONDENT:
MANAGING OFFICER CUM ASSTT. CUSTODIAN OF EVACUEE PROPERTY, JA

DATE OF JUDGMENT 22/10/1979

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
KOSHAL, A.D.

CITATION:
1980 AIR 89 1980 SCR (1) 993
1980 SCC (1) 146

ACT:
Displaced Persons (Compensation and Rehabilitation) Act
1954-S-20A(1) Explanation-Scope of.

HEADNOTE:

The appellant purchased a house in July, 1948. Although neither the vendor nor the appellant was an evacuee within the meaning of the Administration of Evacuee Property Act, 1950, the appellant was treated as an evacuee and the house was declared evacuee property in 1951. In response to the appellant's petition filed in 1953, a certificate was granted by the Government under the unamended provisions of section 16 of the Act. When the appellant asked for restoration of the house the Assistant Custodian passed an order in 1957 granting restoration. In the meantime since respondent No. 2 had been inducted as a tenant in the house by the Custodian after it was declared evacuee property the appellant was asked to take symbolic possession of the house allowing the tenant to continue in possession.

Section 20A(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 provided that where an evacuee had made an application under section 16 of the Evacuee Property Act, 1950 and the Central Government is of opinion that it is not expedient or practicable to restore the whole or any part of the property to the applicant, it shall be lawful for the Central Government to pay to the applicant the value of the property in cash from the compensation pool in lieu of the evacuee property. The Explanation to this section provided that the provisions of this sub-section shall apply, whether or not a certificate for the restoration of the evacuee property had been issued to the applicant under section 16(1) of the 1950 Act.

The Central Government revised its earlier order dated November 11, 1960 and gave compensation to the appellant under section 20A of the 1954 Act.

The appellant's writ petition challenging the order of the Assistant Custodian was dismissed by the High Court.

Dismissing the appeal,

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HELD: 1. According to section 16 of the 1950 Act, as it stood before October 22, 1956, an application for certificate was to be made to the Central Government. On the

issuance of the certificate, restoration order-was made by the Custodian of Evacuee Property. In the instant case the certificate was issued on October 27, 1956. The High Court was therefore right in holding that the certificate issued in accordance with the old law was not valid. [995 D-F]

2. The provisions of section 20A(1) have got the over-riding effect by virtue of the Explanation appended to it even after a certificate for the restora-
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tion of the evacuee property had been issued to the applicant on October 27, 1956. In spite of the certificate it was open to the Central Government not to allow restoration of the house to the appellant and to pay him compensation only. The Central Government has adopted the latter course. Respondent No. 2, a displaced person, was inducted as a tenant in the property a long time back. The property was sold to him by the Custodian. In such a situation it was just and proper to refuse restoration of the property to the appellant and to pay him only compensation. [996 F-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2233 of 1969.

From the Judgment and Order dated 11-3-1968 of the Rajasthan High Court in Writ Petition No. 126/62.

Sobhagmal Jain and S. K. Jain for the Appellant.

E. C. Agarwala and Girish Chandra for the Respondent.

The Judgment of the Court was delivered by

UNTWALIA, J. This is an appeal by certificate by Shri Abdul Qadir from the judgment of the Rajasthan High Court dismissing his Writ Petition. The house in question belonged to one Mohammed Amin Khan. The appellant purchased the house from the said owner on 10-7-1948 for Rs. 12,000. It appears that neither the appellant nor Mohammed Amin Khan was an evacuee within the meaning of the Administration of Evacuee Property Act, 1950, hereinafter called the Evacuee Property Act. But under some mistaken notion probably the appellant was treated as an evacuee and the house was declared as an evacuee property on 15-11-1951 in accordance with the Evacuee Property Act. After such declaration the question that the property was an evacuee property could not be reopened and became final. Upon that footing the appellant filed an application on 26-9-1953 under section 16(1) of the Evacuee Property Act, as the section then stood, for grant of a certificate. On 27-10-1956 the Central Government granted a certificate under the unamended provision of law contained in section 16. Pursuant to the above the appellant made an application to the Assistant Custodian of Evacuee Property for restoration of the house under sub-section (2) of section 16. The Asstt. Custodian, respondent no. 1 passed an order on 18-3-1957 restoring the house to the appellant. But before that Shri Ajjumal, respondent no. 2 had been inducted as a tenant in the house by the Custodian after it was declared as an evacuee property. The appellant was directed to take symbolic possession of the house allowing the said tenant to continue in its occupation on receipt of rent from him.

The appellant came to know later that on 11-11-1960 the Central Government passed an order under section 20A of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter
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referred to as the Displaced Persons Act, whereby it was ordered that in respect of the house in question action be taken in accordance with the said provision of law. On 6-12-1960 the Central Government ordered that it had revised its order dated 11-11-1960 and the petitioner was entitled to compensation only under section 20A of the Displaced Persons Act. In the Civil Suit filed by the appellant against Ajjumul it transpired that a sale deed had been executed in his favour as he was a displaced person in occupation of the house and the appellant was entitled to compensation only. He, therefore, filed a writ petition in the High Court to challenge the action of the Assistant Custodian, respondent no. 2 and the Union of India, respondent no. 3.

The writ case was contested by all the respondents and it was asserted that Ajjumul being a sitting allottee had to be rehabilitated and the appellant was entitled to compensation only.

The High Court has quoted s. 16 of the Evacuee Property Act as it stood prior to 22-18-1956 and the section as it came into force after that date. It has rightly pointed out that there was a change of procedure in the two provisions. According to section 16 as it stood before 22-10-1956 the application for certificate was to be made to the Central Government and the Central Government in its discretion was to issue the certificate. On the issuance of such a certificate after following certain procedure the restoration order had to be made by the Custodian of the Evacuee Property. In the present case only a certificate was issued on 27-10-1956. The High Court is right in holding that the certificate so issued in accordance with the old law was not valid. Attempts were made before the High Court to show that the said certificate was issued pursuant to an order alleged to have been made on 1-10-1956. The High Court was not satisfied about the correctness of this new stand. Nothing could be pointed out to us to persuade us to take a view different from the one taken by the High Court in regard to the question of the invalidity of the certificate issued in favour of the appellant on 27-10-1956.

There is another difficulty in the way of the appellant and that comes in because of the provision of law contained in section 20A of the Displaced Persons Act. The said section also had undergone a change from time to time and at the relevant time sub-section (1) of section 20A stood as follows:-

(1) Where any evacuee or his heir has made an application under Sec. 16 of the Evacuee Property Act and the Central Government is of opinion that it is not expedient or

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practicable to restore the whole or any part of such property to the applicant by reason of the property or part thereof being in occupation of a displaced person or otherwise, then, notwithstanding anything contained in the Evacuee Property Act and this Act, it shall be lawful for the Central Government-

- (a) to transfer to the applicant in lieu of the evacuee property or any part thereof, any immovable property in the compensation pool or any part thereof, being in the opinion of the Central Government as nearly as may be of the same value as the evacuee property or, as the case may be, any part thereof, or
- (b) to pay to the applicant amount in cash from the compensation-pool in lieu of the evacuee property or part thereof as the Central Government having

regard to the value of the evacuee property or part thereof may, in the circumstances deem fit.

Explanation:- The provisions of this sub-section shall apply, whether or not, a certificate for the restoration of the evacuee property has been issued to the applicant under sub-sec. (1) of sec. 16 of the Evacuee Property Act, as in force before the commencement of the Administration of Evacuee Property (Amendment) Ordinance, 1956, if the evacuee property has not in fact been restored to the applicant."

It would be noticed that the provisions of section 20A (1) have got the over-riding effect by virtue of the Explanation appended to it even after a certificate for the restoration of the evacuee property had been issued to the applicant on 27-10-1956. In spite of the certificate it was open to the Central Government not to allow restoration of the house to the appellant and to pay him compensation only. The Central Government has adopted the latter course. Respondent No. 2, a displaced person, was inducted as a tenant in the property long time back. The property was sold to him also by the Custodian. In such a situation it was just and proper to refuse restoration of the property to the appellant and to pay him compensation only. But we were informed that the amount of compensation payable to the appellant has been determined at a somewhat low figure being in the neighborhood of Rs. 8,000 only. The appellant had

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purchased the house for Rs. 12,000 in the year 1948. In that view of the matter we recommend for consideration of the Government whether it would be possible for them to enhance the amount of compensation at least to the figure of Rs. 12,000. The matter is finally within their jurisdiction and they may decide it as they think it fit and proper to do.

For the reasons stated above this appeal fails and is dismissed but without costs.

P.B.R.

Appeal dismissed.

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