PETITIONER:
INAYAT ULLAH

Vs.

RESPONDENT:
THE CUSTODIAN,EVACUEE PROPERTY

DATE OF JUDGMENT:
30/10/1957

BENCH:
IMAM, SYED JAFFER
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IMAM, SYED JAFFER
BHAGWATI, NATWARLAL H.
GAJENDRAGADKAR, P.B.

CITATION:
1958 AIR 160 1958 SCR 816

ACT:
Evacuee property, Notification of-Issue of notice by Custodian on person interested-Propriety, if can be determined by Court-Refusal of copies of materials by Custodian-Legality-Administration of Evacuee property Act, 1950 (XXXI of 1950), s. 7.

HEADNOTE:
The appellant and his brother owned certain properties inherited from their father. The brother died and the appellant claimed to have become the sole heir. The respondent issued a notice under S. 7 of the Administration of Evacuee Property Act, 1950, in respect of the share of the brother on the ground that the brother had left a widow and a son who had migrated to Pakistan. The appellant, desiring to know on what materials the notice was issued, applied for copies of the materials on the basis of which he respondent had formed his opinion. The application was rejected by the respondent. The appellant filed a petition under Art. 226 of the Constitution in the High Court which was also dismissed. The appellant obtained special leave and contended that the notice was issued without jurisdiction as there was no material before the respondent to justify his issuing of the notice and that the application for the copies had been improperly -ejected by the respondent.
Held, that it was for the Custodian to form his opinion on such material as was before him and on such information which he possessed. It is not for any Court to determine whether the information in the possession of the Custodian was adequate to justify the issue of a notice under S. 7 of the Act:
Held further, that the application for copies had been rightly rejected. There are two stages in the process whereby any property can be declared to be evacuee property under the Act. One is the issuing of the notice to persons interested and the other is the inquiry under S. 7. The proceedings commence after issue of the notice and not prior to it. A party to the proceedings will be entitled to copies of the record and evidence from the stage of
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the issuing of the notice until the conclusion of the enquiry but not previous to the issue of the notice.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 144 of 1956.

Appeal by special leave from the judgment and order dated the 9th July, 1955, of the former Madhya Bharat High Court in Civil Misc. Case No. 27 of 1954.

M. A. Khan and Ratanaparkhi, for the appellant.

S. N. Bindra and R. H. Dhebar, for the respondent.

1957. October 30. The following Judgment of the Court was delivered by

IMAM J.-This is an appeal by special leave against the order of the Madhya Bharat High Court dated July 9, 1955, rejecting an application filed by the appellant under Art. 226 of the Constitution.

According to the appellant, his father Habibullah died more than twenty years ago leaving behind the appellant and his brother Bashirullah as his sole heirs. Habibullah, on his death, left immovable properties in the city of Indore. Bashirullah, who was unmarried, went mad in 1942 and died in 1950 without any issue. On his death, the appellant became the sole owner of all the properties left by his father Habibullah. On September 21, 1954, the respondent purported to serve on the appellant a notice tinder s. 7 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950), hereinafter referred to as the Act. This notice was not served on him and was never pasted on the property concerned. Service of the notice was, according to the appellant, not proper and therefore illegal.

The appellant desiring to know on what material the notice under s. 7 of the Act was issued against him applied on October 1, 1954, for copies of the record and the evidence in the possession of the respondent on the basis of which he formed the opinion that Bashirullah, at his death, had left behind a son Iqbal and a wife Kamrunnissa who had migrated to Pakistan in consequence of which the estate inherited by them from Bashirullah became evacuee property. The application was rejected by the respondent.

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The appellant filed a petition under Art. 226 of the Constitution in the Madhya Bharat High Court, which was dismissed by that Court. The High Court was of the opinion that two questions fell to be decided in the proceedings before it-(I) was the notice dated September 21, 1954, issued by the respondent under s. 7 of the Act, illegal and (2) was the refusal of the respondent to supply to the appellant copies of the record and the evidence in possession of the respondent prior to the issue of notice under s. 7 of the Act unlawful? Both these questions were decided against the appellant.

The notice dated September 21, 1954, was issued under s. 7 of the Act in accordance with the Rules framed under s. 56 of the Act. Under s. 7 of the Act the notice has to be given to persons interested in the prescribed manner. Rule 6 of the Rules framed under the Act requires the notice to be in Form I to be served on persons interested in the property proposed to be declared evacuee property. We have compared the notice issued in the present case with Form I of the Rules and can find no difference between them in essential particulars. It was said that the notice in the present case does not state the grounds upon which the property concerned was proposed to be declared evacuee

property and Iqbal and Kamrunnissa evacuees. This contention is without foundation because the notice in question definitely states under the heading "Grounds" that Iqbal and Kamrunnissa migrated to Pakistan after March 1, 1947, on account of the creation of the Dominions. The notice specifies with sufficient clarity the particulars of the property proposed to be declared evacuee property. There was no reliable material to prove the assertion of the appellant that the notice was not properly served. We are, accordingly, of the opinion that the notice in question has not been proved to be illegal on account of contravention of any of the provisions of the Act or the Rules made thereunder.

It was next contended that there was no material before the respondent to justify his issuing the notice and, therefore, the notice was issued without

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jurisdiction. Section 7 of the Act provides that where the Custodian is of the opinion that any property is an evacuee property within the meaning of the Act he may, after causing notice thereof to be given in the prescribed manner to the persons interested and after holding such enquiry in the matter, as the circumstances of the case permitted, pass an order declaring any such property to be evacuee property. It is for the Custodian to form his opinion on such material, as was before him, and on such information which he possessed. The notice which he issued was in Form I of the Rules framed under the Act and it stated clearly that there was credible information in possession of the respondent that lqbal and Kamrunnissa were evacuees and that the property specified in the notice was evacuee property. It was for the respondent to decide . whether, on the information in his possession, he should issue a notice under s. 7 of the Act. It is not for this Court or any other Court to determine whether the information in possession of the respondent was adequate to justify the issuing of the notice. The contention on behalf of the appellant in this respect cannot be supported on any valid ground.

It was next contended on behalf of the appellant that when bona fides of the respondent bad been challenged in the High Court, that Court should have sent for the record and seen for itself as to whether there was any justification for the issue of the notice under s. 7 of the Act. In our opinion, this contention cannot prevail as there is no material on the record to justify the accusation that the respondent acted with malafides in issuing the notice. The respondent was free to believe or not to believe the information in his possession. The mere issue of a notice would not make the persons named therein evacuees or the property mentioned therein evacuee property. That stage could only be reached after the notice had been issued and after the holding of such enquiry, as the circumstances of the case permitted, when an order declaring the property to be evacuee property could be made in respect of a person who was an evacuee, as defined in

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the Act. In our opinion, it was unnecessary for, the High Court to have called for the record and to have examined it for itself in order to ascertain whether the respondent was justified in issuing the notice.

We have now to consider whether the application for copies filed by the appellant was improperly rejected. On his behalf, it was contended that the application for copies

should have been allowed as s. 7 of the Act contemplates only one proceeding, from the commencement to the end, including the stage prior to the issue of notice, regarding the declaration of any property as evacuee property and that that proceeding is a judicial proceeding. Since the appellant was a party to the proceedings under s. 7 of the Act, he was entitled to have copies of the record including the evidence which constituted the proceedings. Reliance was placed on s. 49 of the Act, which states that all records prepared or registers maintained under the Act shall be deemed to be public documents within the meaning of the Indian Evidence Act and shall be presumed to be genuine until the contrary is proved. Reference was also made to s. 45 of the Act which states that for the purpose of holding an enquiry under the Act, the Custodian shall have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of the following matters:

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the discovery and production of documents;

(c) any prescribed matter;

and the enquiry by the Custodian shall be deemed to be a judicial proceeding within the meaning of ss. 193 and 228 of the Indian Penal Code and the Custodian shall be deemed to be a court within the meaning of ss. 480 and 482 of the Code of Criminal Procedure. There can be little doubt that the Custodian, while holding an enquiry under s. 7 of the Act is acting in a judicial capacity and that, by virtue of Rule 35 of the Rules, any party to the enquiry would be entitled to copies of any application,

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objection, petition, affidavit, or statement made by a party or a witness and any other document. He would also be entitled to copies of the final original order passed by the Custodian or an order passed in appeal, revision or review. The position, however, is quite different with respect to the material in possession of the Custodian on which he formed his opinion and on which he issued notice under s. 7, because at that stage he was not holding an enquiry and was, therefore, not acting in a judicial capacity. It is a misconception of the entire scheme of the Act to suppose that an enquiry under s. 7 of the Act and the issuing of a notice previous to the holding of that enquiry is a single proceeding. When issuing a, notice under s. 7 the Custodian merely has some credible information which, in his opinion, justifies him in issuing it and thereafter to enquire into the matter before making a declaration that the property is evacuee property. That information may, after the enquiry has been concluded, turn out to be entirely insufficient for making the required declaration. In our opinion, there are two stages in the process whereby any property can be declared to be evacuee property under the Act. One is the issuing of the notice to persons interested and the other an enquiry under s. 7 of the Act. The proceedings commence after the issue of a notice and not previous to it. At the second stage, a party to the proceedings would be entitled to copies of the record and the evidence from the stage of the issuing of the notice until the conclusion of the enquiry but not previous to the issue of the notice. In our opinion, the appellant would have been well advised to have responded to the notice issued to him and assisted the respondent in holding the enquiry. The respondent would have had to consider all the material before him at the enquiry before he declared the property in question evacuee

property. If the material in the enquiry was insufficient to justify such a declaration, the appellant had the right of appeal against the order of the respondent. In our opinion, the application of the respondent for copies was rightly rejected by the respondent as he was not,
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entitled to copies of the material before the respondent previous to the issuing of the notice under s. 7 of the Act. The appeal, accordingly, fails and is dismissed with costs.

Appeal dismissed.