

CUSTODIAN OF EVACUEE PROPERTY

v.

SMT. RABIA BAI

August 19, 1976

[Y. V. CHANDRACHUD, R. S. SARKARIA AND P. N. SHINGHAL, JJ.]

Administration of Evacuee Property Act, 1950—S. 40(4)(a) and rule 22—Scope of—S. 10(2)(n) “out of the funds in his possession” meaning of.

Rehabilitation Act, 1954—S. 14(1)(b)—“Such cash balances”—Meaning of.

Words and phrases—“out of the funds in his possession” and “such cash balances”—Meaning of.

Section 40(1) of Administration of Evacuee Property Act, 1950 provides that no transfer of any property belonging to an evacuee, which may subsequently be declared to be evacuee property, shall be effective unless the transfer was confirmed by the Custodian. Sub-section (4)(a) provides that where an application had been made to the Custodian for confirmation, he may reject the application if he is of opinion that the transaction had not been entered into in good faith or for valuable consideration.

In 1949 the respondent purchased house property from an evacuee and paid the consideration. She made an application under s. 40 to the Assistant Custodian for confirmation of the sale. The application was rejected by him on the ground of want of good faith on the part of the vendor in entering into the transaction. Her appeal to the Custodian and revision to the Custodian General were dismissed. In the meantime, under r. 22, of the Administration of Evacuee Property (Central Rules) 1950, the respondent registered her claim for the return of the sale consideration to her. Thereafter r. 22 was deleted. She was informed by the Deputy Custodian that no third party claim against immovable property was payable since r. 22 was deleted. In 1966 the Government transferred to Compensation Pool the ‘surplus balance’ of the evacuee pool lying in the personal deposit account of the Custodian. The respondent later made a petition to the Custodian, which was rejected mainly on the ground that the sale proceeds had been credited to the compensation pool, that there was no amount in the hands of the Custodian from which her claim could be paid and that the words “out of funds in his possession” occurring in s. 10(2)(n) of the Act showed that the clause would be attracted only where funds were lying with the Custodian.

The High Court held that payment made by the respondent to the evacuee in pursuance of the infructuous sale, was not vitiated in any manner as the sale was refused confirmation, not because of want of *bona fides* in the transferee, but on account of want of *bona fides* in the transferor, and as such the Custodian was under a statutory obligation to refund the sale price paid by her and that the Custodian was competent to transfer only surplus fund left with him, in excess of what was required by him for meeting the outstanding claims registered under r. 22.

In appeal to this Court it was contended that (i) the order of the Assistant custodian registering the claim was a nullity because since the sale was not confirmed under s. 40(4)(a) it could not be deemed to be a *bona fide* transaction for the purposes of registration of claim under r. 22; (ii) registration was an administrative act required to be done for statistical purposes; and (iii) as a result of the deletion of r. 22 the Custodian was no longer under an obligation to meet the claim and no part of the compensation pool was available to satisfy the claims of third parties who were neither displaced persons nor evacuees.

Dismissing the appeal,

HELD : (1) The High Court was right in directing the Custodian is refund the sale price to the respondent in payment of her claim and in further directing

A the Central Government to place at the disposal of the Custodian the said sum for the purpose of refund. [268 A-B]

(1)(a) Under r. 22, before a claim for refund of money paid as consideration for the transfer by an evacuee of any property is registered by the Custodian, he should be satisfied: (i) that such transfer has not been confirmed under s. 40 of the Act, (ii) that such transfer is a *bona fide* transaction; (iii) that the amount for which the claim is being registered is proved to have been paid as consideration for the transfer of the property. [262 G]

B In the instant case, the validity of the Assistant Custodian's order registering the respondent's claim is unassailable because all the three conditions aforesaid to give authenticity to the registration of her claim were satisfied. The sale was not confirmed by the Custodian but he found that the whole of the price had actually been paid by the claimant. [263 A]

C (b) In order to qualify for confirmation under s. 40(4)(a) on the ground of good faith, a sale has to pass a much more stringent test than the one required to hold it "a *bona fide* transaction" for the purposes of r. 22. While under s. 40(4)(a), lack of good faith either in the transferor or the transferee would be sufficient to disqualify the transfer for confirmation, the position under r. 22 is different. Under r. 22 it is the character of the conduct of the claimant which primarily determines the character of the transaction. Therefore, if the vendee-claimant in purchasing the property acted in good faith, for the purposes of r. 22, the sale would be a *bona fide* transaction, notwithstanding the fact that there was lack of good faith on the part of the vendor. Again, the test of the vendee's *bona fides* under this Rule would be, whether he had purchased the property for adequate valuable consideration. [264 A-B]

D *Rabia Bai v. Custodian General of Evacuee Property* [1961] 3, SCR 448 followed.

E In the instant case, the Assistant Custodian found that this test was amply satisfied. This finding of fact was not challenged before the High Court. It is therefore too late in the day to urge that the respondent's claim was not duly registered in accordance with r. 22. [264 C]

F (2) Registration of claim of a vendee under r. 22 amounts to a preliminary adjudication as to the genuineness of the claim and its eligibility for discharge under the relevant substantive provisions of the Act. While mere registration of a claim under this rule does not *ipso facto* confer a right to payment, it is not correct to say that the only purpose served by such registration is statistical and nothing else. Before registering a claim the Custodian is required to determine objectively that the transaction is *bona fide* the claimant having entered into it in good faith on payment of adequate valuable consideration. The determination of this preliminary fact, which is an essential pre-requisite of registration, is a judicial function enjoined on the Custodian by the statutory provision. [264 E-F]

G (3)(a) The words "out of the funds in his possession" in s. 10(2)(n) have reference only to the funds relatable to the particular evacuee against whom or against whose property, the claim for refund was made by a claimant. The use of the expression 'in the opinion of the Custodian' in s. 10(2)(m) was not intended to invest the Custodian with arbitrary authority. In forming his opinion, he was bound to act judicially. [266 A-B]

Raja Bhanupratap Singh v. Custodian [1966] 1, SCR 304 followed.

H In the instant case, the Custodian had formed an opinion about the respondent's claim being genuine. In the exercise of that power the only thing that remained to be done by the Custodian was to ascertain whether there were adequate 'funds in his possession' to meet the respondent's claim. The property was sold by the Government for a consideration which had been far in excess of her claim, and the sale proceeds were credited to the compensation pool. It could not be said that at the material time the Custodian was not in possession of sufficient funds to meet the respondent's claim. [266 B]

(b) The expression 'such cash balances' used in s. 14(1)(b) of the Rehabilitation Act cannot be interpreted to cover total cash deposits with the Custodian.

The expression has to be construed as the excess of credits over debits. The word 'balances' had been advisedly used in preference to 'deposits' because the intention was that only that much amount in deposit with the Custodian should be transferred to the Compensation Pool which would be in excess of the amounts required for meeting the due claims against the evacuees or their properties. What can be directed to be transferred to the Compensation Pool by the Government under s. 14(1)(b) is the 'cash balances' and not the total cash deposits with the Custodian [267 A-B]

(c) The Custodian had neither the power nor the authority to transfer the entirety of funds to the Compensation Pool. The word 'surplus' used in the Government order puts the matter beyond doubt that only those balances which were surplus or in excess over what was required to meet the liabilities of the evacuees, were to be transferred to the Compensation Pool. It was the duty of the Custodian, therefore, to keep back with him so much of the funds in his deposit as were necessary to meet the verified claims against evacuees or their properties. Such a course would have been perfectly legal and also in conformity with the final directions issued for transfer of 'surplus balances' by the Central Government. Only the 'cash balances' which were *validly* transferred could legally form part of the Compensation Pool. [267 E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 882 of 1975.

(Appeal by Special Leave from the Judgment and Order dated 13-12-1974 of the Madras High Court in Writ Appeal No. 101/73).

Gobind Das, and Girish Chandra, for the Appellant.

V. M. Tarkunde, K. Rajendra Chaudhury, Mrs. Veena Khanna, S. L. Setia & Miss Manek Tarkunde, for the Respondent.

The Judgment of the Court was delivered by

SARKARIA, J. This appeal by special leave, directed against a judgment dated December 13, 1974; of the High Court of Madras, arises out of these facts :

Respondent Rabia Bai, is a citizen of India. She has her residence at Grange Yercund, Salem District. She came to know in 1949 that premises No. 20, Godown Street, G. T. Madras (known as Gani Market) was for sale. Consequently, by a sale-deed, dated April 29, 1949, she purchased this property from one Abdul Gani Jan Mohd. who had left for Pakistan in 1947, soon after the partition of the Indian sub-continent. Abdul Gani came to Madras in April 1949 and executed the sale-deed in her favour for a consideration of Rs. 2,40,000/- out of which Rs. 1,50,000/- was paid immediately in the form of bank drafts. Thereafter, the sale-deed was duly engrossed and sent to Karachi for execution by the vendor, who duly executed it and sent it back. It was presented at the Collector's Office, Madras and was duly stamped on June 27, 1949. After obtaining the clearance certificate from the Income-tax Department, the Registrar registered it on August 11, 1949. Rs. 30,000/-, the balance of the consideration was paid before the Registering Officer to Mr. M. H. Gani who held a power of attorney from the vendor.

On June 13, 1949, Ordinance XII of 1949 was promulgated. The Ordinance was extended to Madras on August 23, Ordinance XII of 1940 was repealed by Ordinance 27 of 1949, which in turn was replaced by the Administration of the Evacuee Property Act, 1950

A (Central Act 31 of 1950) (hereinafter referred to as the Act). The Act had retrospective operation with effect from August 14, 1947. Section 40 of the Act [corresponding to s. 25(2) of Ord. 12], provided that no transfer made after the 14th day of August, 1947 but before the 7th day of May, 1954 by any person of any property belonging to him which may subsequently be declared to be evacuee property, would be valid unless the transfer was confirmed by the Custodian-General of Evacuee Property.

B On December 19, 1949, the vendee Rabia Bai, applied for confirmation of the sale transaction in her favour. The application was resisted by some tenants on several grounds. On January 11, 1951, the Assistant Custodian Evacuee Property, Madras City, declared the property in question as evacuee property under s. 7(1) of the Act.

C The Assistant Custodian considered Rabia Bai's application for confirmation of the sale in the light of the declaration already made by him, that the vendor being an evacuee, the property was evacuee property. He referred to the relevant features of the transaction and came to the conclusion that he would not be justified in confirming it. In reaching this conclusion, he relied on the provisions of s. 40(4)(c) of the Act. In his opinion, the feverish hurry disclosed that in making the sale, the vendor was not motivated by good faith. Accordingly on July 31, 1951, he made an order refusing to confirm the transaction. Rabia Bai went in appeal against the order of the Assistant Custodian to the Custodian. The Custodian found that the sale transaction was supported by valuable consideration. Even so, he proceeded to examine the question as to whether it could be said to have been entered into in good faith. Relying on a letter written by the vendor to one Mohideen on July 4, 1949 wherein he had stated that "if the matter is delayed there would be many sort of new difficulties as you know the government are passing new rules every day", the Custodian took the view that the vendor's intention was to dispose of and convert his properties in India into cash and to take them away to Pakistan as quickly as possible so as to evade the restrictions of the evacuee law which he apprehended could be extended to Madras any day. On this reasoning, the Custodian came to the conclusion that the transaction had been entered into otherwise than in good faith, and so it could not be confirmed under s. 40(4)(a) of the Act. This appellate order was pronounced by the Custodian on February 4, 1953.

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G Rabia Bai then moved the Custodian-General in revision, who dismissed the same. Against that order of the Custodian-General, Rabia Bai came in appeal by special leave to this Court.

H While that appeal was pending, Rabia Bai on August 27, 1954, made an application under Rule 22 of the Administration of Evacuee Property (Central Rules) 1950 (for short the Rules) for registration of her claim for the return of the sale consideration of Rs. 2,40,000/- The claim was registered by the Assistant Custodian on October 1, 1954.

Thereafter, the Act was amended by Act 91 of 1956. By a notification, dated February 20, 1957, the aforesaid Rule 22 was deleted.

Rabia Bai's aforesaid appeal (Civil Appeal No. 22 of 1956) was dismissed by this Court on January 12, 1961. That judgment is reported as *Rabia Bai v. Custodian General of Evacuee Property*(¹).

Rabia Bai repeatedly petitioned for the return of the sale consideration of Rs. 2,40,000/- to her but without success. She petitioned to the Prime Minister on May 16, 1966. Thereupon, she was informed by a letter, dated August 1, 1966, by the Deputy Custodian, Evacuee Property, Bombay, that 'no third party claim against the immoveable property is payable by his office as Rule 22 of the Administration of Evacuee Property (Central) Rules has since been deleted as a result of the amendment of s. 10(m) by Act 91 of 1956.

By an order, dated August 18, 1966, Government of India directed that all the 'surplus balance' of the evacuee pool lying in the personal deposit account of the Custodian be transferred to the Dy. Accountant General, New Delhi to form part of the compensation pool under s. 14(1)(b) of the Displaced Persons Compensation and Rehabilitation Act of 1954.

In 1968, Rabia Bai filed a writ petition in the High Court for return of the sale consideration. The writ petition was withdrawn on July 11, 1968. Thereafter on August 3, 1968, she made a petition under s. 10(2)(m) and (n) of the Act read with Rule 22 before the Custodian. This petition was rejected by the Custodian under an order, dated November 2, 1968, mainly on the ground that the properties of the evacuee were acquired by the Central Government under s. 12 of the Displaced Persons (C. & R.) Act, 1954 and the sale proceeds of the said properties have been credited to the compensation pool. There is at present, no amount in the hands of the Custodian from which the petitioner's claims would be paid".

In his view the words "out of funds in his possession" in s. 10(2)(n) of the Act show that it would be attracted only where funds are lying with the Custodian.

To impugn this order, dated November 2, 1968, of the Custodian, Rabia Bai filed writ petition No. 1259 of 1971 in the High Court. The petition came up for hearing before a learned single Judge (Ramaprasada Rao J.) who took the view that having regard to the scheme of the Rehabilitation Act and the policy reflected therein and the transfer of the cash balances with the Custodian to the compensation pool, it was not open to the writ-petitioner to assail transfer of funds or any orders passed in that behalf and therefore she was not entitled to a writ of *certiorari* sought for, much less a writ of *mandamus*. On this ground, he dismissed the writ petition. With regard to the petitioner's claim for return of the sale price, it was held that she still continues to be entitled to get the money from and out of the funds that may subsequently come into the hands of the Custodian. It was added that "the petitioner as at present, should only be satisfied with her entitlement to claim and await the collection of funds or accumulation of funds with the Custodian in future".

(1) [1961] 3 S.C.R. 448.

A Aggrieved by that order, Rabia Bai appealed under Cl. 15 of the Letters Patent to a Bench of the High Court. The Bench held that since it was not denied or refuted by the respondents (Custodian, Evacuee Property, Bombay, Regional Settlement Commissioner and Union of India) that payment of Rs. 2,40,000/- was made by Rabia Bai to the evacuee in pursuance of the infructuous sale, "the payment is also not vitiated in any manner as the sale was refused confirmation, B not because of want of *bona fides* in the transferee, but on account of want of *bona fides* in the transferor. The respondents are, therefore under a statutory obligation to refund to the appellant the sale price paid by her".

C With regard to the argument that she could not be paid because the fund with the Custodian had been transferred in compliance with the orders of the Government of India to the compensation pool formed under s. 14(1) (b) of the Rehabilitation Act, it was held that the Custodian was competent to transfer only surplus fund left with him, in excess of what was required by him for meeting the outstanding claims registered under r. 22. The Appellate Bench spelled out this conclusion from a construction of the words "such cash balances" occurring in s. 14(1) (b), and the expression "surplus fund" used in D the Central Government order asking the Custodian to transfer funds to the account of the Deputy Accountant General as part of the compensation pool. In this view, the Bench allowed the appeal and by a writ of *certiorari* quashed the impugned orders and notifications. It was further directed that a writ of *mandamus* shall issue requiring the 1st respondent (Resp. Custodian) to refund the sum of Rs. 2,40,000/- to Rabia Bai. The third Respondent, Union of India was further E directed to place at the disposal of the Custodian the said sum for the purpose of the refund. It was specified that the direction regarding the refund and payment shall be complied with within three months.

Hence this appeal by the Custodian and the other respondents before the High Court.

F Let us now have a look at the relevant statutory provisions. The material part of s. 10, as it stood before the amendment effected by Act 91 of 1956, read as follows :

G "10(1) Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

H (2) Without prejudice to the generality of the provision contained in sub-section (1), the Custodian may, for any of the purposes aforesaid,

(a) to (1)

(m) incur any expenditure, including the payment of taxes, duties, cesses, and rates to Government or to any local authority (or of any amount due to an employee of the evacuee or of any debt by the evacuee to any person).

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(n) pay to the evacuee or to any member of his family or to any other person as in the opinion of the Custodian is entitled thereto, any sums of money out of the funds in his possession...

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That part of clause (m), which is shown within the brackets was deleted by Act 91 of 1956 with effect from October 22, 1956.

Section 40 reads as under :

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"40. (1) No transfer made after the 14th of August, 1947, but before the 7th day of May, 1954, by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them, if, at any time after the transfer, the transferor becomes an evacuee within the meaning of section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

D

(2) * * * *

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(3) An application under sub-section (1) for the confirmation of any transfer may be made by the transferor or the transferee or any person claiming under or lawfully authorised by either of them to the Custodian within two months from the date of the transfer or within two months from the date of the declaration or notification referred to in sub-section (1) whichever is later, and the provisions of section 5 of the Indian Limitation Act, 1908 shall apply to any such application.

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(4) Where an application under sub-section (1) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescribed manner and may reject the application if he is of opinion that—

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(a) the transaction has not been entered into in good faith or for valuable consideration; or

(b) the transaction is prohibited under any law for the time being in force; or

(c) the transaction ought not to be confirmed for any other reason.

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A In this connection, Rule 22 may also be seen. The material part of this rule ran as under :

“Claim by third parties :—

B (1) Any person claiming the right to receive any payment from any evacuee or from the property of such evacuee, whether in repayment of any loan advanced or otherwise may present a petition to the Custodian for registration of his claim.

C *Explanation.*—An application under this sub-rule shall be in respect of a claim for refund of money paid as consideration for the transfer by an evacuee of any property, where such transfer is not confirmed by the Custodian under s. 10 of the Act.

(2) (a) * * *
(i) to (iv) * * *

D (b) Where such claim is of the nature referred to in the Explanation to sub-rule (1) and the Custodian holds that the transfer of the property in respect of which the claim is made was a *bona fide* transaction, the Custodian may register the claim or such part thereof as has not been satisfied :

E Provided that in the case of a claim of the nature referred to in the Explanation to sub-rule (1), the claim shall be registered only for that amount of money which is proved to have been paid as consideration for the transfer of the property.

2A. * * *

F (3) The mere registration of a claim shall not entitle the claimant to payment and the Custodian may for reasons to be recorded refuse payment.

It may be noted that Rabia Bai had made an application under this rule for the registration of her claim to the refund of the sale consideration. Indeed, it was under this rule that her claim for Rs. 2,40,000/- was registered.

G From a plain reading of Rule 22, it is clear that before a claim for refund of money paid as consideration for the transfer by an evacuee of any property is registered by the Custodian, he should be satisfied : (a) that such transfer has not been confirmed under s. 40 of the Act; (b) that such transfer is a *bona fide* transaction; (c) that the amount for which the claim is being registered is proved to have been paid as consideration for the transfer of the property.

H In the instant case, the validity of the Assistant Custodian's order dated October 1, 1954, registering the claim of Rabia Bai appears to be unassailable because all the three conditions aforesaid to give

authenticity to the registration of her claim were satisfied. The sale was not confirmed by the Custodian, but he found that the whole of the price had actually been paid by the claimant as under :

“That by 29.4.1949, Rabia Bai had paid a sum of Rs. 1,50,000/- to the evacuee, and by 30.5.1949, she had paid Rs. 2,10,000/- to the evacuee, and a further sum of Rs. 30,000/- was paid to the evacuee’s agent on the date of registration of the document i.e. 11.8.1949 before the Sub-Registrar.” He further found that so far as the vendee was concerned, she had purchased the property in good faith for very valuable consideration and there was no *mala fides* on her part. It was on these findings that he registered her claim under Rule 22 for Rs. 2,40,000/- against “Gani Market” No. 20. Godown Street, G. T. Madras.”

Mr. S. N. Prasad, appearing for the appellants contends that the order of the Assistant Custodian registering Rabia Bai’s claim for Rs. 2,40,000/- was a nullity because the transaction was not a *bona fide* one there being lack of good faith both on the part of the vendor and the vendee. In any case, proceeds the argument, a sale which is not confirmed under s. 40(4) (a) owing to the absence of good faith either in the vendor or the vendee, cannot be deemed to be a *bona fide* transaction for the purpose of registration of a claim made by the vendee, under Rule 22. Reference in this connection has been made to the observations of this Court, in the judgment in the earlier appeal of Rabia Bai arising out of the Custodian’s order refusing to confirm the sale under s. 40(4) (a) of the Act to the effect, that the vendor had not entered into the transaction in “good faith”.

The contention is misconceived and cannot be accepted. Under s. 40(4) (a) of the Act, one of the grounds on which the Custodian is bound to reject an application for confirmation of a transfer, is that if in his opinion, the transaction has not been entered into in good faith. This clause came up for interpretation before this Court in the earlier appeal, *Rabai Bai v. Custodian General* (supra). It was held that the expression “good faith” in s. 40(4) (a) when construed in the context of s. 40(1) means “that if a transaction is affected by absence of good faith either in the vendor or the vendee its confirmation may properly be rejected under s. 40(4) (a); in other words, good faith is required both in the vendor and vendee”. With reference to the facts of the case, it was further observed : “Therefore the fact that the appellant paid valuable consideration for the transaction and is not shown to have acted otherwise than in good faith in entering into the transaction would not justify her claim for confirmation of the said transaction if it is shown that the vendor had not acted in good faith in entering into the said transaction. The fact that consideration was paid by the appellant and that she was acting in good faith may perhaps be relevant in determining the character of her conduct in regard to the transaction, but it would not be relevant or material in determining the character or the conduct of the vendor in relation to the transfer. This position is not seriously disputed before us.”

A It is clear that in order to qualify for confirmation under s. 40(4) (a) on the ground of good faith, a sale has to pass a much more stringent test than the one required to hold it "a bona fide transaction" for the purposes of Rule 22(e) (b). While under s. 40(4) (a) lack of good faith either in the transferor or the transferee would be sufficient to disqualify the transfer for confirmation, the position under Rule 22 is different. Under Rule 22, it is the character of the conduct of the claimant which primarily determines the character of the transaction.

B Therefore, if the vendee claimant in purchasing the property acted in good faith, for the purposes of Rule 22, the sale would be a *bona fide* transaction, notwithstanding the fact that there was lack of good faith on the part of the vendor. Again, the acid test of the vendor's *bona fides* under this Rule would be, whether he had purchased the property for adequate valuable consideration?

C In the instant case, the Assistant Custodian found that this test was amply satisfied. This finding of fact was not—and indeed could not be—challenged before the High Court. It is therefore too late in the day to urge that Rabia Bai's claim was not duly registered in accordance with Rule 22.

D Further question that falls to be considered is : What was the consequence of this registration ?

According to Mr. Prasad, the registration was an administrative act required to be done merely for a statistical purpose. Our attention has been invited to sub-rule (3) of the Rule, which provided that "merely registration of a claim shall not entitle the claimant to payment"

E While it is true that mere registration of a claim under this Rule does not *ipso facto* confer a right to payment, it is not correct to say that the only purpose served by such registration is statistical and nothing else. As has been discussed already, before registering a claim the Custodian is required to determine objectively that the transaction is *bona fide*, the claimant having entered into it in good faith on payment of adequate valuable consideration. The determination of this preliminary fact which is an essential pre-requisite of registration is a judicial function enjoined on the Custodian by the statutory provision. Registration of claim of a vendee under this Rule, therefore, amounts to a preliminary adjudication as to the genuineness of the claim and its eligibility for discharge under the relevant substantive provisions of the Act.

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G The next question to be considered is the effect of the deletion of r. 22 by notification dated February 20, 1957, and the omission by Act 91 of 1956 of the words "or of any amounts due to any employee of the evacuee or of any debt due by the evacuee to any person" from s. 10(2)(m) of the Act. It is contended by Mr. Prasad that since registration under the deleted Rule 22 did not confer a vested right on the claimant, the claim does not survive for consideration under s. 10(2) of the Act. Clause (m) of s. 10(2), according to Counsel, would not cover the case because of deletion caused by the amending Act 91 of 1956. Clause (n) of s.10(2), it is maintained, also

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will be of no avail because firstly, as a result of the deletion of r. 22, the Custodian is no longer under any legal obligation to meet the claim, and secondly, the Custodian has no funds with him for payment of the claim as those funds have since been transferred to the Compensation Pool formed under s. 14 of the Displaced Persons Compensation and Rehabilitation Act 1954 (for short, the Rehabilitation Act). It is contended that every penny in the Custodian's account once transferred to the Compensation Pool, can be utilised only (a) to compensate displaced persons and (b) to compensate the evacuee according to Indo-Pak Agreement (s.15), and that no part of the Compensation Pool is available to satisfy the claims of third parties who are neither displaced persons, nor evacuees.

So far as the first contention relating to the effect of deletion of r. 22 and the amendment of s.10(2) is concerned, the same is no longer *res integra*. In *Raja Bhanupratap Singh v. Custodian*,⁽¹⁾ a similar argument was advanced. Shah J. (as he then was) speaking for the Court, negatived the argument, thus :

“We are, however, unable to agree that because of the amendment made in s.10(2)(m) and the deletion of Rule 22 the power which is vested in the Custodian under s.10(2) (n) must be held restricted. Sub-section (1) of s. 10 sets out the powers of the Custodian generally, and the diverse clauses in sub-s.(2) illustrate the specific purposes for which the powers may be exercised, and there is no reason to think that the clauses in sub-s. (2) are mutually exclusive. If power to pay the debts was derived both under cls. (m) and (n) as it appears it was, deletion of the provision which authorised the Custodian to pay debts due by the evacuee to any person from cl. (m) and Rule 22 setting up the machinery for registration of debts did not, in our judgment, affect the power which is conferred by cl.(n) by sub-s.(2) and also by s.10(1). In our judgment, the power to administer is not merely a power to manage on behalf of the evacuee so as to authorise the Custodian merely to recover and collect the assets of the evacuee but to discharge his obligations as well.”

From the above enunciation, it is clear that the substantive provision which empowers the Custodian to recover and preserve the assets of the evacuee and to discharge his obligations as well is in s. 10(1). The diverse clauses of subs s. (2) are not mutually exclusive, and illustrate the various purposes which are included in the general power to administer the properties of the evacuee conferred on the Custodian by sub-s.(1) of s.10. Clause (n) of s.10(2) specifically authorises the Custodian to pay to “any other person as in the opinion of the Custodian is entitled thereto any sums of money out of the funds in his possession.” As was explained in *Bhanupratap Singh's* case (*supra*), the use of the expression “in the opinion of the Custodian” was not intended to invest the Custodian with arbitrary authority.

(1) [1966] 1 S.C.R. 304.

A In forming his opinion, he was bound to act judicially. In the instant case, the Custodian had, in accordance with the machinery provided in r. 22 for effectuating the exercise of the power conferred by s. 10(2)(n), formed an opinion about Rabia Bai's claim being genuine. In the exercise of that power the only thing that remained to be done by the Custodian was to ascertain whether there were adequate "funds in his possession" to meet Rabia Bai's claim which was

B a genuine liability of the evacuee. The words "out of the funds in his possession" in cl.(n) of s. 10(2) have reference only to the funds relatable to the particular evacuee against whom or against whose property, the claim for refund is made by a claimant. In the case before us, it is pointed out, the property in question was fetching huge rental income. The property was acquired under s. 12 of the Rehabilitation Act by the Government on February 24, 1961. It was

C thereafter sold by the Government on January 18, 1962 for Rs. 3,10,100/-, that is, for a consideration substantially in excess of Rabia Bai's claim. The sale proceeds were credited to the Compensation Pool. At the material time, therefore, it could not be said that the Custodian was not possessed of sufficient funds to meet the claim of Rabia Bai.

D Section 14 of the Rehabilitation Act, which came into force on October 9, 1954 conceives the constitution of a Compensation Pool. It provides that such Pool shall consist of :

- (a) all evacuee property acquired under s.12, including the sale proceeds of any such property and all profits and income accruing from such property;
- E** (b) such cash balances lying with the Custodian as may, by order of the Central Government, be transferred to the compensation pool;
- (c) such contributions, in any form whatsoever, as may be made to the compensation pool by the Central Government or any State Government;
- F** (d) such other assets as may be prescribed.

Sub-s. (2) further provides that the Compensation Pool shall vest in the Central Government **free from all encumbrances** and shall be utilised in accordance with the provisions of the Act and the rules made thereunder.

G The controversy is about the true import of the expression "cash balances lying with the Custodian" used in cl. (b) of sub-s. (1) of s. 14.

According to Mr. Prasad "such cash balances" will cover all funds in their entirety lying in the deposit account of the Custodian which may be transferred by an order of the Central Government to the

H Compensation Pool.

In our opinion, the expression "such cash balances" used in s. 14(1)(b) cannot be interpreted so as to cover total cash deposits.

with the Custodian. The use of the word "balances" is significant. The connotation of the term "balances" is well known. According to Websters' Dictionary, it means "the difference, if any, between the debit and credit side of an account." It is the result of a comparative reckoning. The expression "cash balances" in clause (b) therefore, has to be construed as the excess of credits over debits. The word "balances" appears to have been advisedly used in preference to "deposits" because the intention was that only that much amount in deposit with the Custodian should be transferred to the Compensation Pool which would be in excess of the amounts required for meeting the due claims against the evacuees or their properties. It is thus clear that what can be directed to be transferred to the Compensation Pool by the Government under s. 14(1)(b) is the "cash balances" and not the total cash deposits with the Custodian.

The above being the legal position, it is to be seen as to what was actually directed to be transferred to the Compensation Pool. The first order of such transfer made by the Central Government is dated March 19, 1956. It purports to have been issued under s.14(1)(b) of the Rehabilitation Act. Thereby the Government directed that a sum of Rs. 10 crores out of the *balances* centralised under the Head "S-Deposits and advances-Part II-Deposits not bearing interest-(C)-other Deposits of the Custodians of Evacuee Property" be transferred to the Compensation Pool. The second order is dated February 26, 1957 whereby the sum of Rupees one crore was directed to be transferred *out of* the Custodian's *cash balances* to the Compensation Pool. The last order is dated August 18, 1966, whereby it was directed that all the *surplus balances* in the deposit account of the Custodians be transferred to the Compensation Pool. The use of the word "surplus" in this Government order is significant. It puts the matter beyond doubt that only those *balances* which were *surplus* or in excess over what was required to meet the liabilities of the evacuees or the registered verified claims against the evacuees or their properties, were to be transferred to the Compensation Pool. It was the duty of the Custodian therefore to keep back with him so much of the funds in his deposit as were necessary to meet the verified claims against evacuees or their properties. Such a course on his part would have been perfectly legal and also in conformity with the final directions issued for transfer of "surplus balances" by the Central Government. Only the 'cash balances' which were *validly* transferred could legally form part of the Compensation Pool. On this point we agree with the High Court that the Custodian had neither the power nor the authority to transfer the entirety of funds to the Compensation Pool.

Even if it is considered for the sake of argument that the last order of the Government was a direction to transfer the entirety of funds including those relating to the property of the evacuee, Abdul Ghani Jan Muhammad, without keeping back what was required for paying the registered claims of Rabia Bai, then the same would be contrary to the intendment of cl.(b) of s.14(1) to the extent of Rabia Bai's claim.

- A** We are of opinion that in the peculiar circumstances of the case, the Appellate Bench of the High Court was right in directing the Custodian to refund a sum of Rs. 2,40,000/- to the respondent, Rabia Bai, in payment of her claim and in further directing the Central Government to place at the disposal of the Custodian, appellant herein, the said sum for the purpose of refund. The time for refund is further extended by 3 months from today, if the same has not already
- B** been done. Accordingly, we dismiss this appeal. The appellant shall pay the costs of the respondents in this Court.

P.B.R.

Appeal dismissed.