

MAHENDRA PRATAP DUBEY

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v.

MANAGING OFFICER, EVACUEE PROPERTY & ORS.

(Civil Appeal No. 6384 of 2010)

NOVEMBER 16, 2018

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**[A.M. KHANWILKAR AND
DR. DHANANJAYA Y CHANDRACHUD, JJ.]**

Displaced Persons (Compensation and Rehabilitation) Act, 1954: s. 10(2)(o) – Sale certificate issued by the custodian of evacuee property – Validity of – Jurisdiction of the Managing Officer to determine – On facts, application by respondent no. 3 claiming that she was occupying the suit property as a owner, having purchased the same at a public auction and in furtherance whereof sale certificate was issued in her favour and that respondent No.4, through whom the appellant claimed his right, title and interest in the suit property, was causing obstruction to her possession in the suit property on the basis of some fictitious sale certificate – Allowed by the Managing Officer (Evacuee Property) and thereafter, upheld by the Authorities and the High Court – On appeal, held: Application was moved by respondent no.3 and not by appellant or any of his stated predecessor-in-title, as such the enquiry into the application ought to be limited to the fact as to whether the documents relied upon by respondent no.3 before the authority, to claim that she had acquired right, title and interest in the suit property as a consequence of issuance of certificate of sale, were genuine – Furthermore, the appellant has not been able to establish any causal connection with the suit property either on account of allotment of the suit property to him or his predecessors, by the competent authority or otherwise – Respondent no.4 has not claimed right in respect of the suit property in any other capacity and appellant has failed to produce the sale certificate in favour of respondent no.4 issued by the Custodian of Evacuee Property – In view thereof, respondent no. 4, or any person claiming through him-appellant, could not be permitted to question the validity of the sale certificate issued by the Managing Officer in favour of respondent No.3 and the issue of jurisdiction of the Managing Officer to deal with the subject property.

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A Dismissing the appeal, the Court

HELD: 1.1 The application was moved by respondent No.3 and not by the appellant or any of his stated predecessor(s)-in-title. In that situation, the enquiry into the application ought to be limited to the fact as to whether the documents relied upon by respondent No.3 before the authority, to claim that she had acquired right, title and interest in the suit property as a consequence of issuance of certificate of sale, were genuine. Neither the appellant nor his predecessor-in-title has challenged the validity of the said official documents issued in favour of respondent No.3 before the concerned authority or otherwise. In the proceedings initiated by respondent No.3, because of the stand taken by her that respondent No.4 was also claiming right, title and interest in the suit property by virtue of a sale certificate issued in his favour by the Custodian, notices were issued by the competent authority to him as well as others to evoke their response. However, they failed to produce any document, much less original documents, evidencing that the Custodian had issued a sale certificate in respect of the suit property in favour of respondent No.4. [Para 10][800-D-F]

1.2 The appellant as well as respondent No.4 having failed to produce any original document and since there was no record or entry in the official register to show that such a sale certificate was issued in favour of respondent No.4 by the Department, as concurrently found by the authorities, it must follow that their claim in respect of the suit property remained unsubstantiated. In other words, the appellant has not been able to establish any causal connection with the suit property either on account of allotment of the suit property to him or his predecessors, by the competent authority or otherwise. [Para 11][800-G-H; 801-A]

1.3 The finding of fact and conclusion that sale certificate issued in favour of respondent no. 3 is valid, came to be affirmed by the Appellate Authority as well as the Revisional Authority for which reason the High Court declined to interfere. Once it is held that no sale certificate issued in favour of respondent No.4 by the Custodian of Evacuee Property, under the 1950 Act is forthcoming nor any entry in the official register is found in that

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regard, all persons claiming through him (including the appellant) must suffer the consequences of such a finding of fact. Notably, respondent No.4 has not claimed right in respect of the suit property in any other capacity, and in that view of the matter, it cannot be understood as to how respondent no. 4, or any person claiming through him, could be permitted to question the validity of the sale certificate issued by the Managing Officer in favour of respondent No.3. [Para 12][802-E-G]

1.4 The appellant, having failed to produce the sale certificate in favour of respondent No.4 issued by the Custodian of Evacuee Property under the 1950 Act, he cannot be heard to raise the issue of jurisdiction of the Managing Officer to deal with the subject property, including the validity of the sale certificate issued in favour of respondent No.3. A deeper enquiry as to how the Managing Officer assumed jurisdiction to issue the sale certificate in favour of respondent No.3 would become relevant and essential only if the appellant was able to substantiate the fact, at least prima facie, that the suit property was, in fact, transferred in favour of respondent No.4 by the Custodian of Evacuee Property under the 1950 Act. [Para 14][803-B-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6384 of 2010

From the Judgment and Order dated 26.02.2007 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 30158 of 1995.

Anurag Dubey, Ms. Anu Sawhney, Bhupendra Kr. Bhardwaj, Sanchit Maheshwari for Mohan Pandey, Advs. for the appellant.

Ms. Meenakshi Kalra, E. C. Agrawala, Rajesh Kumar Advs for the Respondents.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J.

1. This appeal takes exception to the judgment and order dated 26th February, 2007 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.30158 of 1995, whereby the writ petition filed by the appellant challenging the decision of the Chief Settlement

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- A Commissioner, Board of Revenue U.P. at Lucknow was rejected. The Assistant Custodian/Managing Officer (Evacuee Property), Board of Revenue, Lucknow had allowed the application filed by respondent No.3 - Mainmum Nissa @ Kumani, W/o Subrati @ Algu, R/o Village Singramau, Tehsil Shahganj, District Jaunpur, U.P., accepting her claim that she was occupying the suit property as owner thereof, having
- B purchased the same at a public auction and in furtherance whereof a certificate of sale came to be issued in her favour and that respondent No.4 - Mohd. Sattar @ Mokhan (through whom the appellant claims his right, title and interest in the suit property) was causing obstruction to her possession in the suit property on the basis of some fictitious sale
- C certificate dated 30th September, 1968.

2. Be it noted that the statutory authorities and the High Court have concurrently found that Ram Abhilakh (through whom the appellant claims to have acquired title in the suit property), to whom notice was issued by the authority and opportunity was given to produce the official
- D record in his possession to substantiate that he had acquired title in the suit property pursuant to a transfer by the Custodian in favour of Md. Sattar @ Mokhan, failed to do so. He avoided filing any document. Further, there was no record or any entry in the official register to show that any sale certificate was issued in favour of Md. Sattar @ Mokhan
- E by the concerned department.

3. On the other hand, it has been concurrently held that respondent No.3 had produced a certificate of sale dated 7th August, 1965 in her favour issued by the competent authority in reference to an auction conducted on 12th July, 1962, at which she purchased the subject property. Further, there was nothing to discredit the documents and the testimony
- F of respondent No.3 that she had acquired right, title and interest in the suit property by virtue of a certificate of sale in her favour. Such finding has been recorded by the first authority vide judgment and order dated 4th May, 1985 and confirmed by the Collector, District Jaunpur, by dismissing the appeal preferred by the appellant bearing Case No.8/
- G 1984/522 decided on 7th October, 1988 and further upheld by the Chief Settlement Commissioner, Board of Revenue, Lucknow, U.P., being the revisional authority, by dismissing the revision of the appellant bearing Revision No.1(RR) No./1988-89) District Jaunpur, decided on 5th August, 1995. The High Court, therefore, declined to interfere in exercise of its

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writ jurisdiction and dismissed the writ petition preferred by the appellant A
vide impugned judgment and order.

4. The moot question agitated by the appellant before the concerned B
authorities and up till the High Court, was that the Managing Officer,
appointed under the Displaced Persons (Compensation and
Rehabilitation) Act, 1954 had no jurisdiction to determine the validity of
a sale certificate issued by the Custodian of Evacuee Property in exercise
of the powers conferred upon him under Section 10(2)(o) of the
Administration of Evacuee Property Act, 1950. This contention, however,
did not find favour with either the authorities or the High Court in view
of the findings of fact recorded against the appellant. The appellant was
neither able to assail the concurrent findings of fact recorded by the C
authorities before the High Court nor did he produce the original sale
certificate dated 30th November, 1968 purportedly issued in favour of
respondent No.4 (Md. Sattar @ Mokhan), who had transferred the
property to one Shri Vishwanath S/o Kukhekahar who in turn transferred
the same to Ram Abhilakh S/o Parmananad, R/o Shahganj, District D
Jaunpur, from whom the appellant claims to have acquired the same.

5. In the present appeal, the appellant has contended that if an
Indian citizen had left India to live in Pakistan, his property would become
an evacuee property as defined in Section 2(f) of the 1950 Act; and
whence the Custodian alone would have the power under Section 10 of E
the 1950 Act to transfer such property in the manner prescribed by the
1950 Act. Further, such evacuee property could indeed be acquired under
Section 12 of the Displaced Persons (Compensation and Rehabilitation)
Act, 1954 by the Central Government, consequent to which the property
would lose the status of an evacuee property and the Custodian would
be divested of its power to deal with the same. That property would then F
become a part of the compensation pool as envisaged under Section 14
of the 1954 Act and only thereafter, could the Managing Officer assume
control or authority over the same and dispose it of in the manner specified
under Section 20 of the 1954 Act. On facts, it has been argued on
behalf of the appellant that respondent No.3 admits that the property is G
an evacuee property and has not claimed that it is a compensation pool
property. For, in the suit filed by the husband of respondent No.3 (Subrati),
being suit No.520/1982, it was asserted that the evacuee property has
been auctioned off to respondent No.3 by the Custodian; but in the subject

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A application dated 30th April, 1982 filed before the Managing Officer, respondent No.3 claims that the suit property was purchased in an auction and consideration amount was deposited in the office of the Managing Officer and the sale certificate dated 7th August, 1965 came to be issued in her favour by the Managing Officer. Similarly, in the counter affidavit filed before this Court, respondent No.3 had claimed that the property was transferred to her by the Managing Officer. In substance, the argument is that respondent No.3 has taken a contradictory stand before different authorities and courts, which must militate against her.

6. The contesting respondent, on the other hand, would contend that regard being had to the concurrent finding of fact recorded by the authorities concerned and also upheld by the High Court, the sole issue raised by the appellant about the jurisdiction of the Managing Officer does not merit any interference. An abstract debate bereft of any proof produced by the appellant to establish that the suit property was transferred to respondent No.4 (Md. Sattar @ Mokhan) by the Custodian in terms of sale certificate dated 30th November, 1968, does not merit examination. The question whether such a sale certificate was issued and, in fact, exists, could certainly be examined by the Managing Officer before whom the subject application dated 30th April, 1982 was filed by respondent No.3, by virtue of the enabling provision in Section 19 and the bar of jurisdiction of the civil courts in terms of Section 36 of 1954 Act. In such an enquiry, all aspects were open including to determine as to whether the sale certificate issued in favour of respondent No.3 by the office of the Managing Officer, is valid. It is submitted that all the authorities including the High Court have concurrently found that the sale certificate issued in favour of respondent No.3 in respect of suit property dated 7th August, 1965 was genuine and valid. Furthermore, it has been concurrently found against the appellant that despite sufficient opportunity, his predecessor-in-title Ram Abhilakh S/o Parmanand did not produce any document; nor did respondent No.4 (Md. Sattar @ Mokhan), through whom he (appellant) had claimed right, title and interest in the suit property, produce the original transfer document issued by the Custodian to prove the genuineness of the transaction and further there was no record or any entry in the official register evidencing that any sale certificate was issued in favour of respondent No.4 (Md. Sattar @ Mokhan) by the department. In that view of the matter, the question of law sought to be agitated by the appellant about the authority of the

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Managing Officer to decide the matter in issue concerning the sale certificate issued by the Custodian of Evacuee Property under the 1950 Act would be tenuous and the Court should not enter upon that issue. A

7. We have heard Mr. Anurag Dubey, learned counsel appearing for the appellant and Ms. Meenakshi Kalra, learned counsel appearing for the respondents. B

8. Indisputably, the respondent No.3 had filed an application before the Assistant Custodian/Managing Officer (Evacuee Property), Board of Revenue, Lucknow, which highlighted two aspects. First, that it be declared or directed that she had acquired right, title and interest in the suit property by virtue of the sale certificate dated 7th August, 1965 issued by the Managing Officer. Second, the claim of respondent No.4 (Md. Sattar @ Mokhan) that the suit property was transferred in his favour by virtue of a sale certificate dated 30th November, 1968, issued by the Custodian is non-existent and not genuine. C

9. Respondent No.3 in the subject application had asserted that she had purchased the suit property at a public auction held on 12th July, 1962; and after payment of the sale consideration in the office of the Managing Officer, a certificate of sale was issued in her favour on 7th August, 1965. To buttress this submission, reliance has been placed by respondent No.3 - Mainmum Nissa @ Kumani on (i) Receipt issued by the Office of the Regional Settlement Commissioner, U.P., accepting the consideration amount paid by her, (ii) Acceptance Letter issued by the Assistant Custodian, Government of India, dated 10th June, 1965, and (iii) Certificate of Sale issued under the signature of the Managing Officer, Varanasi. The said documents read thus: D

“Annexure -R2 F

EVACUEE SIRAI

FORM NO.1

OFFICE OF THE REGIONAL SETTLEMENT COMMISSIONER
UTTAR PRADESH

Srl. No. 4209

Receipt No.30

Dated: 12.7.62 G

Received from Mst. Maimunnisha alias Kumman, 170/- (Rupees One hundred seventy only) by cash on account of rent / licence H

A fee / licence money in respect of / as earnest money for KacchaKhander house of Evacuee Sirai in Village Sgramau, Teh. Shahganj, Jaunpur.

Previous Receipt No. Dated

B Note: Where payment is made by cheque and the cheque is dishonoured by the bank, the receipt will be rendered in valid.

H/B (highest bid) 1700/-

Sd/ (illegible)

12.7.62

Jr. Accountant

C Subject to the approval of higher authorities”

“**Annexure R-3**”

Form No. IX

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ACCEPTANCE LETTER
GOVERNMENT OF INDIA
MINISTER OF REHABILITATION
Office of the Assistant Custodian

E District Varanasi

Dated: 10.6.1965

Smt. Maimun Nisha alias Kumman w/o Subrati alias (illegible)
Shahganj, Jaunpur.

F Subject: Sale Kaccha House Khander,
Situating at: Sigramau, Shahganj, Jaunpur.

Situated at: Sigramau, Shahganj, Jaunpur.

Evacuee: Sirai

G You are hereby informed that you bid dated 12 July, 1962 for Rs. 1700/- for the above noted property, has been accepted. You are further required to send by post or to produce before the undersigned a treasury challan for the deposit of balance money of sale price amounting to Rs.1530/-, under Central head “S-Deposits and Advances – Part IV Suspense Accounts – P.A.O.

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MAHENDRA PRATAP DUBEY v. MANAGING OFFICER, 799
EVACUEE PROPERTY [A. M. KHANWILKAR, J.]

Suspense – Transactions Adjustable with Pay and Accounts Office, A
Rehabilitation Delhi – Finally Adjustable by P.A.O. under the Head
S – Deposits and Advances – Part II Deposits not bearing Interest
– IVIL Deposits – Personal Deposits – Deposits on Account of
Un-acquired Evacuee Property”, within 15 days from the date of
issue of this letter.

Sd/-

(B.B. VERMA)

Assistant Custodian”

“**Annexure R-4**”

GOVERNMENT OF INDIA
MINISTRY OF REHABILITATION
OFFICE OF THE MANAGING OFFICER
VARANASI

APPENDIX XXII
CERTIFICATE OF SALE
(Free Hold Property)
Rule 90(15)

Dated: 7.8.1965

This is to certify that Smt. Maimun Nisha alias Kamman w/o
Subrati resident of Sigramau, Shahganj, Jaunpur having given the
highest bid at a sale by public auction held in pursuance of the
powers conferred upon me under Section 20 of the Displaced
Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954)
on the 12th day of July 1962 of the properly described in the
Schedule and his bid having been accepted and the valid thereof
having been paid by him in cash/ by adjustment of compensation
due on his and his associates claims has been declared the
purchaser of the said property with effect from 25th day of June
1965. Given under my hand and seal of my office this 26th June of
1965.

SCHEDULE

Kaccha House Khander
Sigramau, Evacuee
Shahganj, Sirai
Jaunpur

EVACUEE
Sirai Sale price 1700/-

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- A East – House of Jokhu& Field
 West – House of Gaya Dargai
 North – Road
 South – House of Dase

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Sd/-
 (B.B. Verma)
 Managing Officer
 Varanasi”

- C 10. From the acceptance letter, it is noticeable that it has been issued under the signature of one B.B. Verma, Assistant Custodian and the same person issued a certificate of sale in his capacity as Managing Officer. It must be kept in mind that the application was moved by respondent No.3 and not by the appellant or any of his stated predecessor(s)-in-title. In that situation, the enquiry into the application ought to be limited to the fact as to whether the documents relied upon
- D by respondent No.3 before the authority, to claim that she had acquired right, title and interest in the suit property as a consequence of issuance of certificate of sale, were genuine. Neither the appellant nor his predecessor-in-title has challenged the validity of the said official documents issued in favour of respondent No.3 before the concerned
- E authority or otherwise. In the proceedings initiated by respondent No.3, because of the stand taken by her that respondent No.4 (Md. Sattar @ Mokhan) was also claiming right, title and interest in the suit property by virtue of a sale certificate issued in his favour by the Custodian, notices were issued by the competent authority to him as well as Vishwanath S/o Sukhi and Ram Abhilakh S/o Parmanand to evoke their response.
- F Despite opportunity given by the competent authority, they failed to produce any document, much less original documents, evidencing that the Custodian had issued a sale certificate in respect of the suit property in favour of respondent No.4 (Md. Sattar @ Mokhan).

- G 11. The appellant as well as respondent No.4 having failed to produce any original document and since there was no record or entry in the official register to show that such a sale certificate was issued in favour of respondent No.4 (Md. Sattar @ Mokhan) by the Department, as concurrently found by the authorities, it must follow that their claim in respect of the suit property remained unsubstantiated. In other words,

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the appellant has not been able to establish any causal connection with the suit property either on account of allotment of the suit property to him or his predecessors, by the competent authority or otherwise. The Assistant Custodian on analysing the factual position in its judgment observed thus: A

“I have gone through the file and found there is no such documents have been filed by the objector whose genuineness can be examined except the objection which has been filed on behalf of O.P. Sri Ram Abhilakh stating that this tribunal has got no jurisdiction to examine the genuineness of sale certificate that which one is correct out of these two documents. B

In this regard I have to mention that this has been the consistent view of the higher tribunal under the O.P. (C & P) Act No. 44 of 1954, that in a case in which the nature of each complaint is that some forged deeds have been reported to have been issued by the Assistant Custodian/Managing Officer the said officer can meet enquiries and can ask the person concerned to produced the relevant papers to examine their veracity find out if any such deed was at all issued. In this connection a copy of order of Sri Prem Narain, Settlement Commissioner (Judicial) passed on 11.10.76 in appeal No.14/SC/PN/U/70,SriMohd. Shamim Vs. Managing Officer, Lucknow was filed as an examper, in which it has been held that the Managing Officer can certainly look into the matter on receipt of complaint and can pass appropriate order on that basis. Accordingly, the parties were directed to produce relevant papers, the applicant Smt. MaimunNissa filed the original & photo copy of receipt of earnest money, acceptance letter dt. 10.6.65 and the sale certificate dt. 7.7.65 referred to above, and supported her contention on affidavit. Sri Ram Abhilekh did not produce any document and also did not produce Sri Mohd. Satar @ Mohkan the alleged original transferred from the custodian to prove the genuineness of the transaction. On the other hand the evaded to file the documentation the plea that the same cannot be looked into by the tribunal; which as stated above can always be looked in this circumstances of the case. C
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In the absence of any papers or evidence of Sri Ram Abilekh the matter was examined with the available records.

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A **The connected file shows that first the house was put to sale on 16.3.62 when the bid of Smt. Amina was the highest for Rs.1210/- and an amount of Rs.121/- was deposited but subsequently for non deposit the balance money the sale was cancelled and the earnest money deposited was forfeited.**

B **It further seems from the documents filed that the house was put to sale on 12.7.82 and it was knocked down in favour of MaimunNissa, who deposited Rs.170/- as earnest money and on receipt of acceptance letter dt.10.6..... she deposited the balance sale consideration money on 26.6.65 and thereafter the certificate of sale was issued in her favour on 7.7.65 by Sri B.B. Verma, Managing Officer, Varanasi. I have seen the original documents. There is nothing to discredit the said documents and the testimony of Smt. MaimunNissa. There is no record in the office or any entry in the office register to show that any Sale Certificate was issued in favour of Mohd. Sattar @ Mohkan by this department. The sale certificate issued in favour of Smt. MaimunNissa is accordingly held valid.”**

(emphasis supplied)

E 12. This finding of fact and conclusion came to be affirmed by the Appellate Authority as well as the Revisional Authority for which reason the High Court declined to interfere. Once it is held that no sale certificate issued in favour of respondent No.4 (Md. Sattar @ Mokhan) by the Custodian of Evacuee Property, under the 1950 Act is forthcoming nor
F any entry in the official register is found in that regard, all persons claiming through him (including the appellant) must suffer the consequences of such a finding of fact. Notably, respondent No.4 (Md. Sattar @ Mokhan) has not claimed right in respect of the suit property in any other capacity, and in that view of the matter, we fail to understand as to how Md. Sattar @ Mokhan, or any person claiming through him, could be permitted
G to question the validity of the sale certificate dated 7th August, 1965 issued by the Managing Officer in favour of respondent No.3 (Mainmum Nissa @ Kumani).

H 13. The appellant had placed emphasis on the finding rendered in the civil suit filed by the husband of respondent No.3, for permanent

injunction against respondent No.4 (Md. Sattar @ Mokhan). However, we agree with the concurrent view taken by the authority concerned that the said finding will be of no avail to the appellant. For, respondent No. 3 was not impleaded as a party in the said suit. A

14. Suffice it to observe that the appellant, having failed to produce the sale certificate in favour of respondent No.4 (Md. Sattar @ Mokhan) issued by the Custodian of Evacuee Property under the 1950 Act, he cannot be heard to raise the issue of jurisdiction of the Managing Officer to deal with the subject property, including the validity of the sale certificate issued in favour of respondent No.3. A deeper enquiry as to how the Managing Officer assumed jurisdiction to issue the sale certificate in favour of respondent No.3 would become relevant and essential only if the appellant was able to substantiate the fact, at least prima facie, that the suit property was, in fact, transferred in favour of respondent No.4 (Md. Sattar @ Mokhan) by the Custodian of Evacuee Property under the 1950 Act. Accordingly, this appeal must fail. B C

15. In view of above, the appeal is dismissed with costs. D