

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5322 OF 2008
(Arising out of SLP(C)No.3331 OF 2006)

LAHORIMAL JETHANAND ... **APPELLANT(S)**

:VERSUS:

MANAGING OFFICER/TAHSILDAR, JALNA AND ORS. ... **RESPONDENT(S)**

ORDER

Leave granted.

The appellant herein migrated to India from Pakistan in the year 1948. He was registered under Section 5 of Bombay Refugees Act, 1948. A certificate to that effect was issued in his favour. By an order dated 11.10.1994 passed by the Settlement Commissioner, he was allotted House No. 4003 in the District of Jalna, in lieu of his claim over the land that he owned and possessed in Pakistan.

Respondent No.4 indisputably was in possession of the said premises. A notice dated 2.4.2005 was issued asking it to vacate the said premises in terms of Section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The respondent filed a writ petition before the

Bombay High Court. The said writ petition was allowed directing:

“In view of this position, the writ petition is disposed of. Rule is discharged. However, the Managing Officer is directed to take into consideration the observations made above and give reasonable opportunity to the petitioners before passing further necessary orders. Considering the time taken in this matter, we expect that the Managing Officer will pass necessary orders within a period of two months from the date of receipt of this order. The petitioners to appear before the Managing Officer and it will not be necessary for the Managing Officer to issue further notices to the petitioners to appear before him. The petitioners should, suo motu, appear before the Managing Officer on 3rd April, 2000.”

Pursuant thereto or in furtherance thereof the Managing Officer heard the parties. However, despite the fact that limited notice was issued to respondent No.4, their other contentions were also entertained and it was ordered:

“The representation made by the petitioner is allowed. It is declared that the petitioner is entitled to get the property on Government approved rates as are prevalent today as per B & C Department. In case the respondent obtains an order from the competent authorities holding him entitled to receive amount of compensation within a period of six month then he can withdraw the said amount deposited by the petitioner after assessment at the Government approved rates. The request of the respondent for allotment of house No. 4003 is rejected.

The petitioners are directed to execute a bond on a stamp paper of Rs. 20/- giving an undertaking that they are ready to purchase the house in question at price as may be determined by B & C Department on approved Government rates. If the petitioners are not ready to purchase the said property than they may be evicted and the property be sold by auction as per rules laid in Govt. letter dated 1.1.88 & 3.3.95.

The notice issued to the petitioners in the year 1995 for their eviction is withdrawn.”

The appeal as well as a revision application preferred by the appellant thereagainst have been dismissed. He questioned the validity of the said orders by filing a writ petition before the High Court of Judicature at Bombay. It was marked as Writ Petition No. 6762/2002. By reason of the impugned judgment dated 11.10.2005, the said writ petition has been dismissed by the High Court directing:

“By this petition the petitioner seeks a direction to hand over peaceful, vacant possession of the house property bearing No. 4003-Jaina. Such prayer can better be decided in a civil suit. Similar is the prayer regarding cancellation of conveyance in favour of the petitioner. That also is a prayer which can be agitated before the appropriate civil court. Reserving those rights the petition is dismissed. Civil Application No. 1654 of 2004 stands disposed of accordingly.”

Learned counsel appearing on behalf of the appellant would submit that keeping in view the provisions of Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 as also Section 46 of the Administration of Evacuee Property Act, 1950, the Civil Court has no jurisdiction to entertain the suit. The learned counsel appears to be correct.

Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, reads as under:

“Bar of jurisdiction.- Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

Section 46 of the Administration of Evacuee Property Act, 1950,
reads as under:

“Jurisdiction of Civil Courts barred in certain matters.- Save as otherwise expressly provided in this Act, no Court or Revenue Court shall have jurisdiction-

(a) to entertain or adjudicate upon question whether any property or any right to or interest in any property is or is not evacuee property; or

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(c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.”

The provisions of the 1954 Act as also 1950 Act are absolutely clear and explicit, in terms whereof the jurisdiction of the Civil Court is barred. This aspect of the matter is covered by a decision of this Court in Custodian of Evacuee Property, Punjab & Ors. vs. Jafran Begum, (AIR 1968 SC 169).

We, therefore, are of the opinion that the High Court could not have directed the appellant to file a civil suit. The impugned order, therefore, cannot be sustained and it is set aside accordingly. The matter is remitted to the High Court for consideration thereof afresh on merit. The appeal is disposed of.

The respondent No.4 shall not create any third party interest in the meantime.

We make it clear that we have not expressed any opinion on the merit of the matter.

We would however request the High Court to consider the desirability of disposing of the matter as expeditiously as possible, preferably within a period of six months from the date of communication of this order.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

NEW DELHI,
AUGUST 29, 2008.