

PETITIONER:
J.R. JANI & ORS.

Vs.

RESPONDENT:
AHMED EBRAHIM OF RANGOON.

DATE OF JUDGMENT: 14/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
AHMAD SAGHIR S. (J)

CITATION:
1996 SCC (7) 732 JT 1996 (3) 156
1996 SCALE (2) 585

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Though the respondent initially had appeared through Shri I.N. Shroff, Advocate, on his demise, notice was issued on February 29, 1992 to the address available on record and till date nobody appears for the respondent. Neither unserved envelope nor acknowledgement has been received. Under these circumstances, the notice must be deemed to have been served on the respondent.

These appeals by special leave arise from the order of the Division Bench of the High Court of Gujarat dated February 19, 1973 made in L.P.A. No.85/70 holding that the L.P.A. is not maintainable. Therefore, the appellants have challenged the original order of the learned single Judge dated November 24-25, 1969 made in Special Civil Application No.893 of 1965.

The substance of the contention raised and answered in the High Court was that the respondent was at the material point of time a Burmese citizen and he was never an evacuee. He held the shares of the Khatiawad Industries Ltd., a company, in former Junagadh State, which was declared as an evacuee company in 1959. He claimed that in the memory of his father and grand-father Ibrahim Vali Mohammed and Company he purchased six lakhs shares in the said Khatiawad Industries Ltd. under an agreement dated June 12, 1944. He and his brothers had agreed to give those shares to him. He all along was a resident of Burma. Consequently, he was not an evacuee. Without notice to him under Section 7 read with Rule 6 of the Administration of Evacuee Property Act, 1950 and the Rules, the declaration of the said Khatiawad Industries Ltd. as an evacuee property is illegal. The learned single Judge has held that though the respondent has filed a revision under Section 27 of the Act since notice under Section 7 read with Rule 6 was not served on the respondent, the declaration that the Khatiawad Industries Ltd. is an evacuee property is illegal and

therefore, a non-est.

The question is: whether the view taken by the High Court is correct in law? It is seen that the respondent had filed a revision before the revisional authority under Section 27 who had given him an opportunity to adduce evidence to show that he had purchased shares of a value of Rs. 94,000/- which he claimed to have had in Khatiawad Industries Ltd. Except producing a stamp paper of 8 annas value on which there was a mention of the purchase of the shares in the name of Ibrahim Vali Mohammed and Company, no other evidence was adduced. The revisional authority on weighing the evidence found that the respondent was a business Tycoon having business interest in all over the Asian countries; it would be unlikely that he would not have mentioned in any of the books of accounts about the purchase of value of shares worth a sum of Rs. 94,000/- and odd without being submitted to any authorities for income tax purposes etc. The agreement on stamp paper was not attested by any Magistrate or by a Notary as was in vogue in that State. It was, therefore, difficult to believe that the respondent had purchased 6 lakhs of shares of Khatiawad Industries Ltd. for a sum of Rs.94,000/- and odd. Thereby, he had not shown that he had got an interest in the evacuee property. It is seen that though there is no notice served on the respondent as required under Section 7 of the Act read with Rule 6 of the Rules before declaring Khatiawad Industries Ltd. to be an evacuee property, at a revision, an opportunity was given to the respondent to adduce evidence to prove that he had held the shares of Khatiawad Industries Ltd. of the value of Rs. six lakhs for a sum of Rs. 94,000/- and odd. Even though the respondent had appeared initially through counsel, nothing has been placed on record of this Court at least to establish that he had purchased six lakhs shares of a value of Rs.94,000/- and odd from Khatiawad Industries Ltd. which was declared to be an evacuee property. Under those circumstances, we think that the learned single Judge was not justified in interfering with the declaration that the Khathiawad Industries Ltd. is an evacuee property.

The appeals are accordingly allowed and the Writ Petition stands dismissed. No costs.