

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.16533 of 2014
Date of decision:07.02.2017**

Abdul Rahim Khan and another ... Petitioners

Vs.

Union of India and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Som Nath Saini, Advocate
for the petitioners.

Mr. S.K.Bishnoi, Advocate, for
Mr. Vikrant Pamboo, Advocate
for the UOI.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

AMIT RAWAL J. (Oral)

The petitioners have sought the restoration of the land alleged to have been left by Bashir Ahmed Khan to be declared as an evacuee property with an alternative prayer for allotment of land of the equivalent value.

Mr. Som Nath Saini, learned counsel for the petitioners submits that no order under Section 16 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as “1950 Act”) has been passed, therefore, the petitioners have been rendered remediless. Bashir Ahmed Khan was the owner of the land and residential house. The petitioners being son and grandson are entitled to restoration of the aforementioned property. In fact,

in view of the partition and belonging to Muslim category, did not migrate to Pakistan. Since no order was passed, yet the petitioners filed a revision petition which was dismissed, vide order dated 09.09.1994 (Annexure P-2) being barred by law of limitation and in this context, he has referred to the Hon'ble Division Bench judgment of this Court rendered in **The Financial Commissioner Revenue and another vs. Sifte Hassan (deceased through his legal representative) 2013 (3) RCR (Civil) 241** to contend that the claim of the petitioners cannot be held to be non-maintainable and could not be denied on the basis of Section 20-B of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 since repealed as it was in vogue.

Per contra, Mr. Sandeep Singh Mann, learned Senior Deputy Advocate General, Haryana appearing on behalf of the respondents-State submits that the factum of denial of ownership of land of Bashir Ahmed Khan, much less ownership of the land was emphatically denied. Until and unless, the petitioners did not seek declaration with regard to succession-in-interest of Bashir Ahmed Khan, much less, his ownership in accordance with law, the submission of following documents would be inconsequential:-

- “i) Death certificate of Sh. Bashir Ahmed.*
- ii) Voter list.*
- iii) Ration card.*
- Iv) Receipt of Chuhla Tax.*

- v) *Receipt of Chowkidara.*
- vi) *Certificate of President, Panchayat.*
- vii) *Madarsa Faziz Rahim Mardars- certificate.*
- viii) *Photostat copy of passport of Moh. Sher Khan.*
- ix) *Certificate of Madarsa Faziz & Hidyat Rahim.*
- x) *Affidavit of Maksood Ahemd V. Raipur.*
- xi) *Affidavit of Shabir s/o Bashir vill. Raipur.*
- xii) *Death certificate of Abdul Shakoor and Imtiaz Ali.”*

and thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that no doubt, for claiming such relief, the petitioners had earlier filed a suit but the same was dismissed on the ground of jurisdictional error.

Be that as it may. Once the factum of the ownership of the petitioners, much less parentage or the inheritance has been denied, it was incumbent upon the petitioners to lay claim by seeking declaration under Section 34 of the Specific Relief Act, by leading evidence under Section 50 of the Indian Evidence Act and thereafter, could have staked the claim of allotment of evacuee property with an alternative relief but not in the manner and mode as indicated above. The aforementioned document is a self serving information given to the authorities. The authorities could not have undertaken the task of Civil Court for the purpose of granting declaration of ownership and inheritance as it is the domain of the Civil Court. In case, the petitioners have already availed the remedy or

intends to approach Civil Court and succeeds, on succession, they will be entitled to re-agitate their claim and the period spent in this writ petition and suit will not come in their way. However, State will not take the objection regarding the delay. The aforesaid question is left open.

Accordingly, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

February 07, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No