

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 12.02.2019

+ **W.P.(C) 1171/2017 & CM No. 5324/2017**

SUMAN JAIN

..... Petitioner

Versus

CHELMSFORD CLUB LTD. & ORS

..... Respondents

WITH

+ **W.P.(C) 1212/2017 & CM No. 5502/2017**

SUMAN JAIN

..... Petitioner

Versus

CHELMSFORD CLUB LTD. & ORS

..... Respondents

WITH

+ **W.P.(C) 3938/2017 & CM No.17354/2017**

SUMAN JAIN

..... Petitioner

Versus

MOHD. AKHTAR. & ORS

..... Respondents

AND

+ **W.P.(C) 4946/2017 & CM No. 21381/2017**

SUMAN JAIN

..... Petitioner

Versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr S. D. Singh, Mr Puneet Kumar Jain, Mr Rahul Kumar Singh and Ms Kamla Kumar and Mr Kartik Arora.

For the Respondents: Mr Kishan Rawat and Mr Rajan Narain, Advocates for R-1.
Mr Anurag Ahluwalia, CGSC for R-3/UOI.
Mr Jawahar Raja, ASC, GNCTD with Ms Kritika Padode, Advocate for R-5 and R-6.
Mr N. Prabhakar, Advocate for respondent/Mohammad Akhtar.
Mr Yeeshu Jain and Ms Jyoti Tyagi, Advocates for GNCTD/L&B.
Mr Ripu Daman Bhardwaj, CGSC with Mr T. P. Singh, Advocate for UOI in W.P.(C) 4946/2017.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petitions impugning separate orders passed by the Appellate Officer (hereafter 'the Appellate Authority') under the Evacuee Interest (Separation) Act, 1951 (hereafter referred to as 'Evacuee Separation Act'). The orders impugned herein rest on the decision of the Appellate Authority to set aside the order dated 19.11.2011 passed by the Court of Senior Civil Judge cum Competent Officer (hereafter 'the Competent Authority') under the Evacuee Separation Act, in Case No.01/2011.

2. By the aforesaid order dated 19.11.2011, the Competent Authority had passed a decree in favour of the petitioner (Suman

Jain) assessing her interest/share in the immovable property to be 31 bighas 15 biswas. He also decreed separation of the said interest. In addition, the Competent Authority had passed a further decree of possession in favour of the petitioner to the extent of 31 bigha 5 biswas out of the land comprised in Khasra no.355 (4-16), 358 (5-05), 354 (4-16), 356(5-03), 357 (8-19) and 361 (4-16) in Village Gadaipur, Mehrauli, Delhi. The petitioner was also directed to handover possession of 2 bighas 10 biswas from the land comprised in Khasra No.361 (4-16) in Village Gadaipur to Custodian of the Evacuee Property (Government of NCT of Delhi).

3. The aforesaid order dated 19.11.2011 was challenged by the Chelmsford Club Ltd. (hereafter 'Chelmsford') before the Appellate Authority by filing an appeal (RCA No.60933/2016) under Section 14 of the Evacuee Separation Act, which was allowed by an order dated 08.11.2016. By the said order dated 08.11.2016, the order dated 19.11.2011 passed by the Competent Authority was set aside and the matter was remanded to the Competent Authority to consider afresh. The said order dated 08.11.2016 passed by the Appellate Authority is impugned by the petitioner in W.P.(C) 1212/2017.

4. The order dated 19.11.2011 passed by the Competent Authority was also challenged by Mohd. Akhtar (who, the petitioner claims, is her predecessor-in-interest). According to him, the petitioner's husband had no right to make an application under the Evacuee Separation Act, as the Power of Attorney issued by him was cancelled. The said appeal (RCA No.60929/2016) was allowed by

an order dated 19.11.2016, and the order dated 19.11.2011 passed by the Competent Authority was set aside. The Appellate Authority came to the conclusion that the order dated 19.11.2011 was passed without following due procedure of law. The said order dated 19.11.2016 is also founded on the same reasoning as the order dated 08.11.2016 passed in RCA No.60933/2016 (which is impugned in W.P.(C)1212/2017). The petitioner has impugned the order dated 19.11.2016 passed by the Appellate Authority in RCA No.60929/2016 in W.P.(C) 3938/2017.

5. In W.P.(C) 1171/2017 and W.P.(C) 4946/2017, the petitioner impugns orders dated 21.02.2012 passed by the Competent Authority in a petition filed by the petitioner for executing the order dated 19.11.2011 passed by the Competent Authority. The order dated 21.02.2012 was set aside in view of the Appellate Authority's decision dated 08.11.2016 passed in RCA No.60933/2016, whereby the original judgment dated 19.11.2011 in Case No.01/2011 was set aside.

6. As is apparent from the above, the principal challenge in the present petition relates to the impugned order dated 08.11.2016 passed by the Appellate Authority in RCA No.60933/2016 captioned '*Chemsford Club Ltd. v. Mohd. Akhtar and Ors.*'.

Factual Background

7. The brief narration of the context, in which the disputes arise, is as under:-

8. The petitioner states that during the time of partition in the year 1947, one Shri Shera alias Sheruddin (hereafter 'Shera') was the recorded owner of lands comprised in Khasra No.194 (4-17), 533 (5-8), 571 (2-12), 54/2 (2-0), 28/1 (0-8), 29 (0-8), 30 (4-18), 51/1(2-0), 61 (6-14), 358 (9-12), 355 (9-12), 53/2 (3-4), 49 (4-16), 54/2 (2-16), 662 & 663 (9-12), 783/1 (3-4), 646/1 (1-10), 682 (3-10), 56, 57, 58, 59, 75, 76, 77,78, 79, 80, 81, 84, 85 and 86, total measuring 134 bighas. Shera also owned lands measuring 28 bigha alongwith Shri Islam in Khasra No.22/3, 722, 173, 695, 172, 405, 3409, 143. The said lands were located in Village Gadaipur, Mehrauli, New Delhi.

9. The petitioner states that Shera left Delhi at the time of partition and went to his native place in Mehndipur, District Bulandshahar, Uttar Pradesh alongwith other members of his family as he feared for his life at the material time. In their absence, the Custodian of Evacuee Property took possession of the lands owned by Shera (except lands in Khasra No.354 to 358 and 361 measuring 32 bigha). It is claimed that the Custodian had taken over the land in mistaken belief that Shera and Shri Islam had migrated to Pakistan.

10. The petitioner states that on 26.03.1948, Shri Islam made an application to the custodian for restoration of his property. Subsequently, on 10.01.1953, Shera also made an application seeking restoration of his property.

11. The said requests were declined and on 25.03.1953, the

Assistant Custodian of Evacuee Property passed an order declining the aforesaid applications for restoration of the properties on various grounds.

12. Thereafter, on 07.07.1955, a notification under Section 12 of the Administration of Evacuee Property Act, 1950 was issued vesting the properties of Shera with the Custodian of the Evacuee Property.

13. On 12.05.1964; that is, almost nine years after issuance of notification, Shera and Shri Islam filed a Revision Petition under Section 27 of the Evacuee Property Act seeking release of their properties that were declared as Evacuee Properties.

14. During the course of the said proceedings, the office of the Regional Settlement Commissioner informed the Revisional Authority that the properties in question had vested with the Custodian under Section 12 of the Evacuee Property Act, by virtue of the notification dated 07.07.1955. It is further informed that the properties in question had been disposed of by allotting the same in favour of displaced persons.

15. The Revisional Authority passed an order dated 25.03.1968 (Revision Petition bearing No.77-R/DLH/66 captioned '*Shera & Ors. v. Custodian Evacuee Properties*') holding that the properties in question were taken over without due enquiry and investigation. Accordingly, the matter was remanded to the Assistant Custodian for determining the rights, title and status of the properties in question

after affording Shera and Shri Islam due opportunity to be heard. The petitioner claims that the said directions were apparently not complied with and no notice was received from the Assistant Custodian.

16. It is claimed that in the year 1972, Shri Shera fell ill and returned back to Mehndipur Kalan, District Bulandshahar, Uttar Pradesh, where he had passed away leaving behind his two sons – Mohd. Akhtar and Mohd. Asgar – as his only legal heirs.

17. The averments made in the petition do not disclose that any further proceedings were conducted, thereafter, till the year 2005. On 14.12.2005, Mohd Akhtar, one of the son of Shri Shera, made a representation on 14.12.2005. The officials called upon Mohd. Akhtar to produce the revenue records. This was complied with on 23.12.2005, and Mohd. Akhtar submitted copies of the revenue records in the Department of Land and Building Evacuee Properties.

18. The petitioner states that while the matter was pending before the concerned authority, the Evacuee Property Act was repealed on 06.09.2005.

19. In order to seek redressal, Mohd Akhtar and his brother Mohd. Asgar alongwith Smt. Waziran (widow of Late Shri Islam) filed a Writ Petition – W.P.(C) 17687-89/2006 – before this Court, *inter alia*, praying that directions be issued to the concerned respondents to restore the vacant physical possession of the land owned by Shera and Shri Islam in Village Gadaipur, Mehrauli, New Delhi. In the

alternative, the said petitioners also prayed that if the relief of restoration/allotment of land was not feasible, the respondents be directed to grant compensation equivalent to the market value of the said land.

20. The petitioner states that interim relief was granted to the said petitioners, and this Court directed that the status quo be maintained. It is stated while the said petition was pending, Mohd. Asgar executed a Release Deed dated 11.01.2007 in favour of Mohd. Akhtar. It is claimed that consequently, Mohd Asgar's share of property of Shera stood transferred to Mohd. Akhtar.

21. Mohd. Asgar expired in the year 2008.

22. The petitioner claims that while the aforesaid petition was pending, Mohd. Akhtar executed various documents on 05.05.2010 including Agreement to Sell, Will, No Objection Certificate, Possession Letter etc. in favour of the petitioner. The petitioner also claims that Mohd Akhtar handed over possession of the land comprised in Khasra No.354 to 358 and 361 to the petitioner. Thereafter, on 13.05.2010, Mohd. Akhtar executed a Power of Attorney in favour of Shri V. K. Jain (husband of the petitioner).

23. On 19.08.2010, the Government of India issued a notification delegating the powers to certain offices of the Government of NCT of Delhi, to exercise powers under various provisions of the statutes that were repealed in order to enable the said officers to dispose of pending claims notwithstanding repeal of the statutes.

24. In view of the above, on 09.09.2010, this Court disposed of the Writ Petition (W.P.(C) 17687-89/2006 captioned '*Mohd. Akhtar and Ors. v. Union of India & Ors.*', *inter alia*, directing the concerned officer to deal with the claims of the petitioners therein (including the aspect of delay). The petitioners therein were permitted to make a representation, and the concerned officer was directed to dispose of the same within a period of six months, thereafter. This Court also directed that in the meanwhile, status quo be maintained with respect to the lands located in Khasra No.354 to 358 and 361 in Village Gadaipur, Mehrauli, New Delhi.

25. In terms of the aforesaid order, Mohd. Akhtar, through his Power of Attorney Shri V. K. Jain (husband of the petitioner), filed a petition before the Assistant Settlement Commissioner-cum-Assistant Custodian General (hereafter 'the Custodian').

26. The petitioner claims that thereafter, on 12.11.2010, Mohd Akhtar executed an Assignment Deed dated 12.11.2010 and 20.06.2011, assigning his rights in respect of the land in favour of the petitioner.

27. On 26.08.2011, the Custodian passed an order, *inter alia*, holding that the petitioner therein (Mohd Akhtar) was not entitled to and could not have any claim in respect of lands comprising in Khasra No.354 to 356, 357 and 361 in Village Gadaipur, Mehrauli, New Delhi. He further held that the allotments made in favour of displaced persons could not be disturbed at that stage, as Mohd.

Akhtar had failed to take any steps for the period 1968 to 2001. However, the Custodian also held that Shri Shera was a non evacuee as on the date of partition. He also observed that Mohd Akhtar and his Predecessor (Shera) had only partial interest to the extent of 1/4th share and 1/6th share in the land in question and, therefore, the land in question (except land comprised in Khasra No.354, 356, 357 and 361) had two sets of interest, namely, evacuee interest and non-evacuee interest rendering the same to be composite properties. He observed that the composite properties were required to be dealt under the Evacuee Separation Act by a different authority. He, accordingly, held that he had no jurisdiction to separate the evacuee interest, and the petitioner therein Mohd Akhtar had their remedies in law.

28. Thereafter, in October, 2011, Mr V.K. Jain filed a petition on behalf of Mohd Akhtar as his power of attorney holder, before the Competent Authority under the Evacuee Separate Act, *inter alia*, praying that the share/interest in land in question, as declared by the Custodian, be separated. The said petition was decided by the Competent Authority by an order dated 19.11.2011. Aggrieved by the aforesaid, Chelmsford filed an appeal (RCA 21/2012, which was renumbered as RCA 60933/2016). In the meanwhile, the petitioner filed an Execution Petition (Execution Petition No. 1/2012) before the Competent Officer, Senior Civil Judge, Tis Hazari, seeking enforcement of the order dated 19.11.2011 passed by the Competent Authority. The said Execution Petition was decided by the

Competent Authority by an order dated 21.02.2012. The objections preferred by Mohd Akhtar to the said Execution Petition were rejected. The appeal preferred by Chelmsford (RCA No. 60933/2016) was allowed by an order dated 18.11.2016, which is impugned in the W.P. (C) No. 1212/2017.

29. Consequently, the Chelmsford also filed a revision petition against the order dated 21.02.2012 passed by the Competent Authority for execution of the order dated 19.11.2011. The same was allowed by a separate order dated 08.11.2016 and the order dated 21.02.2012 was set aside. The said order dated 08.11.2016 is impugned in W.P. (C) 1171/2017. Mohd. Akhtar has also filed a separate appeal (RCA No. 26/2011), which was renumbered as RCA 60929/2016). The said appeal was allowed by an order dated 19.11.2016, which is impugned in W.P. (C) 3938/2017.

30. The Government of India filed a revision petition under Section 15 of the Evacuee Separate Act, impugning the order dated 21.02.2012 passed by the Competent Authority in Execution Petition No. 01/2012, and the same was also allowed by a separate order dated 08.11.2016 passed in MCA No. 60211/2016. The said order is impugned in W.P. (C) 4946/2017.

Submissions

31. Mr S.D. Singh, learned counsel for the petitioner contended that Chelmsford was aggrieved since only 10 bighas 10 biswas of land out of the 31 Bighas and 15 Biswas of land decreed in favour of

the petitioner was transferred to it. He submits that the petitioner does not seek to disturb the land transferred in favour of Chelmsford and would confine his relief to the balance land. He contended that in view of the above, Chelmsford could have no grievance and therefore, the impugned order dated 08.11.2016 passed by the Appellate Authority ought to be set aside. He submitted that there would be no justification for remanding the matter at the instance of Chelmsford, as it could have no grievance if the land transferred to it is excluded from the scope of the order dated 19.11.2011 passed by the Competent Authority.

32. Next, he submitted that the interest of Shera and Mohd Akhtar was duly recognized by the order dated 26.08.2011 passed by the Custodian. He submitted that the said order had not been challenged by any person and had become final and therefore, there could be no debate that Shera was not an evacuee and his heirs were entitled to the land owned by him. Mohd Akhtar had assigned his rights in favour of the petitioner and, therefore, the petitioner's entitlement to the land in question could not be defeated.

33. He referred to the decision of the Punjab and Haryana High Court in ***Custodian General Evacuee Property, New Delhi & Anr. v. Shanti Sarup Prabh Dayal: AIR 1961 P&H 497*** in support of his contention that the Competent Authority would have full jurisdiction to decide any claim relating to a composite property in view of Section 5 of the Evacuee Separation Act.

34. He further submitted that the decision of the Competent Authority to grant possession of land to the extent of 31 Bighas 5 Biswas out of the land comprised in Khasra Nos. 355, 354, 357 and 361 in Village Gadaipur could not be faulted, as the Competent Authority would have jurisdiction to award alternate lands in lieu of interest in composite lands. He relied on the decisions of a Coordinate Bench of this Court in *Tasnemul Haq v. Union of India* :141 (2007) DLT 647 and *Union of India v. Qayyum Khan & Ors.* :158) 2009 DLT 649 in support of his aforesaid contention. He also cited other cases where persons, who had erroneously been held as evacuees, had been allotted separate lands in compensation of their land assumed as evacuee properties.

35. Mr Kishan Rawat, learned counsel appearing for the Chelmsford and Mr N. Prabhakar, learned counsel appearing for Mr Mohd Akhtar countered the submissions made by Mr Singh. They referred to the provisions of the Evacuee Separation Act and contended that the Competent Authority had no jurisdiction to allot lands, which were not a part of the composite property. They submitted that the Competent Authority could grant only limited relief as contemplated under Section 10 of the Evacuee Separation Act. Mr Rawat also submitted that the Competent Authority had failed to follow the procedure as required under the Evacuee Separation Act. He submitted that no public notice, as required under Section 6 of the said Act, had been issued and therefore, the said order was rightly set aside by the Appellate Authority.

Discussion and Conclusion

36. At the outset, it is necessary to refer to the order dated 26.08.2011 passed by the Custodian, whereby he had recognized that Shera was not an evacuee. The Custodian had observed that the respondents therein could not place any material on record to show that Mohd Akhtar (the petitioner therein), or his predecessor Shera, had migrated to Pakistan at the time of partition in 1947. However, the Custodian accepted the contention that Shera had only 1/4th share in the land comprising in Khasra Nos. 195, 533, 171/2, 54/2, 28/1, 29, 30, 51/1, 61, 358, 355, 53/2, 49, 54/2, 56,57,58,59,75,76,77,78, 79, 80, 81, 84, 85 and 86 and 1/6th share in Khasra No. 662, 663, 783/1, 646/1 and 682. The Custodian also noted that this was also reported by the Managing Officer (Rural) to Deputy Custodian General in a letter dated 06.12.1966. It was also confirmed in the said letter that the name of Islamuddin did not figure therein. He also considered the report of SDM, Jewar and the Revenue records produced by the petitioner therein to indicate that Shera was residing in Mehandipur during the relevant period. He, accordingly, concluded that Shera had never gone to Pakistan in the years 1947 to 1954. Accordingly, the Custodian declared that the petitioner therein (Mohd Akhtar) and his predecessors were non-evacuees and consequently, their lands could not have been declared as evacuee properties.

37. It is important to note that the Custodian also held that the petitioner therein, Mohd. Akhtar, had never led any claim in respect

of the land comprising Khasra No. 354, 356, 357 and 361 in village Gadaipur, Mehrauli and thus, was not entitled to and could not have any claim or right in respect thereof.

38. Since the share of Shera and his heirs in the two parcels of lands was limited only to $1/4^{\text{th}}$ and $1/6^{\text{th}}$ respectively, the Custodian held that he would have no jurisdiction to separate their interests from evacuee interests. Accordingly, the Custodian relegated the petitioner to avail of his remedies under the Evacuee Separation Act. The relevant extract of the said decision is set out below:-

“29. The petitioner has not disputed the fact that his father had $1/4^{\text{th}}$ and $1/6^{\text{th}}$ share as stated above in the land mentioned above. Accordingly, Shera @ Sheruddin is held entitled to only $1/4^{\text{th}}$ share in Khasra No. 195, 533, 171/2, 54/2, 28/1, 29, 30, 51/1, 61, 358, 355, 53/2, 49, 54/2, 56, 57, 58, 59, 75, 76, 77, 78, 79, 80, 81, 84, 85 & 86 while in Khasra Nos. 662, 663, 783/1, 646/1 & 682 his share is held to be to the extent of $1/6^{\text{th}}$ only. As regards petitioner’s entitlement, he has succeeded to the interest of his father alongwith other legal heirs of Shera @ Sher Din. There seems to be some dispute between the petitioner and other legal heirs of Shera @ Sher Din.

30. I find the predecessors of the petitioner had never laid any claim in respect of the land comprised in Khasra Nos. 354, 356, 357 and 361 in Village Gadaipur, Mehrauli, Delhi and thus, petitioner is also not entitled to and cannot have any claim or right in respect thereof. I hold accordingly.

31 Now comes the moot question whether the petitioner is entitled to restoration of the land subject matter of the present petition at this stage Petitioner

has himself admitted that after the vesting of the land in question, the same has been allotted to displaced person, though he claims that such allotment was illegal. However, such allottees are not before me nor any effort has been made by the petitioner to implead them in the present proceedings. Petitioner cannot dispute the position that after 1947, decades have passed. The allotments made in favour of the displaced persons/occupiers of the land in question, if disturbed at this stage after decades, will seriously prejudice their rights particularly when the petitioner has failed to take any steps during the period from 1968 till 2001. Equity is in favour of such allottees and they cannot be ousted from the land in question without hearing them after such a long period of time.

32. There is another aspect which needs to be mentioned here. As has been rightly contended on behalf of the respondents that since the petitioner and his predecessor have only partial interest to the extent of $1/4^{\text{th}}$ and $1/6^{\text{th}}$ share only in the land mentioned above and since they have been found to be non-evacuee as on the date of the partition and even thereafter, the land subject matter of the present proceedings (except the land comprised in Khasra No. 354, 356, 357 and 361) have two sets of interests, namely, evacuee interest and non-evacuee interest making the same a Composite Property. Composite properties are to be dealt with under a different statute, namely, Evacuee Interest (Separation) Act, 1951 and the same has to be dealt with by a different authority i.e. the Competent Officer. I have no jurisdiction to determine the extent of evacuee and non-evacuee interest or to separate the evacuee interest and the non-evacuee interest therein. The petitioner has remedy available to him in law for the said purpose and he can avail such remedy.”

39. It is apparent from the above that insofar as the lands located in Khasra Nos. 354, 356, 357 and 361 are concerned, the Custodian had unequivocally held that the petitioner therein (Mohd Akhtar) had no right or claim in respect of the said land.

40. However, the Competent Authority has decreed that the possession of the land located in said Khasras be handed over to the petitioner (who was claiming under Mohd Akhtar). The Competent Authority held that Shera was entitled to 1/4th share in Khasra No. 195, 533, 171/2, 54/2, 28/1, 29, 30, 51/1, 61, 358, 355, 53/2, 49, 54/2, 56,57,58,59,75,76,77,78, 79, 80, 81, 84, 85 which measured 134 Bighas and therefore his share in the said land was determined at 28 Bighas 16 Biswas. Shera's share in Khasra Nos. 662 (4-16), 663 (4-16), 646/1 (1-10) and 682 (1-10) amounted to 2 Bighas 9 Biswas. He, therefore, concluded that the aggregate share of Shera in the lands in question (Composite property) was 31 Bighas 5 Biswas.

41. However, it was noted that the said composite land had been allotted to various persons who were not parties before the Competent Authority. Further, no efforts had been made by the petitioner to implead any of such persons in the proceedings before the Competent Authority. The Competent Authority also noted that the claimant (Shera/his heir) had not taken any steps from the period 1968 to 2001 and therefore, equity was in favour of the allottees who had been allotted the lands in which petitioner was claiming interest. Accordingly, the Competent Authority held that such allottees could not be disturbed. Nonetheless, the Competent Authority proceeded to

pass a decree in favour of the petitioner to the extent of 31 bighas 5 biswas out of the lands comprising in Khasra Nos. 355 (4-16), 358 (5-05), 354 (4-16), 356 (5-03), 357 (8-19) and 361 (4-16). Further, the petitioner was directed to hand over possession of 2 Bighas 10 Biswas of the land comprised in Khasra No. 361 (4-16) in village Gadaipur, Mehrauli. The Competent Authority reasoned that the aforesaid order would be appropriate considering that the petitioner was already in physical possession of 33 Bighas and 15 Biswas of land in those Khasras, which were not a part of the composite property and further that the said land belonged to the Government and the Government was, in any event, bound to restore the land of the claimant, which had been held to be non-evacuee. The relevant extract of the said decision is set out below:-

“21. Claimant cannot dispute the position that after 1947, decades have passed. The allotments made in favour of the displaced persons/occupiers of the land in question, if disturbed at this stage after decades, will seriously prejudice their rights particularly when the claimant has failed to take any steps during the period from 1968 till 2011. Equity is in favour of such allottees and they cannot be ousted from the land in question without hearing them after such a long period of time.

22. But does that mean that the claimant, who has been litigating right from 1948/1953 onwards to secure and protest his rights, should be deprived of the relief even after succeeding in his legal battle i.e. can the patient be allowed to die after successful operation. The answer is clearly in the negative, it would be highly unjust and would

result in grave miscarriage of justice if the claimant is not given possession of his share of 31 bigha 15 biswa land from the aforesaid composite property or if, in lieu thereof, the claimant is not provided with alternative land of same value/area.

23. During the course of hearing, the learned counsel for the claimant had submitted that the land equivalent to the land found to be the entitlement of the Claimant be adjusted by making allotment of alternate land from the land already in possession of the Claimant. According to him, the claimant presently is in physical possession of 33 bigha 15 biswa land comprised in Khasra Nos. 355 (4-16) and 358 (5-05) forming part of the aforesaid composite property, and in Khasra No. 354 (4-16), 356 (5-03) 357 (8-19) and 361 (4-16), which is not a part of the composite property. It was also submitted that claimant would be satisfied if they are allotted alternate land and are permitted to retain the possession of 31 bigha 15 biswa land out of the aforesaid 33 bigha 15 biswa land in his possession and that the claimant is ready and willing to surrender remaining 2 bigha land to the Custodian of Evacuee property, Govt. of NCT of Delhi. This suggestion has been made keeping in view two aspects, firstly, possession is already with the claimant and secondly, land in favour khasra Nos. referred above are government land and in any case, Government is under a legal obligation to restore the land of the claimant who has been held to be a non-evacuee.

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25. In view of the peculiar facts of this case, I am inclined to accept the submissions made by the learned counsel for the claimant which seems to be just and equitable and will undo the injustice done

to the claimant and his predecessors.

26. I, therefore, pass a decree in favour of the claimant/assignee/successor in interest separating his interest/share from the aforesaid composite property and his interest/share is assessed to be 31 bigha 15 biswa. I further pass a decree of possession in favour of the claimant/assignee/successor in interest only to the extent of 31 bigha 5 biswa land out of the land comprised in Khasra No. 355 (4-16), 358 (5-05), 354 (4-16), 356 (5-03), 357 (8-19) and 361 (4-16) total measuring 33 bigha 15 biswa in Village Gadaipur, Mehrauli, Delhi. The claimant/assignee/successor in interest is also directed to handover possession of two bigha 10 biswa land from the land comprised in Khasra No. 361 (4-16) in Village Gadaipur, Mehrauli to the Custodian of Evacuee Property, Govt. of NCT of Delhi within four weeks. Necessary changes in revenue/municipal records be carried out accordingly by the concerned authorities.”

42. In the appeal preferred by the Chelmsford, the Appellate Authority has set aside the aforesaid order on the ground that the Competent Authority had not followed the due procedure as set out in the Evacuee Separation Act. This Court finds no infirmity with the aforesaid view, as the order dated 19.11.2011 passed by the Competent Authority was undoubtedly not in conformity with the provisions of the Evacuee Separation Act.

43. Section 5 of the Evacuee Separation Act expressly provides that the Competent Authority would have the jurisdiction to decide any claim relating to any composite property situated within the

local area of his jurisdiction. Section 6 of the said Act requires the Competent Officer to issue a notice in such form and in the manner, as may be prescribed. Section 6 of the Evacuee Separation Act is set out below:-

“6. Notice to submit claims. – (1) For the purpose of determining or separating the evacuee interest in a composite property, any competent officer having jurisdiction over such property may, either on information received in this behalf from the Custodian or on an application from a claimant, issue, in such form and manner as may be prescribed,--

(a) a general notice requiring all persons who claim interest in such property, and

(b) also a notice on every person who, in the opinion of the competent officer, may have a claim in such property, to submit claims, if any, in respect of that property.

(2) An application under sub- section (1) shall be in such form and manner as may be prescribed.

[(3) No application under this section shall be entertained if filed after the expiry of one year from the commencement of the Evacuee Interest (Separation) Amendment Act, 1960 (27 of 1960).]”

44. Concededly, a general notice, as contemplated under Section 6 (1)(a) of the Evacuee Separation Act, was not issued by the Competent Officer. He had also not taken any steps to ascertain the persons who would be interested in the property in question; consequently, no notice as required under Section 6(1)(b) of the said

Act was issued.

45. In terms of Section 8 of the Evacuee Separation Act, a Competent Officer was required to hold an inquiry in accordance with the procedure as laid down in Section 17 of the said Act. Apparently, the said procedure was also not adopted. Section 8 of the Evacuee Property Act is set out below:-

“8. Decision by competent officer.- (1) On receipt of a statement of claim under section 7, the competent officer shall, subject to the provisions of sub- sections (2) and (3), hold an inquiry into the claim in accordance with the procedure laid down in section 17 and pass an order determining the interest of the evacuee and the claimant in the property in question and the order shall contain all or any of the following particulars, namely:-

- (a) the money value of the property;
- (b) in any case where the evacuee and the claimant are co- sharers or partners, their respective shares in the property and the money value of such shares;
- (c) in any case where the claim is made by a mortgagor, the amount due to the evacuee;
- (d) in any case where the claim is made by a mortgagee, the amount due under the claim in accordance with the provisions of section 9.

(2) Where the Custodian under the Administration of Evacuee Property Act, 1950 (31 of 1950), has determined that the property in question or any interest therein is evacuee property, the decision of the Custodian shall be binding on the competent officer: Provided that nothing contained in this sub- section shall

debar the competent officer from determining the mortgage debt in respect of such property or any interest therein or from separating the interest of the evacuee from that of the claimant under section 10.

(3) If there is any dispute as to whether a liability is a mortgage debt or not or whether any claim submitted under section 7 exists, the competent officer shall decide such dispute:

Provided that a decree of a Civil Court (other than an ex- parte decree passed after the 14th day of August, 1947) shall, subject to the provisions of sections 9 and 10, be binding on the competent officer in respect of any matter which has been finally decided by such decree; and where any matter was decided by an ex- parte decree passed by a Civil Court after the 14th day of August, 1947 , the competent officer may decide such matter afresh and on such decision being made, the ex- parte decree shall be deemed to have no effect.”

46. It is clear from Sub-Section (2) of Section 8 of the Evacuee Separation said Act that the decision of the Custodian under the Administration of the Evacuee Property Act would be binding on the Competent Officer. In the present case, the Custodian had expressly held that Mohd. Akhtar (Shera) had never led any claim of the land comprising Khasra Nos. 354, 356 and 357 and 361 in village Gadaipur, Mehrauli, Delhi and, therefore, he (Mohd Akhtar – through whom the petitioner now claims) was not entitled and could not have any claim or right in respect of the lands comprised in the said Khasras. In this view, granting a decree of possession of 31 Bigha 5 Biswas of land located in those Kharas was clearly contrary to the decision of the Custodian.

47. It is also relevant to refer to Section 10 of the Evacuee Separation Act, which reads as under:-

“10 Separation of the interests of evacuees from those of claimants in composite property. –

Notwithstanding anything to the contrary in any law or contract or any decree or order of a Civil Court or other authority, the competent officer may, subject to any rules that may be made in this behalf, take all such measures as he may consider necessary for the

purpose of separating the interests of the evacuees from those of the claimants in any composite property, and in particular may,--

(a) in the case of any claim of a co- sharer or partner,-

(i) direct the Custodian to pay to the claimant the amount of money assessed in respect of his share in the composite property or deposit the same in a Civil Court having jurisdiction over such property and deliver possession of the property to the Custodian and the claimant may withdraw the amount in deposit in the Civil Court; or

(ii) transfer the property to the claimant on payment by him of the amount of money assessed in respect of the share of the evacuee in the property; or

(iii) sell the property and distribute the sale proceeds thereof between the Custodian and the claimant in proportion to the share of the evacuee and of the claimant in the property; or

(iv) partition the property according to shares of the evacuee and the claimant and deliver possession of the shares allotted to the evacuee and the claimant to the Custodian and the claimant respectively;

(b) in the case of any claim of a mortgagor or a mortgagee,--

(i) pay to the Custodian or the claimant the amount payable under the mortgage debt and redeem the mortgaged property; or

(ii) sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof; or

(iii) partition the property between the mortgagor and the mortgagee having regard to the share to which the mortgagee would be entitled in lieu of his claim;

(c) adopt a combination of all or some of the aforesaid measures:

Provided that before taking any measure under this section, the competent officer shall take into account the order of preference filed by the claimant under clause (f) of sub-section (2) of section 7; and in any case where the claimant is a mortgagor and tenders the amount due, the competent officer shall accept the same in full satisfaction of the mortgage debt.”

48. The relief, as granted by the Competent Officer, also does not fall in any of the provisions of Section 10 of the Evacuee Separation Act.

49. In view of the above, this Court finds no infirmity with the order dated 08.11.2016 passed by Appellate Authority remanding the matter to the Competent Officer to consider the same in accordance with law.

50. It is clarified that this Court has not expressed any opinion as to whether the petitioner, or his predecessor in interest, is liable to be

compensated for appropriation of Shera's property as an evacuee property. The question, whether any such relief can be granted to Mohd Akhtar or the petitioner despite the inordinate delay on their part, is also left open.

51. It is also apparent that there are several disputes pending between the petitioner and Mr. Mohd Akhtar. This is also noted in the order dated 26.08.2011 passed by the Custodian. Mohd. Akhtar has also filed a suit (CS (O) 836/2012) seeking cancellation of the assignment deeds in favour of the petitioner. It is, thus, clarified that nothing stated in this order should be construed so as to prejudice the contention of either parties in their *inter se* disputes.

52. The petitions are unmerited as stated above, and this Court finds no infirmity in the order dated 08.11.2016 setting aside the order dated 19.11.2011 passed by the Competent Officer. Consequently, the orders passed in Execution Petition preferred by the petitioner seeking execution of the order dated 19.11.2011 (order dated 21.02.2011 passed by the Competent Officer) also does not survive and, therefore, the writ petitions W.P. (C) 1171/2017 and 4946/2017 must also fail.

53. This Court also finds no infirmity in the order dated 19.11.2016 passed by the Appellate Authority.

54. In view of the above, the petitions are dismissed.

55. All pending applications are disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

FEBRUARY 12, 2019

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