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W.P.No.1009 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2025

CORAM

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

W.P.No.1009 of 2024
and
W.M.P.No.1053 of 2024

S.Fahath

.. Petitioner

Vs.

- 1.Union of India,
represented by Joint Secretary,
Ministry of Home Affairs,
FFR Division, 2nd Floor,
NDCC II Building, Jai Singh Road,
New Delhi-110 001.
- 2.The Custodian of Enemy Property of India (CEPI),
O/o the Custodian of Enemy Property of India,
New Delhi Head Office,
1st Floor, East Wing,
Shivaji Stadium (Annex Building),
Connaught Place,
New Delhi-110 001.
- 3.The District Collector,
District Collectorate Office,
Kallakurichi.
- 4.The District Revenue Officer,
Kallakurichi.



W.P.No.1009 of 2024

5.The Revenue Divisional Officer,
Kallakurichi.

6.The Revenue Tahsildar,
Sankarapuram,
Kallakurichi District.

.. Respondents

Writ petition has been filed under Article 226 of the Constitution of India seeking for the issuance of writ of certiorarified mandamus seeking to call for the proceedings of the first respondent in Order F.No.37/12/2022-EP dated 20.03.2023, quash the same and consequently, direct the respondents not to disturb the peaceful possession of the petitioner's property comprised in survey nos.50/2B now sub-division no.52/2B3 measuring an extent of 2.06 acres; 52/2A now sub-division no.52/2A2 measuring an extent of 2.15 acres; 52/3 measuring an extent of 1.41 acres and 52/2A1 measuring an extent of 0.05 cents situated at Pootai Village, Sankarapuram Taluk, Kallakurichi District and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Mr.K.Srinivasamurthy, SCGPC for RR1 and 2
Mr.D.Gopal, GA for RR3 to 6

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ORDER

Challenging the impugned order dated 20.03.2023 passed by the



W.P.No.1009 of 2024

first respondent, the present writ petition has been filed.

2.It is the case of the writ petitioner that one Dr.Azizuddin Ahamed was the absolute owner of the lands measuring 31.33 acres comprised in various survey numbers at Pootai village, Sankarapuram Taluk [previously Chidambaram District], presently Kallakurichi District. The said lands were purchased by Dr.Azizuddin Ahamed vide sale deed in document No.3410 of 1964, dated 16.09.1964 from one Tmt.Fathima Begum. Ever since the date of the purchase, he was in possession and enjoyment of the properties. Said Dr.Azizuddin Ahamed was born in undivided India and was an Indian citizen. During his life time, his wife and his minor children went to Pakistan. However, Dr.Azizuddin Ahamed remained in India as an Indian citizen. The eldest son of Dr.Azizuddin Ahamed, namely Mr.Anisur Rahman had returned to India in the year 1965 and was living with his father. The said Mr.Anisur Rahman had never obtained citizenship of Pakistan. Dr.Azizuddin Ahamed died intestate on 14.04.1971 leaving behind him his eldest son Mr.Anisur Rahman as his successor to the said properties. Since then, the said Mr.Anisur Rahman become the absolute owner of said properties and was in peaceful possession and enjoyment of the same without any hindrance.

Page 3 of 21



W.P.No.1009 of 2024

3.The said Mr.Anisur Rahman, during his life time, had executed a sale deed dated 27.01.1977 in favour of one Mr.Abdul Sattar in respect of Survey No.50/2 measuring an extent of 6.04 acres, S.No.52/2 measuring an extent of 4.00 acres and S.No.53/6 measuring an extent of 2.14 acres, totally measuring 12 acres and 18 cents. Similarly, he has also executed another sale deed in Document No.2043 of 1979 dated 18.08.1979 in favour of one Tmt.Aabidun Beevi, wife of Mr.Abdul Sattar, in respect of S.No.52/2 measuring an extent of 4.30 acres along with the ownership over pathway in the entire extent of 2.61 acres in S.No.48/1 in the said village. After the demise of said Mr.Abdul Sattar and his wife Tmt.Aabidun Beevi, the properties were devolved upon their legal heirs, namely Mr.Malik Batcha, Mr.Saleem, Mr.Shahjahan and Tmt.Kudumob and they were in peaceful possession and enjoyment of the properties without any hindrance.

4.In the year 2004, one Mr.Sarbuddin Sahib has purchased the properties comprised in S.Nos.52/2B measuring an extent of 1 acre and 92 cents in Pootai village, Sankarapuram Taluk by document No.1286 of 2004 dated 13.05.2004 on the file of the Sub Registrar Office, Sankarapuram. Subsequently, the said properties were purchased by



W.P.No.1009 of 2024

petitioner's mother Tmt.S.Mumtaj on 27.05.2008 by sale deed in Document No.2229 of 2008. Similarly, the petitioner's mother Tmt.S.Mumtaj had also purchased some properties from Mr.Malik Batcha on 29.05.2008 by virtue of sale deed in Document No.2257 of 2008. The petitioner's father Mr.S.Saleem had executed a settlement deed dated 27.01.2021 settling some of the properties in favour of the petitioner. After the said conveyance, the respective purchasers were in peaceful possession and enjoyment of the properties concerned.

5.After the demise of Dr.Azizuddin Ahamed on 14.04.1971, the first respondent had issued a notice dated 18.12.1980 to Mr.Anisur Rahman and others to show cause as to why the sale of said properties and the transfer in question should not be declared as void. The said notice was issued in terms of the notification issued by the first respondent in Notification No.12/2/65-E, dated 10.09.1965. The said notification was issued alleging that the said properties were enemy properties and therefore, the sale and transfer took place between Mr.Anisur Rahman and others were injurious to public interest and they are liable to be declared as void. Subsequent to the said notice, a detailed reply has been sent by the noticees within the stipulated period.



W.P.No.1009 of 2024

WEB COPY

Thereafter, the first respondent again issued a notice dated 10.07.1981 without properly examining the earlier reply though admitting the fact that the said Dr.Azizuddin Ahamed was an Indian national and died in India on 14.04.1971. It was also alleged in the said notice that his legal heirs went to Pakistan and therefore, the entire property of Dr.Azizuddin Ahamed were rendered as enemy property and vested in the Custodian of Enemy Property. It was also held that Mr.Anisur Rahman had no right to sell the properties belonging to the Custodian of Enemy Property. Therefore, the purchase and sale of said properties is violative of the Enemy Property Act, 1968 [hereinafter 'EP Act' for short] and he was called upon to give explanation with regard to the same. The explanation was also duly submitted. However, there was no response thereafter.

6.According to the writ petitioner, though notice has been issued, no orders have been passed and enquiry has not been made in terms of Section 5A of the EP Act. It is further stated that Mr.Anisur Rahman was an Indian citizen and he had applied for citizenship in India and that was granted through registration on 01.04.1974. He had returned back to India in the year 1965 and has taken care of his father Dr.Azizuddin Ahamed till his life time. During his visit to Pakistan with his mother, he never



W.P.No.1009 of 2024

obtained the citizenship of Pakistan. Therefore, according to the writ petitioner, Mr. Anisur Rahman had legally inherited the property of his father and therefore, he had valid title. The summons dated 21.11.2021 was issued arbitrarily. Thereafter, a writ petition has been filed before this court in W.P.No.1679 of 2022 seeking declaration to declare the properties comprised in S.Nos.50/2B [now sub division no.50/2B3], 52/2A [now sub division no.52/2A2], 52/3 and 52/2A1 belong to Dr. Azizuddin Ahamed and not enemy properties. By an order dated 01.07.2022, this court had disposed of the writ petition directing the petitioner to approach the Central Government as per section 18 of the EP Act as against the proceedings initiated against him for cancellation of patta on account of their claim that the property is an enemy property, within a period of two weeks from the date of receipt of copy of the order. The authorities of the Central Government were also directed to pass final orders on merits and in accordance with law. The petitioner has complied with the order of this court dated 01.07.2022 and gave a representation on 09.08.2022 within the stipulated period of two weeks. The petitioner has also submitted additional documents as sought for by the respondents. However, the final order came to be made without following the

Page 7 of 21



W.P.No.1009 of 2024

mandatory procedure under section 18 of the EP Act. Hence the present writ petition has been filed challenging the impugned order.

7.It is the case of the respondents that a notification dated 10.09.1965 has been published by the Government of India, stating that all immovable properties in India belonging to or held by or managed on behalf of all Pakistan national shall vest in the Custodian of Enemy Property of India [CEPI]. Subsequently, another notification dated 18.12.1971 has also been issued to the effect that all enemy properties whether movable or immovable and belonging to or held by or managed on behalf of enemy shall vest in the CEPI. The properties were originally belonged to one Dr.Azizuddin Ahamed and after his death, his properties devolved upon his five legal heirs, namely his wife and children who were all Pakistan nationals and therefore, his properties were automatically vested in CEPI as enemy property. Further, it is the case of the respondents that all the five legal heirs of Dr.Azizuddin Ahamed were Pakistan nationals as on 14.04.1971, i.e., on the date of death of Dr.Azizuddin Ahamed and the same has been ascertained from the communication sent by the Collector, South Arcot to CEPI, dated 03.03.1972, letter dated 24.08.1972 from Tehsildar, Kallakurichi to the

Page 8 of 21



W.P.No.1009 of 2024

Collector, South Arcot and a letter dated 31.07.1972 from Collector, South Arcot to the Joint Secretary, Public (S.C.) Department, Madras.

8.It is further stated that the properties shall stand vested in the CEPI with all rights, title and interests in the same manner as it was vested in the CEPI in terms of the aforesaid notification dated 10.09.1965 and notification dated 18.12.1971. Accordingly, the Tehsildar, Sankarapuram issued notice dated 21.11.2021 for transferring patta in the name of CEPI. The petitioner without availing the remedy available as per section 18 of the EP Act has filed W.P.No.1679 of 2022 and the said writ petition has been disposed of on 01.07.2022. The representation of the petitioner dated 09.08.2022 was considered and rejected by a well reasoned and speaking order dated 20.03.2023. Further it is stated that the petitioner has approached the first respondent well within the stipulated period. But the representation of the petitioner dated 09.08.2022 was time barred as the same has been made after the prescribed period of 30 days from the date of notice dated 21.11.2021 issued by the Tahsildar, Sankarapuram and further, the petitioner has not given any valid explanation for the delay. Therefore, the petitioner has not submitted the representation within the time stipulated in the EP Act. As there is no



W.P.No.1009 of 2024

provision in the EP Act to condone the delay in submitting the representation, the same was rejected due to delay and laches and further, there is no merit in the claim made by the petitioner as on the date of demise of Dr.Azizuddin Ahamed, namely on 14.04.1971, the legal heirs of Dr.Azizuddin Ahamed were Pakistan nationals and therefore, the writ petition filed by the petitioner is devoid of merits.

9.Mr.R.Bharath Kumar, the learned counsel appearing for the petitioner would submit that even in the communication dated 10.07.1981, the Government of India, Ministry of Commerce has clearly admitted that Dr.Azizuddin Ahamed was an Indian national and died in India on 14.04.1971 and his eldest son Mr.Anisur Rahman came back to India in 1965 and obtained Indian citizenship on 01.04.1974 after the death of his father on 14.04.1971. Therefore, it is the contention of the learned counsel for the petitioner that once the eldest son has returned back to India in 1965 and living with his father and he has also obtained Indian citizenship, there is no evidence to show that he became the Pakistan citizen after going to Pakistan with his mother. Therefore, when the property was purchased by Dr.Azizuddin Ahamed, he was an Indian citizen and before his death, his son joined him in India and he was



W.P.No.1009 of 2024

residing with him even during the death of the original owner, namely Dr.Azizuddin Ahamed. Such being the position, his property cannot be treated as enemy property and there was no specific notification issued by the respondents declaring the property as enemy property as per law.

10.The petitioner is the bona fide purchaser of the property for the value. On the earlier occasion, when the petitioner has filed W.P.No.1679 of 2022 seeking declaration to declare the properties belonging to Dr.Azizuddin Ahamed are not enemy properties, this court has directed the petitioner to approach the Central Government as per the provisions of Section 18 of the EP Act, within a period of two weeks from the date of receipt of copy of the order. Hence, it is the contention of the petitioner that the petitioner has approached the first respondent within a period of two weeks granted by this court. Further, when the first respondent has sought for production of documents and when the same has also been produced, now the final order has been passed under section 18 of the EP Act even without giving an opportunity to the petitioner as mandatory under the law.

11.The impugned order has been passed as if the representation has not been made within a period of 30 days from the date of notice dated



W.P.No.1009 of 2024

21.11.2021 issued by the Tahsildar, Sankarapuram as well as beyond the period prescribed by the court by order dated 01.07.2022. Hence, it is the contention of the learned counsel that the limitation was put against the petitioner. It is the contention of the learned counsel for the petitioner that in fact, the writ petitioner has approached the respondents within the period prescribed by the court, i.e., within a period of two weeks and the same has been complied with and still rejecting the petitioner's representation on the ground of limitation is not proper. It is the further contention that no opportunity has been provided before passing the final order which is in violation of the mandatory provisions under section 18 of the EP Act.

12.Mr.K.Srinivasamurthy, learned Senior Panel Counsel Central Government and Mr.D.Gopal, the learned Government Advocate appearing for respondents submit that the property originally belonged to one Dr.Azizuddin Ahamed and he died in the year 1971. During his life time, his wife and his minor children went to Pakistan. But, the eldest son of Dr.Azizuddin Ahamed, namely Mr.Anisur Rahman returned to India in the year 1965 and later, he acquired Indian citizenship in the year 1974 after the death of his father. Therefore, after his death, the property of



W.P.No.1009 of 2024

Dr.Azizuddin Ahamed vest with the Custodian of Enemy Property under the EP Act and therefore, Mr.Anisur Rahman had no right whatsoever to sell the property. Therefore, the order impugned in the writ petition has been correctly made and no interference is required and prays for dismissal of the writ petition.

13.This court heard the learned counsel for the parties and perused the materials available on record.

14.The impugned order has been passed under section 18 of the EP Act. Earlier, a writ petition in W.P.No.1679 of 2022 has been filed by the petitioner herein seeking for declaration to declare that the properties belong to Dr.Azizuddin Ahamed are not enemy properties. While disposing of the writ petition, this court directed the petitioner to approach the Central Government within a period of two weeks from the date of receipt of a copy of this order. The writ petition was disposed of on 01.07.2022 and the time was granted to the petitioner to approach the respondents within a period of two weeks from the date of receipt of copy of the order. The certified copy was made ready on 27.07.2022 and the copy was delivered to the petitioner on 04.08.2022 and immediately, within a period of two weeks, the petitioner has made a representation on



W.P.No.1009 of 2024

WEB COPY

09.08.2022. Therefore, the very impugned order holding that the representation was made beyond the prescribed by the High court in the writ petition is not correct. This court has directed the petitioner to file the representation within a period of two weeks from the date of receipt of copy of this order. The certified copy was made ready and the copy was delivered to the petitioner only on 04.08.2022 and therefore, the limitation period of two weeks kick starts from the said date and the representation was made within a period of five days thereafter. Therefore, the impugned order recording the fact as if the representation was made beyond the stipulated period prescribed by the High Court is not correct. Therefore, on the ground of limitation, the respondents ought not to have passed the impugned order.

15.It is relevant to note that though the communication dated 10.07.1981 has been sent by the Government of India, Ministry of Commerce in No.12/34/80-EI&EP calling for explanation from one Mr.Arabithunbechi within a period of 30 days, no further orders were placed on record to show that based on the communication dated 10.07.1981, whether any further orders have been made by the Government. Whereas, for the first time after 1981, summons have been



W.P.No.1009 of 2024

issued for changing the patta only in the year 2021 in Na.Ka.A5/3404/2020. Immediately after the summons, the writ petition has been filed before this court. The said writ petition was also disposed of granting time to make a representation within a period of two weeks. As already stated, the representation has also been given within a period of two weeks from the date of receipt of the copy of the order. Therefore, the impugned order holding that there is limitation period and the petitioner has not filed the representation within a period of 30 days in terms of Section 18 of the EP Act is not proper. By holding so, the first respondent has also decided the issue on merits as per Section 18 of the EP Act.

16.It is relevant to extract Section 18 of the EP Act, which reads as follows:

‘18.Transfer of property vested as enemy property in certain cases.--The Central Government may, on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the Custodian within a period of thirty days from the date of receipt of such order or from the date of its publication in the Official Gazette, whichever is earlier and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under



W.P.No.1009 of 2024

this Act and remaining with him was not an enemy property, it may by general or special order, direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested in the Custodian.’

17.A careful perusal of the said section makes it clear that any order under section 18 of the EP Act could be passed after giving reasonable opportunity of being heard which includes personal hearing but in the instant case, no personal hearing whatsoever was given to the petitioner which violates the mandatory provisions under the Act. Therefore, the violation of principles of natural justices vitiates the impugned order. In such a case when any final order is being passed, the same should have been passed after affording personal hearing also. However, no such personal hearing has been given. Further, no details have been placed before this court as to when the property has been vested with the Custodian of enemy property and any prohibition order has been made under section 6 of the EP Act and no such details have been placed on record.

18.As regards the principles of natural justice, Hon’ble Supreme



W.P.No.1009 of 2024

Court in *Maneka Gandhi Vs. Union of India* reported in (1978) 1 SCC

248 has held in paragraph 8 as follows:

‘8..... Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the *audi alteram partem* rule should be followed before impounding a passport, but that is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises....’

In the case on hand, Section 18 of EP Act clearly says that the Central Government may on receipt of a representation from a person aggrieved by an order and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under the EP Act and remaining with him was not an enemy property, it may by general or special order direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested to the Custodian.

19. This Court, with regard to providing proper personal hearing, in



W.P.No.1009 of 2024

W.P.No.22121 of 2013, dated 30.11.2022 [***IMK Human Resources Service Vs. Secretary/Appellate Authority, Ministry of Overseas Indian Affairs, Government of India, New Delhi and others***] has held in paragraphs 18 and 19 as follows:

‘18.It is stated by the petitioner that no prejudice would have caused to the respondents, if an an opportunity of personal hearing is given to the petitioner before passing an order. The fact remains that in this case, since the order has been passed without hearing the petitioner and pursuant to the same, the bank guarantee has also been invoked, which is consequential in nature, will have a civil consequences. Therefore, any finding to be recorded for passing any order which will have civil consequence there must be a proper personal hearing, which has not been done so.

19.In this regard, it is useful to refer to the decision of the Hon’ble Apex Court in ***C.B.Gautam vs. Union of India and Others*** reported in (1993) 1 SCC 78, wherein the Hon’ble Supreme Court has held thus:

‘28. It must, however, be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity. ‘



W.P.No.1009 of 2024

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20.In such view of the matter, as the impugned order has been passed under section 18 of the EP Act without giving proper opportunity of being heard violating the principles of natural justice, this court is of the considered view that such order which has been passed violating the principles of natural justice and not following the mandatory procedure as contemplated under section 18 of the EP Act cannot be sustained.

21.In the light of the above, the impugned order dated 20.03.2023 passed by the first respondent is set aside remanding the matter back to the first respondent to decide the issue after giving proper opportunity to the petitioner to produce all the documents and after giving personal hearing to the petitioner and thereafter, pass final orders on merits and in accordance with law within a period of four months from the date of receipt of copy of this order. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.12.2025

Index : Yes/No
Neutral Citation : Yes
Speaking Order / Non speaking order

vvk

Page 19 of 21



W.P.No.1009 of 2024

WEB COPY

To

1. The Joint Secretary,
Union of India,
Ministry of Home Affairs,
FFR Division, 2nd Floor,
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WEB COPY



W.P.No.1009 of 2024

N.SATHISH KUMAR, J.

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W.P.No.1009 of 2024

08.12.2025