Muhammad Zafar v. District Magistrate, Multan

Shabir Ahmad, J

at the Bar by learned counsel for the petitioner to support his contention that the power to issue writs were wide, but I do not consider it necessary to refer to them because though they may be of great assistance when considering general principles of law, they can have but very little value when one has to interpret a statute with which those authorities did not concern themselves as is the case with the decisions relied upon by learned counsel for the petitioner.

9. In view of what I have said above, I would dismiss the petition but, because of the peculiar circumstances of the case, would leave the parties to bear their own costs.

H. T. RAYMOND, J.—I have had the advantage of reading the erudite judgment of my learned brother. I concur and have nothing material to add.

A. H. *Petition dismissed.*

P L D 1961 (W. P.) Lahore 696

Before Shabir Ahmad and Sajjad Ahmad, JJ

Mirza MUHAMMAD HUSSAIN BEG AND OTHERS—Petitioners

versus

THE GOVERNMENT OF WEST PAKISTAN AND OTHERS—Respondents

Writ Petition No. 391 of 1959, decided on 4th April 1961.

Muhammad Hussain Beg v. Govt. of West Pak.

Shabir Ahmad and Sajjad Ahmad, JJ

(*a*) *Precedent—English authorities—Have little bearing when law in Pakistan is materially different.* [p. 700]*A*

(*b*) *Land Acquisition Act* (*I of 1894*), *Ss. 16 & 17* (*1*)—*"Vest absolutely"—Provincial Government becomes "owner" of property acquired—Government not bound to use "whole" of the property for purpose for which it was acquired—Part remaining unutilised—Person from whom such part was acquired has no option to get same back—Courts will set aside acquisition if property having been acquired by Government no part of it is put to declared purpose, or if purpose is "merely cloak" to deprive a person of his property.*

The Provincial Government becomes owner of the property which has come to it by means of acquisition effected under the provisions of the Land Acquisition Act, 1894, and gets absolute title in the property which thenceforth vests in the Government free of all encumbrances. In the presence of these provisions, it is not possible to hold, in the absence of any other binding provision of law, that the rights of Government in land acquired under the Land Acquisition Act, 1894, are subject to an unwritten condition that the whole of the property of which the Government has become absolute owner is to be put to the use for which it was sought to be acquired, and the result has to be that if a part of the acquired property were not put to that purpose because the purpose had been carried out, the person from whom the property was acquired gets the option to get back the property. It may be that if the Government has acquired property by alleging that it was required for a public purpose and no part of the property is put to that purpose, or it can be conclusively proved that the

mention of that purpose was merely a cloak to enable Government to deprive a person of his property, it will be open to Courts to set aside the acquisition, but if the public purpose for which any property was acquired did actually exist and only some part of the property acquired remained unutilised the provisions of section 16 as those of subsection (1) of section 17 of the Land Acquisition Act will have full application, and the property which was surplus will remain the property of Government and subject to all the rights which any other property of Government is subject to. When a person is owner of any property, be that person a natural person like a man, a woman, or a child or a juristic person like a Government, the right to deal with the property in any manner that the owner likes, subject to conditions imposed by law, vests in the owner and no one else can claim any rights in the property if the owner does not want to part with those rights. [p. 701]*B*

(*c*) *Land Acquisition Act* (*I of 1894*), *Ss. 16 & 17* (*1*) *read with S. 16* (*2*) (*b*), *Pakistan* (*Administration of Evacuee Property*) *Act* (*XII of 1957*)—*Central Government's permission granted to Provincial Government to acquire evacuee land for public purpose* (*building of "D" type quarters*)—*Provincial Government taking possession of land and starting building of quarters before such permission—Central Government only entitled to object to Provincial Government's action—Provincial Government gets title to land on depositing compensation with Custodian in regard to evacuee land acquired.* [p. 702] *C & D*

(*d*) *Displaced Persons* (*Land Settlement*) *Act* (*XLVII of 1958*)—*Land acquired by Government under Land Acquisition Act* (*I of 1894*)—*Becomes property of Government—Act* (*XLVII of 1958*) *has no application to such land.* [p. 703]*E*

(*e*) *Writ—Entitlement—Petitioner seeking by writ petition to get back part of evacuee land* (*allotted to him*) *which subsequently had been acquired by Government under Land Acquisition Act* (*I of 1894*) *but disputed part of which had remained unutilised—Petitioner allotted alternative land by Rehabilitation authorities which petitioner refused to accept—Petitioner not entitled to any writ.* [p. 703]*F*

(*f*) *Land Acquisition Act* (*I of 1894*), *S. 31—Court has no power to compel Government to compensate owner of acquired land by giving land in return.* [p. 703]*G*

(*g*) *Land Acquisition Act* (*I of 1894*), *S. 31—Writ may issue to make Government to pay compensation to owner of acquired land—Constitution of Pakistan* (*1956*), *Art. 170.* [p. 703]*H*

A. S. Salam for Petitioners.

Sh. Abdul Rashid for Respondents 1 and 2.

S. Muhammad Iqbal for Respondent 3.

Muhammad Aslam Mian for Respondents 4 to 7.

Dr. T. Hussain for Secretary (Urban) S. & R. Commissioner, West Pakistan.

Dates of hearing: 6th, 22nd and 27th February 1961.

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JUDGMENT

SHABIR AHMAD, J.—The West Pakistan Provincial Government issued notifications under the Land Acquisition Act for acquisition of land for the purpose of building 'D' type quarters in an area known as Rahmanpura near Ichhra, a suburb of Lahore. The first of these notifications was issued on the 28th of May 1956, as notification No. 2363-UDD-56/2986, dated the 28th of May, 1956, which appeared at pages 592 and 593 of Part III of the West Pakistan Government Gazette. The second notification was issued on the 15th of August 1956 and appeared in the Gazette of West Pakistan, Part III, dated the 24th of August 1956, at page 827 as notification No. 4690-URD-56/5658, while the third one No. 8257-URD-56/9127 was issued on the 13th of November 1956 and appeared in the Gazette of West Pakistan, Part III, dated the 16th of November 1956, at page 1182. As the land, which was intended to be acquired, consisted partly of evacuee property, which could not be acquired without the sanction of the Central Government of Pakistan because of the provisions of clause (*b*) of subsection (2) of section 16 of the Pakistan (Administration of Evacuee Property) Act (XII of 1957), the Provincial Government applied for that sanction which was conveyed by means of letter No. F. 16 (102)/57-P. 11, dated the 21st of December 1957, sent by the officer on special duty in the Central Ministry of Rehabilitation to the Secretary of the West Pakistan Rehabilitation Department. The contents of this letter were as follows :—

"*Subject.*—Acquisition of evacuee land for construction of C and D type quarters in Rahmanpura and Sodhiwal, Lahore.

"With reference to your letter No. R-6/45-47-6539-1 R, dated the 13th September 1957, I am directed to say that in exercise of the powers conferred by section 16 (3) (*b*) of the Pakistan (Administration of Evacuee Property) Act, 1957 (XII of 1957), the Central Government are pleased to accord approval to the acquisition by the Government of West Pakistan under the provisions of the Land Acquisition Act, 1894, as modified and amended by Town Improvement Acts, 1922 and 1952, of evacuee land measuring 70 *acres* and 48.15 *acres* as per details shown in the attached schedule situated in village Ichhra, Nawakot and Pakki, District Lahore, for Rahmanpura Colony Scheme and Sodhiwal Quarters Scheme respectively on the condition that fair compensation in accordance with the principles laid down in the said Act will be assessed in consultation with the Custodian of Evacuee Property, Lahore, and paid to that officer for credit to the evacuee owners' account and that the displaced persons if any, settled thereon will be provided with alternative land."

It appears that the construction of the quarters started soon after the last of the three above mentioned notifications and before the sanction of the Central Government was given on the 21st of December 1957. When all the 'D' type quarters which the Provincial Government wanted to build had finished, the Provincial Government found that some of the land which had been acquired for the purposes of building quarters remained unutilised, whereupon some of the land, which was formerly evacuee property,

was given to some of the local inhabitants whose land had been acquired. Upon this writ petition No. 352 was brought by Iqbal Din seeking the issue of a writ so that the evacuee land which he claimed had been allotted to him in lieu of the property left by him in Jullundur, which is now a part of East Punjab, should remain in his possession. It was said in the petition, *inter alia*, that the action of the Provincial Government in compensating the local inhabitants whose land had been acquired for the purposes of building 'D' type quarters in Rahmanpura by giving them evacuee land which had been acquired but had remained unutilized for the purpose for which it purported to have been acquired was against law and, therefore, an appropriate writ should issue so that the petitioner may not be deprived of the land allotted to him which he claimed was still in his possession. In his petition Iqbal Din impleaded the West Pakistan Government and the Collector of the Lahore District as the only respondents. Subsequently, however, an application was made by some of the local inhabitants of Lahore to whom some of the evacuee land had been given as compensation for the land acquired from them or to whom it was intended to give the land, for being impleaded as parties and as their interests were likely to be affected if the decision of the writ petition were to be in favour of Iqbal Din petitioner, the application was granted.

2. Two other writ petitions, which sought substantially the same relief which was sought in Writ Petition No. 352 of 1959, were also presented. These Writ Petitions were Nos. 377 of 1959 and 391 of 1959 in the former of which the petitioners were Allah Bakhsh and some others and in the latter Mirza Muhammad Hussain Beg and some others. In both these petitions also local inhabitants, who were likely to be affected in the event of the order being in favour of the persons who had put in the writ petitions, applied to be impleaded as parties and their applications being accepted they were impleaded as respondents in the petitions. Both these petitions were directed to be heard with Writ Petition No. 352 of 1959. Some time later, *Mst.* Zarina Begum presented Writ Petition No. 306 of 1960 against the Collector, Lahore, in which she alleged that a piece of land, measuring 13 *marlas* and 50 square feet, which she had bought from one Salah-ud-Din in 1943, had been acquired by the Provincial Government for the purpose of constructing 'D' type quarters in Rahmanpura and that though she had been deprived of her land long ago, she had not been granted compensation to which she was entitled on account of the acquisition of the property. Her prayer was that a writ should be issued so that she may be given compensation, for the land of which she had been deprived, either in cash or by giving her some other land. As some questions that were likely to arise in this Writ Petition were the same as arose in Writ Petition No. 352 of 1959 and Writ Petitions Nos. 377 and 391 of 1959, Writ Petition No. 306 of 1960 was directed to be heard along with those writ petitions. This order will govern all the four petitions.

3. The facts are not in dispute in Writ Petition Nos. 352, 377 and 391 of 1959 because all the material allegations of fact in these writ petitions were either accepted as correct or their correctness was not denied in the replies put in on behalf of the

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respondents. In Writ Petition No. 306 of 1960, it was pleaded by the Collector, Lahore, the sole respondent in that writ petition, that proceedings with regard to the fixation of the amount payable as compensation to the private owners whose land had been acquired had been completed and *Mst.* Zarina Begum would soon be given the amount to which she was entitled. One of the main differences between the petitioners in the first three petitions and the respondents in those petitions was with regard to the powers of the Provincial Government to give away the surplus left out of land acquired by it for the purpose of building 'D' type quarters as compensation to those of the local inhabitants of Lahore whose land had been acquired for that purpose. Arguments on the questions which arose in writ petitions Nos. 352, 377 and 391 of 1959 were addressed by Mr. A. S. Salam, Advocate, who appeared for the petitioners in Writ Petition No. 391 of 1959, and the learned counsel who represented the petitioners in Writ Petitions Nos. 352 and 377 of 1959 adopted these arguments.

4. The first contention of Mr. A. S. Salam, Advocate, was that when any property was acquired by the Government under the provisions of the Land Acquisition Act that property could be put only to the purpose for which it had been stated to have been acquired and to no other purpose and that if any property remained unutilised, it had to go to the persons from whom it had been acquired, and that person had to return the compensation paid to him at the time of the acquisition. Learned counsel could not point to any provision in the Land Acquisition Act which would support his above mentioned contention, but relied on general principles and on some decisions of the Courts in England. With regard to the decisions of Courts in England, which were relied upon by Mr. A. S. Salam, I need only say that as the law under which those decisions were given is materially different from that contained in the Land Acquisition Act, these decisions can have little, if any, bearing. The arguments addressed by Mr. A. S. Salam on the basis of general principles were something to this effect : Property acquired under the provisions of the Land Acquisition Act was taken by Government by holding out a representation that it was required for a particular purpose, and it was, therefore, the bounden duty of Government to put the property to that use and to no other, and if the property were put to some other use, it could be said that the Provincial Government had committed a fraud on the statute and as no fraud, much less a fraud on a statute, could be countenanced by law, the result had to be that property which remained unutilised for the purpose for which the Government had purported to make the acquisition, must be returned to its original owners if they wanted to take it. That this argument is specious can hardly be doubted, but the mere fact that it has that merit, does not necessarily make it sound in law. The rights of Government in the property acquired under the Land Acquisition Act are specified in that Act and I am clearly of the view that if that Act or any other binding provision of law does not contemplate the results which Mr. A. S. Salam would have the Court hold to be unavoidable, the contention of the learned counsel cannot meet with success.

5. Subsection (3) of section 6 of the Land Acquisition Act

makes it clear that the assertion of Government that land was required for a public purpose was conclusive with regard to the necessity and the Courts could not enter on the determination of the question whether the purpose which was stated to exist was such as to deserve the title "public purpose". Section 16 and subsection (1) of section 17 of the Land Acquisition Act are some of the other provisions of Law which require consideration for determining the soundness or otherwise of the contention raised by Mr. A. S. Salam. They run as follows :

"16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the State, free from all encumbrances.

17. (1) In cases of urgency, whenever the Provincial Government so directs, Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, subsection (1), take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the State, free from all encumbrances."

Now the above-reproduced provisions of law, which are binding on parties as well as the Courts, make it clear that the Provincial Government becomes owner of the property which has come to it by means of acquisition effected under the provisions of the Land Acquisition Act, 1894, and gets absolute title in the property which thenceforth vests in the Government free of all encumbrances. In the presence of these provisions, it is not possible to hold, in the absence of any other binding provision of law, that the rights of Government in land acquired under the Land Acquisition Act, 1894, are subject to an unwritten condition that the whole of the property of which the Government has become absolute owner is to be put to the use for which it was sought to be acquired, and the result has to be that if a part of the acquired property were not put to that purpose because the purpose had been carried out, the person from whom the property was acquired gets the option to get back the property. It may be that if the Government has acquired property by alleging that it was required for a public purpose and no part of the property is put to that purpose, or it can be conclusively proved that the mention of that purpose was merely a cloak to enable Government to deprive a person of his property, it will be open to Courts to set aside the acquisition, but I am clear in my mind that if the public purpose for which any property was acquired did not actually exist and only some part of the property acquired remained unutilised the provisions of section 16 as those of subsection (1) of section 17 of th Land Acquisition Act will have full application, and th property which was surplus will remain the property of Goverment and subject to all the rights which any other property of Government is subject to. It need hardly be said that when a person is owner of any property, be that person a natural person like a man, a woman, or a child or a juristic person like a Government, the right to deal with the property in any manner that the owner likes, subject to conditions imposed by law, vests in the owner and no one else can claim any rights in the property if the owner does not want to part with those rights.

B

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6. The second main contention of Mr. A. S. Salam, Advocate, was based on the provisions of clause (*b*) of sub-section (2) of section 16 of Act XII of 1957. Before dealing with the argument raised, I might mention that the Provincial Government had paid compensation for the evacuee property acquired to the Custodian of Evacuee Property, West Pakistan, as the payment of the compensation had been made a condition precedent by the Central Government in their letter of the 21st of December 1957 whereby the Provincial Government had been allowed to buy the evacuee land for the purpose of building 'D' type quarters in Rehmanpura. The contention of Mr. A. S. Salam was that the action of the Provincial Government erred in two respects. One being that possession of evacuee land had been taken before permission of the Central Government had been received, and the second that that part of the letter of the Central Government wherein it was provided that if any evacuee land intended to be acquired was in possession of a displaced person he shall not be evicted till he had been given alternative accommodation, had not been complied with. Assuming that erection of quarters had started before the Central Government had given their consent for the acquisition of evacuee land, my opinion is that it would not be open to anyone except the Central Government to object that what was done before its sanction had been obtained had no validity. The Central Government not having objected to the building of quarters before they had granted sanction—assuming that the building of quarters had begun before the sanction was granted—the irregularity, if any, can be deemed to have been condoned and cannot be used by the petitioners for attacking the rights that vested in the Provincial Government on the acquisition.

7. The second of the contentions of Mr. Salam based on the provisions of section 16 of Act XII of 1957 may now be taken up. He contended that as persons in possession of the evacuee property had not been given alternative accommodation, the orders of the Central Government had not been complied with and there had, in the eye of law, been no acquisition of evacuee land by the Provincial Government. The assertion that evacuee property had been taken possession of before the sanction of the Central Government was given on the 21st of December 1957, contradicts the assertion in Writ Petitions Nos. 352, 377 and 391 of 1959 that the petitioners were in possession of the evacuee land that had been allotted to them in lieu of the property claimed to have been left by them in East Punjab, but I will deal with the question as if this manifest contradiction did not exist. It appears to me that section 16 and subsection (1) of section 17 of the Land Acquisition Act will come to the aid of the Provincial Government and consequently title in the land would be passed to the Provincial Government when the compensation was deposited with the Custodian of Evacuee Property.

8. I might mention another important circumstance which is not without relevancy. During the hearing the learned Advocates who appeared for the Provincial Government were asked to contact the relevant authorities so that the petitioners in Writ Petitions Nos. 352, 377 and 391 of 1959 may be granted alternative accommodation, and they agreed to do so. Time was, therefore, granted

to the parties and the petitioners were directed to make applications to the Urban Rehabilitation Department, West Pakistan, for providing them with alternative accommodation. At the next date of hearing, it was reported by the counsel who appeard for Government that alternative accommodation had been offered but the petitioners in all the three writ petitions had declined to accept it. The refusal to accept alternative accommodation was not denied by the learned counsel for the petitioners, who justified the action of their clients by saying that the property which had been offered was much inferior to that which the petitioners were being called upon to vacate and, therefore, the petitioners had refused to accept the property offered. Another reason for refusal to accept the land offered was stated to be that by so doing the petitioners would have deprived themselves of the right to get the land in dispute under the provisions of the Displaced Persons (Land Settlement) Act (XLVII of 1958). It is not necessary to determine whether the petitioners would have had a right to get the land in dispute under the provisions of that Act if it had not been acquired by the Provincial Government, because the land in dispute having become the property of the Provincial Government that Act will have no application to it. It appears to me that the conduct of the petitioners in refusing to accept alternative accommodation would have disentitled them to any writ even if it had been held that the other circumstances of the case demanded that it should issue. If the petitioners conduct themselves in a manner which shows that they had no intention of leaving the land which they claimed to be in their possession, which possession is denied by the respondents, they cannot be allowed to do so especially as that property has vested in the Provincial Government by reason of the acquisition made by it under the provisions of the Land Acquisition Act as applicable to the pieces of land which were the subject of acquisition. For the reasons that I have given above, I hold that the petitioners in Writ Petitions Nos. 352, 377 and 391 of 1959 are not entitled to get any writs issued. These three petitions must, therefore, be dismissed, but in the circumstances that obtain, I would direct that the parties shall bear their own costs.

9. I will now take up Writ Petition No. 306 of 1960 in which the prayer, as already mentioned, was that *Mst.* Zarina Begum, whose property has been acquired for the purpose of building 'D' type quarters at Rahmanpura, should be given compensation either in the form of land or in the form of money. A Court cannot force the Government to compensate a person whose land has been acquired by giving some other land and, therefore, the prayer of *Mst.* Zarina Begum that the Collector or the Provincial Government should be directed to give her land in lieu of the land taken away from her cannot be accepted. With regard to the second of her prayers, however I am of the view that the issuance of a writ is justified. The learned counsel who appeard for the respondent in this case said that the compensation proceedings had been completed and *Mst.* Zarina Begum would be given the amount that she is found entitled on her making an application in that behalf to the Collector. If this assertion is correct, then the issue of a writ in favour of *Mst.* Zarina Begum cannot adversely affect the respondent. The petition of *Mst.* Zarina Begum is accepted to the extent indicated above, but the parties are left to bear their own costs.

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10. The result, therefore, is that while the parties in all the four writ petitions disposed of by this order are left to bear their own costs, writ petition No. 306 of 1960 is accepted to the extent that writ is granted that compensation for her land which was acquired by the Provincial Government be given to *Mst.* Zarina Begum at as early a date as possible, but the other three writ petitions are dismissed in their entirety.

Sajjad Ahmad, J

SAJJAD AHMAD, J.—I agree.

A. H.

P L D 1961 (W. P.) Lahore 704

Before Anwarul Haq J

SHAH DIN—Petitioner

versus

THE STATE—Respondent

Shah Din v. State

Criminal Revision No. 716 of 1960, decided on 5th June, 1961.

Anwarul Haq, J

(a) Criminal Procedure Code (V of 1898), S. 235 (1)—Offences falling under provisions of two separate penal enactments but arising out of same incident—Joint trial not illegal—Penal Code (XLV of 1860), S. 332/149 and Arms Act (XI of 1878), S. 19 (f).

Where charge under section 19 (*f*) of the Arms Act, 1878 has arisen out of the same incident which gave rise to the charge under section 332/149 of the Penal Code, 1860, it was held that it was not necessary for the Court to try the accused at separate trials for charges under section 332/149 of the Penal Code, 1860, and section 19 (*f*) of the Arms Act. Under the provisions of section 235 (1) of the Criminal Procedure Code, 1898 the accused could be tried for the two offences at the same trial. [p. 706] *A & B*

(b) Arms Act (XI of 1878), Ss. 4 & 19 (f)—Definition of "arms" given in S. 4, not exhaustive—Purpose for which implement is primarily intended—Determines whether it should be deemed to be "arms"—Persons found in possession of knives with blades 6 to 7 inches long—Conviction under S. 19 (f), held proper.

The definition of "Arms" given in section 4 of the Arms Act, 1878 is not exhaustive, and whatever can be used as an instrument of attack and defence and is not an ordinary implement for domestic purposes, falls within the purview of the Act. The purpose for which an implement is primarily intended determines whether it should be deemed to be arms. It cannot be laid down as a hard and fast rule that no clasp-knife would fall within the meaning of the word "arms." The determination of this question would depend on the circumstances of the case and not only the shape of the weapon or the size of its blade. If the weapon is obviously and primarily designed as an instrument for domestic use then it would normally fall outside the definition of arms, but if it is such that it cannot be described as an instrument of ordinary daily domestic use, and is, on the other hand, capable of being employed as a weapon of offence and defence, it should then be regarded as falling within the