

SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
COMTEMPT PETITION NO. 87 OF 2006
IN
CIVIL APPEAL NO.2501 OF 2002

RAJA MOHAMMED AMIR MOHAMMED KHAN

... Petitioner

Vs.

S.N. MENON SECRETARY COMMERCE
MIN. & ANR.

... Respondents

ORDER

The late Raja of Mahmudabad of District Sitapur, U.P., was the owner and occupier of various properties in Lucknow, Sitapur, Lakhimkheri, Barabanki and Nainital. In December, 1957, the said erstwhile Raja of Mahmudabad migrated to Pakistan and became a citizen of Pakistan leaving behind his son and other relatives in India who continued to be Indian citizens. In terms of Rule 133-V of the Defence of India Rules, 1962, which came into force with effect from 5th November, 1962, the Central Government was authorised to appoint a Custodian of Enemy Property in India with the object of preserving such properties. Subsequently, in exercise of powers under Rule 133-V several orders were

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issued by the Central Government by which all immovable properties in India belonging to or held by or managed on behalf of Pakistani nationals stood vested in the Custodian of Enemy Property in India with immediate effect. Since the father of the respondent was a citizen of Pakistan, his properties also vested in the Custodian.

The erstwhile Raja of Mahmudabad died in London on 14th October, 1973 leaving behind Raja Mohammed Amir Mohammed Khan, hereinafter referred to as "Raja M.A.M. Khan", as his sole legal heir to succeed to his estate. Thereafter, since there was no response to the various

representations made by Raja M.A.M. Khan to the Central Government as also the Custodian to release the properties forming the estate of his late father, since they had ceased to be Enemy Property, he filed a Suit No. 365 of 1981 in the Court of Civil Judge, Lucknow on 18 th November, 1981 seeking a declaration that he was the sole heir and successor of the deceased Raja of Mahmudabad. The said suit was dismissed for non-joinder of the Custodian of Enemy Property as a party respondent.

Thereafter, a second suit, being Suit No.219 of 1984, was filed before the learned Civil Judge, Lucknow, for the self-same declaration and the same was decreed on 8th July, 1986 and Raja M.A.M. Khan was declared the sole heir and successor of his late father and thereby entitled to 25% or whatever percentage as may be allowed to him in the suit property. Since, despite prolonged correspondence over several years, the Custodian failed to hand over possession of the properties forming the estate of the erstwhile

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Raja of Mahmudabad, Raja M.A.M. Khan filed Writ Petition No.1524 of 1997 in the Bombay High Court, inter alia, praying for a declaration that the properties which had vested with the Custodian ceased to be enemy property and stood divested from the said Custodian with effect from 14th October, 1973 and that the possession of the Custodian was illegal and without authority of law. The said writ petition was allowed by the High Court with a direction upon the Custodian to hand over possession of the properties to the writ petitioner within 3 months from the date of passing of the order. The other prayers made for mesne profits and compensation in respect of the properties in question were rejected.

The said judgment and order of the High Court was challenged by the Union of India in Civil Appeal No.2501/2002 which was dismissed with a fresh direction to the appellants to get the buildings (residence or offices) vacated from officers who were in occupation of the same and hand over the possession thereof to the writ petitioner within 8 weeks from the date of the order. The appellants were also directed to hand over possession of the other properties as well. It was specifically indicated that failure to comply with the directions to hand over the possession within 8 weeks would constitute disobedience of the order and the appellants would be in

contempt thereof. Liberty was also given to the writ petitioner to move an application in this Court if the directions given were not complied with.

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Complaining that the said directions had not been complied with by the Custodian, the writ petitioner, who was the respondent in the Civil Appeal, filed an application under Section 12 of the Contempt of Courts Act, 1971, which was numbered as Contempt Petition No.87 of 2006, inter alia, for the following direction :-

"(b) issue appropriate directions in favour of the applicant that the judgment and final order dated 21.10.2005 of this Hon'ble court be complied with immediate effect."

Notice was issued on the contempt petition on 28th April, 2006 and pursuant thereto the alleged contemnors entered appearance. Simultaneously, various interlocutory applications were filed on behalf of Raja M.A.M. Khan, the Union of India, the Custodian and several individuals. Orders have been passed in most of the said applications and only a few remain to be disposed of. Some of the outstanding applications are for impleadment of parties, for clarification of orders and disclosure of certain facts by the District Magistrates of Sitapur, Lucknow and Lakhimkheri. As far as Interlocutory Application Nos.47 and 48 are concerned, they were filed by Raja M.A.M. Khan for a direction upon the Custodian to hand over to the applicant the amounts being held by him amounting to approximately Rs.1,77,38,828/-.

After notice was issued on the contempt application, the Sub-Divisional Magistrate, Lucknow, on 7th August, 2006, issued letters to

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occupants of the various properties belonging to the estate of the Raja to hand over possession of the areas in their occupation by 16th August, 2006. On receipt of the said letters, some of the applicants herein filed separate writ petitions before the Lucknow Bench of the Allahabad High Court in August, 2006, challenging the said letter issued by the Sub-Divisional Magistrate on 7th August, 2006. All the writ petitions were dismissed by the High Court on 29th August, 2006, which impelled the writ petitioners to file

Special Leave Petitions before this Court. On 8th September, 2006, the Special Leave Petitions were taken up and disposed of by the following order :-

"These Special Leave Petitions are disposed of with the clarification that persons who were inducted/ allotted properties by the Custodian or who came in possession after 1965 i.e. on or after declaring the property of Raja Mahamudabad as enemy property and appointment of the custodian have to vacate the properties in their possession. Persons claiming possession prior to the appointment of the Custodian declaring the property of Raja Mahamudabad, father of the respondent, as enemy property, based on duly authenticated tenancy created by the then Raja Mahamudabad or his General Power of Attorney shall not be covered by this Court's judgment passed in Civil Appeal No.2501 of 2002 dated October 21, 2005 titled Union of India & Another Vs. Raja Mohammed Amir Mohammad Khan reported in (2005) 6 SCC 696."

One of the writ petitioners Mr. A.K. Manocha, who had filed Special Leave Petition (Civil) No.14946 of 2006, which was disposed of on 8th September, 2006, filed Review Petition No.1189 of 2006. The same was, however, dismissed on December 13, 2006, and subsequently on the

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instructions of the Custodian, the Sub-Divisional Magistrate, Lucknow, on 14th December, 2006, issued a notice to the occupants of the different premises requiring them to furnish affidavits/documents in support of their claim to have been inducted as tenants in the estate of the erstwhile Raja of Mahamudabad. 58 occupants filed affidavits along with documents. Having regard to the large number of affidavits filed and the fact that the Custodian had his office in Mumbai, Raja M.A.M. Khan wrote to the Custodian on 17th November, 2006, suggesting that the question as to which of the claimants under the jurisdiction of the District Magistrate, Lucknow, had been inducted in the estate prior to 1965 and after 1965, when the properties came to be vested in the Custodian could be referred to a retired Supreme Court Judge for decision. Accepting the suggestion, the Custodian filed I.A. No.3 in the Contempt Petition for the appointment of a retired Judge to determine the issue. On such application, with the consent of the parties, this Court appointed Mr. Justice N.N. Goswami, a retired Judge of the High Court of Delhi to determine :-

(i) as to which of the persons claiming possession prior to the

appointment of the Custodian in 1965 are in occupation of the premises in Lucknow based on duly authenticated tenancy created by the then Raja Mehmoodabad or his General Power of Attorney, as directed by this Court in its order dated 8th September, 2006.

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(ii) to determine as mentioned in clause (i) above on the basis of documents, already submitted by the occupants to the Custodian within three months from today. He shall also consider the objections/comments of the applicant.

According to the directions given by this Court, the Custodian forwarded the affidavits/ documents received from the occupants of the different premises belonging to the erstwhile Raja within the jurisdiction of the District Magistrate, Lucknow, to Mr. Justice Goswami for determination of the above-mentioned issue. After several hearings, Justice Goswami submitted his report which was opened in Court on 16th July, 2007, from which it was found that 15 of the 39 occupants were held to be pre-1965 occupants. Some of the occupants filed objections before this Court challenging the appointment of Justice Goswami.

When the contempt petition and the various interlocutory applications were taken up for hearing, a preliminary objection was taken on behalf of Raja M.A.M. Khan that the interlocutory applications filed for being impleaded or for leave to intervene in the contempt petition were not maintainable on the ground that the Special Leave Petition had already been disposed of and hence no interlocutory application could have been filed in a matter which had already been disposed of. It was also submitted that as indicated hereinabove, a review petition filed by Mr. A.K. Manocha against the principal judgment dated 21st October, 2005, had been

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dismissed on 13th December, 2006 and as a result there could not be a further review of the principal judgment.

Despite the submissions made with regard to the maintainability of the various interlocutory applications, Mr. Ram Jethmalani, learned Senior Counsel, who was heard on behalf of some of the applicants who claim to

have been inducted into the estate of the erstwhile Raja prior to the appointment of the Custodian, submitted that merely on the opinion expressed by Mr. Justice Goswami and endorsed by the Custodian, those persons who had in fact been inducted or have been in possession of the premises under their occupation in the estate of the erstwhile Raja of Mahmudabad, could not be evicted without due process of law. Mr.

Jethmalani also submitted that Mr. Justice Goswami had no authority in law to exercise delegated powers of the Supreme Court in deciding the issue as to which of the occupants had come into possession prior to the vesting of the property in the Custodian and who had been inducted subsequently. It was urged that such occupants, who were neither parties to the Special Leave Petition which was decided on 21st March, 2005 and had not been heard, could not be evicted without even being heard.

Some of the learned counsel appearing for other similar applicants adopted the submissions made by Mr. Jethmalani.

Separate submissions were, however, advanced in IA no.59 filed by M/s Mahatex Handloom Fabrics to whom notice had been given by Justice

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Goswami and the applicant had appeared, but its claim of tenancy had been rejected. Mr. Shirish Kumar Mishra, learned Advocate, appearing in support of the said application submitted that rent had been claimed by the Raja even after the order had been passed by the High Court and hence neither of the orders passed on 21st October, 2005, or 8th September, 2006, would have any application as far as the applicant was concerned, and he could not be evicted except in due process of law.

Having considered the submissions made on behalf of the respective parties, what emerges is that the applicants in IA Nos.10, 12, 13, 23, 24 and 25 claim that they had not been served with notice by Mr. Justice Goswami and as a result they were not present before the learned Judge in support of their respective cases and that as would be evident from the various documents filed by the Custodian before Mr. Justice Goswami, they were duly recognized as being in occupation of their respective portions of the estate of the erstwhile Raja long prior to the date on which the

properties vested in the Custodian.

Having looked into the said documents which were also before Mr. Justice Goswami and having heard learned counsel for the parties, we make it clear that it was never the intention of the Court to direct those who have been in occupation as lawful tenants of their respective areas under the estate of the erstwhile Raja of Mahmudabad prior to 11th September, 1965, to hand over vacant possession thereof to the Custodian or the present Raja.

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It was the intention of this Court while disposing of Civil Appeal No.2105 of 2002 filed by the Union of India that only those persons who had come into possession after the date on which the properties of the erstwhile Raja of Mahmudabad had vested in the Custodian, were required to make over possession of the properties to the Custodian. In fact, the order passed on 8 th September, 2006, makes the same very clear.

The grievance of the applicants in the various interlocutory applications appears to be that they have been issued notice by the Custodian and/or his agents to make over vacant possession of the properties in which they had been inducted prior to 1965 when the properties came to vest in the Custodian. This was clearly not the intention of the Court and instead of going into the allegations and counter-allegations made on behalf of the parties, in our view, the best course of action to adopt in the contempt proceedings and the offshoots thereof would be to give the said applicants and other occupants of the estate of the Raja, a further opportunity of proving their respective claims to have been inducted into their respective premises prior to the vesting thereof in the Custodian in 1965.

The Hon'ble Judge shall fix his own remuneration for the said purpose. Before going into the matter, the Hon'ble Judge shall ensure that proper notice is given, if necessary, by publication in a local newspaper of the proceedings before him in terms of this Order, so as to give all claimants

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an opportunity of appearing before the Hon'ble Judge. The expenses incurred for the above purpose and the remuneration of the Hon'ble Judge

will be defrayed from the funds of the estate.