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statute, and the fact that special Courts were set up for a special purpose. If Mr. Walawalkar's interpretation were to be given effect, then it would seriously impair the machinery set up under the Act and would also seriously interfere with the object the legislature had in mind in giving relief to agricultural debtors. Therefore, I refuse to be swayed by the argument strongly urged upon me by Mr. Walawalkar that a creditor may be bound by an award although he in that particular case did not have an opportunity of contesting the issues which were determined by that award.

In my opinion, therefore, the learned Judge below was right in the view that he took. The result is that the revision application fails. Rule discharged with costs.

*Rule discharged*

M. W. P.

### ORIGINAL CIVIL

*Before Mr. Justice Tendolkar.*

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 Nov. 17

SANWALDAS GOBINDRAM, PETITIONER *v.* THE STATE OF BOMBAY  
 AND ANOTHER, RESPONDENTS.\*

*The Bombay Refugees Act (XXII of 1948), s. 7—Order made under s. 7  
 —Whether s. 7, ultra vires the legislature of State of Bombay.*

The pith and substance of the Bombay Refugees Act, 1948, is the relief and rehabilitation of the displaced persons. Prior to the enactment of the Constituent Assembly Act, IV of 1949 being the Government of India (Third Amendment) Act, 1949, which inserted item No. 31C in the Concurrent Legislative List in schedule VII of the Government of India Act, 1935, there was no item of this nature in the provincial or concurrent legislative lists. In any event, s. 7 of the Act was not within the competence of the Bombay State legislature and was *ultra vires* of the said legislature.

*Held*, therefore that the order made under s. 7 of the Act was without jurisdiction.

The Director of Rehabilitation, Government of Bombay, M. R. Yardi, (2nd Respondent) served an order on Sanwaldas Gobindram (the petitioner) dated June 11, 1952 under s. 7 of the Bombay Refugees Act, 1948, requiring the petitioner to leave the Chembur Colony with all his belongings within three days of the service of the order and forbidding him from

\* Miscellaneous Petition No. 170 of 1952.

re-entering it. The Petitioner thereupon filed this petition for a writ of mandamus or prohibition directing the State of Bombay (1st Respondent) and the 2nd Respondent to refrain from enforcing that order against the petitioner.

R. B. Jethmalani, for the petitioner.

G. N. Joshi, for the respondents.

*Tendolkar J.* This is a petition for a writ of mandamus or prohibition directing the State of Bombay, who are the first respondents, and the Director of Rehabilitation, who is the second respondent from enforcing an order dated June 11, 1952, made under s. 7 of the Bombay Refugees Act 1948 against the petitioner. The order requires that the petitioner shall leave the Chembur Colony, with all his belongings within a period of 3 days from the date of the service of the order and shall not re-enter the said colony.

The order is challenged on various grounds, but there is one ground which goes to the very root of the matter, viz., the s. 7 of the Act under which the order was made was *ultra vires* the Bombay Legislature. Since, in my opinion, this contention appears to be well-founded, it is not necessary to consider the rest of the grounds on which the petition is based.

Now, the Bombay Refugees Act 1948, being Act XXII of 1948, was published on March 29, 1948. It is contended on behalf of the petitioner that at the said date the local Legislature did not have power to legislate regarding refugees, their movements and rehabilitation.

Now, it appears that by the Constituent Assembly Act No. 4 of 1949, which was published on August 24, 1949, s. 5 (b) *inter alia* provides for the insertion of Item 31C in the Concurrent Legislative List in schedule 7 of the Government of India Act 1935.

The entry is as follows:—

“31C. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.”

By the same Act, s. 3 of the Constituent Assembly Act No. 4 of 1949, the Government of India Act 1935, s. 8, was also amended. Now, that section in sub-s. (1) thereof enacts that the executive authority of the Dominion extends to the matters with respect to which the Dominion Legislature has

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power to make laws. Then the section has a proviso which is as follows:—

“Provided that the said authority does, not, save as expressly provided in this Act or in any law made by the Dominion Legislature with respect to any of the matters specified in the next succeeding sub-section, extend in any Province to matters with respect to which the Provincial Legislature has powers to make laws.”

I have reproduced this proviso as amended by the Constituent Assembly Act 1 of 1949. Then by the same Act sub-s. (1A) was inserted in s. 8 of the Government of India Act which enumerated the matters referred to in cl. (i) of the proviso to sub-s. (1). The Constituent Assembly Act 4 of 1949 amended sub-s. (1A) by adding to the List of these matters, an Item exactly identical with the Item 31C inserted in the Concurrent Legislative List. The effect of these provisions is that as from August 24, 1949, in so far as relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan was specifically made Item 31C in the Concurrent Legislative List, both the Dominion and the State Legislatures had authority to legislate in respect thereof, but the executive authority of the Dominion did not extend to this particular matter except in so far as expressly provided by the Government of India Act or by any other law made by the Dominion Legislature. It is clear, therefore, that after the date of the Constituent Assembly Act No. 4 of 1949 the Bombay Refugees Act 1948 would, without question, fall within entry No. 31C in the Concurrent Legislative List and would therefore be within the competence of the local Legislature. The question, however, is whether before this amendment the local Legislature had power to enact the said Act.

Now, whilst considering the competence of a Legislature to enact legislation it has been well settled that one has to look to the pith and substance of the legislation to determine whether it falls within the legislative competence of the Dominion or Provincial Legislature. For the purpose of determining the pith and substance one has got to consider the Act as a whole. Now, the preamble to that Act is as follows:—

“Whereas with a view to securing public safety, maintaining order, public health and sanitation and avoiding pressure on accommodation, it is expedient to provide for compulsory registration and movements of

refugees and for certain other purposes; It is hereby enacted as follows:—

It will be noticed that certain words of the preamble are reproductions of certain entries in the Provincial Legislative List in Sch. VII to the Government of India Act, e.g., "securing public safety, maintaining order" is Item 1 in that List "public health and sanitation" is Item 14 in that List. However, this preamble of the Act was by Act LXVI of 1948 substituted by the following:—

"Whereas it is expedient to provide for the registration and to regulate the movement of refugees with a view to facilitating their relief and rehabilitation and to securing public health, sanitation and safety and for certain other purposes herein specified; It is hereby enacted as follows":

The important alteration to be noticed is that the words "maintenance of public order" which were to be found in the first Preamble find no place in the substituted Preamble although the Act remains substantially the same. It is therefore legitimate to assume that the recital in the Preamble that the Act had been enacted for the "maintenance of public order" was nothing more than a colourable device to attempt to bring this Act within the scope of Item 1 in the Provincial Legislative List, unless of course there is any provision of the Act which may indicate that "maintenance of public order" has been provided for in the Act. Section 2 of the Act defines a "refugee" as follows:

"In this Act, "refugee" means any person who has since the first day of August 1947, entered the Province of Bombay, having left his place of residence elsewhere on account of civil disturbance in that place or the fear of such disturbances."

It seems to me that this definition is capable of embracing two different classes of persons: (a) persons coming from another Province to this Province, and (b) persons coming from outside India to this Province. The importance of this lies in the fact that there is in Sch. VII, List 1, of the Government of India Act in the Federal Legislative List an entry No. 50 "Migration within India from or into a Governor's Province or a Chief Commissioner's Province." Then proceeding further with the Act, ss. 3 to 6 deal with registration of refugees. Section 7, under which the order impugned purports to have been made, gives power to the Provincial Government to control the movement of refugees by directing that they shall reside in any particular camp or shall leave one camp or place

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and go and reside in another camp or place. Section 8 prescribes the penalty for disobedience of an order under s. 7. Section 9 deals with the authority of the Provincial Government to require refugees to get themselves vaccinated or inoculated, a section which by itself is clearly within Item 14 in the Provincial Legislative List "public health and sanitation." None of the other sections of the Act are of importance in determining what is the pith and substance of the Act, and it is clear to my mind that the pith and substance of the Act is the relief and rehabilitation of displaced persons. Obviously there was no item of this nature in the Provincial Concurrent Legislative List prior to the Constituent Assembly Act IV of 1949. But on behalf of the respondents it has been urged that the authority for enacting this Act is to be found from Items 1, 14 and 32 or any one of them in the Provincial Legislative List.

Now, Item 1 is "public order" and as I have pointed out earlier besides the use of the words "maintaining order" which appear in the Preamble to the Act as originally enacted and which have been subsequently deleted from the Preamble, there is nothing in the Act to indicate that the Act in any way deals with "public order".

Turning next to Item 14 which deals with "public health and sanitation," no doubt s. 9 of the Act in terms falls within the scope of the terms of this entry and it may be that the provisions for the registration of refugees which are to be found in ss. 3 to 6 may be incidental to the provisions of s. 9 which empower the Provincial Government to order refugees to get themselves vaccinated or inoculated, but the same cannot be said of s. 7 which empowers the Provincial Government to require a particular refugee to leave any camp or place and to go and reside in any other camp or place. In any event, therefore, s. 7 cannot fall within the scope of the entry "public health".

Entry 32 in the Provincial Legislative List which has been invoked deals with "relief of the poor." Now, it may be that some of the refugees are poor, but yet others are probably just evacuees, and it is difficult to say that an Act, such as this, which according to the amended Preamble is an Act for the registration and for regulating the movements of refugees, is an Act which can fall within the legislative head "relief of the poor." In my opinion, therefore, in so far as s. 7 of the

Act is concerned, it is not in any event within the competence of the local Legislature and is *ultra vires* of the said Legislature.

This conclusion is also supported by another consideration. As I have pointed out earlier, the definition of "refugees" embraces within its scope persons coming from another Province into this Province. This interpretation is challenged on behalf of the respondents and it is pointed out that in the first Schedule to the Act there is a form of registration and in that form sub-entry 8 refers to property left by the refugee "in the country from which migrated," which, according to Mr. Joshi for the respondents, clearly indicates that the word "refugee" is used in the sense of a person coming from outside India. But I fear that the meaning of a word defined in a Statute cannot be limited by reference to some item in the Schedule, and in any event the form which is a common form for persons who come into the Province both from outside India and from another Province would legitimately provide for a column showing the property if any left by such refugee in the country from which he migrated. In my opinion the definition clearly embraces within its scope a person who has come into the Province from another Province and to the extent to which it does so the Act falls within entry 50 in the Federal Legislative List in the 7th Schedule to the Government of India Act, viz., "Migration within India from or into a Governor's Province or a Chief Commissioner's Province." It is therefore a matter which was within the competence of the Dominion Legislature and not of the Provincial Legislature. Looked at from either point of view, therefore, s. 7 of the Act is, in my opinion, *ultra vires* of the local Legislature.

Since I have held that s. 7 of the Act is *ultra vires* the local Legislature, the order made under the section is without jurisdiction. The rule will, therefore, be made absolute with costs.

Attorneys for petitioners: *Nanawati & Co.*

Attorneys for respondents: *Little & Co.*

*Rule made absolute.*

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