

Therefore, the workmen of these hospitals can claim all the rights given to workmen under Industrial Disputes Act.

The result, therefore, will be that we must reverse the decision of Mr. Justice Tendolkar. The appeal will, therefore, be allowed. Order in terms of prayer (b) of the petition. Respondents to pay to the petitioner costs of the petition and costs of the appeal. Costs of the petition will be quantified at Rs. 250. Costs of the appeal to be taxed. Liberty to the appellant's Attorneys to withdraw the sum of Rs. 500 deposited in Court.

Attorneys for Appellants: *Nanavati Tijoriwala & Co.*

Attorneys for Respondents: *Little & Co.*

Appeal allowed.

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APPEAL FROM ORIGINAL CIVIL AND INHERENT JURISDICTION

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Desai.

D. B. GODBOLE, THE CUSTODIAN OF EVACUEE PROPERTY FOR THE STATE OF BOMBAY, APPELLANT (ORIGINAL RESPONDENT) *v.* KUNWAR RAJNATH, RESPONDENT (ORIGINAL PETITIONER).*

Administration of Evacuee Property Act (XXXI of 1950), s. 48 (2); s. 10 (2) (b) and (f)—Appointment of manager of Evacuee Property by Custodian—Custodian calling for manager statement of accounts of his management of such property—On submission of accounts, Custodian deciding amount due to him from manager and issuing notice to him to pay such amount—Petition for quashing such notice—Whether Custodian has power to determine amount due in such case?

When the Legislature makes the decision of any authority final, it confers upon such authority by necessary implication the power to decide that which becomes final. Section 48 (2) of the Administration of Evacuee Property Act, 1951 which makes the decision of the Custodian regarding any sum due to the Custodian or Government final confers by necessary implication the power to determine what sum is so due. But the ambit and extent of such power is confined and limited, as is clear from s. 48 (1) of the Act, to deciding only such amounts as are due under the provisions of the Act.

It is a condition precedent to the exercise of the power under s. 48 (2) of the Act that the sum with regard to which he gives his decision should be a sum due under the provisions of the Act. And his decision that a certain sum is so due is subject to the scrutiny of the Court to which he is subordinate. As under Art. 227 of the Constitution of India every tribunal is subordinate to the High Court, the High Court has the power to examine whether the Custodian has in so deciding acted within jurisdiction.

Because the Custodian has the power to appoint a manager of the Evacuee Property and call upon him to furnish to him returns and accounts of the management under clauses (b) and (f) respectively of sub-s. (2) of s. 10 of the Act, it does not follow that under the provisions of the Act he has the authority either to determine the liability of the

*Appeal No. 1 of 1956: Miscellaneous Petition No. 285 of 1955.

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manager or to call upon him to pay such amount as he has determined as being due from him.

On August 1, 1952, the Custodian of Evacuee Property for the State of Bombay appointed K. R., the petitioner, manager of certain properties declared to be evacuee properties. On June 1954 the Custodian took back possession of the properties from the petitioner and called upon him to submit a statement of accounts with regard to the management of the properties. After considering the statement submitted by the petitioner the Custodian decided that a sum of Rs. 4,73,000 was due by the petitioner to him. and on March 30, 1955 issued a notice to him to show cause why he should not pay the said amount to him. On September 5, 1955 the petitioner moved the High Court at Bombay for a writ to quash the notice. The trial Court passed an order quashing the notice. The Custodian appealed.

Held, that the sum due by the manager of evacuee properties to the Custodian was not a sum due to him under the provisions of the Act and hence the notice to show cause issued by him to the petitioner was without jurisdiction and was rightly quashed.

S. Benjamin v. Ebrahim Aboobaker⁽¹⁾ and *Ahmedabad Municipality v. Jayantilal*,⁽²⁾ referred to.

A Court of law must be anxious to safeguard contractual rights and liabilities of third parties and to see that those rights and liabilities are determined in the ordinary Courts of the land; and unless Parliament expressly precludes a third party from going to a Civil Court or precludes the Civil Court from determining his rights and liabilities, the Court must not put upon a section a construction which would bring about such unsatisfactory result.

Facts material to this report are sufficiently set out in the Judgment.

C. K. Daphtary, Solicitor General of India with *M. P. Amin*, Advocate General, *G. N. Joshi*, *Porus Mehta* and *K. H. Bhabha*, for the Appellant.

M. L. Maneksha with *P. N. Bhagwati*, for the Respondent.

Chagla C. J.—A short but rather important point affecting the rights of third parties under the Evacuee Property law arises in this appeal. On September 12, 1951, the properties of Messrs. Ahmed Abdul Karim Bros. Ltd. were declared evacuee properties. These properties consisted of Woollen Mills at Ambarnath, a bobbin factory at Tardeo, and certain other moveables. The respondent to this appeal was appointed manager by the Custodian to manage these properties. He was appointed on August 1, 1952, and he continued as manager till August 30, 1952. On that date an arrangement was arrived at by which the lease of evacuee properties was granted by the Custodian to a partnership of three persons of whom the respondent was one, and pursuant to this arrangement possession of the properties was given to the partnership on August 31, 1952. The lease was terminated by the Custodian on May 25, 1954. After the lease was granted the respondent continued to be the manager for the purpose of collecting the dues and discharging the debts in respect of evacuee property for the period August 1, 1952 to August 30, 1952. On June 30, 1954, the Custodian took back the possession of the evacuee

properties. He called upon the respondent to submit a statement of accounts with regard to his management of evacuee properties. This statement was submitted by the respondent on August 12, 1954. After considering the statement the Custodian decided that a sum of Rs. 4,73,000 and odd was due by the respondent to him and on March 30, 1955, he issued a notice against the respondent to show cause why this amount should not be paid by him to the Custodian. On September 5, 1955, the respondent presented a petition to this Court contending that the Custodian had no jurisdiction to determine the amount payable by him to the Custodian and asking for a direction from this Court to quash the show cause notice. Mr. Justice Coyajee who heard the petition held that the Custodian had no jurisdiction to determine the amount and therefore the show cause notice was not well founded and passed an order quashing that notice. The Custodian has now come in appeal.

The relevant section that has got to be considered in order to determine the rights of parties is s. 48 (1) and s. 48 (2). Section 48 (2) was introduced in the original Act by amending Act XLII of 1954. The original s. 48 was to the following effect:

"Any sum due to the State Government or to the Custodian under the provisions of this Act may be recovered as if it were an arrear of land revenue."

It will be noticed that this is a procedural section which lays down the mode of recovery of any sum due to Government or the Custodian. It does not purport either to create rights or impose liabilities. The sum that may become due under the provisions of the Act must be ascertained by looking to the other provisions of the statute. Section 48 itself throws no light on what are the sum or sums due under the provisions of the Act. The new sub-s. (2) provided:

"For the purposes of sub-s. (1) the decision of the Custodian as to the sum due to the State Government or to the Custodian shall be final."

It is significant that whatever power is conferred upon the Custodian under sub-s. (2) is for the purposes of sub-s. (1) which, as we have already indicated, is a procedural section providing for the mode of recovery of certain sums due to Government or the Custodian. This sub-section makes the decision of the Custodian final, but the finality attaches only to that decision of the Custodian which is given with regard to the sums due to the Custodian, and reading sub-s. (2) in the light of sub-s. (1) it is clear that the sums due to the Custodian with regard to which his decision is rendered final are the sums due under the provisions of the Act. It will therefore again be noticed that just as in the case of s. 48 (1), sub-s. (2) does not create any new rights or impose any new liabilities. Having laid down the procedure with regard to the recovery

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of certain sums under s. 48 (1), the Legislature proceeded further and made the decision of the Custodian with regard to those sums final. It has been argued by Mr. Manekshaw that this section does not confer any power upon the Custodian to decide or determine anything. All that it provides is that his decision, if he has the power to decide, is rendered final, and Mr. Manekshaw's contention is that unless we find somewhere in the Act a power conferred upon the Custodian to decide or determine a matter, we must not import that power into sub-s. (2) of s. 48. In our opinion that contention is clearly untenable. When the Legislature makes the decision of the Custodian final, by necessary implication it confers upon the Custodian the power to decide. The making of his decision final necessarily carries with it the power to decide that which becomes final, and it would be too technical a construction to put upon sub-s. (2) that because in terms the Legislature did not confer the power to decide upon the Custodian, therefore he has no power to decide under this sub-section, but the power must be found elsewhere in the statute. But even if the Custodian has the power to decide, the question still remains what is the extent and the ambit of his power. The extent and the ambit of his power is clear from the language of s. 48 (1) and that extent and that ambit is confined and limited to deciding and determining what are the sums due to Government or the Custodian under the provisions of the Act.

The Solicitor General attempted to argue that this was one of those cases where the Legislature set up a tribunal with a limited jurisdiction and conferred upon that tribunal not only the power to decide matters in issue but also jurisdictional facts which must exist before the tribunal would have jurisdiction to decide, and therefore the argument was advanced that not only the Custodian had the power to decide what were the sums due to the State or the Custodian, but he had also the power to decide whether any sum was due under the provisions of the Act, and according to the Solicitor General if the Custodian decided that a certain sum was due to him under the provisions of the Act, that decision of his was final. We are not prepared to accept that contention. When a Court or a tribunal with a limited jurisdiction is set up, ordinarily it is the duty and the function of the higher Court to see that the Court or tribunal of limited jurisdiction functions within the jurisdiction conferred upon it. Undoubtedly there are cases in the books which go to show that Legislatures have set up Courts and tribunals with much wider powers and have conferred upon them the jurisdiction to decide even jurisdictional facts. But those are rare and exceptional cases and unless there is clear language to indicate that Legislature intended to set up such a Court or tribunal, as a matter of ordinary construction the Court or tribunal of limited jurisdiction could not be assumed to possess the power finally to decide facts

with regard to their own jurisdiction. Therefore, in our opinion, it is a condition precedent to the exercise of a power of the Custodian under sub-s. (2) that the sum with regard to which he gives his decision or determination must be a sum due under the provisions of the Act. It is not sufficient for the Custodian to say that in his opinion a certain sum is due under the provisions of the Act. That opinion is subject and must always be subject to the scrutiny of the Court to which he is subordinate, and as under art. 227 of the Constitution every tribunal is subordinate to the High Court, the High Court has the power to examine the decision of the Custodian from the point of view of deciding whether he has acted within jurisdiction.

It was then argued by the Solicitor General that in fact the amount determined by the Custodian was a sum due under the provisions of the Act, and for that purpose reference was made to s. 10 which deals with the powers and duties of the Custodian and it was pointed out that the manager was appointed under sub-cl. (b) of s. 10 (2), that he was required to furnish returns and accounts under sub-cl. (f), and the sum of Rs. 4,73,000 and odd was determined by the Custodian as a result of his having appointed the manager as a manager under the provisions of the Act and having called upon that manager to submit returns and accounts. In our opinion, it is fallacious to suggest that this sum of Rs. 4,73,000 and odd is due by the respondent under any provision of the Act. Undoubtedly the Custodian has the authority under the Act to appoint a manager, undoubtedly he has also the authority to call upon him to render accounts, but it does not follow from that that under the provisions of the Act either he has the authority to determine the liability of the manager whom he has appointed or to call upon him to pay any amount which he determines as due from him. This sum of Rs. 4,73,000 and odd is really due under the arrangement arrived at between the Custodian and the respondent. It was suggested by the Solicitor General that the properties which the respondent was managing were evacuee properties and this amount was due in respect of those properties and that this amount when collected would constitute an accretion to evacuee properties. This would have been very sound argument if the Legislature had used the expression

“any sum due to the State Government or to the Custodian in respect of evacuee property.”

But that is not the language that the Legislature has used. It was also urged upon us that this sum is due in consequence of carrying out the provisions of the Act and that this sum is due in pursuance of the Act. It is unnecessary to consider that argument more closely because we refuse to substitute a different expression for the expression advisedly used by the Legislature.

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In asking us to accept his contention, the Solicitor General wishes us to accept the position that Parliament conferred upon the Custodian such wide powers that he could conclude the rights and liabilities of third parties merely by his fiat that a certain sum was due by them to him, and the Solicitor General wanted us to accept this position because he said that as we ourselves had held before that this was a special legislation and a child of an emergency, we must give a construction to this section consistent with the object of the Act. The object of the Act is to administer evacuee property, to manage, look after and preserve evacuee property. The object of the Act is not strictly to decide rights and liabilities of third parties who have dealings with the Custodian or with evacuee property. A Court of law must be anxious to safeguard contractual rights and liabilities of third parties. The Court must be anxious to see that those rights and liabilities are determined in the ordinary Courts of the land, and unless Parliament expressly precludes a third party from going to a Civil Court or precludes the Civil Court from determining his rights and liabilities, the Court must try not to put a construction which would bring about this unsatisfactory result. In our opinion, it is impossible to take the view that if Parliament in incorporating sub-s. (2) of s. 48 in the Act intended that the Custodian should be given the power to decide the liability of third parties in all matters where third parties had any dealings either with him as the Custodian or with evacuee properties and that in deciding this liability his decision should be final and that the rights and liabilities of third parties should be concluded by his decision, then Parliament would not have used more appropriate language. It is difficult to believe that by a side wind by amending a procedural section such drastic powers were intended to be conferred upon the Custodian. It is also surprising that whereas rights of appeal and revision are conferred upon a party aggrieved by a decision of the Custodian which rights are to be found in Chapter V commencing with s. 24, and s. 28 renders orders made by the Custodian or other authorities final subject to this power of appeal and revision, when we turn to s. 48 (2) the finality of the Custodian is so complete that apparently there does not seem to be any right of appeal conferred upon the third party whose liability is determined, nor does there seem to be any power of revision against that decision of the Custodian. That seems to lend an added strength to the contention that by this provision the Legislature did not intend to confer upon the Custodian the power to determine the liability of third parties. There seems to be no principle whatever underlying this extraordinary conferment of absolute power upon the Custodian in the case of third parties who have nothing whatever to do with migration or directly with evacuee property, when even evacuees have

been given the right not only of appeal but of revision to the Custodian General.

Realising the extent and scope of the power which his submission would confer upon the Custodian, the Solicitor General was driven to make a more limited submission and his submission was that it may be that if the Custodian is carrying on business under s. 10 (2) (a) and in the course of business he enters into contracts it would not be open to him to determine the liabilities of third parties with whom he enters into contracts, the position would be different when he appoints a manager under s. 10 (2) (b) and calls upon that manager under sub-cl.(f) to render accounts. His contention was that whereas in the former case it might be said that the amount was not due under the provisions of the Act, in the latter case, inasmuch as the manager was appointed under the Act and accounts were called for from him under the Act, it may be said that the amount was due under the provisions of the Act. Now, it is always a mistake to try and construe a section of an Act only bearing in mind the particular facts that come up before a Court. A section must be construed so that it applies not only to the particular facts of the case, but which could be applied similarly if other facts come before the Court. The construction of a section cannot vary with the facts to which the section has got to be applied, and therefore we must construe this section on principle and not in the light of the particular facts which we have to decide in this appeal, and we see no distinction in principle between applying the section in the same manner, whether the case falls under s. 10 (2) (a) or under s. 10 (2) (b). Either the contention of the Solicitor General is right that anything done by the Custodian as a Custodian and any power exercised by him under the Act, if it leads to a contract or arrangement being made, amounts becoming due under the contract or arrangement become sums due under the provisions of the Act, or the Solicitor General's contention is erroneous. If his contention is erroneous then it is as much erroneous whether the sum of Rs. 4,73,000 and odd is due under a contract entered into with the respondent in the course of the business which the Custodian carries on on behalf of the evacuee, or the sum of Rs. 4,73,000 and odd is due under an arrangement arrived at with the respondent who is constituted a manager.

We were also told that if Legislature enacts any provision of the law it does so with some purpose and we must find some cases to which the particular provision of the law would attach and it is said that if we give to s. 48 the meaning which we suggest is the proper meaning, then it would be difficult to find any cases to which s. 48 would be applicable. It is true that ordinarily the function of the Court should be not to render any legislation futile or infructuous, but it is equally

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the function of the Court not to alter the language of the Legislature in order to give effect to any piece of legislation. There are innumerable instances of what a learned Law Lord said of Legislature misfiring and often the Legislature by failure to use adequate language fails to achieve its object. We are not at all sure, in the first instance, that the Legislature ever intended to confer upon the Custodian the wide and drastic power of deciding liabilities of third parties, and even assuming we were satisfied that that was the object of the Legislature, we refuse to extend and alter the meaning of the language used by the Legislature merely because we may find that s. 48 would have no application if it was given the strict meaning which the language bears. As a matter of fact, Mr. Manekshaw has drawn our attention to two provisions of the Act which were extant when s. 48 was originally enacted, ss. 23 and 45 (b) which go to show that there might have been provisions when s. 48 was enacted which would satisfy the language used by the Legislature, viz. sum due under the provisions of the Act. But that is neither here nor there. We cannot throw the burden upon the respondent to show us some provision of the Act to which s. 48 applies. Rather it is for the Custodian to satisfy us that on the language used by the Legislature in s. 48 it applies to the case of third parties.

Turning to the authorities, our attention was drawn naturally to a decision of this Court reported in (*S. Benjamin v. Ebrahim Aboobakar*⁽³¹⁾). That is a decision directly in point. In that case we held that s. 10 (2) (i) of the Administration of Evacuee Property Act did not confer upon the Custodian the power to recover a debt due to an evacuee by a summary process without having resort to the Civil Courts and that he could only recover that debt by going to a Civil Court, establishing the debt and getting the Court to pass a decree in his favour, and further that the right conferred upon the Custodian, under s. 10 (2) (f) to call upon a person to furnish information, returns and accounts did not carry with it the right by the Custodian's own adjudication to determine the liability of any person in respect of any property which was vested in him. What is now sought to be argued is that when this decision was given Parliament had not enacted s. 48 (2), and what is urged upon us is that by reason of the enactment of s. 48 (2) this decision is no longer good law and that we would never have come to this conclusion if s. 48 (2) had been upon the statute book. In our opinion, the enactment of s. 48 (2) does not make the slightest difference to the ratio of this decision. As a matter of fact, in that case the Advocate General relied on s. 48 and we pointed out to him that before he could rely on that section he must satisfy us that any sum was due to the Custodian under the provisions of the Act, and inasmuch as the Advocate

General was not in a position to satisfy us, he failed. The position is identical today. The only change in the law that s. 48 (2) has brought about is that it has conferred a power upon the Custodian to decide and it has made his decision final. But the law is still the same today, viz. that what he can decide is something due under the provisions of the Act, and unless the Solicitor General can satisfy us that this sum claimed by the Custodian from the respondent is due under the provisions of the Act, just as s. 48 was no help to the Advocate General in that case, s. 48 (2) can be of no help to the Solicitor General in this case. What was argued in that case was that because a debt was due by a third party to the evacuee or the Custodian, the Custodian had the right to determine the liability of the debtor. We rejected that contention because we found nothing in any provision of the Act which conferred such a power upon the Custodian. We again look in vain through the provisions of the Act to find such a power conferred upon the Custodian, because what the Custodian is purporting to do today is exactly what the Custodian purported to do in that case.

The Solicitor General referred to a Full Bench decision of this Court reported in *Ahmedabad Municipality v. Jayantilal*.⁽⁴⁾ It is rather an instructive case because we were construing there words used in the Bombay Municipal Boroughs Act which were much wider in their import than the words used in s. 48, and the words used there were: "an act done in pursuance of the Act." Even so the Full Bench held that "the act done must be the direct result of some duty cast upon the local body or some authority conferred upon it. If it is the direct result of a contract, which although the local body is empowered to enter into but is under no obligation to do so, then that act is not the act contemplated by the section." Therefore, even in the case of language stronger than the language used in s. 48 we made a distinction between a contract entered into pursuant to the Act, which was not obligatory upon the local authority, and a duty directly cast upon the local authority. In coming to this conclusion we relied on the well known English case *Braddford Corporation v. Myers*.⁽⁵⁾ The Solicitor General says that there is a recent English case, *Firestone Tire and Rubber Co. v. Singapore Harbour Board*,⁽⁶⁾ where the view seems to have been taken that if the local authority in entering into a contract is doing a public duty, then the mere fact that the contract entered into is not obligatory does not deprive the Act of its public quality. In the first place, we are bound by the decision of the Full Bench, and even assuming the law is as stated by the more recent English decision, we are not here construing language which had to be considered by the Full Bench and by the English Court, but we are here considering

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4. (1947) 49 Bom. L. R. 724.

5. (1916) 1 A. C. 242.

6. [1952] A. G. 452.

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language which is very different in its connotation and in its import.

Under the circumstances we are of the opinion that the learned Judge was right in the view that he took. The result is that the appeal fails and must be dismissed with costs.

Attorneys for Appellants : *Little & Co.*

Attorneys for Respondents: *Amarchand & Mangaldas.*

Appeal dismissed.

P. M. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Dixit.

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SHRI CHHOGUMAL JASHARAM BHATIJA v. DISTRICT JUDGE,
THANA AND ABDUL KADAR UPPAL.*

Administration of Evacuee Property Act (XXXI of 1950), ss. 27 (2), 2 (d) (iii)—Jurisdiction of High Court in reference under s. 27 (2)—Whether High Court on reference can interfere with a finding of fact arrived at by District Judge—Whether property seized after August 14, 1947, must be evacuee property at date of seizure within the meaning of s. 2 (d) (iii).

On a reference under s. 27 (2) of the Administration of Evacuee Property Act, 1950 the High Court can only exercise that jurisdiction which the Custodian General himself may exercise under s. 27 (1). It must be confined to the High Court satisfying itself as to the legality or propriety of the order passed by the District Judge and cannot be extended to an inquiry into the correctness of the decision of the District Judge on a question of fact unless the decision is manifestly wrong or perverse or based upon no evidence whatever.

The person seizing any property after August 14, 1947, without paying for it or without giving any other property in exchange would come within the ambit of s. 2 (d) (iii) of the Administration of Evacuee Property Act, 1950, if such property is subsequently declared to be evacuee property; it is not necessary that the property seized should have been evacuee property at the date of seizure.

CIVIL Reference made by the Deputy Custodian General of India on a decision of V. S. Bakhale, Esquire, District Judge, Thana, reversing the order of the Deputy Custodian of Evacuee Property, Bombay.

The facts are sufficiently set out in the Judgment.

M. P. Amin, Advocate-General, with *R. M. Kantawala*, instructed by *Little & Co.* for the Referor.

H. M. Choksi, Government Pleader, for the District Judge of Thana.

A. A. Peerbhoy, instructed by *Nagindas Husseinaly & Co.* for the Applicant.

B. K. Keswani, for *C. J. Bhatija*, Informant.