

A UNION OF INDIA & ANR.
v.
RAJA MOHAMMED AMIR MOHAMMAD KHAN
I.A. No. 47 and 48
In
B (Civil Appeal No. 2501 of 2002)

JANUARY 19, 2010

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

C *Mesne Profit – Claim for – Supreme Court by final order*
declaring the claimant to be successor of the estate of
predecessor-Raja – Direction issued to the Custodian of
Enemy Property to release the rents and profit collected after
5.4.2002 to the claimant – Also held that mesne profit prior
D *to that date to be claimed by resorting to the remedy of suit –*
Interlocutory applications filed before Supreme Court claiming
the amount credited in the account of predecessor-Raja on
27.3.2002 – Held: Since the claim was for the period prior to
5.4.2002, claimant entitled to recover it by filing a suit – Enemy
E *Property Act, 1968.*

In the present appeal, Supreme Court held that the respondent was sole legal heir and successor to the properties of the Late Raja of Mahmudabad, which had been taken over by the Custodian of Enemy Property under the provisions of the Enemy Property Act, 1968. The court held that he could get *mesne profit* for the period i.e. till the passing of interim order on 5.4.2002 by filing a suit. Money received as rent or lease after 5.4.2002 was directed to be handed over to the respondent.
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G Appellant was also directed to handover possession of other properties to the respondent.

From the records of the Custodian of Enemy Property, respondent came to know that an amount was

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credited to the account of the Late Raja on 27.3.2002. Respondent claimed remission of the amount to his credit. The same was refused. Hence the present applications were filed by the respondent for a direction to the appellant and the Custodian of Enemy Property, to release the amount to his credit.

Dismissing the applications, the Court

HELD: 1. A conscious distinction with regard to the rents and profits collected from the estate prior to 5.4.2002 and thereafter, had been made by this Court while disposing of the appeal. It was clearly the intention of the Court that in respect of rents and profits collected after the order of *status-quo* passed on 5.4.2002, the same were to be made over by the Custodian to the applicant, but as far as the rents and profits collected prior to that date were concerned, the applicant would be required to file a suit to recover the same. [Para 14] [781-F-H; 782-A]

2. The directions given to the appellants to hand over the possession of other properties, mentioned in the second part of the order relates to the immovable properties of the estate and not to the rents and profits collected by the Custodian from the estate prior to 5.4.2002. The two sets of properties are dealt with separately and are on two different settings. [Para 15] [782-E-F]

3. Since the amount recorded in the Custodian's ledger as being credited to the Estate of Raja of Mahmudabad represents the collections made from the estate prior to the order of *status-quo* passed on 5.4.2002, the respondent has been given leave to recover the same by filing a suit. In view of the said order passed by this Court, it cannot be said that the directions to make over the possession of other properties to the applicant also included the rents and profits collected from the estate prior to 5.4.2002. [Para 15] [782-G-H; 783-A]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2501 of 2002.

I.A. Nos. 47 & 48

In

B Civil Appeal No. (s) 2501 of 2002.

From the Judgment & Order dated 21.09.2001 of the High Court of Judicature at Bombay in Writ Petition No. 1524 of 1997.

C Indira Singh, ASG, Naresh Kaushik, Subhash Kaushik, A.K. Sharma, Aditi Gupta, Lalitha Kaushik, Shreekant N. Terdal for the Appellants.

D P.V. Kapur, S.K. Dwivedi, Anjali K. Varma, Meera Mathur, Niraj Gupta, Chetna Gulati, Shail Kumar Dwivedi, Subhash Chandra Jain, Shrish Kumar Misra, Gunnam Venkateswara Rao, R.K. Gupta, Manoj Kumar Dwivedi, G.V. Rao for the Respondent.

E The Judgment of the Court was delivered by

F **ALTAMAS KABIR, J.** 1. These two I.A. Nos.47 and 48 of 2008 have been filed on behalf of the Respondent in connection with Contempt Petition No.87 of 2006 filed in Civil Appeal No.2501 of 2002, inter alia, for a direction upon the Union of India, and the Custodian of Enemy Property to release to the Respondent a sum of Rs.1,77,38,828.11, being held by the said Custodian on account of the Estate of the Raja of Mahmudabad.

G 2. It may be recalled that in Writ Petition No.1524 of 1977 filed by the applicant herein, Raja Mohammed Amir Mohammad Khan, (Raja MAM Khan for short), the Bombay High Court, while allowing the writ petition, had directed the return of the properties of the Raja of Mahmudabad to the applicant. The decision of the Bombay High Court was

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challenged by the Union of India in this Court in Civil Appeal No.2501 of 2002, which was disposed of on 21.10.2005, *inter alia*, with the following directions :

"The High Court had refused to grant the mesne profits to the respondents, against the aforesaid finding no appeal has been filed by the respondent. Since no appeal has been filed, the appellants are not entitled to the mesne profits till the passing of the interim orders of status quo by this Court on 5.4.2002. The respondent would be entitled to the actual mesne profits by filing a suit, if so advised for this period. However, whatever moneys have been collected by the appellants by way of rent or lease etc. after 5.4.2002, till the handing over of the possession of these properties to the respondent be deposited/ disbursed to the respondent within 8 weeks.

The appellants are directed to get the buildings (residence or offices) vacated from such officers and handover the possession to the respondent within eight weeks. Similarly, appellants are directed to handover the possession of other properties as well. The officers who are in occupation of the buildings for their residence or for their offices are also directed to immediately vacate and handover the buildings or the properties to the Custodian to enable him to handover the possession to the respondent in terms of the directions given. Failure to comply with the directions to handover the possession within 8 weeks will constitute disobedience of this order and the appellants would be in contempt of this order. Respondent would be at liberty to move an application in this Court if the above directions are not complied with for taking appropriate action against the appellants or their agents. Since the appellants have retained the possession of the properties illegally and in a high handed manner for 32 years the appeal is dismissed with costs which are assessed at Rs. 5 lacs."

A 3. In I.A. No. 47 it has been stated that when the properties
 were taken over by the Custodian, the amounts due and
 payable by the various occupants were collected by the office
 of the Custodian and credited to the account of the Estate of
 Mahmudabad in the Ledger of the Custodian maintained in his
 B office at Mumbai. In view of the judgments of the Bombay High
 Court and this Court, holding the applicant to be the sole legal
 heir and successor of the Late Raja of Mahmudabad, he had
 succeeded to the properties belonging to the late Raja which
 had been taken over by the Custodian of Enemy Property under
 C the provisions of the Enemy Property Act, 1968. It has further
 been contended that it could not, therefore, be disputed that the
 applicant is entitled to the moneys standing to the credit of the
 Estate of Mahmudabad in the Ledger Account maintained by
 the Custodian of Enemy Property.

D 4. According to the applicant, after continuous efforts, a
 copy of the Ledger Account was supplied to him in the month
 of December, 2007, by the office of the Custodian of Enemy
 Property and on perusal of the same it was discovered that a
 sum of Rs.1,77,38,828.11 stood credited to the account of the
 E applicant as on 27.3.2002. On coming to know of the above,
 the applicant requested the Custodian by his letter dated
 27.12.2007, to remit the amount which stood to his credit in the
 Ledger maintained by the office of the Custodian.

F 5. As no response was received to the said letter, another
 letter was issued to the Custodian on 6.2.2008, and in his reply
 the said Custodian replied that there was no provision in the
 Enemy Property Act, 1968, to refund any amount received from
 Enemy Property. In response it was also indicated clearly that
 no amount was admissible to the applicant by way of refund.

G 6. It is on account of such response from the Custodian of
 Enemy Property that I.A.No.47 of 2008 was filed for the reliefs
 which are indicated in the prayer.

H 7. Appearing for the applicant, Mr. P.V. Kapur, learned
 Senior Advocate, submitted that after the clear and

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unambiguous directions given by this Court in its judgment A
dated 21.10.2005 in Civil Appeal No.2501 of 2002, there could
be no justification for the Custodian of Enemy Property to object
to making over of the moneys collected by him on account of
rents and profits to the applicant. Mr. Kapur submitted that the
intent of the order of this Court was very clear that on being B
found to be the sole legal heir of the Raja of Mahmudabad, the
applicant was entitled to his entire estate, which included all
amounts which had been collected from the properties of the
Estate and credited to the account of the Estate in the Ledger
maintained by the office of the Custodian of Enemy Property. C

8. As an alternate submission Mr. Kapur urged that in
addition to the directions contained regarding disbursement to
the applicant of the amount collected by the appellant by way
of rent or lease after 5.4.2002 till the handing over of the
possession of the properties to the applicant this Court had also D
directed the appellants to get the immovable properties of the
Estate vacated and to hand over the possession of the same
to the respondent/applicant within 8 weeks. *The appellants
were also directed to handover the possession of the other
properties as well.* (Emphasis supplied) E

9. Mr. Kapur submitted that under the general directions
given by this Court in respect of properties belonging to the
Estate of Mahmudabad, which included the amount held by the
Custodian on account of rents collected from the Estate of the
Raja of Mahmudabad prior to 5.4.2002, the said Custodian and F
the Union of India were bound to make over the said amount
collected by the Custodian to the applicant.

10. Resisting the application filed on behalf of the
respondent Mr. MAM Khan, the learned Additional Solicitor
General, Ms. Indira Jai Singh submitted that in view of the
categorical direction given in the order of 21.10.2005 passed
by this Court, the question of making payment of the amount in
question to the respondent did not arise. Ms. Jai Singh
submitted that this Court had recorded the fact that the High G
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- A Court had refused to grant mesne profits to the appellant and against that decision no appeal had been filed by him. Consequently, the applicant was not entitled to the mesne profits till the passing of the interim order of status quo by this Court on 5.4.2002. In the said order this Court went on to say
- B that the applicant would be entitled to the actual mesne profits for the period prior to the passing of the interim order of status quo by filing a suit. However, whatever moneys that had been collected by the appellant by way of rents after 5.4.2002 till the handing over of the possession of the properties to the
- C applicant, should be deposited/dispensed to the respondent within 8 weeks. Ms. Jai Singh submitted that the rents collected from the said properties after 5.4.2002 till the handing over of the possession of the properties to the applicant, had already
- D been dispensed to him as directed. However, since other than the directions for recovery of mesne profits for the period prior to 5.4.2002 no other direction had been given by this Court for disbursement of the rents and profits from the said Estate prior to 5.4.2002, the claim of the applicant was misconceived. Ms. Jai Singh contended that if it had been the intention of this Court that the applicant would be entitled even to the rents and profits
- E prior to 5.4.2002, then it would have given a clear direction for payment of the entire amount to the applicant.

11. As to the alternate submission of Mr. Kapur, the learned ASG urged that in view of what has been stated hereinabove,
- F it could not have been the intention of this Court to release the entire sum of Rs.1,77,38,828.11 being the amount of the rents and profits collected from the Estate of the Raja prior to 5.4.2002. Ms. Jai Singh submitted that the claim of the applicant was misconceived in view of the directions contained in the
- G Judgment of this Court dated 21.10.2005.

12. In addition to her aforesaid submissions, Ms. Jai Singh also urged that neither of the two applications were maintainable since the appeal and the contempt petition in
- H which they have been filed have already been disposed of

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earlier. Ms. Jai Singh submitted that having disposed of the appeal and the contempt petition, this Court had become functus officio and was bereft of jurisdiction for passing orders on the said two applications which are not in the nature of consequential reliefs being claimed from the disposed of matters but substantive applications raising substantial claims, de hors the reliefs prayed for in the appeal and the contempt petition. Ms. Jai Singh referred to various decisions on the question of the maintainability of applications filed in concluded proceedings, which we may refer to if it becomes necessary to do so.

13. Replying to Ms. Jai Singh's submissions, Mr. Kapur submitted that the answer to the question as to what is to be done in regard to the rents and profits collected prior to 5.4.2002, is clearly provided in Section 18 of the Enemy Property Act, 1968, which provides that the Central Government may by general or special order, direct that any enemy property vested in the Custodian under this Act and remaining with him shall be divested from him and be returned, in such manner as may be prescribed, to the owner thereof or to such other person as may be specified in the direction and thereupon such property shall cease to vest in the Custodian and shall revest in such owner or other person. It was submitted that there was neither any legal nor moral justification for the Custodian to hold on the said amount lying to the credit of the Estate of the Raja of Mahmudabad which had devolved upon the applicant as held by the Bombay High Court and confirmed by this Court.

14. On a careful consideration of the submissions made on behalf of the respective parties, we are of the view that a conscious distinction with regard to the rents and profits collected from the Estate of Raja of Mahmudabad prior to 5.4.2002 and thereafter, had been made by this Court while disposing of Civil Appeal No.2501 of 2002 on 21st October, 2005. It was clearly the intention of the Court that in respect of rents and profits collected after the order of status-quo passed

- A on 5th April, 2002, the same were to be made over by the Custodian to the applicant, but as far as the rents and profits collected prior to that date were concerned, the applicant would be required to file a suit to recover the same. We have been informed that, in fact, such a suit has been filed by the applicant
- B and the same is pending decision.

15. Notwithstanding the use of the expression "mesne profits" in the first part of the directions given by this Court, what was intended was that all rents and profits collected in respect of the Estate of Raja of Mahmudabad prior to the order of status-quo passed on 5th April, 2002, would have to be treated separately and not with the other collections made from the estate. The use of the expression "mesne profits", in our view, would cover all the monies received by the Custodian for the period prior to 5th April, 2002, and would, thereafter, be
- C covered by the aforesaid order of this Court directing the appellant to release to the respondent the sum of Rs.1,77,38,828.11 held by the Custodian to the credit of the Estate of Raja of Mahmudabad. The interpretation sought to be given to the second part of this Court's order extracted
- D above, will not include handing over of possession of the rents and profits prior to 5.4.2002, which had been excluded in the previous paragraph of the judgment of this Court. In our view, the directions given to the appellants to hand over the possession of other properties, mentioned in the second part
- E of the order extracted hereinabove, relates to the immovable properties of the estate and not to the rents and profits collected by the Custodian from the estate prior to 5.4.2002. The two sets of properties are dealt with separately and are on two different settings. Mr. Kapur's attempt to include both the movable and
- F immovable properties of the Estate of Raja of Mahmudabad is misconceived and is not acceptable. Since the amount recorded in the Custodian's ledger as being credited to the Estate of Raja of Mahmudabad represents the collections made from the estate prior to the order of status-quo passed on 5th
- G April, 2002, the Respondent has been given leave to recover
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the same by filing a suit. In view of the said order passed by this Court, it can no longer be argued that the directions to make over the possession of other properties to the applicant also included the rents and profits collected from the estate prior to 5.4.2002. A

16. We are not, therefore, inclined to allow I.A. Nos.47 and 48, which are, accordingly, dismissed. The applicant will be free to pursue his claim for the said amount of Rs.1,77,38,828.11 before the Civil Court. B

17. There will, however, be no order as to costs. C

K.K.T.

Applications dismissed.