



2025:DHC:619



\$~42 & 43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 13.01.2025*

+ **W.P.(C) 4517/2018 & CM Appl.17347/2018**

NAFIS-UL-AFIIN

.....Petitioner

Through: Mr. T.S. Ahuja, Mr. Varun S. Ahuja,
Ms. Ridhi Kapoor and Mr. Himanshu
Sharya, Advs.

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Ms. Shiva Lakshmi, CGSC with Mr.
Govind Sharma, Adv. for UOI.
Mr. Varun Talwar and Ms. Sanya
Arora, Law Officers.

(43)

+ **W.P.(C) 9196/2018 & CM Appls.35383/2018, 52813/2018**

NAFIS-UL-ARFIN

.....Petitioner

Through: Mr. T.S. Ahuja, Mr. Varun S. Ahuja,
Ms. Ridhi Kapoor and Mr. Himanshu
Sharya, Advs.

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Ms. Shiva Lakshmi, CGSC with Mr.
Govind Sharma, Adv. for UOI.
Mr. Varun Talwar and Ms. Sanya
Arora, Law Officers.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU



TARA VITASTA GANJU, J.: (Oral)

1. The grievance of the Petitioner as articulated in the present Petitions is a common challenge to the following:

(i) For quashing of the Impugned Notice dated 18.05.2017 issued by Respondent No. 2 [hereinafter referred to as “Impugned Notice”] in respect of property bearing no. 5385 ground floor, new market, Sadar Bazar, Delhi-110006 [hereinafter referred to as “subject property”];

(ii) For quashing of the Impugned Certificate dated 12.12.2016 issued by Respondent No.2 [hereinafter referred to as “Impugned Certificate”] in respect of property bearing nos. 5385, 5386, 5387-A, 5387-B, 5387-C, 5387-D, 5387-D/1, 5387/1 to 5387/8, 5388, 5389, 5390, 5391, 5392, 5392-A, 5393-A, 5394, 5394-A, 5394-B, 5393, 5394-C, 5394-D, 5394- E/A, 5394-E/2, 5394-E/3, 5394-E/4, 5394-E/5, 5394-E/6, 5394- E/7, 5394-F, 5394-G, 5394-H, 5395, 5395/1 to 5395/8, 5395A to D (covered under Old No. 6092 to 6108), 2892-2897 (Old No. 3124-3129), 2899(Old No. 3130-3136), 5396, 5396-1, 5396-2,5396-3, 5396-4, 5396-5, 5396-A, 5396-A/1 (Old No. 6109-6110), Sadar Bazar, Delhi and 592 (Old No. 349-350), Ward -9, Churiwalan, Delhi, which includes the subject property.

2. The Petitioner has bifurcated its reliefs in two separate writ petitions. **W.P (C) 9196/2018** has been filed seeking direction to quash the Impugned Certificate issued by Respondent No.2 under Section 12 of the Enemy Property Act, 1968 [hereinafter referred to as “Act”], declaring the subject



property as “*enemy property*” and restraining the Respondents from claiming ownership of the subject property. **W.P (C) 4517/2018** seeks to quash the Impugned Notice passed under Section 11 of the Act, wherein the Respondents is claiming rent for the subject property from 10.09.1965 onwards. This Court is passing one order for both the Petitions.

3. A Coordinate Bench of this Court issued notice on 01.05.2018 in W.P. (C) No.4517/2018 and on 31.08.2018 in W.P. (C) No. 9196/2018 and further granted *status quo* on 05.02.2019 in regards to the possession of the subject property.

4. The Petitioner claims to be the owner of the subject property bearing nos. 5385, 5386, 5387-A, 5387-B, 5387-C, 5387-D, 5387-D/1, 5393, 5394 and 5387/1 to 8 at the first floor, New Market, Sadar Bazar, Delhi-110006.

4.1 It is the case of the Petitioner that these properties were originally owned by one Mr. Hafiz Karim Baksh and after his death, Mst. Sami-Un-Nissa inherited the property in 1926. The said Mst. Sami-Un-Nissa executed a registered Wakf Deed vesting the property with her elder son Shri Sultan-Ul-Arfin, who was the first Mutawali of the property in question. Shri Sultan-Ul-Arfin died on 27.01.1952 in India. Thereafter, Mr. Siraj-Ul-Arfin became the Mutawali in terms of a registered Wakf Deed. All rights and interests in the property also vested in the said Mr. Siraj-Ul-Arfin in terms of order dated 08.11.1954 passed by the Circuit Bench of the Punjab High Court at Delhi in Civil Revision No.280-D/54. The said Mr. Siraj-Ul-Arfin died on 17.09.2014 in Delhi, India.

4.2 During her lifetime, Mst. Sami-Un-Nissa gave the property bearing



New No. 2892-2897 (Old no. 3124-3129), Sadar Bazar, Delhi-110006 to her daughter-in-law Mst. Amtul Saira through an oral gift, who in turn, gifted it to her son Mr. Siraj-Ul-Arfin through an oral gift.

5. In addition, the Petitioner also seeks to rely upon a decree dated 29.01.1977 passed by Sh. L.D. Malik, learned Sub-Judge, Delhi [hereinafter referred to as “1977 Decree”] in a suit for mandatory injunction and for removal of “mutawali” between the co-owners of the property, whereby all properties were partitioned between various parties. It is the case of the Petitioner that the Petitioner got the subject property as per the 1977 Decree.

6. The Impugned Certificate dated 12.12.2016 was issued by the Respondents under Section 12 of the Act, wherein it was directed that the properties which were set out in the Certificate, which include the subject property, stand vested in the Custodian appointed under the Enemy Property Act, 1968.

7. On 18.05.2017, the Petitioner received the Impugned Notice under Section 11 of the Act, which was issued to the tenant of the Petitioner, one Mr. Vijay Sachdeva son of Late Darshan Lal Sachdeva. The relevant extract of the Impugned Notice is below:

“Details of Occupied Portion, 5385 New Market, Sadar Bazar, Delhi.”

WHEREAS all immovable and movable properties in India belonging to or held by or managed on behalf of Pakistani Nationals vest in the Custodian of Enemy Property for India, under government of India Notification No. 12/2/95-E-Pty. dated 10-09-1965, 11.09.1965 and S.O. 5511 dated 18.12.1971 issued under The Defence of India Rules, 1962 and The Defence of India Rules, 1971 respectively continue to remain so vested in the said Custodian, under Section 5 of the Enemy Property, Act, 1968.



AND WHEREAS proportionate share(s) of all the movable and immovable properties inherited by the legal heirs of Amtul Saira w/o Haji Sultan-ul-Arfin r/o 592, (Old House Nos. 349-350), Gali Jutey Wali, Churiwalan, Delhi-110006 namely Manssor-ul-Arfin and Noor-ul-Arfin who had migrated to Pakistan in the year 1959 and permanently settled there, have been declared as an enemy property and vested with the Custodian of Enemy Property for India as per provisions made in The Enemy Property Act, 1968 as amended by The Enemy Property (Amendment and Validation) act, 2017.

As you are occupying the above cited premises under the said enemy property, you are, therefore, directed to deposit the rent of the portion occupied by you in the subject property w.e.f 10-09-1965 onwards, as fixed from the end, to this office with a copy of last paid rent receipt, site plan of the portion occupied. Voter I Card, PAN Card, Aadhaar Card within 15 days from the date of receipt of this notice falling which proper legal steps will be initiated against you as per the said Act.”

[Emphasis supplied]

8. Upon receipt of the Impugned Notice, the Petitioner sought information with regard to the status of the subject property by filing of an RTI Application. However, it is the case of the Petitioner, that no response was received to this Application.

9. Learned Counsel of the Petitioner, contends that the Impugned Notice and Impugned Certificate are bad in law, and are not sustainable on account of the non-compliance of Rules 3, 4 and 5 of the Enemy Property Rules, 2015 [hereinafter referred to as “Rules”] by the Respondent.

9.1 Learned Counsel for the Petitioner also seeks to rely upon the judgment dated 03.01.2018 passed by a Coordinate Bench of this Court in the matter of W.P (C) 10654/2015 captioned as ***Naima Khatoon & Ors v. Government of India & Ors.*** wherein in the case of a similar challenge was raised by the Petitioner and the Notice under Section 12 of the Act, was set



aside by the Court as it did not comply with the Rules.

10. Learned Counsel for the Petitioner submits that in the present case, no show-cause notice was issued as is required under the provisions of Act and Rules pertaining to the subject property. He submits that in view of the fact that the procedure as is prescribed under Rules 3 and 4 of the Rules was not followed, the Impugned Notice dated 18.05.2017 and the Impugned Certificate dated 12.12.2016 issued, cannot be sustained.

11. Learned Counsel for the Respondents fairly states that no notice as is envisaged under Rules 3 and 4 of the Rules has been issued, however she submits that subsequent to filing of the present Petitions, fresh proceedings were initiated against some of the properties as set out in W.P.(C) 9196/2018.

12. The Rules set out a detailed procedure for identification of immovable property under the Act and for the declaration and vesting of such property. While, Rule 3 provides the procedure to be followed by the Custodian for identifying any immovable property belonging to or held in the name of an enemy, Rule 4 provides for the procedure of declaration and vesting of the enemy property. It is apposite to extract Rules 3 and 4 of the Rules, which read as under:

“3. Procedure for identification of immovable property –

(1) The Custodian may seek assistance of the District authority for examination of the tehsil-wise or block-wise revenue records for the purposes of identifying any immovable property belonging to or held in the name of an enemy.

(2) The concerned District authority shall on identifying any immovable property belonging to or held in the name of an enemy,



forward to the Custodian the complete details of such enemy property including the nationality of the owner thereof.

(3) If the District authority receives any information or complaint from any person or from any source in respect of an enemy property, he shall forward such information or complaint to the Custodian along with details referred to in sub-rule (2).

(4) The Custodian may direct the District authority in which the enemy property is located, to carry out physical inspection or verification of the enemy property for obtaining the information as specified by the Custodian.

(5) On receipt of the direction from the Custodian under subrule (4), the District authority shall check the relevant revenue or municipal or police records to verify the location or area and other details of the enemy property and conduct survey for obtaining the information as specified by the Custodian.

(6) On obtaining the required information referred to in subrule (5), and on being satisfied that the property or interest therein is prima facie enemy property, the Custodian or his authorised representative shall cause a notice to be served in Form 1, on the person claiming title to such property or interest and on any other person or persons whom he considers to be interested in the property.

(7) The notice referred to in sub-rule (6) shall, as far as practicable, mention the grounds on which the property is sought to be declared as an enemy property and shall specify the provisions of the Act under which such property is alleged to be an enemy property.

(8) (a) The notice shall be served personally to the person concerned or his manager, or to other members of his family; or be sent through registered post; or affix it on some conspicuous part of the premises concerned or at the last known place of the business of the person concerned. (b) The Dasti service of notice through police may be resorted only in the case of persistent non-compliance of the notice.

(9) The Custodian or his authorised representative shall observe the principles of natural justice by giving sufficient opportunity to the notices to present their case before them and hear them or their representative.

(10) Where a notice has been duly served, the party shall be called upon to show cause as to why the subject property should not be



declared as an enemy property:

Provided that if the party fails to appear on the dates fixed for hearing even after giving reasonable opportunity, the Custodian or his authorised representative may proceed further to hear the matter ex -parte and pass a reasonable order on the material before them as the Custodian or his authorised representative deem fit.

(11) Where the party appears and contests the notice, the Custodian or his authorised representative shall state the reasons to be recorded in writing, as to why the subject property should not be deemed to be an enemy property.

(12) Any other person or persons claiming to be interested in the proceedings relating to enemy property, may file an application before the Custodian who shall then, either on the same day or on any subsequent day to which the hearing may be adjourned, proceed further to hear the applicant himself or cause the same to be heard by his authorised representative.

(13) The authorised representative of the Custodian shall prepare a detailed report of all cases identified as enemy property in respect of which hearing is complete, and shall submit the same to the Custodian along with his recommendations thereon.

(14) All properties under examination and in the process of identification or verification shall be considered as Process Case and details of such cases shall be recorded in Annexure-I till its declaration.”

xx

xx

xx

4. Procedure for declaration and vesting of the enemy property –

(1) On receipt of the report of the authorised representative referred to in sub-rule (13) of rule 3, the Custodian shall examine and cause further investigation, if considered necessary.

(2) If, on examination of the report or on further investigation under sub-rule (1), the Custodian is satisfied that the property is an enemy property, he shall issue a certificate in Form 2, declaring the property as enemy property and vesting of such property in the Custodian, along with an authorisation order in Form 3, authorising the District authority to take over the said property immediately on his behalf.



(3) On receipt of the authorisation order from the Custodian under sub-rule (2), the District authority shall proceed further to take control over the management of the enemy property and shall initiate action for recovery of arrears or dues recoverable from the occupier of the vested property and a notice in Form 4 shall be affixed over the property declaring the said property as vested with the Custodian.

(4) The District authority shall prepare a list of the vested property pertaining to his district in the format given in Annexure II and a copy of the same shall be sent to the Custodian.”

13. An elaborate procedure is described in Rule 3, by which firstly the Custodian is required to take assistance of the District Authority in identifying the property. Thereafter, the Custodian may direct the District Authority to carry out a physical inspection and verification. For this purpose, the Revenue and Municipal records shall also be checked. Once the verification is carried out and the District Authority is, *prima facie*, satisfied that the property or interest therein is enemy property, the Custodian is required to issue a show cause notice in Form-I to the person claiming title to such property or to any other person or persons whom he considered to be interested in the enemy property. The said notice is also required to mention the grounds on which the property is sought to be declared as enemy property and is also required to specify the provisions of the Act under which the property is alleged to be the enemy property.

13.1 In terms of Rule 3(9) of the said Rules, the Custodian or his authorised representative is obliged to observe the principles of natural justice by giving sufficient opportunity to the noticee to present their case or to hear them or their representative. Rule 3(10) of the said Rules requires that the party to whom notice has been served in terms of Rule 3(6) of the Rules be called upon to show cause why the subject property should not be



declared as an enemy property.

13.2 Rule 3(13) of the Rules set out that the authorised representative of the Custodian is required to prepare a detailed report of all cases identified as enemy property and to submit the same to the Custodian alongwith his recommendations.

13.3 Once the report under Rule 3(13) of the Rules is prepared, the Custodian is required to examine the same, and if necessary, he can also call for further investigation to be conducted. If upon such investigation and examination, the Custodian is satisfied that the property is enemy property, a certificate in Form II declaring the subject property to be enemy property alongwith authorisation order in Form III authorising the District Authority to take over the property on his behalf are to be issued.

14. As stated above, no show-cause notice as is requisite under Rule 3(7) of the Rules has been issued specifying the grounds and applicable provisions of the Act. In addition, concededly the detailed procedure as has been set out above under Rules 3 and 4 of the Rules has not been followed by the Respondents.

15. A Coordinate Bench of this Court in the judgment in *Naima Khatoon* case had found that where the procedure under Rules 3 and 4 of the Rules had not been followed, and thus, the notice and the certificate could not be sustained. The relevant extract of the judgment in *Naima Khatoon* case is below:

“23. Admittedly, the aforesaid procedure has not been followed. Further, it is also not disputed that the order approving the decision to vest the property was taken by the Custodian on 26.08.2015, that is,



after the Rules had come into force.

24. In view of the above, the decision to declare the property as an enemy property and the consequent Certificate 09.09.2015 issued under Section 12 of the Act cannot be sustained. Consequently, the impugned notice to the tenants of the property, which are premised on the basis that the property is an enemy property, cannot be sustained.”

[Emphasis supplied]

16. The facts in the present case also shows that no notice as was required to be issued under Rules 3 and 4 of the Rules was issued with respect to the subject property. Thus, the procedure as is envisaged under Rules 3 and 4 of the Rules was not followed at the time of issuing the Impugned Notice or the Impugned Certificate.

17. The Impugned Notice and the Impugned Certificate are accordingly set aside.

18. The Petitions are allowed. Pending Applications stand closed.

19. It is clarified that the order passed today does not preclude Respondent No.2 from taking appropriate proceedings in accordance with law against the Petitioner. All rights and contentions of the parties are left open.

20. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JANUARY 13, 2025/ ha/r