



2026:AHC:202705-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 7015 of 2023

Smt. Prem Goel and 3 others

.....Petitioner(s)

Versus

Union of India and 9 others

.....Respondent(s)

Counsel for Petitioner(s)	: Ravi Anand Agarwal, Shreya Gupta
Counsel for Respondent(s)	: A.S.G.I., Anupam Kumar, C.S.C.

A.F.R.

Reserved on 23.07.2026

Delivered on 28.09.2026

Court No. - 5

**HON'BLE PRAKASH PADIA, J.
HON'BLE VIVEK SARAN, J.**

(Per: Hon'ble Vivek Saran, J.)

1. Heard Ms. Shreya Gupta, learned counsel for the petitioners, learned Standing Counsel for the State respondents and Sri Anupam Kumar, learned counsel for the respondent nos. 1 to 5.

2. The instant writ petition has been filed with the following relief:-

“a) Issue a writ, order or direction in the nature of MANDAMUS directing the State respondents not to treat the property bearing no. 25 (old no 19), Civil Lines, South, Muzaffarnagar, Uttar Pradesh as enemy or evacuee property and to forthwith remove the signage- "यह निष्क्रान्त सम्पत्ति है। आज्ञा से कस्टोडियन मुजफ्फरनगर।"/"इस सम्पत्ति पर निर्माण कार्य / कय विकय प्रतिबन्धित किया गया है। आज्ञा से कस्टोडियन मुजफ्फरनगर।", put by them on the shutters of the ground floor shops of the commercial complex being constructed by the petitioners over the said property;

b) Issue a writ, order or direction in the nature of MANDAMUS directing the State respondents not to cause any interference in the use, occupation, possession and development of property bearing no. 25 (old

no 19), Civil Lines, South, Muzaffarnagar, Uttar Pradesh by the petitioners.”

3. The facts, which are culled out from the averments made in the writ petition, are as follows:-

- (i) The land-in-dispute is part of Plot No. 25 (old No. 19), Civil Lines, South, Muzaffarnagar, carved out of Khasra No. 834, admeasuring 90 sq mts. Which the petitioners no. 3 and 4 claim title of by virtue of sale registered deed dated 12.06.2018 duly executed by petitioners no. 1 and 2 to them.
- (ii) Initially, this land-in-dispute and other land of Khasara No. 834, 835 and 843 belonged to one Nawab Mohammad Sadakkat Ali Khan s/o Nawab Mohammad Rustam Ali Khan, who vide an exchange deed dated 22.07.1946, duly registered on 23.07.1946; out of his entire holdings transferred to the predecessor-in-interest of the petitioners, namely, Smt. Prakashwati w/o Lala Jagdish Prasad, Smt. Magan Murti w/o Radha Krishnan and Smt. Pushpawati w/o Jaiprakash
- (iii) On 30.09.1955 the said Smt. Prakashwati, Smt. Magan Murti and Smt. Pushpawati transferred their entire property, which was subject matter of the exchange deed to their own family members, namely, Sri Lal Jagdish Prasad, Sri Radha Krishnan, Sri Jaiprakash and Sri Surendra Prakash, by executing a gift deed.
- (iv) Out of the aforementioned persons, Sri Surendra Prakash, filed Original Suit No. 8 of 1956 before the Civil Judge, Muzaffarnagar seeking a declaration, as against his other family members, that he be declared as an exclusive owner of the property mentioned in Lot No. 5, in the plaint, on the basis of a family settlement dated 31.12.1955. The property in dispute was in this part of Lot No. 5, as stated in the petition.
- (v) This suit came to be decreed on 06.09.1956 on basis of the family settlement, thereby the aforementioned Sri Surendra Prakash became the exclusive owner of the property in Lot No. 5, which included the property in dispute.

- (vi) The aforementioned, Sri Surendra Prakash executed a will dated 01.04.2013 bequeathing his right in the property to the petitioner nos. 1 and 2.
- (vii) The aforementioned, Sri Surendra Prakash died on 01.05.2013 and by virtue of the said will, the property devolved to the petitioner nos. 1 and 2 and they became exclusive owners.
- (viii) Out of the property which devolved to the petitioner nos. 1 and 2, they sold about 90 square meters of land to the petitioner nos. 3 and 4 vide registered sale deed 12.06.2018 and put them in actual physical possession of the property-in-dispute.
- (ix) However, the property, which the petitioner nos. 1 and 2 had inherited by virtue of a will dated 01.04.2013, was in occupation of various persons including one Shri Narendra Arora, and for the purposes of their eviction, the petitioner nos. 1 and 2 had adopted legal recourse, and after litigating till Supreme Court of India, they were able to seek eviction through court proceedings.
- (x) It is the case of the petitioner that the behest of one of the tenants, namely, Sri Narendra Arora, one person, namely, Sri Rewati Nandan made a complaint dated 11.02.2018 with respect of the property-in-dispute, to the State authorities, alleging it to be an *Enemy Property* and was being illegally encroached upon.
- (xi) The District Magistrate/respondent no. 5 on the basis of the said complaint of Sri Rewati Nandan, required the petitioner nos. 1 and 2 to furnish explanation and instituted an inquiry. Thereafter, on the basis of inquiry he rejected the said complaint vide order dated 22.11.2018.
- (xii) Thereafter, the petitioners no. 3 and 4, got a map for construction sanctioned from Muzaffarnagar Development Authority, Muzaffarnagar on 16.08.2018 and started constructions of a commercial complex.
- (xiii) No sooner the constructions started, the aforementioned Sri Rewati Nandan, again made a similar complaint dated 18.12.2018 to the Muzaffarnagar Development Authority, Muzaffarnagar

alleging the land in dispute to be an *enemy property*. An inquiry was made in the allegations and the Concerned Officer of the Muzaffarnagar Development Authority vide order dated 29.01.2019 rejected the said complaint.

- (xiv) Thereafter, again the aforementioned Sri Rewati Nandan filed a complaint, however, this time before the Assistant Custodian of Enemy Property, U.P. and Uttarakhand on 03.04.2019 alleging that though an area of 502.89 square meters of land in Khasra Nos. 835 and 843 had been declared as an enemy property but the remaining land of Nawab 214.84 Sq. mtrs. was left out is also an *enemy property* and be protected from encroachment and illegal occupation of the petitioners.
- (xv) The Assistant Custodian of Enemy Property after inquiry, vide order dated 02.08.2019 concluded that out of total area of Gata No. 835, an area of 0.061 hectare and out of Gata No. 843 an area of 0.082 hectare was not enemy property.
- (xvi) Thereafter, the petitioners restarted their construction work over the property in dispute on the basis of the sanctioned map but all of a sudden, on 06.01.2023 the State respondents, being respondent nos. 8 and 9 by use of force, stopped the constructions/development activities of the petitioners. Thereafter, on 24.01.2023 the State officials came during the late night hours and partly demolished the constructions and wrote a remark “*Yah Nishkrant Sampatti Hai. Agya Se – Custodian Muzaffarnagar*” on the property.
- (xvii) Aggrieved by the said illegal action the instant writ petition has been preferred.

SUBMISSIONS

4. Learned counsel for the petitioners submitted that the property-in-question is part of land of Khasra No. 834, which is Non-ZA category, admeasuring 90 square meters, which the petitioner nos. 3 and 4 had purchased vide registered sale deed dated 12.06.2018 from the petitioner nos. 1 and 2. She emphatically submitted that the property-in-question is

neither an *evacuee property* nor and *enemy property*, as the title stood transferred to the predecessors in interest of the petitioner no 1 and 2 by virtue of registered transfer deed. She further submits that this land in question fell in the share of one Surendra Prakash by virtue of family settlement dated 31.12.1955 and it was part of land referred to in the Lot No. 5 of Original Suit No. 8 of 1956, filed by Surendra Prakash which was decreed on 06.09.1956 on the basis of family settlement.

5. She further submits that the land was initially belonging to one Nawab Mohammad Sadakkat Ali Khan, who executed the registered exchange deed dated 22.07.1946, which was duly registered on 23.07.1946 with Smt. Prakashwati, Magan Murti and Pushpawati and these ladies have further executed a gift deed and one of the beneficiary was Surendra Prakash. She thus submits that the land in question has a clear traceable title right from the year 1946. Further, in support of her argument, she submits that the land in question is not an enemy property, as is admitted in the counter affidavit filed on behalf of Custodian of Enemy Property and she further submits that it is not even an evacuee property, as per own statement of the respondents since, the District Magistrate is repeatedly writing to the Custodian of Enemy Property to register the same as an enemy property. She however, submits that in fact, it was at the behest of one of the tenants, namely, Narendra Kumar Arora, who had lodge the case till Hon'ble Supreme Court of India and had vengeance against the petitioners and due to ulterior motive had been repeatedly trying to create one or the other trouble to the petitioners.

6. Learned counsel for the petitioners further submitted that Rewati Nandan has no concern whatsoever with the property in question but the for reasons best known to him probably due to his political inclination and close association with Narendra Kumar Arora, he was making repeated complaints. The petitioner nos. 2 and 3 have got a map sanctioned by the Muzaffarnagar Development Authority vide order dated 16.08.2018. She submits that during this sanctioning of map the scrutiny of documents and records have been done. The first complaint made by Rewati Nandan was inquired upon by the State authorities and

rejected vide order dated 22.11.2018 of the District Magistrate/Deputy Custodian Enemy Property, Muzaffarnagar. In its order it has been categorically recited that as per the records and map the property in question is not an enemy property. She submits that the second complaint made by Rewati Nandan dated 18.12.2018 was inquired upon by the Additional District Magistrate (Judicial)/Secretary, Muzaffarnagar Development Authority and was rejected vide order dated 29.01.2019. Thereafter, again the third complaint was made by Rewati Nandan to the Custodian of Administration, Ministry of Home Affairs, New Delhi, which was also rejected vide order dated 02.08.2019.

7. Although, the respondents could neither place on record any document by which the property in question has been treated to be an enemy property by the District Magistrate nor about the same as an evacuee property and the basis on which State authorities had proceeded to restrain the petitioners from making constructions as an evacuee property and that too without there being any written order, which is evident from the writings made on the building. She submits that the property in question is having a clear title, as stated above, and without there being any recording of the property as an evacuee property under the Administration of Evacuee Property Act, 1950, which now stands repealed w.e.f. 05.09.2005, there cannot be a presumption either especially at this belated stage.

8. Per contra, learned Standing Counsel for the State-respondents has submitted that due to the property initially owned by Nawab Mohammad Sadakkat Ali Khan, who left India and became a Pakistani citizen, the property in question, thus, would either be an enemy property or an evacuee property and the petitioners cannot have any right or title over the same. He has placed reliance on the letter dated 04.01.2019 by which the District Magistrate was called upon to reply by the Assistant Custodian of Enemy Property. He further submits that the documents, which have been relied upon by the petitioners have no sanctity and do not create any title over the same.

9. Learned counsel representing the Custodian Enemy Property stated that the property in question is not an enemy property.

10. Heard learned counsel for the parties and perused the record.

11. The sole question which falls for consideration before this Court is as to whether the respondents, as on date, have any right to stop or prevent the petitioners from making any constructions over the property in question?

12. There is no dispute that the petitioners have got a map for construction sanctioned from the Muzaffernagar Development Authority on 16.08.2018 and which is valid on date and the development authority is not proceeding against the petitioners and in fact by order dated 29.01.2019 the Secretary of the Development Authority has rejected the complain made by the aforementioned person, Rewati Nandan.

13. In the counter affidavit, the State – respondents/District Magistrate have come up with the case that as the erstwhile owner of the property Nawab Mohammad Sadakkat Ali Khan had become a Pakistani resident subsequent to the partition of the dominion of India and therefore, all his property are to be treated as enemy property under the Enemy Property Act, 1968 (hereinafter referred to as the ‘Act of 1968’) or as an evacuee property under the Administration of Evacuee Property Act, 1950 (herein after referred to as the ‘Act of 1950’) and for which proceedings were initiated vide notice dated 04.01.2019 by the Assistant Custodian of Enemy Property and therefore, the State is resisting any construction over the same.

14. The definition of ‘Enemy’ and ‘Enemy Property’, as contained in Section 2(b) & (c) of the Act of 1968, reads as under:-

“(b) "enemy" or "enemy subject" or "enemy firm" means a person or country who or which was an enemy, [an enemy subject including his legal heir and successor whether or not a citizen of India or the citizen of a country which is not an enemy or the enemy, enemy subject or his legal heir and successor who has changed his nationality] or [an enemy firm, including its succeeding firm whether or not partners or members of such succeeding firm are citizen of India or the citizen of a country which is not an enemy or such firm which has changed its nationality], as the case may be, under the Defence of India Act, 1962, and the Defence of India Rules, 1962 [or the Defence of India Act, 1971 (42 of 1971) and the Defence of India Rules, 1971], but [does not include a

citizen of India other than those citizens of India, being the legal heir and successor of the "enemy" or "enemy subject" or "enemy firm";

(c) "enemy property" means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm:

Provided that where an individual enemy subject dies in the territories to which this Act extends [or dies in any territory outside India], any property which immediately before his death, belonged to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purposes of this Act."

15. The emphasis of the State-respondents that under the Act of 1968 the property in question ought to be registered as an enemy property and therefore, no constructions over the same can be permitted, cannot be accepted as from perusal of the order dated 02.08.2019 passed by the Assistant Custodian of Enemy Property, Uttar Pradesh and Uttarakhand (filed as Annexure-10 to the writ petition), which categorically recorded that out of 77 Gatas, the remaining land of Gata No. 843 admeasuring 0.082 hectare was not found to be enemy property. The relevant extract reads as under:-

"उक्त 77 गाटों में आरोपित गाटा संख्या 835/0.061 तथा 843/0.082 हे० भी शामिल है। तहसीलदार सदर, उपजिलाधिकारी सदर एवं गठित समिति की जाँच रिपोर्टों में उक्त भूमि को शत्रु सम्पत्ति नहीं माना गया है। जिलाधिकारी/उप अभिरक्षक शत्रु सम्पत्ति ने अपने आदेश में उक्त दोनों गाटाओं की शेष भूमि को शत्रु सम्पत्ति नहीं माना है। उपरोक्त जाँच रिपोर्टों तथा आदेशों एवं अभिलेखों के आधार पर भूमि गाटा संख्या 835/0.061 तथा 843/0.082 हे० की शेष भूमि 214.84 वर्ग भी० शत्रु सम्पत्ति के अन्तर्गत नहीं आती है।"

16. Thus, once the order dated 02.08.2019 had been passed by the Assistant Custodian of Enemy Property, the reliance placed by the State-respondents on the communication dated 19.01.2019 to treat the property in question as enemy property, is misplaced and has no relevance at all.

17. Apart from the aforesaid the respondent nos. 1 to 5 admitted the said fact. The relevant statements of the counter affidavit of the respondent nos. 1 to 5 made in paras – 3, 5 & 6 read as under:-

"3. That it is to further bring to the notice of Hon'ble court that the office of Custodian of Enemy Property deals with Enemy Property and as such as per official records the said property in dispute has not yet been recorded as Enemy Property in the records of the respondent

herein, which stand has also been taken vide order dated 2-8-2019 (vide Annexure-10) to the writ petition.

5. That it is further being mentioned for sake of clarity that a Property can be either an Evacuee property or an Enemy property separately, but can never be both.

6. That it is further being stated that as far as the Recall Application dated 13-7-2020 is concerned, it is being clarified that consideration of the same is barred by law, whereby seeking exercise of power of Substantial Review, does not vest in the Assistant Custodian of Enemy Property.”

18. This stand of respondent nos. 1 to 5 is already recorded in the letter dated 31.01.2023 (Annexure-14 to the writ petition). The officer concerned from the office of Custodian of Enemy Property has categorically written to the then District Magistrate that the land of Gata Nos. 835 and 843 admeasuring 214.84 Sq. Mtr. has not been recorded as enemy property and was requested to furnish fresh input or written records, which declare the property bearing No. 25 (Old No. 19) Civil Lines South, Muzaffarnagar, as enemy property. The relevant extract of the communication is reproduced below:-

“In view of the foregoing, you are once again requested to please confirm if there are fresh inputs/revenue records which declares the property bearing No. 25 (Old No. 19) Civil Lines South, Muzaffarnagar, UP as Enemy Property.”

19. In the counter affidavit, the respondents have also come up with the case that the property in question is an evacuee property. The averments made in para-27 of the counter affidavit is relevant, which reads as under:-

“27. That, the contents of para 41, 42, 43, 44, 45 and 46 of the writ petition are not admitted as stated and are denied. As already mentioned above, the disputed land is evacuee property since the year 1947. The repeal of Administration of Evacuee Property Act does not affect the status of the disputed property as an evacuee property. Once a property becomes evacuee property by operation of law, it is evacuee property forever. The petitioners have not produced anything on record to prove that the disputed land is not an evacuee property.”

20. In support of the said averments, nothing has been brought on record by the State respondents except a letter dated 06.12.2021, which is a communication by the Ayukta and Sachiv, Rajasva Parishad to Assistant

Custodian, Government of India Enemy Property, wherein a reference of letter dated 13.03.2020 has been made citing the property in question to be an evacuee property. This letter dated 13.03.2020, has not been brought on record.

21. Similarly, Annexure CA-7 to the counter affidavit is a report prepared by the Committee dated 25.04.2022, however, in the said report it has been stated that the inquiry was made pursuant to the allegation that the land of Khewat No. 1/3/1/1 of Khasra Nos. 835, 842 and 843 was an enemy property. In the said report, it is recorded that six shops were being constructed on the land admeasuring 214.83 sq. mtrs. i.e. 31'x74'.

22. It is thus, evident that in the entire counter affidavit no document has been brought on record to show that the property in question was ever recorded as an evacuee property, except for passing statement in the letter dated 06.12.2021.

23. Even in the Administration of Evacuee Property Act, 1950, which, although, has now been repealed w.e.f. 05.09.2005, the cut-off date for applying the provisions of the Act was 14.08.1947 regarding transfer of properties, as is evident from Section 2(f) of the Act, which reads as under:-

“[“evacuee property” means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provisions contained in section 40,] but does not include---

*(i) any ornament and any wearing apparel, cooking vessels or other household effects in the immediate possession of an evacuee,
(ii) any property belonging to a joint stock company, the registered office of which was situated before the 15th day of August, 1947, in any place now forming part of Pakistan and continues to be so situated after the said date;”*

24. Further, Section 7-A of the Act of 1950 also provides for an outer date for applying the provisions of the Act. Section 7-A of the Act reads as under:-

“[7-A. Property not to be declared evacuee property on or after 7th May, 1954--Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954: Provided that nothing contained in this section shall apply to-
(a) any property in respect of which proceedings are pending on the 7th day of May, 1954 for declaring such property to be evacuee property; and
(b) the property of any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances had left on or after the 1st day of March, 1947, any place now forming part of India, and who on the 7th day of May, 1954, was resident of Pakistan:
Provided further that no notice under section 7 for declaring any property to be evacuee property with reference to clause (b) of the preceding proviso shall be issued after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954).”

25. In exercise of powers conferred by Section 56 of the Act, 1950, the Administration of Evacuee Property (Central) Rules, 1950 was framed. The whole procedure of recording a property as an evacuee property has been provided thereunder. Rule 7(3) is relevant in order to determine that which property was registered as an evacuee property. The said rule reads as under:-

*“7. Notification of evacuee property under sub-section (3) of section 7.-
 (3) A list of all such evacuee property brought up to date in each State shall be published once a year, in the Official Gazette or in such other manner as the Custodian deems fit.”*

26. Since the respondents State has not brought on record any such document, which would refer the property in question either registered as an evacuee property or any such proceedings are still pending for its registration etc., mere allegation would not suffice and the action of the State respondents for stopping the constructions work on the land in question, where the map has been sanctioned, cannot be justified.

27. In view of the aforesaid discussion, the respondents are restrained from interfering in the peaceful possession and occupation of the property in question being part of Plot No. 25 (old no. 19), Civil Lines, South Muzaffarnagar (U.P.), erstwhile part of Khasra No. 834,

admeasuring 90 sq. mtr. only to the extent of which the map has been sanctioned.

28. The instant petition is **allowed** in terms of the aforesaid directions.

29. No order as to costs.

30. This Court places on record its appreciation for the valuable assistance rendered by Ms. Radha Tiwari & Ms. Mansi Sharan Shrivastava, Research Associates, while preparing this judgement.

(Vivek Saran,J.) (Prakash Padia,J.)

September 28, 2026

gp/-