

**2023 STPL(Web) 79 SC
SUPREME COURT OF INDIA**

(ABHAY S.OKA AND SANJAY KAROL JJ.)

STATE OF HIMACHAL PRADESH & ORS.

Appellants

VERSUS

MEER BAKSH & ORS.

Respondents

Civil Appeal No. 616 8 of 2016-Decided on 19-7-2023

Civil

Evacuee Property – Appeal by State against its own admissions – Dismissed with cost

JUDGMENT

Abhay S. Oka, J.-Heard the learned counsel appearing for the appellants.

2. The predecessor-in-title of the respondents who was the holder of the property was one Sultan Mohammad. The appellant-State contended that the property held by the said person is an evacuee property within the meaning of Section 2(f) of the Administration of Evacuee Property Act, 1950 (for short "the 1950 Act") as the said Sultan Mohammad was an evacuee within the meaning of clause (d) of Section 2 of the 1950 Act.

3. After having perused the judgment of the learned Single Judge, we find the learned Judge has held that it was categorically admitted by the State in its reply that the said Sultan Mohammad never left for Pakistan. It is not shown to us that the reply does not contain such admission. Therefore, the learned Single Judge proceeded to hold that the property held by Sultan Mohammad could not have been declared as an evacuee property and hence, the action of declaring his property as an evacuee property was set aside. An appeal was carried by the appellants to the Division Bench of the High Court by the appellants. In paragraph 4 of the impugned judgment, the appeal Bench has noted thus:

"4. Mr. V.S.Chauhan, learned Additional Advocate General, has frankly conceded that the predecessor in- interest of the writ petitioners, namely, Sultan Mohammad, was living in the State of Himachal Pradesh till the year 1983, when he died."

4. Thus, we have to proceed on the footing that it is an admitted position that the said Sultan Mohammad never left India and therefore, he cannot be an evacuee within the meaning of the 1950 Act.

5. Notwithstanding the admitted position that this gentleman never left India and notwithstanding a fair concession based on facts made by the learned Additional Advocate General, the State has chosen to file appeal an against the orders of the learned Single Judge and the Division Bench. This action of the State has to be deprecated.

6. Accordingly, we dismiss the appeal.

7. We saddle the appellant-State of Himachal Pradesh with the costs of Rs.25,000/- (Rupees twenty five thousand) to be payable to the Writ Petitioners before the High Court. The amount of costs shall be paid within two months from today.
