

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 366 OF 2001

APPELLANTS

(Ori. Plffs. on RA)

- 1] Wamanrao s/o Narhar Behare,
(Dead) through Lrs
- (1-a) Shalini Ramnath Dhok,
Aged 55 years, R/o Javardi,
Post Bhandaraj, Tah. Anjangaon,
District – Amravati.
- (1-b) Shrikirshna Wamanrao Behere,
Aged 68 years, R/o Ghusar,
Tah. & Dist. Akola.
- (1-c) Shankuntala wd/o Ramkrishna
Behere, Aged 52 years,
R/o Ghusar, Tah. & Dist. Akola.
- (1-d) Vibha Gajanan Gawande,
Aged 28 years, At Post Dapura,
Tah. & Dist. Akola.
- (1-e) Gopal s/o Ramkrishna Behere,
Aged about 26 years, At & Post
Ghusar, Tah. & Dist. Akola.
- (1-f) Laxman Wamanrao Behere,
Aged 45 years, R/o Ghusar,
Tah. & Dist. Akola.
- 2] Anna s/o Narhar Behare
Aged about 67 Years,
(Dead) Thr. Legal representatives.

Amendment carried out
as per Court order dated
07.8.17

Sd/- x Illegible x

C.F. APPELLANT

R.S. KALANGIWALE

- 1] Gunwant s/o Anna Behere,
Aged 58 years, Occ: Agriculturist,
R/o Post Ghusal, Tah. & Dist.
Akola.

- 2] Gajanan s/o Anna Behere,
Aged 56 Years, Occu: Agriculturist,
R/o Post Ghusal, Tah. & Dist.
Akola.
- 3] Chhaya w/o Raju Shejole,
Aged 35 Years, Occu: Housewife,
R/o Post Gaulkhed, Tq. Shegaon,
Dist. Buldhana.
- 3] Devidas s/o Narhar Behere,
Aged about 57 years, (since
deceased). All Agriculturist,
resident of Ghusar, Taluka &
Dist. Akola.

...VERSUS...

RESPONDENTS

(Ort. Defts. On R.A.)

As per Reg (J) Order
dt. 30.01.2014 S.A. is
dismissed against
Res. No.3.
Sd/- x illegible x
7.2.2014

- 1] The State of Maharashtra,
through the Collector, Akola.
- 2] The Tahsildar, Akola.
- 3] Bhojraj Dilaram, 221, A/3 Sion,
(East), Bombay-22.

Shri R.S. Kalangiwale, Advocate and Shri Vipul Bhise, Advocate
for Appellants.

Ms M.H. Deshmukh, AGP for Respondents/State.

CORAM	: S.M.MODAK, J.
DATE OF RESERVE	: 04/08/2021.
DATE OF DECISION	: 08/09/2021.

ORAL JUDGMENT

1] This appeal involves an irony faced by the person who is migrated to India from Pakistan after the partition. Neither the displaced person [Shri Adumal Morandamal] nor his legal representative Defendant No.3- Bhojraj got the land as per the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Act of 1954"). As on today, after the passage of several years, even this

Court is not aware as to whether the said allottee got the land or not. It seems that this situation has arisen probably due to lack of coordination between the Government Authorities and due to insensitivity shown by the concerned person. However, when the Constitutional Court has noticed this situation, the Court cannot shut its eyes and confined itself to the issues raised before it. If required, this Court has to pass necessary orders (within the limits of appellate jurisdiction), so that the displaced persons will get relief. At the same time, this Court has also to see that the interest of other stakeholders is protected.

2] In this appeal, this Court is required to consider the right of tenant/purchaser on one hand and right of an allottee under the Displaced Persons (Compensation And Rehabilitation) Act, 1954 on the other hand. The plaintiffs'/ appellants' predecessor-in-title considered to be the purchaser of the land as per the provisions of the Maharashtra Tenancy and Agricultural Lands (Vidharbha Region) Act, 1958 (hereinafter referred to as "the Act of 1958"), whereas the same land is allotted to the defendant No.3 under the provisions of the Act of 1954.

FILING OF SUIT

3] When the Tahsildar Akola asked the plaintiffs to visit the site for giving possession to the defendant No.3, plaintiffs were required to file a civil suit in the Court of Civil Judge, Senior Division, Akola. The State of Maharashtra, the Tahsildar, Akola and the allottee-Bhojraj were the three defendants. The plaintiffs

have asked for :-

- (a) declaration of ownership over the suit land and
- (b) permanent injunction restraining the defendants from disturbing their possession over the suit land.

4] Though the defendants have appeared, they have not filed written statement. Defendant No.3 only filed reply to the temporary injunction application. He has denied the averments made in the plaint. Being the legal representatives of the original allottee-Shri Adumal Morandamal, he has claimed possession over the suit land. As he could not get the possession, he was compelled to file Writ Petition No. 3039/1988 in this Court (Principal Seat) and this Court directed the Government to hand over the possession upto 31.03.1993. He pleaded that as per the provisions of Section 4(1) of the Administration of Evacuee Property Act, 1950, the provisions of any other law will have no bearing. As per the provisions of Section-8 (4) of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as 'the Act of 1950'), the Custodian [in whom the Evacuee Property vests] is entitled to allot it to any displaced person. He has also objected to the jurisdiction of the Court.

5] Both the parties have agreed for adjudication of the dispute only on the basis of the documents. They have not adduced any oral evidence. The Trial Court was pleased to dismiss the suit. It was mainly for the reason that the Custodian under the Act of 1950 is entitled to decide to whom the land will be allotted

and as such the Civil Court will not be having jurisdiction. There was a reliance placed on the provisions of Section 46 of the Act of 1950 and Section 36 of the Act of 1958. The findings of the trial Court are as follows :-

The Trial Court observed :-

“as per the provisions of the Law, the defendants are duty bound to hand over the possession of the suit land as per directions of the custodian. The custodian will see as to whom the suit property is to be allotted and this Court has no jurisdiction to interfere into his right” [Para-19]

FIRST APPEAL

6] When the plaintiffs/appellants approached the First Appellate Court, they were not successful to convince that Court. That Court also relied upon the provisions of Section 28 and Section 46 of the Act of 1950. Though the First Appellate Court was convinced that the Civil Court will be having jurisdiction if the procedure is not followed, the First Appellate Court relied upon certain judgments and observed that non-service of notice does not lead to any cause of action for filing the suit. Relevant observations of the First Appellate Court are as follows :-

- (a) *“had the question been simply that whether the property in dispute is a evacuee property or not, then certainly the jurisdiction of the civil Court can be deem to be barred, but if there is an allegation that the procedure adopted by the concerned authority*

for the purposes of making such declaration was not consistent with or is in derogation of the said procedure, then definitely the procedure so followed could well be questioned in a suit before a Civil Court” [para-15].

(b) After referring to some of the judgments the First Appellate Court further observed :-

“in order to attract the applicability of this Clause, it must be shown that the custodian general or the custodian have taken action under the Act and suit in question aims at impugning the legality of that action”. The words ‘under the Act’ are of great significance and can only be interpreted to mean as sanctioned or authorized by the Act if the custodian takes an action which is not sanctioned or authorized but which may merely purport to take as one under this Act, Civil Court is perfectly entitled to question legality of the same.

(c) It has been further observed:-

“in absence of notice, the order declaring the property as evacuee property is without jurisdiction and therefore suit for declaration is not barred by Section 46”. However, the Appellate court has not accepted the arguments of the appellate by relying upon the observations in case of Shreesam Yeshwant Patil and others. Accordingly, the appeal was dismissed.

SECOND APPEAL

7] While admitting the appeal of the plaintiffs, this Court has framed following substantial questions of law :

Sr. No.	Questions	Findings
01.	Whether a prayer for injunction could have been granted by the Courts below?	 In the affirmative.
02.	Whether the Court below erred in not considering the effect of Section 12 of the Administration of Evacuee Property Act?	... In the affirmative.

8] On this background, this Court heard learned advocate Shri R.S. Kalangiware, learned advocate Shri Vipul Bhise, for the plaintiffs/ appellants, and learned A.G.P Ms M.H. Deshmukh, for the respondent Nos. 1 and 2. None appeared for the allottee/ defendant No.3.

9] As said above, the documents which were filed before the trial Court are part of the record and parties have made a submissions by either admitting those documents or clarifying their stand by referring to those documents. For ready reference, the documents filed before the Trial Court are enumerated below:

Exhibits	Description
Exhibit-23	Notice given by Akola Tahsildar dated 21.09.1992 to Wamanrao Narhari Behare – Plaintiff-1 asking him to attend the office

	on 23.09.1992.
Exhibit-24	Notice dated 22.9.1992 given to plaintiff No.1 – Wamanrao asking him to attend at the spot on 24.9.1992 so as to give possession to Bhojraj Lilaram – Defendant No.3 (Gat No. 807).
Exhibit-25	Certificate mentioning Narhar Bhonaji Marathe has become owner of the land as per Bombay Tenancy Act dated 28.3.1974.
Exhibit-26	7/12 Extract in the name of Plaintiff-1 – Wamanrao, the names of other plaintiffs shown in other extracts (Gat No. 807)
Exhibit-27	Certificate under Section 43 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 in the name of Narhar Bhonaji and landlord Mauladin Ayub Kacchi Firm, Akola.
Exhibit-28	Gat No. 807 in the name of Narhar Bhonaji Behare under Section 24 (1) of Fragmentation Act.
Exhibit-29	7/12 extract of Wamanrao Bhonaji
Minutes of order	In Writ Petition No. 3039/1985 in CA No. 3420/1992 dt. 18/9/1992 (Principal Seat)

10] From the pleadings and record, the following facts emerge as under :-

- (a) The suit land bearing Survey No. 316/1 (Gat No.807/1) at Mouza Ghusar, Tq. Akola originally belonged to M/s Mauladin Ayub Kacchhi Firm.

- (b) The predecessor in title of plaintiff's namely Narhari Bhonaji Behare was the lessee of the said firm in respect of the suit land.
- (c) On 25.5.1968, the purchase price of the land at Rs. 1375.35 was fixed by the Agricultural Land Tribunal, Akola, to be paid by Narhar Bhonaji.
- (d) Certificate under Section 43 of the Act of 1958 was issued on 11.03.1974 in the name of Narhar Bhonaji Behare.
- (e) Declared as an Evacuee Property by the Deputy Custodian as per the order dated 21.06.1951 as per Section-7 the Act of 1950 [name of the partner is not clear].
- (f) As per the Act of 1950, the interest of Evacuee Partner was separated in composite property belonging to the firm.
- (g) The Deputy Custodian allotted the property to various displaced persons including Shri Adumal Morandamal [It is not clear whether he is allotted as per the Act of 1950 and or as per the Act of 1958].
- (h) In spite of allotment, Shri Bhojraj Lilaram could not get possession.

- (i) That is why, he filed a Writ Petition No. 3039 /1985 and this Court gave direction to hand over possession on or before 31.03.1983.
- (j) Plaintiffs received a notice dated 21.09.1992 issued by Tahsildar, Akola [Exhibit-25] to attend the office on 23.9.1992.
- (k) Plaintiffs again received a notice dated 22.09.1992 to remain present on the site to hand over the possession [Exhibit-24].

When both the Courts below have opined about exclusion of jurisdiction of Civil Court substantial question of law “about effect of Section 12 of the Act of 1950” was framed. In view of this it is necessary to consider relevant provisions of both the Acts.

BAR OF JURISDICTION

11] Section 46 of the Administration of Evacuee Property Act, 1950 bars the Civil and Criminal Court from deciding the issues laid down under those clauses. It read as follows :-

- (a) Whether the particular property is Evacuee or not ?
- (b) Whether the right or interest in that property is Evacuee Property or not ?
- (c) The question of legality of action taken by the Custodian.

These questions cannot be decided by the Civil Court. If the person has migrated to Pakistan leaving behind him the property and there is no intermediary, question arises whether it is Evacuee Property or not. If there is some occupant other than the migrated person, the question arises about his right or interest in that Evacuee Property.

12] Whereas Section 36 of the Displaced Persons (Compensation And Rehabilitation) Act, 1954 also bars Civil Court to entertain any suit or proceedings. It pertains to –

- (a) any matter which the Central Government or Officer or Authority appointed under this Act to determine.
- (b) and injunction shall not be granted in respect of action taken or to be taken in pursuance of any power conferred by the Act.

JUDGMENTS CITED BY APPELLANT

13] There is an emphasis by learned Advocate for the appellants on following the procedure under Section 12 of the Act of 1950 and under Section 19 of the Act of 1958. He relied upon certain judgments. In *Ranga Singh V/s Gurbux Singh and another reported in AIR 1961 P&H 166* the High Court of Punjab and Haryana opined in favour of jurisdiction of the Civil Court particularly when notice was not given under Section 19 of the Act of 1958 and the Displaced Persons (Compensation and Rehabilitation) Rules were also considered. Section 19 of the Act

of 1958 empowers the Managing Officer or Managing Corporation to cancel any allotment or terminate the lease or its terms. This power has to be exercised subject to Rules made under the Act.

14] In the case of *Munshi Ram and others V/s Delhi Administration reported in AIR 1968 SC 702* while dealing with a criminal matter involving right of private defence, the Hon'ble Supreme Court has also emphasised on taking the steps under Section 19 (2) of the Act of 1958. If the power of eviction has to be exercised under Section 19 of the Act of 1958 then the earlier procedure needs to be followed strictly.

15] Similarly, this Court Nagpur Bench in case of *Shreesam Yeshwant Patil and others V/s Regional Settlement Commissioner and Custodian, Evacuee Properties, Bombay and others reported in 1977 Mh.L.J. 433* has also disposed of the application by observing to give notice under Section 19 of the Act of 1958, if it is not given earlier. The First Appellate Court also relied upon this judgment. However, part of the observations are considered by leaving other part. "Prior to declaring a property as an Evacuee Property notice under Section 7 of the Act of 1950 is contemplated". This Court observed that notice to every person is not contemplated general inquiry is contemplated. [para-9]. The First Appellate Court considered this observation. However, this Court felt it necessary to take action under Section 19 of the Act of 1958 if already not taken. [para-19]. This observations was not considered by the First Appellate Court.

16] *Sadhu Singh (deceased) and others V/s Union of*

India and others 1980 Supp SCC 787 Hon'ble Supreme Court has again emphasised on giving an opportunity of hearing to allottees if at all the allotment is to be cancelled under Section 19 read with Rule 102 of the Act of 1958. In all these judgments there is a emphasis on following the procedure.

AVERMENTS IN THE PLAINT

17] On this background if averments in the plaint are perused, we can find that he has relied upon the provisions of Section 46 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. Asking the plaintiffs to hand over to the possession is shown by him as a cause of action. Plaintiffs have nowhere referred the suit land as an evacuee property. Whereas defendant No.3 in his reply has pleaded that suit land is an evacuee property and it is allotted to him being displaced person. Trial Court has framed "issue of jurisdiction" probably it was on the basis of averments in the reply filed by respondent No.3. Hence, the scheme of the Act of 1950 and the Act of 1954 needs to be considered.

18] As per the Act of 1950 the custodian is empowered to decide a particular property as an Evacuee Property by issuing notification and issuing notice under Section 7 of the said Act. Once it is declared, such property vests in the Custodian under Section 8. The custodian is also empowered to cancel the allotment or modify the terms under Section 12 of the said Act. Whereas the Act of 1954 will come into picture only when Central Government acquires Evacuee Property for public purpose by

issuing notification under Section 12 of the said Act. Once acquired it becomes part of compensation pool such compensation pool vests in Central Government free from encumbrances under Section 14 (2) of the said Act. The managing officer or managing corporation are giving power to cancel the allotment or terminate the lease as per Section 19 one of the said Act.

19] In other words, till the time notification is issued under Section 12 of the Act of 1954, the property vests in the custodian. Whereas once notification under Section 12 of the Act of 1954 is issued, it vests with the Central Government and Custodian will be having no role to play.

20] It will be material to consider the relevant provisions about cancellation as per both the Acts.

CONSIDERATION OF THE EFFECT OF SECTION 12 OF THE ACT OF 1950

21] **Section-12 - Empowers the Custodian :-**

- a] To cancel any allotment or
- b] Terminate any lease or
- c] Amend the terms of lease or agreement.

under which any Evacuee Property is held or occupied by person. The words 'Evacuee' and 'Evacuee Property' are explained in Section 2(d) and Section 2 (f) of the Act of 1950 respectively. Prior to exercising the power under Section-12 of the said Act, it is presumed that the property is notified as 'Evacuee Property' under Section 7 of the said Act. Section 7(1) contemplates issuing a

notice to persons interested. It also contemplates conducting an inquiry prior to declaring any property as an Evacuee Property. According to the appellants, such notice is not served on them.

This Court has held in case *Shreesam Yeshwant Patil* referred above that notice under Section 7 of the Act of 1950 is not required to every person and general inquiry is contemplated. Once this procedure is completed, such Evacuee Property vests in the custodian as per the provisions of Section 8 (1) of the Act of 1950. It may happen that the Evacuee after migration to Pakistan by leaving his property, someone else may be in possession in different capacity. The possession of such person is considered to be a possession on behalf of the Custodian and he is bound to surrender the possession when asked by the Custodian as per Section 8(4) of the Act of 1950.

22] So, Section 12 of the Act of 1950, empowers Custodian to cancel the allotment or terminate the lease. Those interest might have been created prior to the Act of 1950 or afterwards also. There is an embargo on the Custodian to cancel the allotment or terminate the lease if they are created prior to 14.08.1947. The power can be exercised only in case of contingency arises under Clause (a) to Clause (c) of proviso to Section 12 (1) of the said Act. The Custodian is also given power under Section 12 (3) of the Act of 1950 to eject such person if he fails to surrender the possession.

**THE DISPLACED PERSONS (COMPENSATION AND
REHABILITATION) ACT, 1954**

23] This Act will come into picture only when Central

Government issued a notification that Evacuee Property is required for rehabilitation of the Displaced Persons. It is under Section 12 of that Act. Once it is issued, the property vests in Central Government and thereafter only the Managing Officer or Managing Corporation can cancel allotment or terminate the lease under Section 19 of the Act of 1958. Once notification is issued, the Custodian uses his powers. This has been held in case of *Lt. Governor of Delhi and others V/s Matwal Chand and others* reported in *2015 (15) SCC 576*. The Hon'ble Supreme Court was dealing with effect of notification under Section 4 of Land Acquisition Act on the Evacuee Property. Section 4 notification in question mentions that evacuee property is excluded. However, Hon'ble Supreme Court observed "once Evacuee Property is notified under Section 12 of the Act of 1954, its status as an Evacuee Property comes to end.

24] In case before us, there is no material showing that notification under Section 12 of the Act of 1954 has been issued. However, the defendant No.3 in his reply has pleaded about allotment of the suit land as per the provision of the Act of 1958. If it has been done, then in that eventuality also notice is required to be given under Section 19 prior to cancellation of allotment or termination of lease.

DOCUMENTS

25] The documentary evidence needs to be considered. Two notices/letters by Exhibit Nos. 23 and 24 are on record. They are issued by Tahsildar. The learned A.G.P. tried to defend

sufficient compliance of the provisions of law by issuance of those two notices/letters. If they are perused, we can find that there is neither compliance of Section 12 of the Act of 1950 nor there is compliance of Section 19 of the Act of 1958. The predecessor-in-title Wamanrao was asked to remain present on 23.09.1992 by one notice and by another notice he was asked to remain present at the site for handing over possession. Even though this Court (Principal Seat in Writ Petition No. 3039/1988) has directed the State to hand over the possession to the allottee, it does not mean that this Court has permitted to bypass the procedure to be followed in any eventuality. Both these letters do not refer to cancellation/termination of the lease existing in favour of predecessor-in-title of plaintiffs.

26] So, when the procedure has not been followed, allottee has got right to approach the Civil Court for injunction not to disposses unless the procedure is followed. The trial Court has non-suited the plaintiff on all counts. Whereas the First Appellate Court though opined about entertaining of the suit by the Civil Court, went on to observe that the notice is not required. These observations find place in Appellate Court Judgment [on Page No. 22 of the paper book], which are as follows :

“In the case of Shriram (Supra), however, the Hon’ble High Court has laid down that non-service of notice to the tenants at the time the property was declared to be Evacuee Property, is of no consequence”.

These observations pertains to notice under Section 7 of the Administration of Evacuee Property Act, 1950.

Appellate Court further observed :-

“Following the principle laid down in the case of Shriram, I hold that the arguments for the appellants that the appellants were not served with the notice and, therefore, the declaration of property as a Evacuee property is illegal etc. warrants no merit.”

The First Appellate Court though considered part of the observations in *Shreesam Y. Patil* has not considered other observations. In that case, this Court has also laid emphasis on compliance of the procedure under Section 19 of the Act of 1958. However, the First Appellate Court has overlooked the relevant observations about complying the procedure under Section 19 of the Act of 1958.

**CONFLICT IN BETWEEN M.T.A.L. (V.R.) ACT OF 1958 AND
THE ACT OF 1950**

27] When the averments in the plaint are perused, we may find that nowhere the plaintiffs have referred the suit property as an Evacuee Property or property forming part of compensation pool. This might have been done unintentionally or deliberately. Probably plaintiffs may be aware about the provisions of the Act of 1950 and the Act of 1958 about bar of jurisdiction. However, when declaration of title is sought and when defendant no.3 in reply to temporary injunction application has pleaded about Evacuee Property and allotment to him, Court is bound to enquire into that defence before taking appropriate decision on plaintiffs relief for ownership declaration. The trial Court and the first appellate Court has not looked into the issues from that angle and they have simply held the suit barred by relevant laws.

28] The claim of the plaintiffs as per the provisions of M.T.A.L.(V.R.) Act, 1958 also needs to be considered in the light of the provisions of Section 12 and 14 of the Act of 1954. Once the Evacuee Property is notified by the Central Government, the property vests in the Central Government, free from all encumbrances as contemplated under Section 12 (2) of the Act of 1954. So also, Section 14 (2) deals with forming of compensation pool (including Evacuee Property) and vesting of such pool with Central Government [Section 14 (2)]. So, whether the right of the plaintiffs under the M.T.A.L. (V.R.), Act 1958 can be considered as an encumbrance or not is an issue. This Court [Aurangabad Bench] in case of **Gangadhar s/o Bajirao Barkul through his legal heirs V/s Ramjibhai s/o Laljibhai and another** reported in **(2001) 3 BCR 152** has dealt with similar issue. It has been observed “it is clear beyond doubt that land which is vested in the Government and which is held by the Government has to be left out of consideration while applying the provision of the Hyderabad Land Tenancy Act, 1950”. In short, the provisions of Tenancy Act are not to be made applicable to the land held by the Government [para-13]. In that case also, this Court directed the respondents to issue notice under Section 19 (2) of the Act of 1958.

29] The learned Advocate for the appellants emphasised on the sale of the suit land in favour of Narhari Bhonaji Behare, as per the provisions of the M.T.A.L. (V.R.) Act of 1958. He has also relied upon the provisions of Sections 41 and 46 of M.T.A.L. (V.R.) Act. Whereas according to learned A.G.P, the provision of Section 128 of the said Act are more relevant. It is true that the tenant is given right to purchase a land from the landlord and as per

Section 41 of the said Act, such right has to be exercised notwithstanding anything contained contrary to any law. The ownership will stand transferred to the tenants from 01.04.1961 and this provision will prevail over provision of any law. This is as per Section 46 (1) of the said Act. We have to read the provision of law in its entirety. Section 128 of the said Act, specifically lays down the contingencies wherein the provisions of the Act will not be applicable. Clause (a) lays down the contingencies wherein the land belongs to the Government or taken on lease from the Government. It means that a person cannot enforce right as a tenant/purchaser if the landlord is the Government. What a mistake the Agricultural Land Tribunal did was not to verify the Government record prior to certifying sale in the name of the plaintiffs / predecessor-in-title vide Exhibit No.25. Because at that time, the land has already been declared as an Evacuee Property.

30] Even the provision of Section 4 of the Act of 1950 needs to be considered. The provision of the Act of 1950 were given predominance. So if, there is anything inconsistent with the provision of the Act of 1950, those inconsistent provision will not apply. It is true that M.T.A.L (V.R.) Act, 1958 was enacted after the Act of 1950. This Court is of the opinion that Section 128 of the Act of 1958 itself says that you cannot claim the right to purchase against the Government. It is also clear that the suit land was declared as an Evacuee Property by the Deputy Custodian as per the declaration dated 21.06.1951. So when Narhari Bhonaji Behare asserted his right to purchase the land as against the firm, prior to that, only the land has already been vested in the Custodian.

31] So the question arises, whether the plaintiffs can insist on adherence to the procedure laid down under Section 12 of the Act of 1950?. There are two aspects. One is whether the facts and circumstances warrant exercise of power for Custodian and Second whether the proper procedure has been followed. If this Court has to consider “*whether the Court below erred in not considering the fact of Section 12 of the Act of 1950*”, then the issue also arises whether the Civil Court has got jurisdiction. If the jurisdiction is ousted expressly or impliedly, this Court cannot consider whether the procedure laid down under Section 12 of the Act of 1950 is followed or not ?

32] From available record it can certainly be said that Narhar Bhonaji plaintiffs predecessor-in-title was the agricultural tenant of Mauladin Ayub Kacchi Firm. For the reasons stated above, plaintiffs cannot seek declaration of their ownership from Civil Court, the jurisdiction is ousted. The findings of both the Courts below were confirmed. However, when there is grievance about not following procedure as per law, Court has to protect the settled possession till the time procedure is followed. Hence, this Court holds that the prayer for permanent injunction ought to have been considered by the Courts below. The plaintiffs can certainly succeed in insisting on following procedure either under Section 12 of the Act of 1950 or under Section 19 of the Act of 1958. Unless it has been done, the plaintiffs cannot be evicted from the suit land by respondent Nos. 1 and 2. These aspects were not considered by the Trial Court and by the First Appellate Court. Hence, I answer question Nos. 1 and 2 in the affirmative. So, the appeal needs to be partly allowed.

DIRECTION

33] A copy of the order dated 03.06.2002 passed by this Court thereby dismissing the Writ Petition No. 3039/1988 filed by the Defendant No.3 is filed on record. It is not clear whether the defendant No.3 got the possession of the allotted land or not. Probably, it might have happened that defendant No.3 might have been put in possession of any other land also. Even though this Court in present proceeding has directed the respondent Nos. 1 and 2 to file an affidavit as per the order dated 04.02.2021. Such affidavit was not filed. So, taking of possession from the appellants will arise only if the possession of the suit land is to be handed over to respondent No.3 or to any other allottee. The respondent Nos. 1 and 2 has to verify this fact as to whether the possession of any other land is handed over to respondent No.3 or not. If it is not handed over, then only compliance of the procedure is required. If the defendant No.3 is already handed over possession of any other land, then the question may arise, what should be done about that land and its possession by the appellants.

34] As said above, the appellants cannot succeed in agitating their claim on the basis of the provision of the Act of 1958 and they can remain to be lessee of the Government. In that eventuality, the respondent Nos. 1 and 2 have to take appropriate decision, including a decision to recover rent from the plaintiffs since beginning. Hence, the following order:-

ORDER

1] Second Appeal is partly allowed.

- 2] Judgment dated 31.1.1994 passed by the trial Court in Regular Civil Suit No. 564/1992 and the judgment dated 20.06.2001 passed by the Appellate Court in Regular Civil Appeal No. 44/1994 are hereby set aside partly.
- 3] The respondents are hereby restrained from taking possession of the appellants over the suit land till appropriate decision (as directed in subsequent directions) is taken.
- 4] The respondent nos. 1 and 2 are directed to take appropriate decision -- as to whether the claim of defendant No.3 as to displaced person is satisfied or not -- within three months from today.
- 5] If the respondents come to conclusion that the claim of respondent no.3 being displaced persons is not satisfied then –
 - a) take appropriate action against the appellants by keeping in mind the provisions of Section 12 of the Administration of Evacuee Property Act, 1950 or Section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.
- 6] If the respondents come to conclusion that the claim of respondent no.3 being displaced persons is satisfied then –
 - a] Respondent Nos.1 and 2 are directed to take

appropriate decision about possession of the appellants over the suit land.

- 7] The parties to bear their own costs.
- 8] Pending application(s), if any, shall also stands disposed of.

JUDGE

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