

Ashvini Narwade

ASHVINI
BAPPASAHEB
KAKDE

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BAPPASAHEB KAKDE
Date: 2024.04.05
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 963 OF 2024
IN
WRIT PETITION NO. 8709 OF 2023

1. Vikraman Pillay
Age: 65 years, Occ. Retired
2. Chandrakant Alhat
Age: 78 years, Occ. Retired
3. Abhijeet Alhat
Age: 50 years, Occ. Domestic Worker
4. Sameena Shaikh
Age: 62 years, Occ. Housewife
5. Sakshi Vishal Shinde
Age: 37 years, Occ. Service
6. Joseph Albert Fernandes
Age: 65 years, Occ. Retired
7. Rashmi Waghmare
Adult, Occ. Housewife
8. Ashish Waghmare
Adult, Occ. Service
9. Akshay Navghane
Age: 32 years, Occ. Service
10. Mahendra Navghane
Age: 58 years, Occ. Business
11. Suresh Nalawade
Adult, Occ. Retired
12. Jagdish Barla
Age: 50 years, Occ. Service

13. Prabhakar Darwatkar
Age: 75 years, Occ. Retired
14. Usha Bhosle
Age: 60 years, Occ. Service
15. Firoz Shaikh
(Proprietor)
Lucky Wedding Solutions
Age: 38 years, Occ. Business
16. Sitaram Ghule
Age: 47 years, Occ. Service
17. Popatrao Kopanwar
Age: 75 years, Occ. Retired
18. Shalan Kopanwar
Age: 43 years, Occ. Service
19. Manaram Dewasi
Adult, Occ. Business
20. Vikram Shinde
Age: 42 years, Occ. Business
21. Reginaldo Albert Fernandes
Age: 75 years, Occ. Retired
22. Sarika Hede
Age: 42 years, Occ. Service
23. Nagesh Gowda
Age: 50 years, Occ. Business
24. Vijay Nawghane
Age: 53 years, Occ. Domestic worker
25. Sanjay Darwatkar
Age: 53 years, Occ. Domestic worker
26. Rahul Darwatkar
Age: 69 years, Occ. Service

27. Ramesh Darwatkar
Age: 69 years, Occ. Domestic worker
28. Jagdish Gorte
Age: 40 years, Occ. Service
29. Laxmi Rachappa Gorte
Age: 65 years, Occ. Housewife
30. Siddramappa Gorte
Age: 45 years, Occ. Service
31. Lalita Dnyashwar Gaikwad
Age: 55 yeras, Occ. Housewife

All through Power of Attorney Holder
Applicant No.6- Joseph Albert Fernandes
R/at : 20, Bund Garden Road,
Mobo's Hotel Compound,
Opp. Wadia College,
Pune 411 001.

...Applicants

In the matter between

1. Prakash Kartar Bijalani
Age 46 years, Occ : Business,
H/B, 15/2, Pimpri Colony,
Pune-17
2. Mahesh Kartar Bijalani
Age 44 years, Occu:-Business,
H/B, 15/2, Pimpri Colony,
Pune 17.
3. Dhiraj Kartar Bijalani
Age 43 years, Occ: Business,
H/B, 15/2, Pimpri Colony,
Pune-17

...Petitioners

Versus

1. State of Maharashtra
Through its Minister

Relief and Rehabilitation Department
Mantralaya, Mumbai 400 032.

2. The Settlement Commissioner for
Compensation Pool, Maharashtra State
United India Building, 4th Floor,
Sir P. M. Road, Fort, Mumbai – 400 001.
3. Managing Officer @ Tahasildar
Pune City, Khadakmal Ali, Pune

(Summons to be served on the Learned
Additional Government Pleader
Appearing for State of Maharashtra
Under Order XXVII, Rule 4 of the Code of
Civil Procedure, 1908.)

4. Basant Kumar Jain
(A person impleaded as party
by virtue of Interim Application No. 14603 of 2023
[Coram : B. P.Colabawalla J. and M. M. Sathay JJ.)
dated November 9, 2023.)

...Respondents

**WITH
INTERIM APPLICATION NO.964 OF 2024
IN
WRIT PETITION NO. 8709 OF 2023**

1. Ronak Nikalje
Age 33 years, Occ: Business
Mayuresh Xerox Centre
Mobo's Compound
2. Elijabeth Arun Nilakje
Age 58 years, Occ :-Business
Xerox Centre
Mobo's Compound
3. Dinesh Berha
Age 35 years, Occu : Business
Rifling Centre
Mobo's Compound

4. Aziz Yakub Shaikh
Age 45 years, Occ :- Business
Acurate Key Maker
Mobo's Compound
5. Imran Rafiq Shaikh
Age 35 years, Occ : Business
Sai Samarth Xerox
Mobo's Compound
6. Sachin Shathe
Age 40 years, Occ :-Business
Raswanti Gruha
Mobo's Compound
7. Mansoor Nadaf
Age 45 years, Occ: Business
Laxmi Motor Garage
Mobo's Compound
8. Alka Santosh Bandal
Age 50 years, Occ : Business
Pan Shop
Mobo's Compound
9. Usha Ashok Pansare
Age 52 years, Occ : Business
Xerox Centre
Mobo's Compound
10. Dhananjay Kable
Age 32 years, Occ :- Business
Om Mobile Shop
Mobo's Compound
11. Maruti Bhosale
Age 40 years, Occ : Business
R. T. Rifiling Centre
Mobo's Compound
12. Husain Shaikh
Age 40 years, Occ:- Business
Scrap Centre

Mobo's Compound

13. Zahir Shaikh
Age 40 years, Occ : Business
Neera Sale Centre
Mobo's Compound
14. Shalan Nale
Age 60 years, Occ :- Business
Tea Stall
Mobo's Compound
15. Kashinath Nale
Age 70 years, Occ : Business
Mahalaxmi Pan Shop
Mobo's Compound
16. Raju Kashinath Nale
Age 41 years, Occ : Business
Juice Center
Mobo's Compound
17. Niranjana Gaikwad
Age 35 years, Occ:- Business
Sai Decorators
Mobo's Compound
18. Babu Bajjar
Age 45 years, Occu :- Business
Shubham Bhojnalaya
Mobo's Compound
19. Laxmi Vijah Malaswear Bajjar
Age 42 years, Occ : Business E Seva Centre
Mobo's Compound
20. Deepak Gaikwad
Age 30 years, Occ : Business
Balaji Paratha
Mobo's Compound
21. Abhijit Anarashe
Age 28 years, Occ :- Business

- Om Pan Shop
Mobo's Compound
22. Ramdas Jadhav
Age 40 years, Occ:- Business
Om Tea Centre
Mobo's Compound
23. Saurabh Kamble
Age 40 years, Occ:- Business
Sai Tea Centre
Mobo's Compound
24. Arun Kisanrao Nikalje
Age 65 years, Occ : Business
Lokmanya Mitra Mandal
Address :- Mobous Hotel compound
20, Bund Garden Road,
Opp. Monish Petrol Pump,
Near Wadia College
Pune-411 001.
25. Deepak Gaikwad
Age 30 years, Occ :- Business
Sai Charitable Trust
Mobo's Compound
26. Madhuri Gaikwad
Age 25 years, Occ :- Business
A-1 Momo's Centre
Mobo's Compound
27. Nisha Madhu Aavad
Age 38 years, Occ :- Business
Chinese Stall
Mobo's Compound
28. Tabrej Yusuf Shaikh
Age 32 years, Occ : business
Pani Puri Snacks Centre
Mobo's Compound
29. Bandu Patil

- Age 42 years, Occ :- Business
Datta Mandir Trust
Mobo's Compound
30. Sonu Nikalje
Age 52 years, Occu :- Business
Tours & Travels
Mobo's Compound
31. Deepali Rahul Darawatakar
Age 35 years, Occ :- Business
Shri Ganesh Enterprises
Mobo's Compound
32. Jagdish Gorte
Age 30 years, Occ:- Business
Shiva Enterprises
Mobo's Compound
33. Laxmi Gorte
Age 52 years, Occ:- Business
Ladies Tailor
Mobo's Compound
34. Arun Vishwas
Age 45 years, Occu:-Business Rubber Stamp
Mobo's Compound
35. Akhasay Navghane
Age 30 years, Occ: Business
Lock Smith
Mobo's Compound
36. Jayshree Navghane
Age 50 years, Occ :- Business
Pan Shop
Mobo's Compound
37. Jisan Kureshi
Age 51 years, Occ: Business
Key Maker
Mobo's Compound

38. Shivaji Kamble
Age 55 years, Occ : Business
Pramila Snacks
Mobo's Compound
39. Ajay Kamble
Age 28 years, Occ : Business
Tea Centre
Mobo's Compound
40. Sandesh Choudhary
Age 35 years Occ :- Business,
Mobo's Wada Pav
Mobo's Compound
41. Kaum Shaikh
Age 60 years, Occ:- Business
Bhangarwala
Mobo's Compound
42. Sachin Matge
Age 32 years, Occ :- Business
Bhangarwala
Mobo's Compound
43. Vishal Kamble
Age 42 years, Occu : Business
Bhangarwala
Mobo's Compound
44. Abhijit Alhat
Age 45 years, Occ:- Business
Chinese Stall
Mobo's Compound
45. Govind Patnekar,
Age 50 years, Occ :- Business
Mobo's Compound

All through Power of Attorney holder
of Applicant No.24
Arun Kisanrao Nikalje
Age 65 years, Occ : Business

Lokmanya Mitra Mandal
Address: Mobous Hotel Compound
20, Bund Garden Road,
Opp. Monish Petrol Pump,
Near Wadia College
Pune-411 001

...Applicants

In the matter between

1. Shri Prakash Kartar Bijalani
Age 46 years, Occ : Business,
H/B 15/2, Pimpri Colony,
Pune-411 017.
2. Shri Mahesh Kartar Bijalani
Age 44 years, Occu:-Business,
H/B 15/2, Pimpri Colony,
Pune -411 017.
3. Shri Dhiraj Kartar Bijalani
Age 43 years, Occ: Business,
H/B 15/2, Pimpri Colony,
Pune-411 017

...Petitioners

Versus

1. State of Maharashtra
Its Minister
Relief and Rehabilitation Department
Mantralaya, Mumbai 400 032.
2. The Settlement Commissioner for
Compensation Poor, Maharashtra State
United India Building, 4th Floor,
Sir P. M. Road, Fort, Mumbai – 400 001.
3. Managing Officer Alis Tehasildar
Pune City, Khadakmal Ali Pune

(Summons to be served on the Learned
Additional Government Pleader
Appearing for State of Maharashtra
Under Order XXVII, Rule 4 of the Code of

Civil Procedure, 1908.)

4. Basant Kumar Jain
(A person impleaded as party
by virtue of Interim Application No. 14603 of 2023
[Coram : B. P. Colabawalla J and M. M. Sathay JJ].
Dated November 9, 2023.)

...Respondents

**WITH
INTERIM APPLICATION NO.967 OF 2024
IN
WRIT PETITION NO. 8709 OF 2023**

1. Smt. Sangitaa Kashinath Lokande
Age-52 years, Occ. -Business,
Address-20 Bund Garden Road,
MoboJ Hotel Compound,
Pune 411 001.
2. M/s. Brass Engineering
And Trading Company
Through its proprietor
M/s. Sujaya Prakash Haridas Through her POA holder
Ms. Vidya Haridas
Age-55, Occ.-Business,
R/at. 2/21 Guruprasad Hsg. Society,
24 Bund Garden Road, Pune -411 001.
3. Smt. Usha Narendranath Dube
Age-62 years, Occ. -Business
R/at. A/001, Indraprastha Lane,
7/D Kalyani Nagar, Pune-411 006
4. Mrs. Shobha Prafulla Shah
Being proprietor of
Shree Engineering Corporation
Through its POA holder
Shri. Prafulla Rasiklal Shah
Age-74 years, Occ.-Business
R/at. 44/8 Sasson Road, Palia Estate,
Pune-411 001.
5. Sou. Ratan Bhima Narute

Age - 52 years, Occ.- Business
R/at. 242/2 Shivai Colony,
Yerwada Pune - 411 06

6. Shri. A. Karunakaran Nair
Age- 72 years, Occ.- Business,
R/at. Flat No. 11 Kunal Terraces,
65/4, Kadari Nagar, Wanwadi
Pune- 411 040
7. Shri. Suresh S. Shetty
Age- 69 years, Occ.- Business,
R/at. Radiant Hights, Flat No. 304,
3rd Floor, Opp. ASPT Swimming Pool,
Pune-411 030
8. Shri. Bashir Masumdar
Age- 43 years, Occ.- Business,
Address at. 20 Moboj Hotel
Bund Garden Road, Pune- 411 001.
9. Shri. Shankar Mittu Rathod
Age- 54 years, Occ.- Business,
Being proprietor of
Vijayant Travels
Address- 20 Band Garden,
Moboj Hotel Compound, Pune 411 001
10. Shri. Avinash Raj Salve
Age- 61 years, Occ.- Business
R/at. Survey No.10, Sou. Shila Salve Nagar,
Yerwada, Pune 411 006
11. Shri. Vivek Sahebrao Kakade
Age-58 years, Occ.- Business,
R/at. River Crest Apartment,
Building No.1, Flat No.5
Boat Club Road, Pune 411 001
12. Shri. Rajkumar Krishnadev Dwivedn
Age-51 years, Occ.- Business,
Being proprietor of
Unicorn Security,
Address - 20 Bandgarden Road,

Moboj Hotel Compound, Pune- 411 001

13. Shri. Atul Raj Salve
Age-59 years, Occ.- Business,
R/at. Survey No.10,
Sou. Shila Salve Nagar,
Yerwada, Pune 411 006
 14. Shri. Ganesh Shankar Mohite
Age- 54 yrs, Occ.- Business
R/at. 20 Bund Garden Road,
Moboj Hotel Compound,
Pune 411 001.
 15. Shri. Shreenath Krishna Kamble
Age- 53 years, Occ- Business
Being Proprietor of
Malas Intercity Travels
R/at. 20 Bund Garden Road,
Moboj Hotel Compound,
Pune 411 001
 16. Shri. Mohammad Bashir Sidhqui
Age- 49 years, Occ.- Business
R/at. 20 Bund Garden Road,
Moboj Hotel Compound,
Pune -411 001
 17. Shri. Nashir Shekh
Age-50 Occ.- Business
R/at. 20 Bund Garden Road,
Moboj Hotel Compound,
Pune 411 001
 18. Shri. Pandharinath Gunajirao Shinde
Age- 57 years, Occ.- Business,
Address-20 Band Garden Road,
Moboj Hotel Compound, Pune-411 001
- ...Applicants

In the matter between

1. Shri. Prakash Kartar Bijalani
Age 46 years, Occ : Business,
R/at.H/B 15/2, Pimpri Colony,

Pune-411 017

2. Shri. Mahesh Kartar Bijalani
Age 44 years, Occu:-Business,
R/at. H/B 15/2, Pimpri Colony,
Pune -411 017.

3. Shri. Dhiraj Kartar Bijalani
Age 43 years, Occ: Business,
R/at. H/B 15/2, Pimpri Colony,
Pune-411 017

...Petitioners

Versus

1. State of Maharashtra
Through its Minister
Relief and Rehabilitation Department
Mantralaya, Mumbai 400 032
2. The Settlement Commissioner for
Compensation Pool, Maharashtra State
United India Building, 4th Floor,
Sir P. M. Road, Fort, Mumbai – 400 001.
3. Managing Officer Alis Tahasildar
Pune City, Khadakmal Ali, Pune

(Summons to be served upon then
Additional Government Pleader
Appearing for the State of Maharashtra)

...Respondents

Mr. Anil Anturkar, Senior Advocate a/w. Mr. Amol Gatne for Applicants in
IA/963/2024.

Mr. Anil Anturkar Sr. Advocate a/w. Mr. Yatin Malvankar for the
Applicants in IA/964/2024.

Mr. Sanjay Kshirsagar for Petitioner in WP/1453/2024 and for applicants
in IA/967/2024.

Mr. Yuvraj Narvankar a/w. Mr. Suraj Gurav, Ms. Jayashree Mane, Ms.
Amruta Gurav, Ms. Surbhi S. Agrawal for the Petitioner in
WP/8709/2023.

Ms. P. J. Gavane, AGP for State in WP/8709/2023.

Ms. Shruti D. Vyas a/w. Mr. Sachin H. Kankal AGP for State in WP/1453/2024.

Dr. Arun K. Barthakur for Intervenor/Respondent No.4 in WP/8709/2023.

CORAM: G. S. KULKARNI &
FIRDOSH P.
POONIWALLA, JJ.
RESERVED ON : 1st FEBRUARY 2024
PRONOUNCED ON : 3rd APRIL 2024

JUDGMENT (Per Firdosh P. Pooniwalla, J.):-

1. These Interim applications have been filed, *inter-alia*, seeking intervention and impleadment in Writ Petition No.8709 of 2023. Before dealing with the contentions in these Interim Applications, it would be appropriate to set out the facts in Writ Petition No. 8709 of 2023 and the Orders passed by this Court in the said Writ Petition.

WRIT PETITION NO. 8709 OF 2023

2. The Petitioners are successors-in-interest of late K.T. Bijalani. The said K. T. Bijalani purchased an urban evacuee property from the Compensation Pool, bearing survey No. 13/4B at Vadgaon Sheri, Pune, admeasuring around 2 Acres 18 Gunthas. The said K.T, Bijalani paid the full auction price of the land and a Certificate of Sale dated 31st August 1971 was issued to K. T. Bijalani.

3. However, Respondent Nos.2 and 3 failed to deliver physical possession of the said property to K. T. Bijalani. The occupants of the said property filed two Civil Suits, i.e., RCS No. 1564 of 1978 filed by Madhukar Galande and RCS No. 1580 of 1978 filed by Zunjar Co-operative Housing Society and others. By judgements passed in the said Suits, the sale transaction in respect of the said property purchased by K. T. Bijalani was cancelled.

4. In these circumstances, K. T. Bijalani approached the Managing Officer to obtain an alternative land for him. In this regard, he filed a Petition before the Chief Settlement Commissioner, New Delhi, seeking allotment of alternate Compensation Pool properties.

5. K. T. Bijalani passed away on 29th January 1994. Letters of Administration dated 28th September 1995 were issued by the Civil Court, Senior Division, Pune in respect of the Will dated 3rd April 1989, as well as the declaration of continuation of Will dated 17th December 1993, of K. T. Bijalani.

6. Thereafter, an Order dated 25th May 2009 was passed by the Chief Settlement Commissioner allotting to K. T. Bijalani, as represented by the Petitioners, the property at 20, Bund Garden Road, Ghorpadi, Pune, bearing C. T. S. No. 17, Final Plot Number 246 and admeasuring 10490.06. sq. mtrs ("the Bund Garden Property"). The operative part of the said Order dated 25th May 2009 reads as under :-

“(a) The Appellants are hereby allotted the part of the compensation pool property at 20, Bund Garden, bearing CTS No.17, Final Plot No.246, admeasuring 10490.06 sq. mtrs.. Ghorpadi, Pune, which excludes the land area admeasuring about 476.48 sq.mtrs, covered by the main structure., which includes the 16 galas mentioned in para 1(a) to 1(m) in the plaint in RCS no. 1236/1984.

(b) The Appellant shall pay Rs.6,89,02,791/-[D-A] (Rupees Six Crores Eighty Nine Lakhs Two Thousand Seven Hundred Ninety One Only). being the difference in value of the two properties as per the valuation made in para 54 above which excludes the land area covered by the main structure admeasuring about 476.48 sq.mtrs., comprising of the 16 galas mentioned in para 1(a) to 1(m) in the plaint in RCS no. 1236/1984, in the manner as follows:

The amount of Rs.6,89,02,791/-[D-A] (Rupees Six Crores Eighty Nine Lakhs Two Thousand Seven Hundred Ninety One Only) shall be paid within six months from the date of this order or within one month from the date of removing the entire encroachments on the land, whichever is later. The said balance amount shall be credited to Reserve Bank of India by drawing a Challan to the Head of Account.

"0029 Land Revenue.

105 Sale Proceeds

Sale of Govt. Property (Evacuee Property)

(Com No. 6102001002)”

The Appellants shall submit the original challan at the office of the Managing Officer.

(c) The Managing Officer shall take immediate action to evict the encroachers from the property as per the applicable law without violating the order of the Hon'ble High Court in the pending appeals.

(d) Immediately upon receipt of the payments of the amounts mentioned in para (b) of this order the Managing Officer shall issue the Certificate of Sale in respect of the above property after modifying the Certificate of Sale dated 31.7.1971 issued to Shri Bijlani in the manner explained above, excluding the area covered by the main structure admeasuring about 476.48 sq.mtrs., comprising of the 16 galas mentioned in para 1(a) to 1(m) in the plaint in SCS no. 1236/1984.

(e) The Certificate of Sale shall record the current value of the original plot, earlier allotted to Late K. T. Bijlani which is set off against the current value of the said portion of the property at 20, Bund Garden, excluding the land area covered by the main structure admeasuring about 476.48 sq.mtrs., comprising of the 16 galas mentioned in para 1(a) to 1(m) in the plaint in RCS No. 1236/1984 and the balance consideration has been paid by the Appellants.

(f) The Managing Officer shall hand over possession of the said portion of the land, without violating the order of the Hon'ble High Court in the pending appeals.

(g) The appellants shall have the liberty to apply to the Managing officer for allotment of the said excluded portion of the property in the event of the injunction being vacated by the Hon'ble High Court.

(h) Until the property is physically handed over to the appellants the said property shall continue as part of the compensation pool and the authorities shall prosecute the pending appeals until their final disposal,

(i) The parties shall be informed accordingly.”

7. It is the case of the Petitioner that, pursuant to the said Order dated 25th May 2009, Respondent No.3 handed over provisional possession of the Bund Garden property to the Petitioners on 30th January 2012. From that date onwards, the Petitioners have provisional possession of the said property, although they did not get any income from the same.

8. The Petitioners further submit that, by a Judgment dated 18th March 2011, passed by a Single Judge of this Court in **Mohan Pandurang Borade Vs. Union of India &Ors.**¹, it was declared that the Bund Garden property was evacuee property and tenancy law was not applicable in respect of the said property. It is also the case of the Petitioners that, in the said proceedings, the applicants in the present Interim Applications were represented by Veas, Bund Garden Road Bhadekaru Sanstha (“Veas Bund Garden Sanstha”) which had filed a Civil Application No. 19 of 2004, which was also disposed of by the said Judgment.

1 2011 (4) MHLJ 173

9. It is further the case of the Petitioners that the Managing Officer, i.e., Tahsildar, Pune City, issued two letters dated 3rd January 2019 and 4th January 2019, in the name of the Petitioners, upholding the provisional possession of the Petitioners.

10. The Petitioners further submit that the Managing Officer issued a letter dated 26th February, 2020 to the City Survey Officer, directing him to demarcate the property and directed the Petitioners to pay the requisite fees for the same. On 4th August 2020, a Demarcation Copy was issued by Taluka City Survey Officer No.2 in the name of the Petitioners showing provisional possession of the Petitioners.

11. The Petitioners further submit that Respondent No.2 held meetings on 15th June 2021 and 1st September 2021 regarding the current status of the Bund Garden Property and the effect to be given to the Order dated 25th May 2009 of the Settlement Commissioner.

12. The Petitioners also submit that they have made various representations to Respondents. They made representations dated 15th June 2021 and 17th June 2021 to Respondent No.3 for removing the encroachments on the Bund Garden property. Since the same was not done, the Petitioners filed the present Petition, *inter alia*, seeking removal of encroachments from the Bund Garden property. The final reliefs sought in the Petition are as under:-

[A] That this Hon'ble court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the constitution of India, directing the respondents to remove entire encroachment in the CTS No.17 Final plot no.246 and handover the property free from all encumbrances deleting all development plan to the petitioners.

[B] That this Hon'ble court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the constitution of India, directing the respondents to paid interest amount of Rs.46,87,19,174/- to the petitioners.

[C] That alternative this Hon'ble Court may be pleased to direct the Respondents to decide Representation dated 15/06/2021 & 17/06/2021 (at Exhibit P.) made by petitioner as early as possible."

13. By an Order dated 9th November 2023, passed by this Court, the Interim Application of Respondent No.4 to be joined as party Respondent to the Writ Petition was allowed. In the said Order, it was recorded by this Court that, although there was a serious dispute between the Petitioners and Basant Kumar Jain (Respondent No.4) with reference to the entitlement to the said property and to whom the same should be handed over to, both of them were in agreement that the encroachments on the Bund Garden property had to be removed as per the said Order dated 25th May 2009. Further, in the said Order, this Court noted that Order dated 25th May 2009 had not been challenged by any party and had attained finality and further that, in the said Order, the Settlement Commissioner had directed that the Managing Officer should take immediate action to evict encroachers from the Bund Garden property as per the applicable law. In these circumstances, this Court directed the learned AGP to take instructions as to when the Government would start the action for removing the encroachers from the Bund Garden property. The Court also

ordered that the Government should ensure that no further encroachments were created on the Bund Garden Property.

14. Further, by an Order dated 30th November 2023 passed by this Court in the Writ Petition, this Court recorded the statement of the learned AGP, on instructions, that the Government would remove the encroachments within a period of approximately three months from the date of the said Order. Further, considering the said statement made, this Court directed that the encroachments on the said property should be removed preferably within a period of three months, and, in any event, at the latest, within a period of four months from the date of the Order.

15. Pursuant to the said Orders of this Court, an Eviction Notice dated 15th January 2024 has been issued by the Tahsildar, Pune for vacating the Bund Garden property.

16. It is in these circumstances that the present Interim Applications have been filed in Writ Petition No.8709 of 2023.

INTERIM APPLICATION NO. 963 OF 2024

17. This Application was filed on 18th January 2024. It is the case of the Applicants that they are having residential premises within the said Bund Garden Property. It is submitted that, by virtue of the interim orders passed by

this Court in Writ Petition No. 8709 of 2023, the Respondents will proceed to evict the Applicants, and, therefore, the Applicants have filed the interim application to get themselves impleaded as parties to the Writ Petition.

18. It is the contention of the Applicants that, as set out in the Interim Application, various letters have been written by them in respect of their rights in the Bund Garden Property. It is the submission of the Applicants that, in this case, the provisions of the Administration of Evacuee Property Act, 1950 ("the Evacuee Property Act") have not been followed. It is their case in the Application that, the provisions of Evacuee Property Act provide that after a particular date mentioned therein, no property can be declared as Evacuee Property. It is the case of the Applicants that, in the present case, those provisions have been grossly violated. Further, the Applicant submits that neither the Petitioners nor Basant Kumar Jain can claim any right in respect of the Bund Garden property because the very declaration of the said property as evacuee property is contrary to the provisions of the Evacuee Property Act.

19. It is the further contention of the Applicants that they, being in possession of the premises, are required to be heard and are necessary parties to Writ Petition No. 8709 of 2023 as their civil rights would be affected by the outcome of the Petition. The Applicants have also referred to the said Notice dated 15th January 2024 issued by the Tahsildar, Pune for vacating their

premises. In these circumstances, the Applicants have sought the following final reliefs in this Application:-

“A) That the Hon'ble Court be pleased to direct the Original Petitioner Prakash Kartar Bijlani and others to implead the Applicants as the party Respondents, in Writ Petition No. 8709 of 2023.

B) That this Honourable Court be pleased to quash and set aside the notice dated 15.01.2024.

C) Alternatively, the Hon'ble Court for the reasons which have been given in the memo of this Interim Application be pleased to direct the Respondent No.1 Prakash Kartar Bijalani and others to allow the Applicant to intervene in the said Writ Petition No. 8709 of 2023.”

INTERIM APPLICATION NO. 964 OF 2024

20. In the said Interim Application the facts pleaded and the reliefs sought are the same as that in Interim Application No.963 of 2024.

INTERIM APPLICATION NO.967 OF 2024

21. This Interim Application has been filed by occupants of the galas in the Bund Garden Property. It is the case of the Applicants that they are in possession and occupation of their respective galas and are paying property tax and electricity bills for many years. It is also the case of the Applicants that they were inducted by late Mohan Borade, who was the lawful lessee in respect of the said property. The Applicants have then referred to the said Notice dated 15th January 2024 issued by the Tahsildar and have submitted that, after the service of the said notice, they took search of the relevant papers and came to

know about Writ Petition No.8709 of 2023 and the Order dated 25th May 2009 passed by the Settlement Commissioner.

22. It is the case of the Applicants that, on 5th September 2005, the Displaced Persons Claims and Other Laws Repeal Act, 2005, came into force and the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (“the Displaced Persons Act”), the Evacuee Property Act and three other Acts were repealed. It is submitted that, on the date of repeal of the said Acts, no original, appeal or revision proceedings were pending in respect of the Bund Garden property, and, hence, by virtue of the provisions of Section 6 of the General Clauses Act, the Evacuee Property Act was not applicable to the said property. The Applicant, therefore, submits that the Order dated 25th May 2009 is not correct law and the Petitioners are not entitled to the Bund Garden Property under the said Order.

23. In these circumstances, the Applicants have sought the following final reliefs in the Interim Application:-

“A] That the Hon'ble Court be pleased to permit the Applicant to intervene in the Writ Petition No. 8709 of 2023 and direct the Petitioners to implement the present Applicant as the party respondents.

B] That the Hon'ble Court be pleased to quash and set aside the order dated 15th January 2024 issued by the Respondent No. 6 to the applicants.

C] That the Hon'ble Court be pleased to recall the order dated 13th November 2023 passed by the Hon'ble Court [Coram: Shri. B. P. Collabawalla and Somasekhar Sundaresan, JJ] in Writ Petition No. 8709 of 2023.

D] That the Hon'ble Court be pleased to stay the orders of eviction 15th January 2024 issued by the Respondent No. 6 as per of S.19(2)(3) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 against the applicants."

RESPONSE OF THE PETITIONERS AND RESPONDENT NO.4:-

24. The Petitioners and Respondent No.4 have opposed the Interim Applications. Respondent No.4 has also filed an Affidavit dated 31st March 2024 opposing the Interim Applications.

25. It is the case of the Petitioners and Respondent No.4 that the Notice dated 15th January 2024 is in consonance with the Orders dated 9th November 2023 and 30th November 2023 passed by a Coordinate Bench of this Court in Writ Petition No.8709 of 2023 after due deliberation and application of mind and as such does not suffer from any infirmity.

26. They further submitted that the order for removing the encroachers from the Bund Garden property was first given by the Settlement Commissioner in his Order dated 25th May 2009, and then by this Court by its Orders dated 9th November 2023 and 30th November 2023. They submitted that these facts were well known to the Applicants but the Applicants chose not to do anything and, therefore, are now not entitled to challenge the said Notice dated 15th January 2024.

27. Further, the Petitioners and Respondent No.4 submitted that a group of 19 persons, comprising Veas Bund Garden Sanstha, had preferred a Civil

Application No.19 of 2004 in Second Appeal No.435 of 1989 preferred by Mohan Pandurang Borade. By a Judgment dated 18th March 2011, a learned Single Judge of this Court was pleased to dismiss the said Second Appeal as well as the said Civil Application No.19 of 2004. By the said Judgement, it was held that the rights of Mohan Borade as a tenant stood extinguished consequent to the acquisition of the Bund Garden property by the Union of India under Section 12(1) of the Displaced Persons Act. By the said Judgement, this Court further held that, in view of a number of decisions of the Supreme Court and of this Court, no person could claim possessory right over evacuee property. The Petitioners and Respondent No.4 submitted that the Applicants were represented by the said Vees Bund Garden Sanstha in the said matter. Having not succeeded in the said matter, the Applicants cannot seek to raise the same grounds, and, for this reason also, they ought not to be allowed to have themselves impleaded or intervene in Writ Petition No.8709 of 2023.

28. Further, it was also submitted that, as far as the Applicants in Interim Application No.967 of 2024 were concerned, some of them had filed Civil Suits, claiming rights, which were pending. In this context, it was pointed out that Smt.Sangita K. Lokhande has filed Civil Suit No.200115 of 2011, M/s.Brass Engineering and Trading Company, through Smt. Sujaya Prakash Haridas, had filed Civil Suit No. 200131 of 2011, Smt. Usha Narendranath

Dubey had filed Civil Suit No.200122 of 2011, Smt. Shobha Prafulla Shah had filed Civil Suit No.200213 of 2011, Shri Bhima Kondiba Narote had filed Civil Suit No.200281 of 2011 and Shri A Karunakaran Nair had filed Civil Suit No.200165 of 2011 before the Pune Civil Court claiming to be tenants of the Bund Garden property. The Petitioners and Respondent No.4 submitted that, in the light of these Applicants having filed Civil Suits, they ought not be impleaded in Writ Petition No.8709 of 2023 or be allowed to intervene in the said Writ Petition as that would amount to them indulging in filing parallel proceedings.

29. The Petitioners and Respondent No.4 submitted that, for all these reasons, all the Interim Applications ought to be dismissed.

ANALYSIS AND CONCLUSIONS:-

30. Writ Petition No.8709 of 2023 has been filed seeking removal of encroachments based on the said Order dated 25th May 2009 passed by the Settlement Commissioner. As far as the Respondents are concerned, as recorded in the Orders dated 9th November 2023 and 30th November 2023 passed by this Court, Respondent No.4, although having a serious dispute with the Petitioner with reference to the entitlement to the Bund Garden property and to whom the same should be handed over, is in agreement with the Petitioner that, as prayed for in the Petition, the encroachments on the Bund Garden Property had to be removed as per the Order dated 25th May 2009

passed by the Settlement Commissioner. Further, as far as Respondent Nos.1 to 3 are concerned, as recorded in the Order dated 30th November 2023 passed by this Court, a statement has been made on their behalf that they would remove the encroachments on the said Bund Garden Property within a period of approximately three months from the date of the said Order. This clearly shows that even Respondent Nos.1 to 3 have no dispute with the Petitioners and Respondent No.4 regarding the finality of the said Order dated 25th May 2009.

31. The primary consideration for the Court in considering the intervention application as filed by the applicants, would be to apply the test whether such party seeking an impleadment is in a position to demonstrate a *prima facie* legal right to defend the subject matter of the dispute brought before the Court by the Petitioners. The intervenors certainly cannot seek a substantive relief for themselves in the Writ Petition. Thus, absence of any legal rights *qua* the property in question would certainly be a paramount consideration for the Court refusing an Application for impleadment, which is the situation as clearly seen from the background facts, as noted by us in some detail hereinabove. Thus a bald contention of the Applicants that the orders which would be passed on the Petition would adversely affect them, in our opinion, cannot be a ground to maintain an application for impleadment. The Applicants are not in a position to show a remotest right which could be

recognized in law to occupy the property in question. In fact, some of the applicants have miserably failed to obtain orders in the civil suit filed by them against the Petitioners. Thus, having already espoused their legal remedy to assert their rights in the civil suit and having failed to obtain any injunctory reliefs, they cannot by seeking an impleadment and have a second round of assertion is the Petitioner's proceedings. In such situation, the Applicants can have no locus to seek an impleadment by reasserting what was in fact asserted by them in the civil suit, however, without any success. In respect of some of the applicants, they have not even bothered to file civil suit, hence they cannot be asserting their contentions in the absence of any legal rights by seeking impleadment in the present proceedings. In Writ Petition No. 8709 of 2023, no reliefs are being sought against the Applicants. Reliefs are being sought only against Respondent Nos.1 to 3 for orders and directions directing them to remove the encroachments based on the Order dated 25th May 2009 passed by the Settlement Commissioner. For these reasons, the question of impleading the Applicants in Writ Petition No. 8709 of 2023 does not arise. Further, the present case is also not such that, in the absence of the Applicants, no effective decision can be rendered by this Court. As stated above, in Writ Petition No. 8709 of 2023, the Petitioner is seeking removal of encroachments based on the Order dated 25th May 2009 passed by the Settlement Commissioner, which has attained finality. The Applicants are not necessary for the Court to decide whether the encroachments can be removed on the basis of the said Order

dated 25th May 2009, which has attained finality. In our view that involves only a question of the Court considering the effect of said Order dated 25th May 2009, in deciding the Petitioner's plea for removal of encroachments. In our view, for such reason also, the Applicants are not required to be impleaded in Writ Petition No. 8709 of 2023.

32. As far as the intervention by the Applicants is concerned, it is well settled in law that a person can intervene in a proceeding only for the purpose of addressing arguments in support of one or the other side. This has been held by the Supreme Court in **Saraswati Industrial Syndicate Ltd. Vs. Commissioner of Income Tax Haryana, Rohtak**² Paragraph 12 of the said Judgement is relevant and reads as under:-

12. Learned counsel for the interveners submits that he is entitled to the same order as we have just passed. We cannot pass such an order in an intervention application. The only purpose of granting an intervention application is to entitle the intervenor to address arguments in support of one or the other side. Having heard the arguments, we have decided in the assessee's favour. The interveners may take advantage of that order.

33. This judgment of the Supreme Court has been followed by the Madras High Court in **Alchemist Asset Reconstruction Company Limited Vs. VME Precast Pvt. Ltd. & Ors.**³. Paragraph 8(i) to 8(ix) of the said Judgement are relevant and read as under:-

"8. DISCUSSION AND DISPOSITIVE REASONING:

2 (1999) 3 SCC 141

3 MANU/TN/0150/2020

(i) At the outset it is to be made clear that the task of disposal of instant application on hand has become fairly simple owing to the fair stand taken by learned counsel for Alchemist ARC on instructions. Learned counsel for Alchemist ARC, on instructions, submitted that the prayer in instant application is now abridged/limited to making a request to be heard as an 'intervener' and instead of an 'impleaded party'.

(ii) Therefore, the application on hand is now one to test whether Alchemist ARC can be heard as an intervener.

(iii) It is therefore important to notice the essential distinction between an impleaded party and an intervener, as this would put to rest most the submissions that have been raised on behalf of FFICL. An intervener cannot claim any relief in the proceedings in which intervener is being heard. In other words, an intervener will merely have audience, but will not have any right to claim any relief or take out any application in the proceedings in which the intervener is being heard. Likewise, an intervener will not be able to prefer an appeal (be it an intra-court appeal or an appeal to the next higher Court) unlike an impleaded party.

(iv) This essential distinction between an impleaded party and an intervener or in other words, this limited right of an intervener has been laid down by Hon'ble Supreme Court in *Saraswati Industrial Syndicate Ltd., Vs. Commissioner of Income Tax* reported in MANU/SC/0163/1999 : (1999) 3 SCC 141. The most instructive paragraph, where this principle has been articulated, is Paragraph 12 and the same reads as follows:

'12. Learned counsel for the intervener submits that he is entitled to the same order as we have just passed. We cannot pass such an order in an intervention application. The only purpose of granting an intervention application is to entitle the intervener to address arguments in support of one or the other side. Having heard the arguments, we have decided in the assessee's favour. The interveners may take advantage of that order.'

(v) *Saraswati Industrial Syndicate* principle has been followed by a Division Bench of Madhya Pradesh High Court in *Jeevam Singh Chhatwal Vs. Bank of Baroda* case (order dated 17.12.2014 made in M.C.C. No. 1375 of 2006). This Court deems it appropriate to extract Paragraphs 3 to 5 in *Jeevam Singh Chhatwal* case which read as follows:

'3. Shri V.S. Shroti, senior counsel for respondent no. 1 objects with regards to maintainability of this review application mainly on two counts. The first ground is that there is no error apparent on the face of the record, the ground raised pertains to interpretation of certain judgments and therefore, review application is not maintainable

on these grounds. The second ground is that at the instance of intervenor the review is not maintainable, it is said that that even if in the appeal intervenor had any grievance he could not claim any relief for himself as a intervenor, he may have a right to intervene but as a intervenor has no right to seek any relief to himself in a proceeding, though, the application is not maintainable. Reliance is placed on a judgment of Supreme Court in the case of *Saraswati Industrial Syndicate Ltd. Vs. Commissioner of Income Tax Haryana, Rohtak* MANU/SC/1602/1999 : 1999(3) SCC, 141 in support of this contention.

4. Having heard learned counsel for parties and on consideration of the second ground canvassed by Shri V.S. Shrotri, senior counsel and taking note of the law laid down by the Supreme Court in the case of *Saraswati Industrial Syndicate Ltd. (supra)*, this M.C.C. No. 1375/2006. (sic)

court is of the view that if the intervenor had any grievance with regard to his right to the property in the appeal no relief could be claimed by him. He is only entitled to support or oppose the claim of the parties to the appeal. No relief to an intervenor can be granted in that appeal, that being the legal position, there is much force in the objection raised by Shri Shrotri, Senior counsel. In the appeal that was pending i.e. M.A. No. 1153/1999, the applicant as a intervenor could not claim any relief for himself based on the right that accrued to him by virtue of the auction conducted in his favour. He could not stake his right to the property by way of intervention, he could only either support or oppose

the claim of one of the party. In the capacity of a intervenor he cannot challenge the auction process by contending that he has a right to the property and claim a separate relief for him, keeping in view the law laid down in the case of *Saraswati Industrial Syndicate Ltd. (supra)*, we are of the considered view that at the instance of intervenor no relief could be granted in the appeal proceedings initiated.

5. The applicant herein admittedly was an intervenor in M.A. No. 1153/1999 and they were claiming their right to the property by virtue of the M.C.C. No. 1375/2006. Auction held in their favour at the instance of Sales Tax Department as already indicated hereinabove. An intervenor cannot claim any relief or decree

for himself in the capacity of an intervenor in the appeal under Order 21 Rule 58 of C.P.C., that being the legal position. It is clear that in M.A. No. 1153/1999, the applicant as an intervenor could not claim any relief for himself, accordingly, even if this application is allowed and the appeal proceedings under Order 21 Rule 58 are restored the intervenor cannot get any benefit as he cannot claim any relief for himself. That being so no useful purpose would be served in considering the question of review at the instance of the applicant an intervenor for the reasons as are indicated hereinabove.'

(vi). Before proceeding further, it is also to be noted that subject to the outcome of main OP if and when FFICL resorts to launching an execution petition qua the said Foreign Award under Order XXI Rule 66 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) read in the light of Form 29 of Appendix E, adequately protects the interest of Alchemist ARC. This is another aspect that this Court has reminded itself in considering/examining the abridged request of Alchemist ARC to be heard as an intervener i.e., not an impleaded party. (vii) This takes us to the rival submissions with regard to the first point pertaining to a separate inter-creditor agreement. There is no dispute or disagreement that there is a separate inter-creditor agreement dated 29.03.2012 between FFICL and Alchemist ARC's predecessor UCO Bank and dispute resolution clause in the same, namely Clause 7.41, which reads as follows:

'7.41. The parties hereby agree that the courts and tribunals at Chennai in India, shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings (together referred to as "Proceedings" arising out of or in connection with this Agreement may be brought in such Courts or the tribunals and the Parties irrevocably submit to the jurisdiction of those Courts or tribunals.'

(viii) Therefore, if Alchemist ARC is merely heard as intervener in the instant case, the rights, if any of Alchemist ARC qua the said Foreign Award, which is subject matter of case on hand, will stand protected.

(ix) As the prayer of Alchemist ARC is now only to be heard as an intervener and as the very limited rights of an intervener has already been set out supra, the other apprehensions raised by FFICL regarding raising objections to recognition and enforcement qua the said Foreign Award (Section 48 of A and C Act) and a third party filing an appeal pale into insignificance. To be noted, the clear and well marked out distinction between an entity impleaded as a party and a party being merely heard as intervener is not disputed in instant case by both sides and therefore, that has made the task of

disposal of this application fairly simple as alluded to supra. This puts to rest all the apprehensions and anxiety expressed by FFICL qua the implead prayer.”

34. The Applicants in all the Interim Applications seek to intervene on the ground that the said Order dated 25th May 2009 passed by the Settlement Commissioner is not correct in law. As set out herein above, the correctness or otherwise of the said Order dated 25th May 2009 is not at all in issue in the present Petition. In the light of this position, the question, of the Applicants addressing arguments in support of one side or the other, does not arise. The Applicants want to challenge the correctness of the Order dated 25th May 2009, which is not at all in issue in Writ Petition No.8709 of 2023. For this reason alone, the Applicants cannot be permitted to intervene in Writ Petition No. 8709 of 2023.

35. Further, as pointed out by the Petitioners and Respondent No.7, the Applicants, through Veas Bund Garden Sanstha, had filed Civil Application No.19 of 2004, in Second Appeal No.435 of 1989, wherein the main issue was as to whether the Bund Garden Property had vested in the Central Government free from all encumbrances. In fact, the Applicants in Interim Application No.967 of 2024 claim the rights through the said Mohan Borade who filed Second Appeal No.435 of 1989. By a Judgement dated 18th March 2011 passed by a learned Single Judge of this Court, in *Mohan Pandurang Borade* (Supra), the said Second Appeal No.435 of 1989 and all the Civil Applications filed therein, including Civil Application No.19 of 2004 filed by

the said Sanstha, were all dismissed. By the said Judgement, this Court held that the Bund Garden property had vested in the Central Government after it was declared as evacuee property, that the said vesting was free from encumbrances and that the rights of Mohan Borade stood extinguished. Paragraphs 10 to 16 of the said Judgement are relevant and read as under:

"10. Mr. Adsule, the learned AGP appearing on behalf of the Government, on the other hand, relied on the judgment of the Apex Court in Sir Fazalbhoy Currimbhoy and others vs. Official Trustee of Maharashtra and others, (1979) 3 SCC 189 and submitted that the ratio of the said judgment squarely applies to the facts of the present case and by virtue of the said judgment the issue stood concluded. He submitted that the Apex Court has taken into consideration the historical background starting from formation of the Trust and the Act which was passed whereby the entire property of the original owner vested in the Trustees of the said Trust and after the last heir of Sir Currimbhoy Ebrahim migrated to Pakistan, the said property was declared as evacuee property and, therefore, vested in the Central Government. He submitted that, therefore, even otherwise, since the Settlement Commissioner-cum-Custodian had taken possession of the said property on 23/06/1984, the said property had vested in the Commissioner and, therefore, even leasehold rights were extinguished and the Plaintiff, therefore, had no right whatsoever in respect of the said property.

11. There is much substance in the submissions made by the learned AGP appearing on behalf of the Government.

The Apex Court in Sir Fazalbhoy Currimbhoy and others vs. Official Trustee of Maharashtra and others, (1979) 3 SCC 189 has observed in para 6 of its judgment as under:-

"6. Meanwhile, the Fourth Baronet having migrated to Pakistan along with his son Zoolfikar Ali, the Bombay Legislature passed an Act titled the Sir Currimbhoy Ebrahim Baronetcy (Repealing and Distribution of Trust Properties) Act, 1959 (which we shall refer to as "the Repealing Act"). The Act, as its name shows, repealed the Baronetcy Act and, inter alia, revoked and extinguished "the trusts, powers, provisions, declarations and purposes" declared and expressed in that Act. It provided for the vesting of the properties and funds in the Official Trustee Bombay, for the purpose of distributing them "amongst the persons rightfully entitled thereto according to law". Acting under the Repealing Act, the Official Trustee called upon persons claiming interest in the "trust properties",

an expression which includes the properties and funds settled and created under the Bombay Act, to submit their claims. As he found that the claims were contested and was unable to say which of them were justified, he applied to the Bombay High Court under sub-section (2) of Section 7 of the Repealing Act for orders and directions as regards the distribution of the trust properties amongst the several claimants. The properties were valued at Rs 30 lakhs for the purposes of court fees."

In para 16 of the said judgment, after taking into consideration, the expression "evacuee property" and the further development which had taken place, the Apex Court has observed as under:-

"16..... Therefore, it is beyond dispute that the official Trustee must, by virtue of sub-section (4), transfer and vest in the Custodian the trust properties. Sub-section (4) of Section 7 further declares that the law relating to evacuee property shall apply to "such right, title and interest in the trust properties" as they apply to any other evacuee property under the law. The words "such right, title and interest in the trust properties" mean the right, title and interest in the trust properties which we have found the evacuee entitled to in this proceeding under Section 7, and which now vest in the Custodian. That is distinct from the right, title and interest of the Fourth Baronet in the trust properties which were declared to be evacuee property under the Administration of Evacuee Property Act, 1950."

In view of the judgment of the Apex Court in the said case, it is clear that the property of the Trust, therefore, vested in the respondents after it was declared as evacuee property and the Plaintiff's right stood extinguished. Division Bench of this Court has clarified this aspect in Shreeram Yeshwant Patil and others vs. Regional Settlement Commissioner, and Custodian Evacuee Properties, Bombay and others, 1977, Mh. L.J 438. Apart from that, the Government of India acquired the properties on 10/04/1980 by exercising powers vested in it under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

12. So far as leasehold rights of the persons in such evacuee properties are concerned, those rights also stand extinguished and the Division Bench of this Court in Shreeram Yeshwant Patil and others vs. Regional Settlement Commissioner, and Custodian Evacuee Properties, Bombay and others 1977 Mh. .L.J. 438 after taking into consideration the provisions of the said Act and the observations made by the Apex Court in various judgments, has observed in para 15 of its judgment as under:-

"15. The question for consideration is whether the possession of the petitioners in view of all these

provisions of law would be an encumbrance within the meaning of that expression in section 12 of the Displaced Persons Act and whether the property would vest in the Central Government free from that encumbrance. The word "encumbrance" has been defined in Chamber's 20th Century Dictionary as "that which encumbers or hinders; a legal claim on an estate," "to burden" etc. We have already referred to the various provisions of the Administration Act and we have tried to emphasize the anxiety of the Legislature to preserve the evacuee property for its eventual utilization for certain purposes including a public purpose of rehabilitation of the Displaced Persons. Section 12(1) of the Displaced Persons Act also refers to the purpose connected with the relief and rehabilitation of Displaced Persons as the public purpose. In view of this position, we are of the view that the word "encumbrance" occurring in section 12(2) of the Displaced Persons Act should be given a wide connotation, and if it is so interpreted, in our view, it would include even a lease which has controlled by the Custodian in respect of the properties which vested in him under section 8 of the Administration Act and section 11 of the Separation of the Interest Act."

13. In this view of the matter, though it is true that, both, the trial court and the lower appellate court have not taken into consideration the evidence on record and have only relied on the judgment of the learned Single Judge of this Court, in view of the judgment of the Apex Court and Division Bench of this court, in my view, the appellant/plaintiff does not have any right, title or interest and their leasehold rights stood extinguished after the land vested in the Custodian and then in Union of India under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Apart from that, the Apex Court in Tar Mohammad and others vs. Union of India and others (1997) 4 SCC 382 has held that after the land is declared to be an evacuee property, the Tenancy Law applicable to it cannot be enforced by virtue of non obstante clause and the Administration of Evacuee Property Act, 1950 overrides the provisions of Tenancy Law. The Apex Court in the said judgment has observed in para 3 as under:-

"3. Firstly, we are unable to appreciate the stand taken by the appellants for the reason that there should be a specific finding by the authorities that the appellants had tenancy granted by Mohd. Hasham Abdulla prior to 14-8-1947 in their favour and that they remained in occupation under that title as tenants. Then only sub-section (2) of Section 12 of the Act stands attracted. There is no such finding recorded by the High Court in that behalf nor any such contention was raised. Their only premise is that they were tenants and, therefore, the property was not covered under the AEP Act as free

from encumbrances. That contention, though raised in the High Court, was negatived. The High Court reasoned that by operation of Section 4(1) of the AEP Act, the pre-existing law stands excluded by virtue of the non obstante clause. Thereby, tenancy rights also stand extinguished by operation of the non obstante clause. Once Section 4(1) of the AEP Act stands attracted, the alleged right to tenancy also is set at naught; nor does it amount to encumbrance. In consequence, the alleged right to tenancy has no foundation for resisting taking possession of the land. Even the order passed by the Tehsildar and Assistant Custodian has not been made part of the record which was impugned in the High Court. Under these circumstances, there is no case warranting interference."

14. The Second Appeal No.435 of 1989 is dismissed. Consequently, all Civil Applications taken out in Second Appeal No.435 of 1989 do not survive and they are disposed of accordingly.

SA NO.448 OF 1989:

15. In view of the judgments of the Apex Court in the aforesaid cases, the Second Appeal No.448 of 1989 also will have to be allowed since the property is now vested in the Custodian and has acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

16. Accordingly, the first substantial question of law viz. "(i) whether a person in possession of an evacuee property or acquired evacuee property, like the respondent-plaintiff, can claim any tenancy right under the Transfer of Property Act?" is answered in the negative and the second substantial question of law viz "(ii) whether rights of the lessee in respect of demised premises which has been acquired under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and which has been declared as evacuee property stand extinguished in view of the land being vested in Central Government?" is answered in the affirmative."

36. In our view, the Petitioners and Respondent No.4 are correct in submitting that, having challenged the vesting of the said property in the Central Government free from encumbrances, and having failed in the challenge, the Applicants are not entitled to raise the same challenge again by seeking to challenge the Order dated 25th May 2009 passed by the Settlement

Commissioner whereby the Settlement Commissioner has confirmed the allotment of the Bund Garden property to the Petitioners and also directed to take immediate action to evict the encroachers from the said property as per the applicable law.

37. In our view, for this reason also, the Applicants have not made out any case for intervening in Writ Petition No.8709 of 2023 or for being impleaded in the same.

38. Further, as submitted by the Petitioners and Respondent No.4, some of the Applicants in Interim Application No.967 of 2024 have also filed Civil Suits before the Pune Civil Court claiming to be tenants in respect of the Bund Garden Property. In our view, having filed these Civil Suits whereby they have independently claimed rights in respect of the Bund Garden Property, these Applicants are not entitled to get themselves impleaded in Writ Petition No.8709 of 2023 or to intervene in the same. If the same is permitted, then that would lead to some of the Applicants having parallel proceedings, which is neither desirable nor permissible in law.

39. Further, some of the Applicants in Interim Application No.967 of 2024 have also filed a separate Writ Petition in this Court, being Writ Petition No.1453 of 2024, challenging the said Order dated 25th May 2009 passed by the Settlement Commissioner. For this reason also, the said Applicants are not required to be impleaded in Writ Petition No.8709 of 2023 or be allowed to

intervene in the same.

40. For all the aforesaid reasons, these Interim Applications are dismissed without prejudice to the rights of the Applicants to file or continue such appropriate proceedings, as may be permissible in law, for enforcement of their rights, if any.

41. In the facts and circumstances of the case, there will be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)

42. At this stage, learned Counsel for the Applicants seek extension of the ad-interim order which was passed on 29th January 2024.

43. On such request being made, the ad-interim order passed on 29th January 2024 is extended by a period of two weeks from today.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)