

2025:PHHC:027592



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-7117-1995 (O&M)
Date of decision :27.02.2025

BUDH RAM AND OTHERS

...Petitioners

Versus

THE FINANCIAL COMMISSIONER (APPEALS), PUNJAB
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vikas Singh, Advocate
for the petitioners.

Mr. Nirmaljit Singh Diwana, Sr. D.A.G., Punjab.

Mr. G.S. Punia, Sr. Advocate assisted by
Ms. Manleen Kaur, Advocate
for respondents No.4(i), 4(iii), 4(v), 5 and 6.

HARSH BUNGER, J.

Prayer in the present writ petition filed under Articles 226/227 of the Constitution of India, is, *inter alia*, for issuance of a writ in the nature of *certiorari* for setting aside the order dated 19.01.1990 (Annexure P-13) passed by the learned Chief Settlement Commissioner, Patiala and order dated 16.03.1994 (Annexure P-14) passed by the learned Financial Commissioner (Appeals), Punjab.

2. Briefly, the case set up by the petitioners is that petitioner No.1-Budh Ram came to India from Bhawalpur State (now forming part of Pakistan) upon partition of our country in the year 1947 and accordingly, the arrangements were made for obtaining the revenue records in respect of the land left by persons migrating from Bhawalpur State. It is stated that

the non-punjabi/non-claimants were to be settled in seventeen villages of Rajpura Tehsil and two villages of Sub Tehsil Samana at District Patiala and as per the then policy decision of the Government, agricultural lands were allotted to non-punjabi/non-claimants on “temporary basis”. It is claimed that petitioner No.1-Budh Ram was allotted three shares out of twenty four shares of agricultural land and possession was also delivered of the old khasra numbers.

2.1 According to the petitioners, the Government of India, vide its letter dated 13.01.1957 (Annexure P-2), issued directions to the learned Chief Settlement Commissioner, New Delhi for the transfer of acquired evacuee agricultural land to non-punjabi/non-claimant allottees. It is further stated that vide letter dated 22.07.1960 (Annexure P-3), the Punjab Government (Department of Rehabilitation) issued instructions that non-punjabi/non-claimant settled in 17 villages of Rajpura Tehsil, will be allowed to purchase evacuee agricultural land in their occupation under Rule 63 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (for short ‘the 1955 Rules’).

2.2 It is stated that the Deputy Secretary to the Government of Punjab, Rehabilitation Department, issued letter dated 21.02.1964 (Annexure P-4) to the Tehsildar, Rajpura stating that in accordance with the instructions of Government of India, the Pepsu Development Board, Rajpura had allotted the evacuee lands on temporary basis, to non-claimants in 21 villages of Tehsil Rajpura and two villages of Sub Tehsil Samana and the said lands were now to be sold to the occupants under Rule 63 of the 1954 Rules, in accordance with the instructions dated 13.01.1957.

2.3 According to the petitioners, the price of the land allotted and transferred to petitioner No.1-Budh Ram, amounting to Rs.875.93/-

(including principal and penal interest), as fixed by the department, was duly deposited on 30.11.1970, as per the directions of the Managing Officer, issued vide letter dated 19.11.1970.

2.4 It appears that on 08.12.1970, a conveyance deed (Annexure P-6) was executed in favour of petitioner No.1-Budh Ram, in respect of land measuring *18 bighas-10 biswas* comprised in *khasra No.515(1-0), 823 min(1-7), 829(2-11), 830(6-5), 1035/856(3-1), 984/861(8-4)* situated in Village Dhakansu Kalan, Tehsil Rajpura.

2.5 The afore-said conveyance deed is stated to have been registered on 17.12.1970 and mutation No.2014 was also recorded on 26.05.1971 (Annexure P-8).

2.6 It is stated that petitioner No.1-Budh Ram sold a part of the afore-said land in favour of Man Singh (petitioner No.10) vide sale deed No.2575 dated 01.03.1971 and mutation No.2019 was sanctioned in that regard. Similarly, Budh Ram (petitioner No.1) sold another part of the afore-said land in favour of one Ram Chand vide sale deed dated 24.03.1971 and mutation No.2027 was recorded. Thereafter, Budh Ram sold some more part of the afore-said land in favour of Mohan Lal and others i.e. petitioner No.2 etc., vide sale deed dated 24.02.1971 and mutation No.2048 was recorded. Budh Ram is stated to have sold more land vide two sale deeds dated 16.07.1973 in favour of Subhash Chand (petitioner No.13) and mutation Nos.2130 and 3137 were recorded. It is also stated that Subhash Chand (petitioner No.13) further sold the land to petitioners No.11 and 12 and in this manner, they became the full-fledged owners with possession of the land, in question.

2.7 Petitioners state that respondent No.4-Tara Chand was also allotted some land in Village Dhakansu Kalan as a non-claimant and a sale

deed was registered in his favour on 19.11.1984, wherein, two khasra Nos. i.e. *khasra No.823* and 829 were included in his sale deed, although, the said *khasra nos.* were also mentioned in the sale deed executed in favour of petitioner No.1-Budh Ram.

2.8 It transpires that vide an *ex-parte* order dated 02.01.1984 passed by the Tehsildar (Sales)-cum-Managing Officer, Rajpura, the allotment of the entire area made in favour of petitioner No.1-Budh Ram was cancelled and upon learning about the said order dated 02.01.1984, petitioner No.1-Budh Ram preferred an appeal before the learned Settlement Commissioner, which was allowed vide order dated 06.05.1986 (Annexure P-9); whereby, the order dated 02.01.1984 was set aside and the matter was remanded to the Tehsildar (Sales)-cum-Managing Officer, Punjab for *denovo* decision.

2.9 The order dated 06.05.1986 (Annexure P-9) was challenged by respondent No.4-Tara Chand by filing a revision petition before the learned Chief Settlement Commissioner, Punjab, which was also dismissed vide order dated 01.12.1986 (Annexure P-10).

2.10 Upon remand, the then Tehsildar-cum-Managing Officer, Rehabilitation Department, vide order dated 18.05.1987 (Annexure P-11) held that Budh Ram, had obtained the conveyance deed of the land allotted to him and the revision petition filed by Tara Chand against order dated 06.05.1986 (Annexure P-9) stand dismissed, therefore, no action can be taken in the matter and the case was filed.

2.11 It appears that on 08.03.1988, the then Tehsildar-cum-Managing Officer, Rajpura made a reference to the learned Chief Settlement Commissioner, Patiala, stating that the allotment of land in favour of Budh Ram (petitioner No.1) should be cancelled as the said

allotment was not supported by any record and also that the Civil Court has declared Tara Chand, to be the owner of the property and the appeal filed against the afore-said judgment of the trial Court was also dismissed by the learned Additional District Judge, Patiala on 07.08.1987.

2.12 The afore-said reference dated 08.03.1988 came to be accepted by the learned Chief Settlement Commissioner, Patiala vide order dated 19.01.1990 (Annexure P-13) directing cancellation of the Conveyance Deed dated 08.12.1970, executed in favour of petitioner No.1-Budh Ram and further holding that the sale in favour of Tara Chand (respondent No.4) was valid.

2.13 Feeling aggrieved against the order dated 19.01.1990 (Annexure P-13), the petitioners i.e. Budh Ram and his vendees, preferred a petition under Section 33 of the 1954 Act, which was also dismissed vide order dated 16.03.1994 (Annexure P-14). Hence, the present writ petition.

3. Learned counsel for the petitioners submits that the learned Chief Settlement Commissioner as well as the learned Financial Commissioner, have erred in law and fact in passing the impugned order. It is submitted that the land in question, was rightly transferred in the name of petitioner No.1-Budh Ram, who had further executed the Sale Deeds in favour of other petitioners. It is submitted that the learned Chief Settlement Commissioner should not have set aside the allotment of land/conveyance deed in favour of petitioner No.1 after a delay of over twenty years as the power under Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short 'the 1954 Act'), was required to be exercised within a reasonable time. It is submitted that the authorities below have failed to consider and appreciate the documents available on the record, which duly proves that the land was validly allotted in favour of

petitioner No.1-Budh Ram, who had deposited the necessary price thereof, and thereafter, even the conveyance deed was executed in his favour. It is stated that the reliance upon the Civil Court judgment is mis-placed as the petitioner No.1-Budh Ram was not a party to that case and even otherwise, the Civil Court judgment had been challenged before this Court in ***RSA No.3579 of 1987***. It is further submitted that petitioners No.2 to 13 had purchased the land from petitioner No.1-Budh Ram; therefore, their rights are protected under Section 41 of the Transfer of Property Act, 1882 (in short 'the 1882 Act').

3.1 With the afore-said submissions, prayer has been made for setting aside the impugned orders.

4. Per contra, learned counsel appearing for the State as well as learned counsel appearing on behalf of private respondents No.4 to 6, have opposed the submissions made on behalf of learned counsel for the petitioners, by submitting that the impugned orders are legal and valid, in the peculiar facts and circumstances of this case. It is submitted that petitioner No.1-Budh Ram was not in possession of the land before the allotment; therefore, the conveyance deed was wrongly executed in his favour. It is submitted that when the initial allotment in favour of petitioner No.1-Budh Ram was illegal, therefore, the subsequent sale deeds, executed by petitioner No.1 in favour of petitioners No.2 to 13, have no value in the eyes of law. It is submitted that the allotment in favour of petitioner No.1-Budh Ram has been rightly cancelled as the said allotment was not supported by any record and moreover, the issue has already been decided by the learned Civil Court and Tara Chand has been declared as the owner of the property. It is next submitted that even ***RSA No.3579 of 1987*** stands dismissed by this Court vide judgment dated 11.09.2013, a copy of which is

available on the file. It is categorically submitted that petitioner No.1 was not in cultivating possession of the land in question in *Rabi 1959* and *Kharif 1959* nor his name was mentioned in the list of non-claimants (Annexure R-1). It is also submitted that the petitioner had not deposited any amount. It is stated that only those non-claimants, who were already in possession of land, could have purchased their share(s) according to Rule 63 of the 1954 Rules; however, since petitioner No.1 was not in possession of the land, accordingly, no land could have been allotted to him and there is no illegality in the impugned orders; accordingly, prayer for dismissal of the writ petition has been made.

5. Heard.

6. In the present case, the petitioners' claim that the land in question, was to be sold to the non-punjabi/non-claimants in accordance with the instructions dated 13.01.1957 (Annexure P-2) issued by the Government of India, Ministry of Rehabilitation and also the letter dated 22.07.1960 (Annexure P-3) issued by the Department of Rehabilitation, Punjab.

7. Here, it would be apposite to refer to Clause 2 of the Instructions dated 13.01.1957 (Annexure P-2) and also the letter dated 22.07.1960 (Annexure P-3), which read as under :-

Clause 2 of the Instructions dated 13.01.1957

"2. It will be necessary to ascertain the correct particulars of the land in the occupation of the displaced person and also whether he is in authorised occupation thereof. For this purpose, it has been decided that every allottee of evacuee agricultural lands should file a declaration in the office of the Settlement Officer concerned giving full particulars of the land in his possession together with an extract from the Jamabandi

and Khasra Girdawari record duly attested by the Naib Tehsildar. A specimen form of the declaration is enclosed herewith (Annexure 1). The date and place for filing the declarations should be notified by Publication of a notice in the village concerned. The notice should clearly say that if the declaration is not filed within the stipulated time, the allottee will not be permitted to purchase the land on the basis mentioned in rule 63 of the Displaced Persons (C&R) Rules, 1955.”

Letter dated 22.07.60 (Annexure P-3) :

“Government of Punjab
Department of Rehabilitation
To
The Tehsildar-cum-M.O.,
Rajpura

No.180-RII/30605/Reh(R) Dated Jalandhar, the 22.7.60.

Subject : Transfer of evacuee agricultural land to Non-Punjabi
non-claimants settled in 17 villages of Rajpura.

Memorandum

Under the existing policy of the Govt. of India the non-Punjabi non claimants settled in 17 villages of Rajpura tehsil will be allowed to purchase the evacuee agricultural land in their occupation under Rules 63 of the Displaced Persons (C&R) Rules, 1955 determining the factum of self cultivation on the basis of girdawaris of two harvests Rabi 1959 and Kharif 1959. The cases of non-claimants whose allotments were cancelled under the old instructions will be reviewed by the Land Claims Organisation. Therefore, with a view to avoiding any dislocation of hardship to these persons the land cancelled from their allotments should not be leased out and they may be allowed to remain possession of the same on payment of 6 times of the land revenue till orders passed in their cases are reviewed by the Land Claims Organisation.

Please acknowledge receipt of this letter.

Sd/-

Deputy Secretary to Govt. of Punjab
Reh. Department, Jalandhar.”

8. A perusal of the above extracted provisions made in Annexure P-2 shows that the correct particulars of the land in occupation of

the displaced persons was to be ascertained by the authorities and every allottee was required to file a declaration in the Office of the Settlement Officer concerned, giving full particulars of the land in his possession, together with an extract from the *jambandi* and *khasragirdawari* record, duly attested by the Naib Tehsildar.

8.1 Further, as per Annexure P-3, the non-punjabi/non-claimants were entitled to purchase the evacuee agricultural land, which was in their possession, in terms of Rule 63 of the 1955 Rules, after determining the factum of self cultivation on the basis of *girdawaris* of two harvests i.e. *Rabi 1959* and *Kharif 1959*.

9. During the course of hearing of this petition, learned counsel for the petitioners was asked to point out to any material/document, indicating that Budh Ram was in cultivating possession of the land in question, since *Rabi 1959/Kharif 1959* onwards, as envisaged vide Annexures P-2 and P-3. Learned counsel for the petitioners was also asked to refer to the list of non-claimant allottees, indicating the name of petitioner No.1, to be recorded therein.

10. Learned counsel for the petitioners has failed to refer to any such document, which could show that Budh Ram was in cultivating possession of the land in question, since *Rabi 1959/Kharif 1959* onwards, as envisaged vide Annexures P-2 and P-3 nor the name of petitioner No.1-Budh Ram is shown to have been reflected in the list of non-claimant allottees.

11. It is noticeable that the Tehsildar (Sales)-cum-Managing Officer, Rajpura had made a reference dated 08.03.1988 to the Chief Settlement Commissioner, Patiala, indicating that the allotment of land in favour of petitioner No.1-Budh Ram, should be cancelled as the said

allotment was not supported by any record and that the Civil Court has already declared said Tara Chand (respondent No.4) to be the owner of the property.

11.1 Upon receipt of the said reference, the matter was got enquired into and vide order dated 19.01.1990 (Annexure P-13), the Chief Settlement Commissioner ordered the cancellation of allotment/conveyance deed in favour of petitioner No.1-Budh Ram by holding as under :-

“I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me. The facts of the case were also discussed thoroughly in my order dated 24.2.1989 vide which the case was sent to the Settlement Commissioner (SDO Civil) Rajpura with the direction that he should scrutinize the available evidence and then arrive at a final conclusion. The Settlement Commissioner (SDO Civil) Rajpura was required to report if the allotment of land made in favour of Budh Ram was valid or not. It is clearly made out in the report dated 19.6.1989 sent by the Sub Divisional Officer(C) Rajpura that Tara Chand was allotted the land in village Dhakansu as a non-claimant because he fulfilled the requisite conditions and he became permanent owner of the land after depositing the price of the land and conveyance deed was also issued in his favour. On the other hand, regarding the allotment of land to Budh Ram, an enquiry was referred to the Deputy Secretary, Rehabilitation Punjab who heard Budh Ram but Budh Ram failed to produce any evidence in support of his claim. It is reported by the Assistant Registrar Land-al imas, Punjab, Rehabilitation Department to the Chief Settlement Commissioner that no land was ever allotted to Budh Ram. The Chief Settlement Commissioner, Jalandhar, referred the case to the Tehsildar (Sales) Rajpura who cancelled the land from the name of Budh Ram and restored in the name of the Government. Budh Ram went in appeal and the case was

remanded to the Tehsildar (Sales) for a fresh decision. The report of the Tehsildar (Sales) dated 8.3.1988 is very much in detail. It has been clearly held there that Budh Ram was never in possession of the land during the period in question. Moreover, the statement of Budh Ram was recorded before the Tehsildar in which he stated that he never cultivated the land nor deposited any amount as price of the land.

It is very clear from the above fact that the sale deed in favour of Budh Ram is not a valid document. I agree with the Tehsildar (Sales)-cum-M.O. Rajpura as well as the Settlement Commissioner (SDO Civil) Rajpura that the said deed needs to be cancelled. Even the Chief Settlement Commissioner, Punjab, Jalandhar held that no allotment was made in favour of Budh Ram. The Additional Sessions Judge, Patiala, vide order dated 7.8.1987 has also dismissed his appeal. In the light of these facts it is very clear that the sale in favour of Budh Ram should be cancelled and I order accordingly. The conveyance deed dated 8.12.1970 is ordered to be cancelled. It is further held that the sale in favour of Tara Chand is perfectly valid and the allotment of further land measuring 3B 13B in khasra No.823(1-7) and 829(2-6) made on 7.2.1984 is also valid. The rest of the land should be disposed of as per the regular procedure by the Tehsildar (Sales)-cum-M.O. Rajpura. The case is, therefore, sent to the Tehsildar, Rajpura for further action in the matter. He is directed to furnish the case as early as possible so that the litigation between the parties could become to an end. Parties to appear before him on 19.2.1990.”

11.2 The afore-said order dated 19.01.1990 has been further upheld by the learned Financial Commissioner (Appeals), Punjab, vide order dated 16.03.1994 (Annexure P-14), by observing as under :-

“7. I have considered the averments of the learned counsel and have gone through the record of the case. I have also minutely studied the impugned order. The learned Chief Settlement Commissioner has gone into great detail while

considering the reference dated 8.3.1988 from the Tehsildar (Sales)-cum-Managing Officer, Rajpura recommending the cancellation of the allotment. It has been clearly stated that an earlier report dated 21.7.1983 said that no land had been allotted to Budh Ram and accordingly the allotment made in his favour was cancelled vide an order dated 2.1.1984, prior to which reference was made to Budh Ram's own statement before the Tehsildar to the tune that he had not deposited any price nor ever cultivated the suit land. Since some other evidence given by Budh Ram's counsel went counter to this, the learned Chief Settlement Commissioner felt that "there was a lot of confusion in the case and a thorough probe into the record was necessary." He, therefore, sent the case, very correctly, to the Settlement Commissioner (SDO Civil), as the Managing Officer (Tehsildar) had already given his opinion and another report from him ran the risk of being biased. After perusing the fresh report and giving adequate opportunity to both the counsel, he came to a categorical finding that the sale pro-Budh Ram deserved to be cancelled, and he ordered accordingly. At this stage of the proceedings, I can scarcely place any reliance on the version of the counsel for the petitioner to the effect that his client was aged and deaf and therefore his own statement should not be held to operate against him. This is a rather facile argument, since it was open to Budh Ram to be represent before the Chief Settlement Commissioner by a counsel. In my case, in the light of the concurrent finding of the Tehsildar (Sales)-cum-Managing Officer, Rajpura, the Settlement Commissioner as well as the conclusions of the Chief Settlement Commissioner, Punjab, Jalandhar, that no allotment was made in favour of Budh Ram, bolstered by the fact that the Additional Session Judge also dismissed his appeal, I see no reason to differ with the conclusions amount at by the learned Chief Settlement Commissioner. The present petition is accordingly declined."

12. It is borne out from the findings returned by the learned Chief Settlement Commissioner as well as learned Financial Commissioner that no land had been allotted to Budh Ram (petitioner No.1) and that as per the own statement of Budh Ram, he had not deposited any price nor even cultivated the suit land.

12.1 Furthermore, it is not disputed before this Court that even the appeal (***RSA No.3579 of 1987***) preferred by the vendees of petitioner No.1- Budh Ram namely, Hardayal Singh and others, has been dismissed by this Court vide judgment dated 11.09.2013, by observing as under :-

“A perusal of the record shows that the plaintiff, himself, had entered into the witness box as PW-1 and had testified that he was in possession of the suit land. Subhash Chand, while appearing as DW-1, though stated that possession of the suit land was delivered to the defendants and his testimony was corroborated by DW-2, Hardayal Singh and in cross-examination, said Subhash Chand had stated that he had been in possession of the suit land for 2-1/2 years but this oral evidence has to give way to documentary evidence available on record in the form of jamabandies for the years 1978-79, Exhibit P/2, and 1983-84, Exhibit P/5, wherein the plaintiff is recorded to be in cultivating possession of the suit land. Khasra girdawaris, Exhibits P/3, P/4 and P/6, for the period from kharif 1979 to Rabi 1998 also support the plea of the plaintiff that he has been in cultivating possession of the suit land. A presumption of truth attaches to the entries in these jamabandis and as per Section 114 of the Indian Evidence Act, there is presumption of continuity of possession. Though, the presumption attached to the jamabandis is rebuttable but the defendants have not been able to bring any evidence to rebut the same or to show that possession of the suit land was entered into by them. It is also noticed by the learned trial Court that a conveyance deed, Ex.P/1, was executed in favour of the plaintiff on 24.8.84 in respect of the

land allotted to him by the Rehabilitation Department and the land in dispute forms part of that land. In view of the overwhelming evidence to show possession of the plaintiff over the suit land, coupled with the fact that both the courts below, on appreciation of evidence available on record, have recorded concurrent findings to hold the plaintiff to be entitled to a decree of injunction and there being no question of law, much less a substantial question of law involved in the matter, I am not inclined to interfere with the findings of fact recorded by the courts below and, therefore, dismiss the appeal leaving the parties to bear their own costs.”

12.2 It would be evident from the above extracted findings returned in ***RSA No.3579 of 1987*** that the possession of respondent No.4-Tara Chand over a part of land in question was proved on record.

13. Considering the totality of circumstances, since the petitioners have failed to show that petitioner No.1-Budh Ram was in possession of the land in question at the relevant time, as envisaged in Annexures P-2 and P-3 and he had further admitted that he had not deposited any amount, coupled with the fact that a part of the land stood allotted to Tara Chand (respondent No.4) and his possession on a part of the land in question (in the present writ petition) has been proved and upheld upto this Court in ***RSA No.3579 of 1987***, I find no merit in the claim of the petitioners.

14. Coming to the plea of petitioners No.2 to 13 that they are the *bona fide* purchasers and that they are entitled for protection under Section 41 of the 1882 Act, it is observed that the said issue is no more *res-integra* as the same stands answered by a Full Bench of this Court in ***Niranjan Kaur v. Financial Commissioner, Revenue & Secretary to Government, Punjab, 2010(4) RCR(Civil) 610***, wherein the doubt raised

by the Division Bench of this Court, was noticed as under:-

“14. The Hon'ble Division Bench doubted, the observations made by this Court, holding the vendees to be protected under Section 41 of the Property Act, and accordingly made reference to the Larger Bench for the following reasons :-

(1) The provisions of Section 41 of the Property Act are attracted only when with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration. It is, therefore, obvious that before this provision can be attracted, there has to be a real owner and an ostensible owner who transfers the property with express or implied consent of the former. In the case before the Division Bench and the other cases noticed above, the allottee upon whom the rights had been conferred was the real owner and there was no question of anybody being the ostensible owner.

(2) The principle involved in section 41 of the Property Act is basically one of estoppel. It is well-established that the principle of estoppel cannot override the provisions of a Statute. Obviously, therefore, the provisions of section 41 of the Property Act would not be able to override the provisions of section 24 of the Act which authorises the Chief Settlement Commissioner to cancel any allotment.

(3) It is again highly doubtful if the word "persons" would include the Union or the State Government. Reference in this context may profitably be made to Sarkar-E-Aali Zaria Nazim v. Athar, AIR 1957 Andhra Pradesh 714 and M/s Jaswant Sugar Mills Ltd. v. Union of India and another, AIR 1966 Punjab 229.

(4) Express or implied consent under section 41 of the Property Act has to be a valid and free consent. If the allotment has been secured by fraud or

misrepresentation and is sought to be cancelled on such ground under Section 24 of the Act, it cannot be said that the allottee on whom the permanent rights were conferred was the ostensible owner with express or implied consent, the alleged consent having been procured by misrepresentation or fraud.

14.1 The Hon'ble Full Bench upon consideration of the matter, observed as under:-

“39. Though in reply to the first question raised, it has to be answered that the allottee can be treated to be an ostensible owner and the Government as real, but, whether the benefit of Section 41 of the Property Act would be permissible to subsequent vendee, is required to be considered under question No. 2.

40. In order to answer question No. 2, referred to the Full Bench, it will be necessary to go through Sections 19 and 24 of the Act, which read as under :-

"19. Power to vary or cancel leases or allotment of any property acquired under this Act. (1) Notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act is held or occupied by a person, 123 Whether such allotment or lease was granted before or after the commencement of this Act.

(2) Where any person, -

(a) has ceased to be entitled to the possession of any evacuee property by reason of any action taken under sub-section (1), or

(b) is otherwise in unauthorized possession of any evacuee property or any other immovable property forming part of the compensation pool; he shall, after he

has been given a reasonable opportunity of showing cause against his eviction from such property, surrender possession of the property on demand being made in this behalf by the managing officer or managing corporation or by any other person duly authorised by such officer or corporation.

(3) If any person fails to surrender possession of any property on demand made under sub-section (2), the managing officer or managing corporation may, notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such property and may, for such purpose, use or cause to be used such force as may be necessary.

(4) Where a managing officer or a managing corporation is satisfied that any person, whether by way of allotment or lease, is, or has at any time been, in possession of any evacuee property acquired under this Act to which he was not entitled, or which was in excess of that to which he was entitled, under the law under which such allotment or lease was made or granted, then, without prejudice to any other action which may be taken against that person, the managing officer or the managing corporation may, having regard to such principles of assessment of rent as may be specified in this behalf by the Central Government, by order, assess the rent payable in respect of such property and that person shall be liable to pay the rent so assessed for the period for which the property remains or has remained in his possession: Provided that no such order shall be made without giving to the person concerned a reasonable opportunity of being heard.

(5) Where any person is, or has at any time been, in unauthorised possession of any evacuee property acquired under this Act the managing officer or the managing corporation may, having regard to such

principles of assessment of damages as may be specified in this behalf by the Central Government, assess the damages on account of the use and occupation of such property and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order: Provided that no such order shall be made without giving to the person concerned a reasonable opportunity of being heard."

"24. Power of revision of the Chief Settlement Commissioner. (1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer an Assistant Settlement Commissioner, a managing officer or a managing corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

(2) Without prejudice to the generality of the foregoing power under sub-section (1), if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material fact, then notwithstanding anything contained in this Act, 129 the Chief Settlement Commissioner may pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, cancelling the lease or allotment granted to him; and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may, on a certificate issued by the Chief Settlement Commissioner,

be recovered in the same manner as an arrear of land revenue.

(3) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by any order made under Sub-section (2), may, within thirty days of the date of the order, make an application for the revision of the order in such form and manner as may be prescribed to the Central Government and the Central Government may pass such order thereon as it thinks fit."

The reading of Section 19 of the Act would show that it contains a non obstante clause, therefore, the provisions would apply notwithstanding anything contained in any agreement or any other Act for the time being in force.

41. It cannot be disputed that the Act is a special Act, whereas the Transfer of Property Act, is a general Act. Therefore, the provisions of the Property Act, would have no application to orders passed under Sections 19 and 24 of the Act.

*42. In support of this conclusion, reference can be made to the judgment of the Hon'ble Supreme Court in **Harishchandra Hegde v. State of Karnataka and others, (2004)9 SCC 780**, wherein the Hon'ble Supreme Court while interpreting the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 vis-a- vis Section 51 of the Property Act, has laid down as under :-*

"13. By reason of an order passed under Section 4 of the Act, the lands are directed to be restored in the event the illegalities specified therein are discovered. The consequences contained in Section 5 of the Act apply automatically in the event an order under Section 4 of the Act is passed. Section 4 of the Act contains a non obstante clause. The said provision would, thus, apply notwithstanding anything contained in any agreement or any other Act for the time being in force. The Act is a

special Act whereas the Transfer of Property Act is a general Act and in that view of the matter also Section 51 of the Transfer of Property Act will have no application and the consequences contained in Section 5 would prevail."

43. The Hon'ble Supreme Court in **Hardev Singh v. Gurmail Singh (dead) by LRs.**, (2007)2 SCC 404, while interpreting the scope of provisions of Sections 41 and 42 of the Property Act, has laid down as under :-

"9. Application of Section 41 of the Act is based on the law of estoppel to the effect that if a man has represented that the transferor consents to an act which has been done and that he would not offer any opposition thereto, although the same could not have been lawfully done without his consent and he thereby induces others to do that from which they might have abstained, he could not question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

10. The ingredients of Section 41 of the Act are :

- (1) the transferor is the ostensible owner;*
- (2) he is so by the consent, express or implied, of the real owner;*
- (3) the transfer is for consideration;*
- (4) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.*

11. Section 43, on the other hand, embodies a "rule of feeding the estoppel" and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts thereupon and it is immaterial whether the transferor acts bona fide or fraudulently in making the representation.

12. In order to get the benefit of the said provision, the conditions which must be satisfied are :

(1) the contract of transfer was made by a person who was competent to contract; and

(2) the contract would be subsisting at the time when a claim for recovery of the property is made.

13. However, the provisions would have no application if the transfer was invalid as being forbidden by law or contrary to public policy, as envisaged under Section 23 of the Contract Act. Thus, no estoppel can be pleaded contrary to the provisions of a statute. The "rule of feeding the estoppel" shall apply in absence thereof."

44. In view of the authoritative pronouncements of the Hon'ble Supreme Court, question No. 2 is answered against the petitioners, by holding, that the provisions of the special statute, would override the provisions of Section 41 of the Property Act.

14.2 In view of the above, it is held that petitioners No.2 to 13 are not entitled for protection under Section 41 of the 1882 Act.

15. In the light of above discussion, I find no merit in the present writ petition. Resultantly, the instant writ petition fails and the same is, accordingly, dismissed.

16. All pending application/s, if any, shall also stand closed.

February 27, 2025
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No