
(1983) 04 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 187/73

Balveer Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 07-04-1983

Acts Referred:

Specific Relief Act, 1963 — Section 9

Transfer of Property Act, 1882 — Section 106, 111, 116, 117

Citation : (1983) WLN 476

Hon'ble Judges : Dwarka Prasad Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dwarka Prasad Gupta, J.—In this petition the petitioners have challenged the validity of the order of the Board of Revenue for Rajasthan at Ajmer dated August 28, 1972.

2. The petitioner filed a suit for possession u/s 183 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as "the Act") on October 4, 1958 in the court of the Sub-Divisional Officer, Phalodi, alleging that agricultural lands comprised in Khasra Nov 62 and 62/1, including the Pipalia well situated in village Kotra, Tehsil Osian District Jodhpur was under the tenancy of the plaintiffs, who held a "Bapi Patta" dated December 4, 1942 in respect of the aforesaid agricultural lands, including the Pipalia well. Defendant Bhura was allowed by means of an agreement dated September 12, 1950, produced in the court of the Assistant Collector, Jodhpur, to continue to remain in possession of the agricultural lands in question as a sub-tenant thereof for a period of two years. The plaintiffs alleged that after the expiry of the aforesaid period of two years, they were unable to obtain possession of the agricultural lands in dispute from Bhura because of the promulgation of the Rajasthan Protection of Tenants Ordinance. According to the plaintiffs, Bhura was holding possession of the lands in dispute since Jeth Sudi 15, Samvat 2006 as a trespasser and without authority of law and it was

asserted that the plaintiffs were entitled to obtain possession of the lands in question from Bhura u/s 183 of the Act. In his written-statement, filed on October 25, 1950, defendant Bhura denied the execution of the alleged agreement dated September 12, 1950 and stated that he was in possession over the agricultural lands in dispute as a khatedar tenant thereof. It was also stated on behalf of Bhura that in case the plaintiffs considered him to be a sub-tenant, then a suit for eviction u/s 180 should have been brought and not one u/s 183 of the Act. Bhura also asserted that an application for a declaration that he was the khatedar tenant of the lands in dispute was filed by him before the Assistant Collector, Phalodi and the same was pending in that court.

3. Probably realising that in view of the allegations made in the plaint itself that the agricultural lands in dispute were let to Bhura as a subtenant thereof, by virtue of the agreement dated September 12, 1950, and as such a suit u/s 183 for dispossession of a trespasser may not be held to be maintainable, the plaintiffs filed an application on May 11, 1964 u/s 209 of the Act praying that in case Bhura was not held to be a trespasser but was considered to be a tenant from year to year, then the suit may be deemed to have been filed u/s 180(1)(b) and (c), of the Act and may be decreed on that basis.

4. The Sub-Divisional Officer, Phalodi, by his judgment dated April 3, 1967 held that the execution by the parties of the, agreement dated September 12, 1950 was proved. He also held that after the expiry of the period of two years, Bhura defendant became a tenant holding over from year to year and he could not be considered to be a trespasser. The Sub-Divisional Officer, therefore, passed a decree in favour of the plaintiffs and against the defendant Bhura for possession u/s 180(1)(b) of the Act and the plaintiffs were also held entitled to get rent at the rate of double the agreed yearly rent, in respect of the agricultural holding in dispute.

5. An appeal was filed by Bhura before the Revenue Appellate Authority, Bikaner, who held that Bhura was admitted as a sub tenant by the plaintiffs in respect of the lands in dispute and on the coming into force of the Rajasthan Tenancy Act in the year 1955, Bhura defendant became a khatedar tenant, by virtue of the provisions of Section 19(1)(a) thereof as he was recorded as a sub-tenant in the Girdawari of Samvat year 2012 and in this view of the matter the plaintiffs' suit for possession could not be decreed. It was also held by the Revenue Appellate Authority that after the promulgation of the Rajasthan (Protection of Tenants) Ordinance 1949 and until the coming into force of the Rajasthan Tenancy Act, Bhura remained as a statutory tenant and he could not be a trespasser. The Revenue Appellate authority by its order dated September 21, 1968 accepted the appeal of Bhura defendant and dismissed the plaintiffs' suit for possession.

6. The plaintiffs preferred a second appeal before the Board of Revenue. The Board of Revenue accepted the findings of the two courts below that Bhura was in cultivatory possession of the lands in dispute and the compromise agreement dated September, 12, 1950 was, entered into by the parties. According to the

decision of the Board of Revenue, Bhura was a sub-tenant in respect of the lands in dispute from Samvat year 2004 and that he continued to be a sub-tenant at the time of the coming into force of the Rajasthan Tenancy Act and thereafter he continued holding over as a sub-tenant from year to year. The Board, relying upon the admission of the plaintiffs held the sub-tenancy created in favour of Bhura by the compromise agreement dated September 12, 1950, continued by the operation of the statute until the commencement of the Rajasthan Tenancy Act and that even if his name was not entered in the Annual Register, Bhura was conferred khatedari rights u/s 19(1)(a) of the Act, by operation of law on the basis of the entry in the Record of Rights. The Board, therefore, dismissed the appeal filed by the plaintiffs.

7. In this writ petition, the principle argument advanced by the learned counsel for the petitioner is that the Board of Revenue erred in holding that khatedari rights were conferred upon Bhura defendant by operation of law u/s 19(1)(a) of the Act, merely on the admission of the plaintiffs that he was admitted as a sub-tenant in respect of the lands in dispute for a period of two years in Samvat year 2004. According to the learned counsel, an entry in the Annual Registers as sub-tenant was a pre-requisite condition for conferment of khatedari rights on Bhura respondent u/s 19(1)(a) of the Act. Learned counsel submitted that in the absence of an entry showing Bhura respondent as a sub-tenant in the Annual Registers, which were current at the time of the commencement of the Rajasthan Tenancy Act, and in the absence of a declaration to that effect by the Sub-Divisional Officer, khatedari rights could not have been conferred upon Bhura respondent and the suit of the plaintiffs could not have been dismissed on this ground. Learned counsel submitted that the suit should have been decreed u/s 180(1)(b) of the Act, if it was held that Bhura was a tenant holding over. In the alternative, it was argued by the learned counsel for the petitioners that after the expiry of the period of his sub-tenancy, Bhura respondent became a trespasser and the suit for possession should have been decreed u/s 183 of the Act.

8. So far as the question of application of Section 19(1)(a) is concerned, there can be no doubt that an entry as a sub-tenant in the Annual Registers current at the time when the Rajasthan Tenancy Act came into force was necessary conferment of khatedari rights upon Bhura defendant. It is not his case that his name was entered as a subtenant in the Annual Register, which was in force in Samvat year 2012. It may be observed that the Rajasthan Tenancy Act came into force on October 15, 1955 and as such the relevant point of time when the name of the defendant should have been found to be entered in the Annual Registers as a sub-tenant was October 15, 1955. If such an entry in the Annual Registers current at that time would have been produced, then no question of an enquiry into the correctness or otherwise of such an entry could have arisen and Section 19(1)(a) would have become applicable and khatedari rights would have been automatically conferred upon the respondent Bhura with effect from April 5, 1959, when the amendment containing Section 19(1)(a) was introduced in the Act.

9. Even in his written-statement, it was not Bhura's case that there was automatic confirmation of Khatedari rights upon him by virtue of the provisions of Section 19(1)(a) nor a copy of the relevant entry in the Annual Register, which was current on October 15, 1955, has been produced on the record. As a matter of fact, the case of Bhura in his written-statement was that an application for conferment of khatedari rights and for making an entry in his favour as a khatedar tenant of the lands in dispute, had already been filed by him and the same was pending for consideration before the Assistant Collector. Thus, it appears that Bhura's case fell u/s 19(1)(b), as according to him he was a sub tenant of the lands in dispute but his name was not entered as a sub-tenant in the Annual Register current at the relevant time. It is possible that he might have made an application u/s 19(2) claiming that khatedari rights had accrued to him and seeking a declaration that khatedari rights be conferred upon him by virtue of the provisions of Section 19(1)(b) of the Act, with effect from April 5, 1959.

10. In *Haji Sk. Subhan Vs. Madhorao*, while interpreting a provision contained in the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, which required land recorded as "Sir" or Khudkasht in the annual papers for the years 1948-49 for conferment of khatedari rights, their lordships of the Supreme Court observed that what was required under the law was that the land should have been actually recorded as a "Sir" or khudkasht in the annual papers of the year 1948-49 and not that it ought to have recorded as such but was not so recorded. In view of the express provisions contained in Section 19(1)(a) of the Act, the person, on whom khatedari rights were to be automatically conferred by operation of Jaw under that provision, it was necessary that he should be entered in the Annual Registers current at the time of the commencement of the Act as a subtenant. If this essential condition was not fulfilled, there could not be an automatic conferment of khatedari rights upon a sub-tenant u/s 19(1)(a) of the Act. In those cases where a person was in possession of land as a sub-tenant thereof at the relevant time but, his name was not so entered as a sub-tenant in the Annual Register current at that time, the provisions of Section 19(1)(b) would be applicable and the procedure contained in Section 19(2) shall have to be followed. The Board of Revenue, therefore, appears to be in error in holding that the case of the respondent Bhura fall within the ambit of Section 19(1)(a) of the Act, on the basis of the admission of the plaintiffs. In my view, even the admission of the plaintiffs could not be a substitute, for an entry in the Annual Register as a sub-tenant, which was a pre-requisite condition for the application of the provisions of Section 19(1)(a) of the Act.

11. However, the contention of Mr. R.N. Bishnoi, appearing on behalf of respondent Bhura, is that the case of respondent Bhura was covered under the provisions of Section 19(1-A) of the Act, which came into force with effect from April.19, 1961; According to the provisions contained in Section 19(1-A), a person referred to in Section 19(1), namely, a sub tenant or a tenant of

khudkasht would become a khatedar tenant of the land held by him from the date of commencement of the Rajasthan Tenancy (Amendment) Act, 1961 that is April 5, 1961, if he did not acquire khatedari rights u/s 19(1) before the aforesaid date or in case no proceedings for ejectment Under Clause (a) or Clause (d) of Section 180(1) were pending on the aforesaid date.

12. In the first place, it was argued by Mr. L.R. Mehta, counsel for the petitioners, that the provisions of Section 19(2) of the Act would be applicable to a case falling u/s 19(1A) and such a person was required to file an application before the Assistant Collector and that in the present case although it has been asserted on behalf of the respondent Bhura that an application was filed by him for a declaration regarding conferment of khatedari rights, yet no order of the Assistant Collector has been produced to show that such a declaration was ever made in his favour. In the second place, it was submitted that the suit for possession in the present case was filed on October 4, 1958 and as the proceedings for ejectment had been started earlier and the same were pending at the time of the commencement of the Rajasthan Tenancy (Amendment) Act, 1961 and so respondent Bhura could not acquire khatedari rights u/s 19(1-A) of the Act. In the third place, it was submitted by the Shri Mehta that Section 19(1-A) is prospective and would confer khatedari rights only with effect from April 5, 1961. If Bhura had become a trespasser during the intervening period, on account of the fact that the Rajasthan (Protection of Tenants) Ordinance had ceased to exist and if he continued to remain in possession of the land in dispute thereafter without any authority of law, he was not entitled to the conferment of khatedari rights under Sub-section (1-A) of Section 19.

13. As regards the first ground advanced by Mr. Mehta it would be proper to read Section 19, as substituted by Act No. 7 of 1959, which came into force with effect from April 5, 1959 and as subsequently amended by Act No. 12 of 1961 which came into force with effect from April 5, 1961. Section 19, amended as aforesaid, reads as under:

19. Conferment of rights on certain tenants of Khudkasht and subtenants"

(1) Every person who, at the commencement of this Act,--

(a) was entered in the annual registers then current as a tenant of khudkasht or sub-tenant of land other than grove land, or

(b) was not so entered but was a tenant of Khudkasht or subtenant of land, other than grove land, shall as from the date of commencement of the Rajasthan Tenancy (Amendment) Act, 1959, hereafter in this Chapter referred to as the appointed date become, subject to the other provisions contained in this chapter, the Khatedar tenant of such part of the land held by him as does not exceed the minimum area prescribed by the State Government for the purpose of Clause (a) of Sub-section (1) of Section 180 or exceeds the maximum area from which such person is liable to ejectment Under Clause (d) of the said sub-section of the said section and rights in improvements in that part of the said land shall also accrue

to such persons:

Provided that Khatedari rights or rights in improvements shall not so accrue--

(i) if such part of the said land is held from any of the persons enumerated in Section 46, or

(ii) if such rights therein may not accrue under the proviso to Sub-section (1) of Section 15 or u/s 15-A or u/s 15B or u/s 16, or

(iii) if such person, has, after the commencement of this Act and before the appointed date, ceased to be such tenant of Khud kasht or sub tenant by virtue of-lawful surrender or abandon ment in accordance with the provisions of this Act or because of his having been ejected in accordance with those provisions by and under the decree or order of a competent revenue court.

(1A) Subject to the exceptions contained in the proviso to Sub-section (1), every person referred to in that sub-section shall, as from the date of commencement of the Rajasthan Tenancy (Amendment) Act 1961, hereafter in this chapter referred to as the "appointed day" become, subject to the other provisions contained in this chapter, the khatedar tenant of that part of land held by him in which he has not acquired khatedari rights, under Sub-section (1) before the appointed, day, no proceedings, for ejectment under Clause (a) or Clause(d) of Sub-section (1), of Section 180 shall have been started within the time limit prescribed by Section 182A or if on that day no such proceedings previously started might have been pending.

(2) Every tenant of Khudkasht or sub tenant referred to in Clause (b) of Sub-section (1) claiming that the rights mentioned in that Sub-section accrued to him on the appointed date in the whole or any part of his holding shall within two years of that date and on payment of a court-fee of twenty five naye paise, apply to the Assistant Collector having jurisdiction, praying for a declaration that such rights accrued to him as aforesaid, and the provisions of Sub-section (5) of Section 15 shall apply to such application and such tenant of Khudkasht or, sub-tenant shall not be regarded to have become the Khateder tenant of his holding or part, as the case may be, until he has obtained the declaration so prayed for.

(3) In respect of land in which rights accrue to him under Sub-section (1) on..Sub-section (1-A):

(a) every tenant of khudkasht in relation to the estate-holder who let out such khudlkasht, and

(b) every sub-tenant, in relation to--

(i) the State Government, if his tenant-in-chief held the land sub-let by the latter from the State Government, or

(ii) the estate-holder, if such tenant-in-chief held such land from an estate-holder, shall, as from the appointed date, be entitled to all rights conferred, and

be subject to, all liabilities imposed on a Khatedar tenant by this Act.

(4) Every tenant of khudkasht, or sub-tenant to whom rights accrue under Sub-section (1) or Sub-section (1-A) shall be bound to pay to his land-holder compensation determined in accordance with the provisions of this Chapter.

Provided that such tenant or sub-tenant may, within 3 years of the appointed date intimate in writing to the Assistant Collector having jurisdiction that he does not wish to acquire khatedari rights on payment of such compensation, in which case he shall not acquire khatedari rights or be liable to pay compensation and he shall continue as tenant of khudkasht or sub-tenant as heretofore.

14. Now, a closer reading of the aforesaid provisions go to show that Sub-section (2) of Section 19 is applicable only to the case of a tenant or subtenant covered under Clause (b) of Sub-section (1) of that section and not to a case covered under Sub-section (1-A) of Section 19. It may be pointed out in this respect that where the legislature intended to refer to the conferment of khatedari rights, both under Sub-sections (1) and (1-A) of Section 19 then both the aforesaid subsections have been specifically referred to as was done in Sub-Section (3) and (4) of Section 19. Further, it may be observed that in Sub-section (2) Clause (b) clause (a) of Sub-Section. (1) has been specifically referred to, which goes to show that Sub-section (2) of Section 19 is neither applicable to clause (a) of Sub-section (1) or Sub-section (1 A) of Section 19. It is only in cases covered by clause (b) of Sub-section (1), where a person was a tenant of khudkasht or Sub-tenant of land at the time of commencement of the Act but was not so entered, that an application is to be made by such person to the Assistant Collector having jurisdiction for his having acquired khatedari rights. Section 30-A, which was introduced in the Act by the Amending Act No. 12 of 1961 along with Sub-section (1-A) of Section 19 provides that any application made u/s 19, apparently under Sub-Section (2) thereof and pending on the date of the coming into force of the Amending Act. No. 12 of 1961 i. e. on April 5, 1961, shall be consigned to record without passing any order. It has also been provided therein that if an application made u/s 19 was already disposed of before April 5, 1961, then the decision on such applications shall be operative and shall be given effect to. A combined reading of the provision of Section 19 and 30 A goes to show that any application made under Sub-section (2) of Section 19, in a case covered by clause (b) of Sub-section (1) of Section 19 shall be consigned to record without passing any order, if such an application was pending on April 5, 1961, but all orders passed prior to April 5, 1961 on application filed u/s 19 (1) shall be given effect to. The reason for making such provision is apparent, because Sub-section (1-A) of Section 19 was introduced on April 5, 1961 by Amending Act No. 12 of 1961 and thereafter it was not necessary for a tenant of khudkasht or a Sub-tenant, referred to in clause (b) of Sub-section (2) of Section 19, to obtain a declaration from the assistant Collector and such a person has been put at par with the person covered under clause (a) of Sub-section (1) of sub Section 19. According to the provisions of Sub-section (1-A) of Section 19, a person who was

a tenant of khudkasht or a Sub-tenant of land at the time of the commencement of the Rajasthan Tenancy Act, became entitled, as of right, to the conferment of khatedari rights, subject to the exceptions given in Section 19 (1) and also subject to the provisions contained in Chapter III-A of the Act, irrespective of the fact as to whether such a person was entered in the Record of Rights as a tenant of khudkasht or a Sub-tenant of the land at the time of commencement of the Rajasthan Tenancy Act, became entitled, as of right to the conferment of khatedari rights, subject to the exceptions given in Section 19(1) and also subject to the provisions contained in Chapter III-A of the Act, irrespective of the fact as to whether such a person was entered in the Record of Rights as a tenant of khudkasht or a sub tenant of the land at the time of commencement of the parent Act. Thus, the only condition required to be fulfilled, subject to conditions other contained in Section 19 and in Ch II-A, for conferment of khatedari rights u/s 19 is that the person concerned should have been a tenant of khudkasht or a Sub-tenant of land on October 15, 1955 i.e. the date of the commencement of the Rajasthan Tenancy Act. Learned Counsel for the petitioners submitted that the clause "subject to other provisions contained in this Chapter", occurring in Sub-section (1-A) of Section 19, also referred to Sub-Section (2) of Section 19 and according to the learned Counsel a person falling within Sub-section (1-A) was also required to make an application under Sub-section (2) for conferment of khatedari rights I am unable to agree with this contention, because if that would have been the intention of the legislature that person falling within the four corners of Sub-Section (1-A) of Section 19 should make an application to the Assistant Collector seeking a declaration regarding the conferment of khatedari rights, as contemplated in Sub-Section (2) of Section 19 should make an application to the Assistant Collector seeking a declaration regarding the conferment of khatedari rights, as contemplated in Sub-Section (2) of Section 19, then such a provision was already contained in (Clause b) of Sub-section (1) of Section 19 read with Sub-section (2) of that section and in that event Sub-section (1-A) would not have at all been necessary. It may be pointed out that person who was entered in the annual registers, which were current at the time of the commencement of the Rajasthan Tenancy Act, as a tenant of khudkasht or as a sub-tenant of land, would be conferred khatedari rights with effect from April 5, 1959, as provided in Section 19(1). The conferment of khatedari rights upon such a person was automatic as nothing further was required to be done in the matter by such a tenant of khudkasht or sub-tenant. It was not with the intention of doing away with the pending proceedings relating to such tenants of khudkasht or sub-tenants of land, who were holding land in that capacity at the time of the commencement of the Rajasthan Tenancy Act but were not so entered in the annual registers current at the relevant time and who might have submitted an application under Sub-section (2), but also to benefit such tenants of khudkasht or sub-tenants who might not have submitted an application u/s 19(2) of the Act, that provisions of Sub-section (1A) were introduced in Section 19. In all such cases of persons, who were tenants or khudkasht or sub-tenants at the time of the commencement of the Rajasthan Tenancy Act, but who were

not so entered in the annual registers current at that time, that Sub-section (1-A) of Section 19 conferred khatedari rights with effect from April 5, 1961, Moreover, Section 30-A further provided that if such a person had already submitted an application under Sub-section (2) of Section 19 and the same would have been pending at the time of the coming into force of the Amending Act No. 12 of 1961, then such application shall be consigned to record without passing any order in respect thereof If the pending applications, already file by such persons under Sub-section (2), were to be consigned to record without any orders after Sub-section (1-A) was introduced in Section 19 by the Amending Act No. 12 of 1961, and khatedari rights were to be conferred on all such persons who were tenants of khudkasht or subtenants of land at the time of the commencement of the Rajasthan Tenancy Act by operation of law with effect from April 5, 1961, irrespective of the fact as to whether their names were entered in the annual registers at that time or not, then nothing further was to be done by the tenant of khudkasht or sub-tenant of land for becoming a khatedar tenant of his holding. Section 20 provides that the land holder or the person from whom such tenant of khudkasht or sub-tenant holds land may apply to the Sub-Divisional Officer in the prescribed form and in the prescribed manner, payment of compensation on account of the accrual of khatedari rights to the tenant of khudkasht or the sub-terant. Sub-section (4) of Section 19 only makes, such tenant of khudkasht or sub tenant, to whom khatedari rights have accrued under Sub-section (1) or (1-A) of Section 19, liable for payment of such compensation as may be determined Under Sections 20 and 25 and other provisions contained in Chapter III-A,

15. A controversy was also raised that as the suit was filed, in the present case, earlier to the coming into force of Sub-section (1-A) and as such khatedari rights could not accrue to defendant Bhura u/s 19(1-A). However, it appears from a perusal of the provisions of Sub-section (1-A) of Section 19, that a suit or proceedings for ejectment Under Clause (a) or (b) of Sub-section (1) of Section 180 which might have started earlier and might be pending, would bar the conferment of khatedari rights upon such sub-tenant under Sub-section (1-A) of Section 19. But a reference to the original gazette notification containing the Amending Act No. 12 of 1961, discloses that the bar against conferment of khatedari rights related to proceedings for ejectment Under Clause (a) or Clause (d) of Sub-section (1) of Section 180, if such proceedings had started earlier to the time prescribed u/s 182-A and if the same might be pending. This position is also confirmed by a perusal of the provisions of Section 182-A, which prescribes the limitation of 3 years from the commencement of the Act for filing an application of ejectment Under Clause (a) or Clause (d) of Section 180. It appears, upon reading the provisions of clauses (a) and (d) of Section 180 and Section 182-A together, that applications for ejectment could be filed under the provisions of Clauses (a) and (d) of Section 180 within 3 years of the commencement of the Rajasthan Tenancy Act i.e. upto October 15, 1958 and thereafter no such application for ejectment of a tenant or sub-tenant on the

grounds enumerated in Sub-sections (a) and (d) of Section 180 could be entertained. Thus, so far as Clause (b) of Section 180 is concerned, which covers the case of a tenant or sub-tenant holding over from year to year, no exception was created for the application of the provisions of Sub-section (1-A) of Section 19; and in the case of a person who was a tenant of khudkasht or a sub-tenant at the time of the commencement of the Rajasthan Tenancy Act, Sub-section (1-A) of Section 19 conferred khatedari rights with effect from April 5, 1961, irrespective of the fact that his case was covered Under Sub-section (b) of Section 180 or that such tenant or sub tenant was holding over from year to year. Thus, in my view, there was no impediment in the accrual of khatedari rights to Bhura respondent Under Sub-section (1-A) of Section 19, notwithstanding the fact that he was a sub-tenant holding over from year to year.

16. Another argument which was advanced by the learned counsel for the petitioners was that Section 19(1-A) was prospective in its effect and it conferred khatedari rights only w e.f. April 5, 1961 and as such it could not have been applied in the case of Bhura respondent as he was holding the land in dispute without the consent of the landlord and, therefore, without lawful authority after Jeth Sudi 15, Smt. 2008. It was contended by the learned counsel that no suit could be brought by the petitioners for ejectment of Bhura respondent immediately after the expiry of 2 years period, for which a sub-lease was granted to him by the compromise or agreement dated September 12, 1950, because of the fact that the provisions of the Rajasthan Protection of Tenants Ordinance were in force at the time of the expiry of two years period of sub-lease and that as soon as the aforesaid Ordinance ceased to be operative, the petitioner's right to eject Bhura respondent and obtain possession of the land in dispute from him received, as the land-lords had not assented to the continuance of possession of Bhura respondent after Jeth Sudi 15, Svt. 2008. This, submission of the learned counsel is also untenable. The Rajasthan Protection of Tenants' Ordinance, 1949, which came into force on 21-6-1949 was already in existence at the time when the compromise agreement dt. 12-10-1950 was entered into by the parties and a sub-lease for 2 years was created by the consent of both the parties. Moreover, the compromise agreement, a copy of which has been produced on the record as Annexure 7, does not provide that Bhura was then admitted as a sub-tenant for the first time for a period of 2 years; on the other hand it appears from a perusal of the contents of compromise Annexure 7 that Bhura was already in cultivatory possession of the land in dispute and Clause (6) of the agreement provided that in any event the petitioners would not be entitled to dispossess Bhura within the period of two years from Jeth Sudi 15, Smt. 2008 and further that the parties would be free to enter into an agreement thereafter. Section 4 of the aforesaid Ordinance provided that so long as the Ordinance remained in force, no tenant would be liable to be ejected or dispossessed from his holding or any part thereof. A "Tenant" was defined in Section 2 of the Ordinance as a person by whom rent was payable and included a sub-tenant. It is not in dispute that the provisions of the Ordinance continued to remain to be operative until the

provisions of the Rajasthan Tenancy Act came into force. The definition of 'tenant' contained in Clause (43) of Section 5 of the Rajasthan Tenancy Act, is identical to the definition of 'tenant' contained in Section 2 of the Rajasthan Protection of Tenants' Ordinance, as a 'tenant' u/s 5(43) of the Act means a person by whom rent is or would be payable and include a Sub-tenant, but does not include a trespasser. Thus, as soon as the Rajasthan Tenancy Act came into force the respondent Bhura, who was a Sub-tenant of the land in dispute, at the time of the commencement of that Act, became a 'tenant', as defined in Section 5(43) thereof, and he continued to hold the land in that capacity until the promulgation of the Amending Act No. 12 of 1961 w.e. f. April 5, 1961, with the consequence that Khatedari rights automatically accrued to him on the introduction of Sub-Section (1-A) in Section 19. Thus, although Section 19(1-A) is prospective in nature, in the sense that Khatedari rights stood conferred upon the tenant of khudkasht or the Sub-tenant from the date of enforcement of the said provision, but the requirement for the application of the Sub-Section. (1-A) is that such person should fulfil the condition that he was a tenant of khudkasht or a Sub-tenant of land on the date of the commencement of the parent Act, namely, the Rajasthan Tenancy Act. Section 19(1-A) would be attracted if the aforesaid condition, specified therein is fulfilled. There can be no doubt in the present case that Bhura was in possession of the land in dispute as a Sub-tenant thereof, on the date of the commencement of the Rajasthan Tenancy Act, on the basis of the admission of the petitioners themselves and further that he continued to remain in possession as such until January 5, 1961, the date of promulgation of the Amending Act No. 12 of 1961. The conferment of Khatedari rights on the Sub-lessee in such a case was automatic, by virtue of the provisions of Sub-Section. (1-A) of Section 19 and it was wholly immaterial as to whether the Sub-tenant continued to remain in possession with the assent of the landlord or without his consent, but on account of the protection afforded to him by the Ordinance of 1949. Even if Bhura continued as a Sub-tenant, on account, of the statutory protection afforded to him by the provisions of the Ordinance, then also he was entitled to get benefit of the provisions of Section 19(1-A), so far the question of Khatedari rights is concerned, because of the fact that he was Sub-tenant of the land in dispute on the date of the commencement of the Rajasthan Tenancy Act.

17. Coming to the last argument advanced by the learned counsel for the petitioner that after the expiry of the period of lease or Sub-lease, the respondent Bhura became a trespasser, as he retained possession of the land in dispute thereafter without legal authority and as such he was liable to be ejected, if not u/s 180(1)(b), then u/s 183. As a matter of fact, the suit in the present case was initially filed u/s 183, treating Bhura respondent as a trespasser, but at the final stage it was submitted on behalf of the petitioner that if respondent Bhura may not be considered to be trespasser and if he is considered to be a Sub-tenant holding over, then the suit should be decreed u/s 180(1)(b) of the Act. In this Court also, the initial argument of the learned counsel for the petitioners was

that the as the case of Bhura respondent was not covered by the provisions of Section 19(1-A) and no declaration was made u/s 19 (1)(b) read with Section 19(2) by the Assistant Collector regarding the conferment of khatedari rights upon him, the suit should have been decreed against respondent Bhura as a Sub-tenant whose lease for two years had explned. But after realisation of the fact that although the case of respondent Bhura, may not be covered u/s 19(1)(b) yet the same would be covered by the provisions of Section 19 (1-A) of the Act, then an alternative submission was made by the learned counsel that Bhura respondent should be treated as a trespasser, because he illegally retained possession of land without any lawful authority after the expiry of the period of the sub-lease and a decision by a seven member bench of the Board of Revenue for Rajasthan in the case of Bhalla v. Mst. Gulab Kanwar (2) was relied upon by the learned counsel in support of his aforesaid contention. Learned Counsel for the petitioners contended that at the time when Bhura was admitted as a Sub-tenant, the provisions of the Marwar Tenancy Act, 1949 were in force and the petitioner were entitled to file an application for ejectment u/s 92 (b), In the Marwar Tenancy Act, althought a Sub-tenant was not specifically referred to as being included within the definition of a ?tenant? contained in Section 3 (1), yet there is no reason to hold otherwise because a ?tenant? has been defined in Sub-section (10) of Section 3 of the Marwar Tenancy. Act, as a jperson who holds land of another person and who is liable for payment of rent. Sections 91, 92 and 93 of the Marwar Tenancy Act contained provisions for ejectment of tenant and Sub-tenants. Section 91 contained a general provision for ejectment of a tenant from his holding, while Section 92, which is more relevant for our present purpose, ran as under:

92.--A ghair-khatedar shall also be liable to ejectment on the application of lthe land lord on any of the following grounds, namely:

- (a) that he is a tenant holding from year to year;
- (b) that he is a tenant holding under a lease for period which has expired or will expire before the end of the current agricultural year.

The aforesaid provision shows that tenant holding from year to year or a tenant holding after the expiry of the period of lease, has been described as a ?ghair khatedar? tenant Section 12 provided that a tenant other than a Sub-tenant, who is not khatedar, shall be a ?ghair khatedar? tenant. Thus, a tenant holding over after the period of his lease has expired would fall within the definition of ? ghair-khatedari tenant. It is apparent from the aforesaid provision that a tenant, holding land after the expiry of the period of his lease, did not automatically become a trespasser on the expiry of the period of his lease, but he continued to remain as a tenant thereof and if he did not acquire khatedari rights and was not a sub-tenant holding land after the expiry of the period of his sub-lease would not have ceased to be a sub-tenant and an application for his ejectment could have been filed by the tenant ?in-chief u/s 93, read with Section 92 (b) of the Marwar Tenancy Act, after the expiry of the period of 2 years from the date of

agreement yet he was not entitled to do so on account of the provisions of the Rajasthan Protection of Tenants? Ordinance 1949 which remained in force during the entire period. until the Rajasthan Tenancy Act came into force. But when the Rajasthan Tenancy Act came into force, the Marwar Tenancy Act was repealed and the liability of the sub-tenant to be ejected on account of the provisions of Section 93 read with the Section 92(b) of the Marwar Act ceased to be effective, as soon as the Rajasthan Tenancy Act came into force.

18. It may be pointed out here that Chapter V of the Rajasthan Act relates to surrender, abandonment, and extinction of tenancies. A tenant or a sub-tenant can surrender his tenancy u/s 55 or can abandon the tenancy u/s 60, by ceasing to cultivate the land which was subject matter of lease, and leaving the neighbourhood or otherwise, in accordance with the provisions of Section 60 (1). Section 63 of the Act outlines the various methods in which the interest of a tenant in respect of his holding may be extinguished. It includes surrender and abandonment, as provided in Sections 55 and 60 respectively, but there is no provision in Section 63 for extinguishment of tenancy by efflux of time. The difference between agricultural tenancies covered by the Act and the urban tenancies governed by the provisions of the Transfer of Property Act in this respect, has to be borne in mind. Section 111(a) of the Transfer of Property Act provides that a lease of immovable property can be determined by efflux of time limited thereby. But in the case of agricultural tenancies governed by the Act, Section 63 does not contain any provision corresponding to that contained in Section 111(a) of the Transfer of Property Act. As such the interest of a tenant or sub-tenant in his agricultural holding does not become extinguished merely on account of the fact that the time of lease or sub-lease has expired. Sub-section (5) of Section 63 provides that the interest of a tenant in his holding shall be extinguished when he has been ejected therefrom, in accordance with the provisions of the Act. Section 161 also provides that no tenant shall be ejected from his Holding otherwise than in accordance with the provisions of the Act. The provisions contained in Sections 162 to 180 describe the various contingencies in which a tenant can be ejected from his holding. Now, if a tenant or a subtenant, who was inducted upon agricultural land for a fixed term of years, does not cease to be a tenant after the expiry of the period of lease or sublease, but such a tenant thereafter become a "ghair khatedar" tenant or a tenant holding from year to year. Section 17 of the Act provides that every tenant of land, who is not a khatedar tenant or a tenant of khudkasht or a sub-tenant, shall be ghair-khatedar tenant. Thus, a ghair-kbatedar tenant or a sub-tenant, who holds land from year to year, after the expiry of the period of his lease or sub-lease can be ejected therefrom on other grounds contained in Chapter II of the Act and specifically u/s 180(f)(b).

19. Section 180, as it was originally enacted, was substituted by Act No. 27 of 1956 with effect from September 22, 1956. Clauses (b) and (c) of Sub-section (1) of Section 180, as they then stood, were found by this Court to be overlapping and self contradictory in *Kalwa v. Board of Revenue Rajasthan* 1961

RLW 479 in as much as the second part of second Clause (b) and Clause (c) provided different contingencies for ejectment of tenants, which fell under the same class of leases and sub-leases granted after the commencement of the Act.. After the aforesaid judgment was delivered by this Court, the legislature amended Clauses (b) and (c) of Section 180(1) by Amending Act No. 5 of 1962 with retrospective effect from December 30, 1961. The amended Clause (b) of Section 180(1) relates to a tenant or sub-tenant holding from year to year, while clause to relates to a lease or sub-lease granted u/s 45 after the commencement of the Act. Thus all the four clauses of Section 180 (1) have now been made mutually exclusive. Section 180(1)(b), as substituted by Amending Act No. 5 of 1962, runs as under:

180. Additional provisions for ejectment of khudkasht or Ghair-khatedar tenants or sub-tenants.--(1) A tenant of khudkasht or a Ghair khatedar tenant or sub-tenant shall also be liable on application to ejectment on any of the following grounds.--

(a) ...

(b) that be is a tenant or sub-tenant holding from year to year. Provided that no tenant or sub-tenant holding land in the Abu area from year to year shall be liable to ejectment under this clause;

Explanation--For the purpose of Clause (b) a tenant or sub-tenant holding from year to year shall include a tenant or subtenant who remains in possession of the holding after the determination of the lease or sub lease and the lessor or his legal representative accepts rent from the tenants or sub-tenants or otherwise assents to his continuing in possession.

According to the explanation added to clause (b) of Section 180(1), a tenant or sub-tenant, who remains in possession of the holding after the determination of the lease or sub-lease, would be considered to be a tenant or sub-tenant holding from year to year, in case the lessor accepts rent from him or otherwise assents his continuing in possession.

20. The question whether a person who was holding land under a lease for a fixed period and who continues to retain possession of his holding after the expiry of the period of such lease, is a tenant or a trespasser was considered by a Full Bench of the Board of Revenue in Umedi Ram v. Ram Deo (4). It was held by the Full Bench of the Board of Revenue in that case that as there was no provision of extinguishment of tenancy by efflux of time or expiry of period of lease, the tenant could not be held to be a trespasser. u/s 68 of the Act, a person holding land after the expiry of the term of his lease, did not become a trespasser and such a person could not be ejected u/s 83. It was also held in that case that such a tenant or subtenant, retaining possession of his holding after the expiry of the period of lease, can only be ejected u/s 180(1)(b). It was observed that such a tenant even after the expiry of the period of his lease, nevertheless continues to be a tenant for the purpose of ejectment, as he could

not be included in the term "trespasser", as defined in Section 5(4) of the Act. The argument that such a person retaining possession of land after the expiry of the term of his lease remained in possession of land without authority of law, was rejected and it was held that such a person retained possession as a tenant from year to year by operation of law because his tenancy was not extinguished.

21. It may be observed in this connection that a tenant or sub-tenant, retaining possession of land after the expiry of the period of lease, cannot be said to retain possession without lawful authority and cannot be deemed to be a trespasser, because such a person derived the necessary authority for continuing in possession of such land by the operation of law until ejected therefrom in pursuance of a decree for ejectment passed against him by a competent revenue court. As already observed there is no provision in Section 63 for termination of tenancy in respect of agricultural land by efflux of time, and so the tenancy or sub-tenancy, as the case may be, would continue to subsist, irrespective of the fact that the time agreed upon between the parties had come to an end. Yet if such a person, who was holding any lease or sub-lease for a fixed term, continues to retain possession of any such holding after the expiry of the period of his lease, then he shall be a tenant and Section 161 debars dispossession of such person, except in accordance with the provisions of law. The lease of such a person shall be extinguished only on his ejectment from the land of his holding in accordance with the provisions of Clause (v) of Section 63.

22. The aforesaid decision of the Full Bench of the Board of Revenue in Umediram's case (4) was approved by a Division Bench of this Court in *Nandgir v. Board of Revenue, Rajasthan* 1963 RRD 250 and again in *Ram Deo v. Board of Revenue, Rajasthan* 1967 RLW 353 related to a suit for ejectment against a tenant, who was given a lease of land for cultivation on July 1, 1952 for a period of 3 years, but who failed to surrender possession of the leased area on the expiry of the period of his lease. The Board of Revenue held in that case that the tenant, holding over after the expiry of the period of lease, could not be treated as a trespasser and a decree for ejectment could not be passed against him u/s 183 of the Act. It was held by a division bench of this Court that at the time of the expiry of the said lease, the provisions of the Rajasthan Protection of tenants' Ordinance, 1949, put a clog on the right of the land holder to get back possession of his holding from the tenant by ejecting him therefrom in any other manner except as provided in the aforesaid Ordinance. Thus, there was a statutory bar for the land holder to eject his tenant at the relevant time and it could not be held that the tenant retaining possession of land in such circumstances after the expiry of the period of his lease, was holding that and without any lawful authority. Their Lordships of the Division Bench further observed in the aforesaid case as under:

Padamadas, therefore, under such circumstances shall be deemed to be within his rights to retain the possession of the holding even after the fixed term of his tenancy had expired. In such cases, the status of the tenants would be that of a

tenant holding over. The Board has discussed the question from other angles also and we feel that the conclusions arrived at by the Board are correct. Section 63 of the Rajasthan Tenancy Act provides for the extinction of tenancies. We do not find any provision in the Rajasthan Tenancy Act whereby the tenancy may extinguish with the lapse of time. Under Clause (v) of Section 63 such tenancies which have been created for a fixed term extinguish only when the tenant is ejected from the land in accordance with the provisions of the Rajasthan Tenancy Act. Section 187-B, which is analogous to Section 9 of the Specific Relief Act, affords protection to the tenants and gives him a right to get the possession of the land back if he is ejected therefrom without taking recourse to the process of law. These provisions of the Rajasthan Tenancy Act make the position of the tenant for a fixed term quite clear that his tenancy does not extinguish simply because his period of the lease has expired, the tenancy, in such a case, comes to an end only when the tenant is ejected from his holding and till then he shall be taken as tenant holding over and his possession in the eye of the law will be "judicial" possession and will be protected from unauthorised ejection.

(emphasis added)

In Ramdeo's case 1967 RLW 353, a Division Bench of this Court approved the decision of the Full Bench of the Board of Revenue in Umedi Ram's case 1961 RRD 109 that a person holding agricultural land under a lease for a fixed period, did not become a trespasser in the event of his retaining possession of such land after the expiry of the period of his lease, but he continued to be a tenant holding land from year to year.

23. A larger Bench of the Board of Revenue consisting of 5 members again considered the question of a tenant retaining possession of land after the expiry of the period of lease. Again in Bhalla v. Mst. Gulab Kanwar and Ors. 1974 RRD 281 probably because Section 180(1)(b) was amended and the explanation was added thereto, the larger bench of the Board of Revenue referred to the decision of this Court in Nandgir's case 1963 RRD 250 and Ramdeo's case 1967 RLW 353, referred to above, and held that a tenant holding over after the expiry of the period of his lease is duly authorised to continue his possession over the holding until otherwise ejected therefrom in accordance with the provisions of the Rajasthan Tenancy Act. As regards the explanation added to Section 180(1)(b), it was observed by the larger bench that person holding over after the expiry of the period of his lease, is included in the term "tenant" or "sub-tenant", holding over from year to year, even if such person retains the land let out to him with the assent of the land-lord or the land-lord accepts the rent. It was emphasised by the Board of Revenue in the aforesaid case that a tenancy for a fixed term does not extinguish itself, merely on account of the expiry of the lease, as held by this Court in Nandgir's case 1963 RRD 250 and such a person could not be held to be a trespasser and he is not liable to be ejected u/s 183 of the Rajasthan Tenancy Act, after the repeal of Rajasthan Protection of Tenants Ordinance. Thus, the larger Bench of the Board of Revenue held that a tenant or a subtenant, holding

land after expiry of the period of his lease, became a tenant or sub-tenant holding over and was not a trespasser and that the Full Bench decision of the Board of Revenue in Umediram's case 1961 RRD 109 was still fully applicable, even after amendment of Section 180(1)(b) of the Rajasthan Tenancy Act, by the Amending Act No. 5 of 1962. The aforesaid decision in Bhalla's case 1974 RRD 281 was thereafter referred to a still larger Bench of the Board of Revenue, consisting of 7 members and this time the majority of the members of the Board of Revenue came to a contrary conclusion and held that a tenant or sub-tenant, holding land after the expiry of the period of his lease, was a trespasser and was not a tenant or sub-tenant holding over. In coming to this conclusion, learned Chairman of the Board of Revenue Mr. B.N, Malhan, who gave the majority judgment, appears to have been led away by decisions relating to urban tenancies and observed that although Section 106 of the Transfer of Property Act did not apply to leases of land for agricultural purposes, by virtue of the provisions of Section 117 of that Act, nevertheless Section 106 of the Transfer of Property Act and other sections included in Chapter V of that Act were founded upon reason, equity and good conscience and so the principles thereof were applicable to agricultural leases also. The learned Chairman, however, did not meet the submission made on behalf of the tenant that there was no provision in the Rajasthan Tenancy Act regarding extinguishment of tenancy by lapse of time, as was contained in Section 111 of the Transfer of Property Act. The learned Chairman took the view that there was no sufficient cause for the continuance of the possession of the tenant, even after the expiry of the period of his lease, unless the landlord expressed definite assent to the continuance of possession by the tenant, either by acceptance of rent or otherwise. Another learned member, Mr. B.C. Joseph felt the difficulty that a person in occupation of land must be classified either as some type of tenant or as trespasser and as a tenant or sub-tenant retaining possession after the expiry of the period of his lease, who was not a tenant holding over within the meaning of Section 116 of the Transfer of Property Act or the explanation added to Section 180(1)(b) of the Rajasthan Tenancy Act, such a person could not be put in any of the categories of tenants and must, therefore, be held to be a trespasser. Another member, Shri K.S. Ujjwal, who expressed the minority view, held that the decisions of this Court in Nandgir's case 1963 RRD 250 and Romdeo's case 1967 RLW 353 as also the decision of the Board of Revenue in Umediram's case 1961 RRD 109 and the five member bench decision in Bhalla's case 1974 RRD 281 still held the field and a lessee, on the expiry of the term of his lease, does not become a trespasser, liable to be ejected u/s 183 of the Act. He also held that the addition to the explanation to Section 180(1)(b) did not make any difference, as the same was added only to make Section 180(1)(b) applicable to the ejectment of a tenant or sub-tenant, who continued to retain possession of the holding with the express assent of the landlord, either by acceptance of rent or otherwise, and not for the purpose of making any change in the position of a tenant holding over without such assent. I have carefully read the declarations of the members of the Board of Revenue in the aforesaid case I am of the view that the minority decision of

the Board of Revenue, expressed by Mr. K.S. Ujjawal, Member, appears to depict the correct legal position. The provisions of the Transfer of Property Act, in respect of determination of tenancies by efflux of time, cannot be made applicable to agricultural tenancies by analogy, because of the specific provisions contained in the Rajasthan Tenancy Act regarding the conditions and circumstances in which tenancies relating to agricultural lands could be extinguished. Section 117 of the Transfer of Property Act provides that the provisions of Chapter V of that Act would not apply to leases for agricultural purposes except in so far as the State Government may by notification declare them to be so applicable. Section 111 of the Transfer of Property Act, thus, cannot be applied to agricultural tenancies in Rajasthan even in principle, because of the specific provisions contained in Section 63 regarding the determination or extinguishment of leases relating to agricultural lands. Thus, in the face of the provisions of Section 63, which do not provide for extinguishment of tenancies by efflux of time limited by the lease, it would be proper to apply the provisions of Section 111 of the Transfer of Property Act to agricultural tenancies either by an analogy or by application of principles thereof. It cannot be held that extinguishment of tenancy, in case of an agricultural land, can be effected by efflux of time in appropriate cases as held by Mr. Joseph, Member of the Board of Revenue, because such a decision would obviously be contrary to the express provisions of Section 63. After the expiry of the period of his lease, a tenant or sub-tenant can continue to retain possession of his holding as a "ghair-khatedar" tenant and the retention of possession of land by such tenant or sub-tenant, after the expiry of the period of his lease, cannot be said to be without authority of law. It is only after the extinguishment or determination of the tenancy, holding possession of land thereafter by the former tenant or sub-tenant, could be held to be without any authority of law, so that such person may come within the definition of a trespasser, given in Section 5(44) of the Act; but until the lease is determined by one of the methods provided in Section 63, including surrender, abandonment or ejection in accordance with law, the tenant or sub-tenant continues to be a "ghair-khatedar" tenant or sub-tenant, as the case may be, and it would be erroneous to hold that such a person was merely a trespasser. The application of the principles of English law, where a tenant holding over without the consent of the lessor is known as a tenant on sufferance, could not be applied to agricultural tenancies, as the law applicable to them does not recognise the expiry of the period of tenancy as the point of time for determination or extinguishment of such lease or sub-lease. Where the tenant continues to remain in possession of the holding, after the expiry of the period of his lease, he remains as a tenant holding from year to year, irrespective of the fact as to whether he continues to remain in possession with the consent of the lessor or without his consent because such consent does not make any difference in his status as a tenant under the Rajasthan Tenancy Act. The explanation added to Section 180(1)(b) did not make any change in the situation, as no amendment has been made either in the definition of "tenant" contained in Section 5 or in the provisions of Section 63 of the Act. The

explanation added to Section 180(1)(b) merely enlarged its scope, so as to include within its ambit a tenant or sub-tenant who remains in possession of the holding after the determination of his lease or sub-lease with the express assent of the lessor, either by acceptance of rent or otherwise, for the purpose of filing an application for ejectment. It may be pointed out that the expression used in the explanation is "who remains in possession of the holding after the determination of the lease or sub-lease" and it appears that the net effect of the addition of the explanation is to make the remedy provided by Section 180(1)(b) against a tenant or sub-tenant holding over from year to year, also applicable to a person who is holding over with the assent of the landlord by acceptance of rent or otherwise and whose tenancy has thus been impliedly recognised by the lessor. The amendment made in Section 180(1)(b) by the addition of the explanation does not affect the provisions or enlarge the scope either of Section 63 or Section 183, so to make a tenant or sub-tenant, retaining possession of his holding after expiry of his lease as a trespasser.

24. In *Jodha v. Board of Revenue* 1976 RRD 161, a suit was filed u/s 180(1)(b) for ejectment of a tenant holding over after the expiry of the period of the lease; the Board of Revenue in that case, following the judgment of seven members' bench in *Bhalla's* case held that the sub-tenant was a trespasser and was liable to be ejected u/s 183 of the Act. This Court refrained from expressing any view on the question as to whether such a lessee or a Sub-tenant, who continued to remain in possession of the land after the expiry of the term of his lease, became a trespasser, because in that case a decree for ejectment had to be upheld even if the sub lessee were held to be sub-tenants holding over from year to year, as the suit was filed u/s 180(1)(b), and it was observed as under:

Even if we may not agree with the Board of Revenue that the petitioners became trespassers after the expiry of the term of their sub-lease and they were liable to be ejected u/s 183 of the Act, yet if the possession of the petitioners be considered to be as subtenants holding over from year to year, then a suit for ejectment u/s 180(1)(b) could be filed against them and a decree for the ejectment passed by the Revenue Courts cannot be interfered with by this Courts.

25. However, it was pointed out in that case that on account of the provision of Section 63(1) of the Act, a lease or sub-lease in respect of agricultural holding cannot be terminated by efflux of time or expiry of the term of the lease but the tenancy of such a person would be extinguished only when he is ejected from the holding under due process of law, as provided in Clause (v) of Section 63(1). The division bench observed thus:

According to the provision of Section 116 of the Transfer of Property Act, if the lessee after the termination of the lease continues to remain in possession either with the assent of the landlord or if the landlord accepts rent from such person, then only he becomes a tenant holding over from month to month or from year to year, according to the nature of his tenancy. But on account of the provision of Section 65(1) of the Act, a lease or sub-lease in respect of agricultural holding is

not extinguished merely on account of efflux of time or the expiry of the term of the lease, but Under Sub-section (v) thereof, the tenancy of such a person shall be extinguished only when he is ejected from the land under due process of law. If even after the expiry of the term of his lease, the person who was initially admitted as a tenant for a fixed term of a year continued to occupy the land, he shall be termed as a tenant holding over, because his tenancy has not been determined in accordance with the provisions of Section 63 of the Act. This is the view which was also taken by this Court in Nandgir's case and we have no reason to take a different view in the present case as well.

(emphasis added)

The aforesaid observations go to show that the position in Nandgir's case 1963 RRD 250 was approved by the bench of this Court and was held to be operative even now.

26. In Kishori Lal Vs. Birdhi Lal and Others, which was also a case from Rajasthan, their Lordships of the Supreme Court held that for the purposes of determination as to whether a person was a trespasser or not, within the meaning of Section 5(44) of the Act, it has to be considered whether such a person has taken possession of land or retained possession thereof without authority. In that case it was observed by their Lordships that if a person was left into possession by virtue of an agreement and the land was let out to him on payment of rent, then such person could not be held to be a trespasser. Of course, in that case the question of the lessee or sub-lessee retaining possession after the period of lease, did not expressly arise for consideration, yet it was held that a person could not be considered as a trespasser unless the conditions laid down in Section 5(44) of the Act were manifestly satisfied.

27. Taking the view, which was accepted by the Division Bench of this Court in Nandgir's case 1963 RRD 250 and Jodha's case 1976 RRD 161 that without extinguishment of the tenancy, the lessee or the sub-lessee could not become a trespasser but his further retention of possession over the holding would be considered to be as a tenant holding over, the contention of the learned counsel for the petitioners that the suit should have been decreed u/s 183 against the respondent Bhura treating him to be a trespasser cannot be accepted. In my view, even after the expiry of the term of the sub-lease, the retention of possession by Bhura respondent over the land in dispute must be held to be as a tenant holding over or as a "ghair-khatedar" tenant or sub-tenant and as khatedari rights were conferred upon him with effect from 5-5-1961, by virtue of provisions of Section 19(1-A) of the Act during the pendency of the proceedings, the suit for ejectment against him must fail. On 5-4-1961 Bhura respondent was conferred khatedari rights u/s 19(1-A) and from that date he became khatedar tenant of the lands in dispute. The petitioners are only entitled to compensation and the learned counsel appearing for respondent Bhura expressed his willingness to pay the amount of compensation as may be determined in accordance with provisions of Chapter III-A, by the competent authority. The

petitioners should approach the appropriate revenue authority for determination of the amount of compensation payable to them.

28. I, therefore, hold that the respondent Bhura is entitled to the status of a khatedar tenant in respect of disputed lands, by operation of law u/s 19(1-A) of the Rajasthan Tenancy Act with effect from April 5, 1961. The petitioner may move the appropriate revenue authority for determination of compensation and the respondent has expressed his willingness to pay the same.

29. In the circumstances, the writ petition fails and is dismissed. The parties are left to bear their own costs.