

(2000) 09 BOM CK 0090
In the Bombay High Court
Case No : Writ Petition No. 311 of 1983

Gangadhar Barkul through his legal heirs	APPELLANT
Vs	
Ramjibhai and Another	RESPONDENT

Date of Decision : 18-09-2000

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 6, 8
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 10, 12,
19(2), 20(1), 4
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 102, 58

Citation : (2001) 2 ALLMR 508 : (2001) 3 BomCR 152

Hon'ble Judges : V.K. Barde, J; R.G. Deshpande, J

Bench : Division Bench

Advocate : S.S. Choudhari and V.C. Solshe, for the Appellant; A.S. Bajaj, W.C. Jain for Respondent No. 1 and R.S. Deshmukh, A.G.P., for the Respondent

Judgement

R.G. Deshpande, J.—Communication dated 17-1-1983 bearing No. SSC/EVP/Osmanabad 52.54 issued by the respondent No. 2 Settlement Commissioner for Compensation Pool Properties-cum-Custodian of Evacuee Property, MS Bombay, whereby the Collector has been directed to take necessary steps to hand over the vacant possession of the property in question from the petitioner and hand it over to the respondent No. 1, is the subject-matter of challenge in this petition.

2. Relevant facts to be considered for the purposes of the present petition, are narrated as under:---

The petitioner, an agriculturist, is the legal heir of original cultivator Bajirao, who was cultivating Survey Nos. 239 and 353 admeasuring 33 acres and 21 gunthas and 12 acres and 11 gunthas respectively, of village Yermala from Mohammed Matin and Mohammed Ahmedsaheb. Bajirao, according to the petitioner, was cultivating the land as a tenant much prior to the creation of Pakistan in the year 1947. Mohammed Matin, on partition, migrated to Pakistan and naturally the property held by Mohammed Matin, was declared as an evacuee property.

3. Though Mohammad Matin had left India and his property was declared as evacuee property, Bajirao, the father of the present petitioner, who was cultivating the land as the tenant, got certificate in his favour getting declared his tenancy under the Hyderabad Tenancy Act, 1950 which was subsequently followed by a declaration in his favour as an owner of the property in question as a statutory owner, in pursuance of the provisions of section 38-E of the Hyderabad Tenancy Act, 1950. It would be appropriate at this stage itself to mention that the declaration of ownership in favour of the petitioner was only for the land to the extent of 11 acres and 21 gunthas and 6 acres and 6 gunthas respectively, from field Survey Nos. 239 and 353, mentioned in the previous paragraph.

4. It is necessary to observe that there is no dispute so far as regards the declaration of the property in question as an evacuee property in pursuance of the provisions of the Administration of Evacuee Property Act, 1950 (for short "Act of 1950") and hence, in pursuance of the provisions of section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (for short "Act of 1954") the said property came to be acquired as an evacuee property for rehabilitation of displaced persons. Needless to mention that this property virtually forms a part and parcel of the property brought into compensation pool for being distributed to the persons, in consonance with the aims and objects of the 1954 Act.

5. The respondent No. 1 Ramjibhai Laljibhai, now, represented by his legal representative-wife, happened to be an allottee of this land which was the evacuee property of Mohammed Matin and which undisputedly happened to be in possession of the petitioner.

6. Since a declaration was there in pursuance of the provisions of the evacuee property, necessary proceedings were initiated in respect of that property of the evacuee-Mohammed Matin. In this proceeding, the Deputy Custodian, Evacuee Property, observed specifically that the petitioner could not have claimed the tenancy rights on the property in question as the provisions of the Tenancy Act to be not made applicable to the property so declared as evacuee property. This is the decision which was given by the Deputy Custodian, Evacuee Property, by his order dated September 20, 1953. Having been dissatisfied with this order of the Deputy Custodian, Osmanabad, the present petitioner approached the Revisional Authority i.e. the Additional Custodian, Evacuee Property, Hyderabad Division, by filing Revision Application No. 14/EN of 1953. The Revisional Authority, i.e. the Additional Custodian, who dealt with the revision, by his order dated December 9, 1953, allowed the revision by setting aside the order passed by the Deputy Custodian in so far as the possession of the petitioner as protected tenant, was concerned. However, it is observed in the revisional judgment that the petitioner would continue to cultivate the land and pay the lease money in the evacuee's account. From the tenor of this order dated December 9, 1953 it can very well be gathered that so far as regards the rights of the petitioner as a tenant from

Mohammed Matin, have been held to be the tenancy rights from the custodian of the property and that is why the Revisional Authority appeared to have directed to deposit the lease money in the evacuee's account.

7. While the above proceedings were going on, surprisingly, necessary proceedings for declaration of ownership in favour of the petitioner were also initiated by the petitioner and the petitioner was declared owner on 19th December 1960, in pursuance of the provisions of section 38E of the Hyderabad Tenancy Act, 1950. While these proceedings were going on, in the meantime, as observed earlier, the respondent No. 1 was held to be an allottee of the land under the provisions of Clause (c) of the sub-section (1) of section 20 of the 1954 Act. Ramjibhai, the respondent No. 1, having been dissatisfied because of the declaration in favour of the petitioner u/s 38E of the Hyderabad Tenancy Act, 1950, challenged the said order by way of an appeal before the Deputy Collector, Land Reforms, Osmanabad. The said appeal was registered as Appeal No. 20 of 1977. The learned Deputy Collector who dealt with the appeal, by his judgment and order dated 30th November 1979 set aside the declaration u/s 38E of the Act. This order of 30th November 1979, happened to be a subject-matter of challenge, at the instance of the petitioner, before the Maharashtra Revenue Tribunal, Aurangabad in Revision No. 20/B/80.0; which was partly allowed by the Maharashtra Revenue Tribunal on 17-12-1980 and the order passed by the Deputy Collector, Osmanabad, was set aside. While deciding the Revision, the learned Member of the Maharashtra Revenue Tribunal, specifically observed that the tenancy rights of the petitioner's father were not affected by the provisions of 1950 Act, as a tenant on the land from Mohammed Matin. The Maharashtra Revenue Tribunal, therefore, observed that the petitioner was to have in his possession the land in question as a tenant and the same would remain in his possession as such, as the tenancy had commenced before the start of the Evacuee Property Act, 1950. According to the learned Member, Maharashtra Revenue Tribunal, the subsequent declaration which was after the declaration of the property as an evacuee property would not survive. In short, the tenancy of the petitioner was to remain untouched though the property was subsequently decelerated to be an evacuee property. The learned Member of the Revenue Tribunal, further, observed that so far as regards handing over possession in favour of the respondent No. 1 in pursuance of the provisions of section 20 of the 1954 Act, it was nothing but a symbolic possession and it was not a physical possession after evicting the tenant from the land in question.

8. From the facts narrated above, it is seen that so far as regards the order passed by the Additional Custodian of Evacuee Property in Revision No. 14/EN of 1953 holding the tenancy in favour of the petitioner as unaffected by the introduction of 1950 Act and further in view of the declaration u/s 38E of the Hyderabad Tenancy Act, 1950 in favour of the petitioner, the judgment on the record showed that the rights of the petitioner were to remain unaffected as a tenant on the land. Needless to mention that there were certain other directions issued by both the authorities i.e. Additional Custodian of the Evacuee Property

and the Maharashtra Revenue Tribunal. However, in spite of orders being there, the respondent-settlement Commissioner-cum-Custodian, Evacuee Property, on an application at the instance of the respondent No. 1 Ramjibhai issued an order dated 17-1-1983 directing thereby that the provisions of the Hyderabad Tenancy Act, 1950 were not to be made applicable to the properties under the Compensation Pool as the land stood vested in the Central Government and, therefore, the authority concerned was directed to hand over the vacant possession of the property in question to the respondent No. 1 Ramjibhai. It is this order by which the petitioner is offended and prompted to approach this Court challenging the validity, legality and correctness of the same.

9. To find out as to whether the order dated 17-1-1983 by which the petitioner has been restrained from cultivating the suit land and is restrained from taking the crops from the land in question, whether can be sustained in the eye of the law and, if so, whether in toto or to what extent it has to be sustained, will have to be seen strictly in pursuance of the provisions of 1954 Act.

10. From the facts narrated above, it is clear that no doubt there is certain material on the record to hold that there was a tenancy created in favour of the petitioner by the evacuee-Mohammed Matin pertaining to the land in dispute. However, the subsequent declaration of the ownership u/s 38E of the Hyderabad Tenancy Act, 1950, whether also is required to be sustained as it was, will have to be considered for the just decision in the present petition.

11. Shri S.S. Choudhary, learned Counsel appearing on behalf of the petitioner, vehemently contended that in any case, the tenancy in favour of the petitioner was created much prior to 14th August, 1947 and further that in view of the declaration in favour of the petitioner as regards his ownership, according to Shri Choudhary, the petitioner was required to be left untouched even though the provisions of the Act, 1950 i.e. Administration of Evacuee Property Act or the provisions of the 1954 Act though have come into operation. In short, the argument of Shri Choudhary is definitely the index of his inclination requesting this Court to hold that the petitioner has to remain on the land, does not and his rights in no way can be extinguished. The argument of Shri Choudhary does not appear to be sound so as to compel this Court to accept the same. To find out as to whether the petitioner can be left untouched or not, it will be appropriate for this Court to refer to relevant provisions of the various Acts to which we have already made reference. The Act of 1950 which came into force on 17th April, 1950 was with an intention to see that the evacuee property does not go waste or plundered by unknown person; but the same was to be properly managed with an intention to have that land utilised either for certain public purposes or for the re-settlement of people who otherwise might have been adversely affected because of the partition. In pursuance of the Act of 1950, therefore, the property was to be under the management of the Custodian appointed under the provisions of section 6 of that Act. In pursuance of section 8 of the said Act, the property of evacuee so declared stood vested in the Custodian and the Custodian

was supposed to manage the property and for that purpose certain rights were vested in the Custodian. At the cost of repetition, we have to say so far as regards the property being evacuee property is no in dispute before this Court and, therefore, for the purposes of 1950 Act, it would be said that the property stood vested in the Custodian under the provisions of that Act. The management of that property was left to the discretion of the Custodian but strictly in consonance with the provisions made under that Act. The Displaced Persons (Compensation and Rehabilitation) Act, 1954 was brought into the field which had a pious intention of providing of the payment of compensation and rehabilitation grants to displaced persons and for the matters connected therewith. The relevant provision of this Act for the purposes of the decision of the present petition, is section 12 which deals with the power to acquire the evacuee property for rehabilitation of displaced persons. In our opinion, this is one of the most relevant provisions with which we are concerned while dealing with this matter. The fact in the present case is that the respondent No. 1 Ramjibhai happened to be an allottee of the evacuee property and inspite of having been so declared as allottee, is yet deprived of the possession thereof.

12. Before dealing with section 12 referred to in the previous paragraph, we feel it necessary first to refer to section 102 of the Hyderabad Tenancy Act, 1950. Section 102-A states that nothing in the foregoing provisions of that Act, shall apply to (a) to lands leased or held by the Government, a local authority, a Co-operative Society or a University established by law in the State.

13. In view of the above-said provision, it is clear beyond doubt that the land which is vested in the Government and which is held by the Government, has to be left out of consideration while applying the provisions of the Tenancy Act, 1950, to any land. In short, the provisions of the Tenancy Act are not to be made applicable to the land held by the Government. It is not in dispute that the property in question, no doubt, stood vested in the Government, in pursuance of the provisions of the 1950 Act and, therefore, even if there happened to be a declaration u/s 38E of the Tenancy Act in favour of the petitioner, that has to be totally ignored while applying the provisions of the 1950 Act and 1954 Act. This is sufficient to suggest that even though a declaration is there in favour of the petitioner, that will have to be totally ignored for all practical purposes and the property will have to be held to be totally unencumbered into the hands either the Custodian or the Settlement Commissioner under the provisions of 1950 Act or Manager under the provisions of 1954 Act.

14. Shri A.S. Bajaj, learned Counsel appearing on behalf of the respondent No. 1, invited our attention to two provisions of the Rules i.e. the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. These rules being Rule 58 and Rule 102. According to Rule 58, the allotment in favour of the respondent No. 1 was subject to the provisions of any local or special law fixing the ceiling of or otherwise, regulating the agricultural holdings and was entitled to have the possession of the land allotted in favour of his client, subject to the provisions of

Rule 58. According to Shri Bajaj, in respect of being entitled to have the possession from the day of the allotment of the land in his favour, the respondent is not yet given the possession which he is otherwise entitled to. As per Rule 102, according to Shri Bajaj, it was for the authority concerned, for making it possible to handover the possession in favour of his client, to remove all the defects in the property whatsoever it may be, and should have given possession in accordance with Rule 102. Shri Bajaj contended that it was incumbent on the authority concerned to have seen first as to whether was there any necessity to have the compliance of section 102, particularly when, according to Shri Bajaj, in view of the operation of section 12 of the 1954 Act, there was no tenancy at all in existence and hence the question of termination of any tenancy or any other terms of holding of the petitioner and hence the question of issuance of any notice for hearing to the petitioner, in the circumstances, was totally unwarranted.

15. After having dwelt over the facts on the record and in the background of the legal provisions referred to above, we find that there is much substance in the argument of Shri Bajaj, particularly when Shri Bajaj argued that in view of the provisions of section 12 of the 1954 Act, the property stood vested in the Government, free from all encumbrances. According to Shri Bajaj, therefore, neither the tenancy created in favour of the petitioner nor the ownership conferred on the petitioner in pursuance of section 38-E of the Tenancy Act, 1950 could be said to be an encumbrances on the land in question and if at all there was any, the same automatically stood extinguished the moment possession of the evacuee property was taken over by the Government and stood vested in it.

16. Shri Bajaj, invited our attention to a decision of the Supreme Court reported in 1997(4) Bom.C.R. 632 : AIR 1996 S.C. 3679 in the matter of Tar Mohammed and others v. Union of India and others. This is a case wherein Their Lordships of the Supreme Court were dealing with the matter of a partnership firm. One of the partners in that firm had migrated to Pakistan and naturally his share in the partnership was declared to be an evacuee property. The remaining partners were directed to surrender the possession of the said evacuee property. The remaining partners contended that they were in possession of that property and that too much, prior to 14th August, 1947 and hence they could be said to be holding the same by way of tenancy rights and it was not open for the authority concerned to terminate their tenancy. Their Lordships while dealing with the above-said aspect, specifically observed that such a plea was not at all tenable and particularly in respect of that case since it was not on the record to show that the tenancy was created prior to 14th August, 1947. Their Lordships while dealing with that aspect in paragraph 3 of their judgment, specifically observed that because of the operation of section 4(1) of the 1950 Act, the pre-existing law stood excluded by virtue of the non-obstante clause thereby the tenancy rights also stood extinguished by operation of the non-obstante clause. Once section 4(1) of 1950 Act stands attracted, the alleged right to tenancy also is set at nought and Their Lordships, further, observed that it does not amount to an encumbrance. In our opinion, this judgment of the Apex Court (cited supra)

virtually closes all the arguments so far as regards the rights of a person over the evacuee property held by him either prior to 1947 or by way of any other rights created in him, after coming into force 1950 Act, but prior to 1954 Act automatically stood extinguished the moment the provisions of 1954 Act are brought into operation. In view of this, we have no hesitation to observe that neither the tenancy claimed in the present petition nor the ownership u/s 38-E of the Hyderabad Tenancy Act, 1950 would be a hurdle for the respondent No. 1 to have the property put in his possession.

17. Shri Choudhari, however, argued one substantial point before us stating that, in any case, the petitioner was entitled for hearing u/s 19(2) of 1954 Act. According to Shri Choudhari, the notice under challenge is issued straightway, prohibiting the petitioner from cultivating the land and the authorities were to go to the land to take the possession in the month of June, 1983. According to Shri Choudhari, this definitely indicates high-handedness and arbitrariness on the part of the authority concerned, particularly when neither Rule 102 of 1955 Rules was complied with nor the provisions of sub-section (2) of section 19 of 1954 Act are complied with. We certainly find some substance in this argument of Shri Choudhari. We see that by the impugned notice the authority has prohibited the petitioner from cultivating the land and further suggested that possession would be taken in the month of June and in that case if any loss was to be caused to the petitioner, the petitioner himself would have been responsible for the same. It is clear that a notice as is contemplated u/s 19(2) of the Act, 1954 is not given to the petitioner. The impugned notice cannot be read and termed as a notice under sub-section (2) of section 19 of the Act. Section 19 empowers the authority concerned to vary or cancel lease or allotment of any property acquired under that Act. It is a fact that at the time of vesting of the property in the State in accordance with the provisions of the Act 1954, the petitioner definitely was there on the land in question, may be on the basis of the right he claimed and, therefore, to take over the possession from the petitioner and hand it over to the allottee concerned i.e. respondent No. 1, it was incumbent on the part of the concerned authority to have issued notice to the petitioner, calling upon him as to why possession be not taken from the petitioner and as to why the same be not handed over to the respondent No. 1 allottee. In our opinion, not only this provision of section 19(2) but even the principles of natural justice demanded such a notice wherein it would have been open for the petitioner to put his say befitting to his interest.

18. The conclusion, therefore, is that the property definitely stood vested in the Government in pursuance of section 12 of the 1954 Act and possession of the petitioner could be said over the said land with the permission of the authority concerned in whose custody the property was and, therefore, it will have to be no doubt, observed that the property did vest in the Government totally unencumbered. However, since the fact clearly indicate the possession of the petitioner over the land in question and which otherwise could not be said to be unauthorised and illegal, the petitioner definitely was entitled to have a notice u/

s 19(2) and only after following the procedure as is contemplated under the Act, of giving hearing, it is for the concerned authority to divest of the petitioner of the possession of the property and to put the same in possession of the present respondent No. 1.

19. Shri Choudhari, further, argued that, in fact, the order passed by the Addl. Custodian in appeal was in his favour and it was an order unchallenged and it was also passed by the competent authority under the Act. Shri Choudhari, therefore, contended that it is not open for the Court to either sidetrack or not to take the notice of that order while deciding this matter. As the same, Shri Choudhari further argued that under the provisions of law, he has been declared owner, the declaration is by the competent authority and, therefore, that also cannot be undone merely because of provisions of 1954 Act have been brought into operation. We are not in a position to accept this argument of Shri Choudhari for the very simple reason that in pursuance of the provisions of sections 4 and 10 of the 1954 Act, the property stood vested in the Government and all the previous rights created in the petitioner stood automatically extinguished.

20. Shri Choudhari also relied on the Division Bench judgment of this Court reported in 1977 Mh.L.J. 433 in the matter of Shriram Yeshwant Patil and others v. Regional Settlement Commissioner and Custodian, Evacuee Properties, Bombay, and an unreported decision of this Court in W.P. No. 626/1985. On the basis of these judgments, he contended that notice u/s 19 is a must before divesting the petitioner of the possession of the property in question. We have no hesitation in accepting this contention of Shri Choudhari.

21. Before parting with this judgment, one point cannot be left out of consideration. This Court by an order dated 26th August, 1996 had directed the petitioner to deposit Rs. 3,000 per year as he was having and cultivating the land in spite of there being an order of allotment in favour of the respondent No. 1. The petitioner was, therefore, directed to deposit Rs. 1,50,000 in this Court on or before October, 1996 which ultimately the petitioner deposited in this Court. The question as regards disbursement of this amount and to find out as to who is entitled for this amount, we direct that it is for the authority concerned, after the authority takes an appropriate decision and determines as to who is entitled for this amount. After the appropriate decision is taken by the competent authority, the same be communicated to the Additional Registrar, High Court of Bombay, Bench at Aurangabad and the Additional Registrar shall disburse the amount as would be suggested by the competent authority under the Act. Till the above said decision is taken by the authority concerned, the Additional Registrar of this Court is directed to deposit the same amount of Rs. 1,50,000 in the State Bank of Hyderabad, Extension Counter, High Court, Bench Aurangabad, initially for a period of twelve months; renewable every year thereafter, if necessary.

22. In the circumstances, the petition deserves to be partly allowed, directing the respondents to issue an appropriate notice u/s 19(2) of the Act to the petitioner

and after giving him due hearing pass necessary order in the matter. Rule is made absolute in the above said terms. In the circumstances of the case, there will be no order as to costs.