
(2000) 05 MP CK 0013
In the Madhya Pradesh High Court
Case No : S.A. No. 392 of 1993 (J)

Smt. Mishribai and Others	Vs	APPELLANT
Jaheer Hussain and Others		RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(a),
12(1)(c), 12(1)(e)

Citation : (2001) 1 MPJR 235

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : H.B. Agrawal, for the Appellant; Wazid Hyder, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.

This is an appeal filed by the defendants u/s 100 of the CPC against the judgment and decree dated 25.8.1993 passed by the 9th Additional District Judge, Jabalpur in Civil Appeal No. 11-A of 1992 arising out of the judgment and decree in Civil Suit No. 185-A 1991 passed by the IVth Civil Judge, Class-II, Jabalpur.

The facts of this case are as follows :

The respondents and one Rahmat Bi (since deceased) had brought a suit for eviction against the original defendant Nand Kishore Gupta u/s 12(1)(a), 12(1)(c) and 12(1)(e) of the M.P. Accommodation Control Act, 1961 (henceforth the Act). It was alleged in the plaint that the suit house is situated at Sadar Bazar, Cantonment, Jabalpur. It is numbered as House No. 437-A and 437-B by the Cantonment and is shown in the plaint map in the red colour. The suit house belonged to Afzal Hussain who had let it out to the defendant Nand Kishore Gupta. It was stated that originally the house belonged to Ahmad Hussain who

gave it to his wife Bano Begum by Tamlik Nama. Afzal Hussain was the younger son of Bano Begum (also called Bano Bi) and lived with his mother. Bano Begum gifted the suit property orally to Afzal Hussain. Bano Begum expired on 25.1.1973 and Afzal Hussain died on 17.12.73. The respondents are the sons and daughters of Afzal Hussain. It was claimed that on 27.10.47, a lease-deed was got executed from Nand Kishore Gupta. The suit house was let out for Rs. 20/- per month. Nand Kishore Gupta had recognised Afzal Hussain as his landlord and paid rent to him between 1972 and 1974 for a period of 27 months. Thereafter he refused to pay rent and denied the title of the respondents. The tenancy of Nand Kishore Gupta was terminated by serving a notice u/s 106 of the Transfer of Property Act and since the original defendant did not pay the rent two months after the service of notice of demand, a suit for eviction was brought against him for non-payment of rent u/s 12(1) (a) for denial of title u/s 12(1)(c) and on the ground of bona fide requirement u/s 12(1)(e) of the Act. The mesne profits were also claimed.

The defendant Nand Kishore Gupta, inter alia, pleaded that he was not the tenant of Afzal Hussain. Initially the suit property belonged to Bano Begum. The lease-deed dated 7.10.47 was unregistered and, therefore, inadmissible in evidence. The lease-deed was not acted upon. The suit property vested in the Custodian General on 18.2.50. The suit house was subsequently released in his favour. It was also pleaded that the suit house was gifted to him by Bano Begum. He claimed to have perfected his title by adverse possession. It was further pleaded that the respondents were not his landlord and the property was given to Nand Kishore Gupta by him in partition. He denied the execution of lease-deed and denied the relationship of landlord and tenant.

Both the courts have decreed the entire claim of the respondents u/s 12(1)(a), 12(1)(c) and (12(1)(f) of the Act.

The appeal was admitted by this court on the following substantial questions of law by order dated 28.1.1994 :-

1. Whether the plaintiff-respondents have failed in proving their owner-ship of the suit accommodation and hence were not entitled to a decree u/s 12(1)(e) of the M.P. Accommodation Control Act, 1961 ?

Whether the suit accommodation is an evacuee property belonging to the government and hence ejection under the Accommodation Control Act could not have been had on account of the provisions contained in section 3 thereof ?

However, it is implicit in Question No.2 that in case this court comes to the conclusion that the suit property stood vested in the Custodian of Evacuee Property and was not released, then suit filed by the respondents may fail as they could not have acquired the rights as claimed by them. Therefore, it is necessary to frame further questions of law :-

3. Whether the suit property was declared as evacuee property under the

Administration of Evacuee Property Act and what would be the legal consequences flowing therefrom ?

Whether the suit filed by the respondents is maintainable ?

The main argument advanced by the learned counsel for the appellants is that the suit property stood vested in the Custodian as would be clear from Ex. D-36 which records that the House No.437, Sadar Bazar, area 1204 recorded in the name of Mst. Bano Bi wife of Ahmad Hussain as a holder of occupancy right by virtue of an old grant. In the remark column No. 13, it has been recorded that the property was taken by the Custodian of Evacuee-Property under Ordinance XXVII of 1949. The Authority G. of India M of D No. 28/7/1/L&C/49/862 dated 18.2.50. It has been argued on the basis of the above entry that this court must draw a presumption in favour of the entry made in the record of rights maintained by the Cantonment Board. The attention of the Court was drawn to section 289 of the Contonment Act, 1924. The learned counsel for the appellant placed a copy of the mutation - register dated 16th October, 1998. This document is the same as Ex. D-36 and the remark column contains a similar entry showing that the suit property stood vested with effect from 18.2.50.

The learned counsel for the respondents supported the judgment and decree of the court below and stated that the suit property was never proved to be vested in the Custodian of Evacuee Property by the appellants. Earlier, the property was taken over by the Custodian of Evacuee Property, but as found by the court below, the Custodian of Evacuee Property had released the suit house as per Ex. P-6 in favour of Bano Begum.

The question that has to be decided by the court is if the relationship of landlord and tenant between the appellant and the respondents subsisted on the date of filing of the suit for ejectment of the whole of the suit property vested in the Custodian of Evacuee Property on the date of filing of the plaint, then the suit may not be maintainable. Even otherwise, there are restrictions in the Act" and the Administration of the Evacuee Property Act regarding the filling of a suit in respect of a property vested in the Custodian of Evacuee Property. These questions have to be dealt with in their sequence at proper place. But before we embark upon this ordons voyage of judicial scrutiny, it is necessary to settle the first question first. Did property in question remain vested in the Custodian of Evacuee Property.

Both the courts below have heavily relied upon the order dated 6.10.1948 marked as Ex. P-6. It reads as under :-

Copy of Ordered / 6.10.48 in Rev. Case No. 132 of 47-48 Head XXXIII/7 of the court of S.D.O., City Jubbulpore. Custody of Evacuee Property S.O.Cantt Vs. Mst. Bano Bal House No. 437, Tongakhana, Jubbulpore, decided on 6.10.48. Govt. fee amounting to Rs. 12/- only credited into the Treasury vide challan No. 18 of 22.3.48 (page no.41) and proportionate cost of management amounting to Rs. 12-6-0 recovered by R.No. 113 of 22.9.48. Possession of the house restored to

the owner on 22.9.48 vide his acknowledgment on page no. 43. Entries made in registers and accounts closed.

10.48

Sd/- Illegible, Manager

10.48 File

Sd-/ B.B.S. Gour, S.D.O.

It is clear from the aforesaid document that the then Custodian of Evacuee Property released House No. 437 in favour of Bano Bi order dated 6.10.48 on payment of Rs. 12/- This order could be traced to the Central Provinces and Berar Evacuees Administration of Property Act, 1947 (No. XXXV of 1947). It shall be referred to as "the Act of 1947". Section 11 of the Act of 1947 conferred power upon the Custodian to restore the property to the owner subject to payment of fee and expenditure. Section 11 (2) of the Act of 1947 gave full discharge to any liability to the Provincial Government on delivery of possession to the owner. However, it was made clear that such delivery of possession shall be without prejudice to the right in respect of the property which any other person may be entitled to enforce against the person to whom possession is delivered. The Act of 1947 was a Provincial Legislation and the custodian therein was creature of the Provincial Statute. This Act of 1947 was repealed by the Provincial Government which passed Ordinance No. III of 1949 on 6th of July, 1949, titled as "Central Provinces and Berar Administration of Evacuees Property Ordinance, 1949" (henceforth "the Provincial Ordinance of 1949"). The repealing section 40 of the Ordinance of 1949, however, by sub-section (2) thereof, saved "anything done" "or any action taken" under the repealed Act, as if it was taken under that ordinance subject to certain exceptions, which are not attracted in this case. It, therefore, follows that the restoration of house to Bano Bi and the delivery of possession was saved under the Ordinance of 1949. The Ordinance of 1949 had a very short life. It was repealed by a Central Ordinance known as the Administration of Evacuee Property Ordinance, 1949 (XXVII of 1949). It came into force on 18.10.49. It repealed specifically the Ordinances mentioned in sub-section (1) of section 55 thereof. By sub-section (2) of section 55, it repealed all other corresponding Acts and Ordinances issued by the Provincial Governments of the day. The sub-section (3) of section 55, however, preserved any act done under the repealed Ordinances and Acts by sub-section (2) thereof. This Ordinance was further repealed by the Administration of Evacuee Property Act, 1950. (hereinafter referred to as "the Act of 1950"). Section 58 of the Act of 1950, corresponds to section 55 of the Ordinance of 1949 in all other matters, except that it states that it repeals the Administration of Evacuee Property Ordinance, 1949. Section 58 of the Administration of Evacuee Property Ordinance, 1949 is reproduced here :-

58. Repeals and savings -

(1) The administration of Evacuee Property Ordinance, 1949 and the Hyderabad Administration of Evacuee Property Regulation are hereby repealed.

(2) If, immediately before the commencement of this Act, there is in force any State to which this Act extends any law which corresponds to this Act and which is not repealed by sub-section (1), that corresponding law shall stand repealed.

(3) The repeal by this Act of the Administration of Evacuee Property Ordinance, 1949, or the Hyderabad Administration" of Evacuee Property Regulation or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or corresponding law and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken.

The consequence is that the acts done or any action taken by the custodian under the Act of 1947 was preserved by the Provincial Ordinance of 1949, which, in turn, was again preserved by the Administration of Evacuee Property Ordinance passed by the Central Govt. The same thing was done by the act of 1950. The restoration of the house mentioned in Ex.P-6 was affirmed by the Act of 1950. This would be clear from sub-section (3) of section 58. Therefore, restoration of property in favour of Bano Bi, in exercise of power u/s 11 of the Act of 1947, can be deemed to have been done under the Act of 1950.

The story, however, does not end here. The learned counsel for the appellant has drawn the attention of this court to Ex. D-36. It contains the following note in the remarks column No.13 :-

The property has been taken over by the custodian of Evacuee Property under the Evacuee Property Ordinance, 1949.

Auth : G. of I.M. of D. No. 23/7/L/I&C/49/862 dated 18.2.1950.

The learned counsel for the appellants has placed on record a photocopy of Madhya Pradesh Gazette March 31, 1950 Part II (1) of 1950. It purports to be a notification issued under sub-section (3) of section 7 of Administration of Evacuee Property Ordinance, 1949. The Item No.5 in the aforesaid notification shows that House No. 437-A and 437-B situate at Cantonment, Jabalpur have vested in custodian to the extent of 3/4th of the undivided share. There is no dispute that the reference to House Nos. 437-A and 437-B is in fact to the property involved in the suit. Thus, it is apparent, even after release of the property in favour of Bano Bi under "the Act of 1947" by Ex.P-6, the Custodian of Evacuee Property appointed under the Ordinance held that 3/4th of the property is liable to vest in the Custodian under the Central Ordinance of 1949. The copy of the notification dated 31st March. 1950, published in the M.P. Gazette, confirms the existence of entry in Ex.D-36, though the copy of the Central Gazette was not produced before me. There is no reason to doubt the

authenticity of the photocopy of the notification published in M.P. Gazette. The learned counsel for the appellant has placed on record a copy of the Madhya Pradesh Gazette, Part-II(i) dated May 5, 1953. The notification issued under rule 7(3) of the Administration of Evacuee Property Rules, 1950, framed under the Act of 1950, gave the information to general public regarding the property which still remain vested with the Custodian till the end of December, 1953. The Item Nos. 729 and 730 were vested in the. Custodian of Evacuee Property to the extent of 3/4th share. The same position is confirmed by a copy of the M.P., Gazette 25th March, 1955 wherein under the Heading Composite Evacuee Property in Jabalpur City a Schedule B has been made. It also shows that House Nos. 437-A and 437-B, Cantonment was declared to be Custodian of Evacuee Property to the extent of 3/4th undivided share.

Thus the courts below could not have ignored the entry made in Ex.D-36 which had a presumptive value u/s 289 of the Cantonment Act, 1924. In this connection, the learned counsel for the appellant referred to the decision rendered by a division Bench in the case of Alamgir Vs. Indu Diwan L.P.A. No. 66 of 1989, decided on 21.9.97. It is not necessary to rely on that decision in the face of the notifications. It must, therefore, be presumed that at least 3/4th of the undivided share of House Nos. 437-A and 437-B, notified as vested in the Custodian and continued to be so. vested upto 31st December, 1953 and thereafter upto 1955. The courts below were, therefore, wrong in totally ignoring the entry in the document Ex-D-36. It may be that the property was released under the Act of 1947 on 6.10.1948. But subsequently it was taken up by the Custodian under the Central Ordinance of 1949 and the vesting continued at least upto 1955 as proved by the appellants. This fact is taken note of that at least 3/4th of the share of the property of Bano Bi was notified to be vested and continued to be so till 1955. It is not, therefore, necessary to refer to any other document as the respondents have not placed any material on record to show that the Custodian of Evacuee Property had subsequently released the undivided share to the extent of 3/4th in the suit property at any point of time in their favour. No express order was placed. There was no express plea taken in their behalf.

The court is not entitled to go into the question that after restoring of possession as per Ex.P-6, the Custodian was not entitled to proceed under the Central Ordinance of 1949 and under the Act of 1950. Section 46 of the Act of 1950 read with section 28 thereof bars the jurisdiction of the civil court to the extent the Custodian is authorised to act under the act of 1950. The question of bar created by order dated 6.10.1948 was raised before him or not is not known. This court is not concerned with the validity of the notification as the validity was never challenged by the respondents. The respondents had come to this court that the suit property was released as per Ex.P-6 dated 6.10.48 and thus they claimed to be the owners and landlords. The fact of ownership is disproved by the placement of the Gazette notification. The learned counsel for the respondents virtually conceded this position when he applied for making the Custodian of

Evacuee Property as a party to this suit.

Thus, we have come to the conclusion that at best 3/4th of the undivided share was vested in the custodian of Evacuee Property. It cannot be said without any contradiction that there were the tenancy rights of Bano Bi who held them as an "old grant" from the Govt. of India as a tenant. These rights were not destroyed on account of vesting in the Custodian appointed under the Act of 1950. The Custodian therefore, stepped in the shoes of the grantee. The question therefore, is if the respondents could bring a suit for eviction under "the Act". Section 3 of "the Act" does not come into operation for the reason that section 3(1)(a) of "the Act" is confined to the accommodation which is the "property of Government." Ordinarily the M.P. General Clauses Act, 1957 would apply to the word "Government". Section 2(42) of that Act, inter alia, provides that Government means the State Government. However, even the interpretation clause is subject to the qualification that this definition shall be applied to Local Acts "unless there is anything repugnant in the subject or context". It is implicit context in that the legislature wanted to exclude the property belonging to the Government whether State or Central from the operation of Statute. The Act was framed for controlling the relationship between the landlords and tenants. The main provisions of the Act confer great deal of benefit to the tenants by controlling arbitrary eviction. It also confers certain rights on the landlords in its wake. However, the tenants of the State Government or that of the Central Government are subject to other enactments for the purposes of eviction. They are Public Premises Eviction Acts framed by the Central Legislature or the State by whatever names they are called. Even otherwise, it appears, the intention of eviction legislation was to control the activities of landlords other than the Central Government or the State Government. In view of this matter, it would be proper to interpret the word "Government" widely to include all the property of Government, whether it belonged to the Central Govt. or the State Government. The object of the Act is presumably to regulate and control of letting and rent of the accommodation and provide for eviction of tenants on the ground mentioned in the Act and none other. It would be obvious that the sweep and the target of the Act is the private property of landlords in the towns notified by the Act. Looking to avowed object of the Act, it can be safely held that in section 3 of the Act, the words "property of the Government" cannot be interpreted or construed as limited to the property of State Government, The context rules out the definition of Government given in the General Clauses Act of the State of M.P. It cannot be envisaged that the Act wanted to exclude the property of the State Government alone from the operation of the Act. Therefore, it would be proper to construe the words "property of the Government" not in technical sense but as many man would do in common parlance. The ordinary and natural meaning of the words shall be that the property should belong to the Government. It matters not that it formally belonged to the State Government or the Union of India. Moreover, as pointed out by Chagla C.J. and Gajendragadkar, J. in *Rampratap Jaidayal Vs. Dominion of India*, that the use of words "the Government" in

section 3 would ring different bell in the mind. Section 2(42) of the MP. General Clauses Act, 1957 is confined to defining "State Government" or "Government". The addition of article "the" before Government in section 3 of the Act would take out the words used in section 3 from the shackles of definition given in General Clauses Act. The highly technical and linguistic reasoning given by the Division Bench of the High Court supported the view taken by this court on much more humble ground. The court, however, adopts the reasoning of the Division Bench and cannot but quote the inimitable words used by Chagla C.J.

The only conclusion we come to is that the Legislature in this particular case wanted to draw a distinction between "the State Government" and "the Government" and the only distinction that the Legislature could possibly have drawn under these circumstances was that "the State Government" meant the Government of the-State and "the Government" was used in a wider sense meaning not only the Government of State but also the Central Government.

However, the court is not impressed by the argument pressed by the counsel for the appellants that on account of vesting of 3/4th share of property in the Custodian of the Evacuee Property, section 3 of the Act becomes operative. The statutory vesting of the property in the Custodian of Evacuee Property would not vest the property in the Central Government. It vests in the Custodian. The Custodian of Evacuee Property is a creature of Statute. He has a distinct and separate existence. He cannot be treated as a part and parcel of the Central Government, The purpose of the Act of 1950 was to protect the property from falling into hands of the untowards elements who participated in the loot which followed as a consequence of the riots in the wake of partition of the country and to use it for the purpose of rehabilitation of those who crossed the border from the newly created State of Pakistan. The Act of 1950 was not confiscatory in nature. This court, therefore, concludes that section 3 of the Act is not attracted.

However, the aforesaid conclusion does not help the cause of the respondents. The provisions of section 4 of the Act of 1950 come in their way. The aforesaid section is reproduced as follows :-

4. Act to override other laws -(1) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

(2) For the removal of doubts, it is hereby declared that nothing in any other law controlling the rents of, or eviction from, any property shall apply, or be deemed ever to have applied, to evacuee property.

It is clear from section 4(1) that the provisions of the Act of 1950, the rules made thereunder and the order passed shall prevail over any law for the time being in force even though they be contrary to that law. The Act of 1950 also nullifies the effect of an inconsistent instrument opening as such on the foundation of law above named. The provisions of section 4(2) of the Act of 1950

go a step further to clear all doubts regarding the law controlling the rents and eviction from any property. It is declared that nothing in such law shall apply or be deemed to ever have applied to evacuee property. It means that any provision in any other law retaining to control of rent as well as eviction is out of the way so far as the evacuee property is concerned. The words "..... be deemed ever to have applied" in section 4(2) of the Act of 1950 make it clear that those sub-sections are retroactive in operation. It bans the application of laws regarding determination of rents and laws relating to eviction from the suit property between the landlords and tenants to an evacuee property. If this be the legal position, then the M.P. Accommodation Control Act, 1961 would not apply to case when the property is declared an evacuee property. Thus it can be safely held that the application of the M.P. Accommodation Control Act, 1961 is barred by section 4(2) of the Act of 1950. It is also clear that even the provisions of Transfer of Property Act governing the relationship of landlord and tenant, lessor and lessee shall stand overridden by the Act of 1950. The consequence is that the leased evacuee property shall be governed by the provisions of the Act of 1950. It is in the Act of 1950 we can find the key to the solution of the problem of a demise which is under lease when it was declared to be an "evacuee property". The Custodian of Evacuee Property was required to serve notice to a "person interested. It is obvious that the "person interested" would be the person who is interested in showing that the property did not belong to an evacuee. The lessee has no such interest and is not entitled to any notice. This conclusion follows from the two decisions of the Supreme Court reported in Bhanwarlal Vs. Regional Settlement Commissioner, Jaipur (AIR 1965 SC 1885) and Begum Noorbanu and Others Vs. Deputy Custodian General of Evacuee Property, . When the Custodian of the Evacuee Property passes an order to the effect that a tenanted premises is vested in him, then the consequence is that only the interest of the evacuee landlord vests in him. Broadly speaking, the interest of evacuee landlord would be the right to receive rent for demise or the right to enjoy usufruct of the property in question for a period fixed by the contract of lease and get it back after the expiry of the term of lease. Further right may be to evict the tenant in accordance with the law. In other words, it is the partial interest, which is retained by the evacuee-landlord, gets transferred to the Custodian. In the case of Bhanwarlal Vs. Regional Settlement Commissioner, Jaipur (supra), the Supreme Court pointed out that the vesting of the property of evacuee-mortgagor or in the Custodian of the Evacuee Property would give him right to redeem the mortgage. In other words, only the equity of redemption vested in him. It is, therefore, not necessary to issue notice to a mortgagee. Thus the Custodian stepped into the shoes of the evacuee-landlord to the extent of 3/4th share in the property. But in view of section 4 of the Act of 1950, the rights of a lessee qua the custodian would be governed by the Act of 1950.

Section 8(4) of the Act of 1950 provides that any person in possession of the property vested in the Custodian of Evacuee Property shall be deemed to hold it on his behalf and is required to surrender it to the Custodian or any person

authorised by him. Section 9 arms the Custodian with power to get the possession by coercive process and gives him the necessary procedural power to do so. Section 10 grants the consequential powers and casts concomitant duties on the Custodian who obtains possession of the evacuee property. The prime duty of the Custodian is to preserve the property of the evacuee and, therefore, that section does give the Custodian general powers for taking all steps to do so, Section 12 of the Act of 1950 is important for our purposes. It authorises the Custodian to terminate any lease or amend the terms of any lease under which an evacuee property is held. The main section indicates that this power shall be operative irrespective of the fact that lease was entered into prior to commencement of the Act. However, its proviso cuts down the effect of retrospectivity upto 14th of August, 1947. Thus it applies to all the leases granted on or after August, 1947. In the case at hand the lease is affected by section 12 of the Act of 1950. There are other provisions in the Act but this court is of the view that neither section 3 of the Act or any other provisions of the Transfer of Property Act would apply to any property vested in the Custodian. Section 12 of the Act of 1950 takes over and override the provisions of the Rent Act or the general law relating to eviction as well as the terms of tenancy; A Division Bench of the High Court of Bombay in *Shreeram Yashwant Patil Vs. Regional Settlement Commissioner and Custodian, Evacuee Properties, Bombay* (1977 Mh.L.J. 433) reached a similar conclusion at page 438 reproduced below :

It is obvious from the provisions in the Administration Act referred to above that even though the beneficial interest in the property declared as evacuee property does not vest in the Custodian and it continues to vest in the evacuee, after the property declared as evacuee property the leases in respect of such properties are controlled and governed by the over-riding and special provisions in the Administration Act. The provisions of the general law and even the ordinary tenancy laws are to that extent excluded. Section 4(1) of the Administration Act provides that the provisions of the Act and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law. That section further declares that nothing in any other law controlling the rent of, or eviction from, any property shall apply, to the evacuee property. u/s 8(4) after any evacuee property has vested in the Custodian any person in possession thereof shall be deemed to be holding on behalf of the Custodian, and shall, on demand surrender possession of it to the Custodian or any other person duly authorised by him in this behalf. If any person in possession of any evacuee property fails on demand to surrender possession thereof to the Custodian, the Custodian is empowered to use such force as may be necessary for taking possession of such property. Section 12 expressly refers to the power of the Custodian notwithstanding anything contained in any other law for the time being in force to cancel or terminate any lease under which any evacuee property is held or occupied by a person whether such lease was granted or entered into before or after the commencement of the

Act.

Thus, the conclusion is that as far as 3/4th share in the suit property is concerned, the respondents cannot file any suit for eviction. It is the Custodian who is required to deal with that share as an "evacuee property" under the Act of 1950. The further question is if the respondents can evict the appellants under the Act without having any specific portion in the suit property. In this connection, the powers of the Custodian u/s 12 have to be borne in the mind. He has power to terminate any lease or amend the terms of any lease or any agreement under which the evacuee property is held or occupied by a person. It may be argued that this power is limited to 3/4th share in the suit property. However, the Custodian of Evacuee Property could demand surrender of possession of the entire property after he terminated the lease in exercise of his power u/s 12(2) of the Act of 1950. In case the tenant refused to deliver possession or surrender, he could take coercive action to get it vacated. This power is to eject the tenant on termination of lease despite the fact that any other law, for the time being in force, contains a contrary provision. The manner of coercive action is given in section 9. In the opinion of this court, the power under sub-section (1) of section 12 to terminate the lease can be exercised in respect of the entire lease without breaking its integrity. The statutory power vested in the Custodian in respect of the evacuee property cannot be so construed as virtually giving him power to split tenancy. It is well-established that a lease is one and single agreement and it cannot be split-up by any act of the landlord. Similarly the "Custodian" holding the beneficial 3/4th interest of the evacuee cannot breach the integrity by terminating it partially. In absence of any words of limitation in section 12(1) of the Act of 1950, this court holds that the Custodian has full power to terminate the entire lease. Any other interpretation would render the exercise of power u/s 12(1) nugatory. The evacuee property can never be surrendered to him if he steps in the shoes of evacuee having a share. Under the general law, a person entering into shoes of one of the landlords, even by partition, cannot breach the integrity of the lease. An express grant of power to terminate the lease of an evacuee property cannot be construed to give Custodian an authority to split the lease. It would be proper to construe sub-section (1) of section 12 to the effect that it gives greater power to him than those ordinarily available to him on the authority of the words "notwithstanding contained in any other law for the time being in force". The wider meaning given to these words would cover the right to terminate the lease in respect of the share which is not vested in the Custodian. This interpretation is essential for smooth working of section 12. This would facilitate surrender as per section 12 (2) and eviction by coercive process in exercise of power u/s 12(3) read with section 9 of the Act of 1950. The power under sub-section (3) of section 12 of the Act of 1950 is also "notwithstanding anything to the contrary contained in any law for the time being in force". Any other construction put upon section 12 of the Act of 1950 shall be conducive to conflicting powers which may result in head on collision with the powers of the civil court. If it is

held that in case the Custodian's power is construed as limited to termination of lease regarding 3/4th share, then he cannot get possession of the entire house u/s 12(2) and 12(3) of the Act of 1950 in absence of partition. It is not possible for a tenant to surrender possession of 3/4th share. It can be argued with equal force that the same logic could apply in respect of a eviction decree in respect of 1/4th share of the property. In the opinion of this court, the respondents cannot nullify the statutory power of the Custodian to deal with the evacuee property in accordance with the power and discretion given to him by the Act. The moment the property is declared evacuee, the right of eviction under the general law or the Act would be barred u/s 4 read with section 12 of the Act of 1950 at least in respect of 3/4th share in the suit property. However, even though the rest of the property is not separated by metes and bounds, the appellants cannot be evicted by a decree under the Act or Transfer of Property Act. Thus the suit, as filed at present in respect of the entire house, is not maintainable.

This court, therefore, comes to the conclusion that it is not necessary to answer question No. (1). But so far as question Nos. (2), (3) and (4) are concerned, the following answer is given. The answer to question Nos. (2) and (3) is that the appellants have placed the material on record to show that 3/4th share in the suit property was declared as an "evacuee property" and in absence of anything to the contrary, it should be presumed to be so. Once this position is accepted it is held that the suit would not be barred u/s 3 of the Act, but it would be barred under the Act of 1950. It is further held, as to consequence of the notification of Custodian and the maintainability of the suit, that the suit, as framed, is not maintainable. Thus question No (4) is answered accordingly.

The result of the aforesaid discussion is that so long as 3/4th share in the suit property remains vested in the Custodian, the respondents cannot evict the appellants under the Act from the suit property or under the general law. The appeal succeeds and is allowed. The judgment and decree of the courts below are set aside. The suit stands dismissed. No costs.