A BAJRANGA (DEAD) BY LRS.

v.

THE STATE OF MADHYA PRADESH & ORS.

(Civil Appeal No. 6209 of 2010)

B JANUARY 19, 2021

[SANJAY KISHAN KAUL, DINESH MAHESHWARI AND HRISHIKESH ROY, JJ.]

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 – s.11(3) and s.11(4) – Surplus land under the Act – Predecessor-in-interest of appellant was bhumiswami of agricultural dry land – He was stated to be holding land in excess of the prescribed ceiling limit – Such excess land declared to be surplus land, whereafter, respondents initiated proceedings for taking over possession and eviction u/s.248 of the Madhya Pradesh Land Revenue Code – Appellant filed suit for declaration of title and permanent injunction contending that the land recovery proceedings were illegal since he was actually left with land within the prescribed ceiling limit since a part of the land had been decreed in favour of his mother-in-law, 'J', after she filed a civil suit against him – Suit of appellant dismissed by trial court – First Appellate Court however held that the competent authority had failed to comply with the statutory provisions u/s.11(3) and s.11(4) and restrained the respondents from interfering with possession of such land – High Court set aside the judgment of Appellate Court – On appeal, held: Right to property is still a constitutional right under Art.300A of the Constitution though not a fundamental right – Deprivation of the right can only be in accordance with the procedure established by law – On facts, once a disclosure was made (that 'J' had filed a suit against appellant), the matter had to be dealt with under sub-section (4) of s.11 and in view of the pending suit proceedings between appellant and 'J', the proviso to sub-section (4) of s.11 came into play which required the respondent authorities to await the decision of the court – However, the very scheme of the Act was breached by the respondents in not complying with the statutory provisions – Even notice was not issued to 'J' – She could have clarified the position further – The effect of the decree in favour of 'J' is that the appellant

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loses the right to hold that land and his total land holding comes within the ceiling limit – If there is no surplus land there can be no question of any proceedings for takeover of the surplus land under the Act – Judgment of first Appellate Court accordingly restored – Madhya Pradesh Land Revenue Code, 1959 – s.248.

Allowing the appeal, the Court

HELD : 1. The factual matrix of the instant case is to be examined in the context of the provisions of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960. The preparation of the statement of land held in excess of ceiling limit under Section 11 of the said Act has to be on the basis of information given in the return under Section 9 of the said Act, or the information obtained by the competent authority under Section 10 of the said Act after making an enquiry. In terms of Section 11(3), the draft statement is to be published and served on the holder, the creditor and "all other persons interested in the land to which it relates." Once a disclosure is there that 'J' had filed a suit, there has to be mandatorily a notice to her as otherwise any decision would be behind her back and would, thus, violate the principles of natural justice. [Para 22][141-B-D]

2. There is little ambiguity about the aforesaid position as in Section 11(4) it has been stated that in case the competent authority finds that any question has arisen regarding the title of a particular holder, which has not been determined by the competent court, the competent authority shall proceed to enquire summarily into merits of such question and pass such orders as it thinks fit. Thus, the power is vested with the competent authority to determine such conflict of the land holding. This is, however, subject to a proviso. The proviso clearly stipulates that if such a question is already pending for decision before the competent court, the competent authority shall await the decision of the court. [Para 23][141-D-F]

3. The embargo came there and then as once the disclosure was made the proceedings should have been kept in abeyance to await the decision in those proceedings. The occasion to pass orders under sub-section (5) and sub-section (6) of Section 11 of

A **the said Act did not arise in the present case in view of the disclosure of J's suit. Further proceedings should have been kept in abeyance to await the verdict in the suit as per proviso to sub-section (4) and notice should have been issued to 'J'. All this has been observed to be in breach by the respondents. Thus, the findings of the appellate court in constructions of these provisions**
B **reflects the correct position of law in the given facts of the case. [Para 24][141-F-H]**

4. The legal position has to be appreciated in the factual context. Thus, though there may be a process provided for redressal under the scheme of the Act, it is this very scheme of
C **the Act which has been breached by the respondents in not complying with the statutory provisions. It can be nobody's say that 'J' cannot file a title suit against the appellant. That suit being maintainable and pending, and the factum of that suit being disclosed in the return, the provisions of Section 11 had to be**
D **strictly complied with. This is so as the right to property is still a constitutional right under Article 300A of the Constitution of India though not a fundamental right. The deprivation of the right can only be in accordance with the procedure established by law. The law in this case is the said Act. Thus, the provisions of the said Act had to be complied with to deprive a person of the land being**
E **surplus. [Para 28][142-F-H; 143-A-D]**

5. The provisions of the said Act are very clear as to what has to be done at each stage. Once a disclosure was made, the matter had to be dealt with under sub-section (4) of Section 11 of the said Act and in view of the pending suit proceedings between
F **the appellant and 'J', the proviso came into play which required the respondent authorities to await the decision of the court. Sub-section 5 and thereafter sub-section 6 would kick in only after the mandate of subsection 4 was fulfilled. In the present case it was not so. Even notice was not issued to 'J'. She could have**
G **clarified the position further. The effect of the decree in favour of 'J' is that the appellant loses the right to hold that land and his total land holding comes within the ceiling limit. If there is no surplus land there can be no question of any proceedings for take over of the surplus land under the said Act. Thus, the impugned**

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order of the High Court is liable to be set aside and the order of the first appellate court is restored. [Paras 29, 30][143-B-E]

Competent Authority, Tarana District, Ujjain (M.P.) v. Vijay Gupta & Ors., **(1991) Supp 2 SCC 631** and *State of Madhya Pradesh & Anr. v. Dungaji (Dead) Represented by Legal Representatives & Anr.,* **(2019) 7 SCC 465 : [2019] 9 SCR 979 – referred to.**

Case Law Reference

(1991) Supp 2 SCC 631	**referred to**	**Para 15**
[2019] 9 SCR 979	**referred to**	**Para 17**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6209 of 2010.

From the Judgment and Order dated 08.05.2008 and the decree of the High Court for Madhya Pradesh at Gwalior in Second Appeal No. 644 of 1998.

Saurabh Moishra, AAG, Ms. Christi Jain, Harsh Jain, Harshit Khanduja, Akshat Maheshwari, Harshvardhan Sharma, Ms. Pratibha Jain, Sunny Choudhary, Advs. for the appearing parties.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

1. The social objective of providing land to the tiller and the landless post independence was sought to be subserved by bringing in ceiling in agricultural holdings in different States. It is towards this objective that the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as the 'said Act') was brought into force in 1960. The said Act, *inter alia*, provided for acquisition as well as disposal of surplus land.

2. The predecessor-in-interest of the appellant (now represented by the LRs) was the *bhumiswami* of agricultural dry land measuring 64.438 acres situated in Village Bagadua, Paragna Sheopur Kala, District Morena, Madhya Pradesh. He was, thus, stated to be holding land in excess of the ceiling limit prescribed as per Section 7(b) of the said Act, whereby a holder along with his family of five members or less could hold a maximum amount of 54

A acres of land. As a sequitur thereto the competent authority/competent officer (respondent No.2 herein) initiated the process to acquire the surplus land and issued a draft statement in Land Ceiling Case No.180/75-76/A-90(B) for acquisition of 10.436 acres of dry land from Survey Nos.755, 756, 780 and 881/1 (for short 'surplus land'). A final order dated 30.3.1979 was published declaring such land as surplus. In furtherance of the aforesaid, the respondents herein initiated the process of taking over possession and eviction under Section 248 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as the 'said Code') (the provision has since been deleted).

C 3. The appellant being aggrieved by the final order dated 30.3.1979 filed a suit for declaration of title and permanent injunction before the Court of Civil Judge Class-II, Sheopur Kala, District Morena. It is the say of the appellant, as per averments in the plaint, that the proceedings to recover land from him were illegal as he was actually left with only 54 acres of land which was within the prescribed ceiling limit in view of the D fact that the land measuring 17 bighas and 7 biswa in Survey No.77 had been decreed in favour of one Jenobai, who was in *kabza kasht* (possession by cultivation) of the land for about 20 years. She had filed a civil suit, being Civil Suit No.319/75A O.C. on 15.10.1975 against the appellant seeking declaration of title and permanent injunction with respect to the aforementioned land. There had been an admission E of the ground position by the appellant and thus, the suit was decreed on 5.3.1979 declaring Jenobai to be the owner in possession of the said land. We may note that Jenobai is actually the mother-in-law of the appellant and according to her, this land was being cultivated by her on the basis of half and half of the land proceeds. However, subsequently F the appellant developed improper intent and taking advantage of her being a widow and an old woman, had colluded with the Patwari to get this disputed land mutated in his name.

4. The suit filed by the appellant was contested by the respondents herein and they took a defence in the written statement that the possession G of the surplus land had been taken over and allotted to other cultivators. There was, however, an admission that the appellant in the return, filed as per Section 9 of the said Act, mentioned the aspect of the pending suit qua Survey No. 77. However, it was contended that the appellant had neither submitted a copy of the suit nor any proof of pendency of the suit. The suit was alleged to be collusive inasmuch as Jenobai, in

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fact, was the mother-in-law of the appellant and the endeavour was to prevent the surplus land from being acquired. It was pleaded that Jenobai, if she had title or possession of the land in survey No.77, would have submitted a claim before the competent authority after the draft statement was issued. The appellant was also alleged to not have submitted any objection to the draft statement and the remedy of the appellant was stated to be by way of an appeal before the competent court which was not pursued. The order of the competent authority was stated to have become final and, thus, the action for taking over possession of surplus land and allotment thereof was lawful.

5. The trial court decided the suit post trial *vide* judgment and decree dated 7.10.1997. The trial court held that the appellant was the *bhumiswami* in respect of the survey number in question and the suit was collusive with Jenobai having knowledge of the ceiling proceedings. These findings resulted in a dismissal of the suit.

6. The appellant filed an appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') before the Court of Additional District Judge, Sheopur Kala, District Morena. The appellant's say was that in view of the pendency of the suit filed by Jenobai, the proceedings under the said Act should have been kept in abeyance in view of the provisions of Section 11(4) of the said Act. The relevant provisions of Section 11 read as under:

> "11. **Preparation of statement of land held in excess of the ceiling area. -** (1) On the basis of information given in the return under Section 9 or the information obtained by the competent authority under Section 10, the said authority shall after making such enquiry as it may deem fit, prepare a separate draft statement in respect of each person holding land in excess of the ceiling area, containing the following particulars:
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> (3) The draft statement shall be published at such place and in such manner as may be prescribed and a copy thereof shall be served on the holder or holders concerned, the creditors and all other persons interested in the land to which it relates. Any objection to the draft statement received within thirty days of the publication thereof shall be duly considered by the competent authority who after giving the objector an opportunity of being heard shall pass such order as it deems fit.

A (4) If while considering the objections received under sub-section (3) or otherwise, the competent authority finds that any question has arisen regarding the title of a particular holder and such question has not already been determined by a Court of competent jurisdiction, the competent authority shall proceed to enquire summarily into the merits of such question and pass such orders as it thinks fit.

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Provided that if such question is already pending for decision before a competent court, the competent authority shall await the decision of the court.

C (5) The order of the competent authority under sub-section (4) shall subject to appeal or revision, but any party may, within three months from the date of such order, institute a suit in the civil court to have the order set aside, and the decision of such court shall be binding on the competent authority, but subject to the result of such suit, if any, the order of the competent authority shall be final and conclusive.]

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[(6) After all such objections, have been disposed of, the competent authority shall, subject to the provisions of this Act and the rules made thereunder, make necessary alterations in the draft statement in accordance with the orders passed on objections and shall declare the surplus land held by each holder. The competent authority shall, thereafter, publish a final statement specifying therein the entire land held by the holder, the land to be retained by him and the land declared to be surplus and send a copy thereof the holder concerned. Such a statement shall be published in such manner as may be prescribed and shall be conclusive evidence of the facts stated therein.]"

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7. The information about the pendency of the suit between Jenobai and the appellant had been furnished to the competent authority, and post decree of the suit the appellant had been left with only 54 acres of land. Thus, there was no reason to initiate proceedings to take possession of the disputed land. The appellate court noted the admission in the written statement filed by the respondents herein, that in the return filed by the appellant there was disclosure of the factum of Jenobai being in possession of Survey No.77 land as also of the pendency of the suit, being Suit No.319A/75 between her and the

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appellant. That being the factual position, Section 11(3) of the said Act mandated that the copy of the draft statement ought to have been served on Jenobai as she was an 'interested person' in the land. The acquisition proceedings had to be kept in abeyance in view of the proviso to Section 11(4) of the said Act till the disposal of the suit, and that such a judgment of the civil court was binding on the competent authority. The suit was stated to have been decreed for 3.306 hectares out of 17.715 hectares of land recorded in the name of the appellant, resultantly leaving 14.399 hectares of land, which was within the prescribed limited under Section 7 of the said Act. On the basis of these findings, the appeal was allowed and the judgment of the trial court was set aside on the ground that the competent authority had failed to comply with the statutory provisions under Section 11(3) and 11(4) of the said Act. The appellant was declared as the *bhumiswami* of the surplus land and the respondents were restrained from interfering with his possession of the land.

8. It is now the turn of the respondents herein to prefer an appeal under Section 100 of the CPC before the High Court of Madhya Pradesh, Gwalior Bench in Second Appeal No.644 of 1998. The High Court *vide* order dated 8.5.2008 framed two substantive questions of law, which read as under:

> "i. Whether the jurisdiction of the Civil Court challenging the order of the Competent Officer is barred under Section 46 of the said Act?
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> ii. Whether the judgment and decree of the first appellate court is sustainable under the provisions of the said Act?"

9. On a conspectus of the matter, the High Court allowed the appeal. The rationale for the same was that after the publication of the draft statement neither the appellant nor Jenobai had filed objections. In the revenue records the appellant's name was recorded as holder of the entire agricultural land in question. No information was stated to have been provided to the competent authority giving particulars of the suit of Jenobai. The competent authority was found not at fault in the alleged breach of Sections 11(3) and 11(4) of the said Act as the information germane for the same had not been disclosed.

10. The appellant at that stage, thus, approached this Court by the present Special Leave Petition and on 2.3.2009, notice was

A issued and status quo was directed to be maintained. Subsequently, leave was granted on 26.7.2010 and ad interim order was made absolute till the disposal of the appeal.

11. On the appeal being taken up for hearing on 16.1.2020 an order was passed recording the factual controversy as to whether B the appellant had filed objections giving particulars of the pendency of the civil suit. This was so as in terms of Section 9(iv) of the said Act that such particulars were required to be stated. Even on the question of maintainability of the suit, it was mentioned that it was necessary to peruse the objections filed by the appellant to determine whether the requirement of Section 9 of the said Act had C been fulfilled, Thus, records of the last ceiling case were directed to be produced by the respondents herein. The records were, however, not produced and, thus, on 9.9.2020, an order was passed giving further time but directing that failure to produce the record would result in an adverse inference being drawn against the respondents herein.

D 12. The respondents filed an affidavit on 26.9.2020 stating that the records were untraceable including the objections filed by the appellant. It appears that due to carving out of some districts the records could not be traced out. The son of the appellant had stated that he did not have the record either.

E 13. We have heard learned counsel for the parties, albeit in the absence of the aforesaid record, which was not produced right till the date of hearing.

14. The appellant canvassed that the civil suit filed was maintainable as the bar of jurisdiction of the civil court did not F come into play as specified in Section 46 of the said Act in view of the provisions of Sections 11(4) and 11(5) of the said Act read together. Section 46 of the said Act reads as under:

> "46. **Bar of jurisdiction of Civil Courts.** – Save as expressly provided in this Act, no Civil Court shall have any G jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the competent authority."

15. The plea, thus, was that the Section begins with a saving clause qua the bar of civil court – "Save as expressly provided in this

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Act….." The provisions of Section 46 were pleaded to be expressly subject to the provisions of Section 11(5) of the said Act and the observations in ***Competent Authority, Tarana District, Ujjain (M.P.) v. Vijay Gupta & Ors.***[1] were relied upon, opining that a suit can be filed in a civil court within three months of passing of an order by the competent authority under Section 11(4) of the said Act in view of the provisions of Section 11(5) of the said Act. There was pleaded to be an admission about the disclosure of the appellant regarding the factum of the suit filed by Jenobai in the returns and, thus, the respondents herein were required to wait for the outcome of the suit and should have also invited objections from Jenobai. The decree in the civil suit between the appellant and Jenobai was, thus, submitted to be binding on the competent authority.

16. On the other hand, the respondents herein reiterated that the suit filed by Jenobai was a collusive one and the object of the institution was to circumvent the provisions of the said Act. In this behalf, it was submitted that the suit under Section 11(5) of the said Act can only be instituted within three months from the date of Section 11(4) order, the date of which is not mentioned. However, even if the date of the subsequent order under Section 11(6) passed on 31.3.1979 is considered, the period of three months elapsed as the suit was filed on 31.8.1979/3.9.1979 (there is some discrepancy qua the dates as recorded in different proceedings). Further under Section 11(5) of the said Act, a suit can only be filed for setting aside the order under Section 11(4) of the said Act but no such prayer was made.

17. It was urged that after the order under Section 11(6) of the said Act is passed, the land vests with the State under Section 12 of the said Act and, thus, a suit for declaration of title was not maintainable. There was no challenge to the order under Section 11(6) of the said Act and, thus, the suit was not maintainable. It was also urged that no suit lies against an order under Section 11(6) of the said Act in view of the judgment of this Court in ***State of Madhya Pradesh & Anr. v. Dungaji (Dead) Represented by Legal Representatives & Anr.***[2] Learned counsel for the respondents herein pleaded that though the appellant raised the issue about the pendency of the suit with Jenobai in the return filed under Section 9 of the said Act, the

[1] 1991 Supp (2) SCC 631.
[2] (2019) 7 SCC 465.

documents were not produced and exhibited in this behalf even before the trial court. The possession of Jenobai as reflected in the revenue records was not proved by any evidence led in that behalf. And, in fact, no such objections were filed before the trial court.

18. On the aspect of this Court observing that an adverse inference will be drawn as per the orders dated 16.1.2020 and 9.9.2020, it was submitted that the copy of the objections were never placed before the trial court, the first appellate court and the High Court and, thus, the appellant failed to discharge the burden of proving the case. There should, thus, be no occasion to draw the adverse inference against the respondents herein.

19. We have given a thought to the matter in the conspectus of what has been urged before us on the different dates and the proceedings that had been recorded. The matter was taken up on 16.1.2020 and in view of the submissions advanced by the parties, the Court required perusal of the record. Thus, in the proceedings it was recorded that there was a factual controversy as to whether the appellant in pursuance of the draft statement in the objections filed had given the particulars of the pending civil suit filed by the mother-in-law of the appellant claiming part of the land held by the appellant. This was considered to be relevant as in terms of Section 9(iv) of the said Act such particulars are mandated to be given and, thus, the respondents herein being in breach or not of the other succeeding provisions of the Act would depend on this important aspect. We also took note of the fact that as per the respondents herein no particulars had been given and the suit was alleged to be collusive. In order to determine the question it was opined that this Court found it necessary to peruse the objections filed by the appellant to come to a conclusion.

20. On the said date itself, this Court also required the pleadings in the civil suit filed by the mother-in-law, Jenobai, to be placed on record as also the judgment.

21. The appellant complied with the order dated 16.1.2020 by filing these additional documents but the respondents herein did not do the needful. It is in these circumstances that on 9.9.2020 this Court made it clear that in case the records are not filed adverse inference will be drawn. The natural sequitur to this is that the failure to place the aforementioned documents on record shows that there

had been proper disclosure about the suit in the return filed under Section 9 of the said Act. The factum of disclosure of the suit could not really be doubted by the respondents herein in view of their own pleadings (admitted in the pleadings before the trial court, as perused by us). However, the records are alleged not to have been located. A

22. The aforesaid factual matrix is, thus, to be examined in the context of the provisions of the said Act. The preparation of the statement of land held in excess of ceiling limit under Section 11 of the said Act has to be on the basis of information given in the return under Section 9 of the said Act, or the information obtained by the competent authority under Section 10 of the said Act after making an enquiry. In terms of Section 11(3), the draft statement is to be published and served on the holder, the creditor and "all other persons interested in the land to which it relates." Once a disclosure is there that Jenobai had filed a suit, there has to be mandatorily a notice to her as otherwise any decision would be behind her back and would, thus, violate the principles of natural justice. B C D

23. There is little ambiguity about the aforesaid position as in Section 11(4) it has been stated that in case the competent authority finds that any question has arisen regarding the title of a particular holder, which has not been determined by the competent court, the competent authority shall proceed to enquire summarily into merits of such question and pass such orders as it thinks fit. Thus, the power is vested with the competent authority to determine such conflict of the land holding. This is, however, subject to a proviso. The proviso clearly stipulates that if such a question is already pending for decision before the competent court, the competent authority shall await the decision of the court. E F

24. In our view, the embargo came there and then as once the disclosure was made the proceedings should have been kept in abeyance to await the decision in those proceedings. The occasion to pass orders under sub-section (5) and sub-section (6) of Section 11 of the said Act did not arise in the present case as in view of the disclosure of Jenobai's suit. Further proceedings should have been kept in abeyance to await the verdict in the suit as per proviso to sub-section (4) and notice should have been issued to Jenobai. All this has been observed to be in breach by the respondents herein. We are, thus, of the view that the findings of the appellate court in constructions of these provisions reflects the correct position of law in the given facts of the case. G H

25. The issue of jurisdiction of civil court is no more *res integra* in view of the judgment in ***Competent Authority, Tarana District, Ujjain (M.P.).***[3] where it has been observed in para 4 as under:

> "4. So far as the other question regarding the maintainability of the suit in a civil court is concerned, suffice to say that sub-section (5) of Section 11 of the Act itself provides that any party may within three months from the date of any order passed by the Competent Authority under sub-section (4) of Section 11 of the Act institute a suit in the civil court to have the order set aside. Thus the above provision itself permits the filing of a suit in a civil court and any decision of such court has been made binding on the Competent Authority under the above provision of sub-section (5) of Section 11 of the Act. It is not in dispute that the suit in the present case was filed within three months as provided under sub-section (5) of Section 11 of the Act. In the result, we do not find any force in this appeal and it is accordingly dismissed with no order as to costs."

26. We have taken note of the latter proceedings of this Court in ***State of Madhya Pradesh & Anr. v. Dungaji (Dead) Represented by Legal Representatives & Anr.***[4] discussing the scheme of the Act and the requirement of taking recourse to the provisions of appeal and revision under the said Act.

27. We have also considered the plea of limitation advanced by learned counsel for the respondents albeit no specific issue being framed in respect of the same.

28. In our view the legal position has to be appreciated in the factual context. Thus, though there may be a process provided for redressal under the scheme of the Act, it is this very scheme of the Act which has been breached by the respondents herein in not complying with the statutory provisions. It can be nobody's say that Jenobai cannot file a title suit against the appellant. That suit being maintainable and pending, and the factum of that suit being disclosed in the return (if the nature of disclosure being the reason we wanted to peruse the record, which were not made available), the provisions of Section 11 had to

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[3] (supra).

[4] (supra).

be strictly complied with. We say so as the right to property is still a constitutional right under Article 300A of the Constitution of India though not a fundamental right. The deprivation of the right can only be in accordance with the procedure established by law. The law in this case is the said Act. Thus, the provisions of the said Act had to be complied with to deprive a person of the land being surplus.

29. The provisions of the said Act are very clear as to what has to be done at each stage. In our view once a disclosure was made, the matter had to be dealt with under sub-section (4) of Section 11 of the said Act and in view of the pending suit proceedings between the appellant and Jenobai, the proviso came into play which required the respondent authorities to await the decision of the court. Sub-section 5 and thereafter sub-section 6 would kick in only after the mandate of sub- section 4 was fulfilled. In the present case it was not so. Even notice was not issued to Jenobai. She could have clarified the position further. The effect of the decree in favour of Jenobai is that the appellant loses the right to hold that land and his total land holding comes within the ceiling limit. If there is no surplus land there can be no question of any proceedings for take over of the surplus land under the said Act.

30. We are, thus, of the view that the impugned order is liable to be set aside and the order of the first appellate court is restored.

31. The appeal is accordingly allowed leaving the parties to bear their own costs.

Bibhuti Bhushan Bose Appeal allowed.