ISMAILBHAI I. KANSARA (D) THROUGH LR

v.

STATE OF GUJARAT & ORS.

(Civil Appeal No. 2851 of 2015)

JULY 13, 2021

[SANJAY KISHAN KAUL AND HEMANT GUPTA, JJ.]

Displaced Person (Compensation and Rehabilitation) Act, 1954: ss. 19(2)(b), 20 – Power to vary or cancel leases or allotment of any property acquired – Appellant-encroacher on evacuee property served with eviction notice u/s. 19(2)(b) – Writ petition by the appellant, challenging the eviction order – Dismissed by the High Court holding that it is an evacuee property, thus, the appellant has no right over it and is not entitled to claim regularization of his possession – Upheld by the Division Bench – On appeal, held: Encroacher does not have any right of regularization of an evacuee land in the presence of a displaced person entitled to allotment in order to satisfy the objective of the Act – Evacuee land can be allotted only to a displaced person alone – Allotment to non-displaced person can be considered only after all the displaced persons have been settled – On facts, perusal of the Circular dated 20.06.1978 shows that an encroacher can be considered for regularization of his possession only if there is no displaced person in terms of clause III – In terms of clause III, the Chief Settlement Commissioner allotted the land to Respondent No. 4 since he had balance verified claim – Appellant was ordered to be evicted being an unauthorized occupant of evacuee land – Thus, the clause to allot evacuee land to encroacher in the government policy dated 20.6.1978 is beyond the scheme and purpose of the Act – However, if any allotment has been made to an encroacher and had attained finality, the same will not be re-opened – Possession of the land was taken over by the Government on 24.01.2014 – As such, the claim for restoration of possession by an encroacher, is wholly untenable.

Dismissing the appeal, the Court

HELD:1.1 The appellant filed the writ petition soon after the eviction order was served upon him, wherein he made reference to the previous notice. He had further stated that he

appeared before the Collector and also made an application for purchase of land in question. Though, he has stated that the eviction notice was dropped, no such order has been produced or referred to in the written submission filed. The stand is that his purchase application could not be considered on account of the pending writ petition. Thus, the appellant had received show cause notice for unauthorized possession of an evacuee property. The submission that eviction order was passed without notice is factually incorrect. [Para 6][43-E-G]

1.2 The relief claimed by the appellant in the writ petition was to quash and set aside the eviction order. The appellant has not sought any relief *qua* allotment or regularization of his possession of the land in question. Therefore, substantially, the claim of the appellant before the High Court was to examine as to whether the order of eviction passed was suffering from any illegality or irregularity which could have warranted interference in the writ proceedings. Since the claim of the appellant was limited only to challenge the eviction order and the fact that the possession of the appellant was not regularized before 23.06.1992, therefore, there is no illegality in the eviction notice issued against the appellant. Hence, in terms of Section 19 of the Act, the order of eviction passed cannot be said to be illegal or invalid. [Para 7][43-H; 44-A-C]

1.3 The appellant is in possession of a land meant for displaced person being an evacuee land, therefore, it is not the circular dated 08.01.1980 which is in respect of encroachment on public land that would be applicable but the Circular of 20.6.1978 under which the claim of the appellant for regularization of his possession alone can be examined. A perusal of the Circular dated 20.6.1978 would show that an encroacher can be considered for regularization of his possession only if there is no displaced person in terms of clause III. In terms of clause III, the Chief Settlement Commissioner allotted the land to Respondent No. 4 on 12.10.1990 since he had balance verified claim. The appellant was also ordered to be evicted being an unauthorized occupant of evacuee land. It cannot be said that the appellant was required to be heard before passing such an order as the appellant is not claiming any right being a displaced person. Between the

displaced person and a land encroacher, the displaced person has a priority and thus, was rightly allotted land. [Para 8, 10-11][44-C-D; 45-F, H; 46-A-B]

1.4 The respondent No. 4 is claiming allotment on the basis of government policy decision dated 20.06.1978, which contemplate that the allotment of the evacuee land shall be in terms of Section 20 of the Act. The evacuee land has to be allotted to a displaced person as it forms part of the compensation pool in terms of Section 14 which can be allotted in terms of Section 20 of the Act. The evacuee land can be allotted only to a displaced person alone. The allotment to non-displaced person can be considered only after all the displaced person have been settled. Therefore, the clause to allot evacuee land to encroacher in the policy dated 20.6.1978 is beyond the scheme and purpose of the Act. However, if any allotment has been made to an encroacher and had attained finality, the same will not be re-opened. Thus, an encroacher does not have any right of regularization of an evacuee land in the presence of a displaced person entitled to allotment in order to satisfy the objective of the Act. The possession of the land was taken over by the Government on 24.01.2014. The claim of the appellant, for restoration of possession by an encroacher, is wholly untenable. [Para 12-14][46-F-H; 47-A-D]

Ramesh Parsram Malani v. *State of Telangana* **(2020) 11 SCC 653 – distinguished.**

Case Law Reference

(2020) 11 SCC 653 distinguished. Para 12

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2851 of 2015.

From the Judgment and Order dated 10.03.2014 of the High Court of Gujarat in Ahmedabad in Letters Patent Appeal No. 1362 of 2013.

Rauf Rahim, Anwar Sheikh, Ali Asghar Rahim, Advs. for the Appellant.

Pritesh Kapur, Sr. Adv., Aniruddha P. Mayee, Nikhil Goel, Naveen Goel, Vinay Mathew, Advs. for the Respondents.

A The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. The present appeal is preferred by an encroacher on an evacuee land measuring 0-14 acre-guntha of Survey No.191/2 at Godhara, Gujarat since 1976 where he is running an auto garage named Bharat Motor
B Garage since 1977. The Learned Single Bench dismissed the writ petition of the appellant herein on 24.10.2013 challenging the eviction order dated 23.6.1992. The order has been upheld by the learned Division Bench. Still aggrieved, the appellant is before this Court.

2. The appellant was served with a notice on 23.6.1992 under
C Section 19(2)(b) of the Displaced Person (Compensation and Rehabilitation) Act, 1954[1]. The appellant filed a writ petition in the High Court of Gujarat at Ahmedabad bearing Special Civil Application (SCA) No. 4700 of 1992 on 16.07.1992. Another SCA No.2940 of 1992 filed by one Srikant Devi prasad Joshi was heard alongwith SCA filed by the
D appellant. Shri Joshi was claiming right over the property in question on the basis of allotment made to him on 20.09.1972 as an enemy property[2]. The land allotted to Shri Joshi was cancelled on 06.12.1974. The appeal against the said order was dismissed on 15.07.1975. It is thereafter Shri Joshi filed SCA before the High Court which came to be dismissed on 24.10.2013. The said order has attained finality qua Shri Joshi. Learned
E Single Bench decidedthe SCA filed by the appellant by not considering him to be encroacher but observing that it is an evacuee property and thusthe appellant has no right over it. While examiningthe notice of the eviction and claim of regularization of possession, the Court held as under:

> "The challenge in this petition is to the notice of eviction dated
F 23.6.1992 and this notice indicted that the same was issued on account of property being treated as evacuee property and likely to be disposed of in accordance therewith and therefore, when this Court has not accepted the petition of original petitioners and not disturbed the stand of the State and authorities qua property
G being evacuee property, then, the entire petition of present petitioner will be required to be viewed from that angle only. The claim for regularization if at all is there, then, the same shall take second fiddle and as could be seen from the aforesaid discussion, this

[1] Hereinafter referred to as the 'Act'

H [2] Enemy Property Act, 1968

Court has not accepted the contention of the petitioner qua property being evacuee property and hence, the basic premise on which the property could have been has not been for regularization does not exist in favour of the petitioner and therefore, decisions cited at bar accompanying the written submission, in my view, would be of no avail to the petitioner and therefore, the Court need not detain itself elaborately on the aspect of regularization."

3. In an intra Court appeal, an order was passed on 20.01.2014 remanding both the SCA's before the learned Single Bench. But on an application filed, the application and the Letters Patent Appeal were dismissed on 10.03.2014.

4. Before this Court, Mr. Rauf Rahim argued that no opportunity was granted to the appellant before the eviction order was passed on 23.06.1992. The appellant had averred in the SCA filed that he is entitled to regularization of his possession on the basis of the government resolution dated 8.1.1980.

5. The argument of learned counsel for the appellant before this court is based upon the policy dated 20.6.1978 for allotment of evacuee land to encroachers and the resolution dated 8.1.1980 in respect of allotment of other public land to encroachers. The appellant as an encroacher is covered by either or both of the policies, therefore, is entitled to claim regularization of his possession.

6. We have considered the arguments raised and find no merit in the present appeal. The appellant filed the writ petition soon after the eviction order dated 23.06.1992 was served upon him. In the writ petition, the appellant had made reference to the notice dated 1.5.1989. He had further stated that he appeared before the Collector and also made an application for purchase of land in question. Though, he has stated that the eviction notice was dropped, no such order has been produced or referred to in the written submission filed. The stand is that his purchase application could not be considered on account of the pending writ petition. Thus, the appellant had received show cause notice for unauthorized possession of an evacuee property. Therefore, the argument that eviction order was passed without notice is factually incorrect.

7. The relief claimed by the appellant in the writ petition was to quash and set aside the eviction order. The appellant has not sought any relief qua allotment or regularization of his possession of the land in

question. Therefore, substantially, the claim of the appellant before the High Court was to examine as to whether the order of eviction passed on 23.06.1992 was suffering from any illegality or irregularity which could have warranted interference in the writ proceedings. Since the claim of the appellant was limited only to challenge the eviction order and the fact that the possession of the appellant was not regularized before 23.06.1992, therefore, we do not find any illegality in the eviction notice issued against the appellant. Hence, in terms of Section 19 of the Act, the order of eviction passed cannot be said to be illegal or invalid.

8. Alternatively, we have also examined the claim of the appellant for regularization of his possession over the land in question.The Government Resolution dated 08.01.1980 is in respect of encroachment on public land. The appellant is in possession of a land meant for displaced person being an evacuee land, therefore, it is not the circular dated 08.01.1980 that would be applicable but the Circular of 20.6.1978 under which the claim of the appellant for regularization of his possession alone can be examined.

9. The Circular dated 20.06.1978 is to the effect that the disposal of the evacuee property shall be regulated in accordance with provisions contained in Section 20 of the Act in the following manner:

"Dated the 20th June, 1978

In supersession of the instructions issued in G.R.R.D. No. EVP-1073-R, dated the 1st March 1975 it is hereby directed that the valuation and sale of remaining evacuee properties/lands which are undisposed and are unclaimed by displaced persons, should be dealt with in accordance with the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the Rules 1955 thereunder. The disposal of these properties shall be regulated in accordance with the provisions contained under Section 20 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 and Rules 87 of the Displaced Persons (Compensation & Rehabilitation) Rules 1955 by the Settlement Commissioners and Managing Officers appointed under the said Act in the following manner:

(I) XXX

(II) XXX

(III) The evacuee lands both agricultural and non-agricultural, which are not covered by item (i) and (ii) above are not occupied but are open should be sold to displaced persons without auction on payment of the present market value, preference being given to a displaced persons, who is (i) locally settled (ii) is in genuine need of land/plot for rehabilitation and (iii) does not possess any property either in his name or in the name of his family members and, if he is a claimant displaced person, he has unsatisfied claim of property left in Pakistan in his name or in the name of his family members. ……

(IV) The encroachment of evacuee lands both agricultural and non-agricultural which do not conflict with the Town Plan of the area should be regulated by Charging occupancy price at penal rate of not less than two and half times the ordinary occupancy price which should be fixed by the Collector and Settlement Commissioner's alongwith fine and annual assessment etc., in the manner as chargeable for regularization of encroachment of State lands as per instructions contained in item No.3 of G.R.R.D. No. EG-71/1072/2735-L dated 25-7-1972 for agricultural lands and in G.R.R.D. No.8297/45 dated the 17th May 1950 for non-agricultural lands as amended from time to time. If the encroachment is a displaced persons, the encroachment may be regularized by recovering the single occupancy price which should be fixed by the Collector and Settlement Commissioner and fine and annual assessment in the manner as chargeable as per the provisions of section 61 of Bombay Land Revenue Code, 1879."

10. A perusal of the said Circular would show that an encroacher can be considered for regularization of his possession only if there is no displaced person in terms of clause III. The said clause contemplates that the evacuee land, both agricultural and non-agricultural should be sold to displaced person without auction on payment of present market value. The preference is to be given to (1) a locally settled displaced person, (2) is in genuine need of land/plotfor rehabilitation and (3) does not possess any property either in his name or in the name of his family member.

11. In terms of such clause III, the Chief Settlement Commissioner allotted the land to Respondent No. 4 on 12.10.1990 *inter alia* for the reason that he has balance verified claim. The appellant was also ordered

A to be evicted being an unauthorized occupant of evacuee land. We do not find any merit in the argument that the appellant was required to be heard before passing such an order as the appellant is not claiming any right being a displaced person. Therefore, between the displaced person and a land encroacher, the displaced person has a priority and thus, was rightly allotted land. In fact, this Court in ***Ramesh Parsram Malani*** v. ***State of Telangana***[3] held that, it is only after the displaced persons are settled, the State Government may utilize the land for other purposes. The Court held as under:

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> "32 However, we are unable to agree with the High Court that transfer of land to the State Government takes such transferred land out of compensation pool. The land transferred to the State Government continues to be part of compensation pool but it is required to be disposed of by the officers of the State who have been conferred the powers of the Managing Officer or of the Settlement Commissioner for the settlement of the displaced persons alone. *It is only after the displaced persons are settled, the State Government may utilize the land for other purposes."*
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> (Emphasis Supplied)

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12. The appellant relied upon the judgment in ***Ramesh Parsram Malani*** to contend that a displaced person has to file a claim before 30.06.1955.We do not find any merit in such argument. The referred case was where a displaced person was an owner of 83.11 acres of landin Pakistan which was verified by the Settlement Claim Officer. An allotment of 40.4 standards acre was made prior to commencement of the Act. It is 13 years after the death of displaced person on 10.08.1988, the legal heir sought allotment of the remaining verified claim of the displaced person as perennial source of allotment. The appellant cannot take help from that judgment, he having no claim of allotment to an evacuee land. The displaced person is claiming allotment on the basis of government policy decision dated 20.06.1978, which policy contemplate that the allotment of the evacuee land shall be in terms of Section 20 of the Act.

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13. The displaced person- respondent No. 4 is claiming allotment on the basis of government policy decision dated 20.06.1978. The evacuee land has to be allotted to a displaced person as it forms part of the

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[3] (2020) 11 SCC 653

compensation pool in terms of Section 14 of the Act which can be allotted in terms of Section 20 of the Act. The evacuee land can be allotted only to a displaced person alone. The allotment to non-displaced person can be considered only after all the displaced person have been settled. Therefore, the clause to allot evacuee land to encroacher in the policy dated 20.6.1978 is beyond the scheme and purpose of the Act. However, if any allotment has been made to an encroacher and had attained finality, the same will not be re-opened. Therefore, an encroacher does not have any right of regularization of an evacuee land in the presence of a displaced person entitled to allotment in order to satisfy the objective of the Act.

14. It is stated that the possession of the land has been taken over by the Government on 24.01.2014. The claim of the appellant is now for restoration of possession by an encroacher, which is wholly untenable in view of the above observations.

15. In view thereof, we do not find any merit in the present appeal and the same is dismissed.

Nidhi Jain Appeal dismissed.