

PETITIONER:
TAR MOHAMMAD & ORS. ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ORS. ETC.

DATE OF JUDGMENT: 01/04/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

CA NO.1393/77

As per office Report Respondent No.11 is dead. Hence, Civil Appeal No. 1393/77 having abated is dismissed.

CA NOS.1394-1400/77 & 2473/77

These appeals arise from the common judgment of the Bombay High Court passed in special civil Application No.369/1970 and batch on December 21, 1976. One Mohd. Hasham Abdulla was a partner of M/s Moula Dina Ayub Firm, Akola which firm owned 689.28 acres of land in Balapur and Akola Taluk of Akola District of Maharashtra. The said Mohd. Hasham Abdulla migrated to Pakistan. Consequently, the Deputy Custodian on June 21, 1951 declared his 1/4th share as an evacuee property. Therefore, it would appear from the record that as per the assertion made by the appellants, a partition of the partnership properties took place on May 16, 1956 and it was claimed that the said property had fallen to the share of Mohd. Hasham Abdulla. They claimed tenancy rights in the said property. Pursuant to the declaration and also action taken under the Displaced persons (compensation and Rehabilitation) Act, 1954 [for short, the "Act"], the order came to be passed by the Assistant Custodian of the Evacuee property on April 28, 1969 and notice in furtherance thereof was issued on February 9, 1970 in some cases and on April 23, 1971 in some other cases by the Tehsildar directing the appellants to surrender possession of the property. They challenged the same order in the writ petition. Several contentions were raised in the High court and all have been negatived by the High Court. One contention, raised before us by Shri Mohta, learned senior counsel for the appellants, is that they remained in possession of the property prior to August 14, 1947 as tenants. By operation of sub-section (2) of section 12 of the Act, the tenancy cannot be terminated. The property, therefore, was not free from encumbrances under the Administration of Evacuee property Act, 1950 [for short, the "AEP Act"] As a consequence, the order passed by the Tehsildar and Assistant Custodian Evacuee property is without jurisdiction and authority of law. It also contended that it was subject to encumbrance. Therefore, the view

taken by the Division Bench of the Bombay High Court is not correct in law.

Firstly, we are unable to appreciate the stand taken by the appellants for the reason that there should be a specific finding by the authorities that the appellants had tenancy that there should be specific finding by the authorities that the appellants had tenancy granted by Mohd. Hasham Abdulla prior to August 14, 1947 in their favour and that they remained in occupation under that title as tenants. Then only sub-section (2) of section 12 of Act stands attracted. There is no such finding recorded by the High court in that behalf nor any such contention was raised. Their only premise is that they were tenant and, therefore, the property was not covered under the AEP Act as free from encumbrances. That contention, though raised in the High court, was negatived. The High Court reasoned that by operation of Section 4(1) of the AEP Act, the pre-existing law stands excluded by virtue of the non obstante clause. Thereby, tenancy rights also stand extinguished by operation of the non obstante clause. Once section 4(1) of the AEP Act stands attracted, the alleged right to tenancy has no foundation for resisting taking possession of the land. Even the order passed by the Tehsildar and Assistant Custodian has not been made part of the record which was impugned in the High Court. Under these circumstances, there is no case warranting interference.

The appeals are, accordingly, dismissed. No. costs.