SUPREME COURT OF INDIA

Shankara Co-Op. Housing Society

Vs.

M.Prabhakar & Ors.

C.A.No.4099 of 2000

(D.K.Jain and H.L.Dattu,JJ.,)

05.05.2011

JUDGMENT

H.L.Dattu,J.,

1. We grant leave in the special leave petition filed by the State of Andhra Pradesh.

2. In these civil appeals, we are required to consider essentially the erstwhile legislations with regard to the administration of property left behind in India by evacuees migrated to Pakistan during partition and the compensatory redistribution of the same amongst those persons who had migrated from Pakistan, leaving behind their property, at the time of partition.

3. The subject matter are the lands in Survey Nos. 9, 11, 47, 140, 141, 142, 143, 151, 152, 153, 676 and 677, admeasuring about 90.08 acres, situated at Khapra Village, in the erstwhile Medchal Taluk (now Vallabhnagar Taluk) of the Ranga Reddy District, Andhra Pradesh [hereinafter referred to as `the disputed lands'].

4. In this batch of three civil appeals, the appellant is the subsequent purchaser of the property in dispute from the allottees under the provisions of The Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as, "the Displaced Persons Act"). It assails the judgment and order of the Division Bench of the High Court of Andhra Pradesh in WP No. 17722 of 1990 dated 27.04.2000. The State Government has also filed Special Leave Petition (c) No. 6964 of 2001 under Article 136 of the Constitution, in defense of the notification which was struck down by the impugned judgment. Since the facts and questions of law raised before us are the same in all these civil appeals, we will take up C.A. No. 4099 of 2000, in the case of Shankara Co-op. Housing Society Ltd. as the lead case for the purpose of narrating the facts leading upto the impugned judgement.

5. The facts in extenso require to be noticed. They are:- The disputed lands originally belonged to one Mandal Bucham, whose legal representatives are respondents herein. Shri Mandal Bucham had borrowed paper currency from late Rahim Baksh Khan and since he

failed to discharge the amount due, late Rahim Baksh Khan had filed a civil suit against Mandal Bucham before the District and Sessions Judge at Hyderabad District. It appears that the Court had passed a judgment and decree in favour of late Rahim Baksh Khan. In the execution proceedings of the decree, it is alleged that late Rahim Baksh Khan had purchased the disputed lands belonging to Mandal Bucham in an auction under the supervision of the Court. Rahim Baksh Khan expired in the year 1940 and later on, it appears, his legal representatives had migrated to Pakistan after partition of India.

6. It is averred that the Deputy Custodian and Collector, Hyderabad District, had issued notice dated 11.01.1951, to the legal heirs of late Rahim Baksh Khan, namely Mr. Rafi Mohammed Khan and Mr. Shafi Mohammed Khan, under sub-Section (1) of Section 7 of the Administration of Evacuee Property Act, 1950 [hereinafter referred to as "the Evacuee Property Act"] inter alia stating that the "disputed lands" belonged to late Rahim Baksh Khan and they have migrated to Pakistan and they are evacuee and, therefore, he would hold an enquiry in the matter on 27.01.1951 and any person having any share or interest in the above "disputed lands" are directed to participate in the proceedings with necessary documents in support of their claim. It appears that general notices were also published in the village in which the said lands were situated on 26.01.1951. Notice was also given to the ancestors of the contesting respondents on 15.02.1951. It is stated that neither the contesting respondents nor anybody else had filed any objection to the notice issued under Section 7(1) of the Evacuee Property Act.

7. After conducting a detailed enquiry in respect to the claim of ownership of the said property, the Deputy Custodian and Collector issued a Notification No.55, in NO CE/4064 to 4080 dated 11.12.1952, declaring the disputed property in issue as an Evacuee Property under Section 7 of the Evacuee Property Act. This notification was subsequently published in the Hyderabad Government Gazette. Pursuant to the aforesaid declaration, the name of the Collector/Custodian was entered in the Revenue Records. After such declaration, the Central Government has acquired the "disputed lands" by issuing notification under Section 12 of the Displaced Persons Act for the rehabilitation of the persons who were displaced during the partition.

8. The erstwhile owners of the property or the ancestors of the contesting respondents did not question the declaration of the "disputed lands" as evacuee property and the subsequent acquisition by the Central Government. It was on or about in the year 1955, the ancestors of the respondents herein claimed ownership of the `disputed lands' and made their representation before the authorities under the Evacuee Property Act. The authorities, however, had informed them that they should prefer an appeal or a review petition. In spite of such counsel, they continued to make representations and petitions in furtherance of their claim.

9. The Tahsildar, Medchal Taluk, issued a letter dated 29.06.1966, inter-alia, seeking to auction the "disputed lands" on yearly lease basis. Aggrieved by the action of the authorities, Shri. Mandal Anjaiah, claiming to be ancestor of the contesting respondents, preferred a writ petition before the Andhra Pradesh High Court, in No. 1051 of 1966, inter-alia, seeking a

writ of prohibition or direction restraining the respondents in the petition from auctioning the "disputed lands" and to direct the authorities to decide the representations/ petitions filed by the writ petitioner. The Regional Settlement Commissioner/Custodian of Evacuee property was arrayed as one of the respondents to the proceedings. In his affidavit dated 21.08.1967, he had averred that the notice as required under Section 7 of the Evacuee Property Act read with Rule 6 of the Rules notices had been issued to all the parties interested in the disputed lands.

10. During the pendency of the writ petition, a portion of the land was allotted to one Smt. Eshwari Bai, and therefore, she was impleaded as one of the respondents in the writ petition. During the pendency of this writ petition, other contesting respondents had filed a Revision Petition under Section 27 of the Evacuee Property Act before the Deputy Custodian General, Jaisalmer House, New Delhi, to revise the notification dated 11.12.1952 declaring the disputed lands as evacuee property.

11. The writ petition came to be dismissed by the High Court vide its order dated 14.06.1968 on the ground that the claim of the respondents is highly belated and they have also not exhausted the alternate remedy provided under the provisions of the Evacuee Property Act. The order passed by the Court has some relevance and, therefore, the same is extracted. It reads :-

> "In this application for the issue of a writ under Article 226 of the Constitution, what is sought to be challenged by the petitioner is an order of the Deputy Custodian of Evacuee Property under Section 7 of the Administration of Evacuee Property Act declaring certain properties as evacuee properties. The notification was made on 11.12.1952. The petitioner did not avail himself of the remedy provided under Section 24 of the Act by way of an appeal. In fact, in 1955 and again in 1957 and 1959, he appears to have approached the Deputy Custodian with a request that the land should not be treated as evacuee property and on all these occasions, he was informed that he should go in appeal and not file review applications. It is not open to the petitioner without preferring an appeal, to approach this court at a late stage with a petition for the issue of a writ. There are no merits in this writ petition and it is therefore dismissed with costs."

12. After the dismissal of the writ petition, some portion of the lands was allotted to Shri. Gopaldas and Shri. Jangimal on 15.09.1968 and to Shri. Mathuradas (legal heir of Shri. Valiram Hiramal) on 21.11.1968. Sanads (Transfer of Titles and Rights) were also issued to them and their names were recorded in the revenue records.

13.As we have already noticed, some of the legal representatives of late Mandal Bucham had approached the Deputy Custodian General, New Delhi by filing a revision petition under Section 27 of the Evacuee Property Act, inter alia questioning the notification dated 11.12.1952. The Deputy Custodian General vide his order dated 25.09.1970, had allowed the revision petition and remanded the case to Custodian-cum-Collector, Hyderabad District for

re-determination of the evacuee nature of the lands after affording an opportunity of hearing to all the parties.

14. After such remand, Collector-cum-Deputy Custodian of Evacuee Property had conducted a re-enquiry and he had concluded that there was no evidence to show that late Rahim Baksh Khan came to be the owner of the land in pursuance of an auction by the Court in execution of any money decree. Hence, the Collector-cum-Deputy Custodian vide order dated 28.05.1979 came to the conclusion that since there were no records available to the contrary, Shri. Mandal Bucham and the other contesting respondents continue to be the owners of the disputed lands.

15. Aggrieved by the aforesaid order, the allottees had filed a Revision Petition before the Chief Settlement Commissioner of Evacuee Property, Hyderabad under the Displaced Persons Act, who, by an order dated 27.10.1979, had called for the records of the case in order to review the aforementioned order of the Collector-cum- Deputy Custodian dated 28.05.1979. It appears that in view of the pendency of the proceedings, the Tahsildar refused to give possession of the "disputed lands" to the allottees (who had sanads in their name) in the light of the aforesaid order of the Collector-cum- Deputy Custodian, Hyderabad District.

16. The Chief Settlement Commissioner of Evacuee Property, by his order dated 11.05.1983, set aside the aforesaid order of the Collector-cum- Deputy Custodian, and declared that the said property belonged to late Rahim Baksh Khan and that by virtue of the Notification No. 55 in NO CE/4064 to 4080 of 1952, the disputed lands are evacuee property.

17. Once again, the contesting respondents had filed a revision petition under Section 33 of the Displaced Persons Act before the Secretary, Revenue Department, Govt. of Andhra Pradesh to revise/review the aforesaid order, which came to be rejected vide order dated 23.07.1983.

18. The contesting respondents filed a writ petition No. 7517 of 1983 before the High Court of Andhra Pradesh, inter alia, requesting the court to direct the authorities under the Displaced Persons Act to initiate suo-moto proceedings to determine the claim of ownership of the disputed lands. The High Court, by its order dated 26.07.1988, dismissed the writ petition, inter alia holding that it cannot compel any authority to initiate and dispose of the suo moto proceedings under Section 33 of the Displaced Persons Act.

19. The contesting respondents filed another Writ Petition No.17722 of 1990 on 13.11.1990 (from which the impugned judgment has arisen) before the High Court, inter alia requesting the High Court to issue a writ or order directing the Commissioner, Survey Settlement and Land Records/Chief Settlement Commissioner, Evacuee Property, Hyderabad to conduct an enquiry into questions of title of "disputed lands" and correctness of the declaration of the said property as evacuee property in pursuance of proceedings of the Chief Settlement Commissioner dated 27.10.1979. It is relevant to notice that the contesting respondents did neither seek for the quashing of the Notification No. 55 in NO CE /4064 to 4080 dated 11.12.1952, nor made the present appellant a party to the writ proceedings. Subsequently, on

13.03.1997, the prayer in the writ petition was sought to be amended to include a prayer to quash the Notification No. 55 in NO CE 4064 to 4080 dated 11.12.1952, which was allowed on 27.08.1998. As the present appellant was not made party to the proceeding, it sought to implead itself by filing an application on 22.01.1999, and the same was allowed on 27.08.1999.

20. By the impugned judgment dated 27.04.2000, the learned Division Bench of the High Court allowed the writ petition by setting aside the order passed by the Chief Settlement Commissioner dated 11.05.1983 and restored the order passed by the Collector-cum-Deputy Custodian of Evacuee Property dated 28.07.1979. Aggrieved by the Judgment and order passed, the appellant-Shankar Co-operative Housing Society has come before us in these civil appeals.

21. The subject matter of the Civil Appeal No. 4100 of 2000 pertains to the lands in Survey No. 152 admeasuring about 13.17 acres. These lands were originally allotted to Mathura Das on 26.11.1968, Subsequently, Mathura Das has executed General Power of Attorney (GPA), in favour of P.H. Hasanand and Chandumal dated 19.12.1966. Before us, the appellant -P.H. Hasanand as General Power of Attorney Holder of the late Mathura Das (who died on 30.5.1970) is assailing the Judgment and order of the Division Bench of the High Court in W.P. 17722 of 1990 dated 27.4.2000. It is relevant to mention that the Special Leave Petition filed by Mathura Das through his legal representatives has been dismissed by an order made by this Court dated 13.8.2007 on the ground of delay.

22. The subject matter in Civil Appeal No. 4101 of 2000 pertains to lands in Survey nos. 9,11,140,142,143,676 and 677, admeasuring about 20.27 acres. These lands were originally allotted to Smt. Eswari Bai on 30.11.1966. During her life time, she had executed a General Power of Attorney in favour of Thakur Hadanani on 06.08.1999. During the pendency of the appeal, Smt. Eswari Bai expired. The application filed by Thakur Hadanani to bring legal representatives of Smt. Eswari bai was dismissed by this Court vide its order dated 30.03.2010 as General Power of Attorney holder of deceased has no locus- standi to file the appeal. In this appeal, the appellants before us are (1) P. Laxmi Patni, who is the son-in-law of P.M. Rao; (2) Vidya Devi, legal representative of Seetha Devi wife of Gopal Das and (3) Thakur Das is minor and represented by Smt. Vidya Devi.

23. One of the appellants before us is a co-operative society, styled as Shankara Co-op. Housing Society Ltd. [hereinafter referred to as `the society']. The said society has 600 members who are Government employees. The society has purchased the lands in disputes from the General Power of Attorney holders of three of the original allottees, namely, Shri. Gopaldas, Shri. Jangimal and Shri. Mathuradas, by paying the entire sale consideration. It is asserted that the Society, after obtaining permission from the competent authorities, has allotted residential plots carved out of the "disputed lands" to its members.

24. We have heard Shri. P.S. Narasimha, learned senior counsel and Shri. C. Mukund, learned counsel for the appellants and Shri. Ranjit Kumar and Shri. L. Nageshwar Rao,

learned senior counsel for the respondents. The State of Andhra Pradesh is represented by Shri. T.V. Ratnam, learned counsel.

25. Shri. C. Mukund, learned counsel who appears for the appellants in C.A. No. 4100 of 2000 and C.A. No. 4101 of 2000, submits apart from others, that the delay and laches on the part of the contesting respondents in approaching various authorities for redressal of their grievances, would disentitle them to claim any reliefs. It is submitted that repeated representations filed before the authorities would not be a ground to condone the delay and it is further submitted that there is inordinate delay in filing the writ petition from the date of notification issued under the Evacuee Property Act; the claim of the respondents is barred by principles of constructive Resjudicata since in the writ petition filed by the respondents before Andhra Pradesh High Court, the plea of non-service of notice on the interested persons while declaring the said lands as an evacuee property was not raised, though it was available to them; that the question of facts as to title of the said lands, etc., could not have been gone into by the High Court in its writ jurisdiction, under Article 226 of the Constitution; and that since the "disputed lands" have already been acquired under the Displaced Persons Act, the contesting respondents cannot have any right, title and interest over those lands.

26. While elaborating the issues raised, Shri. Mukund, learned counsel, submits that right from the beginning, the contesting respondents have either approached the authorities under the Evacuee Property Act or approached the judicial forums belatedly, or have gone before the wrong forum seeking either incorrect or incomplete reliefs. He submits that the competent authority under the Evacuee Property Act had not only issued the individual notices to the evacuee but also public notice was also issued on 26.01.1951. He further states that the ancestors of the contesting respondents were served with a notice dated 15.02.1951. He also submits that there can be no dispute that the "disputed lands" belonged to late Rahim Baksh Khan, as his name was recorded in the land revenue records. He further submits that there was no challenge to the declaration of the lands as evacuee property upto the year 1955, and for the next 11 years, upto 1966, the contesting respondents made only repeated representations to the authorities, without approaching the proper judicial forum provided under the Evacuee Property Act. He further asserts, that even in 1966, when the first writ petition was filed, the only prayer that was made was to set aside the action of the Tahsildar seeking to auction the lands for granting Ek saala lease and not to quash the Notification No. 55 dated 11.12.1952, which had declared the disputed lands as evacuee property. He points out that there was no averment in the writ petition filed in the year 1966 regarding non-service of the notice, which is one of the principal grounds taken by the contesting respondents in the subsequent writ petition. Shri. Mukund further asserts that at no point of time prior to the 1997 amendment to the impugned writ petition, a challenge was made to the Notification No. 55 dated 11.12.1952, declaring the lands as evacuee property. He then referred to the counter affidavit filed by the State Government before the High Court in the 1966 writ petition which states that the contesting respondents were in possession of the land on the basis of Ek Saala or annual lease for the purpose of cultivation, and they had not paid the lease amount, and when their eviction was being attempted, they claimed ownership. Subsequently, even after the dismissal of the 1966 writ petition, Shri. Mukund submits that

the contesting respondents again did not pursue the correct remedies after the 1983 order. In summation, Shri. Mukund contends that the contesting respondents did not take any steps from the time the notice was issued [period between 1951 to 1955], after which they made repeated representations to the authorities, which came to be rejected [period between 1955 to 1959] and then filed the writ petition in 1966 [without doing anything for 7 years for the period between 1959 to 1966]. After this, he states even pursuant to the 1983 Order, again they did not follow the correct course, till the filing of the writ petition in the year 1990. Even when the writ petition was filed, the notification declaring the said lands as evacuee property was not challenged. In other words, Shri. Mukund asserts that every time the contesting respondents raised their voice in protest, they did it before a wrong forum or seeking the wrong or incomplete reliefs.

27. The learned counsel further submits that a person who seeks intervention of the court under Article 226 of the Constitution should give satisfactory explanation of his failure to assert his claim at an earlier date. The excuse for his procrastination should find a place in the petition submitted by him and the facts relied upon by him should be set out clearly in the body of the petition. An excuse that the contesting respondents were making repeated representations before various forums cannot merit serious consideration. In aid of his submission, the learned counsel has invited our attention to the observations made by this court in City and Industrial Development Cooperation Vs. Dosu Andershir Bhiwandiwala and Anr. (2009) 1 SCC 168 (Paras 26-30), S. S. Balu and Another Vs. State of Kerala and others (2009) 2 SCC 479(Para 17), New Delhi Municipal Council Vs. Pan Singh and others (2007) 9 SCC 278 (paras 17-18) and K.V. Rajalakshmiah Setty & Anr. Vs. State of Mysore and Anr. (1967) 2 SCR 70.

28. In support of his second submission, Shri. Mukund invites our attention to the judgment and order in Writ Petition No.1051 of 1966 dated 14.06.1968 and submits that the same had been decided not only on merits but also on the ground that the writ petitioners had not availed the alternate remedy available under the Act. Alternatively, the learned counsel contends that non-service of notice as required under Section 7 of the Evacuee Property Act and the Rules framed thereunder was not raised, though the same was available to the contesting respondents and therefore, they could not have been permitted to take that plea in the subsequent writ petition filed. Therefore, subsequent writ petition from which, the present appeal arises, is barred by the principles analogous to res judicata. In aid of his submission, our attention is drawn to the decisions of this court in Thakore Sobhey Singh Vs. Thakur Jai Singh and others (1968) 2 SCR 848, Mohan lal Goenka Vs. Beney Krishan Mukher Jee and others (1953) SCR 377 and Shashivraj Gopalji Vs. Ed. Appakath Ayissa and others 1949 PC 302.

29. Leaned counsel Shri. Mukund further urged that it is settled law that the fact finding task undertaken by the High Court, which is evident from the impugned judgment, is not warranted in a writ petition filed under Article 226 of the Constitution of India. He attempts to make good his argument by reading out passages from the impugned judgment, and attempts to impress upon us that the prolixity of the judgment clearly showed that the questions of fact had been gone into by the High Court while granting reliefs to the

respondents. This, according to the learned counsel, is impermissible. In aid of his submission, the learned counsel has invited our attention to the observations made by this Court in the case of Surya Dev Rai Vs. Ramchander Rai and others (2003) 6 SCC 675, Ranjeet Singh Vs. Ravi Prakash (2004) 3 SCC 682 and Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and others (2005) 4 SCC 456.

30. Shri. Mukund submits that once the `disputed lands' are acquired under the Displaced Persons Act and allotted to the displaced persons, the Deputy Custodian of Evacuee Property will have no jurisdiction to initiate any proceedings under the Evacuee Property Act. He submits that the object of the two legislations are such that the Evacuee Property Act enabled that Government to first identify property as evacuee property and notify the same, after which, the Government would acquire such property under the Displaced Persons Act and distribute the same to the displaced persons. He contended, once such acquisition and redistribution take place under the Displaced Persons Act, the Deputy Custodian loses all his jurisdiction under the Evacuee Property Act to deal with the evacuee property. In other words, he contends that once property was distributed under the Displaced Persons Act to the displaced persons, it loses its evacuee status, and the status of such land had attained finality, and the same cannot be challenged. Reference is made to the observation of this court in the case of Major Gopal Singh and Others Vs. Custodian Evacuee Property (1962) 1 SCR 328, Basant Ram Vs. Union of India (1962) Supp. 2 SCR 733 and Defedar Niranjan Singh and another Vs. Custodian Evacuee Property and another (1962) 1 SCR 214.

31. Shri Mukund assails the judgment and order of the High Court as perverse on the ground: (a) that the High Court has not taken into consideration the fact that the contesting respondents had taken the lands on an Ek Saala lease, for which they defaulted in making payment; (b) that the High Court had completely overlooked the Order passed by the Chief Settlement Commissioner dated 11.05.1983; (c) that the plea of notice, not being served, was not taken in the writ petition filed in the year 1966. Therefore, it was not open for the contesting respondents to raise such contention in the subsequent proceedings.

32. With regard to the question of non-service of notice, Shri. Mukund would contend that if the contesting respondents were in possession of the said lands, as claimed by them, they cannot plead that they were not served with the notice issued under sub-section (1) of Section 7 of the Evacuee Property Act. He further submits that the conduct of the contesting respondents cannot be brushed aside and had a very vital bearing on this case. He also points out that the revenue records produced by the State Government before the High Court would show late Rahim Baksh Khan as the owner of the property, a fact that was overlooked by the High Court in the impugned judgment.

33. Shri. P.S. Narasimha, learned senior counsel appearing for the Society, prefaces his submission with the purpose and object behind the enactment of the Evacuee Property Act and the Displaced Persons Act. He contends that property that was acquired under the Evacuee Property Act as evacuee property was redistributed to displaced persons for a consideration, and that the sanads issued were actually sale deeds. He further states that there were no prohibition/restriction in the sanads for alienation of the property under the

provisions of the Displaced Persons Act and, therefore, gave finality to question of ownership of the lands. While adopting the submissions of Shri. Mukund, the learned senior counsel would contend that once the Displaced Persons Act comes into operation, the operation of the Evacuee Property Act comes to an end. He further emphasized that the contesting respondents could not be permitted to take advantage of their own wrongs, especially when third party rights had already been created. He also urged that the subsequent writ petition filed by the contesting respondents should have been dismissed by the High Court for the same reason for which earlier writ petition was dismissed inasmuch as the cause of action in both the petitions being the same, the subsequent writ petition would be barred by the principles analogous to res judicata.

34. Shri. T.V. Ratnam, learned counsel appearing for the State of Andhra Pradesh, submits that the Evacuee Property Act is a complete code by itself, with a mechanism to deal with the question of evacuee nature of the property. He states that once it is decided by the Custodian, in exercise of his powers under the Act, that the property was an evacuee property, then it was not available for challenge in a writ petition filed under Article 226 of the Constitution. Such declaration can be questioned only by filing either an appeal or revision, as provided under the Act. He further states that the contesting respondents did not follow the procedure prescribed under the Act. Even when the Revision filed by them was rejected by the Custodian, the same was never challenged. The learned counsel pointed out in the pahani pathra or revenue records that persons other than the contesting respondents were also in possession of the land, along with Shri. Mandal Anjaiah, and states that this possession was in pursuance of the Ek Saala lease that was granted in their favour. The learned counsel points out that the revenue records would clearly prove that it is the Custodian who was the owner and in possession of the lands in dispute. He also emphasized that there was inordinate delay in challenging the notification dated 11.12.1952 and the High Court ought not to have entertained the writ petition filed in the year 1990 and unsettle the settled things.

35. Per contra, Shri. Ranjit Kumar, learned senior counsel, submitted that though late Rahim Baksh Khan had a money decree in his favour against Shri. Mandal Bucham, an ancestor of the contesting respondents, the same was never executed. He further states that there was no warrant for execution against the disputed lands in favour of late Rahim Baksh Khan. He submits that there is nothing on record to show how the rights of the contesting respondents got extinguished. It is his further submission that a proper enquiry, as required under Evacuee Property Act, was not conducted with regard to the nature of the lands. He submits that from the records, it can be made out that the Collector was informed by the Tahsildar that the lands in question were in the name of Mandal Bucham. He also states, that the requirements of personal notice as per Rule 6 of the Administration of Evacuee Property (Central) Rules, 1950 [hereinafter referred to as `the EP Rules'] were not complied with. He also states that the contesting respondents have always been in possession of the said lands, as admitted by the Government, in its counter affidavit.

36. With regard to the question of delay and laches which was the forefront of the submission of Shri. Mukund, learned counsel, he submits that the contesting respondents, who were poor and illiterate farmers, have been continuously making representations and

filing petitions before the various authorities, from the time they had the knowledge of the status of the property being declared as evacuee till the filing of the writ petition in 1966. He further states that since they were in possession of the land, when they came to know that the said lands were being auctioned, they moved the High Court under Article 226 of the Constitution, without further delay. He contends that there were no third party rights at least till 1966, and that the contesting respondents were in possession of the lands and were cultivating the same, and when their possession was threatened, they moved the High Court for appropriate reliefs. It is further submitted that the High Court has merely disposed of the writ petition filed only on the ground that the petitioners therein had not exhausted alternate remedy available to them under the Evacuee Property Act.

37. Shri. Ranjit Kumar further submits that the lands allotted to Shri. Gopal Das and Shri. Jangimal that were made in 1968, and were cancelled by the Custodian, as the two allotees did not come forward to take possession of the same, vide order dt. 21.11.1987. With regard to the lands allotted to Shri. Mathuradas, the learned senior counsel would submit that this Court, by an order dt. 13.08.2007, dismissed the Special Leave Petition filed by the legal representatives of Shri. Mathuradas against the impugned judgment, on the ground of delay, as well as on merits.

38. The learned senior counsel then drew our attention to the revision undertaken by an order of the Dy. Custodian General in the year 1970, who found that Shri. Mandal Bucham was the pattedar and that the status of the lands required enquiry as there was no evidence to the claim that late Rahim Baksh Khan had purchased the said lands in an auction, as claimed by the appellants. Since the question of title was involved, the matter was rightly remanded back to the Collector-cum- Dy. Custodian, who, vide order dt. 28.05.1979, came to the conclusion that the lands were owned by the ancestors of the contesting respondents and the revenue records support their case.

39. The learned senior counsel also submits that the Order passed by the Chief Settlement Commissioner dated 11.05.1983 is manifestly illegal, as the Collector-cum-Dy. Custodian, was not one of those authorities whose order could have been revised by the Chief Settlement Commissioner in exercise of his jurisdiction under Section 24 of the Displaced Persons Act. Since the powers conferred under the aforesaid Section is only to revise those orders passed by the officers notified under the provisions of Displaced Persons Act. Therefore, it is argued that the said order is one without jurisdiction.

40. Shri. Ranjit Kumar rebuts the claim of the appellants that notice was served on the contesting respondents. He states that notice could not have been served on legal heirs of late Rahim Baksh Khan, who were in Pakistan, and were unlikely to come back; no notice was issued to the contesting respondents. On a query from the bench regarding as to why the contesting respondents held an Ek Saala lease if they owned the property, he submits that there was absolutely no record to show that the rights of the contesting respondents had been extinguished. He further submits in rebuttal to the contention of the appellants of pursuing the wrong remedies, by stating that a writ petition under Article 226 was the only remedy available, as Section 36 of the Displaced Persons Act bars the jurisdiction of civil courts.

He also states that the argument of the appellants that once the lands are acquired by the Central Government under the Displaced Persons Act, the property ceases to be evacuee property and becomes the property of the Central Government, depends on the factor that the property is notified as evacuee property after following the due procedure prescribed under the Evacuee Property Act and the Rules framed thereunder. He further urged that if the property in question is not evacuee property, there is no question of the coming into operation of the Displaced Persons Act.

41. Shri. Ranjit Kumar further submits that the appellants are not the original allottees and they are only subsequent purchasers, from the general power of attorney (`GPA') holders of the original allottees. In some cases, he contends, the GPA holders have sold the property after the death of the principal, and in other cases, GPA holders of GPA holders of original allottees have sold the lands and in both cases, he submits that the same is impermissible in law. He further contends that the allotment to Shri. Gopal Das and Shri. Jangimal was cancelled in the year 1989, the Special Leave Petition of Shri. Mathuradas had been dismissed in the year 2007, and that this Court had disallowed the substitution of the legal heirs of Smt. Eshwari Bai, on her death, due to which appellants cannot maintain these proceedings.

42. In summing up his contention, the learned senior counsel states that the Notification dated 11.12.1952 issued under sub-Section (1) of Section 7 of the Evacuee Property Act was manifestly illegal and the disputed lands could not have been declared as evacuee property, as the owners were not evacuee; that the argument of delay and laches was not available to the appellants, as the original allottees who had claimed that they weren't made a party have been heard at all stages right from the first writ petition in the year 1966; that the question of Ek Saala lease cannot be put against the respondents as the name of the contesting respondents was recorded in the Revenue records as owner of the lands; that the proceedings under the Displaced Persons Act can take place only if the proceedings under the Evacuee Property Act are validly made; that the proceedings under Section 24 of the Displaced Persons Act culminating in the order of Chief Settlement Commissioner in the year 1983 is illegal, for the reason it can be done only of those orders passed by the officers notified in Section 24 of the Act, and that the order of Chief Settlement Commissioner is without jurisdiction and hence is a nullity; that the High Court could correct any manifest illegality, such as declaring the disputed lands as evacuee property, under its writ jurisdiction, which need not be interfered with by this Court under Article 136; that the disputed questions of fact had to be necessarily gone into by the High Court under its writ jurisdiction due to the bar of jurisdiction of other Courts by virtue of Section 36 of the Displaced Persons Act; that the contesting respondents were in possession of the lands and continues to be so even till this day and this position is accepted by the State Government in the counter affidavit filed before this court; assuming that there was some delay on the part of the contesting respondents for redressal of their grievances before various forums, since the same has been condoned by the writ court, this court need not interfere with the said order.

43. Shri. L. Nageshwar Rao, learned senior counsel who appears for the contesting respondents in the Special Leave Petition filed by the State, supplemented the arguments of

Shri. Ranjit Kumar. He also submitted that the only issue was whether the nature of the property was such that it fell within the ambit of evacuee property or not. He also submits that if the facts were not gone into by the High Court, there could be no decision on this aspect, and once this aspect was decided in favour of the contesting respondents, then nothing remains to be decided by this Court.

44. The learned counsel have referred to several case laws for the many propositions they have canvassed before us. The relevance of these decision we will deal with at appropriate stage.

45. In the background of these facts, the following questions arise for our consideration and decision:

> "(1) Whether the contesting respondents have been guilty of delay and laches.
>
> (2) Whether the dismissal of the writ petition No. 1051 of 1966 by the High Court decided the matter fully and finally.
>
> (3) Whether the lands in question are evacuee property as defined under the Evacuee Property Act. (4) What is the effect and the consequence of the notification issued under Section 12(1) of the Displaced Persons Act. (5) Whether the High Court could have gone into the facts under its writ jurisdiction."

46. Re : Delay and Laches : - Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances. The Privy Council in Lindsay Petroleum Company Vs. Prosper Armstrong Hurd etc; (1874) 5 PC 221 at page 229, which was approved by this Court in Moon Mills Ltd. Vs. Industrial Courts AIR 1967 SC 1450 and Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service AIR 1969 SC 329, has stated :-

> "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done

during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

47. In Amrit Lal Berry Vs. CCE (1975) 4 SCC 714, this Court took the view that "if a petitioner has been so remiss or negligent as to approach the Court for relief after an inordinate and unexplained delay, he certainly jeopardises his claims as it may become inequitable, with circumstances altered by lapse of time and other facts, to enforce, a fundamental right to the detriment of similar claims of innocent third persons."

48. In State of Maharashtra Vs. Digambar (1995) 4 SCC 683, this Court observed that "unless the facts and circumstances of the case at hand clearly justify the laches or undue delay, writ petitioners are not entitled to any relief against any body including the State."

49. In Shiv Dass Vs. Union of India (2007) 9 SCC 274, this Court opined that "the High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

50. In City and Industrial Development Corporation Vs. Dosu Aardeshir Bhinandiwala and others (supra), this court held :-

> "It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of Mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a Writ is an adequate ground for refusing a Writ. The principle is that courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum."

51. Shri Ranjit Kumar, learned senior counsel for contesting respondents, invites our attention to the observations made by this court in the case of State of M.P. and others Vs. Nandlal Jaiswal and others (1986) 4 SCC 566, wherein this court has stated "this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere inspite of delay or creation of third party rights would by their very nature be few and for between. Ultimately it would be a matter within the discretion of the Court ex-hypotheses every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

52. Reliance is also placed on the observations made by this Court in M/s Dehri Rohtas Light Railway Company Ltd. Vs. District Board, Bhojpur and others (1992) 2 SCC 598, wherein it is observed :

> "The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches."

53. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are: (1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts. (5) That representations would not be adequate explanation to take care of the delay.

54. Let us now advert to the contentions canvassed by learned counsel in this regard. Mr. Mukund, learned counsel for the appellants, submitted that the contesting respondent during the period 1951 till 1955, had not taken any steps for redressal of their grievance, if any, including challenging the notification issued by the competent authority under the Evacuee Property Act dated 11.12.1952. He further submits that from 1955 till 1959, the contesting respondents were making representations before forums which could not have given them reliefs. In spite of the counsel of the authorities that they should file either appeal or revision against the notification issued under the Evacuee Property Act, they did not resort to those remedies. It is further contended that from the period 1959 till 1966, they did not choose to approach any authorities nor took any judicial action. The learned counsel submits that for the first time, they approached the High Court by filing the writ petition some time in the

year 1966, inter-alia, claiming the relief of certiorari to quash the action of the authorities for auction of the acquired lands under the Displaced Persons Act for grant of Ek saala lease, but, at the time of hearing of the petition, they advanced a new case by contending that an appropriate writ requires to be issued to quash the notification issued under the Evacuee Property Act. It is further submitted that the High Court refused to grant the relief on the ground of delay and laches in approaching the court for quashing the notification of the year 1952 and further on the ground that the writ petitioner has not availed the alternate remedies provided under the Evacuee Property Act. The learned counsel submits by this order that the writ court has given a finding that at a belated stage, the writ petitioner cannot challenge the notification issued on 11.12.1952 under the provisions of the Evacuee Property Act. The learned counsel further submits that after disposal of the writ petition, the contesting respondents had approached forums which could not have entertained their claim nor could have granted any relief. It is further submitted even assuming that the respondents were knocking at the doors of the wrong forum, the same should not be held against them, may not come to their aid, since the third party rights are created by allotment of the Evacuee Property to the Displaced Persons under the Displaced Persons Act. He further submits that though the writ petition filed by one of the contesting respondents was dismissed by the writ court, the other contesting respondents suppressing the filing of the writ petition and its dismissal, had filed a revision petition under Section 27 of the Evacuee Property Act before the Deputy Custodian General, New Delhi sometime in the year 1967 inter-alia questioning the Notification dated 11.12.1952 declaring the `disputed lands' as Evacuee Property. Though they succeeded before that authority, the same was short lived and the said order was revised by the Chief Settlement Commissioner at the instance of the allottees by his order dated 11.05.1983. The learned counsel further submits that instead of questioning the said order before a proper forum, they approached the State Government to revise the order by the Chief Settlement Commissioner and when the revision petition was returned, they approached the High Court by filing a writ petition to direct the State Government to invoke its power of `Suo-Moto' revision, which came to be rejected on 26.07.1988. Therefore, the learned counsel submits that the time spent from 1983 till 1988 cannot be considered to be satisfactory explanation since they were seeking reliefs not in a manner provided by the law. The learned counsel submits that after about two years of the dismissal of the writ petition, they filed yet another Writ Petition No.17722 of 1990, inter-alia, seeking initially a direction to respondent No.3 to conduct an enquiry into the question of title of disputed lands and also the correctness of the declaration of the said property as evacuee property, and again after almost seven years of filing of the writ petition, an amendment was sought for quashing the Notification dated 11.12.1952. Therefore, the High Court ought not have entertained the writ petition in view of the inordinate and unexplained delay.

55. Shri. Ranjit Kumar contends that the contesting respondents were and are in continuous physical possession of the lands and it is only when their possession was threatened in the year 1966 by the Tahsildar for auctioning the lands to grant Ek saala lease, they had approached the High Court and prior to that, they were making representations before the authorities for redressal of their grievance. The learned senior counsel submits that the appellants have not placed any material before this Court that the contesting respondents were dispossessed from their lands and an inference should be drawn in favour of the

respondents. He also submits that though Sanads were given to the allottees, they were never put in possession of the property. He states that even the Sanads so granted were cancelled on a later date since the allottee could not take possession of lands. It is also contended that if there is any delay, it could only be after the Chief Settlement Commissioner had allowed the revision petition filed by the allottees by setting aside the earlier order passed by the Deputy Custodian in the year 1979. He further submits that the contesting respondent thereafter had approached the State Government to initiate its suo- moto revisional powers to revise the order passed by the Chief Settlement Commissioner and since that was not done, they immediately filed a writ petition for appropriate direction and the said writ petition was disposed of only in the year 1988 and immediately thereafter, they had approached the High Court by filing a writ petition for appropriate reliefs. Therefore, he submits that firstly, there was no delay or laches on the part of the contesting respondents in approaching the authorities for redressal of their grievances, secondly, assuming there is some delay, the same has been satisfactorily explained and lastly, when there was manifest illegality in the proceedings of the authorities both under the Evacuee Property Act and the Displaced Persons Act, the same has been corrected by the learned Division Bench of the High Court and this Court need not disturb the finding of the High Court in exercise of its jurisdiction under Article 136 of the Constitution.

56. Since this issue requires to be answered in the light of the pleadings of the contesting respondents in the writ petition filed by them before the High Court, it is desirable firstly to notice what was their explanation pleaded in approaching the writ court nearly after 28 years from the date of the notification issued under the Evacuee Property Act. We have carefully scanned through the pleadings in the writ petition and also the application filed for amendment nearly after eight years from the date of filing of the writ petition. There is no explanation, much less satisfactory explanation except a very casual statement in para 4 of the petition. Therein, it is said:

> "4. That in the meanwhile, there have been various proceedings whereunder the petitioners repeatedly knocking the doors of various authorities challenging the very correctness of the proceedings treating the petitioners' lands as evacuee. However, no attempt was made to go to root of the case and to find out, if really said Rahim Bux or his family at time had any title, right or interest to be declared as evacuee. For no fault, the petitioners are sought to be deprived of their legitimate rights, without any justification or valid reason."

57. In the counter affidavit filed by respondent No.13 (Shankar Co- operative Society), they had specifically contended "that the writ petition is time barred and on the ground of latches, the writ petition is bound to be dismissed. The petitioners are seeking quashing the order or notification of the year 1952 and an order of the quasi-judicial authority of the year 1983 and of 1990 [Para 2(d)]. In para 23 of the counter affidavit, they had also asserted, "that the petitioners have referred to various representations alleged to have been made to the respondent authorities from time to time on various dates reflected in the petition. They did not choose to file copies of all representations. On the other hand, it is reliably learnt that it is falsely made and such representations are filed."

58. The High Court, in the course of its judgment and order, notices the specific allegations made by the respondents in their counter affidavit filed and the contention of the learned counsel in regard to delay and laches on the part of the petitioners in approaching the Court.

59. While answering the aforesaid stand of the respondents in the writ petition, the Division Bench of the High Court refers to several orders passed by the authorities and then observes that "from what is narrated above, the petitioners cannot be found fault with for any inaction or lapse and they had been waging tireless legal battle since last 45 years. Further, they did not leave any chance in the litigation." Beyond this, the High Court has not stated anything with regard to the explanation offered by the petitioner in approaching the Court, even according to them, nearly after 45 years. The High Court has not recorded any finding whatsoever and ignored such a plea of far-reaching consequence.

60. In the present case, the respondents in the writ petition had raised a specific plea of delay, as a bar to grant relief to the petitioners. In our view, it was perhaps necessary for the Court to have specifically dealt with this issue. It is now well settled that a person who seeks the intervention of the High Court under Article 226, should give a satisfactory explanation of his failure to assert his claim at an earlier date. The excuse for procrastination should find a place in the petition filed before the Court and the facts relied upon by him should be set out clearly in the body of the petition. An excuse that he was agitating his claims before authorities by making repeated representations would not be satisfactory explanation for condoning the inordinate delay in approaching the Court. If a litigant runs after a remedy not provided in the Statute or the statutory rules, it cannot be a satisfactory explanation for condoning the delay in approaching the Court.

61. On this issue, we have heard the learned counsel for the parties in great detail, since the immoveable property rights of the parties are involved. In our considered view, there is no explanation, much less satisfactory explanation offered by the respondents in approaching the writ court after an inordinate delay of nearly 15 years from the date of the notification issued under the Evacuee Property Act. For the delay from 1952 to 1955, the contesting respondents would only submit that they were not aware of the notification issued under the Evacuee Property Act, since no notice was served on them, though a public notice was issued by the authority under the Evacuee Property Act. While explaining the delay of nearly eleven years from 1955 to 1966, they contend that they were in possession of the property and they were making representations before the authorities under the Evacuee Property Act for redressal of their grievance. The delay after the orders were passed by the Settlement Commissioner in the year 1983 till the writ petition was filed in the year 1990, it is explained that they had moved the State Government to suo-moto revise the order passed by the Chief Settlement Commissioner and since the State Government returned their request, they had approached the High Court to issue directions to the State Government to issue appropriate directions. In our considered view, at every stage, there was inordinate delay in approaching the authorities for redressal of their grievance. As rightly contended by Shri. Mukund, learned counsel, even when they approached the authorities, they were claiming wrong reliefs or incomplete reliefs. Even when they filed the writ petition in the year 1990, they did not choose to question the correctness of the notification issued under the Evacuee Property

Act but was questioned by way of filing an amendment application in the year 1998. There is some merit in the submission made by learned counsel for the contesting respondents that the petitioners in their pleadings before the writ court, had not even offered any explanation, much less satisfactory explanation, in approaching the court nearly after three decades from the date of notification issued under the Evacuee Property Act. It is now well settled that the power of the High Court under Article 226 of the Constitution to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. Inordinate and unexplained delay in approaching the court in a writ is indeed an adequate ground for refusing to exercise discretion in favour of the petitioners therein. The unexplained delay on the part of the petitioner in approaching the High Court for redressal of their grievances under Article 226 of the Constitution was sufficient to justify rejection of the petition. The other factor the High Court should have taken into consideration that during the period of delay, interest has accrued in favour of the third party and the condonatoin of unexplained delay would affect the rights of third parties. We are also of the view that reliance placed by Shri Ranjit Kumar on certain observations made by this Court would not assist him in the facts and circumstances of this case. While concluding on this issue, it would be useful to refer the observations made by the Court in the case of Municipal Council Vs. Shaha Hyder Baig (2002) 2 SCC 48, wherein it is stated that `delay defeats equity and that the discretionary relief of condonation can be had, provided one has not given by his conduct, given a go by to his rights'.

62. Re: Effect of the judgment and order of the High Court in W.P. No. 1051 of 1966:- While narrating the facts, we have referred to the judgment and order of the High Court in Writ Petition No. 1051 of 1966 dated 14.06.1968. The relief that was sought for by the petitioner therein was to issue a writ or direction restraining the respondents from auctioning the lands in pursuance of the letter of Tahsildar, Medchal dated 29.6.1966. However, the High Court while dismissing the Writ Petition, specifically has observed that what was challenged by the petitioner in the Writ Petition was the order passed by the Deputy Custodian of Evacuee property under Section 7 of the Evacuee Property Act declaring certain properties as evacuee properties. The Court specifically notices the notification dated 11.12.1952 issued by the authorities under the Evacuee Property Act and observes that the petitioner had not availed the remedy provided under Section 24 of the Act, by way of an appeal. In conclusion, it observes that petitioner without preferring an appeal has approached the Court at a belated stage with a petition for issue of a writ. Accordingly, the High Court had dismissed the petition with costs. It is not in dispute nor it can be disputed that the said judgment and order has attained finality. Sri Mukund, learned counsel, submits that though petitioner had questioned the letter of the Tahsildar, Medchal for auctioning the lands for grant of Ek saala lease, at the time of the hearing of the petition, there is possibility of the learned counsel for the petitioner to have questioned the notification issued under the Evacuee Property Act. Since by then, the petitioner had the knowledge of the notification issued under the Act, otherwise there was no reason for the High Court to have specifically noticed the notification dated 11.12.1952 issued under Section 7 of the Evacuee Property Act. However, Sri Ranjit Kumar, learned Senior counsel for the contesting respondents to get over this legal hurdle, submits that the writ petition was filed by Mandal Anjaiah,who was one of the legal representatives of late Mandal Buchaiah and the judgment and order passed by the Writ court

cannot be put against the other legal representatives of the Mandal Buchaiah. The learned senior counsel also submits that after disposal of the writ petition, the other heirs of late Mandal Buchaiah had preferred a revision before the Deputy Custodian General, New Delhi under Section 27 of the Evacuee Property Act and the same was not only entertained but necessary relief was also granted to him. Therefore, the Judgment and order of the High Court would not affect the rights of the other legal heirs of late Mandal Buchaiah.

64. Before we consider the contentions of learned counsel, let us first notice the settled legal position in matters like the present case.

65. In Shakur Basti Shamshan Bhumi Sudhar Samiti v. Lt.Governor, NCT of Delhi (2007) 13 SCC 53, the order passed by the High Court for closure of cremation ground, in conformity with zonal development plan, had attained finality. This Court has held that any subsequent order passed in ignorance of the order of the High Court which has attained finality is nullity. It was further observed:

> "40. The learned Subordinate Judge has also passed an order in a suit filed by one Balvant Rai in 1991. What was the nature of the decree passed by the Subordinate Judge has not been disclosed. The only contention raised in the list of dates is that the same was a collusive suit. With whom, the said Balvant Rai colluded or what was the nature and purport of the decree had not been disclosed. Some orders appear to have been passed also by the Additional District Judge. We do not know whether the Additional District Judge has passed the order in the same proceeding or in some other proceedings. If the judgments directing user of the land in conformity with the zonal development plan and further directing that a cremation ground should not be allowed to operate become final, an order passed in ignorance thereof would be a nullity."[Emphasis supplied by us]

66. Once the order of the High Court has attained finality, then it is not open for the lower courts or even for the High Court to ignore the said Order. In A.P. Housing Board v. Mohd. Sadatullah, (2007) 6 SCC 566, it was held:

> "34. Though in the appeal filed by the A.P. Housing Board in the present proceedings, it was asserted that the decision of the High Court in Writ Petition No. 4194 of 1988 was not final as appeal was filed against the said decision, at the time of hearing of the appeal, it was admitted that no such appeal was filed against the judgment of the High Court and the decision had attained finality. The consequence of the decision of the High Court in the circumstances is that in respect of two acres of land, proceedings under the Land Acquisition Act were held bad, award nullity and the landowner continued to remain owner of the property with all rights, title and interest therein.
>
> 41. In our opinion, the learned counsel for the original petitioner landowners is right in contending that when the acquisition proceedings and award in respect of two acres

of land was held bad and nullity by the High Court in previous proceedings, it was not open to the Special Court or the High Court to ignore the said order."

67. The Finality of Order by the High Court has been considered and upheld by this Court in Hindustan Construction Co. Ltd. and Anr. v. Gopal Krishna Sengupta and Ors., (2003) 11 SCC 210. This Court has held:

> "25. The question still remains whether, on facts of this case, the direction given in the Order dated 19th October, 2000 can be maintained. In the application there was no prayer to examine Pritika Prabhudesai. The prayer was to quash the proceedings and start trail afresh. There is no provision in law which permits this. Thus the application could not be allowed. Undoubtedly the High Court has proceeded on the footing that this evidence is essential and necessary. Section 311 of the Criminal Procedure Code permits taking of evidence at any stage. The High Court undoubtedly felt that it was in the interest of all parties that necessary evidence be recorded at this stage itself. But the fact remains that the application for this very relief has been rejected on th Novemb er, 1997. No appeal or revision was filed against that order. The Order dated 6th Novemb er, 1997 has therefore become final. Once such a relief has been refused and the refusal has attained finality, judicial propriety requires that it not be allowed to be reopened. The High Court was obviously not informed of the Order dated 6th Nove mber, 1997. Thus the High Court cannot be blamed. However as that Order has been brought to notice of this Court we cannot ignore it."

68. In Food Corporation of India v. S.N. Nagarkar, (2002) 2 SCC 475, this Court has held:

> "15. ... In the instant case, the writ petition filed by the respondent was allowed by judgment and order dated 6thMay, 1994 passed in Civil Writ Petition No. 4983 or 1993. That order attained finality as it was not appealed from. In execution proceedings, the appellant cannot go beyond the order passed by the Court in the writ petition and, therefore, what has to be considered is whether the High Court was right in holding that in terms of the order of the Court dated 6thMay, 1994 passed in Civil Writ Petition No. 4983 of 1993, the respondent is entitled to the arrears of pay and allowances with effect from the date of promotions. If the answer is in the affirmative, the question whether such relief ought to have been granted cannot be agitated in execution proceeding. We find considerable force in the submission urged on behalf of the respondent. In these proceedings it is not permissible to go beyond the order of the learned Judge dated 6th M ay, 1994 passed in Civil Writ Petition No. 4983 of 1993. The execution application giving rise to the instant appeal was filed for implementing the order dated 6th May, 1994 and in such proceeding, it was not open to the appellant either to contend that the judgment and order dated 6th M ay, 1994 was erroneous or that it required modification. The judgment and order aforesaid having attained finality, has to be implemented without questioning its correctness. The appellant therefore, cannot be permitted to contend in these proceedings that the judgment and order dated 6thMay, 1994 was erroneous in as much as it directed the appellant to pay to the respondent arrears of salary with effect from the dates of

promotion, and not from the dates the respondent actually joined the promotional posts."

69. In Oriental Bank of Commerce v. Sunder Lal Jain and Anr. (2008) 2 SCC 280, the respondents had availed credit facility to the tune of `20 Lacs and defaulted in repaying the same to the Bank. The Bank declared their account as Non Performing Asset and initiated recovery proceedings against the respondents before the DRT, which has issued a recovery certificate in favour of the Bank. However, against this, respondents did not prefer any appeal, instead filed writ petition before the High Court. The High Court has stayed the execution proceedings and directed the bank to consider the respondent's case in terms of RBI guidelines. Aggrieved by this, appellant Bank approached this Court against the order of the High Court. This Court observed that when a decree passed by the DRT had attained finality, then the proceedings for execution of decree cannot be stayed by High Court in an independent writ petition. This Court further held:

> "13. The High Court, therefore, erred in issuing a writ of mandamus directing the appellant bank to declare the respondents' account as NPA from 31st March, 2000 and to apply the RBI Guidelines to their case and communicate the outstandings which shall be recoverable by quarterly instalments over a period of two years. The later part of the order passed by the High Court wherein a direction has been issued to stay the recovery proceedings and the recovery certificate issued against the respondents has been cancelled is also wholly illegal as the decree passed by the DRT had attained finality and proceedings for execution of decree could not be stayed in an independent writ petition when the respondents had not chosen to assail the decree by filing an appeal, which is a statutory remedy provided under Section 20 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993."

70. Doctrine of Amity and Comity requires the Court of Concurrent Jurisdiction to pass similar orders. In India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd., 2007 (5) SCC 510, this Court has held:

> "The doctrine of comity or amity required a court not to pass and order which would be in conflict with another order passed by a competent court of law." It was further held:
>
> "17. This aspect of the matter has been considered in A Treatise on the Law Governing Injunctions by Spelling and Lewis wherein it is stated: Section 8. Conflict and loss of jurisdiction. --Where a court having general jurisdiction and having acquired jurisdiction of the subject- matter has issued an injunction, a court of concurrent jurisdiction will usually refuse to interfere by issuance of a second injunction. There is no established rule of exclusion which would deprive a court of jurisdiction to issue an injunction because of the issuance of an injunction between the same parties appertaining to the same subject-matter, but there is what may properly be termed a judicial comity on the subject. And even where it is a case of one court having refused to grant an injunction, while such refusal does not exclude

another coordinate court or Judge from jurisdiction, yet the granting of the injunction by a second Judge may lead to complications and retaliatory action...."

71. The issue before us is whether the judgment and order passed by the High Court in the writ petition filed by one of the legal representatives having attained finality in so far as the notification dated 11.12.1952 issued under the Evacuee Property Act, could have been re-agitated by the other legal heirs of late Mandal Buchaiah and whether the authorities under the Evacuee Property Act could have gone beyond the Judgment and order passed by the Writ Court and whether the High Court was justified in the subsequent Writ Petition filed to have re-agitated the issue which had attained finality.

72. In the Writ Petition filed by Mandal Anjaiah, the Regional Settlement Commissioner and custodian of Evacuee Property, Bombay, was arrayed as one of the respondents. That only means, he was fully aware of the Judgment and order passed by the Writ Court. In the revision petition filed by the other legal representatives of late Mandal Buchaiah, he was also arrayed as one of the respondents. However, a perusal of the order passed by Deputy Custodian General does not clearly indicate whether it was brought to his notice the Judgment and order passed by the High Court, yet again, in the order by the Collector-cum-Deputy Custodian dated 28.5.1979, there is no reference to the Judgment and order passed by the High Court. However, in the order passed by Chief Settlement Commissioner of Evacuee Property, there is reference to the judgment of the High Court. The said authority while setting aside the order passed by Collector-cum-Deputy Custodian as nullity, the reliance is not placed on the judgment and order passed by the High Court. In the subsequent Writ Petition filed, the respondents therein, in their Counter Affidavit had specifically contended that the notification dated 11.12.1952 has become final in view of the judgment and order passed by the High Court in Writ Petition No. 1051 of 1966 as also in Writ petition 7517 of 1983. The Division Bench of the High Court while dealing with this aspect, has observed in its order "it is not correct to read the Judgment dated 14.6.1968 rendered in W.P. No. 1051 of 1966 that this Court had negatived the rights of the petitioners. A sentence here and there in a Judgment cannot be picked up in construing it. A Judgment has to be construed on reading and understanding as a whole and if so understood, the judgment in W.P. 1051 of 1966 is to the effect that in the writ petition, the rights of the parties cannot be adjudicated and more so in view of the fact that alternative remedy of appeal is available under the Act. By that, it cannot be assumed that this Court had upheld the notification issued under Section 7 of the Act".

73. We do not agree with the reasoning and conclusion reached by the Division Bench of the High Court. We do not think that the decision of the court has been correctly read. However, we do agree with the learned Judges that the Judgment should be read as a whole and understood in the context and circumstances of the facts of that case. In this context, it is worthwhile to recall the observations made by this court in the case of U.P. State Road Transport Corporation v. Asstt. Commissioner of Police (Traffic) Delhi [2009(3) SCC 634], wherein it is observed that "a decision is an authority, it is trite for which it decides and not what can logically be deduced therefrom.

This wholesome principle is equally applicable in the matter of construction of a judgment. A judgment is not to be construed as a Statute. It must be construed upon reading the same as a whole. For the said purpose, the attending circumstances may also be taken into consideration."

74. At the cost of repetition, we once again intend to notice the judgment and order passed by the High Court in W.P. No. 1051 of 1966. The Court, while narrating the facts, specifically observes that what is challenged before it by the petitioner was the notification dated 11.12.1952 issued under Section 7 of the Evacuee Property Act declaring certain properties as evacuee properties. While dismissing the writ petition, the Court has observed that petitioner has failed to avail the alternate remedy of appeal provided under the Act and at the belated stage, he cannot question the correctness or otherwise of the notification dated 11.12.1952. Therefore, it may not be correct to say that the court had rejected the writ petition only on the ground that the petitioner without availing the alternate remedy provided under the Act, could not have filed the writ petition. We hold that the writ petition was dismissed by the High Court not only on the ground that the petitioner had failed to avail the remedy under the Act, but also on the ground that the petitioner could not have questioned the notification dated 11.12.1952 at a belated stage. Therefore, in our view, the approach of the Division Bench of the High Court was not justified in entertaining a writ petition on the very issue, which had attained finality in an earlier proceeding. This view has nothing to do with the Principle of res judicata nor are we saying Principles of res judicata would apply in the facts and circumstances of this case. We are only holding that when a competent court refuses to entertain a challenge made to a notification issued on 11.12.1952 in a writ petition filed in the year 1966, the High Court could not have entertained the writ petition on the same cause of action at a belated stage in a writ petition filed in the year 1990. The course adopted by the High Court not only leads to confusion but also leads to inconvenience. We also hold that the Judgment and order of the High Court was binding on the authorities under the Evacuee Property Act and, therefore, they could not have reagitated the correctness or otherwise of the notification dated 11.12.1952 issued under Section 7 of the Evacuee Property Act.

75. Shri. Ranjit Kumar, learned senior counsel, contends that the writ petition was filed by one of the co-owners of late Mandal Buchaiah and judgment and order passed would not bind the other parties. We cannot agree. It is a settled law that no co-owner has a definite right, title and interest in any particular item or portion thereof. On the other hand, he has right, title and interest in every part and parcel of the joint property or coparcenery under Hindu Law by all the coparceners. Our conclusion is fortified by the view expressed by this court in A. Viswanath Pillai and Others vs. The Special Tahsildar for Land Acquisition No.IV and Others (1991) 4 SCC 17), in which this Court observed:

> "It is settled law that one of the co-owners can file a suit and recover the property against strangers and the decree would enure to all the co-owners. It is equally settled law that no co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand he has right, title and interest in every part and parcel of the joint property or coparcenery under Hindu law by all the coparceners. In

Kanta Goel v. B.P. Pathak (1977) 2 SCC 814, this Court upheld an application by one of the co-owners for eviction of a tenant for personal occupation of the co-owners as being maintainable. The same view was reiterated in Sri Ram Pasricha v. Jagannath (1976) 4 SCC 184 and Pal Singh v. Sunder Singh..."

"....A co-owner is as much an owner of the entire property as a sole owner of the property. It is not correct to say that a co-owner's property was not its own. He owns several parts of the composite property alongwith others and it cannot be said that he is only a part owner or a fractional owner in the property. That position will undergo a change only when partition takes place and division was effected by metes and bounds. Therefore, a co-owner of the property is an owner of the property acquired but entitled to receive compensation pro rata."

76. Re. Constructive Res judicata:- Learned counsel Shri. Mukund submits that the respondents herein for the first time in the writ petition filed in the year 1990 had raised a contention that the procedure prescribed under the Evacuee Property Act and the rules framed thereunder were not followed before notifying the lands in question as evacuee property. Though this ground was available, the same was not raised. Therefore, it is contended that a ground, though opened to be raised, but not raised in earlier writ petition, cannot be allowed to be raised in a subsequent writ petition. Sri Ranjit Kumar, learned senior counsel, would contend that the judgment and order in W.P. No. 1051 of 1966 was not dismissed on merits but only on the ground of delay and laches and therefore, principles of constructive res judicata would not apply. Our attention is invited to the decision of this court in the case of Daya Rao Vs. State of U.P. (1962) 1 SCR 574 and in the case of Hosunak Singh Vs. Union of India (1979) 3 SCC 135.

77. In our view, this issue need not detain us for long. This Court in the case of Devilal Modi, Proprietor, M/s Daluram Pannalal Modi v. Sales Tax officer Ratlam & Ors. [AIR 1965 SC 1150], has observed that "the rule of constructive res judicata that of a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding, which is based on the same cause of action, is founded on the same considerations of public policy. If the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take proceedings one after another and urge new grounds every time, and that plainly is inconsistent with considerations of Public policy."

78. In the present case, it is admitted fact that when the contesting respondents filed W.P. No. 1051 of 1966, the ground of non- compliance of statutory provision was very much available to them, but for the reasons best known to them, they did not raise it as one of the grounds while challenging the notification dated 11.12.1952 issued under the Evacuee Property Act. In the subsequent writ petition filed in the year 1990, initially, they had not questioned the legality of the notification, but raised it by filing an application, which is no doubt true, allowed by the High Court. In our view, the High Court was not justified in permitting the petitioners therein to raise that ground and answer the same, since the same is hit by the principles analogous to constructive res judicata.

79. Re: Whether the High Court could have gone into the facts under its writ jurisdiction:- The learned counsel Shri Mukund contends that the High Court in exercise of its power under Article 226 of the Constitution of India ought not have gone into the disputed facts and render a finding on those facts. The learned counsel invites our attention to the observations made by this Court in Surya Dev Rai vs. Ramchander Rai and Others (2003) 6 SCC 675, Ranjit Singh vs. Ravi Prakash (2004) 3 SCC 682 and Karnataka State Industrial Investment and Development Corporation Ltd. vs. Cavalet India Ltd. and Others (2005) 4 SCC 456. Per contra, Shri Ranjit Kumar, learned senior counsel submits that since there is a bar for filing civil suit under Section 28 and Section 48 of the Evacuee Property Act and Section 36 of the Displaced Persons Act, the High Court necessarily has to go into disputed question of facts. In aid of his submission, the learned senior counsel has relied on the decisions of this Court in the case of State of Orissa vs. Dr. Miss Binapani Dei and Ors. (1967) 2 SCR 625, Smt. Gunwant Kaur and Ors. vs. Municipal Committee, Bhatinda and Ors. (1969) 3 SCC 769, Om Prakash Vs. State of Haryana and others (1971) 3 SCC 792, Surya Dev Rai vs. Ram Chander Rai and Ors. (2003) 6 SCC 675 and ABL International Ltd. and Anr. Vs. Export Credit Guarantee Corporation of India Ltd. and Ors. (2004) 3 SCC 553.

80. The High Court in its writ jurisdiction, will not enquire into complicated questions of fact. The High Court also does not sit in appeal over the decision of an authority whose orders are challenged in the proceedings. The High Court can only see whether the authority concerned has acted with or without jurisdiction. The High Court can also act when there is an error of law apparent on the face of the record. The High Court can also interfere with such decision where there is no legal evidence before the authority concerned, or where the decision of the authority concerned is held to be perverse, i.e., a decision which no reasonable man could have arrived at on the basis of materials available on record. Where an enquiry into complicated questions of fact is necessary before the right of aggrieved party to obtain relief claimed may be determined, the court may, in appropriate cases, decline to enter upon that enquiry, but the question is always one of discretion and not of jurisdiction of the court which may, in a proper case, enter upon a decision on questions of fact raised by the petitioner.

81. Before we advert to the settled legal position, we will notice the decisions on which reliance is placed by the learned counsel for the parties.

82. This Court in Surya Devi Rai's case (supra), for parameters for the exercise of jurisdiction, held as under :-

> "(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules or procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning

failure of justice. (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii(a grave injustice or gross failure of justice has occasioned thereby."

83. In Ranjeet Singh's case (supra), this Court, while explaining the jurisdiction of the High Court in exercise of its power under Article 226 and 227 of the Constitution, held :-

"Feeling aggrieved by the judgment of the Appellate Court, the respondent preferred a writ petition in the/High Court of Judicature at Allahabad under Article 226 and alternatively under Article 227 of the Constitution. It was heard by a learned Single Judge of the High Court. The High Court has set aside the judgment of the Appellate Court and restored that of the Trial Court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the Appellate Court. Though not specifically stated, the phraseology employed by the High Court in its judgment, goes to show that the High Court has exercised its certiorari jurisdiction for correcting the judgment of the Appellate Court."

84. In Karnataka State Industrial Investment and Development Corporation Ltd. (supra), while explaining the jurisdiction of the High Court in exercising its jurisdiction under Article 226 of the Constitution, has stated :-

"The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities."

85. Shri Ranjit Kumar, per contra, has placed reliance on the observations made by this Court in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and others (1967) 2 SCR 625, has observed :-

"Under Article 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Article 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer

the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court."

86. In Smt. Gunwant Kaur and others Vs. Municipal Committee, Bhatinda and others (1969) 3 SCC 769, this Court held as under :-

"The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioners right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition."

87. In Om Prakash Vs. State of Haryana and others (1971) 3 SCC 792, this Court observed :-

"The two judgments referred to by the High Court proceeded on the ground that the High Court would not in deciding a petition for a writ under Article 226 of the Constitution enter upon disputed questions of fact. But whether in the present case there are disputed questions of fact of such complexity as would render it inappropriate to try in hearing a writ petition is a matter which has never been decided. There is no rule that the High Court will not try issues of fact in a writ petition. In each case the court has to consider whether the party seeking relief has an alternative remedy which is equally efficacious by a suit, whether refusal to grant relief in a writ petition may amount to denying relief, whether the claim is based substantially upon consideration of evidence oral and documentary of a complicated nature and whether the case is otherwise fit for trial in exercise of the jurisdiction to issue high prerogative writs."

88. In ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd. and others (2004) 3 SCC 553, this Court has held :-

"Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Smt. Gunwant Kaur (supra), this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact."

89. In Custodian of Evacuee Property Punjab and others Vs. Jafran Begum (1967) 3 SCR 736, this Court held :-

> "It may be added that the only question to be decided under s. 7 is whether the property is evacuee property or not and the jurisdiction of the Custodian to decide this question does not depend upon any finding on a collateral fact. Therefore there is no scope for the application of that line of cases where it has been held that where the jurisdiction of a tribunal of limited jurisdiction depends upon the first finding certain state of facts, it cannot give itself jurisdiction on a wrong finding of that state of fact. Here under s. 7 the Custodian has to decide whether certain property is or is not evacuee property and his jurisdiction does not depend upon any collateral fact being decided as a condition precedent to his assuming jurisdiction. In these circumstances, s. 46 is a complete bar to the jurisdiction of civil or revenue courts in any matter which can be decided under s. 7. This conclusion is reinforced by the provision contained in s. 4(1) of the Act which provides that the Act overrides other laws and would thus override s. 9 of the Code of Civil Procedure on a combined reading of Sections 4, 28 and 46. But as we have said already, s. 46 or s. 28 cannot bar the jurisdiction of the High Court Art. 226 of the Constitution, for that is a power conferred on the High Court under the Constitution."

90. We are of the view that the High Court has not committed an error while entertaining a writ petition filed under Article 226 and 227 of the Constitution, wherein the proceedings under Section 7 of the Evacuee Property Act was questioned. We say so for the reason that under the Evacuee Property Act, there is specific bar for the civil court to adjudicate on the issue whether certain property is or is not evacuee property. This issue can be decided only by the custodian under the Act. Any person aggrieved by the findings of the custodian can avail the other remedies provided under the Act. The findings and the conclusion reached by the authorities under the Act in an appropriate case can be questioned in a petition filed under Article 226 of the Constitution even it involves disputed questions of facts. This issue, in our view, is no more res integra in view of three Judge Bench decision of this Court in Jafran Begum's case (supra).

91. Re : Whether the lands in question are evacuee property under Evacuee Property Act : Shri Mukund, learned counsel for the appellants, submits that the disputed lands belong to late Rahim Baksh Khan and after issuing notice to the sons of late Rahim Baksh Khan and after following the procedure prescribed under the Evacuee Property Act and the rules framed thereunder, the lands were notified as evacuee property by issuing notification dated 11.12.1952. Learned counsel further submitted that late Rahim Baksh Khan had the money decree against late Mandal Buchaiah and in execution of the court decree, Rahim Baksh Khan became the owner of the property and his name had been recorded in the Khatra Khatauni as owner of the said lands. The entry so made in the revenue records was not questioned by anybody including late Mandal Buchaiah during his lifetime. It is further submitted that the records of the execution petition was not traceable since the matter is 60 years old and they have also not been placed on record by the contesting respondents. Therefore, in view of the entries made in the Revenue records, late Rahim Baksh Khan and

his legal representatives were in possession of the lands under dispute. It is also submitted that the contesting respondents took the said lands on Ek saala lease from the Government in the year 1952 to 1955 and only in the year 1956, they made representation for the redressal of their grievance before the authorities under the Evacuee Property Act and since those representations did not yield any result, they approached the High Court only in the year 1966 only questioning the action of Tahsildar who had proposed to auction of the lands for grant of Ek saala lease. However, Shri Ranjit Kumar would submit that late Rahim Baksh Khan never became the owner of the lands since he did not execute the money decree that he had obtained from a civil court. The learned senior counsel by placing reliance on various provisions of the Evacuee Property Act and the rules framed thereunder, submits that since procedure prescribed under the Evacuee Property Act is not followed, the authorities under the Act could not have declared the disputed lands as evacuee property. It is submitted that the order passed under Section 7 of the Evacuee Property Act is manifestly illegal and the illegality cannot be perpetuated against the contesting respondents since they are owners and in continuous possession of the property. The learned senior counsel also submits that except the notification issued under Section 7 of the Act, no other document such as order passed under the Act after notice to the persons interested in the lands is produced by the State Government in whose custody the records of the proceedings were available. Therefore, Deputy Custodian General was justified in setting aside the declaration made under Section 7 of the Evacuee Property Act which order has merged with the impuged judgment and order of the High Court. However, learned counsel for the State of Andhra Pradesh by referring to their counter affidavit filed in the writ petition before the High Court submits that the authority under the Act before issuing notification under Section 7 of the Evacuee Property Act, the procedure prescribed therein had been followed and this assertion had not been denied by the respondents by filing their reply affidavit and since no denial of the factual assertion made by the State Government, the only inference that can be drawn is that the proper procedure prescribed under the Act had been followed before issuing the notification under the Evacuee Property Act.

92. Admittedly, before the High Court, parties to the lis had not produced any records. Petitioners therein claimed that they were not dispossessed from the lands in dispute pursuant to any money decree by late Rahim Baksh Khan or his legal representatives. It is the stand of the appellants and also the State Government that the name of late Rahim Baksh Khan had been recorded in the Khatra Khatauni and the authorities under the Evacuee Property Act after issuing notices to the legal representatives of late Rahim Baksh Khan and also the public notice, the notification under Section 7 of the Act was issued and gazetted. Since the records are of the year 1952, neither the State Government nor the contesting respondents could produce any records or documents in support of their claim. However, based on the affidavits filed by the petitioner, the High Court proceeds to hold that they were no dispossessed from their lands in accordance with law. This reasoning of the learned Judges is firstly difficult to comprehend and secondly, difficult to accept. It is the specific case of the appellants, by placing reliance on the revenue records, that the name of late Rahim Baksh Khan found a place in the revenue records prior to issuance of the notification dated 11.12.1952 under the Evacuee Property Act and, thereafter, the name of the custodian is shown as the owner of the lands. The burden of proof was on the petitioners therein to prove

their title, right and interest in the property. It looks again very strange to us that the High Court, in the absence of any records of the year 1952, proceeds to determine that the official respondents had not followed the mandatory requirement of the provisions of the Evacuee Property Act and rules framed thereunder before declaring the disputed lands as evacuee property. It also looks odd and queer to us that the High Court, in the absence of any records of the civil court and the executing court, proceeds to arrive at a definite finding that the sale of property had not taken place. Pursuant to the money decree passed, the executing court had not auctioned disputed lands and late Rahim Baksh Khan became the owner of the lands, though it concedes that the above facts have to be proved with reference to the records and there cannot be oral evidence in this regard. To say the least, it was highly inappropriate for the High Court to have proceeded to determine whether any notice was issued to late Mandal Buchaiah before notifying the property as evacuee property without there being any material nor the documents and records by relying only on the procedure prescribed under the Act and the rules thereunder, even after noticing that both the parties have not produced any records, since the records are old and not traceable. In view of the above, we are of the opinion, the High Court was wholly incorrect when it arrives at a finding that there is manifest illegality while issuing notification under Section 7 of the Evacuee Property Act. For the very same reason, we cannot also accept the findings and the conclusion reached by the Collector-cum-Deputy Custodian in his order dated 28.05.1979.

93. The High Court in the impugned Judgment, also gives a finding that the authorities under the Act have violated the principles of natural justice in not issuing notice to the owners of the lands in dispute before taking any action under the Act. We are of the view that whether any notice under the Act was issued or not, can only be decided with reference to the records. Such records were neither available nor any material was produced by the petitioners in support of their assertion made in the writ petition. Though, this assertion was denied by the respondents in their counter affidavit filed before the Court, this issue is answered by the High Court in favour of the petitioners. We disagree with the findings and conclusion reached by the High Court in this regard.

94. Re : Effect of acquisition and Distribution of the Evacuee Propety under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The contention of the learned counsel Shri Mukund is that once the notification under Section 12 of the Displaced Property Act is issued and the lands are acquired for re-distribution, no proceedings can lie under the Evacuee Property Act. Per contra, learned senior counsel Shri Ranjit Kumar would submit this can be so, provided notification issued under Evacuee Property Act is valid and legal. Shri Mukund, learned counsel has placed reliance on Major Gopal Singh and Others. vs. Custodian, Evacuee Property, Punjab (1962) 1 SCR 328, Basant Ram vs. Union of India (1962) Supp. 2 SCR 733 and Dafedar Niranjan Singh and Another vs. Custodian, Evacuee Property (Pb.) and Another (1962) 1 SCR 214.

95. In Major Gopal Singh's case, this Court held that "the power of the Custodian under the Administration of Evacuee Property Act, 1950, to allot any property to a person or to cancel an allotment existing in favour of a person rests on the fact that the property vests in him. But the consequence of the publication of the notification by the Central Government under

Section 12(1) of the Displaced Persons (Compensation and Rehabilitation) Act with regard to any property or a class of property would be to divest the custodian completely of his right in the property flowing from Section 8 of the Administration of the Evacuee Property Act, 1950 and vest that property in the Central Government."

96. In Basant Ram's case, this Court held that "It is not in dispute that the evacuee property in these two villages was notified under Section 12(1) of the Act on March 24, 1955. The consequence of that notification is that all rights, title and interest of the evacuee in the property ceased with the result that the property no longer remained evacuee property. Once, therefore, the property ceased to be evacuee property, it cannot be dealt with under Central Act No. XXXII of 1950 or the Rules framed thereunder."

97. Shri Ranjit Kumar's submission is that the proceedings under the 1954 Act only happen if the proceedings under the 1950 Act are valid. If the proceedings under 1950 Act is invalid, the 1954 Act does not come into operation. To demonstrate that, the proceedings under the Evacuee Property Act is invalid for want of notice on the person/persons who would be effected by an order under the Act, the learned senior counsel has relied on the observations made by the High Court of Bombay in the case of Abdul Majid Hazi Mohammed vs. P.R. Nayak (AIR 1951 Bombay 440), wherein the Court has observed that mode of service of notice under Section 7 of Act read with Rule 25 of the Rules, contents of the notice and the nature of the order that requires to be passed by the Custodian under the Evacuee Property Act.

98. In Dr. Zafar Ali Shah and Others vs. The Assistant Custodian of Evacuee Property [1962] 1 SCR 749, wherein this Court has observed that Section 12 of Displaced Persons Act, 1954 only affects the rights of Evacuee in his property. The notification made under that Section did not have the effect of extinguishing the petitioners' rights in the houses as they had never been declared evacuees.

99. In Ebrahim Aboobaker vs. Tek Chand Dolwani [1953] SCR 691, wherein the Court has stated that it is well established and not disputed that no property of any person can be declared to be evacuee property unless that person had first been given a notice under Section 7 of the Act.

100. In Nasir Ahmed vs. Assistant Custodian General, Evacuee Property, U.P. Lucknow and Another [1980] 3 SCR 248, it is held, that Section 7 of the Evacuee Property Act required the custodian to form an opinion that the property in question was evacuee property within the meaning of the Act before any action under that Section was taken. Under Rule 6 of the Administration of Evacuee Property (Central) Rules, 1950, the custodian had to be satisfied from information in his possession or otherwise that the property was prima-facie evacuee property before a notice was issued.

101. To answer this issue, we are required to notice certain provisions of both the Acts to arrive at a finding whether both the Acts operate independent of each other or whether they

are complimentary and the action of one Act has some bearing on the other Act which we are concerned in these appeals.

102. The Evacuee Property Act was mainly intended to provide for the administration of evacuee property. The Act is primarily concerned with evacuee property and not the person who is evacuee. The procedure prescribed to declare a particular property as an evacuee property is mandatory and they are to be complied with by the authorities notified under the Act and the Rules framed thereunder. The Act is a complete code itself in the matter of dealing with evacuee property. The question whether any property or right or interest in any property is or is not evacuee property can be adjudicated only by the custodian and not the civil courts. Section 7 of the Act confers the power upon the custodian to declare certain property as evacuee property. Sub-section (1) provides that where the custodian is of the opinion that any property is evacuee property within the meaning of Section 2(f) of the Evacuee Property Act, then he may pass an order declaring such property to be evacuee property, provided he causes notice thereof to be given in such manner as may be prescribed to the persons interested and he holds such inquiry into matter as the circumstances of the case permit. Section 8(1) of the Act envisages that once the property has been declared to be evacuee property under Section 7, that property must be deemed to have vested in the custodian for the State. Section 8(4) contemplates a situation even where any evacuee property has vested in the custodian, any person is in possession thereof shall be deemed to be holding it on behalf of the custodian. Section 9 gives the power to the custodian to take possession of evacuee property which is vested in him. Section 24 confers a right of appeal against the orders passed under Section 7, 40 and 48 of the Act. Section 27 confers on the Custodian General the power of revision to revise the orders under the Act either `suo-moto' or on an application filed by the aggrieved person. Section 28 bars the jurisdiction of the civil courts from entertaining suits relating to matters within the exclusive jurisdiction of the custodian. But Section 28 or Section 46 of the Act cannot bar jurisdiction of the High Court under Article 226 of the Constitution. The question whether evacuee property has been vested in custodian or not is a question of fact and the same cannot be interfered with except in exceptional circumstances which would include violation of principles of natural justice before notifying a property an evacuee property.

103. The Displaced Persons Act provides for payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith. The Sections which require to be noticed for the purpose of this case are Sections 12 and 24 of the Displaced Persons Act. Section 12 of the Act authorizes the Central Government to acquire evacuee property for rehabilitation of the displaced persons. Section 24 of the Act vests power in the Chief Settlement Commissioner to set aside or vary any order passed by any of the officers named in that sub-section at any time, if the Chief Settlement Commissioner is not satisfied about the legality or propriety of such order.

104. To appreciate and resolve the controversy raised in these appeals, it would be useful to extract the relevant Section 12 which reads as under:

"12. Power to acquire evacuee property for rehabilitation of displaced persons--(1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

(2) On the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.

(3) It shall be lawful for the Central Government, if it so considers necessary, to issue from time to time the notification referred to in sub-section (1) in respect of—

(a) all evacuee property generally; or

(b) any class of evacuee property; or

(c) all evacuee property situated in a specified

area; or

(d) any particular evacuee property.

(4) All evacuee property acquired under this

Section shall form part of the compensation

pool."

105. At the cost of repetition, let us once again notice the submissions made by learned counsel for the parties. Shri Mukund, learned counsel for the appellant submits that once the notification is issued under Section 12 of the Displaced Property Act, the evacuee property notified under the Evacuee Property Act no more exists and therefore, the authorities under the Evacuee Property Act could not have passed the order dated 25.09.1970 and 28.05.1979 and, therefore, Chief Settlement Commissioner of Displaced

Persons Act was justified in passing the order dated 11.05.1983. The learned senior counsel Shri Ranjit Kumar would submit that since there was irregularity in declaring the disputed lands as evacuee property, the Deputy Custodian General was justified in setting aside the notification declaring the disputed land as evacuee property.

106. Section 12 of the Act authorizes the Central Government to acquire the evacuee property if it so desires and on such acquisition the property shall vest absolutely in the Central Government free from all encumbrances. The pre-requisite for acquiring property under Section 12 is that it must be evacuee property as defined under Section 2 (f) of the Act. The consequence of issuing notification under Section 12 of the Act would denude the powers of the Custodian under Evacuee Property Act. As soon as the notification is published, property ceases to be evacuee property. This Court in the case of Haji Siddik Haji Umar and Others. Vs. Union of India (1983) 1 SCC 408, has held "that the publication of a notification under Section 12 extinguishes the right, title or interest of the evacuee in the evacuee properties. By virtue of Section 12(2) they vest absolutely in the Central Government free from all encumbrances. The only relief available to an evacuee is compensation in accordance with such principles and in such manner as may be agreed upon between the two countries. The jurisdiction of the Court to consider any orders passed by the Custodian or any action taken by him would not be barred if the orders passed or the action taken was without jurisdiction. But, if a party succeeds in establishing that the action taken or the orders passed were outside the purview of the Act, then, those would not be the orders passed under the Act."

107. While answering the issue whether the `disputed lands' is evacuee property or not, we have held that the notification issued under Section 7 of the Evacuee Property Act is valid in law and, therefore, one and the only conclusion that can be reached on this issue is, in the facts and circumstances of the case, in view of the notification issued by the Central Govt. under Section 12 of the Displaced Persons Act, for the `disputed lands' had vested in the Central Govt. and thereby had lost the status of evacuee property.

108. Shri Ranjit Kumar also submitted that the order passed by the Chief Settlement Commissioner is one without jurisdiction, since the said authority can exercise his power of revision to set a side any order passed by any of the officers named in that Section. Since Deputy Custodian General is not one of those officers named in that sub-section, he could not have exercised his power of revision against an order passed by Deputy Custodian General dated 28.05.1979.

109. Section 24 of the Act speaks of power of revision of the Chief Settlement Commissioner. The said Section reads :-

> "Power of revision of the Chief Settlement Commissioner - (1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissi oner, a Settlement Commissioner, a Managing officer or a managing corporation has passed an order for the purpose of

satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit."

110. Section 24 of the Act gives power of revision to Chief Settlement Commissioner either on his motion or an application made to him to call for the record of any proceeding under the Act in order to satisfy himself as to legality or propriety of any order passed therein and to pass such order in relation thereto as he thinks fit. The Section also provides that the said powers can be used in relation to the orders passed by Settlement Commissioner, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Settlement Commissioner, a Managing officer or a managing corporation. A bare reading of the Section shows that the Chief Settlement Commissioner can revise the order if in his opinion that the orders passed by the officers named in the Section are either illegal or improper. In the instant case, the Chief Settlement Commissioner has invoked his revisional powers at the request of the allottees/displaced persons to revise the proceedings and the order passed by the Collector-cum-Deputy Custodian under the provisions of the Evacuee Property Act dated 28.05.1979. In view of the plain language of the Section, there cannot be two views. In our view, what the Chief Settlement Commissioner can do is only to revise the orders passed by those officers who are notified in the Section itself and not of the officers under the provisions of the Evacuee Property Act, if the orders passed by the named officers in this Section is either illegal or improper. To this extent, we are in agreement with the submission made by the learned senior counsel Shri Ranjit Kumar. Therefore, the orders passed by the Chief Settlement Commissioner in exercise of his revisional powers under the Displaced Persons Act is without jurisdiction and non-est in law.

111. To sum up, our conclusions are :

(I) The High Court ought not to have entertained and granted relief to the writ petitioner/contesting respondents, since there was inordinate and unexplained delay in approaching the court.

(II) The Judgment and order of the High Court in W.P. No. 1061 of 1966 having attained finality was binding on the authorities under the Evacuee Property Act and the High Court ought not to have permitted the writ petitioners/contesting respondents herein to re-agitate the correctness or otherwise of the notification dated 11.12.1952 in the subsequent writ petition.

(III) A subsequent writ petition was not maintainable in respect of an issue concluded between the parties in the earlier writ petition.

(IV) In view of the specific bar under Section 46 of the Evacuee Property Act, writ petition filed by the contesting respondents before the High Court was maintainable.

(V) Since we have taken exception to the orders passed by the Collector-cum-Deputy Custodian and the Judgment and order passed by the High Court in W.P. No. 17222 of 1990, we hold notification dated 11.12.1952 is valid in law.

(VI) Since the notification issued under Section 7 of the Act is valid in law, the evacuee property acquired by the Central Govt. under Section 12 of the Displaced Persons Act ceases to be evacuee property and becomes the property of the Central Govt.

(VII) In view of the clear language employed in Section 24 of the Act, the Chief Settlement Commissioner had no jurisdiction to revise the order passed by the Collector-cum-Deputy Custodian under the Evacuee Property Act.

112. In view of the above discussion, the appeals are allowed. The Judgment and order passed by the High Court in W.P. 17222 of 1990 dated 27.04.2000 is set aside. Costs are made easy.