

RAJASTHAN HIGH COURT

Devkinandan

Vs.

Roshan Lal

Civil Ref. Second Appeal No. 7 of 1981 and Civil Ref. Revn. Petn. No. 619 of 1982
(P.K. Banerjee, K.S. Sidhu and G.K. Sharma, JJ.)

28.08.1984

JUDGMENT

P.K. Banerjee, C.J.

1. This Full Bench Reference was made by Hon'ble Mr. Justice S. C. Agrawal in S. B. Civil Second Appeal No. 7 of 1981. The Hon'ble Judge formulated the substantial question of law to be decided in the Full Bench in the following terms : -

"Whether a tenant of a mortgagee is entitled to the protection of the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 against the mortgagor after the redemption of the mortgage?"

In the said order of reference Mr. Justice Agrawal referred to two cases namely *Ghamandi Ram v. Shanker Lal*, ¹ and *Sachal Mal Parasram v. Mst. Ratan Bai* ² His Lordship felt that the definition of 'landlord' contained in the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as 'the Act of 1950') is wider than that of in the East Punjab Urban Rent Restriction Act, 1949. In view of the first Division Bench judgment in *Ghamandi Ram v. Shanker Lal*, 1965 Raj LW 333 : (AIR 1966 Rajasthan 19) (supra) and subsequent decision of the Supreme Court as herein before stated his Lordship Mr. Justice Agarwal referred the case to the Chief Justice for formation of a larger Bench.

2. A similar question arose before Mr. Justice G. M. Lodha in S. B. Civil Revision No. 619 of 1982. Mr. Justice Lodha also referred the matter to the Chief Justice for reference to the Full Bench on the same term.

3. On the basis of these facts the Full Bench was constituted. Before we refer to the

questions raised, it is convenient for us to set out the definitions of 'landlord' and 'tenant' as appearing in the Act of 1950 in Section 3 (iii) and(vii) in the following terms :-

"(iii) 'landlord' means any person who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or as an agent, trustee, guardian or receiver or any other person or who would so receive or be entitled to receive the rent if the premises were let to a tenant; it includes a tenant in relation to a sub-tenant."

"(vii) 'tenant' means-

(a) the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act; and

(b) in the event of death of the person as is referred to in sub-clause (a), his surviving spouse, son, daughter and other heir in accordance with personal law applicable to him who had been, in the case of premises leased out for residential purpose, ordinarily residing and in the case of premises leased out for commercial or business purposes, ordinarily carrying on business with him in such premises as member of his family up to his death."

At this stage it is convenient for us to refer to Section 76 of the Transfer of Property Act, which is in the following terms :

"76. Liabilities of mortgagees in possession. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,-

(a) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(b) he must use his best endeavours to collect the rents and profits thereof;

(c) he must not commit any act which is destructive or permanently injurious to the property;

....."

It is not necessary for us to refer to other portions of the section in view of arguments advanced before us. I will also refer to Section 13 of the Act of 1950, which is in the

following terms;

"13. Eviction of tenants- (1) Notwithstanding anything contained in any law or contract, no court shall pass any decree, or make any order, in favor of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent there for to the full extent allowable by this Act, unless it is satisfied-

....."

It is not necessary for us to set out other portions of the section for the purpose of consideration of the point referred to the Full Bench.

4. Mr. Lodha on behalf of the petitioner contended *inter alia* that Division Bench judgment of this Court in *Ghamandi Ram v. Shankerlal*, 1965 Raj LW 333 : (AIR 1966 Rajasthan 19) (supra) it was held that if the mortgagee in possession let out the premises to a tenant even after the redemption of the mortgage by the mortgagor, the tenancy continues under the mortgagor and he cannot be evicted therefrom. In support of his contention he referred to the judgment reported in *Ghamandi Ram v. Shanker Lal*, 1965 Raj LW 333 : (AIR 1966 Rajasthan 19) (supra) as also the judgments of the Supreme Court reported in *Mahabir Gope v. Harbans Narain Singh*,³ *Asa Ram v. Mst. Ram Kali*,⁴ *Sachalmal Parasram v. Mst. Ratanbai*, AIR 1972 Supreme Court 637 (supra), *All India Film Corporation Ltd. v. Raja Gyan Nath*⁵ and *Prabhu v. Ramdeo*,⁶ Mr. Bhandari in the next case supported Mr. Lodha's contention and relied upon *Dahya Lala v. Rasul Mahomed*,⁷ *V. Dhanpal Chettier v. Yasodai Ammal*,⁸ *Biswabani Pvt. Ltd. v. Santosh Kumar Dutta*,⁹ *G. Ponniah Thavar v. Nalleyam Perumal Pillai*,¹⁰

5. Mr. Mehta on the other hand relied heavily on the Supreme Court judgments reported in the *All India Film Corporation Ltd. v. Raja Gyan Nath*, (1969) 3 SCC 79 (supra), *Sachalmal Parasram v. Mst. Ratanbai*, AIR 1972 Supreme Court 637 (supra), *Champa Lal v. Mst. Gulab*,¹¹ *Lalji Purshottam v. Thacker Madhavji Meghaji*,¹² *S. V. Venkatarama Raddier v. Abdul Ghani Rawther*,¹³ and *Jagannath Piarelal v. Mittar Sain*,¹⁴

6. Before we deal with the Supreme Court judgments and other judgments, referred to at the Bar, it is convenient for us to refer to the judgment of Division Bench of this Court in 1965 Raj LW 333 : (AIR 1966 Rajasthan 19). It has been held on referring the definition of 'landlord' and 'tenant' that tenant inducted into possession by the mortgagee in possession could not be evicted by the mortgagor on redemption of

mortgage, because the mortgagor becomes on redemption a landlord and the lessee of the mortgagee becomes a statutory tenant under the provisions of the Act of 1950. By the reference as herein before made, it is for us to consider whether on consideration of the Supreme Court decision in *Sachalmal Parasram v. Mst. Ratanbai*, AIR 1972 Supreme Court 637 (supra), this Division Bench judgment stands overruled

7. At this stage it is convenient for us to refer to different Supreme Court decisions from 1952 onwards on this point. The first judgment of the Supreme Court on the point is *Mahabir Gope v. Harbans Narain*, AIR 1952 Supreme Court 205 (supra), wherein the Supreme Court had considered a grant of a lease by the mortgagee in possession. In the said judgment their Lordships of the Supreme Court held *inter alia* that the general rule is that a person cannot be transferred or otherwise confer a better title on another than he himself has. A mortgagee cannot, therefore, create an interest in the mortgaged property, which will enure beyond the termination of his interest as a mortgagee. The mortgagee who takes possession of the mortgaged property, must as a person of ordinary prudence should manage it as it was his own. He cannot during the subsistence of the mortgage act in any manner detrimental to the mortgagor's interest as such by giving the lease which may enable the tenant to acquire permanent or occupancy right in the land, thereby defeating the mortgagor's right to khas possession; it would be an act which would fall within the provisions of Section 76, sub-clause (c) of the Transfer of Property Act. In the said case it was held that mortgagor was entitled to possession of the land upon redemption of the mortgage, because on construction of the deed of mortgage it was held that a mortgagee cannot grant such lease. In the said case the Supreme Court pointed out the exception and held *inter alia* that a permissible settlement by a mortgagee in possession with a tenant in the course of prudent management and the springing up of rights in the tenant conferred or created by statute based on the nature of the land and possession for the requisite period is a different matter altogether. It is an exception to the general rule. In such a case the tenant cannot be ejected by the mortgagor even after the redemption of the mortgage. He may become an occupancy 'raiyat' in some cases and a non-occupancy 'raiyat' in other cases. But the settlement of the tenant by the mortgagee must have been a *bonafide* one. It must be mentioned that this case is a case of agriculture tenancy.

8. The next case, which was relied upon by learned counsel for the petitioner is *Harihar Prasad Singh v. Deonarain Prasad*,¹⁵ This case is also a case of agricultural

tenancy. It was held by the Supreme Court in paragraph 13 that a person cannot confer on another any right higher than what he himself possesses and, therefore, a lease created by a usufructuary mortgagee would normally terminate on the redemption of the mortgage. Section 76(a) enacts an exception to this rule. If the lease is one which could have been made by the owner in the course of prudent management, it would be binding on the mortgagors, notwithstanding that the mortgage has been redeemed. Their Lordships of the Supreme Court held *inter alia* that before a person can claim occupancy rights under Section 21 of the Bihar Tenancy Act, he must establish that he is a raiyat as defined in Section 5(2) and (3) of the Act. Where, therefore, the lessees acquire the right to hold the lands for the purpose of cultivation from the mortgagees and not under the mortgagors, they are not raiyats as defined in Section 5(3) and can claim no rights under Section 21 of the said Act. The argument that the mortgagee could be considered tenure holder was not upheld in view of Section 5(1) of the Act, which defines a 'tenure holder' as meaning a person holding the land for collecting rents or for bringing them into cultivation by establishing tenants thereon. As in that case the lands were under personal cultivation of the mortgagor at the time when they were mortgaged, there were no rights in the land and no question of transferring the right to collect rent from them arise. In paragraph 13 the Supreme Court reiterated the law as laid down in *Mahabir Gope v. Harbans Narain Singh*, AIR 1952 Supreme Court 205 (supra), to the effect that the power of mortgagee under Section 76(a) of the Transfer of Property Act to induct tenants in usual course of management would not avail the respondents to claim occupancy rights over the land.

9. The next case relied upon by the petitioner is *Asa Ram v. Mst. Ram Kali*,¹⁶. In the said case an agricultural land was leased out by the mortgagee. It was held by the Supreme Court that the law undoubtedly is that no person can transfer property so as to confer on the transferee a title better than what he possesses. Therefore, any transfer of the property mortgaged by the mortgagee must cease, when the mortgage is redeemed. Section 76(a) of the Transfer of Property Act provides that a mortgagee in possession must manage the property as a person of ordinary prudence would manage it if it were his own. This is an obligation cast on the mortgagee. It must therefore be viewed more in the nature of an obligation rather than a right. Keeping this in view, the Supreme Court held in the facts of that case that the action of the mortgagee in leasing the land to tenants on the terms set out in the Kabuliat was neither prudent nor *bonafide* and on consideration of the entire evidence that the lease evidenced by the Kabuliat was not binding on the mortgagor even though that was an agricultural lease.

10. A case reported in *Prabhu v. Ramdeo*, AIR 1966 Supreme Court 1721 (supra) again deals with the agricultural tenancy under the Rajasthan Tenancy Act. Their Lordships of the Supreme Court stated *inter alia* that Section 15 provides, *inter alia*, that subject to the provisions of Section 16 every person who, at the commencement of this Act, is a tenant of land, shall, subject to the provisions of this Act and subject further to any contract not contrary to Section 4 be entitled to all the rights conferred and be subject to all the liabilities imposed on Khatedar tenants under the Act. In other words, as soon as Section 15 came into operation on October 15, 1975, the possession of the respondents, who had been inducted into the land by the mortgagee was substantially altered and they became Khatedars by virtue of the statutory provisions prescribed by Section 15. Section 161 of the Act provides that no tenant shall be ejected from his holding otherwise than in accordance with the provisions of this Act. The position thus is clear that as soon as the Act came into force the respondents acquired khatedari rights under Section 15 and could not therefore be ejected. It is because of these provisions that the appellant was driven to make the plea that the respondents were trespassers inasmuch as they had voluntarily surrendered possession of the land to him after the redemption decree was passed and had wrongfully entered into possession thereafter. That plea has not been proved and the matter falls to be considered squarely within the provisions of Sections 15 and 161 of the Act. It is true that Section 183 of the Act provides for the ejectment of a trespasser but that section has no application to this case inasmuch as the respondents cannot be held to be trespassers at all.

11. *All India Film Corporation Ltd. v. Raja Gyan Nath* (1969) 3 SCC 79 (supra) is a case of the lease by a mortgagee in possession of urban property. The property involved in the cited case was a cinema house in Jullundur City. The Supreme Court after referring to the earlier decisions namely, *Mahavir Gope v. Harbans Narain Singh*, AIR 1952 Supreme Court 205 (supra) and *Asaram v. Mst. Ramkali* AIR 1958 Supreme Court 183 (supra) held *inter alia* as follows :

"To the above propositions there is, however, one exception. That flows from Section 76 (a) which lays down liabilities of a mortgagee in possession. It is provided there that when during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he must manage the property as a person of ordinary prudence would manage it if it were his own. From this it is

inferred that acts done *bonafide* and prudently in the ordinary course of management, may bind even after the termination of the title of the mortgagee in possession. This principle applies ordinarily to the management of agricultural lands and has seldom been extended to urban property so as to tie it up in the hands of lessees or to confer on them rights under special statutes. To this again there is an exception. The lease will continue to bind the mortgagor or persons deriving interest from him if the mortgagor had concurred to grant it."

It appears from this paragraph of the Supreme Court judgment that the principle embodied in Section 76 (a) casting an obligation on the mortgagee in possession to manage the property prudently as if it were his own, and acts done *bonafide* and prudently in the course of such management applies ordinarily to the management of agricultural land and has seldom been extended to urban property so as to tie it up in the hands of the lessee, or to confer upon them rights under special statutes. A lease, however, will be binding, as the Supreme Court has said, on the mortgagor if he has concurred to grant it.

12. Another Supreme Court judgment which supports the view that the tenancy created by the mortgagee in possession does not survive the mortgagee's interest and that the tenant of the mortgagee cannot claim protection of the Rent Control Legislation is reported in *Sachmal Parasram v. Mst. Ratanbai*, AIR 1972 Supreme Court 637 (supra). The Supreme Court held that the tenancy created by the mortgagee in possession does not survive the termination of the mortgagee's interest. The termination of the mortgagee's interest terminates the relationship of landlord and tenant, and there being no relationship of landlord and tenant, the tenant cannot claim the protection of the Rent Control Legislation. It has been specifically made clear by the Supreme Court in the said judgment that the principle of Section 76 (a) of the Transfer of Property Act ordinarily applies to the management of agricultural land and reiterated that it has seldom been extended to urban property. It is significant to note that the definition of the 'landlord' and 'tenant' in the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, with which we are concerned in this case and the definition of these very expressions as given in the Madhya Pradesh Accommodation Control Act which was under consideration of their Lordships of the Supreme Court in *Sachmal Parasram v. Ratan Bai* (supra) are *pari materia*. We would like to reproduce the two sets of definitions in juxtaposition in order to stress their exact similarities, as follows :

Definitions as per the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.	Definitions as per the Madhya Pradesh Accommodation Control Act.
'landlord'-	landlord
'landlord' means any person who for the time being is receiving or is entitled to receive the rent of any premises whether on his own account or as an agent, trustee, guardian, or receiver or any other person of who would so receive or be entitled to receive the rent if the premises were let to a tenant; it includes a tenant in relation to a sub tenant.	'landlord means person, for the time being is receiving or is entitled to receive the rent of any accommodation, whether on his own account or on account of any other person or as trustee, guardian or receiver or any other person or who would so receive the rent or be entitled to receive the rent if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord
'tenant'	'tenant' means-
(a) the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act; and 'tenant'	tenant means a person by whom, or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the commencement of this Act, but shall not include any person against whom any order or decree for eviction has been made.
(b) in the event of death of the	

person as is referred to in sub-clause (a), his surviving spouse, son, daughter and other heir in accordance with personal law applicable to him who had been in the case of premises leased out for residential purpose, ordinarily residing and in the case of premises leased out for commercial or business purposes, ordinarily carrying on business with him in such premises as member of his family up to his death.	
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From the definitions hereinbefore quoted it will be seen that there is no material difference between the two sets of definitions. This Supreme Court authority therefore is directly applicable to the question posed for our answer in these references.

13. Mr. Mehta referred to a judgment reported in *Lalji Purshottam v. Thacker Madhavji Meghaji*,¹⁷ wherein their Lordships of the Full Bench speaking through Divan, C. J. considered all these judgments and in paragraph 31 answered the reference in the following terms :

31. In the light of the above discussions, we answer the questions referred to us as follows :

(Q. 1) Section 76(a) of the Transfer of Property Act cannot apply to a case of urban immovable property and hence a lease created by the mortgagee in possession of an urban immovable property, would not be binding on the mortgagor after redemption of the mortgage, even if it were to be assumed that the lease is such as a prudent owner of property would have granted in usual course of management.

(Q. 2) If the words of the mortgage deed clearly and indubitably express an intention to allow expressly creation of a tenancy beyond the term of the mortgage, then only the lease created in exercise of the power expressly

conferred by the mortgage deed would be binding on the mortgagor. If the words of the mortgage deed do not clearly and indubitably disclose the intention to allow expressly the creation of a tenancy beyond the terms of the mortgage, the mere fact that the mortgage deed authorises the mortgagee with possession to induct a tenant would not create a tenancy binding on the mortgagor after the redemption of the mortgage. We may at this stage mention that the opening words of question No. (2) "Whether even apart from Section 76(a) of the Transfer of Property Act" are apt to be misleading and what seems to have been meant while framing this question is whether the granting of a lease in exercise of general power expressly conferred on the mortgagee with possession under the mortgage deed would be binding on the mortgagor after the redemption of the mortgage. It may be pointed out that according to the Supreme Court decision in *Asaram v. Mst. Ram Kali*¹⁸ where there is no prohibition under the mortgage deed expressly prohibiting the mortgagee with possession from granting a lease, the parties will be thrown back on the rights under the Transfer of Property Act and the lessees must still establish that the lease is binding on the mortgagors under Section 76(a) of the Act. Under these circumstances we answer question No. (2) as indicated above.

(Q. 3) Our answer to question No. (3) is that a tenant inducted on the property by a mortgagee with possession when the tenancy of that tenant is not binding on the mortgagor after the redemption on the mortgage, is not protected under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947."

14. It has been held again by the Full Bench of the Punjab and Haryana High Court in *Jagannath Piare Lal v. Mittar Sain*, AIR 1970 Punjab and Hary 104 (supra) that a tenant inducted by the mortgagee remains the tenant during the continuance of mortgage and on redemption of the mortgage, tenancy comes to an end. Their Lordships of the Full Bench of the Punjab and Haryana High Court held that this proposition is valid for the urban properties only, but in case of agricultural tenancy it does not absolutely hold good. Following the Supreme Court decisions hereinbefore discussed, their Lordships of the Punjab and Haryana High Court held that in respect of urban properties, after the redemption of the mortgage, the mortgagor is entitled to actual possession of the mortgaged property from the mortgagee's tenants. In the facts of this case, however, it was held that the tenant was already a tenant under the mortgagor and that even after the mortgage he had not surrendered the tenancy which

he originally held under the mortgagor. Their Lordships concluded on the facts of this case that on redemption of the mortgage, the tenancy of the tenant under the mortgagor revives.

15. Similarly, a Full Bench of the Madras High Court held in *S. V. Venkatarama v. Abdul Ghani Rowther*¹⁹ that when the interest of a mortgagee in possession is extinguished by redemption of the mortgage, his status as landlord ceases and with that the tenant also ceases to be a tenant.

15-A. Reference may be made of the Allahabad High Court Full Bench decision reported in AIR 1974 Allahabad 234 at paragraph 20 relied upon by Mr. R. M. Lodha in support of his contention. There is no doubt that the view of Allahabad High Court (Full Bench) supports Mr. Lodha, but we are unable to agree with the view of the said Full Bench decision of the Allahabad High Court in view of the discussion hereinbefore made.

16. It is now left to us to refer to a decision of this Court reported in *Champa Lal v. Mst. Gulabi*, AIR 1981 Rajasthan 130 (supra), wherein it has been held that the view taken in *Ghamandi Ram v. Shanker Lal*, 1965 Raj LW 333 = AIR 1966 Rajasthan 19 (supra), and *Shrinarain v. Lachhiram*,²⁰ is no longer a good law in view of *Sachalmal Parasram v. Mst. Ratan Bai*, AIR 1972 Supreme Court 637 (supra). In para 7 of the judgment it has been held that the position of law cannot be disputed that in a redemption decree the tenant of the mortgagee inducted during the continuance of the mortgage can be evicted and protection of the Rent Control Act is not available to him.

17. Similarly in *Gauri Shanker v. Kapoor Chand* (reported in)²¹ Hon'ble Mr. Justice Dr. K. S. Sidhu held that in view of decisions in *All India Film Corporation Ltd. v. Raja Gyan Nath* (1969) 3 SCC 79 (supra) and *Sachalmal Parasram v. Ratanbai*, AIR 1972 Supreme Court 637 (supra) the view held in *Ghamandi Ram v. Shankerlal*, AIR 1969 Rajasthan 19 (supra) (Division Bench) must be held to be overruled. We may mention here that the decision of the Bombay High Court reported in *Bhanshali Khushal Chand Ramji v. Shah Shamji Jivraj*²² was cited before the Hon'ble Judges of the Division Bench of this Court in *Ghamandi Ram v. Shankerlal* (*ibid*) in support of the contention that tenancy created by the mortgagee in possession does not survive the termination of the mortgagee's interest and that the tenant cannot claim the

protection of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 to avert eviction. The Division Bench declined to follow the judgment of the Bombay High Court in the aforementioned case, notwithstanding the fact that it was brought to the notice of the Hon'ble Judges that the definitions of the expressions 'landlord' and 'tenant' as given in the Rajasthan Rent Act are identical with such definitions as given in the Bombay Rent Act. The Division Bench bypassed the Bombay ruling with the remarks the relevant definition of 'landlord' as given in the Bombay Act had not received "adequate consideration" at the hands of the Bombay High Court and that therefore the Bombay view cannot be accepted as correct. The correctness of the judgment of the Bombay High Court which was described as incorrect by the Division Bench of this Court in Ghamandi Ram's case (ibid) has been expressly affirmed by the Supreme Court in Sachalmal Parasram's case (ibid). Thus there is no doubt that Ghamandi Ram's case (ibid) stands overruled.

18. A reliance was placed by the petitioners' Advocates Mr. Lodha as also Mr. Bhandari on the observations made by the commentator of Mulla's Transfer of Property Act at page 528 Sixth Edition. It is stated after referring the decisions in *Sachalmal Parasram v. Ratanbai AIR 1972 Supreme Court 637* (supra) and *All India Film Corporation Ltd. v. Raja Gyan Nath (1969) 3 SCC 79* (supra) as follows:

"It is respectfully submitted that the position could be more satisfactorily stated with reference to the language of clause(a). The right conferred by the clause is to manage the property during the subsistence of the mortgage. It is unlikely that a prudent manager would create a lease for a period longer than mortgage, or in circumstances which would give the lessee rights after the redemption of mortgage. Such leases would prima facie be imprudent, and not binding on the mortgagor as beyond the powers conferred by clause (a). If, however, it can be shown in any given case that such a lease was prudent, it would bind that mortgagor, even after redemption, and even though the lessee acquires there under rights of a permanent or quasi-permanent nature. No question of imprudence can arise where, as in *Prabhu v. Ramdev* ²³ (d) the rights of the tenant were enlarged by Tenancy Legislation enacted after the tenant was put in possession by the mortgagee. It is submitted that this statement of the law is consistent with all the Supreme Court decisions quoted above. It has been held, following the above quoted Supreme Court decisions that a tenant of a mortgagee in possession cannot resist eviction by the mortgagor by relying on the Rent Act. (e)".

19. In our opinion, however, the Supreme Court is clear on this point that mortgagee in possession of agricultural land can induct tenant in respect of such land beyond the period of redemption of the mortgage, if he has acted prudently and *bonafide* and in cases where the mortgagor agreed with the mortgagee for creation of such tenancy and there is no prohibition in the deed itself against creation of such tenancy. Then and then only the agricultural tenancy created by the mortgagee in possession binds the mortgagor after the redemption of the mortgage and if it does not come within the exception hereinbefore stated and also stated in the Supreme Court cases decided and discussed hereinbefore. In our opinion, therefore, the view of the Commentator of Mulla's Transfer of Property Act to the contrary cannot be accepted to be correct.

20. A question has been raised by the learned Advocate for the petitioners that because of section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, and because of the wordings "Notwithstanding anything contained in any law or contract," the tenants inducted by the mortgagee in possession become statutory tenants and even after the mortgage is redeemed, the statutory tenancy continues. In our opinion, in view of the Supreme Court judgments hereinbefore stated, we cannot accept the contention to be correct. In respect of tenancy of urban property or premises, the mortgagee in possession has no right to jeopardise the right of the mortgagor by giving a tenancy which will continue even after the redemption of the mortgage. In the Rent Legislations of M. P., such provision is to be found in Section 12 of the M. P. Accommodation Control Act, which was subject matter of the decision in *Sachmal Parasram v. Mst. Ratan Bai*, AIR 1972 Supreme Court 637 (supra). Section 12 of the M. P. Accommodation Control Act, 1961 reads as follows :-

"12. Restriction on eviction of tenants. (I) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds, namely:-

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The East Punjab Urban Rent Restriction Act, 1949, similarly had Section 13, wherein it is enacted that a tenant cannot be evicted from the tenancy unless the landlord can make out a case for eviction under Section 13 of the Act. The East Punjab Urban Rent Restriction Act, 1949 was considered by the Supreme Court in the *All India Film*

Corporation Ltd. v. Raja Gyan Nath, (1969) 3 SCC 79 (supra). In both these cases the Supreme Court held that such tenancy under the Rent Acts of Punjab and M. P. is not protected after the mortgagor has redeemed the property from mortgage and that after such redemption, the relationship of landlord and tenant between the mortgagee and his tenant is extinguished without any new relationship of landlord and tenant coming into existence between the mortgagor and the erstwhile tenant of the mortgagee.

21. In the circumstances, therefore, our answer to the reference is that a tenant of a mortgagee in possession is not entitled to the protection of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, against the mortgagor after the redemption of the mortgage. The references are answered accordingly.

Order accordingly.

Cases Referred.

1. 1965 Raj LW 333: (AIR 1966 Rajasthan 19)
2. AIR 1972 SC 637
3. AIR 1952 SC 205
4. AIR 1956 SC 183
5. (1969) 3 SCC 79
6. AIR 1966 SC 1721
7. AIR 1964 SC 1320
8. AIR 1979 SC 1745
9. AIR 1980 SC 226
10. AIR 1977 SC 244
11. AIR 1981 Raj 130
12. AIR 1976 Guj 161 (FB)
13. AIR 1980 Mad 276 (FB)
14. AIR 1970 Pun and Har 104 (FB)
15. AIR 1956 SC 305
16. AIR 1958 SC 183
17. AIR 1976 Guj 161
18. (AIR 1958 SC 183)
19. (1981) 1 Rent CR 1: (AIR 1980 Mad 276)
20. AIR 1971 Raj 38
21. AIR 1983 Raj 77

22. AIR 1958 Bom 53

23. (AIR 1966 SC 1721)