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APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Bhagwati.

MAHOMED HUSAIN KASAMBHAI MANSURI, PETITIONER *v.* J. K. TRIVEDI AND OTHERS, RESPONDENTS.* 1951 *Feb.* 18

Bombay Land Requisition Act (XXXIII of 1948), s. 6—Administration of Evacuee Property Act (XXXIII of 1950), s. 7—Landlord creating tenancy without intimating Government—Validity of tenancy—Whether Custodian of Evacuee Property can declare tenancy evacuee property without notice to such tenant.

Although s. 6 of the Bombay Land Requisition Act, 1948, penalises the action of the landlord who creates a tenancy without intimation to or permission from Government, it does not render void a tenancy created in contravention of s. 6 (3). Such a tenancy is a valid tenancy and the tenant has an interest in the premises.

Hence, if the Custodian of Evacuee Property proceeds to declare the tenancy evacuee property the tenant is entitled to be served with a notice under s. 7 of the Administration of Evacuee Property Act, 1950, and the interest of the tenant in the premises cannot be affected without a proper notice being given to him by the Custodian under that section.

One Hassanbhai was staying as a tenant in a house at Ahmedabad which was owned by a minor on whose behalf one Bai Chanchal was managing the property. On January 26, 1948, Hasanbhai vacated the premises and left India for Pakistan. He was subsequently declared an evacuee. On February 10, 1948, Bai Chanchal let out the said premises to Mahomed (Petitioner).

On July 14, 1950, the Deputy Custodian of Evacuee Property (respondent No. 1) issued a notification declaring Hassanbhai's tenancy right an evacuee property. No notice was given to Mahomed (Petitioner) under s. 7 of the Administration of Evacuee Property Act, 1950. Thereafter the Assistant Custodian of Evacuee Property (respondent No. 2) issued a notice under s. 8 (4) of the Act calling upon the Petitioner to deliver

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possession of the premises occupied by him to the Assistant Custodian at Ahmedabad.

The Petitioner applied to the High Court praying for a Writ of Prohibition under Art. 226 of the Constitution of India.

The application was heard.

C. G. Shastri, for the petitioner.

G. N. Joshi, with *Little & Co.,* for the respondents.

CHAGLA C. J. This is a petition challenging an order made by the Deputy Custodian of Evacuee Property with regard to the tenancy right of the petitioner. It seems that one Hassanbhai was a tenant of a room and the landlady was Bai Chanchal. Hassanbhai left India for Pakistan and he was declared an evacuee, and the petitioner's case is that when he left India he surrendered his tenancy to the landlady and thereafter she created a tenancy in favour of the petitioner. After Hassanbhai was declared an evacuee, on July 14, 1950, a notification was issued by the Deputy Custodian declaring his tenancy right an evacuee property. Admittedly no notice was given to the petitioner. Under s. 7 if the petitioner has any interest in the property, he is entitled to be served with a notice, and the question is whether on the admitted facts the petitioner had any interest in the property.

Mr. Joshi's contention is that Bai Chanchal could not in law create a tenancy in favour of the petitioner because the law then was the same as it is now, viz. that a landlord has to give intimation to Government with regard to a vacancy and it is only after the lapse of one month that a tenancy can be created, and according to Mr. Joshi a landlord is prohibited from creating a tenancy otherwise than in accordance with the provisions of s. 6 of the Land Requisition Act. The question is whether any rights are created as between a landlord and a tenant in a case where the landlord fails to give intimation or fails to get permission from Government as required by s. 6. It is clear that if the landlord contravenes the provision of s. 6, he renders himself liable to penal consequences. But does that mean that no right is created as between landlord and tenant? Looking to the scheme of s. 6 it is clear that s. 6 is not intended in any way to modify the ordinary law of landlord and tenant. The Land Requisition Act requires the landlord to give intimation to the Government

of a vacancy because Government can deal with such vacancies by allocating it to persons who are in need of property, and if the landlord does not conform to the scheme, he is penalised for his action. But there is no reason why we should assume from that that if a landlord has created a tenancy in favour of a tenant contrary to the provisions of s. 6, no right is created in the tenant himself. Section 6 does not render a tenancy created void. It only penalises the action of the landlord in that he created the tenancy without the permission of Government. If that be the true position, then although admittedly Bai Chanchal did not give intimation to Government as required by law, nor did she get the permission of Government to create the tenancy if in fact she did create the tenancy, it was a valid tenancy and the petitioner had an interest in the land. It may also be noticed that sub-s. (5) of s. 6 penalises a landlord who lets the premises in contravention of the provisions of sub-s. (3) of s. 6. Therefore, the letting by the landlord is recognised by the law. What is penalised is letting without the permission required by sub-s. (3) of s. 6. Further, it would also be noticed that even when premises are let without the permission of the Government, there is no obligation upon the Government to requisition those premises. They may or they may not, and clearly if they do not requisition the premises, the relationship of landlord and tenant created is not in any way affected by the fact that the landlord has let out the premises without the permission of the State. Therefore, it is clear that a valid tenancy was created as between the petitioner and Bai Chanchal, although Bai Chanchal created the tenancy without the permission of the Government. Therefore the petitioner had an interest in the premises and that interest could not be affected without a proper notice being given to him by the Custodian under s. 7 of the Act. As admittedly no notice was given, the order made by respondent No. 1 is bad and respondent No. 2 who is the Assistant Custodian cannot in pursuance of that order issue a warrant of possession depriving the petitioner of the possession of these premises. There is nothing to prevent the Custodian from passing a proper order after giving notice to the petitioner under s. 7 of the Evacuee Properties Act.

We would therefore make an order in terms of prayers (*a*), (*b*) and (*c*) of the petition. Respondents to pay the costs.

Order accordingly.

K. B. S.