

GHULAM NABI DAR & ORS.

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v.

STATE OF J&K & ORS.

(Civil Appeal Nos.6-7 of 2013)

JANUARY 3, 2013

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**[ALTAMAS KABIR, CJI, SURINDER SINGH NIJJAR
AND J. CHELAMESWAR, JJ.]**

Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006 – s. 6 – Notification published under, declaring lands under the possession of appellants to be vested in the Custodian of Evacuee Property – Whether vitiated – Held, Yes, since the appellants had been denied an opportunity of explaining that they were not mere occupants of the property in question, but tenants thereof, in which case, neither r.9 nor r.13-C of the 2008 Rules had any application to the facts of the case – Jammu and Kashmir State Evacuees' (Administration of Property) Rules, 2008 – rr.9 and 13C.

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Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006 – s. 16 – Protection under – When available – Held: It is available only in respect of evacuee property after a determination to such effect is made – A unilateral declaration is clearly opposed to the principles of natural justice and administrative fair play and cannot be supported.

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Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006 – s. 6 – Notification issued under the Act, declaring the land in question to be evacuee property – Occupants claiming to be tenants-at-will of the said land since before the Act came to be enacted, filed writ petition praying inter alia that the said notification be quashed – Writ petition before High Court – Out of Court settlement entered into

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A *between the parties and filed before the High Court – Occupants of the lands in question had surrendered part of the land in favour of the Custodian of Evacuee property while remaining in possession of the remaining part of the land, which were to be settled with them – Pursuant to the*

B *Settlement, the State authorities raised constructions on the surrendered lands – But later took the stand that the Settlement stood vitiated on account of non-compliance with r.13C – Held: The Settlement was lawful and within the scope of Sub-Rule (3) of Or.23 CPC – The special facts of the case*

C *set the present Agreement/Settlement apart from the cases of grant of lease of vacant lands in terms of r.13C – Since the lands were not vacant, the very first criterion of r.13C, was not satisfied and the lease of the lands were to be granted as part of the settlement packet, which included surrender of 22*

D *kanals of prime land – r.13C had no application to the Settlement arrived at between the parties and the same was not, therefore, vitiated for not putting the lands to auction to determine the premium to be paid for the leases to be granted in respect thereof – It was nobody's case that the Settlement*

E *was the outcome of any fraud or was unlawful and the same, having been signed and acted upon, was binding on the parties and could not be withdrawn unilaterally – Jammu and Kashmir State Evacuees' (Administration of Property) Rules, 2008 – r.13C.*

F **On 21-11-1980, the Custodian of Evacuee Property, Jammu and Kashmir, issued a Notification under Section 6 of the Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006, declaring the land in question to be evacuee property. Persons claiming to**

G **be in possession of the said land in the capacity of tenants-at-will since before the aforesaid Act came to be enacted, filed writ petition praying inter alia that the said notification dated 21-11-1980 be quashed. During pendency of the writ petition, the High Court restrained**

H **the respondents from raising any construction on the**

spot. Aggrieved, the Custodian of Evacuee Property filed LPA. While the matters were pending, an out of court settlement was ultimately arrived at between the parties which was submitted before the Court. A

After filing the Settlement in Court and asking the Court to take action thereupon, an application was made on behalf of the Custodian of Evacuee Property for leave to withdraw the settlement on the ground that the Chief Minister had reversed the earlier decision taken on 27/28th March, 2005 and, that, accordingly, the deponent, in the affidavit, was not competent to enter into the Settlement with the occupants of the evacuee property, as the decision to do so had been withdrawn by the competent authority. The State Government took the stand that the Settlement stood vitiated on account of non-compliance with Rule 13-C of the Jammu and Kashmir State Evacuees' (Administration of Property) Rules, 2008. B
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Dispute arose as to whether having entered into a Settlement, which stood concluded and had been acted upon by the State Government by raising constructions on the surrendered lands, could the Settlement have been withdrawn unilaterally only at the instance of the State Government. E

The main plank of the submissions made on behalf of the appellants is that the lands in question are not evacuee property, and, that, the appellants were tenants thereof since before the Act came into force. In fact, it is the case of some of the appellants that their predecessors-in-interest were in occupation of the lands in question even prior to 1st March, 1947, and 14th August, 1947, which clearly excluded the appellants from the operation of the provisions of the 2006 Act and the 2008 Rules. The appellants claimed that as "protected tenants", they were entitled to continue in possession of F
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A the lands and, particularly so, in view of the Settlement arrived at between the Appellants and the State authorities.

Disposing of the appeals, the Court

B HELD: 1. Section 16 of the of the Jammu and
Kashmir State Evacuees' (Administration of Property)
Act, 2006 deals with occupancy and tenancy rights. It is
clear from Section 16 that on account of the non-obstante
C clause, the provisions of Section 16 will prevail over any
other law for the time being in force and the right of
occupancy in any land of an evacuee shall not be
extinguished. Accordingly, in the event the tenants were
D enjoying occupancy rights in respect of the lands in their
possession, they could not be evicted therefrom by
virtue of the Notification published under Section 6 of the
2006 Act. However, the protection under Section 16 will
be available only in respect of evacuee property after a
determination to such effect is made. A unilateral
E declaration is clearly opposed to the principles of natural
justice and administrative fair play and cannot be
supported. [Para 32] [899-C, F-H; 900-A]

F 2. The Notification published on 21st November,
1980, under Section 6 of the 2006 Act, declaring the lands
under the possession of the Appellants to be vested in
the Custodian of Evacuee Property, stood vitiated, as the
appellants had been denied an opportunity of explaining
that they were not mere occupants of the property in
question, but tenants thereof, in which case, neither the
provisions of Rule 9 nor Rule 13-C of the 2008 Rules
G would have any application to the facts of this case. [Para
34] [900-C-D]

H 3. Apart from the above, the Settlement entered into,
was dependent on several factors, including the fact that
the occupants of the lands in question had surrendered

22 kanals of prime land out of 37 kanals and 5 marlas in favour of the Custodian Department while remaining in possession of 15 kanals and 5 marlas, which were to be settled with them. While, on the one hand, the State authorities took advantage of the Settlement and constructions were raised on the surrendered lands, a stand was later taken on behalf of the State Government that the Settlement stood vitiated on account of non-compliance with the provisions of Rule 13-C of the 2008 Rules. The fact situation of this case is different from the circumstances contemplated under Rule 13-C of the 2008 Rules. In the present case, the lands covered by the Settlement were not vacant and were not, therefore, within the ambit of Rule 13-C when the Settlement was at the gestation stage. It is only under the Settlement that the claims and rights, if any, of the writ petitioners were required to be surrendered and, therefore, the question of actual surrender of possession of 22 kanals of land out of 37 kanals and 5 marlas, was to follow, leaving a balance of 15 kanals and 5 marlas to be allotted to the occupancy rights and tenants-at-will in respect thereof. [Para 35] [900-E-H; 901-A-B]

4. The special facts of the case set the present Agreement/Settlement apart from the cases of grant of lease of vacant lands in terms of Rule 13-C and has, therefore, to be treated differently. Firstly, as the lands were not vacant, the very first criterion of Rule 13-C, was not satisfied and the lease of the lands were to be granted as part of the settlement packet, which included surrender of 22 kanals of prime land. In the special facts of this case, Rule 13-C of the 2008 Rules would have no application to the Settlement arrived at between the parties and the same were not, therefore, vitiated for not putting the lands to auction to determine the premium to be paid for the leases to be granted in respect thereof. It was nobody's case that the Settlement was the outcome

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A of any fraud or was unlawful and the same, having been signed and acted upon, was binding on the parties and could not be withdrawn unilaterally. [Para 36] [901-B-E]

B 5. The Settlement arrived at between the parties and filed before the High Court for acceptance is lawful and within the scope of Sub-Rule (3) of Order 23 of the Code of Civil Procedure. It cannot be held that the Settlement was contrary to the provisions of Rule 13-C of the 2008 Rules. The High Court shall proceed to pass appropriate orders for acceptance of the out-of-Court settlement and for adjustment of the rights of the parties in terms thereof. [Para 37] [901-F-G, H; 902-A]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6-7 of 2013.

D From the Judgment & Order dated 25.03.2008 of the High Court of Jammu & Kashmir at Srinagar in CMP Nos. 128 and 525 of 2006 in LPA No. 169 of 2004.

E WITH

E C.A. Nos. 8-9 of 2013.

F Bhaskar Gupta, Zaffar Ahmad Shah, Purnima Bhat for the Appellants.

F Sunil Fernandes, Vernika Tomar, Astha Sharma, Insha Mir for the Respondents.

The Judgment of the Court was delivered by

G ALTAMAS KABIR, CJI. 1. Leave granted.

H 2. The disputes between the parties relate to lands measuring 37 Kanals 5 marlas comprised in several survey numbers forming the subject matter of OWP No. 480 of 2003 and OWP No. 454 of 2005. On 21st November, 1980, the Custodian of Evacuee Property, Kashmir, issued a Notification

under Section 6 of the Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006, hereinafter referred to as "the 2006 Act", declaring the aforesaid land to be evacuee property, being in the ownership of one Qamar-ud-Din and other evacuees. Inasmuch as, the writ petitioners in OWP No. 480 of 2003, claiming to be the tenants-at-will of the land involved in the writ petition, commenced earth filling, they were stopped from doing so by the Evacuee Department. It is the case of the writ petitioners that when they made inquiries, they were able to lay their hands on records indicating that the lands measuring 11 kanals 6 marlas out of the land comprised in the said survey numbers had been taken over by the Evacuee Department and placed at the disposal of the Custodian vide three seizure memos dated 22nd January, 2003 and 1st February, 2003. Claiming that they were in possession of the land in the capacity of tenants-at-will since before the aforesaid Act came to be enacted, the petitioner in OWP No. 480 of 2003 prayed for the following reliefs:-

"(i) it be declared that Section 6 of the J&K Evacuee (Administration of Property) Act, 2006 is unconstitutional;

(ii) it be declared that Section 3 of the Agrarian Reforms Act, 1976 in so far as it excludes the application of Sections 4 and 8 of the tenants of evacuee land is *ultra vires* the Constitution.

(iii) That by an appropriate writ, direction or order including the writ in the nature of certiorari following notification/communication be quashed:-

1. Notification dated 21.11.1980

2. Communication No. CEPS/GE/2002/2766-70 dated 17.12.2002.

3. Communication No. CG(EP)1020/ 2003/ 167-Misc. K dated 23.1.2003

- A 4. Three seizure memo dated 2.2.2003
5. Communication No. CEPE-JE/2002/3347-50 dated 6.2.2003
- B 6. Communication No. DFI/SG/378 dated 22.2.2003

(iv) That by an appropriate writ, direction or order including a writ in the nature of prohibition respondents be restrained from interfering in the rights of possession of the petitioners in the land and in their levelling of land and from fencing.

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(v)

Along with the writ petition, the petitioners also filed a miscellaneous petition seeking interim relief in which it was ordered that the Respondents were not to dispossess the petitioners from the lands in dispute, till the next date. The petitioners were also restrained from raising any construction or changing the nature and character of the said lands during the said period. However, when during the pendency of the writ petition, the Custodian started construction of a shopping complex, in violation of the said order of injunction, the petitioners filed another CMP in which notice was issued on 22nd April, 2004, returnable within four weeks, and till then the parties were directed to maintain status quo. Subsequently, by an order dated 30th September, 2004, the Registrar (Judicial) of the High Court was appointed as Commissioner to visit and submit a report which he did on 7th October, 2004.

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3. On receipt of the report and on being satisfied that construction work had been undertaken by the Custodian on the aforesaid lands and was being proceeded with, the High Court by its order dated 19th November, 2004, restrained the Respondents from raising any construction on the spot. Since its earlier orders had been violated by the Custodian, the Station House Officer of the concerned Police Station was

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directed to see that the order of the Court was duly complied with, till the petition was considered for admission, or until further orders. A

4. Aggrieved by the aforesaid order of the learned Civil Judge, the Custodian of Evacuee Property filed LPA No. 169 of 2004. Other writ petitioners, who also claimed to be in possession of their lands as tenants-at-will and as "protected tenants", have also challenged the validity of the provisions of Section 6 of the Jammu and Kashmir Evacuee (Administration of Property) Act, 2006 and Section 3 of the Agrarian Reforms Act, 1976, insofar as it excludes the application of Sections 4 and 8 to the tenants of evacuee properties. B C

5. While the matters were pending, serious efforts were made by the parties for an out of court settlement which ultimately fructified in terms of a settlement which was submitted before the Court by way of CMP No. 128 of 2006. The Settlement presented before the Court was duly signed by the Custodian of Evacuee Property, Kashmir and by all the writ petitioners and their counsel. While the above miscellaneous petition was pending consideration, the Advocate General filed an application on 23rd May, 2006, praying that the Settlement be not accepted, which application was later withdrawn. In the meantime, there was a change in the Government and the Custodian was also transferred. The new Custodian took a decision to refer the matter back to the State Government. On 10th October, 2006, the Custodian filed an application praying for withdrawal of the Settlement contained in CMP No. 128 of 2006, and in support of such application, the Custodian placed reliance upon a letter of the Revenue Department in which it was stated that the Revenue Minister had accorded approval for reversing the earlier decision taken on 27/28th March, 2005, for entering into a settlement with the occupants of the evacuee property. The said application for withdrawal of the Settlement filed by the Custodian came to be registered as CMP No. 525 of 2006. D E F G

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A 6. The two miscellaneous petitions, being CMP No. 128
of 2006, filed by the parties for disposing of the appeal and
writ petitions in terms of the compromise and CMP No. 525 of
2006, filed by the Custodian for withdrawal of the Settlement,
came up for consideration before the Division Bench of the
B Hon'ble Mr. Justice H. Imtiaz Hussain and the Hon'ble Mr.
Justice Mansoor Ahmad Mir, on 15th September, 2007. As
indicated hereinbefore, the Hon'ble Judges differed on the relief
prayed for. While H. Imtiaz Hussain, J. held that the Settlement
violated Rule 13-C of the Jammu and Kashmir State Evacuees'
C (Administration of Property) Rules, 2008, hereinafter referred
to as "the 2008 Rules" and could not, therefore, be accepted
by the Court, Mansoor Ahmad Mir J. held that the aforesaid Rule
did not apply to the facts of the case and that it was nobody's
case, that the Settlement arrived at was the outcome of fraud
or unlawful. His Lordship was also of the view that the
D Settlement having been duly signed and acted upon by the
parties, the same was binding on the parties and could not be
withdrawn unilaterally. His Lordship, therefore, dismissed CMP
No. 525 of 2006, filed by the Custodian for withdrawal of the
Settlement and directed the listing of LPA No. 169 of 2004 and
E CMP No. 128 of 2006, for further arguments. In view of such
differences, the matter was referred to Hon'ble the Chief
Justice in terms of Rule 36(2) of the Jammu and Kashmir High
Court Rules, for referring the matter to a Third Judge.

F The learned third Judge framed three questions for
consideration, namely,

- (a) whether Rule 13-C of the 2008 Rules is attracted
to the Settlement arrived at by the parties?
- G (b) whether the Settlement contravenes Rule 13-C?
- (c) whether the Custodian can withdraw from the
Settlement unilaterally?

H 7. Before the learned third Judge it was sought to be urged

on behalf of the State that the chunk of the land in question A
belonged to one Qamar-ud-Din who had two brothers, namely,
Ahmad Din and Imam Din. In the disturbances of 1947, Qamar-
ud-Din left the State and became an evacuee and his property
was declared as evacuee property. In 1949 or 1950 there was
no such record available in the Custodians Department. B
Subsequently, Ahmad Din submitted three applications dated
11th Assuj 2009, before the Custodian of Evacuee properties
with a request that three bungalows along with the premises be
declared as non-evacuee property as the entire property was C
held by the three brothers, Qamar-ud-Din, Ahmad Din and
Imam Din. The said three applications were dismissed on
grounds of default on 28th July, 1956. An application for review
of the said order was filed on 20th November, 1956, which was
disposed of by the Custodian by his Order dated 5th
September, 1963, whereby the close relatives of the evacuees D
were appointed as managers of the properties provided they
gave an undertaking that they would submit yearly accounts of
income and expenditure to the Department and deposit the
income from the properties regularly so that the same could be
credited against the names of the evacuees. It was, therefore, E
contended on behalf of the State that in terms of the above
Orders, the property came under the control of the Evacuee
Department and was being administered through its allottees
and managers appointed by it. It was also the stand of the State
that once the Custodian came into control of the evacuee F
properties, he decided to construct a Shopping Mall over the
land and allotted the work of construction to a contractor, who
started raising the construction thereupon. It was also urged that
notwithstanding the claim of the writ petitioners to be in
possession of the lands as tenants, their rights, if any, in the
land, were extinguished once the Evacuee Property Act came G
into effect and in any case by virtue of the declaration issued
under Section 6 of the 2006 Act.

8. It was also the case of the State that any allotment of
lands belonging to the State could not have been settled without H

A complying with the provisions of Rule 13-C of the 2008 Rules and such contravention invalidated the Settlement which was, therefore, illegal and was rightly declared to be so by H. Imtiaz Hussain, J.

B On the other hand, it was contended by Mr. Shah, appearing for the writ petitioners, that the Settlement between the parties was in the nature of a contract and had been arrived at by the parties who enjoyed the freedom to contract. It was also submitted by him that Rule 13-C could have applied if the land to be allotted was vacant. According to Mr. Shah, since the writ petitioners were holding the land as tenants, it was not vacant for the purposes of Rule 13-C of the Rules. According to Mr. Shah, the views expressed by the Hon'ble Justice Mansoor Ahmad Mir was in consonance with Rule 13-C, which in the facts of the case, could not have any application to the lands in question.

9. It was also contended by Mr. Shah that even assuming that Rule 13-C was applicable, even then there was no violation of its provisions as the premium was fixed in the present case by taking into consideration the fact that the writ petitioners were surrendering all their rights in respect of the whole land. The premium was fixed by the members of a committee headed by none else than the Minister-in-Charge of the Custodian Department. Mr. Shah also submitted before the learned third Judge that the rate of Rs.30 lakhs per kanal, as indicated by the Appellants, was not based on any relevant material.

10. As mentioned hereinbefore, the controversy in this case related to the applicability of Rule 13-C in regard to the land in question.

G In his judgment and order dated 25th March, 2008, the learned third Judge, Y.P. Nargotra, J. agreed with the view taken by H. Imtiaz Hussain, J. that the parties had violated Rule 13-C of the above-mentioned Rules and the Custodian was, therefore, competent to unilaterally withdraw the same. The

Learned Judge came to such a conclusion on the ground that in terms of the Settlement arrived at, the writ petitioners would have to surrender all their rights over the entire land, which would render the land vacant within the meaning of Rule 13-C.

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11. On the question as to whether the Settlement contravened Rule 13-C, the learned third Judge was of the view that the premium to be paid for the lease to be granted to the respondents/writ petitioners under the Settlement had not been determined by putting the lease to an open auction which was in contravention of the mandatory requirement of Rule 13-C. The learned Judge, therefore, held that the Settlement contravened Rule 13-C on the point of determining the premium payable.

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12. On the third question as to whether the Custodian could withdraw from the Settlement unilaterally, the learned third Judge held that Rule 3 of Order 23 CPC, which related to compromise of suits, would have application provided it was proved to the satisfaction of the Court that the suit had been adjusted wholly or in part by any lawful agreement or compromise. In such case, the Court would have the discretion to order such agreement or compromise to be recorded and shall pass a decree in accordance therewith in so far as it related to the parties to the suit. The learned third Judge took note of the Explanation to Rule 3 of Order 23 CPC, which provides that an agreement or compromise which is void or voidable under the Contract Act shall not be deemed to be lawful within the meaning of the Rule. Accordingly, in terms of the above Explanation, an agreement not found to be lawful, could be rejected by the Court for the purpose of passing a decree.

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The learned third Judge then referred to Section 23 of the Contract Act, 1872, whereby any agreement which the Court regards as immoral or opposed to public policy, is void. The learned third Judge held that the Settlement was directly hit by Section 23 of the Contract Act as it defeated the object of Rule 13-C and was, therefore, unlawful for the purposes of Rule 3

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A of Order 23 CPC. The Learned Third Judge held that the Settlement being unlawful, the Custodian was entitled to withdraw from the Settlement unilaterally. Agreeing with the views expressed by H. Imtiaz Hussain, J., the learned third Judge observed that by consent or agreement, the parties cannot achieve what is contrary to law and that the Settlement arrived at between the parties could not be accepted.

13. As a result of the above, while the two miscellaneous petitions were disposed of by the High Court, LPA No. 169 of 2004 and OWP No. 480 of 2003, filed by the Appellants challenging the Notification dated 21st November, 1980, are still pending decision in the High Court.

14. These two Appeals arise from the final judgment and order dated 25th March, 2008, passed by the learned third Judge of the Jammu & Kashmir High Court at Srinagar, in the said miscellaneous applications.

15. Briefly stated, the grievance of the Appellants is directed against the order passed by H. Imtiaz Hussain, J., holding that the Settlement violated Rule 13-C of the 2008 Rules and could not, therefore, be accepted by the Court.

16. Appearing for the Appellants, Mr. Zaffar Ahmad Shah, learned senior counsel, reiterated the submissions made before the High Court and submitted that, although, the Evacuee Department issued the Notification dated 21st November, 1980, the same was neither gazetted nor implemented till 1999, when an entry was made in the Revenue Records in that regard. Mr. Shah urged that all the Appellants were occupancy tenants in respect of the lands in which they were in possession and such possession was protected under Section 16 of the 2006 Act. The impugned order of the Custodian General, being contrary to the said provisions, was illegal and liable to be quashed.

17. Mr. Shah contended that the lands in question and the

lands comprised in the surrounding areas were agricultural lands and had been utilised for cultivation of paddy for decades. There was a change in user of the surrounding lands, when a bye-pass road and a new airport was constructed. As a result of such developments and the expansion of the city, a large number of residential houses and commercial establishments came to be constructed in and around the area called Hyder Pora. On account of such unrestrained construction activities, the level of land used in construction work was raised considerably on account of earth filling. The lands of the Appellants, on the other hand, continued to be low-lying and gradually became receptacles of water, making them unfit for cultivation. In order to render the lands usable, the Appellants also resorted to earth filling to prevent collection and stagnation of water. It is, at this stage, that the functionaries of the Evacuee Department intervened and stopped the Appellants continuing with earth filling of the lands in question.

18. Mr. Shah submitted that after purported *ex parte* enquiries were made by the Custodian General's Office, letters were issued to the Custodian of Evacuee Property directing him to resume possession of the lands under the occupation of the Appellants. However, the Appellants were kept completely in the dark regarding such enquiry and the procedure adopted by the Office of the Custodian General, in arriving at a final conclusion regarding the status of the land behind the back of the Appellants, was without legal sanction and was liable to be quashed.

19. Mr. Shah urged that the Appellants and their predecessors-in-interest had been holding and possessing the lands in question much before 14th August, 1947, in their capacity as tenants and are, therefore, protected in law against any action of the Respondents. Mr. Shah urged that, although, the Respondents claimed that the property in question belongs to one Qamer-ud-Din, he was never in possession of the lands as on 1st March, 1947, or on 14th August, 1947 and the

A predecessors-in-interest of the Appellants were all along in
occupation of the property as tenants and, at no stage, did they
cease to occupy the said property.

B 20. Mr. Shah urged that under Section 5 of the 2006 Act,
all evacuee property situated in the State would be deemed to
have vested in the Custodian. However, in order to vest in the
Custodian, the properties had to be evacuee property. Mr. Shah
submitted that in the instant case, Qamer-ud-Din was not an
evacuee within the meaning of Section 2(c) of the above Act,
nor did he acquire the property in the manner indicated in
C Section 2(c)(iii) thereof. Mr. Shah submitted that the property
has not been registered as evacuee property by the Custodian,
in terms of Section 5 of the 2006 Act.

D 21. The learned counsel then submitted that Section 6 of
the 2006 Act was unconstitutional and was liable to be struck
down. It was urged that before issuing a notification under
Section 6 of the 2006 Act, it was only incumbent upon the
authorities to ensure that the principles of natural justice were
followed.

E 22. Mr. Shah contended that the 2008 Rules provide that
in respect of any evacuee property which vests in the
Custodian, but is in the possession of some other person
having no lawful title to such possession, the Custodian may
F evict the person from such property in the manner indicated in
the 2006 Act and the 2008 Rules.

G 23. Mr. Bhaskar Gupta, learned Senior Advocate, who
appeared for the Appellants, Ghulam Mohammad Dar and
others, emphasised the use of the expression "vacant" in Rule
13-C of the 2008 Rules. Mr. Gupta submitted that the
expression "vacant" has been defined in Black's Law Dictionary
to mean "empty, unoccupied, absolutely free, and unclaimed".
Accordingly, land in possession of any person prior to coming
into force of the Act and the Rules, could not be said to be

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vacant land and, accordingly, Rule 13-C of the 2008 Rules would have no application to the lands in question at all. A

24. Mr. Gupta submitted that in terms of the Settlement which has been arrived at between the Appellants and the State agencies, the Appellants had surrendered possession of 22 kanals of prime land out of 37 kanals and 5 marlas in favour of the Custodian Department and the Appellants continued to be in possession of the remaining lands. Furthermore, according to Mr. Gupta, by the raising of constructions on the surrendered land, the Settlement had been duly acted upon and the State could not, therefore, now resile therefrom. It was no longer open for the State to contend that they had wrongly arrived at the Settlement. Mr. Gupta also pointed out that the fact that the Appellants were and continued to be in possession of the lands in question, would be evident also from a letter written on behalf of the State Government, in its Revenue Department, to the Custodian General on 10th October, 2006 regarding the Settlement to be filed in LPA No. 169 of 2004 and OWP No. 480 of 2003. It was pointed out that, in the said letter, the State Government had acknowledged the fact that the Appellants were the occupants of the property in question, even though such occupation was referred to as illegal. Mr. Gupta submitted that what was important was the acknowledgement of the fact that the Appellants were in actual possession of the lands in question. B
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25. It was lastly submitted that Rule 3 of Order 23 CPC permits compromise of suits and where it is proved to the satisfaction of the Court that the same had been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the Court shall order such agreement, compromise or satisfaction to be recorded and then proceed to pass a decree. F
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26. Mr. Sunil Fernandes, learned counsel, who appeared for the State of Jammu and Kashmir, submitted that the two writ petitions regarding resumption of possession of the lands in H

- A question were still pending before the High Court and the validity of Section 6 of the 2006 Act was the subject matter of challenge therein. The ambit of the dispute between the parties before the High Court was confined to the question of validity of Section 6 of the 2006 Act, as also the challenge to the Settlement arrived at between the parties.

27. Mr. Fernandes urged that the view of the learned third Judge represented the majority view in the matter, which did not warrant any interference. These appeals were, therefore, liable to be dismissed.

- C 28. The main plank of the submissions made on behalf of the Appellants is that the lands in question are not evacuee property, and, that, the Appellants were tenants thereof since before the Act came into force. In fact, it is the case of some of the Appellants that their predecessors-in-interest were in occupation of the lands in question even prior to 1st March, 1947, and 14th August, 1947, which clearly excluded the Appellants from the operation of the provisions of the 2006 Act and the 2008 Rules. On the other hand, as "protected tenants", the Appellants were entitled to continue in possession of the lands and, particularly so, in view of the Settlement arrived at between the Appellants and the State authorities.

- F 29. That, there was a settlement arrived at between the parties is not in issue. It is also not in issue that after filing the Settlement in Court and asking the Court to take action thereupon, an application was made on behalf of the Custodian of Evacuee Property, Jammu and Kashmir, for leave to withdraw CMP No. 128 of 2006 on the ground that the Chief Minister had reversed the earlier decision taken on 27/28th March, 2005 and, that, accordingly, the deponent, in the affidavit, was not competent to enter into the Settlement, as the decision to do so had been withdrawn by the competent authority.

- H 30. The question to be decided is whether having entered

into a Settlement, which stood concluded and had been acted upon by the State Government by raising constructions on the surrendered lands, could the Settlement have been withdrawn unilaterally only at the instance of the State Government? A

31. The other branch of submissions made on behalf of the Appellants, which merits consideration, is whether on Section 8 of the 2006 Act having been declared *ultra vires*, a party could be left without a remedy as the right to challenge a Notification issued under Section 6 stood extinguished by such declaration? B

32. In addition to the above, the provisions of Section 16 of the 2006 Act may also be noticed. Section 16, which deals with occupancy and tenancy rights provides as follows :- C

"16. Occupancy or tenancy right not to be extinguished - Notwithstanding anything contained in any other law for the time being in force, the right of occupancy in any land of an evacuee which has vested in the Custodian shall not be extinguished, nor shall an evacuee or the Custodian, whether as an occupancy tenant, or a tenant for a fixed term of any land, be liable to be ejected or deemed to have become so liable on any ground whatsoever for any default of the Custodian." D E

It is clear from Section 16 that on account of the non-obstante clause, the provisions of Section 16 will prevail over any other law for the time being in force and the right of occupancy in any land of an evacuee shall not be extinguished. Accordingly, in the event the tenants were enjoying occupancy rights in respect of the lands in their possession, they could not be evicted therefrom by virtue of the Notification published under Section 6 of the 2006 Act. F G

However, the protection under Section 16 will be available only in respect of evacuee property after a determination to such effect is made. A unilateral declaration is clearly opposed to H

A the principles of natural justice and administrative fair play and cannot be supported.

B 33. As far as the second limb of Mr. Shah and Mr. Gupta's submissions is concerned, the same being the subject matter of the writ proceedings pending before the High Court, it would not be proper on our part to express any opinion in respect thereof.

C 34. Having considered the submissions made on behalf of the respective parties, we are inclined to accept the submission made on behalf of the Appellants that the Notification published on 21st November, 1980, under Section 6 of the 2006 Act, declaring the lands under the possession of the Appellants to be vested in the Custodian of Evacuee Property, stood vitiated, as the Appellants had been denied an opportunity of explaining that they were not mere occupants of the property in question, but tenants thereof, in which case, neither the provisions of Rule 9 nor Rule 13-C of the 2008 Rules would have any application to the facts of this case.

E 35. Apart from the above, the Settlement which was entered into between the writ petitioners and the State, was dependent on several factors, including the fact that the occupants of the lands in question had surrendered 22 kanals of prime land out of 37 kanals and 5 marlas in favour of the Custodian Department while remaining in possession of 15 kanals and 5 marlas, which were to be settled with them. While, on the one hand, the State authorities took advantage of the Settlement and constructions were raised on the surrendered lands, a stand was later taken on behalf of the State Government that the Settlement stood vitiated on account of non-compliance with the provisions of Rule 13-C of the 2008 Rules. The fact situation of this case is different from the circumstances contemplated under Rule 13-C of the 2008 Rules. In the present case, the lands covered by the Settlement were not vacant and were not, therefore, within the ambit of Rule 13-C when the Settlement was at the gestation stage. It is only under the

Settlement that the claims and rights, if any, of the writ petitioners were required to be surrendered and, therefore, the question of actual surrender of possession of 22 kanals of land out of 37 kanals and 5 marlas, was to follow, leaving a balance of 15 kanals and 5 marlas to be allotted to the occupancy rights and tenants-at-will in respect thereof. A
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36. The special facts of the case set the present Agreement/Settlement apart from the cases of grant of lease of vacant lands in terms of Rule 13-C and has, therefore, to be treated differently. Firstly, as the lands were not vacant, the very first criterion of Rule 13-C, was not satisfied and the lease of the lands were to be granted as part of the settlement packet, which included surrender of 22 kanals of prime land. We are inclined to agree with the views expressed by Mansoor Ahmad Mir, J. that in the special facts of this case, Rule 13-C of the 2008 Rules would have no application to the Settlement arrived at between the parties and the same were not, therefore, vitiated for not putting the lands to auction to determine the premium to be paid for the leases to be granted in respect thereof. As observed by His Lordship, it was nobody's case that the Settlement was the outcome of any fraud or was unlawful and the same, having been signed and acted upon, was binding on the parties and could not be withdrawn unilaterally. C
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37. In our view, the Settlement arrived at between the parties and filed before the High Court for acceptance by way of CMP No.128 of 2006 is lawful and within the scope of Sub-Rule (3) of Order 23 of the Code of Civil Procedure. The decision holding the Settlement to be contrary to the provisions of Rule 13-C of the 2008 Rules, as held by H. Imtiyaz Hussain, J. on 15th September, 2007, and affirmed by the third learned Judge, Y.P. Nargotra, J. by his judgment and order dated 25th March, 2008, cannot be sustained and is set aside. Consequently, the view expressed by Mansoor Ahmad Mir, J. is upheld. CMP No.525 of 2006 is, accordingly, dismissed and CMP No.128 of 2006 is allowed. The High Court shall proceed F
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A to pass appropriate orders for acceptance of the out-of-Court settlement and for adjustment of the rights of the parties in terms thereof in the LPA as well as in OWP No.480 of 2003 and OWP No.454 of 2005.

B 38. Since, in these appeals we have only been called upon to consider as to whether the Settlement arrived at between the parties stood vitiated on account of non-compliance with the provisions of Rule 13-C of the 2008 Rules, we have not expressed any opinion with regard to the second limb of the submissions advanced regarding the constitutionality of
C Section 6 of the 2006 Act. The said issue is, accordingly, left to the High Court for decision. We make it clear that whatever has been expressed in this judgment, shall not in any way prejudice and/or affect the outcome of the decision of the High Court in the said matter.

D 39. The appeals are, accordingly, disposed of. There will, however, be no order as to costs.

B.B.B.

Appeals disposed of.