COMPENDIUM
OF
IMPORTANT COURT DECISIONS
RELATING TO OLD GRANTS
(PART-II)

सत्यमेव जयते

Government of India
Ministry of Defence
Directorate General Defence Estates

FOREWORD

I am glad that second part of compendium related to important judgments delivered by the Hon'ble Supreme Court of India and Hon'ble High Courts has been brought out now - in continuation of the first part published in Aug., 2000. This compendium primarily contains ten important judgments. The landmark judgment in Harish Chand Anand's case has been reiterated by the Apex Court while deciding the case again on contest. Interestingly, the decision given in PD Tandon's case long back, has been reversed now by the Apex Court, enabling us to present the full facts to the High Court where the case is remitted back. The other interesting cases are Chitra Kumari's case and Suman Rajvedi's case. Each case is very significant and will serve as a guide to officers involved in old grant litigation. After long and sustained legal battles put up by the department, we have now succeeded in establishing very clearly that the GGO s governing the old grant tenures definitely are the law in force today and, therefore, the ownership of old grant land is vested with the Government of India and the Government can exercise the powers of resumption of such old grant properties after giving one month's notice.

Now that the confusion surrounding the concept of old grants has been removed by various successive judgments of the Hon'ble Supreme Court of India, the administration and management of old grant properties located all over India should become comparatively a smooth affair.

I sincerely hope that this compendium will also go a long way to guide the concerned officers in pursuing the litigation work and also in managing the old grant properties to protect the interest of the Government of India, successfully.

(DR. VEENA MAITRA)
DIRECTOR GENERAL
DEFENCE ESTATES

New Delhi,
25th, June, 2004

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.10281 OF 1995
(Arising out of SLP (C) No. 19608 of 1994)

The Cantonment Board,Jabalpur & Ors .... Appellants

VERSUS

Shri S.N.Awasthi & Ors. .... Respondents

ORDER

Leave granted.

This appeal by special Leave arises from the order of the High Court of Madhya Pradesh dated March 2, 1992 passed in Misc. Petition No.2233 of 1991.

The Cantonment Board through its Resolution No.10 dated 30th March,1990 had granted permission for construction of a building which later on was cancelled by another proceedings dated July 5,1991. Calling in question of the cancellation, the respondents filed the writ petition. The High Court allowed the writ petition on three grounds, viz., that the sanction having been granted in favour of the respondents, cancellation thereof without giving an opportunity would be in violation of the principles of natural justice. It was also held that the appellants had not specified the distinction between the 'Military Estates Officer' and the 'Defence Estates Officer' for the latter to get power to cancel the permission. Further, it was already held that in equity, since the respondent had started construction, the cancellation was not justified .

It is not in dispute and in fact cannot be disputed that the land is situated within the Cantonment area. Therefore, the title in the land stands vested in the Cantonment Board. What a person in lawful possession would be entitled to enjoy is the Lease-hold ri ;hts thereon subject to the conditions mentioned therein. For the erection or re-erection of a building, a licence from the Cantonment Board is required as a pre-condition under the Act. Section 181 of the Act in that behalf covers the field. Sub-s (3) thereof reads thus :-

"(3) The Board, before sanction the erection or re-erection of a building on land which is under the management of the Military Estates Officer, shall refer the application to the Military Estates Officer for ascertaining whether there is any objection on the part of the Government to such erection or re-erection; and the Military Estates Officer shall return the

application together with his report thereon to the Board within 30 days after it has been received by him".

The Act was subsequently amended by Amendment Act No.16 of 1983 which came into force w.e.f. October 1,1983 substituting for the words "Military Estates Officer", Defence Estates Officer. Thus, as on October 1,1983 the competent officer to be consulted as a condition to grant permission by the Cantonment Board for erection or re-erection of building by the Board was the 'Defence Estates Officer'. Admittedly, prior permission was not obtained form him. It is also on record that GOC-in-Chief had suspended the Resolution by proceedings dated June 22,1991 and he passed the order directing the Cantonment Board to reconsider the matter and pursuant there to, the Board had cancelled the sanction. Since the condition precedent of prior sanction of Defence Estates Officer under sub-section (3) of Section 181 had not been obtained, the sanction for construction of the house granted by the Cantonment Board was per se illegal. It is true that no prior notice, before cancellation by the Board, was given to the respondents. In view of the fact that statutory condition has been complied, we do not like to have the proceedings delayed by directing the Board to give an opportunity to pass fresh order. Instead, we think that the proper course would be to direct the respondents to make an application afresh and the same would be considered by the Board according to law and would be disposed of. The Board would consider the same within one month from the date of the application and should make reference within 15 days thereafter to the 'Defence Estates Officer' for appropriate sanction who would then take action under Section 181 (3) of the Act within one month. On return thereof, final order would be passed by the Cantonment Board within one month from the date of receipt of the order passed by the Defence Estates Officer. It is needless to mention that in case the Board or the Defence Estates Officer would be inclined to reject the application for sanction, they should give reasons in support thereof. It is also needless to mention that along with the application, the respondents would be at liberty to file all their documents in support of their claim for sanction. Construction made in contravention of law would not be a premium to extend equity so as to facilitate violation of mandatory requirements of law. The High Court, therefore, was not justified in extending equity for completion of construction.

The appeal is disposed of accordingly. No costs.

Sd/-
(K.RAMASWAMY)

New Delhi
November 2,1995

Sd/-
(B. L. HANDARIA)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO-1435 OF 1984

Union of India & Anr. .....Appellants

VERSUS

Vijay Kumar & Anr. .....Respondents

ORDER

The respondents were the plaintiffs in Civil suit No. 7 A of 1972 in the Court of learned District Judge,Sagar. The plaintiff filed the suit for declaration of title in respect of bungalow No.24 G.L.R. Survey No. 464 measuring 5.31 acres within Sagar Cantonment together with the land, building, out houses,well,trees and fencing etc,and perpetual injunction restraining the respondents Union of India and others from taking possession of the said bungalow. It may be stated that the plaintiff has not succeeded in establishing title to the said property and it has been adjudicated that the land belonged to Sagar Cantonment and the plaintiff was permitted to erect the building etc.on such land. The plaintiff, however,succeeded in getting an order of perpetual injunction restraining the defendants,namely,the appellants before this court from taking possession of the said bungalow etc. There is no dispute in this case that the notice of one month as contemplated for resumption of the land on which structure etc. had been made by the defendants had been given to the plaintiff. The dispute is whether or not for such resumption only one month's notice is required to be given and it is not necessary to make payment of the compensation for the structure etc. before resumption. Such question has been decided by this court in Union of India and Ors Vs. Harish Chand Anand (1995 Supp. 4 SCC 113) It has been held in the said decision that after a licence was granted by the Governor General In Council to respondent to erect structure on government land but retaining power of resumption at any time on giving one month's notice and payment of the value of the structure,the only condition precedent for the resumption of the land is service of one month's notice and the amount of compensation is not required to be paid before such resumption. The quantum of compensation may be determined subsequently after giving opportunity to the grantee and pay-

ment to be made on determination of the proper compensation. As in the instant case,the plaintiff failed to establish title to the land on which the bungalow was built and as it has been found that such bungalow was built on the Cantonment land where the defendants appellants had the right to resume possession and as it has also been found that one month's notice had been given prior to such resumption, there was no reason to grant perpetual injunction against the defendants appellants. Therefore,this appeal must succeed. We allow the same by setting aside the impugned judgment. It is made clear that the question of compensation for the structure etc. is kept open to be decided by the appropriate authority after giving reasonable opportunity to the plaintiff. There will be no order as to cost in this appeal.

Sd/-
(G.N.RAY)

New Delhi
March 19,1998

Sd/-
(G.B.PATIANAIK)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 917-918 OF 1998

Smt.Chitra Kumari ..... Appellant

VERSUS

Union of India & Ors. ..... Respondents

WITH

CIVIL APPEAL NOS. 1265-66 OF 2001

[Arising out of S.L.P.(C)Nos.22436-22437/1997]

Smt.Raj Kumari & Ors. ..... Appellants

VERSUS

Union of India & Ors.....Respondents

JUDGMENT

S.N.VARIAVA,J.

Leave granted In S.L.P.(C)Nos.22436-22437 of1997.

These Appeals can be disposed off by this common Judgment. It must be first mentioned that these Appeals were on board along with three other Civil Appeals. After arguments on behalf of the Appellants had taken place Civil Appeal No 3221 of 1991 civil appeal No. 3503 of 1991 and civil appeal No. 4133 of 1991 were withdrawn by the Appellants therein.

In these Appeals the Appellants have land with bungalows in Ambala Cantonment area. As is being pointed out in greater detail hereafter, the cases had, till this stage, proceeded on the footing that the land was granted to the predecessors of these Appellants on "old grant terms." These Appeals therefore are fully covered by the decision of this Court in the case of Chief Executive Officer vs.Surendra Kumar Vakil reported in (1999) 3 SCC 555.

Before arguments are considered facts in these Appeals need to be noted.

In Civil Appeal Nos. 917-918 of 1998 Notice of Resumption was given on 28th September, 1973.

A suit bearing No.280 of 1975 was filed in the Court of Senior Sub-Judge,Ambala, wherein the order of resumption was challenged. In the Suit it was,inter alia, averred as follows:

"4. That the order of resumption of the above bungalow is illegal, invalid, malafide, whimsical, unconstitutional and in-effective against the rights of the plaintiffs, inter alia, on the following grounds:-

(a) xxx xxx xxx

(b) That in the first instance,it is wholly incorrect that the site on which the building is standing is an old grant as alleged by the defendant No. 2. However, even notice of assumption, which the plaintiffs do not admit, in that event too, the Government has no right to resume the property in the manner as alleged."

The Respondents in the Written Statement contended that the land was on old grant terms and that they were entitled to resume. The trial Judge, inter alia, raised an issue to the following effect:

"1. Whether the impugned resumption order is illegal and inoperative as alleged in para no.4 of the plaint OPP. "

Strictly speaking a specific and separate Issue on this aspect would have had to be raised. Such a specific Issue was not raised as,for reasons set out hereafter,it is clear that this contention raised in para 4(b) was not being pressed.However, it is arguable that Issue No.4 as it is framed covered,amongst others,the ground of challenge on the basis that the land on which the building was standing was not on old grant basis.

Parties then led evidence.In these Appeals the Appellants have not relied on the evidence led by them. But the original record is before the Court.It could not be shown to us that Plaintiff/Appellant led any evidence claiming ownership of land in question or denying title of Respondents. Admittedly documents shown to the Court were not tendered as Exhibits. On the other hand Respondents tendered and got marked as Exhibits, an admission in writing by Appellants predecessors that the land was on old grant terms, a copy of GGO No 179 of 12th September,1836 and the Register of Land Records. Parties then argued their respective cases. Ultimately, the Suit was decreed by a Judgment dated 27th November, 1978.

The Judgment sets out the submissions which have been made under the aforesaid Issue No.1. In the submissions, as have been reproduced in the Judgment, there is no submission to the effect that the land was not under the old grant basis and/or that the Respondents were not the owners of the land. The entire submission, under Issue No. 1, has

been on the basis that the Appellants had not been heard before the Notice of Resumption was issued and/or that compensation had been fixed in an arbitrary manner. The Court has accepted this submission and held that, without fixation of compensation and an opportunity of being heard, an order of resumption could not be passed. We have perused the entire Judgment. In the entire Judgment there is no reference to any submission that the land was not under an old grant and/or that the Respondents were not the owners of the land. Even though, the Suit has been decreed and a permanent injunction passed in favour of the Appellants, the Court was careful enough to hold as follows:

"In view of the evidence, reasons and findings set out above, a decree for declaration is passed in fovour of the plaintiffs and against the defendants with costs, that the resumption order is illegal, void and ineffective and is not binding upon the plaintiffs and a decree for permanent injunction is also passed, restraining the defendants from dispossessing the plaintiffs from the property in dispute except in due course of law."

(Emphasis supplied)

It is thus to be seen that the even while decreeing the Suit the Court has held that the Respondents could dispossess the Plaintiffs by following due course of law. The question of dispossessing the Plaintiffs/Appellants would not arise if the Appellants were the owners of the land and the land was not under an old grant. This clearly shows that point was not pressed before the Trial Court and/or that if this point was pressed it has not been held in favour of Plaintiff/Appellant. If the point was pressed then it must be deemed to have been decided against the Appellant as Court has permitted dispossession by following due course of law.

The Respondents then filed an Appeal before the District Judge, Ambala. No cross Appeal was filed by the Appellants. The District Judge dismissed the Appeal on 6th September, 1979. We have read the Judgment of the District Judge. Here also there is no claim that the land was not under an old grant. The District Judge has also in the final paragraph of his Judgment held as follows:

"9. Lest there be any misunderstanding it is claritied that neither the assailed order dated 27.11.1978 of the learned trial Court not the judgment in this appeal would in any way stand in the way of Union of India initiating proceedings for resumption of the disputed land after compliance of the statutory formalities."

This clarification could only have been issued, provided it was an admitted position that the land belonged to the Union of India and that they could resume it by following due process of law.If there had been a claim to the ownership of land by Appellants such

clarification could not have been issued.

The Respondents then filed a Second Appeal before the High Court of Punjab & Haryana at Chandigarh. During the pendency of this Appeal, this Court in the case of Union of India vs. Harish Chand Anand reported in 1995 Supp. (4) SCC 113,held that the Respondents were entitled to resume the land without prior determination of the amount of the strcture. This Court held that the view that it was a condition precedent for the Respondents to give notice to the parties concened, determine the compensation and then only resume the property was not correct. It was held that the view taken by the Delhi High Court in the case of Raj Singh vs. Union of India reported in AIR 1973 Delhi 169, was a correct view and that the Goverment could resume the land merely by giving one month's notice. It was held that the amount may have to be determined after giving an opportunity but that this could be done thereafter. As this Court had now finally laid down the law and as the Judgment of the Trial Court and the first Appellate Court were only on the basis that prior opportunity of being heard had not been given, the High Court by its Judgment dated 7th November, 1997 reversed the Judgment of the Trial Court as well as the first Appellate Court and dismissed the Suit. In its Judgment the High Court observed as follows:

" It is not in dispute that the plaintiffs are in possession of the property in dispute on what are known as 'old grant' terms. The terms are contained in order No. 179 of 12-Sep-1836 issued by the Governor General of India in Council and have been produced on record."

Thus it is to be seen that before the High Court it had not been disputed that the land was under an old grant term and that the terms of the old grant had been produced on record.

At this stage, it must be mentioned that this Court again had occasion to consider whether the view taken by the Delhi High Court in Raj Singh's case (supra) was correct. This Court has, in the case of Union of India & Anr. vs. Tek Chand and Ors. reported in (1999) 3 SCC 565, again approved the view in Raj Singh's case.

As the Appellants were now non suited on the basis of law finally laid down by this Court, they filed on 10th December, 1997 a Review Petition. In this Review Petition, for the first time, they sought to raise a point that the land was not under the old grant terms. For the first time, after all these years, they sought to rely on certain documents and seek a carification from the High Court that its comments to the effect "It was not in dispute that the land was on old grant terms" were not correct and that the same should be deleted. It was now sought to be contended that they had never admitted that the land was on old grant terms. This Review Petition came to be dismissed on 24th December, 1997. Thus the High Court has confirmed

that at the time when the original appeal was argued it was not in dispute that the land was under old grant terms.

Civil Appeals Nos. 917-918 of 1998 are filed against the Judgment dated 10th November, 1997 and the order dated 24th December, 1997.

In Civil Appeals arising out of SLP (C) Nos. 22436-22437 of 1997 also the bungalow and land are in Ambala Cantonment. The notice of resumption was given on 30th July,1971. The Suit was filed in the Court of the Sub -Judge, Ist Class, Ambala. In this Suit it was contended that it was not proved that the land was on old grant terms. It was also urged that the terms of the old grant did not permit resumption of land. However, no evidence was led to prove that plaintiffs were owners, Plaintiff/Appellant and his witnesses did not depose that land did not belong to the Respondents. The Respondents had brought on record and got exhibited an admission in writing, by the predecessors of the Appellants, that the land was on old grant terms, the GGO No. 179 dated 12th September, 1836 and the Register of Land Records. In this case on the basis of evidence on record the Trial Court dismissed the Suit.

The Appellants then filed an Appeal. In the Appeal also it was contended that it was not proved that the land was on old grant terms. The Appellate Court, after considering the evidence, dismissed the Appeal on 3rd September, 1986. The Appellants then filed a Letters Patent Appeal which was dismissed by the High Court on 8th July, 1997. A Review Petition was also filed and the same was also dismissed on 7th October 1997. Thus in this case the Appellants have lost in all Courts. All Courts have on evidence and facts held against the Appellants.

It must be mentioned that, in some other case filed by these Appellants in 1990, an application is made calling upon the Respondents to produce the old grant and certain other documents. In that Suit the Respondents have replied that the original records regarding the bungalow in question and the Notification through GGO 179 of 12th September, 1836 were applied to the Ambala Cantonment, but that the papers showing that Ambala Cantonment was a station of the Bangalore Army and the Notification were not available on record.

These are the facts in brief. Now let us consider the submissions.

Mr.Andhyarujina submitted that his case was not covered by the decision in Harish Chand's case (supra). Relying on Para 4(b) of the Plaint, which has been set out hereinabove, he submitted that his clients had always disputed that the land was on old grant basis. He submitted that in the Suit the old grant has not been brought on record by the Respondents till date. He pointed out that all that had been brought on record was the cyclostyled copy of

Governor General in Council Order No. 179 dated 12th September, 1836. He submitted that this was not the old grant. He submitted that the grant would necessarily have to be a registered document. He submitted that as the Respondents were contending that the land was on old grant terms, it was for the Respondents to prove their case by producing the old grant. Mr. Andhyarujina submitted that an admission did not confer title. He submitted that if the Respondents were claiming to be owners of the land it was for them to prove there ownership.

He submitted that the Appellants had ample evidence to show that they were the owners of the land. In support of this he relied upon a Sale Deed dated 21st April, 1926 between Million Robert Pearce and George Erner Symes on the one hand and Lala Balmokand Bhalla on the other .In this Deed it is recited that one Lewis Herbert Robbin had appointed the vendors as his executors to administrate his affairs and that the said Lewis Herbert Robbin had expired on 1st May 1925. It is stated that the Will had been proved in the High Court at Lahore and that the vendors were now the owners of the property and were selling the same. He pointed out that the register showed that the property was on a perpetual lease free from the Secretary of State for India in Council. He submitted that this was a registered document which showed that the Land in question was not under old grant terms.

Mr. Andhyarujina also relied upon a Lease dated August, 1936, wherein Lala Balmokand Bhalla had leased out dwelling house along with out houses and land to the Secretary of State for India in Council. He submitted that if the land was on old grant terms, than there was no question of the predecessors in title of Appellants leasing out the land to the Secretary of State for India in Council. Mr. Andhyarujina also relied upon another Sale Deed dated 25th January, 1943, by which Balmakand Bhalla sold the property to Lala Padam Pershad and Lala Mahabir Pershad.

Mr.Andhyarujina submitted that if this land was on old grant terms, then not only the lease would not have been executed, but such sales could not have taken place as the old grant terms did not permit transfer without written permissions.

At this stage it must be noticed that none of these documents had been brought on record in the Suit. These documents had been annexed for the first time, only in the Review petition filed in the High Court.

Mr. Andhyarujina submitted that earlier the Himachal Pradesh High Court in the case of Durga Das Sud VS. Union of India rep in AIR 1972 HP 26, taken the view that principles of natural justice had to be complied with and that no notice of resumption could be given unless and the compensation was first fixed after hearing the concerned parties He pointed

out that the Allahabad High Court had taken the same view in the case of Mohan Agarwal vs.Union of India reported in AIR 1979 All. 170. He submitted that this was the law which prevailed. He submitted that because of this law the trial Court took an easy way out and decided his clients' suit only on the narrow point of principles of natural justice not having been followed. He submitted that it has nowhere been mentioned that his clients had not pursued or had given up their case that the land was not on old grant terms. He submitted that merely because the Trial Court took an easy way out and did not decide all the points urged by his clients would be no reason for depriving the Appellants of their valuable right. He submitted that as his clients had succeeded in the trial Court they did not need to file an Appeal. He submitted that before the first Appellate Court also his client, succeeded. He submitted that only in 1995, in Harish Chand's case (supra). this Court overruled the view taken by Allahabad High Court and the Himachal Pradesh High Court and approved a contrary view taken by the Delhi High Court in Raj Singh's case (supra), He submitted that the trial Court and Appellate Court decided in his client's favour only on the basis of the law then existing. He submitted that the Court chose to decide the case merely on one point, even though his clients had at all stages not given up the case that the land was not on old grant terms. He submitted that his client cannot be made to suffer because the Courts chose not to decide other aspects.

Mr. Andhyarujina relied upon Section 110 of the Indian Evidence Act and submitted that whenever a question arises whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. He submits that the Appellants and their predecessors in title have been in possession since at least 1926. He submits that the burden was entirely on the Respondents to show that they were not the owners. He submits that the only way that the burden could have been discharged was to produce the old grant. He submits that merely producing a Register in which it has been mentioned that the property is on old grant terms is not sufficient. He submits that the Register and the copy of GGO 179 of 1836 would be secondary evidence. He submitted that such evidence would be barred under the provisions of Section 91of the Indian Evidence Act unless it was shown that the old grant was not available. He submitted that in this case no evidence had been led to show that the old grant, if there was one, had been lost or misplaced or that it was not avallable. He submitted that mere production of a Register or a cyclostyled copy of the terms of the grant was no evidence at all.

In support of his submission he relied upon the case of Union of India vs. Purushotam

Dass Tandon reported in 1986 (Supp)SCC 720. In this case Allahabad Polytechnic filed an interpleader Suit as there was a dispute between the persons who had let out the property to them and the Union of India as to the ownership of the property. In the Interpleader Suit the question was whether the person who had let out the property to the Polytechnic was the owner or whether the Union of India was the owner of that property. The Court held that the burden to prove its title was on the Union of India and that it should discharge their burden by producing the old grant . The Court held that the Court should know the terms and the date of the grant and that an admission in a standard draft for seeking permission of the Cantonment Board for transfer was no proof or title. However, to be noted, this was a case where the question of title of the Union was in serious dispute.

Mr. Andhyarujina also relied upon the authority in the case of P.T.Anklesaria vs.H.C.Vashistha reported in AIR 1980 Bombay 9. In this case the land and house in the Pune Cantonment were sought to be resumed. Resumption was challenged on the ground that this was not Government land. It was held that it cannot be said that all land in the Cantonment were Government land and there was no land of private ownership in the Cantonment. It was held that it had first to be established that the land belonged to the Government. It was held that even though there may be entries in the Register of the Government, those entries raised no presumption that they are true, until the contrary is provided. It must also be mentioned that this matter ultimately came up before this Court. This Court has remitted the matter back to the High Court with permission to the Union to lead proper evidence, if it so chose. This again was a case where there was a dispute whether the land belonged to the Government.

Mr. Andhyarujina then submitted that there was nothing to show that the GGO No. 179 dated 12th September, 1836 applied to Ambala. He submitted that there was nothing to show that Ambala was part of the Bengal Army. In this behalf he referred to the reply filed by the Respondents, wherein it has been stated as follows:

"8. G.G.O.179 of 12.9.1836 is applicable to all the cantonments of India. For the purpose of administration the Bengal Army was organized in two portions the Bengal Command and the Punjab Command. The Punjab Command included the Peshwar Cantonment. Notes on old grant terms in Military Land Manual are being filed as ANNEXURE-R-2."

He submitted that in support of this contention the Respondents were relying upon the Extract from the Military Land Manual which had been annexed to the said Affidavit. He pointed out that in this Extract there was not a word about Ambala. He submitted that in the Rejoinder the Appellants have denied that Ambala fell within the Bengal Army.

.....Mr. Yogeshwar Prasad on behalf of the Appellants in Civil Appeals arising out of SLP (C) Nos. 22436-22437 of 1997, supported Mr. Andhyarujina in his arguments. He further submitted that in his case it was all along disputed that the land was on old grant. He submitted that the grant had not been produced in this case. He pointed out that in the subsequent suit which was filed in 1990 it had been admitted that these papers were not avaliable. He submitted that Ambala became a Cantonment only in 1845, Threfore, GGO 179 of 1836 could not possibly apply to Ambala. He submitted that in his case also there was no proof to show that the land was on old grant terms. Mr. Yogeshwar Prasad also relied on certain Sale Deeds and a Lease Deed. However, these have been produced, for the first time, in this Appeal.

On the other hand , Mr. Rohtagi submitted that in Civil Appeal Nos. 917-918 of 1998 it was an admitted position that the land was on old grant terms. He submits in Civil Appeals (arising out of SLP (C) Nos. 22436-22437 of 1997) that on facts all Courts had held in favour of the Respondents. He points out that in both the cases the Appellants or the predecessors had given affidavits admitting the fact that the land was on old grant terms. He points out that the affidavits were tendered in evidence and marked as exhibits and/or are on record. He submits that the notices of resumption were given in 1971 and 1973. He submits that Mr. Andhyarujina's clients have litigated for the last approximately 17 years on an admitted position that the land was on old grant terms. He submits that it is now too late in the day and would be a travesty of justice if they were to be permitted to resile from the admitted position and at this belated stage be allowed to contend that the land did not belong to the Government. He submits that Mr. Yogeshwar Prasad's clients have lost in all Courts on facts and have not been able to show that the findings of the Courts below are not based on evidence in that case.

Mr. Rohtagi pointed out, from the original records which were available in this Court, that in Civil Appeal Nos. 917-918 of 1998 the Appellants had given evidence. He pointed out tha in the evidence there was not even a statement that the Appellants or their predecessors were the owners of the property and/or that the Government was not the owner of the land. He points out that in this case the documents which have been relied upon by Mr. Andhyarujina were not part of the record and had been surreptitiously brought on record by way of Review Petition only after the High Court delivered the impugned Judgment. He further points out that in the Civil Appeals (arising out of SLP (C) Nos. 22436-22437 of 1997) some documents have been produced for the first time in the Appeal and are now sought to be relied upon. He submits that the ratios laid down, in the cases of P.T.Anklesaria and Purushotam Dass

Tandon (supra), have no application to these cases. He submits that those were cases where it was denied that the land was on old grant terms. He submits that in those cases the Government was required to prove that it was the owner and had failed to do so. He submits that in one of these cases it has been an admitted position that the land was on old grant terms and in the other all Courts have, on facts, held in favour of the Respondents. He further points out that, even though it was not necessary, in Civil Appeal Nos. 917-918 of 1998, the witness of the Government had given evidence that this a Government land. He points out that the witness has produced the Register of land records showing that the land is on old grant terms. He points out that the witness has produced GGO 179 dated 12th September, 1836. He submits that even in Civil Appeals (arising out of SLP (C) Nos.22436-22437 of 1997) the Government has produced the Register of Land records and the GGO. He submits that in both the cases the Government has produced written admissions of the parties or their predecessors that the land was on old grant terms.

He submits that these cases are fully covered by the authority of this Court in Surendra Kumar Vakil's case (Supra). He further submits that an admission is a strong piece of evidence and is relevant and admissible by virtue of Section 21 of the Indian Evidence Act. He submits that such an admission would be binding unless he is able to explain away such admission. He submits that neither of the Appellants have given any explanation or even stated that the admission was given under force or compulsion. He submits that counsel cannot for the first time, in arguments during SLP supply explanation on behalf of their clients. He submits that the Appellants have no case at all and the Appeals must be dismissed.

We have considered the rival submission. In our view Mr. Rohtagi is quite right. It is now too late in the day for Mr. Andhyarujina's clients to take a contrary stand. Mr. Yogeshwar Prasad's clients have on facts lost in all Courts below. Notice to produce documents, given belatedly in some other case, is of no relevance so far as these Appeals are concerned. The practice of annexing irrelevant documents and trying to rely on them for the first time in the Appeal or in Review Petitions in the High Court should be deprecated.

In Civil Appeal Nos. 917-918 of 1998 it is clear that, at all stages, the case has progressed on the basis that it was not disputed that the land was on old grant terms. Of course, in the Plaint, In Para. 4(b)it had been averred that the land was not on old grant terms. However, except for making such an averment that point has clearly not been pressed at any stage. In evidence given by the plaintiff and/or on his behalf, there is no statement that the land was of plaintiff ownership and/or that the land did not belong to the Government. During trial the documents, now sought to be relied upon by Mr. Andhyarujina were neither

produced nor tendered nor got marked as Exhibits Were they produced Respondents would have had an opportunity to cross examine the witnesses and show that the averments in the documents were not correct and/or to explain how and why lease was taken by the Secretary of the State. It is clear that the averments in para 4(b) of the Plaint were not pressed.That they were not pressed is also clear from the Judgment of the Trial Court. It sets out all the arguments of the parties. No submission on the question of ownership of land by the Plaintiff and/or that the land was not on old grant terms has been recorded. If it was argued and their submissions were not recorded cross objections should have been filed particularly when in the last paragraph the Trial Court clarifies that the Government could resume the land after following due procedure of law. There could be no question of resumption if it was being disputed that the Government was the owner of the land. If Mr.Andhyarujina is right and the parties had not given up this contention, then It would be worse for the Appellants in-as-much as it would then mean that the Trial Court had not accepted Plaintiffs/Appellants claim to ownership of land and had negatived it.

The Appellants never went in Appeal against the Judgment of the Trial Court. Even when the Respondents went in Appeal no cross objections were filed. Even before the first Appellate Court it has not been stated that their submissions were not dealt with and/or that the portion of the Judgment permitting resumption, after due process of law, could not have been granted. On the contrary the first Appellate Court is also clarifying that the Government can resume after following due process of law. This shows that even before the first Appellate Court it was an admitted position that the Government was the owner of the land and that the land was on old grant terms.

When the Respondents went in Second Appeal before the High Court, at this stage also, no cross objections were filed. Before the High Court it was not disputed that the land was on old grant terms. The High Court has so recorded in its Judgment. It is settled law that one has to proceed on basis of what has been recorded by the Court. If any party feels aggrieved of what has been recorded by the Courts a clarification has to be sought from that same Court. In this case the clarification was sought, by way of Review Petition, to which as stated above, fresh documents were purported to be attached for the first time. The High Court has rejected the Review Petition. The High Court has thus confirmed that at the time the Second Appeal was argued it was not disputed that the land was on old grant terms. This Court has to go by what has been recorded in the Judgment. What is recorded in the Judgment is supported by the conduct of the parties in-as-much as no evidence was led to dispute the fact, no documents were tendered or marked as Exhibits and no submissions were made on

this aspect. That it was not disputed that the land was on old grant terms is also supported by what has been recorded in the Judgments of the trial court and the First Appellate Court. There is no evidence that the written admissions were taken forcibly and/or that they were not binding or not correct. Admissions are relevant evidence if not explained away. Thus these cases have been fought over the last 17 years on an admitted position Mr. Rohtagi is right that it would be a travesty of justice and would amount to permitting parties to misuse laws delays if at this stage they are permitted to change their stand take contentions which are contrary to what has been the admitted position all these years.

In Civil Appeals (arising out of SLP(C)Nos. 22436-22437 of 1997) all the Courts below have given concurrent findings of fact. We see no infirmity in these findings. The findings of fact are based on evidence before the Trial Court and require no interference.

Once it is admitted that land was on old grant terms it is irrelevant to argue that it is not shown that Ambala was under the Bengal Army, The same would be the position when on evidence Court has held that land is on old grant terms.

It may only be mentioned that even in the three Appeals which were withdrawn, it had been an admitted position that the land was on old grant terms. As that position could not be controverted and as those parties were fully covered by Surendra Kumar Vakil's case (supra), those Appeals were withdrawn.

In these Appeals, the priniciples laid down in Purushotam Dass Tandon's case and P.T.Anklesaria's case (supra)would not apply. In our view, these Appeals are fully covered by the ratio laid down in Surendra Kumar Vakil's case. In our view there is no infirmity in the Impugned Judgments of the High Courts. Accordingly, these Appeals are dismissed. There will, however, be no order as to costs.

Sd/-
(V.N. KHARE)

New Delhi
4.2.2001

Sd/-
(S.V. VARIAVA)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 16th day of August, 2001

BEFORE

THE HON' BLE MR JUSTICE R.V.RAVEENDRAN

Writ Petition No. 34468 of 1997 (GM)

ARUNA DATTATRAYA BEDRE
OCC: TAILORING
R/O HOUSE NO. 54
HIGH STREET
CAMP: BELGAUM -590001 & Others

Vs

GOVT. OF INDIA & OTHERS

THIS WRIT PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

1. Petitioners 1 to 5 are the sons and respondents 4 to 7 claim to be the daughters of Dattatraya Bendre and Muktabai D. Bendre. The leasehold of an extent of 53.07 sq m in GLR Sy. No. 251/682 was granted to the ancestors of petitioners and respondents 4 to 7 about 100 years ago by the Government with permission to put up the superstructure and enjoy the property. The petitioners claim that their father Dattatraya was accordingly in possession of the said plot and house constructed thereon bearing No. 54 [Sy. No. 251/682] measuring 53.07. Sy mtrs as also backyard measuring 16.44 sq.m consisting of bathroom etc [in Sy No. 251/6]. The said Dattatraya died in the year 1966 and thereafter the name of his wife Muktabai was entered as occupier the General Land Register and she continued as Leaseholder under the Government of India (Ministry of Defence). Petitioners claim that their mother Muktabai submitted an application for grant of free hold rights in regard to the said property in the year 1988.
2. The Ministry of Defence [Director General of Defence Estates] considered the said request and took a decision to convert the old lease hold right in regard to 53.07 sq.m in GLR Sy. No. 251/682 into a free hold and also transfer on outright sale basis the encroached area of 16.44 sq.m. out of GLR No 251/6, in all 69.512 sq.m to Muktabai and

petitioners 1 to 5 subject to payment of conversion charges of Rs 44,625.00, plus rent form 6-5-1980 to the date of actual payment of sale value in regard to16.44.sq .m.in GLR Sy No. 251/6 at the rates applicable to residential premises on the basis of the STR in force from time to time. The first respondent communicated the said decision to the Director (Defence Estates) and second respondent, by letter dated 22-3-1993 (Annexure-R1).

3. In pursuance of said decision, a communication dated 12-7-1993 (Annexure-R2) was addressed to Smt Mukta Bai, calling upon her to pay the conversion charges of Rs.44,625.00 along with arrears of rent of Rs 1,730.00 in respect of 16.44 sq.m at an early date to finalise the sale. As the said letter was returned with an endorsement 'Mukta Bai was no more', second respondent sent a letter dated 25-8-1993 (Annexure-R3) to the petitioners 1 to 5 to pay the said amounts aggregating to Rs.46,355/and also to produce the death certificate of Mukta Bai and legal heir certificate with affidavit confirming that the petitioners were the only legal heirs of Mukta Bai.

4. It is stated by petitioner that there was some dispute as to who is entitled to said premises, among the legal heirs of Dattatraya and Muktabai, and, therefore, there was a delay in payment of the amount demanded. As no payment was made for more than four years, the second respondent sent a communication dated 19-9-1997 [Annexure-'H'] to petitioners 1to 2 stating that the offer made in the letter dated 22-3-1993 (to convert the leasehold into a free hold ought in regard to GLR Sy.No.261/682 and to convey on outright sale basis an additional area in GLR Sy No.251/6) had to be implemented within one year from 22-3-1993 and as it was not done, the sanction stood lapsed. The second respondent, however, further informed the petitioners 1 and 2 that if they were still interested in conversion of the property to free hold, they may be approached the Belgaum Cantonment Board with a fresh application signed by all the recorded holders of occupancy rights.

5. Feeling aggrieved first petitioner filed this petition for the following reliefs:

   a) to quash the communication dated 19-9-1997 [Annexure 'H']issued by the second respondent;

   b) a direction to second respondent to permit the petitioners to deposit a sum of Rs 46,355.00 and grant them free hold rights in regard to Sy.No251/682 (House No.54) and convey on outright sale the back yard portion in Sy.No.251/6, as indicated in the letters dated 12-7-1993 and 28-8-1993 in his favour.

   c) a direction to the third respondent restraining him from initiating or proceeding with the Case No. 1/80-EO/1054 under the Public Premises [Eviction of Unauthorized Occupants] Act,1971.

The first petitioner had impleaded his brothers as respondents 4 to 7 They made appli-

cations for transposing themselves as petitioners 2 to 5 and those applications were allowed and they were transposed as petitioners 2to 5.

6. In the meanwhile, the four sisters of petitioners filed IA-I for impleading, alleging that their father, his brohter and sister had on-third share each in the lease hold rights of the said property; that their brothers(petitioners 1to 5)had purchased the two third share of their uncle and aunt; and that on the death of their father Dattatraya and mother Muktabai, their father's one third share devolved on the 5 sons and four daughters and therefore each of them have a share(that is 1/27th share) and therefore they are necessary parties. The said application was filed on 27.9.1999 and was ordered to be heard along with the main petition. The said application was therefore heard today along with the main petition.The applicants claim to be legal heirs of Dattatraya Bendre and Mukta Bai D.Bendre, entitied to a share in the property in question. It is stated that a partition suit is also pending Having regard to the subject matter of the petition, they are necessary and proper parties and therefore IA-I for impleading is allowed and the applicants in IA-I are ordered to be impleaded as respondents 4 to 7. Cause title amended.

7. Petitioners admit that they are in occupation of the premises in question as lessees/ licences under respondents 1 to 3. They do not have any right, statutory or contractual, to convert their leasehold right into free hold rights or any right for sale of encroached portion However, having considering their request, the Ministry of Defence decided to convert the old lease hold grant rights into free hold rights, in regard to GLR Sy. No.251/ 682 and also convey on outright basis the encroached portion subject to payment of Rs 46,355.00 vide its letter dated 25.8.1993 Even though the said letter dated 25-8-1993 did not specify that the amount should be paid within any particular period, as there was no acceptance of the offer, nor payment, the second respondent was justified in withdrawing the offer. In fact the standing Instructions on land matters relating to Defence lands make it clear that when an offer of free hold rights is not accepted within one year of the offer, Ministry may resume the land and sell by public auction (vide Instructions contained in the letter dated 18-6-1982 from the Government of India to the Director General, Defence Lands and cantonments). The second respondent waited for more than four years to enable the petitioners to accept the offer and make payment. Only thereafter the second respondent informed the first petftioner that the offer stood lapsed on failure to accept within one year. However, he further made it clear that if the petitioners were still interested they can make a fresh application. Petitioners have not been able to demonstrate any error, arbitrariness or unreasonableness in the said communication dated 19-9-1997 [Annexure 'H'] The Ministry of Defence, being the absolute owner of the premises in question, is entitled to deal with the property in any manner it deems fit and in the absence of any right, statutory or contractual, the

petitioners are not entitled to the relief sought, in law. Hence, the first and second prayers are liable to be rejected.

8. The petitioners had however the benefit of interim order of stay of eviction proceedings during the pendency of these proceedings. Petitioners and their ancestors have been lease holders for nearly a century. The Ministry has also very fairly stated that if the petitioners are still interested, they can make fresh application for conversion of land into freehold. In fact in the communication dated 19-10-1994, the Ministry had made it clear that land will be given subject to payment of present rate of market value as fixed by the Ministry of Defence is paid. Petitioners, however, dispute receipt of said letter dated 19-10-1994. Be that as it may.

9. It is clear that non-payment was due to inter-se dispute among the children and Dattatraya (petitioners 1 to 5 and respondents 4 to 7). Petitioners 1 to 5 also state that they are willing to pay Rs.46,355/- with interest at 12% PA from 25-8-1993 to date of payment plus any nominal penal fee.

10. In the circumstances, interests of justice would be met if the respondents 2 and 3 are directed to reconsider the request of the petitioners for converting the lease hold grant into a free hold, (regarding 53.07 sq.m in GLR Sy. No. 251/682) and for conveyance on outright sale basis (regarding 16.44 Sq. M in GLR.Sy.No.251/6) subject to payment of Rs 46,355.00 mentioned in the letter dated 25-8-1993 with interest at 12% p.a. thereon from that date till date of payment, apart from such other additional payments, that may be fixed by the Ministry of defence. Ordered accordingly.

10.1) The second and third respondents shall inform their decision as to the amount payable to the petitioners within three months from the date of receipt of a copy of this order Petitioners 1 to 5 shall make payment within three months from the date of receipt of said communication.

10.2) It is needless to say that if petitioners do not make payment within the time stipulated, the Ministry of Defence will be at liberty to proceed with the eviction proceedings in accordance with law, and deal with the property in any manner it deems fit.

10.3) If payment is made and the property is conveyed, then the rights or shares inter-se among petitioners 1to 5 and respondents 4 to 7 will have to be decided in appropriate Civil Proceedings, either pending or to be instituted.

The petition is disposed of accordingly.

Sd/-

Date :16.8.2001 (R. V. RAVEENDRAN)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1868 0F 1979

Union of India & ors. ...Appellants

Vs.

Sri Harish Chand Anand

(Dead) through LRs. ...Respondents

ORDER

In this appeal filed by the certificate granted by the Allahabad High Court under Article 133 (i) of the Constitution, the Union of India, represented by the Station Commander Headquarters, Faizabad, the Military Estate Officer, Lucknow Circle, Lucknow Cantonment and the Station Commander Sub- Headquarters, Faizabad, have challenged the judgment in Special Appeal No.36/1976 in which the judgment of the learned single Judge in Civil Misc. Writ Petition No.1757 of 1972 was confirmed and the appeal was dismissed. Tte property in dispute is about 8.69 acres of land lying with the Faizabad Cantonment and the structures which were erected by the respondent with permission of the authorities on a portion of the same. The land was granted by the Government of India in favour of the predecessor in interest of the present respondents. The grant is an 'old grant' as defined under the Government Grants Act, 1895. The grant order was subject to certain conditions including the condition in clause (5) thereof relating to resumption of land. The said clause reads; "The Government to retain the power of resumption at any time on giving one month's notice and paying value of such buildings as may have been authorised to be erected". In exercise of the power of resumption vested under the clause, the Government of India by the notice dated 21st February, 1972 resumed the land and the building standing thereon. The relevant portion of the said notice is extracted below:

"AND WHEREAS government have decided to resume the said land and the building standing therein.

NOW THEREFORE; in exercise of the power herein before mentioned, the Government hereby give NOTICE to you to quit and deliver possession of the aforesaid land together with structures standing therein to the Agent for Government (Military Estates Officer, Lucknow Circle, Lucknow Cantonment) on the expiry of one month from the date of service of this notice. Please note that on the expiry of one month from the date of service of this notice your occupation and any rights easements and interests you may have in the said land and buildings standing thereon shall cease as from that date.

TAKE NOTICE further that Government are prepared to pay and so offer you the sum

of Rs.11,288/- (Rupees eleven thousand two hundred and eighty eight only) as the value of the authorized erections standing on the land. A cheque for this amount is sent herewith."

On receipt of the notice, the respondent filed the writ petition in the High Court seeking quashing of the notice on the grounds, inter alia, that there was no pre-determination of the amount of compensation to be paid to him for the structures erected by him with permission of the authorities and the said condition precedent having not been complied, the resumption notice was invalid and deserved to be quashed. The learned single Judge by the judgment dated 19th July, 1974 accepted the case of the writ petitioner, respondent herein and held that since determination of the compensation after giving notice to the grantee was the condition precedent for resumption of the property, which was not complied in the case, the resumption notice was invalid. The learned single Judge allowed the writ petition and quashed the resumption notice. The learned single placed reliance on the Division Bench decision of the Allahabad High Court in the case of Smt. Bhagwati Devi vs. President of India, through Under Secretary to the Government of India, Ministry of Defence and another reported in 1974 All. Law Journal at p.43. The respondents in the writ petition who are the appellants herein challenged the judgment in appeal before the Division Bench. The Division Bench, as noted earlier, confirmed the judgment of the learned single Judge and dismissed the appeal. However, the Division Bench taking note of the difference of opinion between different High Court on the point, granted the certificate of fitness for filing appeal before this Court under Article 133(i) of the Constitution, in pursuance of which this appeal was filed by the appellants. The appeal was earlier disposed of ex-parte. On the application filed for recall of the order, the order was recalled and the appeal was ordered to be listed for fresh hearing. That is how this appeal is listed before us.

The question that arises for determination in this case is whether determination of the compensation to be paid for the structure erected on the government land with permission of the authority is a mandatory condition precedent for resumption of the property under the condition specified in clause (v) of the grant order. In this regard there is a difference of opinion between different High Courts. While the Allahabad and Himachal Pradesh High Courts have held that in the absence of such determination of compensation, the resumption is invalid; the Delhi High Court has takan the view that determination of compensation for such structures is not a condition precedent for resumption of the land. The Delhi High Court, however, observed that the matter relating to determination of the compensation can be independently taken up by the Competent Authority if a dispute is raised by the grantee in that regard.

It is not in dispute that the parties in this case are bound by the conditions in clause (v) of the grant order. On a plain reading of the clause relating to resumption of the property, which has been extracted earlier, it is clear that government retains the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have

been authorized to be erected. The power of resumption of the property, the ownership of which rests in the government is recognized in this clause. Regarding the building erected by the grantee on such land, a provision is made for paymant of compensation. In the notice issued in the present case, relevant portions whereof have been extracted earlier it was specifically stated that a month's notice has been given for resumption of the land and a sum of Rs.11,288/- has been paid as compensation for the building. On a fair reading of the notice, it is manifest that the notice conforms to the condition stipulated in the grant order. We are not considering a case where the resumption notice has been issued without any statment regarding payment of compensation for the building. Thus both the conditions in clause (5), that is, one month's notice and payment of compensation towards value of the building have been stated in the notice. The further question that arises is whether determination of the compensation was made following the procedure conforming to the principles of natural justice. The case of the respondent in that regard is that he was not given any notice before the amount of compensation, as stated in the notice, was fixed by the Authority. The further contention of the respondent is that until the determination of compensation is made in compliance with the principles of natural justice, there can be no resumption of the property. We have carefully considered the contention. We are not persuaded to accept this contention raised by the appellant. As noted earlier the High Court accepted the contention raised by the respondent relying on the Division Bench decision in the case of Smt. Bhagwati Devi (supra). Subsequently the Himachal Pradesh High Court took the same view as the Allahabad High Court, in the case of Durga Das Sood vs. Union of India AIR 1972 H.P. 26. We are of the view that the decision of the Delhi High Court in the case of Raj Singh vs. Union of India & Ors. Reported in AIR 1973 Delhi 169 is acceptable. Therein in paragraph 4 the learned single Judge held that the determination of compensation was not a condition precedent to the resumption. The Division Bench concurred with the view taken by the learned single Judge. The Division Bench in paragraph 21 of the judgment observed:

"The question of compensation would have to be considered in an independent proceeding between the ex-grantee and the Government in the light of the provisions of the first condition of regulation 6 and the whole of regulation 7 of Order 179 of 1836."

The question whether the Government must pay compensation or whether they can take the stand that the Grantee may remove the structure and the quantum of compensation payable would be considered in that proceeding.

This Court had occasion to consider the question in the case of Union of India and another vs. Tek Chand & Ors. 1999(3)SCC 565 in which this Court approved the view taken by the Delhi High Court in Raj Singh case (supra) and the view taken by the Himachal Pradesh High Court in Durga Das Sood case (supra) was not approved. A similar view was taken by this Court in the case of Smt. Chitra Kumari vs. Union of India & Ors. 2001 (2) SCALE p.58 wherein in paragraph 12 of the judgment this Court observed:

"At this stage, it must be mentioned that this Court again had occasion to consider whether the view taken by the Delhi High Court in Raj Singh's case (supra) was correct. This Court has, in the case of Union of India & another vs. Tek Chand & Ors. reported in (1999) 3 SCC 565, again approved the view in Raj Singh's case.

It is contended by learned counsel for the respondent that in both the cases aforementioned this Court referred to and relied on the decision in this very case (Union of India vs. Harish Chand Anand 1995 Supp.(4) SCC 113) and that the decision having been set aside and the appeal restored to file, they have no precedential value. We cannot agree. Apart from relying on the decision in this case which was subsequently set aside, the learned Judges also approved the view taken by the Delhi High Court in Raj Singh's case. In any case, we are also of the view that the process of resumption of land in terms of clause (5) of the Grant does not get indefinitely postponed till the dispute as to compensation is determined according to law. In other words, the determination of compensation after hearing the affected parties, though mandatory, is not a condition precedent for the exercise of power of resumption. The resultant position that emerges is that the question formulated earlier has to be answered in the negative and the writ petition is liable to be dismissed.

We make it clear that it would be open to the respondent to raise the question of inadequacy of the compensation paid to him. If a dispute in that regard is raised by the respondent the Competent Authority will consider and dispose of the same in accordance with law, after giving opportunity of hearing to the parties. In the circumstances of the case it is apt and proper that the proceeding, if initiated should be completed with utmost expedition.

Accordingly, the appeal is allowed. The judgment of the single Judge of the High Court in the Writ Petition No. 1757 of 1972 as confirmed by the Division Bench in Special Appeal No.36 of 1976 is set aside. The writ petition is dismissed. Parties to bear the respective costs.

Sd/-
(D.P.MOHAPATRA)

New Delhi
January 17,2002

Sd/-
(P.VENKATARAMA REDDI)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 180-183 OF 2002

Union of India & Anr. ....Appellants

VERSUS

Smt. Suman Rajvedi & Ors. ....Respondents

ORDER

Heard the learned counsel on either side.

These appeals are before us on a Certificate granted by a division bench of the High Court of Allahabad at Lucknow under Article 133(1) of the Constitution of India to appeal to this Court against the common Judgment dated 08.02.1979. The leave was granted in the context of then prevailing difference of opinion between the judgment rendered by the High Court of Delhi reported in AIR 1973 Delhi 169 (Raj Singh Vs. Union of India) and the other view, taken by the High Court of Allahabad in the decision reported in 1974 ALJ 43 (Bhagwanti vs. President of India).

The question involved for consideration turn on the scope and purport of a clause providing for resumption of the grant by the Government known as "old grant"as defined under the Government Grants Act, 1895 and the controversy in as to whether the payment of the value of the buildings authorised to be constructed on the land was a condition precedent like the giving of one months notice, for taking possession of the property. The Allahabad High Court's view was that the payment also is a condition precedent, as against the one taken by the Delhi High Court that the right to take possession after the service of notice of one month does not get postponed or delayed till the compensation to determined and also paid and that the excercise of power of resumption is not conditioned upon likewise.

Subsequently, the matter has come up before this Court in Civil Appeal No.1868 of 1979 (Union of India & Ors Vs. Sri Harish Chand Anand (D) through L.Rs.) wherein this Court on 17.01.2002 has affirmed the view taken by the High Court of Delhi and disapproved of the view of the High Court of Allahabad by observing as follows:-

"In other words the determination of compensation after hearing the affected parties,

though mandatory, is not a condition precedent for the exercise of power of resumption. The resultant position that emerges is that the question formulated earlier has to be answered in the negative and the writ petition is liable to the dismissed."

Such a view came to be taken following the earlier decisions of this Court reported in 1999(3) SCC 505 : Union of India & Anr. Vs. Tek chand & Ors. and 2001 (2) SCALE 58 : Smt. Chitra Kumari Vs. Union of India and Ors.

In the light of the above, the appeals are allowed and consequently, the writ petitions before the High Court shall stand dismissed. At the same time, there shall be a direction to the competent authorities to determine the compensation payable to the respondents in accordance with law, after hearing the parties expeditiously and within a period of six months from the date of receipt of copy of this order. Parties shall bear their own constn.

Sd/-
(DORAISWAMY RAJU)

New Delhi
November 12, 2002

Sd/-
(SHIVARAJ V. PATIL)

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH:
AT HYDERABAD
THURSDAY THE FOURTEENTH DAY OF AUGUST
TWO THOUSAND AND THREE
PRESENT
THE HONOURABLE Mr. JUSTICE B. SUDERSHAN REDDY
AND
THE HONOURABLE Mr. JUSTICE P.S.NARAYANA
WRIT APPEAL Nos.936/99 and 890,1407/2001
And
W.P.NO.801 OF 2003

W.A.NO.936/99:

(Writ Appeal under Clause 15 of the Letter Patent against the Order Dt. 26-4-1999 in W.P.No.9381 of 1994.)

Between:

1. Union of India rep. by its Secretary, Ministry of Defence, New Delhi.
2. Director General of Defence Estates, Ministry of Defence, Government of India, New Delhi.
3. Defence Estate Officer, Secunderabad.

..Appellants/Respondents.

And

1. S.M.Hussain Rasheed.
2. State of A.P.rep. by the Mandal Revenue Officer, Thirumalagiri Mandal, Hyderabad Dist.

(Respondent 2 is impleaded as per Court Order dated 21-12-1999 in W.A.M.P.No.3386/99)

Respondents.

For the Appelants: Mr. B. Adinarayana Rao, Advocate. None appeared For the Respondents No.

1 Mr. M.R.K.Chowdhary Senior Counsel for
Mr. M.Sudheer Kumar, advocate.
For the Respondent No.

2 The Govt. Pleader for Revenue.

W.A.No. 890 of 2001:

(Writ Appeal under Clause 15 of the Letters Patent against the Order dt. 19-4-2001 in W.P.No. 12124 of 2000 on the file of the High Court.)

Between:

1. The Executive Officer, Secunderabad Cantonment Board, Secunderabad.
2. Secunderabad Cantonment Board, Secunderabad, rep. by its Executive Officer.

..Petitioner/Appellants.

And

1. Shir S.M.Hussain Rasheed.
2. Defence Estates Officer. A.P.Circle, Secunderabad.

.... Respondents/Respondents.

For the Appeliant : Mr. Deepak Bhattacharjee, Advocate.
For the Respondent No.1 M.R.K.Chowdhary, Senior Counsel.
For Mr.M.Sudheer Kumar, Advocate.
For the Respondent No.2 Mr.T.Suryakaran Reddy, S.C.for Central Govt.

W.A.No. 1407 of 2001:

(Writ Appeal under Clause 1s5 of the Letters Patent against the Order dt. 19-4-2001 in W.P.No.12124 of 2000 on the file of the High Court)

Between:

1. Defence Estates Officer, A.P.Circle, Secunderbad,
2. Executive Officer, Cantinment Board, Secunderabad,
3. Cantonment Board, Secunderabad, rep,by its Executive officer

...Appellants.

And

S.M.Hussain Rasheed ..... Respondent.

For the Appellant: Mr. T. Suryakaran Reddy, S.C. for Central Govt.

(None appeared)

For the Respondent : Mr. M.R.K.Chowdhary Senior Counsel for
The Respondent No.1 Mr.M.Sudheer Kumar, Advocate,
For the Respondent Nos :2,3 are not necessary parties.

W.P.No.801 of 2003

Between:

Sri.S.M.Hussain Rasheed, R/o H.No.23-2-442, Mogulpura, Hyderabad-2
(as G.P.A. Holder representing

1. Dr.M. Narasimha Rao
2. Sri.M. Seshagiri Rao
3. Smt. Indumathi ....Petitioner.

And

1. The Union of India rep. by its Secretary, Ministry of Defence, New Delhi.
2. The Director of Defence Estates, Ministry of Defence, Southern Command, Pune.
3. The Director General of Defence Estates, Ministry of Defence, Govt, of India, New Dehli.
4. The Defence Estate Officer, Court Compound, Secunderabad.
5. The Executive Officer, Contonment Board, Secunerabad.
6. The Andhra Sub-Area Commander, Bollaram, Secunderabad.

...Respondents.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an order or order, Writ or Writs more particularly one in the nature of Writ of MANDAMUS declaring the action of the Respondent No.5 in demolishing the shed without any notice as contemplated under the Cantonment Act as illegal, discriminatory, arbitrary and violative of principles of natural justice and consequently direct the Respondent No.5 to sanction the plan submitted by the petitioner on 30-4-2002

For the Petitioner: Mr.P.Badri Premnath, Advocate.

For the Respondents: 1to 4,6: Mr.T.Suryakaran Reddy, S.C.for Central Govt.

For the Respondent No.5: Mr. Deepak Bhattacharjee, Advocate.

The Court made the following Common Judgment:

Common Judgment:(Per.B.Sudershan Reddy,J)

This batch of writ appeals as well as the writ petition may be disposed of by a common judgment, since common questions of law and facts arise for consideration between the same parties.

W.A.No.936 of 1999 is filed by the Union of India and others against the order dated 26-4-1999 made in W.P.No.9381 of 1994 by a learned single Judge of this Court, whereas W.A.Nos.890 and 1407 of 2001 are filed against the order dated 19-4-2001 made by a learned single Judge of this Court in W.P.No.12124 of 2000, by the Executive Officer, Secunderabad Cantonment Board and Defence Estate Officer, A.P.Circle, Secunderabad respectively.

W.P.No.801 of 2003 is interconnected and, therefore, the same is also taken up for disposal along with these writ appeals.

W.A.No.936 of 1999

That one S.M.Hussain Rasheed (hereinafter referred to as 'the writ petitioner') filed W.P.No.9381 of 1994, out of which W.A.No.936 of 1999 has arisen, challenging the action of Union of India in holding that the ownership of the land on which Bungalow No.219 is situated rests with the Government. It would be just and necessary to notice the prayer in the said writ petition:

"For the reasons stated in the accompanying affidavit, it is prayed that this Honourable Court be pleased to issue a writ, order or direction more in the nature of mandamus declaring the action of the respondents in issuing the impugned proceedings dated 18-4-1994, served upon the petitioner on 27-4-1994 as illegal and void after declaring the entries made in the General Land Register, 1956 classifying the Bungalow No.219 as 'B'(3) land as unconstitutional, arbitrary, illegal and ab initio void being contrary to the provisions of the Cantonments Act and the rules made hereunder and consequently to direct the respondents to refrain from in any manner interfering with the possession and enjoyment of Bungalow No.219, situated at Secunderabad Cantonment by the Petitioner while ignoring the entry made in General Land Register and pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case."

The writ petitioner (respondent in this writ appeal) earlier filed W.P.No.20839 of 1993 seeking a direction to the Union of India to alter the entry made in column B3 in General Land Register (GLR) and to convert the same into an entry in column B2 relating to Bungalow No.219 situated in Gymkhana Road, Cantonment area, Secunderabad. This Court by an order dated 18-1-1994 disposed of the said writ petition directing the Union of India to

dispose of the several representations made by the writ petitioner to the concerned anthorities for change of entries in the General Land Register of 1956 (GLR) within a period of three months from the date of receipt of a copy of the said order.

The Government of India having considered several representations of the writ petitioner by its letter dated 18th April, 1994 informed the writ petitioner as well as one M.Seshagiri Rao, G.P.A., that after a detailed examination "Government has come to the conclusion that the ownership of the land on which Bungalow No.219 is situated rests with the Government" The Government of India accordingly expressed its regrets for altering the entry in respect of the said property in General Land Register of Secunderabad as maintained by the Defence Estate Officer, Secunderabad, as prayed for by the writ petitioner.

It is that order dated 18-4-1994, which has been impugned in W.P.No.9381 of 1994 on various grounds with the prayer, which we have already noticed.

The affidavit filed in support of the writ petition makes a somewhat interesting reading. The averments do not reveal as to the interest of the writ petitioner in the said land. The representation dated 3-2-1987 purported to have been made by General Power of Attorney Holder of owners of Bungalow No.219 is sought to be relied upon with a prayer to read the same as a part and parcel of the affidavit filed by the writ petitioner. That a copy of the said representation dated 3-2-1987 made by the General Power of Attorney holder of owners of Bungalow No.219 was enclosed to the letter dated 28-1-1994 addressed by I.Koti Reddy, Advocate to the Secretary, Ministry of Defence, New Delhi for his consideration pursuant to the directions of this Court issued in W.P.No.20839 of 1993. We have already noticed that the said writ petition was filed by S.M.Hussain Rasheed (writ petitioner), whereas the representation dated 3-2-1987 has been made by one M.Seshagiri Rao claiming himself to be the General Power of Attorney holder of his grandmother Smt. Lalitha Bai who is stated to have purchased the said property together with the compound wall from one Smt. Barkatunnisa Begum and other legal heirs for a consideration of Rs.45,000/- under a registered sale deed dated 3-2-1967. The writ petitioner's interest in the subject matter, while tracing the title of bungalow in question and as to how it was treated as a private property, is required to be noted in his own words as stated in the affidavit:

"While so, on 3-2-67 Smt. Barkatunnisa Begum and three executed a sale deed in favour of Smt. Lalitha Bai. W/o. Madhusudan Rao. All these deeds are registered deeds. A copy of this Sale Deed dated 3-2-67 is filed in the material papers for ready reference as Exhibit P7. From the legal heirs of Smt. Lalitha Bai on whom the property in question was devolved, has executed a sale agreement in the year 1987. On receipt of consideration and

on execution of sale agreement in anticipation of obtaining necessary permission for alienating the same I was put in possession and enjoyment of the same on the date of agreement itself. I have been enjoying the same kind all through the property tax was paid to the Cantonment by my predecessors in title and mysalf after 1987. There is no dispute about the tax being paid by all of us.

That is all what has been stated in the affidavit filed in support of the writ petition.

A bare reading of the averments made in the affidavit filed in support of the writ petition at the most reveal that the legal heirs of Smt. Lalitha Bai on whom the property in question was devolved have executed the sale agreement in favour of the writ petitioner in the year 1987. The said agreement of sale, if any, purported to have been executed by the legal heirs of Smt. Lalitha Bai on whom the property alleged to have been devolved is not filed into the Court. There is no document and evidence made available by the writ petitioner in support of his case that he was put in possession and enjoyment of the same on the date of agreement itself. It is interesting to notice that the representation dated 3-2-1987 has been filed by one M.Seshagiri Rao claiming himself to be the General Power of Attorney holder of the owners of the property. It is not known as to on what basis this writ petitioner could have filed W.P.No.20839 of 1993, which was disposed of by this Court directing the Union of India to consider the representation made by him with a request to change the entries in the General Land Register. in the affidavit filed in support of earlier W.P.No.20839 of 1993, the very same writ petitioner stated on oath that he entered into an agreement of sale dated 12-12-1986 with the owner of bungalow No.219. In the said affidavit, it is inter alia stated that "Smt. Lalitha Bai, the grand-mother of M. Seshagiri Rao, Advocate, son of late Ram Mohan Rao, purchased the said property, together with the compound wall from Smt. Barkatunnissa Begum and General Power of Attorney deed dated 9th January, 1995 along with W.P.No.801 of 2003 purported to have been executed by one Dr. M.Narasimha Rao, M.Seshagiri Rao and Smt. Indumati, who are the sons and daughter respectively of late M.Ram Mohana Rao, Advocate, who died on 6th October, 1984 in his favour. There is no mention about this property in the said General Power of Attorney deed. The General Power of Attorney deed by the sons and daughter of Ram Mohana Rao, however, at all was executed only in the year 1995. It is not known as to how the writ petitioner claimed there being a General Power of Attorney deed in his favour in 1987 itself. There is nothing on record suggesting that the persons who executed the General Power of Attorney deed in favour of the writ petitioner are legal heirs of late Smt. Lalitha Bai.

The short question that falls for consideration is as to whether any relief could be

granted to a person invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. who does not reveal the complete, true and correct facts? Whether any relief could be granted to a person who does not make available any material evidence in proof of the facts alleged in the affidavit filed in support of the writ petition ?

That another question may also fall for consideration as to whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can undertake to examine the intricate questions of title and grant any relief?

First we shall take up the question as to whether this Court is justified in examining the legality of the impugned proceedings dated 18th April, 1994 at the instance of the writ petitioner, who claims to be the agreement holder from the legal heirs of one Smt. Lalitha Bai, who were the owners of the property, according to the writ petitioner.

It is a very well settled position in law that a petition challenging an action of the authority as arbitrary or unreasonable, must indicate how and in what manner it is arbitrary or unreasonable. Vague and general allegations are not sufficient. As per settled law, the party who invokes the extraordinary jurisdiction of the Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation and one cannot be permitted to pick and choose the facts he likes to disclose and to suppress or not to disclose other facts. The very basis of the writ jurisdiction of this Court rests on disclosure of true and complete facts. It is equally well settled that a petitioner who does not come with candid facts and clean hands cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is most reprehensible. In a writ proceeding, if the petitioner does not disclose all the material facts fairly and truly but states them in a distorted manner with a view to mislead or deceive the Court, the Court is bound to protect itself and to prevent an abuse of its process. Jugglery has no place in equitable and prerogative jurisdiction.

A party seeking to challenge the validity of a proceeding on a ground involving questions of fact should make necessary averments of fact before it can assail the same on that ground.

In this case, we are of the view that the question as to whether the writ petitioner has any right, title or interest in the property is essentially a question of fact. Half-truths in the affidavit filed in support of the writ petition would in no manner help the writ petitioner.

It is not clear from the averments made in the affidavit as to whether the writ petitioner claims right, title and interest in the property for himself or is acting for and on behalf of the alleged real owners of the property. The alleged real owners of the property are not the

petitioners in the case. On the other hand, the persons from whom the writ petitioner claims to have got the General Power of Attorney deed are shown as the petitioners in W.P.No.801 of 2003 filed seeking some other relief as against the Cantonment Board.

The Supreme Court in Bhagwan Dass v. State of U.P.observed, "the appellant cannot be heard to say in a writ petition filed for the assertion of his own individual rights that the action of the Government is calculated to prejudice somebody else's rights and should therefore be struck down."

In Bharat Singh v. State of Haryana, the Supreme Court had an occasion to consider the distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter affidavit and observed:

"In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point . In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

The writ petitioner in the instant case has gone to the extent of asserting his title on the basis of a sale agreement purported to have been executed by the alleged real owners of the property coupled with the General Power of Attoney deed. The alleged agreement of sale of the year 1987 has not seen the light of the day. Such alleged agreement of sale itself does not confer any right, title or interest in any immovable property upon any individual. There is no material or evidence made available on record in proof of possession of the bungalow in question by the writ petitioner.

However, Sri M.R.K. Chowdhary, learned Senior Counsel appearing on behalf of the writ petitioner, contended that the factum of execution or agreemant of sale by the real owners has not been put in issue by the appellants herein and, therefore, it is not necessary to go into that question.

We are not impressed by the submission made by the learned Senior Counsel. In a proceeding under Article 226 of the Constitution of India, which is a public law remedy

available to an aggrieved person. It is the duty of the person invoking the jurisdiction of the Court to specifically plead every material fact and produce evidence and produce the material facts so stated in the affidavit. Lack of denial on the part of the appellants herein in the counter affidavit filed them is of no consequence. Ultimately. it is the satisfaction of the Court that the person invoking the jurisdiction of the Court had revealed all material facts truthfully and produced proof in support thereof.

We have no doubt whatsoever in our mind that the writ petitioner is indulging in speculative litigation. The writ petition filed by him deserves dismissal on that simple ground.

The next question that falls for consideration is as to whether this Court on the ostensible ground of judicially reviewing the impugned letter dated 18th April, 1994 of the Government of India can go into the intricate questions of title relating to the property in question?

The averments made in the affidavit filed in support of the writ petition themselves reveal the nature of controversy. It is stated that one Sultani Begum purchased the land in dispute under a registered sale deed on 3-12-1868. She had leased out to Capt. H.C.Builder on 19-10-1911. On her demise her son Nawab Mir Parvarish Ali Khan succeeded to her and sold the property to Moulvi Abdul Hayi Sabeb Quadri under a registered sale deed dated 24-11-1922. That he has constructed another house in addition to Bungalow No. 219 and gifted the entire property in favour of his three daughters under a registered Gift Deed dated 1-10-1935. The donees under the Gift deed executed a sale deed in favour of one Lalitha Bai, wife of Madhusudan Rao under a registered deed dated 3-2-1967. After the death of Lalitha Bai, her legal heirs inherited the property and executed a sale agreement in favour of the writ petitioner in the year 1987. While so, it was noticed that an entry in GLR was changed in respect of bungalow No.219 thereby indicating that the property in question belonged to the Union of India. The writ petitioner claims to have made a request for changing the entry in the GLR maintained by the Military authorities from B3 to B2. The said request was rejected vide the impugned order dated 18th April, 1994 by the Government of India.

It is under those circumstances, the entries made in the General Land Register, 1956 classifying the Bungalow No.219 as the land under category B3 are challenged as illegal and unconstitutional being opposed to the Cantonments Act.

The allegations and averments made in the affidavit filed in support of the writ petition are denied by the Union of India in its counter affidavit. It is asserted that the entry made in the General Land Register treating the Bungaiow as Old Grant and classifying the same as category B3 is correct. It is further stated that the General Land Register was prepared for Secunderabad Cantonment in 1933 under the Secunderabad and Aurangabad Cantonment

Land Administrative Rules 1930 and in the said GLR, the land and the subject bungalow are classified under GLR Survey No. 507,Class B, under the management of Military Estate Officer and authority for occupation not known. The second GLR was prepared in 1956 under the Cantonment Land Administration Rules, 1937 and the land was described under Survey No.-465, Class B-3, Old Grant, under the management of Military Estate Officer. It is also stated that even in the State Government records. the land is shown as the government land.

In the counter affidavit, the Government of India has inter alia contended that mere fact that various documents have been executed by and between the parties conveying the rights in the property is not binding on the Government since no person can transfer greater rights than what were possessed by him. The vendors/transferers could have only transferred the occupancy rights in the sites as were granted to them. "Further the petitioner has to prove the authenticity of the documents (Ex.P3 and Ex.P7). It will be seen from Ex.P1 that "old title deeds are attached to and delivered to the above property" However, the petitioner has failed to produce the said original title deeds which are prior to 1968. Obviously, these original title deeds have not been furnished by the petitioners simply because they would clearly indicate that the subject land was Government land and not private land. Further the said Exhibit does not specifically mention the sale of land. It only mentioned "to certify that this day sold to Sultana Begum wife of Mizra Sabut Ali the bungalow and its houses No.224 for a consideration of Rs. H.S.4800/-" therefore no sale of land is conveyed through this alleged sale deed in favour of the then vendees. Further the sale documents have been got registered by the Venders in the office of the Quarter Master General, Hyderabad Subsidiary Force, Secunderabad subject to the condition "that the house to be kept in perfect state of repairs and to be rented to any officer who may be required it etc. etc., to be produced when required." It obviously shows that both the vendee and vendors are aware of the interest of the Subsidiary Forces in the land and the same was registered in the office of the Quarter Master General under the then prevailing rules regarding grant of land for building sites. Therefore, no conclusion other than that the land was of Government, can be derived from Exhibit P(1)"

We have referred to these pleadings only with a view to highlight the nature of controversy relating to the title in respect of the property in question.

The question that falls for consideration is as to wheher, in the factual matrix and having regard to the nature of controversy, this GLR have any effect of superseding the entries in the Survey and Settlement Register and the Record of Rights prepared and main-

tained under the provisions of the Land Revenue Act and the Record of Rights Regulations. The Court observed that they cannot have any offect of superseding the entries in the Survey and Settlement Register and hold that the GLR and the entries made therein are at the most can be construed as a record maintained by the Defence Estate Officer for its own purposes.

We fail to appreciate as to how the said judgment would render any assistance whatsoever to the point urged by the learned Senior Connsel appearing on behalf of the writ petitioner. The entries in the instant case remained in GLR ever since 1956. The Union of India is asserting its ownership, right, title and interest in the land. No survey or settlenent records are made available by the writ petitioner to show that the entries, if any, made therein disclose any private ownership. It is not as if there is any variance between the entries made in record of rights and the entries in GLR. On the other hand, the entries made in pahaai patrik produced by the appellants in clear and categorical terms reveal the nature of the land as the government land. The entries made in the revenue records are perfectly in conformity with the entries made in GLR.

Furthermore, the proceedings in Vasavi Cooperative Housing Society Limited (3 supra) have arisen in a regular appeal filed against the judgment and decree of the City Civil Court where the said Society sought for a relief of declaration of its title in respect of the lands mentioned therein in a civil suit before the Court of competent jurisdiction based upon the entries made in survey and settlement records and as well as entries made in record of rights. This Court considered the evidentiary value of the entries made in revenue/record of rights in respect of agricultural lands as against the entries made in GLR and in that context observed that the entries made in record of rights are to be preferred in comparison to that of entries in GLR. The Court took the view that the entries made in survey and settlement records coupled with the entries made in the record of rights constitute the evidence in support of plea of title. Such entries made after an elaborate enquiry in accordance with the procedure prescribed by various, statutes, under which they are prepared, are of great evidentiary value.

Therefore, the decision rendered by this Court in Vasavi Cooperative Housing Society Limited (3 supra) is not an authority for the preparation that a writ of Mandamus lies for changing the entries Court is justified in issuing any writ declaring the impugned proceedings dated 18th April, 1994 as illegal?

The very impugned proceedings disclose the assertion of ownership by the Government of India. Thus, essentially the dispute relates to the title of the immovable property in question.

No doubt, the learned Senior Counsel, Sri M.R.K.Chowdhary, appearing on behalf of the writ petitioner, contended that the writ petitioner is not seeking any declaration of title, but only seeking an appropriate direction as against the authorities to change the entries in the General Land Register.

Sri T.Suryakaran Reddy, learned Senior Central Government Standing Counsel, appearing on behalf of the Union of India, strenuously contended that under the guise of an innocuous plea for the change in the entries in General Land Register, the writ petitioner is actually seeking the relief of declaration of title in respect of the property in question. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot undertake to adjudicate such intrical questions of title with regard to the immovable property, is the submission made by the learned Senior Central Government Standing Counsel.

The learned Senior Counsel appearing on behalf of the writ petitioner, however, relied upon a Division Bench judgment of this Court in Union of India v.Vasavi Co-operative Housing Society Ltd, to which one of us is a member (B.Sudershan Reddy, J), in support of his submission that 1933 land register maintained by the Cantonment Authorities has no statutory base since the whole of the Cantonments Act, 1924 and the rules framed in 1925 are not applicable to the Secunderabad Cantonment and they were applicable only to the Cantonments located in British India. It is no doubt true that in the said judgment, this Court while considering the nature of entries in the General Land Register maintained under the Secunderabad and Aurangabad Cantonment Land Administration Rules, 1930 observed that the said General Land Register cannot be said to be prepared and maintained in respect of the rights in or over land. The same cannot be equated to that of land record relating to survey for revenue purposes and record of rights. The said observations were so made in the context in order to decide as to whether the entries made in the GLR. This Court never held that the entries made in GLR are of no consequence.

In the instant case, the relief prayed for, for change of entries in the GLR, on the face of it may appear to be innocuous. But, in our considered opinion any such direction to alter the entries may have its own adverse impact on the right, title and interest claimed by the Union of India in the land in question.

In the instant case. the learned Judge declared that the change of entry with regard to Bungalow No.219 of Thokatta village of Secunderabad Cantonment area showing it as belonging to B3 category in the General Land Register prepared in 1956 as being without any authority of law and accordingly directed the Defence Estate Officer to change the entries in the General Land Register "as being the private property of the petitioner through

his predecessors-in-interest and not as a defence land of the Government of India." The learned Judge virtually declared the title of the writ petitioner and his predecessors-in-title in respect of the property in question. On what basis one can conclude the property in question to be a private property?

The short question that falls for consideration is as to whether such a relief at all could be granted by the Court in a judicial review proceeding under Article 226 of the Constitution of India ?

"It needs no restatement at our hands that where there is a dispute as to whether a particular property vests or not, in the state or in any private individual, the dispute undoubtedly is a civil dispute and must, therefore, be resolved by a suit and not in a proceeding under Article 226 of the Constitution of India. It is a well-recognised principle of law that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between the parties". The remedy under Article 226 shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged and in such a case, the Court will issue appropriate direction to the authority concerned "The Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly" (See for the proposition New Satgram Engineering Works v. Union of India; Mohan Pandey v. Usha Rani Rajgaria; and Lambadi Pedda Bhadru v. Mohd. Ali Hussain).

Having heard the counsel for the parties, we are of the clear opinion that the writ petition was misconceived so far as it asked for, in effect, a declaration of writ petitioner's title to the said property. It is clearly evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed questions relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

Sri M.R.K. Chowdhary, however, relied upon the decision of the Supreme Court in Govt of A.P.v.T.Krishna Rao and contended that the Government of India cannot unilaterally assume to itself that it has perfect title with regard to the property in question until it had succeeded in establishing its title to the property in a properly constituted suit. We express our inability to accede to the said submission made by the learned Senior Counsel. The said decision has no application whatsoever to the facts on hand. It is the writ petitioner who is asserting right, title and interest in the property in question and the Government of India through the impugned letter having rejected the claim of the writ petitioner asserted its own

title to the property. There is no action as such initiated by the Government of India against the writ petitioner or any one of his predecessors-in-title.

In T.Krishna Rao (7 supra), the Supreme Court observed that the summary remedy for eviction which is provided for by Section 6 of the A.P.Land Encroachment Act (3 of 1905) can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of Government. If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an abjudication of complicated questions of title.

In the instant case, there is no such summary proceeding initiated by the Government of India against the writ petitioner or his predecessors-in-title. There is nothing on record suggesting that there is a bona fide dispute regarding the title of the Government to the property in question. It is the writ petitioner who raised the dispute asserting his right, title and interest in the property in question, which has been denied by the Central Government. There is nothing on record to establish and prove the continuous and uninterrupted possession of the writ petitioner being in possession of the property in question. On the other hand we have already observed that the claim of the writ petitioner herein is frivolous in its nature and he is merely indulging in speculative litigation.

In the circumstances we hold that the judgment in T.Krishna Rao (7 supra), upon which reliance has been placed, has no application to the facts on hand.

Viewed from any angle, we do not find any substance in the writ petition filed by the writ petitioner It is a clear case of abuse of judicial process by the writ petitioner for ulterior purposes.

We accordingly set aside the order under appeal. W.A.No.936 of 1999 is accordingly allowed with costs, quantified at Rs.5,000/-(Rupees five thousand only), as against the respondent-writ petitioner.

W.A.Nos.890 and 1407 of 2001

In the light of the foregoing reasons, both these writ appeals, prefered by the Cantonment Board and Union of India respectively against the order dated 19-1-2001 in W.P.No.12124 of 2000, are required to be allowed.

The order under appeals is based upon the order passed by a learned single Judge of

this Court in W.P.No.9381 of 1994, dated 26-4-1999 against which W.A.No.936 of 1999 has been preferred, which we have allowed.

The respondent-writ petitioner has filed W.P.No.12124 of 2000 challenging the action of the Cantonment Board in rejecting his application for construction of a building in Bungalow No.219 situated at Gymkhana Road, Secunderabad Cantonment on the ground that the Defence Estate Officer objected for such sanction. The writ petitioner prayed for consequential appropriate directions directing the Cantonment Board to consider his application on merits within a specified period and permit him to proceed with the construction of building in accordance with the plans submitted by him.

The learned Judge allowed the said writ petition and accordingly directed the Cantonment Board to make a scrutiny of the application of the petitioner as to whether it is in consonance with the building regulations of the Cantonment Board and without insisting upon the title being shown and without any reference to the claim of the Defence Estate Officer that the said land belongs to Government of India. Obviously, the said directions have been issued basing upon the order dated 26-4-1999 made in W.P.No.9381 of 1994 declaring the title of the writ petitioner.

The Cantonment Board having examined the application of the writ petitioner resolved to reject the same in view of the objections raised by the Defence Estate Officer, A.P.Circle, Secunderabad. The Defence Estate Officer expressed his definite objection against the building application submitted by the writ petitioner.

That as per Section 181 (3) of the Cantonments Act, 1924 (for short 'the Act') once the property in which a construction permission is sought for is recorded as Government property in the General Land Register, the building plan has necessarily to be referred to Defence Estate Officer and the Board has no right to accord permission without reference of the application to the Defence Estate Officer. Section 181 (3) of the Act reads as follows.

"The Board, before sanctioning the erection or re-erection of a building on land which is under the management of the Defence Estates Officer shall refer the application to the Defence Estates Officer for ascertaining whether there is any objection on the part of Government to such erection or re-erection and the Defence Estates Officer shall return the application together with his report thereon to the Board within thirty days after it has been received by him"

That apart, a bare reading of whole of Section 181 of the Act, which deals with the power of Board to sanction or refuse to sanction the erection or re-erection as the case may be, of the building, makes it abundantly clear that the Board before sanctioning the erection

or re-erection of a building on land which is under the management of the Defence Estates Officer is bound to refer the application to the Defence Estates officer for ascertaining whether there is any objection on the part of Government to such erection or erection, and further when the land on which it is proposed to erect or-erect the building is not held on a lease from the Government if the right to build on such land is in dispute between the person applying for sanction and the Government, the Board is bound to refuse the sanction for erection or re-erection of any building. The Board cannot be compelled not to refer the matter to the Defence Estates Officer by way of a Mandamus by this Court since such directions, if any, from this Court would amount to compelling the Cantonment Board not to follow the provisions of the Act. Nor this Court can issue any writ of Mandamus directing the Cantonment Board to sanction the erection or re-erection of any building even in case of there being a dispute between the person applying for sanction and the Government. Such a direction, in our considered opinion, cannot be issued for the simple resson that no Mandamus lies compelling the statutory authorities not to follow the law. Such directions would be destructive of rule of law.

That in the face of the definite objection raised by the Defence Estate Officer, the Cantonment Board had no other option except to reject the application of the writ petitioner and it rightly did so accordingly.

For the aforesaid reasons, we do not find any merit in W.P.No.12124 of 2000 filed by the respondent-writ petitioner and the same deserves dismissal.

Consequently the order under appeals is set aside. W.A.Nos.890 and 1407 of 2001 are accordingly allowed with costs, quantified at Rs2,500/-(Rupees two thousand five hundred only) in each case as against the respondent-writ petitioner.

W.P.No.801 of 2003

The unauthorised constructions were demolished by the Cantonment Board following the due process of law after service of notice under Sections 185 and 256 of the Act. The writ petitioner is not entitled to raise any construction whatsoever in the land in question without any prior permission sanction from the Cantonment Board. The writ petitioner cannot be allowed to meddle with the property in question in whatsoever manner. In view of our finding in W.A.No.936 of 1999 supra, the writ petitioner is not entitled to maintain this writ petition.

The counter affidavit filed by the Cantonment Board reveals certain interesting aspects as to how the writ petitioner has been abusing the judicial process. The land owners on whose behalf the writ petitioner filed the writ petition got issued a legal notice through Sri

Ramesh Sagar, Advocate in which it is inter alia stated that the power of attorney under which the writ petitioner represented them was a fabricated document and they never appointed the writ petitioner herein as their attorney. Subsequently, the said persons filed a civil suit bearing No.155 of 2000 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad against writ petitioner Syed Mahboob Rasheed to declare the contract dated 19-2-1997 in respect of bungalow No.219 and the land admeasuring 23,000 square yards as rescinded. In the said suit, the Defence Estate Officer is also impleaded as one of the defendants, and a detailed counter affidavit and written statement have been filed by him in the said suit.

These facts speak for themselves. The deplorable conduct of the writ petitioner is writ large on its face. This writ petition, in view of our findings supra, is totally frivolous and deserves to be dismissed summarily.

The writ petition shall accordingly stand dismissed with costs, quantified at Rs.5000/- (Rupees five thousand only).

Sd/-
(B. SUDERSHAN REDDY)

Hyderabad
14.8.2003

Sd/-
(P. S. NARAYANA)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6877-6881 OF 2000

Secunderabad Cantonment Board, Andhra Circle, Secunderabad rep by Executive Officer ..... Appellant

VERSUS

Mohammed Mohiuddin and Ors. ..... Respondents

WITH

CIVIL APPEAL NO. 753/ 2001

The State of Andhra Pradesh, rep.by Collector, Hyderabad Dist, Andhra Pradesh ..... Appellants

VERSUS

Mohammed Mohiuddin Ors ..... Respondents

WITH

CIVIL APPEAL NOS. 1107-1111/2001

Union of India .... Appellant

VERSUS

Mohammed mohiuddin & Ors. .... Respondents

WITH

CIVIL APPEAL NO. 753/ 2001

Secunderabad Cantonment Board, Court Compound, Secunderabad rep. By Execufive Officer ..... Appellants

VERSUS

Weavers represented by their Chairman, T.K.Kodandaram ..... Respondents

WITH

CIVIL APPEAL NOS. 9453-9456 of 2003
@ S.L.P.(c) NOS. 406-409/2002

M/s.Weavers Educational Advance Vocational Economic Rehabilitation Society, represented by its Chairman T.K.Kodandaram ..... Appellants

VERSUS

Union of India & Ors. ..... Respondents

AND

CIVIL APPEAL NO. 6376/ 2001

Syed Sadiq Ali Khan ..... Appellants

Versus

The Executive Officer & Ors. ..... Respondents

JUDGMENT

BRIJESH KUMAR J.

All the above noted appeals though filed by different parties, involve the same question relating to the legality of the order dated 11.8.2000 passed by the Division Bench of the Andhra Pradesh High Court as well as the Judgments later passed following the above said decision. The controversy revolves around the refusal to sanction the plan submitted by different parties to the Cantonment Board for construction of building over the land in question. The Central Government raised its claim over the land and filed objections to that effect through the Defence Estate Officer as provided under Section 181 of the Cantonment Act, 1924 (hereinafter referred to as the Act')

All the appeals have been heard together along with Special Leave Petition (C) Nos. 406-409/02 in which we grant leave. All these matters are being disposed of by this common judgment.

The facts in brief, relevant for purposes of disposing of these matters are that: the land over which the respondents proposed to raise construction and had submitted plans therefor, falls in the limits of Secunderabad Cantonment Board. There is a bungalow No. 215 in Thokatta Village, which is said to have been purchased in the name of Syed Sirajuddin Ali Khan, the minor, represented through his father Syed Sadiq Ali Khan, by means of a registered sale deed dated 21.9.1899. It is also the case of respondents that Syed Sirujdin Ali Khan on attaining majority relinquished his rights in favour of his father Syed Sadiq Ali Khan by means of a deed dated 11.8.1911. The case of the respondents further is that Sadiq Ali Khan had allotted land to 11 persons sometime in 1920 and made an application for making entries in the village records accordingly. The land S.No. 37 was changed to S.No. 170 on revision of settlement. According to the respondents, the cantonment authorities have been collecting tax in respect of the land which has been in their possession. The respondents moved application to the Executive Officer, Cantonment Board for sanction of lay out in respect of part of the land of S.No. 170, measuring 8 acres. The application for sanction of the plan was returned to the respondents with an objection that they were required to furnish exemption certificate under the provisions of Urban Land (Ceiling and Regulation) Act, 1976.

The respondents challenged the return of the layout plan and filed a writ petition 4250 of 1994, before the Andhra Pradesh High Court. The Writ petition was allowed on 30.9.94 and it was held that no such exemption certificate under the Urban Land (Ceiling and Regulation) Act, 1976 was required to be furnished. The authorities were directed to consider the sanction of the plan without insisting for exemption certificate. The lay out plan, however,

was again returned on the ground that S.No. 170 is in Sarkari Abadi Land. Another writ petition No. 6012/95 was filed, challenging the above order. The said writ petition was also allowed by order dated 6.12.95 with a direction to the authorities to find out as to whether the respondents had established a prima facie case as to their possession and also to consider the objection of the Union of India and to pass an appropriate order thereof. The application for sanction of plan was ultimately dismissed on 18.1.1996, refusing permission, as the land was found to have been in possession of Government of India. An appeal was preferred against that order. Since the appeal kept on pending, yet another writ petition No. 3606/96 was filed to restrain the authorities from interfering with the possession of the petitioners (in the writ petition) over the land, till disposal of their appeal. This prayer was granted on 27.2.1996. By means of yet another order passed in writ petition No. 6009/96 police protection was also provided to the writ petitioners (respondents here). Ultimately, the appeal was dismissed on 10.5.1996 holding that the respondents had no title to the land in question.

It gave rise to filing of yet another writ petition No. 10804/96 against the order dismissing the appeal. The learned Single Judge while allowing the writ petition held that the authorities were not required to go into the question of title of the applicants in the land. The writ petitioners, namely, the present respondents were held to be in possession over the property. The learned Single Judge also considered the case of the appellants that the land was covered under the old grant and found that no land was granted to the Government of India by Nizam for military purposes. The learned Single Judge found that in the earlier proceedings, the authorities did not raise objection claiming title, therefore, they could not take that stand in subsequent proceedings as it would be hit by principles of constructive res judicata. Possession of appellant was also not found. With such observation, the learned Single Judge while allowing the writ petition, directed the Cantonment Board to sanction the lay out plan. The appeal, preferred against the judgment of the learned Single Judge, has been dismissed, which is the subject matter of appeals in hand.

Some other developments also took place during all this period. According to the appellants, till the year 1992 the respondents extended no claim, whatsoever, to the land in question. However, the respondent Sadiq Ali Khan filed a petition under Section 15(2) of the Record of the Rights Regulation Act for correction of entries in the Revenue Records to the extent of 25 acres, on the basis of an unregistered sale deed. The said application was rejected by order dated 9.4.92 by the District Revenue officer, holding that land measuring only 2.71 acres out of the land of Bungalow No. 215 was in the private hands and the rest of the land was Government land which has been correctly shown to be so in the revenue records. An appeal was preferred against the said order before the Commissioner of Land

Revenue under Section 158 of the Land Revenue Act which was dismissed on 15.3.97. It may also be mentioned that according to the appellants, the respondents Nos. 1 to 62 had also got themselves impleaded as parties in the appeal which has been decided against them.

Sadiq Ali Khan filed a Civil Suit No. 288/92 also in the Court of Civil Judge. Secunderabad claiming ownership and possession of land measuring 65 acres in S.No. 170 in Tokketa Village. A prayer made for interim injunction was rejected by order dated 12.10.92. It was, however, found that the plaintiff in suit was in possession of land measuring 2.71 acres only and in respect thereof, he was entitled for injunction against dispossession, but so far the rest of the land is concerned measuring near about 63 acres it was in the ownership and possession of the Government of India.

The Division Bench took note of the finding of the learned Single Judge that the competent authority, while considering the question of sanction of the building plan, is only required to see the prima facie possession of the applicant, it has not to adjudicate upon the title of the applicants. The Division Bench also observed that the government authorities had not claimed title over-the land in the previous proceedings, therefore, they were estopped from raising such a plea later which is hit by the principles of constructive res judicata. Referring to a decision reported in AIR 1977 SC 392 Y.B. Patil Vs. Y.L. Patil, it observed that the principles of constructive res judicata could apply in subsequent stages of the same proceedings as well. Ultimately, it was held that principle of constructive res judicata in this case would apply to a limited extent as to the availability of the grounds on which layout plan could be refused. The Division Bench, however itself recorded finding that there is a serious dispute of title amongst various persons. The relevant part of the judgment may be quoted, which reads as follows:-

"With regard to question of title, it is well settled that highly disputed question of title cannot be entertained and adjudicated in a petition under Article 226 of the Constitution of India. From the various contentions raised and arguments urged on behalf of the respective parties, it is apparent that there is a serious dispute of title among the various persons and authorities in respect of title to the property in question".

In so far the objections of the appellants that the learned Single Judge has virtually given a finding on the title in favour of the petitioners, the Division Bench observed as follows :-

"Such an impression does emerge from the observarions of the learned Single Judge at page 22 of the judgment, like as authenticity of these documents cannot be doubted by the

respondents, the same have to be given their weight, and when reliance is placed on those documents, the title of the petitioners cannot be disputed. We do not agree with the conclusions of the learned Single Judge that the petitioners title has been established.

The Division Bench has reiterated its view that question of title could not be decided before the competent authority nor such disputed question could be decided in writ proceedings. It, however, in the later part of discussion in the judgment, has clarified the extent to which it upholds the applicability of principles of constructive res judicata, not being totally in agreement with the finding of the learned Single Judge on the said point. The relevant observation in that regard may be perused, which are quoted below :-

"It is made clear that this judgment under appeal shall not be construed as having decided the question of title in respect of the land involved in the said writ petition. We also hold the view that even the failure of respondents to raise or set up the question of the title in earlier writ petitions, namely, WP No. 6012 of 1995, 3600 of 1996 and 6012 of 1996 as mentioned at page 21 of the judgment of the learned Single Judge, cannot be basis for invoking the principle of res judicata in respect of the question of title. The principle of res judicata as stated above would in this case be applicable only to the limited question as to the entitlement of the petitioner for sanction of lay out and as to the grounds on which such sanction can be refused."

In so far the finding of the learned Single Judge in relation to the possession of the land by all the writ petitioners, it has been held by the Division Bench that the said finding is limited only for the purpose of sanction of lay out and not for any other purpose.

Before proceeding to discuss the submissions made before us by the respective, it may be beneficial to peruse the provisions regarding the sanction of the lay out plan. Section 181 of the Cantonment Act reads as under:-

"Section 181. Power of Board to sanction or refuse - (1) The Board may either refuse to sanction the erection or re-erection, as the case may be,of the building, or may sanction it either absolutety or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters namely:-

(1) x x x x x x

(2) x x x x x x .....

(3) The Board before sanctioning the erection or re erection of a building on land which is under the management of the (Defence Estates Officer), shall refer the application to the (Defence Estates Officer) for ascertaining whether there is any objection on the part of the Government to such erection or re-erection and the (Defence Estates Officer)

shall return the application together with his report thereon to the Board within thirty days after it has been received by him.

(4) The Board may refuse to sanction the erection or re-erection of any building-

(a) when the land on which it is proposed to erect or re-erect the building is held on a lease from the Government, if the erection or re-erection constitutes a breach of the terms of the lease, or

(aa) when the land on which it is proposed to erect or re-erect the building is entrusted to the management of the Board by the Government if the erection or re-erection constitutes a breach of the terms of the entrustment of management or contravenes any of the instructions issued by the Government regarding the management of the land by the Board, or

(b) when the land on which it is proposed to erect or re-erect the building is not held on a lease from the Government, if the right to build on such, land is in dispute between the person applying for sanction and the Government.

(5) x x x x x x x

(6) x x x x x x x"

Bye law 15 reads as under:-

"15. Power of Cantt. Board to sanction, modify or reject:- The Cantonment Board may sanction the lay out plan submitted by the applicant if the same is in accordance with the bye-laws or sanction the same with such modifications as the Cantt. Board may consider fit, or may refuse to sanction any layout if proprietary rights on the land proposed to be laid out is claimed by the Government of India in the Ministry of Defence to be their land as shown in the General Land Register maintained for the purpose".

In our view, the main question which falls for consideration is about the ambit and scope of Section 181 of the Act, more particularly Clause (b) of sub-section 4 of Section 181. The above provision empowers the Board to refuse sanction of a building plan where the land on which a construction is proposed to be raised is not on lease from the Government and there exists any dispute between the applicant for sanction of the plan and the Government.

The respective parties have drawn our attention to certain facts and documents to show as to which of them is the rightful owner of the land. The other question which has been raised by the respondents is that ground for rejection of plan as contained in Clause (b) of Sub-section 4 of Section 181 is not open to be resorted to by the appellants since such a ground was not raised earlier while returning the plan, since in such a situation principle of constructive res judicata would be attracted. There are a few other peripheral questions which we shall be discussing later.

The application for sanction of plan was moved by the respondents on 4.12.93 addressed to the Cantonment Executive Officer. On 4/5 January, 1994 the Cantonment Executive Officer wrote that the ULSC exemption certificate in Form 19(V) form DEAPU Circle Secunderabad was not furnished. It was also indicated that Board was also examining the matter relating to entertaining new lay out plans. Hence the plan submitted by Nawab Mohd. Usuf Khan, the General Power of Attorney, was returned. We have already noted that a writ petition preferred namely, writ petition No. 4250 of 1994, against the return of the plan was allowed by the High Court by Judgment dated 30.9.94, holding that no exemption certificate under the provisions of the Urban (Land and Ceiling) Act was necessary. Hence the matter was required to be considered again without insisting upon a Urban Ceiling exemption certificate. The respondents then again seems to have approached for consideration of sanction of the plan on 10.1.1995. The Cantonment Executive Officer by means of his notification dated 15/3/99 informed to the General Power of Attorney Sh. Nawab Mohd Usuf Khan that the DEO (Defence Estates Officer) had raised definite objection on behalf of the Government against the lay out plan submitted by the respondents. It was also indicated that in the Revenue Records Sy. No.170 of Thokatta Village is shown as Sarkari Abadi which is defence owned land. The plan was thus again returned to the respondents. At this juncture, it may be relevant to take note of sub-section 181 of the Act, as quoted earlier.

We have already noted the findings recorded in the writ petition and the appeal in the earlier part of the judgment. The learned counsel for the appellant has laid great emphasis upon the old revenue record entries in favour of the appellant and the entries made in the General Land Register. It is submitted that Cantonment Land Administration Rules, 1937 have been framed by virtue of power vested under Section 280 of the Contonments Act, 1924. Rule 10 in Chapter III of the Cantonment Land Administration Rules deals with maintenance of General Land Register. The Military Estates. Officer (now Defence Estates Officer) is required to maintain General Land Register prepared under Rule 3 in respect of all land which has been entrusted to or vests in the Board. In this connection, a reference has also been made to a decision reported in 1999 (3) SCC page 555, Chief Executive Officer Vs. Surendra Kumar Vakil and Ors. Regarding General Land Registers, it has been observed that they are maintained under the Rules, in normal course of business and entries made in such registers were to be given due weight. It is therefore, submitted that it cannot be said that no value is to be attached to the entries made in the General Land Registers. It has also been submitted that there being a serious dispute about the title of the property as also found by the Division Bench, existence of the dispute in respect of the property in question cannot

be disputed.

The learned counsel appearing for the Union of India has referred to the proceedings which were initiated by Sadiq Ali Khan for correction of revenue records but that application was rejected on 9.4.92. The appeal, preferred against the said order passed by the District Revenue Officer in which 62 respondents also got themselves impleaded, was also dismissed. That is to say the entries in revenue records in favour of the Government were maintained and the attempt of the respondents for change of the entries claiming right over the land in question failed. The authorities of the Defence Depaartment were also heard. It was held that the claim advanced by the respondents was not substantiated by documents and it was without any basis. It was found that the land was Government land/military estate. The Special Commissioner, Land Revenue observed in his order that no proper documents were produced by the respondents. It is also indicated that in a suit filed by Sadiq Ali Khan(O.S.No.288/92) with a prayer for injunction on the basis of the possession, the prayer was rejected except in part relating to 2.7 acres.

Learned counsel appearing for the respondents tracing the history submitted that area of the village concerned belongs to the Nizam. It is also submitted that respondents have been paying tax in respect of the Bungalow No.215 which was purchased by Syed Sirajuddin Ali, a minorson of Sadiq Ali Khan in the year 1899 who, on attaining majority had relinquished his rights in favour of his father, Sadiq Ali Khan on 11/8/1911. He wrote to the authorities in 1920 that he had allotted the land to the extent of 19.05 gts. to different persons and the same was requested to be recorded in the village records. The fact was acknowledged by the Directorate and the Secretary of the Estate of Nawab Salarjung Bahadur saying that it was not agricultural land, therefore no assessment was made but later tax at the rate of Rs.5 per acre was levied. Therefore, a sum of Rs.325/-in respect of the land in Survey No.37 was held liable to be collected from Sadiq Ali Khan and his allottees. It was also indicated by the authorities of the Estate that on revision of the Bandobast (settlement) Sy.No.37 was given a new Sy. No.170. He has also drawn our attention to the fact that the land which was handed over by the Nizam to Government was only for the purposes of exercising criminal and police jurisdiction by the Government of India and Thokatta is one of such villages mentioned in the notification dated 28/9/1906. A copy of the aforesaid document has been provided to us by the learned Counsel for the respondents which does not seem to be a part of the record. He has also drawn our attention to the documents, namely, the sale deed dated 21/9/1899 regarding 64 acres and deeds pertaining to non-agricultural land. It has further been submitted that the dispute regarding the land, by reason of which permission to sanction the map can be refused, should be bonafide and a genuine dispute.

So far the question of investigating into the title of the parties is concerned, we feel that the view of the High Court to the extent that title is not required to be established by any of the parties before the competent authority is correct. So far possession is concernd, it may be indicated that there seems to be no such specific provision requiring to establish possession but it may depend upon facts of a given case and it may be considered as one of the relevant aspects to be kept in mind while considering the application for sanction of a plan. But so far the statutory requirement is concerned, it is evident from perusal of sub-section 4(b) of Section 181 that the competent authority dealing with the matter, has to see whether there is or not any dispute about the land between the person applying for sanction of the plan and the Government. In case the concerned authority is satisfied about the existence of such a dispute in terms of Section 181 of the Act, the request for sanction of the lay out plan is liable to be refused. In this connection, it will also be relevant to refer to sub-section 3 of Section 181 which provides that before sanctioning a plan the Board is required to refer the application to the Defence Estates Officer for ascertaining whether there was any objection on the part of the Government to such erection or re-erection over the land. The said provision casts a duty upon the sanctioning authority to refer the matter as pointed out above. Accordingly, it referred the matter to the DEO, who raised objections regarding sanction of the plan. The objection relates to the question of ownership of the land. The Government claims ownership of the land and in that regard reliance was placed upon entries in the Revenue Records and the General Land Register which are maintained in due course of official business. The respondents claimed their title through the sale deed executed in favour of son of Sadiq Ali Khan in the year 1899, who on attaining majority had relinquished his rights in favour of his father Sadiq Ali Khan on 11/8/1911 and then the alleged transfer of different parts of the land to eleven different persons. It has been pointed out earlier also that the respondents had moved for correction of the records before the Revenue Officer but they failed. The appeal also remained unsuccessful, in which all the 62 respondents had got impleaded themselves. A civil suit for injunction was filed by Sadiq Ali khan in 1992 but the prayer for injunction was refused except in respect of a part of the land measuring 2.71 acres since prima facie, their possession was not found over the rest of the land. It may be worth while to notice that the proceedings for correction of the recods and the Civil Suit for injunction were initiated in 1992 and the application for sanction of the plan was moved in 1994, that is to say, after the respondents remained unsuccessful in their attempts to obtain order in their fovour twice before. In such circumstances, it would be difficult to say that there would be no bonafide dispute about the land between the parties. In this background, we do not feel it necessary to

enter into the contents and merits of various documents relating to title relied upon by either side. That enquiry would be necessary only if question of title could be decided in these proceedings and not otherwise. But we find there enough material, on the basis of which an authority could reasonably come to the conclusion that there was a dispute, relating to the land, between the applicant and the Government in respect of which sanction of the plan to construct, was applied for. Such a dispute was brought to the notice of the competent authority by means of objection placed before it by the Defence Estates Officer under the statutory provision. We don't think that it would be possible to say that the authority concerned took a view about existence of dispute which was not sustainable.

We may then consider the question as raised regarding application of principles of constructive res judicata. The Division Bench has recorded a finding that the appellants were estopped, on the principle of constructive res judicata, from raising an objection relating to existence of dispute over the land, on the basis that no such plea was put forward at the stage when the map was returned first in the year 1994 saying that the exemption certificate under Urban Land and Ceiling Act was not filed by the applicants. Therefore, this plea of dispute over the land between applicants and the Government, which could have been raised earlier, but not raised, cannot be allowed to be taken up now. Learned counsel for the respondent has in this connection placed reliance upon a decision reported in 1970 SCR page 830, Mathura Prasad Bajoo Jaiswal and Ors. Vs. Dossibai N.B.Jeejeebhoy. Our attention has been particularly drawn to page 836 which is quoted below:-

"It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law, i.e.the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in S.11 Code of Civil Procedure means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of

the land"

On the basis of above observation, it is submitted that decision between the parties, on the question of law, will bind the parties in subsequent proceedings. So far proposition of law is concerned, there would be no dispute to the same but we don't find that there has been any decision between the parties on the question of dispute in terms of sub-section 3 of Section 181 of the Act. No question for interpretation of any provision of law is involved. We, therefore, find that the above decision would be of no help to the respondents. A reference has also been made to 1977 (3) SCR 428 State of Uttar Pradesh Vs. Nawab Hussain parrticularly to the observation made at pages 431 and 434. On the basis of the above decision, it is submitted that doctrine of res judicata would be applicable even to the proceedings other than suits, as has been held in the above case that principle of constructive res judicata would be applicable proceedings under Article 226 of the Constitution of India. It is also submitted that a plea which could be raised in the earlier proceedings, if not raised by a party, it would not be permissible to raise the same subsequently between the same parties.

In connection with the above arguments, it would be worthwhile to notice that stage for raising an objection regarding a dispute between the Government and the applicant arises after the application is referred to the DEO by the sanctioning authority in terms of sub-section 3 of Section 181. So far the return of the first application is concerned, it may be noted that it was returned since the sanctioning authority thought it not to be entertainable, having not been accompanied by an exemption certiticate under the provisions of the Urban Land Ceiling Act. Apparently, it appears that the stage had not yet arrived for referring the application to the DEO for his objections. The competent authority is required to refer the application before sanctioning the plan. Nothing to the contrary has been indicated by the respondents to show that despite reference of the application to the DEO under Sub-section 3 of Section 181. The DEO had chosen not to file any objection in respect of the dispute or the claim over the land.On the basis of the above factual aspect, in our view, the question of failing to raise a plea in the earlier proceedings does not arise due to return of the first application. There is no reason to infer that the DEO had foregone his right to raise objection regarding the ownership of the land before sanction of the lay out plan. The argument therefore, raised is not applicable in the set of facts of this case. Learned counsel for the appellants has, however, placed reliance upon a decision reported in 1996 (6) SCC 424 Allahabad Development Authority Vs. Nasiruzzaman and Ors. particularly to paragraph 6; which reads as under:-

"In view of the above ratio, it is seen that when the legislature has directed to act in a particular manner and the failure to act results in a consequence, the question is whether the

previous order operates as res judicata or estoppel as against the persons in dispute. When the previous decision was found to be erroneous on its fact, this Court held in the above judgment that it does not operate as res judicata. We respectfully follow the ratio therein. The principle of estoppel or res judicata does not apply where to give effect to counter some statutory direction or prohibition. A statutory direction or prohibition cannot be overridden or defeated by a previous judgment between the parties....."

Yet another case referred to by the learned counsel for the appellant is reported in 1997 (9) SCC 191 Bansilal Farms Vs.Umarani Bose and Ors. On the basis of the above decision. it was submitted that the State's right would not be affected by any order or compromise by applying the principle of constructive res judicata.

We, however, find that facts of the case in which the above observations have been made by the Court were slightly different. Shri Altaf Ahamed, Learned Addl. Solicitor General, has then referred to Administrative Law" by Sir William Wade, eighth edition, page249, relevant part of which reads as under:-

" Like other forms of estoppel already discussed, res judicata plays a restricted role in administrative law, since it must yield to two fundamental principles of public law: that jurisdiction cannot be exceeded: and that statutory powers and duties cannot be fettered. Within those limits, however, it can extend to a wide variety of statutory tribunals and authorities which have power to give binding decisions, such as employment tribunals and commons commissioners....."

It is, therefore, submitted that generally, role of the principle of res judicata in administrative matters is restricted, and statutory powers and duties administratively performed cannot be thwarted by application of principles of res judicata. It may be remembered that the earlier order returning the lay out plan was on the ground of non-fulfillment of requirement of filing exemption certificate which the High Court in the writ petition held that there was no such requirement to submit exemption certificate under the Urban Land Ceiling Act. There was a direction to re-consider the matter, hence it was being scrutinized on the grounds other than requirements of filing of an exemption certificate. As indicated earlier, there is nothing to show that a reference was made to the DEO before returning the application earlier. As a matter of fact, no such occasion would have arisen then. In this background, the DEO would neither be denuded of his statutory responsibility to raise objection about Government's claim to the land or dispute about it nor the competent authority was absolved of his statutory duty to refer the matter to the DEO before considering the question of passing of the order of sanction of the plan. The return of lay out plan earlier, was in a way at the preliminary stage when it was found that the application did not accompany the

necessary documents eg. exemption certificate under ceiling laws, which was then considered to be necessary. Stage to file objection came later when the application may have been referred to the D.E.O. The observations referred to earlier made in the Administrative Law by Wade are certainly attracted to the facts of the case. In our view, the respondents just wanted to hold on by raising a flimsy and feeble plea of *constructive res judicata* which is not sustinable either on fact or in law. In the facts and circumstances indicated above, we, therefore, have no hesitation in holding that the learned Single Judge as well as the Division Bench fell into error in holding that the objection under Sub-section 3 of Section 181 of the Act could not be raised by the DEO by applying the doctrine of *constructive res judicata*.

We have already found that in the facts and circumstances discussed above, it cannot be said that a reasonable person would not come to a conclusion that there is a dispute in regard to the land in question so much so the respondents themselves had to move the authorities and the Court twice in connection thereof. Before the revenue authorities they failed and in the civil court some partial relief of injunction restricting to an area of 2.71 acres was granted. Therefore, it cannot be said that the land was free from dispute. As a matter of fact, we have already indicated that the Division Bench of the High Court itself has arrived at such a conclusion but found erroneously that it would not be entertainable being barred by principles of constructive *res judicata*.

There also seems to be some *inter se* dispute with one of the parties appearing in person who alleged that the writ petition was filed by third parties claiming themselves as allottee to the exent of 19.30 gt. In fact, it is submitted that land was given to his fore-fathers and the case of the petitioner-respondens is false and bogus. He further alleges forgery on the part of the holder of the Power of Attorney. Initially there were only 11 transferees which number swelled to 62. He made various allegations of forgery etc. committed in the matter. We however, find that such disputes are beyond the scope of the present controversy which is confined to the question as to whether the lay out plan could have been sanctioned or not.

An effort has also been made on behalf of the petitioner-respondents about the array of the parties in the proceedings. In this connection Section 79 and Order 27 Rule 3 of the Code of Civil Procedure have also been referred to contend that in a suit by or against the Government, Union of India is to be impleaded as a party and not the authority or any officer. The learned counsel for the Union of India submits that the appeal has been filed on behalf of the Union of India and the Defence Estates Officer is appellant No.2. It is submitted that proceedings in court were initiated by the respondents by filing writ petitions. Proper parties should have been impleaded by them. In the writ petition, the respondens did not

implead Union of India as a party, hence, it does not lie to them to raise any such objection. Again such an objection, in any case, should have been raised in the writ appellate court. We, however, also find that in the array of parties in the appeal proceedings before the High Court, Union of India is the appellant with Cantonment Board. So is the position here also, in as much as the Union of India is also impleaded as one of the respondents in the present proceedings. It is indicated that DEO has throughout been representing the Government of India. It is submitted that no such issue was raised earlier and the matter has been contested through out by the DEO and the Cantonment Board, it cannot be said that Union of India is not on the record as a party, it is also represented through counsel and submissions have been advanced on behalf of Union as well by Shri Anoop Choudhary, senior advocate and Shri Altaf Ahmad, Addl, Solicitor General of India has argued the case on behalf of the appellant. The Union of India supports the applicants in challenging the order of the High Court. Union of India has also filed appeals, Civil Appeal Nos.1107-1111 of 2001 impugning the judgment of the Division Bench. We are not favourably inclined to entertain this technical plea for the above reasons.

We also find no substance in the submission made on behalf of the respondents that the lis is between the Cantonment Board and the respondents and there is no lis between the Union of India and the respondents. The Cantonment Board through one of its designated officer, considers and passes appropriate order on the application for sanction of plan. At least it shall have right to defend its orders. Under the statutory provision, the plan is not to be sanctioned in case there is a dispute between the applicant and the Government. Under the statute again the matter is to be referred to the Defence Estates Officer to ascertain this fact and it is for him to raise objection, if any such dispute exists between the applicant and the Government of India Therefore, it cannot be said that there would be no reason for these authorities to contest the matter. The interest of Government of India is very much involved and it will have all the interest to see that the plan is not sanctioned in case it has a claim over the land.

While parting with the matter, we would like to clarify that the dispute and the orders thereon, in these proceedings, are confined only to the question of sanction of the plan for construction of building. We the have, therefore, refrained from taking note of vein efforts made by leamed counsel for the respondents to assure the Court about their title, which, as observed earlier, could not be subject matter of such proceeding. Any dispute regarding the title between the appellants and the respondents or the respondents inter se or with any other party may be a subject matter of any appropriate separate proceeding, which any of

the parties may initiate if advised in that regard, as that right would not be affected by this order.

For the discussion held obove, we find that the judgment and order passed by the High Court is not sustainable.

C.A.Nos.9453-9456 of 2003 @ SLP (C) Nos.406-09/2002

After having heard the appellants and perusing the judgment impugned in these appeals, we find no infirmity so as to call for any interference with the order passed. The High Court rightly held if the petitioner society wants to set up title,it may institute a separate suit for such a relief. The High Court rightly found that there was no occasion to reject the plaint or to claim any declaration to the effect that the Cantonment Board is not the owner of the suit properties. The appeals have no merit.

In the result, the appeals filed by the Secunderabad Cantonment Board (i.e.Civil Appeals No.6877-6881/2000 and C.A.No.6604/2001)and the Union of India (i.e.Civil Appeals No.1107-1111/2001) are allowed and the impugned judgments/orders passed by the High Court of Andhra Pradesh are set aside.

C.A.No.753/2001 and C.A.No.6376/2001

Since the appeals filed by the Secunderabad Cantonment Board and the Union of India have been allowed setting aside the impugned judgments/orders of the High Court of Andhra Pradesh, no further order is required to be passed in these appeals and they stand finally disposed of in view of the aforesaid judgment.

C.A.Nos.9453-9456/2003 @ SLP (C) Nos.406-09/02

In view of the position aforesaid and discussion held earlier, we find no merit in the appeals and the same are dismissed.

Costs easy.

Sd/-
(BRIJESH KUMAR)

New Delhi;
Dated the 28th November, 2003

Sd/-
(ARUN KUMAR)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7284 OF 2001

Purshottam Das Tandon ..Appellant

Versus

Military Estate Officer & Others ..Respondents

WITH

Civil Appeal No. 6637 of 2003

ORDER

BHAN,J.

This order shall dispose of Civil Appeal No. 7284 of 2001 arising from the order of the Division Bench of the High Court of Judicature at Allahabad dated January 7, 2000 in Civil Misc. Writ Petition No. 13353 of 1992 and Civil Appeal No. 6637 of 2003 arising from the order of the another Division Bench of the High Court of Judicature at Allahabad dated 5th March, 2003 in Civil Misc. Writ Petition No. 28558 of 2002. Both the impugned orders pertain to the same set of property between the same parties. Seemingly, there is a contradiction and inconsistency in the two orders passed by the two different Benches. For the reasons stated hereinafter the matters need to be remanded back to the High Court for a fresh decision for disposal by taking them up together to avoid any contradiction or inconsistency.

Facts in Civil Appeal No. 7284 of 2001

The property in dispute situate in Survey No. 143, Old Cantonment, Allahabad was put to auction in execution of a decree against the judgment debtors-Scott and Spencer. The property in dispute was put to auction on 25th November, 1848 and was purchased by the decree holder Lala Manohar Lal, (Grand Father of the appellant) for a sum of Rs. 2,900/-. The auction sale was confirmed by the Court on 27.12.1848. Respondents on behalf of the Union of India on the strength of Governor General's Order No. 179 dated 12th September, 1836 issued a resumption notice dated 26th December, 1968 to the appellant and tried to take possession. Appellant filed Writ Petition No. 175 of 1969 in the High Court challenging the notice alleging, interalia, that the property in dispute is in his ownership and possession.

The same was purchased by his predecessors-in-interest in an auction sale and has fallen to his share in the family settlement. That Union of India was not the owner of the disputed property. That he had also perfected his title by adverse possession. This claim was resisted by the Union of India on various grounds. This petition was finally dismissed on 6th July, 1970 with the observations that it involved highly disputed questions of fact relating to title which could not be adjudicated upon in exercise of writ jurisdiction. The parties were relegated to their alternative remedy of filing a civil suit, if so advised.

The appellant thereafter filed Suit No.147 of 1971 in the Court of Additional District Judge, Allahabad against the tenant/sub-tenant for recovery of arrears of rent and ejectment from the property. Union of India claiming to be the owner after the resumption notice also issued a notice to the person occupying the property as a tenant for recovery of the arrears of rent.

The tenant/sub-tenant filed interpleader Suit numbered as Suit No. 161 of 1973 in the Court of the Civil Judge, Allahabad asserting himself to be the tenant of the appellant and impleaded him and the Union of India as defendant Nos.1 and 2 respectively claiming following reliefs :

"(a) The defendant Nos.1 and 2 be asked to inter plead among themselves to establish their respective rights with regard to the amount of rent due from the plaintiff in respect of premises No.29, Chaithem Lines, Allahabad Cantonment, and declare that the plaintiff is fully disoharged from the liability of the payment of rent due against it to defendant Nos.1 and 2 upto 30.6.1973.

(b) Plaintiff be awarded the costs of suit.

(c) Any other relief deemed fit and just be passed in favour of the plaintiff against the defendants or any of them."

It was pleaded by him that he was not certain about the respective rights of the defendants as both of them were claiming themselves to be the owner of the disputed property and in the circumstances it would be just and proper that they be asked to inter plead between themselves to prove their rights with regard to the disputed property. The trial court framed number of issues including as to who is the owner of the disputed property and entitled to receive the rent. Trial court decreed the suit in favour of the appellant. Aggrieved against which the Union of India filed appeal before the 2nd Additional District Judge, Allahabad which was accepted. The order of the trial court was set aside. Aggrieved against the order passed by the first appellate court the appellant filed Second Appeal No. 2866 of 1978, which was accepted. The order of the first appellate court was set aside and that of the trial

court restored. Relevant findings recorded by the High Court were as follows :

"(i) The controversy is the suit mainly turns round the determination of the question whether the property in suit belonged to the Cantonment as alleged by the Union of India or it was private property of the predecessor of the appellant having been acquired at an auction sale.

(ii) The Sale Certificate shows that in execution of a decree held by Lala Manohar Lal against. George Spencer the property was sold for Rs.2900/- and the purchased by the Decree-holder Lala Manohar Lal. The auction sale undoubtedly conveyed the right, title and interest which the judgment-debtor had.

(iii) .....

(iv) It was consequently embounded duty of the Union of India to establish that the judgment-debtors George Spencer and Mr. Scott held the Bungalow the appurtenant land subject to the condition mentioned in G.G.O. No.179 dated 12th September, 1836. No old grant in favour of the Judgment-debtors was filed. The Court is, therefore, entitled to draw an adverse inference against the Union of India.

(v) Under misconception the appellate court presumed that since the Bungalow and the land lie within the precincts of Cantonment, therefore, the Cantonment must be deemed to be owner, which should be repelled outright.....Even in connection with the G.G.O. No. of 1836 private ownership of land and houses within cantonment limits was fully recognised.

(vi) The Union of India instead of filing the necessary evidence regarding grant has merely chosen to rely on an admission of the appellant said to be contained in Ext. 8.....There is no admission of the appellant or his predecessor of the title Union or its predecessors and the appellant and his predecessors have been enjoying this property to let or hindrance by the Union of India and consequently by lapse of time for more than 100 years have acquired title even if it is assumed that title was with the Government, at any time. The admission in paper No. 67-C is vague and ambiguous. No explanation was sought from the appellant regarding this and this admission does not and cannot be taken to pass title which can only pass by a deed of transfer duly registered.

(vii) .....

(viii) .....

(ix) Giving the matter may vary anxious consideration I come to the conclusion that the property belongs to the appellant, that there is no proof or grant in favour of the respondent and as necessary result recourse cannot be had to a mere notice to evict the appellant."

Union of India filed Civil Appeal No. 5931 of 1983 in this court which was dismissed on 21st February, 1964.

After the dismissal of the Civil Appeal No. 5931 of 1983, the appellant moved an application before the Executive Officer, Cantonment to mutate his name as 'owner' in the Government Land Register and allow him to deposit property taxes of the premises. He also filed an application dated 8.4.1977 before the competent authority (Urban Land Ceiling, Lucknow Cantonment) seeking exemption of excess vacant land on the ground that he wants to utilise it for construction of dwelling house for the weaker sections of the society. As no action was taken by the respondents on the application moved by the appellant the appellant filed C.M.W.P. No. 363985 of 1992 seeking the following reliefs :

"(i) to issue a writ of mandamus directing the respondent no. 1 and 3 to mutate the name of the petitioner in pursuance of the Hon'be Supreme Courts Judgment in their record and directions be issued to accept property taxes from the petitioner.

"(ii) to issue directions to respondent No.2 to dispose of all applications of the petitioners pending before the competent authority."

The High Court disposed of the writ petition on 7th January, 1992 directing the authorities to take a decision on the application filed by the appellant within a period of two months from the date of the presentation of the certified copy of the order of the High Court.

The authorities dismissed the applications filed by the appellant, aggrieved against which the appellant filed the writ petition in the High Court which resulted in the passing of the impugned order. The High Court formulated 9 questions (question no.iv. is missing) which required adjudication. Question Nos. (I) to (v) are not relevant for the present. On question Nos. (vi) to (ix) which read as follows:

(vi) Whether the findings recorded in the interpleader suit in favour of the petitioner and against the union of India in the Second Appeal and by the Supreme Court operate as Res Judicata against the respondents ?

(vii) Whether the mutation application of the petitioner were not maintainable and whether

for that reason the Respondents were justified in not passing orders thereon? If the answer of the first question is the negative then whether this Court will be justified in issuing a writ of mandamus ?

(viii) Whether the Respondents were justified in not accepting the property taxes of the Bungalow in question from the petitioner earlier?

(ix) Whether in the facts and circumstances this court should saddle one or the other party with heavy costs ?

no decision was given by the High Court and were disposed of by observing as follows:

"Thus we refrain ourselves in expressing our views in regard to Question Nos. (vi) to (viii) and leave them to be adjudicated in the civil suit which may be filed either by the petitioner or by the respondents in terms of the order dated 6th July, 1970 passed by this Court in the petitioner's earliest writ petition No. 175 of 1969."

Appellant has filed the present appeal against this order of the High Court.

It would be seen that the High Court did not record any finding as to whether the earlier decision rendered by the Allahabad High Court which was affirmed by this court would operate as Res Judicata or not. The question was left open to be decided in a civil suit to be filed by either of the parties.

Facts in Civil Appeal No. 6637 of 2003

P.D. Tandon, respondent herein, who is the appellant in Civil Appeal No. 7284 of 2001 filed an application before the competent authority for sanction of map under Section 181 of the Cantonments Act, 1924. His application was rejected by the competent authority on 14.3.2002, aggrieved against which he filed Civil Misc. Writ Petition No. 28558 of 2002 in the High Court. In this writ petition without referring to the decision taken by the High Court of Allahabad in writ petition No. 13353 of 1992 which is under challenge in Civil Appeal No. 7284 of 2001 (which presumably was not referred to or produced before the Bench) and relying upon the earlier decision of the High Court in Second Appeal No. 2866 of 1978 observed:

"....the question of title in this case has already become res-judicata and cannot be raked up again. It has been held in that case that the property in dispute belonged to the petitioner. This finding is conclusive and res-judicata and cannot be permitted to be raked up again."

Order passed by the competent authority refusing to sanction the plans submitted by the appellant was set aside and a direction was issued to the concerned authority to decide the claim of the respondent-P.D. Tandon in accordance with law within six weeks treating as if the property belonged to the respondent-P.D. Tandon.

Decision

The property involved in both the Civil Appeals is the same. The dispute is between the same parties. In both the cases the High Court has interpreted the earlier judgment given by the High Court of Allahabad in Second Appeal No. 2866 of 1978. The finding recorded by the High Court in the two writ petitions regarding res-judicata is contrary to each other. To resolve the seeming contradiction it would be in the interest of justice to set aside both the impugned orders passed by the High Court and remit the cases back to the High Court to dispose them of together to avoid any inconsistency in the orders passed in both the cases.

Accordingly, both the apeals are accepted. Orders under appeal are set aside and the cases are remitted back to the High Court for a decision taking up the two writ petitions together for disposal to avoid any contradiction in the orders. We would request the Hon,ble the Chief Justice of the High Court to assign both the writ petitions to the same Bench with a request to dispose them of at the earliest, and if possible, preferably within six months as the litigation between the parties is going on for the last more than 35 years.

Anything stated in this order be not taken as an expression of opinion by this Court and the High Court would be at liberty to dispose of the matters in accordance with law. All questions are left open.

Parties through their counsel are directed to appear before the Registrar of the High Court of Allahabad on 21st January, 2004 for listing of the writ petitions after obtaining orders from Hon'ble the Chief Justice of the High Court. no costs.

Sd/-
[R.C. LAHOTI]

NEW DELHI;
DECEMBER 19, 2003

SD/-
[ASHOK BHAN]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (C) NO. 662 OF 2001
IN

CIVIL APPEAL NO. 8484 OF 1997

Surendra Kumar Vakil & Ors. ..Appellants

Versus

Chief Executive Officer, M.P. & Ors. ...Respondents

ORDER

R.C.LAHOTI, J.

The suit property consists of a piece of land measuring 11.37 acres comprising in Survey No.392 and the structure standing thereon known as Bungalow No.39 in Sagar Cantonment area. A suit for declaration of title filed by the review-petitioner was directed to be decreed by the Trial Court and the decree was upheld by the High Court in First Appeal. The Chief Executive Officer of Cantonment Board, Sagar preferred an appeal by special leave which was allowed by this Court and the suit filed by the review-petitioner was directed to be dismissed. A perusal of the judgment under review reveals that in forming opinion against the review-petitioner in the matter of title over the land in suit, this Court placed reliance on Order No. 179 of 1836 of the Governor General in Council whereunder the land forming part of the suit property is known as one held under 'old grant' This Court also noted with approval the view of the law taken in Shri Raj Singh Vs. The Union of India and Ors. - AIR 1973 Delhi 169 as regards the properties in British Cantonment areas. The judgment sought to be reviewed is reported as (1999) 3 SCC 555.

In the review petition filed by the review-petitioner, one of the pleas raised is that Order

No. 179 of 1836 has stood repealed and therefore the judgment of this Court based on the said order was vitiated by an error of law apparent on the face of the record. It is mainly this plea which persuaded the Court to issue notice in review petition. The non-petitioners herein have disputed the availability of any merit in any of the pleas raised by the writ-petitioner and have submitted that no case for review was made out.

We have heard the learned counsel for the parties at length and we are satisfied that the judgment under review does not suffer from any such infirmity as to call for recalling of the judgment in exercise of review jurisdiction of this Court.

The first submission of the learned counsel for the review-petitioner has been that the GGO No. 179 of 1836 has stood repealed by Act No.XXII of 1864 which received the assent of Governor General on the First day of April, 1964 and came into force on that day. In the submission of the learned counsel for the review-petitioner Sections XVII and XXVIII are relevant which are extracted and reproduced hereunder:

"XVII. And may make Rules and Regulations to provide for certain matters hereinafter mentioned the same to be general or special:

The Local Government shall have power to make Rules and Regulations not inconsistent with the provisions of this Act or of any other law in force, to provide within the limits of any Military Cantonment for the matters hereinafter mentioned, and from time to repeal, or alter, such Rules and Regulations. The Rules and Regulations made under this Section may be general for all Military Cantonments in the Territories under the local Government making the same, or special for any one or more of such Cantonment, according as the local Government shall direct".

'XXVIII. Effects of Rules made under Section XVII of the Act in respect of Regulations previously.

Whenever in any Military Cantonment, Rules and Regulations have been made under Section XVII, so much of any Regulation or Act as may be held to empower the Commanding Officer to make local Regulations regarding matter other than Military shall cease to have any effect in such Cantonment, and all local Regulations for any Military Cantonment which may have been made before the promulgation of the Rules and Regulations for such Cantonment made under such Section XVII, shall cease to have any effect. Provided that nothing in this Section shall be held to interfere with any Military Authority vested in the said Commanding Officer under Articles of War."

The learned counsel for the review-petitioner submitted that Order No.179 of 1836 is referable to Section XVII and, therefore, stands repealed by Section XXVIII.

We have carefully perused the two provisions relied on by the learned counsel and we find no merit in the submission made. Under Section XVII, the Local Government is empowered to make Rules and Regulations generally for all military cantonments in the territories under that Local Government or in respect of one or more of such cantonments. The nature of the Rules and Regulations which can be framed by the Local Government is indicated by the Preamble which reads as under:

"Preamble:

Where it is expedient to make provision for regulating the administration of Civil and Criminal Justice and the superintendence of Police and Conservancy, for protecting the public health within the limits of Military Cantonments and for laying down local Rules and Regulations to be enforced within such limits, it is enacted as follows :"

Once the Rules and Regulations have been framed by the Local Government then the power of the Commanding Officer to make local Regulations regarding matters other than military comes to an end . Order No.179 of 1836 issued by Governor General in Council cannot be said to have been issued under Section XVII and, therefore, the question of its ceasing to operate by reference to Section XXVIII does not arise. There are certain Acts and Regulations which have been specifically repealed by Act No. XXII of 1864 as per Section 2 read with the Schedule appended to the Act but Order No.179 of 1836 is not be found mentioned therein.

In addition, the learned counsel for the non-petitioners has pointed out that Order No.179 of 1836 was amended by Order No.1001 dated 8th July, 1864 by Governor General in Council and such amendment would not have been made if Order No.179 of 1836 would have stood repealed with effect from 1st April, 1864 by Act No. XXII of 1864. It is also pointed out that the decision of this Court in Chitra Kumari (Smt.) Vs. Union of India & Ors. - (2001) 3 SCC 208 decided on February 14, 2001 also takes notice of GGO No.179 of 1836 as still in force.

The first plea raised by the review-petitioner fails.

It was then submitted that in the decision of Nagpur High Court dated 07.10.1949 in Second Appeal No.120 of 1947 in Shrideo Jankiramii Idol Vs. The Governor General in Council, Delhi certain observations have been made regarding General Land Register (GLR) maintained under the Cantonment Land Administration Rules of 1925 and those observations would have a material bearing on the facts of this case. The decision of Nagpur High Court cannot be relied on by the review-petitioner as a precedent because there is no such point of law decided as may be capable of being read as precedent for the purpose of this case. If the judgment though not judgment intra parties, is yet sought to be relied on as a piece of evidence, then it should have been tendered in evidence which has not been done. Be that as it may, it is not disputed at the Bar that this judgment was very much available before the Court when the appeal was argued and the judgment of Nagpur High Court was specifically referred to in the Note of written submissions made on behalf of respondent in the appeal (review-petitioner herein). A point that has been heard and decided cannot form a ground for review even if assuming that the view taken in the judgment under review is erroneous.

The third contention raised on behalf of the review-petitioner relates merely to appreciation of evidence and we do not think it is available to be urged now.

No case is made out for entertaining the review petition. It is dismissed.

Sd/-
(R. C. LAHOTI)

New Delhi,
March 15, 2004

Sd/-
(G. P. MATHUR)