

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 219 OF 1980

PRESIDENT OF INDIA & ANR. APPELLANTS

VERSUS

LAXMAN DAS & ORSRESPONDENTS

ORDER

Land comprising Survey No. 149 (Bungalow No. 36), Bareilly Cantonment, measuring 1.763 acres, belonged to the President of India, which was held on lease by Miss Sophia Elsie Robert and Mrs. D. Morrwal, who constructed a bungalow on that land and subsequently transferred the property in favour of Badri Das, predecessor-in-interest of the present respondents. This lease, which was also known as 'old grant', could be resumed at any time by Government of India in terms of Governor General's Order No. 179 of 1836. It was in exercise of this power that the Govt. of India by its notice dated February 2, 1971 informed Badri Das that the grant was proposed to be resumed by the government and that a sum of Rs. 20,233/- representing the value of the structure, namely the bungalow in question, was offered to him as compensation. This notice was challenged by Badri Das in a writ petition filed before the Allahabad High Court, which was allowed by the impugned judgment dated May 14, 1975 and the notice by which 'Old grant' was proposed to be resumed, was quashed.

Badri Das died during the pendency of the writ petition and was substituted by the respondents.

The Allahabad H. Court while allowing the writ petition, was of the opinion that the grant could not be resumed by the government unless a notice was also issued to the lessee for determination of the value of the structure standing on that land. It was of the opinion that, simultaneously, with the issuance of notice for

resumption of grant, a notice for determination of the value of the structure standing on the land in question had also to be issued and the determination of the value of the structure had to be done in the presence of the owner of the structures. It was of the view that since a notice to Badri Das, predecessor-in-interest of the respondents, for determination of the value of the structure was not issued and the value was determined in his absence, the whole exercise for resumption of the grant was vitiated. For this purpose, reliance was placed by the High Court on its earlier decision in **Bhagawati Devi vs. President of India** 1974 A11. L.J. 43.

The view propounded in **Bhagawati Devi's** case has since been overruled by this Court in **Union of India & Ors. vs. Harish Chand Anand** 1995 Supp. (4) Sc 113 in which this Court has observed as under :

"It is seen that it is not a condition precedent to determine, at the first instance, the compensation after giving an opportunity; make payment thereof and then to resume the property. What is a condition precedent is issuance of one month's notice and on expiry thereof the Government is entitled to resume the land. The amount is to be determined as required under the relevant provisions after giving opportunity and which could be done thereafter. After all, the property would be resumed for public use and determination of value of the building erected is a ministerial act and payment thereof is the resultant consequence. This process would take some time and if the reasoning of the High Court of Allahabad is given effect to, it would defeat the public purpose. The view of the Delhi High Court is consistent with the scheme and appears to be pragmatic and realistic. The High court, therefore, was not right in its conclusion that it is a condition precedent to determine the amount of the value of the building in the first instance and payment thereof before resumption of the property."

Since the decision of the Allahabad High Court in **Bhagwati Devi** case (supra) which was relied upon in the impugned judgment stands overruled, the impugned judgment cannot be sustained. The appeal is allowed, the impugned judgment and order dated May 14, 1975 insofar as it purports to quash the notice of resumption is set aside and the resumption of grant is upheld. A limited

direction is issued to the Military Estate Officer to re-determine the value of the structure according to market rate prevalent in 1971 after associating the present respondents in such proceedings.

No costs.

Sd/-

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(S. Saghir Ahmed)

Sd/-

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(B.N. Kirpal)

New Delhi,
October 14, 1998.