

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPEAL NO. 1868 OF 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. The 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 taken 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 payment 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 statement 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)