

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 CIVIL APPEAL NO. 1844 OF 2008

SMT. USHA KAPOOR & ORS.

... APPELLANT (S)

VERSUS

GOVERNMENT OF INDIA & ORS.

...RESPONDENT (S)

JUDGMENT

RANJAN GOGOI, J.

1. The challenge laid by the appellants to notices dated 14 th December, 2001 and 5th February, 2002 having proved futile, this appeal has been filed upon grant of special leave under Article 136 of the Constitution.

2. The first notice dated 14 th December, 2001 is one of resumption of land comprising the site of Bungalow No.1, Elgin Road, bearing

General Land Register (GLR) Survey No.214, New Cantonment,

Signature Not Verified

Digitally signed by

Allahabad measuring 3.20 acres. The said notice has been issued on

Madhu Bala

Date: 2014.08.14

17:26:00 IST

Reason:

behalf of the President of India in exercise of powers vested by Order

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No.179 of the Governor General-in-Council dated 12 th September, 1836. The second notice dated 5 th February, 2002 is consequential and required the appellant to hand over the aforesaid land to the Defence Estates Officer, Allahabad Circle on 11 th March, 2002.

3. According to the appellants, by a sale deed dated

1 st

September, 1943 executed by and between Kirk Session of the Church

of Scotland at Allahabad and Smt. Mohini Devi Kapoor, the predecessor-in-interest of the appellants, the vendor (Kirk Session) conveyed and sold/transferred to their predecessor (Smt. Mohini Devi Kapoor), a lower roomed tenement or dwelling standing on the said site free from all encumbrances. Another recital in the sale deed described that on or about 2 nd day of March, 1873, the land, covered by the notice dated 14 th December, 2001 was granted to the Reverend J. Williamson Chaplain of the Church of Scotland for the purpose of erecting thereon a Manse and accordingly the Members of the Church erected and built on the said piece of land, a lower roomed tenement/dwelling house for use as a Manse together with outhouses. By a deed of transfer dated 7th November, 1901, Mr. Henry Charles King and Wilkie Adolphus McReddie, Elders of St. Andrews Church of the Scotland at Allahabad transferred to the Kirk Session (Vendor herein), the aforesaid lower roomed tenement or dwelling house which

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was subsequently the subject matter of the sale deed dated 1st September, 1943. The said sale deed was executed after permission to effect the same was granted by the Governor General-in-Council acting through the Commander-in-Chief, as conveyed by letter dated 30th June, 1943 from the Military Estate Officer, Allahabad Circle, Allahabad.

4. Before the High Court, the appellants, as the writ petitioners, had contended that they are the owners of the property including the land by virtue of the sale deed dated 1st September, 1943. The claims of the respondents that the land was covered by an Old Grant had not been substantiated inasmuch as no document showing the actual grant had been laid at any stage before any authority. It was contended that the onus to prove that the land was covered by Old Grant lies upon the respondents which had not been satisfactorily discharged by production of the relevant records.

5. The High Court took into account the prior sanction of the Governor General-in-Council acting through the Commander-in-Chief

for the sale and transfer contemplated by the deed dated 1 st
September, 1943 which, according to it, was inconformity with Clause
6(4) of the Order No.179 of the Governor General-in-Council dated 12 th
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September, 1836 embodying the terms of the Old Grant which were
extracted in the impugned judgment of the High Court. The High
Court also took note of an entry made in the General Land Register
(GLR) on 23rd September, 1943 the extract of which reads as follows :-

"Name of cantonment : Allahabad (New), Survey No.214

1. Details and date of Sold to Mrs. Mohini Devi
mutation and initials of DEO Kapoor wife of Mr. N.C.Kapoor
of the Indian State Railway
Service, at present on the E.I.
Rly as Superintendent
Cawnpore area for
Rs.22,000/- vide sale deed
executed on 7.9.1943 and
regd. As No.1420 in Bk 1
Vol.782 on pages 315 to 319
on 9th September, 1943.

Authority :- D.D.Letter
No.90704/Q.3 (B) 3199 -
L/C&+) dated 7.5.43.

Sd/-xxxx Capt. M.E.O.23.9.43

2. Subsidiary Survey No.

3. Volume and page of
Register

4. Area in Acres 3.20 Acres

5. Description Bungalow

6. Class B(3)

7. By whom managed M.E.O.
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8. Landlord Govt. of India

9. Holder of occupancy rights Mrs. Mohini Devi Kapoor

10. Nature of holders right Old Grant (Granted to Rev. J.
Williamson, Chaplain of the
Church of Scotland vide letter
No.7510 of 8.3.1872 from the
Q.M.G. of the Army.

11. Rent payable per annum: To Central Govt.....

To Cantt. Board.....

12. Date of expiry of lease

13. REMARKS

The holder of site subscribes to condition 6(1) to (4) of G.G.O. No.179 of 1836 vide her transfer application dated 26.11.42.

Sd/- xx xx xx

23 Sept. 43

M.E.O."

6. The High Court also took note of the fact that the predecessors-in-interest of the appellants had again sought sanction for transfer of the land in favour of one Ms. Shakuntala Nair on 16th June, 1959. In the application seeking permission, it was mentioned that the land was covered by Old Grant.

7. The High Court also noticed that on the demise of Smt. Mohini Devi Kapoor, amendments were made in the G.L.R. on the basis of the

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Will dated 22nd July, 1982 and extracted the relevant part of the said amendment which is reproduced herein below:

"8. Land

Government of India

9. Holders of Occupancy rights Shri Giriraj Kapoor, son of Late Nanak Chand Kapoor and Shri Krishna Kapoor son of Shri Giriraj Kapoor

10. Nature of holders rights Old Grant

Grant to Rev. J. Williamson Chaplain of the Church of Scotland vide letter No.75/C dated 8.3.1873 from the QMG of the Army Site of bungalow is an Old Grant terms as per GGO 179 of 1836. Defence Department and Quarter Master General letter Nos. 90704/Q-3(b) (3199-LC&L) dated 7.5.1943 and 96633/LC dated 9.4.1943 respectively refers. Also DEO letter No.A2/2/45 dated 23.7.(sick)."

8. On the aforesaid materials, the High Court thought it proper to conclude that the land in question was covered by old grant, the terms of which did not entail any transfer of land to the grantee and further

authorized the resumption of the land on payment of compensation to the occupier for the structure/building standing thereon.

9. In a book on Cantonment Laws by J.P.Mittal, a precise history of

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the tenures which came to be known as Old Grant is available. A few paragraphs from the aforesaid book may be very usefully extracted below :

"Besides municipal administration, another subject that has always loomed large on the cantonment horizon, is the question of provision of necessary accommodation for military officers near the place of their duty. This led to the issue, from time to time, of certain rules, regulations, and orders by the Governments of Bengal, Madras and Bombay Presidencies between the years of 1789 and 1899. The regulations were mostly of an identical nature. They had a twofold object in view, that of ensuring sufficient accommodation for military officers; and that of regulation of the grant of land sites. Some of these regulations are published in this book. These rules, regulations and orders continue to be the law in force in India even after the enforcement of the British statutes (Application to India) Repeal Act, 1960, (Raj Singh v. Union of India, Mohan Agarwal v. Union of India).

Under these regulations and orders, officers not provided with government quarters were allowed to erect houses in the cantonment. For this purpose ground was allotted to them with the condition that no right of property whatever in the ground was conferred on them and the ground continued to be the property of the State, was resumable at the pleasure of the Government by giving one month's notice and paying the value of the structures as may have been authorised to be erected. The houses or other property built on such grounds were allowed to be transferred by one military officer to another without restrictions. To civilians these could be transferred only with the prior permission of the officer commanding the station.

With the lapse of time civilians were also encouraged to build bungalows on the government land in the cantonment on the same condition of resumption of the ground as given above and with a further condition that

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they may be required to rent or sell the same to any military officer. In case of disagreement about the rent or the sale price, the same was to be fixed by a committee of arbitration. These tenures under which permission was given to occupy government land in the cantonments for construction of bungalows came to be known as 'old grant'. Such permission was given mostly on payment of no rent. This is how a large number of bungalows in the cantonments all over India came in the hands of civilians."

10. The terms of the tenures which came to be known as Old Grants are contained in Order No.179 issued by the Governor

General-in-Council dated 12th September, 1936. The preamble and Clauses 6 and 7 of the said order, being relevant, would require reproduction at this stage :

"The Governor General of India in Council is pleased to rescind the various orders now in force in this Presidency in regard of the occupation of ground and the disposal of premises or buildings situated within the limits of military cantonments, and to substitute for them the following regulations, which are to have effect from the date of its promulgation at the different stations of the Bengal Army :-

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6. No ground will be granted except on the following conditions which are to be subscribed by every grantee, as well as by those to whom his grant may subsequently be transferred :-

1st:- the Government to retain the power of resumption
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at any time on giving one month's notice and payment of the value of such buildings as may have been authorised to be erected.

2nd:- The ground, being in every case the property of the Government, cannot be sold by the grantee but houses or other property thereon situated may be transferred by one military or medical officer to another without restriction except in the case of reliefs when, if required, the terms of sale or transfer are to be adjusted by a Committee of Arbitration.

3rd:- If the ground has been built upon the buildings are not to be disposed of to any person of whatever description who does not belong to the army, until the consent of the officer commanding the station shall have been previously obtained under his hand.

4th :- When it is proposed, with the consent of the General Officer to transfer possession to a native; should the value of the house, buildings or property to be so transferred exceed Rupees 5,000 the sale must not be effected until the sanction of Government shall have been obtained through his Excellency the Commander-in-Chief.

7. All houses in a military cantonment, being the property of persons not belonging to the army which may be deemed by the Commanding Officer of the station suitable from their locality for the accommodation of officers, shall be claimable for purchase or for hire at the option of the owner: in the former case at a valuation and in the latter at

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a rent to be fixed in case of the parties disagreeing by a Committee of Arbitration constituted as follows".

11. In Raj Singh vs. The Union of India which decision was approved by this Court in Union of India vs. Tekchand (C.A.No 3525 of 1983 decided on 5.1.1999), the aforesaid Order No.179 of 1836 was

held to be a statutory exercise made under Section 43 of the Government of India Act, 1833. In Mohan Agarwal vs. Union of India & Ors.², the legislative history following the promulgation of Order No.179 under the Government of India Act, 1833 has been traced upto the date of the commencement of the Constitution to establish that the said order was an existing law on the date of the coming into force of the Constitution of India and, therefore, would continue to remain in force till repealed, which event has not yet occurred. The painstaking efforts of the learned Judges of the Delhi High Court in Raj Singh (supra) and Allahabad High Court in Mohan Agarwal (supra) has to be acknowledged as significant contributions in this realm of law.

12. In Chief Executive Officer vs. Surendra Kumar Vakil & Ors. ³, the effect of the terms of the tenures granted under Order No.179

1 [AIR 1973 Delhi 169]

2 [AIR 1979 Allahabad 170]

3 [1999 (3) SCC 555]

dated 12th September, 1836 was considered and it was held that under the said terms ownership of the land remains with the Government and the land cannot be sold by a grantee. The original grantee is vested with the right to build up a house/structure on the land and he may only transfer the same. Such transfer would require the consent of the commanding officer when the transfer is to a person not belonging to the armed forces. The right to resume the land, at any time, after following the procedure prescribed (extracted above) was expressly recognized by this Court to be vested in the Union.

13. The decision of this Court in Chief Executive Officer vs. Surendra Kumar Vakil (supra) also considered the legal effect of the entries in the G.L.R. which Register is required to be maintained by the Military Estates Officer of the Cantonment under the provisions of the Cantonment Land Administrative Rules framed in exercise of power under Section 280 of the Cantonment Act, 1924. The General Land Register maintained by the Cantonment Board under the Cantonment Act and the Rules framed thereunder is a public

document and the entries therein are conclusive evidence of title. This is the view expressed by this Court in two other decisions, namely, Union of India vs. Ibrahim Uddin & Anr. 4 and Union of India & Ors.

vs. Kamla Verma⁵, apart from the decision in Chief Executive

4 [2012 (8) SCC 148]

5 [2010 (13) SCC 511]

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Officer vs. Surendra Kumar Vakil (supra). The reference to the nature of the holding i.e. old grant and the nature of rights of the holder i.e. occupancy rights, in the G.L.R. extracted above, in our considered view, is conclusive of the fact that the land is covered by an old grant and the rights enjoyed by the appellants were mere possessory or occupancy rights in respect of the structures thereon. The terms of such grants being statutory and the same having vested title of the land in the UOI with the power of resumption, the impugned notices dated 14th December, 2001 and 5 th February, 2002 must be acknowledged to be legal and valid.

14. There is another small aspect of the matter which would require a mention. Against Sl.No.6 of the extract of the G.L.R. extracted above, the class of land has been described as B-3. The aforesaid description of the land is relatable to Rule 6 of the Cantonment Land Administrative Rules which is in the following terms :

"6. Class 'B' Land - Class "B" land shall be divided by the Central Government, or such other authority as they may empower in this behalf, into the following sub-classes, namely -

(iii) Class 'B3' land, which is held by any private person under the provisions of these Rules, or which is held or may be presumed to be held under the provisions of the Cantonment Code of 1899 or 1912, or

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under any executive orders previously in force, subject to conditions under which the Central Government reserve, or have reserved, to themselves the proprietary rights in the soil;"

15. In Union of India & Ors. vs. Robert Zomawia Street

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this

Court considered the effect of the meaning and expression "held by any private person" in Rule 6 (iii) above and after an elaborate consideration rejected the plea that the said expression could mean

that the private person would not be a tenant but would hold the land on the basis of a legal title thereto.

16. In view of the foregoing discussions, we arrive at the conclusion that this appeal is wholly without any merit or substance. The challenge to the impugned notice must fail. The appeal is, accordingly, dismissed. However, in the facts and circumstances of the case, we make no order as to costs.

.....J.
[RANJAN GOGOI]

.....J.
[M.Y.EQBAL]

New Delhi;
August 14, 2014.

6 [2014 (6) SCC 707]

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ITEM NO.IA COURT NO.11 SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).1844/2008

USHA KAPOOR & ORS. Appellant(s)

VERSUS

GOVT. OF INDIA & ORS. Respondent(s)

Date : 14/08/2014 This matter was called on for pronouncement of judgment today.

For Appellant(s) Mr. K. K. Mohan ,Adv.

For Respondent(s) Mrs. Anil Katiyar,Adv.

Mr. Ashok K. Srivastava,Adv.

Hon'ble Mr. Justice Ranjan Gogoi pronounced the Judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice M.Y. Eqbal.

The appeal is dismissed in terms of the signed reportable judgment.

(MADHU BALA)
COURT MASTER

(TAPAN KUMAR CHAKRABORTY)
COURT MASTER

(Signed reportable judgment is placed on the file)