Compendium
of
Important Court Decisions
relating to Old Grants
(Part I)

Government of India
Ministry of Defence
Directorate General Defence Estates

FOREWORD

This is a small Compendium of some important Court decisions which have a direct bearing on the status of old grant properties and the validity of Governor General' s Orders/ Regulations which relate to these grants. As there are thousands of old grant properties in fifty odd cantonments all over India and as a large number of court cases including those challenging the GGOs are pending in various Courts, these judgements will be of immense use to the officers dealing with such cases. There are seven Apex Court decisions in this Compendium given by different benches of the Hon' ble Court upholding the Government' s right of resumption of old grant properties. The decision dated 26th July 1995 in Civil Appeal No. 1868 of 1979 - Union of India & Ors. Vs. Harish Chand Anand is a landmark judgement which has upheld the findings of the Delhi High Court in Shital Prasad Jain Vs. Union of India, thereby underlining the statutory nature of the GGO 179 of 1836. It has also laid down the law that the only pre-condition for resumption of an old grant is the issue of one month' s notice. Prior payment of compensation has not been considered a necessary precondition. Most of the subsequent judgements in this Compendium also refer to this judgement.

Another very important judgement is the one dated 23rd March 1999 in Civil Appeal No. 8484 of 1997 - Chief Executive Officer Vs. Surinder Kumar Vakil and Ors. In this detailed judgement the Hon' ble Supreme Court has not only upheld Government' s right of resumption of old grants but has also appreciated the significance of entries in the General Land Register maintained by the Defence Estates Officers under the rules. Government won the case on the strength of entries in the GLR.

I hope that this Compendium will be a handy and useful guide to the officers of IDES in pursuing litigation pending in various Courts and safeguarding Government' s rights in old grant properties.

New Delhi,
Date : 24.08.2000

(R.R. Pillai)
Director General
Defence Estates.

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1. Civil Writ Petition No. 388 of 1971 - Shital Parshad Jain Versus Union of India & other before the Hon' ble High court of Delhi.

   Date of decision : 05th March 1991

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   Ors. Versus Harish Chand Anand.

   Date of decision : 26th July 1995.

3. Civil Writ Petition No. 919 of 1979 before the Hon' ble Supreme Court of India - Shri Jyoti Prasad Jain versus Union of India and Ors

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4. Civil Appeal No. 10281 of 1995 (arising out of SLP (C) No. 19608 of 1994) before the Hon' ble Supreme Court of India Cantonment Board Jabalpur & Ors. Versus Shri S.N. Awasthi & Ors.

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5. Civil Appeal No. 2886 of 1997 (with civil Appeal No,. 1336 of 1978) before the Supreme Court of India - The President of India and Anr. Versus Man Mohan Agarwal & Ors.

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6. Civil Appeal No. 1435 of 1984 before the Hon' ble supreme court of India. Union of India & Anr. Versus Vijay Kumar & Anr.

   Date of decision : 19th March 1998.

7. Civil Appeal No. 219 of 1980 before the Hon' ble Supreme Court of India (Civil Appellate Jurisdiction). The President of India and Anr. Versus Laxman Das & Ors.

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8. Civil Appeal No. 8484 of 1997 (With Civil Appeal No. 3323 of 1998) before the Hon' ble Supreme Court of India Chief Executive Officer versus Surendra Kumar Vakil & Ors.

Date of decision : 23rd March 1999.

IN THE HIGH COURT OF DELHI

CIVIL WRIT PETITION NO. 388 OF 1971
(AND THREE OTHER WRIT PETITIONS)

Date of Decision : March 5, 1991.

SHITAL PARSHAD JAIN THROUGH : MR. P.N. LEKHI WITH MR. M.K. GARG, ADVOCATE

VERSUS

UNION OF INDIA AND OTHERS THROUGH: MR. S.K. MAHAJAN WITH
MR. GULAB CHANDRA ADVOCATE.

CORM :

The Hon' ble Mr. Justica M.C. Jain, Chief Justice
The Hon' ble Mr. Justice Arun Kumar

1. Whether Reports of local papers may be allowed to see the judgement ?

   Yes.

2. To be referred to the Reporter or no ?

   Yes

3. Whether their Lordships wish to see the fair copy of the Judgement ?

(M.C. Jain, C.J.)

The petitioners in the aforesaid four writ petitions have sought a declaration that the Governor General' s order No. 179 of 1836 is not law or law in force or existing law. There are other prayers as well but the learned counsel for the petitioners has confined his arguments in respect of the aforesaid prayer only, although, interalia, the petitioners have also sought a declaration that notice of resumption issued under the aforesaid order to the petitioners for resumption of the grant is illegal and null and void and that the notices may be quashed. The two writ petitions relate to the bungalows situated in Jullunder

cantonment, and the two bungalows are situated in the Agra Cantonment in the other two writ petitions. According to the respondents, the land comprised in these bungalow are held by the petitioners and their predecessors in interest under the "Old Grant" tenure or term. So, they are liable to be resumed under Governor General' s order in council.

That question so far as this court is concerned stands concluded by a Division Bench of this Court in Shri Raj Singh V. The Union of India and other, AIR 1973 Delhi 169. However, Shri P.N. Lekhi, learned counsel for the petitioners submitted that the question of the aforesaid Governor General' s order having statutory force has not been considered by the Division Bench in its correct perspective. We shall be considering the submissions advanced by Shri Lekhi. However, we may first deal with the historical evolution of the power of the legislation which came to be vested in the Governor General-in-Council.

The Regulating Act of 1773 for the first time conferred on the Governor General in Council power to make and issue rules, ordinances and regulations by Section XXXVI.

The first vital change was made by the Government of India Act, 1833, whereby plenary powers of legislation were granted to the Governor General of India in Council. The plenary powers were as large and of the same nature as those of the British Parliament itself subject only to such reservations as were required for safeguarding the Constitutional system and other essential methods. We may here quote the relevant provisions of the charter Act of 1833 on legislative reforms, as are set out in the treatise "Reading in the constitutional History of India 1757-1947" by S. V Desikachar :

> XLIII. And be it enacted. That the said Governor General in Council shall have power to make Law and Regulations for repealing, amending, or altering any Laws or Regulations whatever now in force or hereafter to be in force in the said Territories or any Part there of, and to make Laws and Regulations for all Persons, whether British or Native, Foreigners or others, and for all Courts of Justice, whether established by His Majesty' s Charters or otherwise, and the Jurisdictions thereof, and for all places and things whatsoever within and throughout the whole and every part of the said Territories, and for all Servants of the said

company within the Dominions of Princes and States in alliance with the said company: save and except that the said Governor General in Council shall not have the power of making any Laws or Regulations which shall in any way repeal, vary, suspend or affect any of the Provision of this Act, or any of the provisions of the Acts for punishing Mutiny and Desertion of officers and Soldiers, whether in the Service of His Majesty or the said Company, or any provisions of any Act hereafter to be passed in any wise affecting the said company or the said Territories or the Inhabitants thereof or any Laws or Regulations which shall in any way affect any prerogative of the Crown, or the Authority of Parliament, or the Constitution or Rights of the said Company, or any part of the unwritten Laws or Constitution of the United Kingdom of Great Britain and Ireland where on may depend in any Degree or Allegiance or any person to the Crown of the United Kingdom, or the Sovereignty or Dominion of the said Crown over any part of the said Territories.

XLIV. Provided always, and be it enacted that in case the said Court of Directors, under such Control as by this Act is provided shall signify to the said governor General in Council their Disallowance of any Laws or Regulations by the said Governor General in Council made, then and in every such Case, upon Receipt by the said Governor General in Council of Notice of such Disallowance, the said Governor General in Councils shall forthwith repeal all Laws and Regulations so disallowed.

XLV. Provided also, and be it enacted, That all Laws and Regulations made as aforesaid, so long as they shall remain unrepealed, shall be or as such Force and Effect within and throughout the said Territories as any Act of Parliament would or ought to be within the same Territories and shall be taken notice of by all Courts of Justice other than the court of Justice whatsoever within the same Territories, in the same manner as any public Act of Parliament would and ought to be taken notice of: and it shall not be necessary to register or publish in any Court of Justice any Laws or Regulations made by the said Governor General in Council.

XLVI. Provided also, and be it enacted, that it shall not be lawful for the said Governor General in council, without the previous sanction of the said Court of Director, to make any Law or Regulation whereby Power shall be

given to any Court of Justice established by His Majesty' s Charters, to sentence to the punishment of Death any of his Majesty' s natural-born Subjects born in Europe, or the children of such Subject, or which shall abolish any of the Courts of Justice established by his Majesty' s Charters.

LI. Provided always, and be it enacted, That nothing herein contained shall extend to affect in any way the Right of Parliament to make Laws for the said Territories and for all the Inhabitants thereof: and it is expressly declared that a full, complete and constantly existing Right and Power is intended to be reserved to Parliament to control, supersede, or prevent all proceedings and Acts whatsoever of the said Governor General in Council, and to repeal and alter at any Time and Law or Regulation whatsoever made by the said Governor General in Council, and in all respects to legislate for the said Territories and all the Inhabitants thereof in as full and ample a Manner as if this Act had not been passed: and the better to enable Parliament to exercise at all Times such Right and power, all laws and Regulations make by the said Governor General in Council shall be transmitted to England, and laid before both Houses of Parliament, in the same manner as is now by Law provided concerning the Rules and Regulations made by the several Governments in India."

It would appear from the above provisions that the Governor General in Council was given comprehensive powers to make Laws and Regulations for the whole country subject to limitations prescribed and the Laws so made were to take effect as Acts without the necessity of registration or publication in any Court of Justice. From the provisions of the Charter Act, 1833, reproduced above, it is clear that the Governor General in Council was given the powers to make Laws and Regulations for repealing, amending or altering any Laws or Regulations, which are in force or to be enforced in Company' s territories and also for all persons and for all Courts of Justice and for all places and things whatsoever within and throughout the Company' s Territories, for all servants of the Company, as Articles of war for the Government of the Native Officers and Soldiers in the Military Service of the Company, and for the Administration of Justice by Courts-martial. There were limitations on the comprehensive legislative authority that the laws which were to be made should not in any way repeal, vary or suspend or affect any; of the provisions of the Act of 1933 or the Act for punishing mutiny and desertion of officers and soldiers and laws should not be made which

may affect the Crown or the authority of Parliament or the Constitutional rights of the Company or any part of the unwritten laws or regulations of United Kingdom. The Governor General in Council was further obliged to repeal all Laws or Regulations in respects of which notice of disallowance is received by the Court of Directors. Prof. C.L. Anand in his treatise on Constitutional Law and History of Government of India has dealt with the evolution of Administration by the Government of India prior to the Independence of India. It is not necessary to refer to various Charters and Acts in force prior to the Charter Act of 1833 as the order in question dates back to 1836 after the promulgation of the Charter Act, 1833. Having vested with comprehensive legislative power, it is to be seen as to whether the order in question has a statutory force and is law in force. Order no. 179 dated 12th September 1836 reads as under:

"FORT WILLIAM, 12th September, 1836.
No. 179 of 1836:

Occupation of land and disposal of premises and buildings. 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 is to have effect from the date of its promulgation at the different stations of the Bengal Army:-

1. **Application for land - Alteration of boundaries or sites and closing or opening of roads.** All applications for unoccupied ground for the purpose of being enclosed, built upon or in any way appropriated to private purposes, such ground being within the limits of a military Cantonment, are in the first instance, to be made to the Commanding Officer of the station through the usual channel ; and in no case are the boundaries of compounds to be changed, old roads closed or new ones opened without the sanction of the Commanding Officer.

2. **Certificate by Commanding Officer.** As the health and comfort of the troops are paramount considerations, to which all others must give way, the Commanding Officer will be held responsible that no ground is

occupied in any way calculated to be injurious to either, or to the appearance of the cantonment, and in forwarding any application for a grant, he must certify that it is not objectionable in those or any other respects.

3. **Orders of Government Required.** When no objection occurs, the application is to be forwarded through the prescribed channel, by the Commanding Officer of the station, to the Quarter Master General of the Army, who if the Commander-in-chief approves, will submit it for the orders of the Government.

4. **Form of Application.** All such applications are to be in the annexed form marked A.

5. **Grants to be registered and noted on plan.** All grants are to be registered by the Officer of the Quarter Master General' s Department attached to the division, and at the stations where no such officer may be present, by the executive officer of public works, to whom also in such cases, applications for ground are to be addressed, and all grants are to be immediately noted upon the plan of the cantonment in the Quarter Master General' s office.

6. **Conditions of Occupancy.** 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:

Resumption of land

lst. The Government to retain the power of resumption at any time on giving one month' s notice and paying the value of such building as may have been authorised to be erected.

Land belongs to Government - Land cannot be sold by grantee-Transfer of houses between military officers.

2nd. The ground, being in every case the property of Government, cannot be sold by the grantee; but houses or other property there on

situated may be transferred by one military or medical officer to another without restriction, except in the case of reliefs, when, if repaired, the terms of sale or transfer are to be adjusted by a Committee or Arbitration.

Arbitration in case of transfer on relief.- Transfer of house of civilian.

3rd. - If the ground has been built upon, the buildings are not to be disposed of to any person, of whatever description, 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 exceeds Rs. 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. **Houses claimable for purchase or hire at option of owner - Committee of Arbitration** - 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 a rent, to be fixed, in case of the parties disagreeing by a Committee of Arbitration constituted as follows:-

8. **Composition of Committee of Arbitration-Appeal.** - The Committee is to be composed of one civil officer, the principal one, if practicable, at or in the vicinity of the station, the Commanding Officer of the Cantonment, and an officer belonging to the station to be named by the proprietor of the premises; and their decision, whether relating to the terms of purchase or rent, is to be conclusive, unless it shall be reversed by Government, for whose orders the proceedings of the Committee are to be submitted, through His Excellency, the Commander-in-Chief, whenever, the proprietor of the premises which they have valued is dissatisfied with their award.

9. **Arbitration in case of transfer as on relief.** When the houses of the officers of one crops are to be transferred to those of another, as on the occasion of a relief, if a difference of opinion should arise as to the fair terms of transfer, the price shall be fixed by a Committee of Arbitration constituted as in the last paragraph, but to which, in such cases, there is to be given an additional member to be named by the intending purchaser.

10. **No appeal -** In this case, there is to be no appeal, and the decision of the Committee of Arbitration is to be final."

If first paragraph of the aforesaid order is read, it would appear that earlier various orders have been rescinded and in their place, the Regulations mentioned in the said order have been substituted from the date of the promulgation of the said order i.e. from 12.9.1836. Although source of power is not mentioned in the first para of the order, but still from the tenor of the order, it would appear that it has been promulgated in the form of Regulations. That gives a clear indication that the Regulations have been issued or promulgated in exercise of the legislative authority vested in the Governor General of India in Council. The Regulation deals with as to how applications are made for unoccupied ground for the purpose of being enclosed, built upon or in any way appropriated to private purposes such ground being within the limits of a military cantonment. In what form the application is to be made and how such applications are to be processed are provided in the said regulations. What is further provided in the Regulations are the conditions of occupancy. It makes a provision in respect of resumption of land and also a provision is made with regard to award of compensation in respect of the super-structure. If the compensation is disputed, the question is to be referred to a Committees of Arbitration. The decision of the Committee of Arbitration was to be conclusive unless it is reversed by the Government. The reading of the whole order would go to show that the Regulations have been issued in exercise of the law making power. Earlier orders were issued which have been rescinded to be substituted by ' Regulation' which was an accepted form of legislation.

From the provision contained in Section 45 of the Government of India Act, 1833, it would appear that all Laws and Regulations made in exercise of the legislative power so long as they remain unrepealed, shall be of the same force and effect as any Act of Parliament, and shall be taken notice of by all Courts of

Justice whatsoever within the territories in the same manner as any public Act of the Parliament, would and ought to be taken notice of. Thus, the laws and regulations if they remain unrepealed shall have the force of Acts of Parliament.

It is true that under Section XXXIX of the Charter Act, 1833, the executive power vested in the Governor General of India in council which provides, "the superintendence, direction and control of the whole civil and military government of all the said territories and revenues in India shall be and is hereby vested in a Governor general and counsellors, to be styled "The Governor General in Council."

The question is whether Governor General' s Order No. 179 of 1836 is issued in exercise of the power under Section XXXIX. Shri P.N. Lekhi submitted that all regulations enacted in a year had to be numbered, registered and published. Reference was made to ' Outlines of Indian Legal History' by Shri M.P. Jain, pages 189-190. And after 1833, the nomenclature of laws was ' Acts' and not ' Regulations' as stated in ' A Short History of the Judicial System of India and some Foreign counties' by Shri Harihar Prashad Dubey. Suffice it to say that on the basis of form alone it cannot be found that the regulations made under Order no. 179 of 1836 were not law and were only executive orders issued under Section XXXIX of the Charter Act of 1833. Had it been simply an executive order, the expression ' regulations' would not have been used as by that time, the expression ' Regulation' had assumed an accepted meaning as law made in exercise of legislative power.

After 1833 Charter, the relevant Act is the Government of India Act, 1858. Shri P.N. Lekhi, referred to the following provisions of the Government of India Act, 1858:

> "LIX. <u>All Orders of the Court of directors or Board of control given before commencement of this Act to remain in force</u> - All orders, Regulations and Directions lawfully given or made before the Commencement of this Act by the Court of Directions or by the Commissioners, for the Affairs of India shall remain in force; but the same shall, from and after the commencement of this Act, be deemed to be the Order, regulations, and Directions under this Act, and taken effect and be construed and be subject to Alteration or Revocation accordingly."

"LXIV. Existing provisions to be applicable to Secretary of State in Council dtd. All Acts and Provisions Now in force under charter or otherwise concerning. India shall, subject to the provisions of this Act, continue in force, and be construed as referring to the Secretary of State in council in the Place of the said company and the Court of Directors and court of proprietors thereof; and all Enactments applicable to the Officers and Servants of the said Company in India, and to Appointments to Office or Admissions to Service by the said Court of Directors, shall subject to the provisions of this Act, remain applicable to the Officers and Servants continued and to the officers and servants appointed or employed in India, and to Appointments to Office and Admission to service under the Authority of this Act."

According to Shri P.N. Lekhi, after the promulgation of the Government of India Act, 1858, 1833 Act stood repealed and only orders, regulations and directions given or made by the Court of Directors or by the Commissioners for the Affairs of India before the commencement of the Act 1858 would remain in force and no other orders, regulations and directions shall remain in force. He further submitted on the basis of the provisions contained in Section 64 that only those Acts and provisions under any Charter or otherwise if they relate to the whole of India, shall remain in force subject to the provisions of Government of India Act, 1858 and they will be construed as referring to the Secretary of the State of Council in the place of the company, Court of Directors and Court of Proprietors. According to Shri Lekhi, Government General' s order No. 179 ceased to have force after the promulgation of the Government of India Act, 1858, viewed in the light of the provisions contained in Section 59 and 64 of the Government of India Act, 1858. It may be stated here that Section 64 of the Government of India Act, 1858 saves all existing provisions and they shall continue to have force subject to the provisions of 1858 Act. However, under Section 64, it is provided that the Acts and Provisions mentioned there in relate to the Company, the Court of Directors and the Court of Proprietors then in their place, they will be construed as referring to the Secretary of State in Council. So far as Section LIX is concerned, it saves the orders and regulations and directions made by the court of directors or by the Commissioners of the affairs of India. So these provisions do not at all deal with the laws or regulations made by the Governor General of India in Council. It may be stated here that although the Government of India Act, 1833 is superseded by the promulgation of the Government of India Act, 1858,

to the extent provisions are made therein, but 1858 Act does not in any way repeal the laws and regulations made by the Governor General of India in Council. The Government of India Act, 1833 in fact came to be repealed by the Government of India Act, 1915. Section 130 of the 1915 Act repealed the Acts specified in the fourth schedule to the extent mentioned in the third column of that Schedule. Section 130 of the 1915 Act reads as under :-

" 130. The Acts specified in the Fourth Schedule to this Act are hereby repealed, to the extent mentioned in the third column of that schedule:

Provided that this repeal shall not affect-

a. the validity of any law, character letters patent, Order in Council, warrant, proclamation, notification, rule, resolution, order, regulation, direction or contract made, or form prescribed, or table provided under any enactment hereby repealed and in force at the commencement of this Act, or

b. the validity of any appointment or any grant or appropriation of money or property made under enactment hereby repealed, or

c. the tenure of office, conditions or service, terms of remuneration of right to pension of any officer appointed before the commencement of this Act.

(Any reference in any enactment, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations, or orders made under any such enactment, or in any letters patent or other document, to any enactment repealed by this Act. shall for all purposes be construed as references to this Act, led or to the corresponding provision thereof.)

(Any reference in any enactment in force in India, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations or orders made under any such enactment, or in any letters patent or other documents to any Indian legislative authority, shall for all purposes be construed as reference to the corresponding authority constituted by this Act.)

The provision has saved all laws and regulations which are in force at the commencement of 1915 Act. The relevant entry in the Fourth Schedule is as under :

FOURTH SCHEDULE
Acts Repealed

Sessions and chapter	Short Title	Extent of Repeal
.....	.....	.....
.....	.....	.....
3&4 Will.4. C.85	The Govt. of India Act, - 1833	The whole Act, except Sec. 112
.....	.....	.....

From the provision of Section 130 of the 1915 Act, it is clear that the Laws and Regulations which were in force were not repealed. Rather they were saved and even the provision of section 112 of the 1833 Act was not repealed, and this legal position continued, even after 1915. Section 321 of the Government of India Act, 1935 repealed the earlier Government of India Act, 1915 but Section 292 thereof saved the existing law. Section 292 reads as under :-

"292. Existing law of India to continue in force- Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately before

the commencement of part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority."

The Indian Independence Act, 1947 also saved the laws of British India and of the parts thereof existing immediately before the appointed day by Section 18. Section 18(3) is as follows:-

18. Provisions as to existing laws, etc.....

1. .....

2. .....

3. Save as otherwise expressly provided in this Act, the laws of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf."

After the commencement of the Indian Constitution, the position remained the same as Article 372 of the Constitution saved the existing laws by providing,

"372. Continuance in force of existing laws and their adaptation - (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

2. For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provided that the law shall, as from such date as may be

specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

3. Nothing in clause (2) shall be deemed -

a. to empower the President to make any adaptation or modification of any law after the expiration of (three years) from the commencement of this Constitution: or

b. to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause."

Thus the saving which was provided by Section 130 of the 1915 Act continued to remain in force till the enforcement of the Constitution of India. The division Bench of this Court in Raj Singh' s case (supra) dealt with the question in paras 7,8,9,10 and 11 as under :-

7. What is the nature of the regulations contained in Order 179 of 1836 ?. Two answers are possible, namely,

a. that they are statutory regulations issued under Section 43 of the Government of India Act, 1833; and

b. that they are only administrative instructions not issued under any statute.

In support of the first view, it may be pointed out that Section 43 of the Government of India Act, 1833 expressly stated as follows:-

"That the Governor General in Council shall have power to make Laws and Regulations for repealing, amending or altering any laws and Regulations whatever now in force."

The preamble of Order 179 of 1836 purports to rescind the various orders in force till then and to substitute for them the regulations

promulgated thereby.

8. Secondly, the word "regulation" was used for statutory regulations in the later 18th and the earlier 19th century of the regime of the East India Company supervised by the British Government of India. The power to issue regulations was given to the Governor General by the Regulating Act, 1772 as also by the subsequent Acts including the Government of India Act, 1833. The first two volumes of the statute book of those years contained the Bengal regulations and it is only in the third volume that Acts occur along with the Regulations. The position was analogous to the one which obtained in mediaeval England prior to the emergence of the formal Parliament enactment. C.K. Allen in his "Law in the Making", 7th Edn, page 476 quotes the following observation of Professor Plucknett:-

"The great concern of the Government was to govern, and if in the course of its duties legislation became necessary, then it was effected simply and quickly without any complication or formalities."

The learned author then states:-

"These governmental Acts go by a bewildering variety of names ..... ' statute' is a less frequent term than most of the others, and seems to have meant ' something decided on' a provision of a public document, rather than the whole document itself."

Section 45 of the Government of India Act, 1833 states that "all Laws and Regulations made as aforesaid, shall be of the same force and effect within and throughout the said Territories as any Act of Parliament would.". Section 65 of the Government of India Act, 1858 continued "all Acts and provisions now (then) in force." The regulations contained in Order 179 of 1836 were "provisions" of statutory nature and were continued by the Act of 1858. Section 130 of the Government of India Act, 1915 repealed the Government of India Act 1858 but provided that the repeal was not to affect the validity of any "Regulations" issued thereunder and in force at the commencement of the Government of India Act, 1915. These Regulations, therefore, continue in force thereafter, on the principle embodied in Section on 24 of the General Clauses Act, 1897, these

Regulations were continued in force unless and until they were repealed or they were inconsistent with some later enactment. They would, therefore, be deemed to be in force in view of Article 272(1) of the Constitution.

9. Thirdly, the words in the preamble of the Order such as "to rescind the various orders now in force" "the following regulations, which are to have effect from the date of its promulgation" indicate that the orders which were rescinded and also the regulations which were promulgated were both of a statutory nature. Such language is not used for mere administrative instructions.

10. Fourthly, all or almost all Bengal Regulations have been regarded as statutory in their nature. These are also Bengal Regulations and there is no reason why they alone should be regarded as purely administrative.

11. Lastly, it is true that the preamble does not expressly state that the regulations were issued under Section 43 of the Government of India Act, 1833. But it is well established that if the power to issue regulations vested in the Governor General in Council thereunder, then even without the recital of the source of the power the regulations would be deemed to have been issued thereunder. The same view has been expressed by the Allahabad High Court in Sri Harain Khanna V. The Secretary of State for India in Council. First Appeal No. 166 All 723) by Bannet, Acting C.J. and Verma, J. and Smt. Bhagwati Devi V. The President of India, civil Misc. Writ Petn. Eo. 520 of 1969 decided on 26.11.1971 (All) by Lokur.J.

On the other hand, the Central Government or rather their legal advisers do not seem to have appreciated the above legal position but have proceeded on the assumption that these are executive orders and not statutory regulations. The reason seems to be that these regulations were repeated in Bengal Army Regulations 1855, 1873 and 1880. Army Regulations India, 1887 and the Cantonment codes of 1895 and 1912. It is to be investigated whether the latter were issued under any statue or not. When the Cantonment Act, 1925 was passed, clauses (a) and (b) of sub-section (2) of Section 280 empowered the Central Government to make Rules relating to the grant of cantonment land and conditions on which it should be granted. It is to be noted that by the time the Cantonment Codes of 1895 and 1912 came to be formed, the policy of the Government had

undergone a change. It was then decided that the cantonment land should be granted not on the "old grant" terms but as leases. But the "old grant" terms continued to govern the grants previously made, This is shown by Rule 6(iii) of the Cantonment Land Administration Rules, 1937 which is as follows:-

"Class "B" (3) 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 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."

The words "executive orders previously in force" used therein would show that the "old grant "terms were understood to be executive in their nature. Similarly on 20th March, 1970, the President issued an executive order laying down the policy for resumption of grants and leases. The very fact that under the "old grant" terms, a grant could be resumed at the pleasure of the Government while under the Presidential order it could be resumed according to the "old grant" terms provided that the resumption was necessary for a public purpose would show that the Presidential Order modified the "Old grant" terms administratively. In so far as such modification was inconsistent with the "old grant" terms, it could be effective on the assumption that the "old grant" terms themselves were administrative. The Allahabad High Court in Raghubar Dayal V. Secretary of State for India in council, ILR (1924) 46 All 427 = (AIR 1924 All. 415) and Thakur, J. of the High court of Himachal Pradesh in Durga Das Sud V. Union of India, AIR 1972, HP 26, have expressed the view that the ' old grant' terms were executive in their nature. In the present case, it is not necessary to decide which of the above two views is to be referred. For our decision would be the same on either of the alternative hypotheses.

The Division Bench reached the conclusion that the Order no. 179 has a statutory force and is an existing law or law in force.

This question also came up for consideration before the Full Bench of Allahabad High court in **Mohal Aggarwal V. Union of India and others.,** AIR 1979 Allahabad, 170 (Lucknow Bench). The question was, whether the Bengal Army Regulation Governor General Order No. 179 dated September 12, 1836 continues to be law in force in India even after the enforcement of the

British Statues (Application to India) Repeal Act (LVII of 1960). Shri Hari Swarup, J. speaking for the Courts traced the history of all the relevant Acts and answered the question in the affirmative. It would appear from the question referred to the Full Bench that the Governor General' s Order No. 179 was held to be ' Law in force' taking that particular Order to be law.

Shri S.K. Mahajan, learned Government Counsel also referred to the Division Bench decision of the Patna High Court in **Jahanara V. Government of India,** Civil Writ case no. 1947 of 1970 and four other petitions decided on 22nd September, 1973. In that case, the Governor General' s Order No. 179 was inter alia, challenged and one of the contentions was that issuance of notices under the Governor General' s Order no. 179 of 12th September, 1836 had no force of law, as the said order was superseded by various subsequent Acts. This contention was negatived and it was held that there was no merit in the contention advanced by counsel appearing on behalf of the petitions. The Division Bench comprised of Mr. Justice Shambhu Prasad Singh and Hon' ble Mr. Justice B.D. Singh, considered the nature of the grant to the predecessor in interest of the petitioners and reference was made to the terms of the grant and the decision of the Division Bench in Raj Singh' s case, (supra).

Shri Lekhi, learned counsel for the petitioners, submitted that although this court has already held that the Governor General' s Order in question has a statutory force as it was promulgated in exercise of the legislative authority but he submitted that regulations were not made in the form of a Governor General' s Order. By reference to some decisions reported in Moore' s Indian Appeals, he tried to emphasise that the regulations used to be made by the British Parliament. Shri Lekhi referred to **Maha-Rajah Mitter jeet Singh. Vs. The Heirs of the Late Ranee. Widow of Rajah Juswant Singh.** 1842 Moore' s Indian appeals, page 42. There is a reference to regulation of 1844. **Rajah Deedar Hossein Vs. Rance Zuhoor-oon Nissa,** Moore' s Indian Appeals, page 441, was a matter under Regulations 11 of 1773 and 12 of 1800. From the citation of these cases, in our opinion, it cannot be said that the form of legislation was only in the manner as has been contended by Shri P.N. Lekhi. A perusal of the Governor General' s Order 179 dated 12.9.1836 would show that nowhere in that order, it is stated that it is ' Governor General' s Order' . It simply gives the ' no' and its ' date' . As it was a Regulation made by the Governor General of India in council, so on that basis, it came to be described as the Order of the Governor

General of India in Council, so on that basis, it came to be described as the Order of the Governor General of India in council. So, we do not find any force in this submission of Shri P.N. Lekhi that the form of legislation was a different one than the form which we find in order No. 179 of 1836.

The other submissions of Shri P.N. Lekhi as well are without any force. What were saved by section LIX and LXIV were the Orders, Regulations and Directions of the Court of Directors or the commissioners for the Affairs of India. That does not mean that regulations made by the Governor General of India in Council were repealed. The Acts and provisions made under the charter or otherwise need not be concerning whole of India. We have already adverted to this aspect earlier. However, we may further state that the Laws and Regulations enacted or promulgated by the Governor General of India in Council were not repealed by the 1858 Act. On the contrary, by the 1915 Act, they were saved by the provisions contained in Section 112. The very fact that 1833 Act was repealed by 1915 Act shows that by the 1858 Act, 1833 Act was not repealed. There may be a case of implied repeal of any inconsistent provisions. But in any case, by Section 130 of the 1915 Act, all Regulations which were in force at the commencement of that Act were saved. We do not agree with the submission of Shri P.N. Lekhi that with the repal of the charter Act of 1833 and subsequent constitutional statutes, laws made in exercise of the legislative power also stood repealed. That may be true of ordinary laws when they are repealed but the same is not true when the constitutional statutes are repealed. There are two decisions supporting the contention of Shri P.N. Lekhi. One is **Raghbar Dayal V. Secretary of State,** AIR 1924 A11., 415, but that stands overruled by the Full Bench Decision in Mohan Agarwal V. Union of India and others (supra). So, no support can be taken from the decision in Raghbir Dayal s case. Another S.B. decision is of Himachal Pradesh High Court in Durga Dass Sud and another V. Union of India and others, AIR 1972 H.P. 26. In that case, no doubt, it was held that the Governor General' s Order no. 179 of 12.9.1836 was purely an executive order without any statutory sanction behind it. So, it was not an existing law. The action of the Military Estates Officer in resuming the possession of the land and the building of the petitioner was held to be illegal and that it had no sanction of any statutory law. We are unable to agree with the view taken in that decision for the reasons which have already been considered above. The other two decisions are namely, **Phiroze Tenulzi Anklesaria v.H.C. Vashistha and others,** AIR 1980 Bom.9, and **Union of India vs. Purshotam Dass Tandon**

and another, 1986 (Supp) S.C.C. 720. These decisions have turned on the merits of the question relating to ownership and title and while examining that question the evidentiary value of the entries in the General Land Register regarding old grant tenure has been considered. They do not directly deal with the question of statutory character of the Governor General' s order.

Thus, in the light of what we have considered above, we are clearly and firmly of the opinion that Governor General' s Order in Council no. 179 dated 12.9.1836 had a statutory force and is existing law and law in force. No other contention has been advanced before us. There is no force in these petitions and so, they are hereby dismissed, leaving the parties to bear their own costs.

Sd/- M.C. Jain
Chief Justice

March 5, 1991.
hcs

Sd/- Arun Kumar
Judge.

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1868 OF 1979.

UNION OF INDIA AND ORS .....APPELLANTS

VERSUS

HARISH CHAND ANAND .....RESPONDENT

ORDER

This is an appeal by Certificate granted by the High court by order dated December 14, 1978 with a question as under :-

> "Whether the only right of the grantee is to claim compensation and whether the Government can take possession at any time after expiry of one month in view of Governor General' s Order No. 179 dated 12th September, 1836?"

In view of the Certificate granted by the High Court under Art. 133(1) of the Constitution, the question arises whether the state is entitled to resume land granted under S.3 of Government Grant Act. 1895 without prior determination of the amount for the structure. Though the respondent has been served, he has not appeared, wither in person or through counsel. We have taken the assistance of counsel for the appellant and we have perused the judgment of the Delhi High Court reported in **Sh. Raj Singh** V **Union of India.** (AIR 1973 Delhi 169) and the Division Bench judgment of the High Court of Allahabad reported in Bhagwati Devi v. President of India , (1974 (72) Allahabad Law Journal, 43) which was relied on and followed by the division bench in this case to hold that it is condition precedent that the State should give notice to the respondent, determine the compensation and then resume the property granted to the respondent. The question, therefore, is whether it is a condition precedent for the Government to resume the land only after determination of the compensation and payment thereof or on the issuance of the notice as required under the Grant and on expiry thereof. To appreciate the contention, it is necessary to look to the provisions of the Grant itself. Under s.3 of the Act, the Governor General in council exercised the power and granted licence to the respondent to erect the structure on the Government land. The conditions of the Grant are :

"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:-

Ist : The Government to retain the power of resumption 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."

The other clauses are not relevant for the purpose of this case. Hence they are omitted.

In the Order No. 179 of 1836, the Governor General in council had issued the regulation empowering the Governor General to rescind authorised orders in force till then and to substitute for them by regulations. The regulations in order No. 179 of 1836 are statutory regulations made by the Governor General in Council in exercise of his statutory power. The covenants for the Grant clearly empower the Government retaining its power of resumption at any time. The conditions precedent are to issue one month' s notice and payment of the value of such building as may have been authorised to be erected.

The Division Bench of the Delhi High Court has left open the question of mode of determination of the value of the building to be determined in accordance with the relevant provisions of the law. The Division Bench of the Allahabad High Court in Bhagwati Devi' s case, (supra) in paragraph 7, had held that though the Government is entitled to resume the land, the grantee is entitled to a prior opportunity to represent his case before the competent authority in determination of the value of the building and for payment of the value of such building resumed by the State.

It would appear that detailed instructions in that behalf were made in the Standing Order No. 241 which was produced before the Division Bench of the High Court of Allahabad in which Military Engineer was instructed to evaluate the value of the building which was resumed by the Government for payment of the amount to the erstwhile licencee. We are not concerned in this appeal as to the method of valuation. Suffice it to state that the order No. 241 though does not contemplate of issuing prior notice to erstwhile licencee whose licence has been determined under Clause I of the Grant, before determination of the actual amount,

the erstwhile grantee is entitled to a notice, so that the grantee would be at liberty to place before the competent authority all relevant material for determining the value of the building and for payment of the amount thereof. 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.**

The appeal is accordingly allowed, but since the respondent is not present without costs.

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(K. Ramaswamy)

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(K.S. Paripoornan)

New Delhi :
July 26, 1995.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CIVIL WRIT PETITION NO. 919 OF 1979

SHRI JYOTI PRASAD JAIN .....PETITIONER

VERSUS.

THE UNION OF INDIA & ORS .....RESPONDENTS

ORDER

As early as 11th March, 1980 this Court passed an order directing the petitioner to give security either in cash or otherwise for amounts recoverable from him or claimed from him upto the end of 1979. Thereafter, he was required to pay mesne profits regularly in cash every moth. Pursuant to the said order, the petitioner by his letter dated 18.7.1981 offered to furnish security by bond in respect of part of B.N. 173, Abu Lane, Meerut Cantt which on scrutiny was not acceptable to the respondent and this was conveyed to him by the Military Estate Officer, Meerut Circle by letter dated 26.10.1981. The petitioner was advised in his own interest to furnish security in the shape of bank guarantee without further loss of time. Thereafter, by the letter of 13th November, 1981 he was once again reminded that he had failed to furnish the security indicated earlier. It, thus, appears that thereafter no action was taken by the petitioner and he virtually forgot the obligation to furnish security. Year after year has rolled by but he has not furnished the security. The court' s order has, thus, not been complied with. Non-compliance with the court' s order must result in the dismissal of this petition.

We, therefore, dismiss this petition for failure to comply with the Court's order of furnishing security with costs.

Sd/-

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Sd/-

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(S.C. San)

New Delhi
September 19, 1995.

Sd/-

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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

ORDERS

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 the 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 respondents 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 rights there on subject to the conditions mentioned therein. For the erection or re-erection of a buildings, a licence from the Cantonment Board is

required as a pre-condition under the Act. Section 181 of the Act in the behalf covers the field. Sub-s (3) thereof reads thus :-

> "(3) The Board, before sanctioning the erection or re-erection of a building on land which is under 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 reerection; and the Military Estates Officer shall return the application together with his report there on 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 Estate Officer' , Defence Estate 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 Estate Officer' . Admittedly, prior permission was not obtained from 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 thereto, 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 not 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 there-after 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 reason 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. 2886 OF 1977

THE PRESIDENT OF INDIA & ANR. .....APPELLANTS

VERSUS

MAN MOHAN AGARWAL & ORS. ..... RESPONDENTS

WITH

CIVIL APPEAL NO. 1336 OF 1978

ORDER

The controversy raised in these appeals is covered by the judgment of this Court reported in Union of India vs. Harish Chand Anand (JT 1995(6) SC 144). The appeals are accordingly allowed. NO costs.

Sd/-

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(K. Ramaswamy)

New Delhi
February 8, 1996

Sd/-

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(G.B. Pattanaik)

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 plaintiff in civil Suit No. 7A 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 house, 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 the 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 the 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 subsequenly after giving opportunity to the grantee and payment 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 moth' s notice had been given prior to such resumption, there was no reason to grant perpetual injunctions against the defendants appellants. Therefore, this appeal must succeed. We allow the same by setting aside the impugned judgement. 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 order as to cost in the appeal.

Sd/-

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(G.N. Ray)

New Delhi
March 19, 1998

Sd/-

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(G.B. Pattanaik)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3525 OF 1983
WITH
CIVIL APPEAL NO. 6011 OF 1983

UNION OF INDIA & ANR. ..... APPELLANTS

VERSUS

TEK CHAND & ORS .....RESPONDENTS

O R D E R

We have Heard learned counsel and are satisfied that the view taken by the High Court is correct. We may point out that the judgment of the Delhi High Court in the case of Raj Singh vs. Union of India (AI 1973 Delhi 169) following therein has been approved by this court in the case of **Union of India & Ors. vs. Harish Chand Anand** (1995(4) Supp. SCC 113). though it must be said that the issue before this Court was much narrower than that before the Delhi High Court. In any event, we find that the view taken by the Delhi High Court is the appropriate view in the circumstances and we do not approve of the contrary view taken by the Himachal Pradesh High Court in **Durga Dass Sud & Anr. vs. Union of India & Ors.**(AIR 1972 HP 26). This would dispose of the appeal by the grantee.

So far as the appeal by the Union of India against the same judgement is concerned, we find no reason to interfere with the directions given in the individual case to hear the grantee on the aspect of the compensation.

The appeals are dismissed. No order as to costs.

Sd/-

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Sd/-

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(V.N. Khare)

New Delhi
January 5, 1999.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 219 OF 1980

PRESIDENT OF INDIA & ANR.. ..... APPELLANTS

VERSUS

LAXMAN DAS & ORS .....RESPONDENTS

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.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8484 OF 1997

CHIEF EXECUTIVE OFFICER.. ..... APPELLANTS

VERSUS

SURENDRA KUMAR VAKIL & ORS. .....RESPONDENTS

JUDGMENT

Mrs. Sujata V. Manohar, J.

These appeals pertain to a property admeasuring 11.37 acres comprising survey No. 392 and known as Bungalow No. 39, Sagar Cantonment. As per the General Land Register maintained under the Cantonment Land Administration Rules of 1925, the said property is shown as held on 'old grant' terms and stands in the name of Shri. S.N. Mukherjee. The site is described as B-3 land and is placed under the management of Defence Estate Officer, Jabalpur Circle, Jabalpur.

According to the respondents, by a sale deed dated 27th of September, 1927, S.N. Mukherjee and his wife, Sarjubala Devi, purchased the said property together with the adjoining Bungalow No. 40 from one Pandit Murlidhar Dubey. The terms of the sale deed, however, do not disclose the nature of the rights possessed by Dubey over the land comprising Bungalow Nos. 39 and 40.

S.N. Mukherjee who was the occupancy holder as recorded in the General Land Register died in the year 1972 leaving behind 11 legal heirs. Bungalow No. 39 which is the subject matter of the present appeals, however, was not mutated in the names of the legal heirs since they did not apply for mutation. By four registered sale deeds dated 26.2.1983, the heirs of S.N. Mukherjee sold the entire property consisting Bungalow No. 39 in favour of 24 persons who are the respondents. One Gopal Das Soni obtained power of attorney from both the vendors as well as the vendees for dealing with the said property and taking all proceedings in connection with it.

In the said sale deeds the property was described as leasehold land of the Cantonment Board and it was stated that the purchasers will have to abide by the terms and conditions on which this land was held in the name of the ancestors of the sellers. It was further provided that the purchasers will have the same rights which the sellers were having on the place sold to them. Thereafter by four amendment (admission) deeds dated 4/5.8.1983, the power of attorney holder on behalf of the vendors stated that in the said sale deeds, due to a typographical error, the land was shown as leasehold type whereas it should have been described as ' old grant' type. Therefore, by the amendment deeds the said description was being changed to ' old grant' type.

By his letter dated 26.8.1985 addressed to the Military Estate Officer, Jabalpur Cantonment, the power-of-attorney holder informed the Military estate Officer that Bungalow No. 39, Survey No. 392, Sagar Cantonment, was held in the name of S.N. Mukherjee. He had died on 13.7.1972 leaving behind 11 legal heirs had sold the said property in favour of 24 respondents (whose names were set out in the letter) by virtue of 4 sale deeds of 26th of February, 1983. By the said letter he requested that the above named Bungalow No. 39 may be transferred in the records of the Military estate Officer, in the name of the

purchasers. Thereafter correspondence ensued between the parties. The Military Estate Officer on 3.10. 1983 issued a notice to the Vendors as well as the Vendees stating there in that the said area is held on ' old grant' terms in the name of S.N. Mukherjee in the records maintained in his office. He further stated that the Vendors divided the entire land into four portions without obtaining the prior sanction of the competent authority in contravention of the terms of the grant on which the site was held and that the sale in favour of the purchasers was also without obtaining the prior sanction of the competent authority and in contravention of the terms of the grant, which would attract action for resumption of the site. The notice asked the purchasers as well as the sellers to show cause why action for resumption of the site be not taken against them. In his reply dated 15.10.1983 the power-of-attorney holder stated that as per the terms of the ' old grant' the sellers were having occupancy rights in respect of Bungalow No.39 and, therefore, the sellers have transferred those rights to the purchasers. The sellers were not aware that prior permission of the Military Estate officer was required before such sale; otherwise they would not have sold the bungalow without obtaining prior permission. He asked for pardon for this uninternational lapse and stated, inter alia, the reason for executing four sale deeds instead of one.

By cancellation deed dated 30.10.1984 the parties cancelled the amendment/admission deeds of 4/5.8.1983. Supplemental deeds of 18.6.1985 were also thereafter executed setting out that the purchasers would have the same rights as S.N. Mukherjee had over the said property.

The Cantonment Estate Officer, Sagar, by his letter dated 28.12.1984 advised the power-of-attorney holder- Soni to submit building plans and obtain permission for construction work on the said property. However, according to the appellants, Soni started construction work without waiting for permission. The building application/ plans which were submitted by Soni, were sent by the

Cantonment Executive Officer to the Defence Estate Officer, Jabalpur. But the same were returned duly rejected on 6.3.1985. Despite rejection, according to the appellants, Soni continued the construction work. Ultimately, a notice was issued by the appellants on 15.4.1985 to Soni advising him to desist from raising any unauthorised construction in the said premises. An appeal filed by Soni and others under section 274 of the Cantonment Act, 1924 before the appellate authority was dismissed by the appellate authority on 28.8.1985.

Thereafter the purchasers filed the present civil suit in the court of the Additional District Judge, Sagar, praying that they be allowed to enjoy the property peacefully without any interruption from the appellants and their agents. The prayer was subsequently amended and a declaration of title over the said land was asked for by the purchasers. The suit has been decreed by the trial court and the first appeal has been dismissed by the High Court of Madhya Pradesh.

The narrow question is whether the land was held by S.N. Mukherjee on old grant basis or not. The land is in the Cantonment area of Sagar. Grant of land in Cantonment areas was, at all material times, governed by the general order of the Governor General in council bearing No. 179 of the year 1836, known as the Bengal Regulations of 1836. Under Regulation 6 of these Regulations, conditions of occupancy of lands in cantonments are laid down. Thereunder, no ground will be granted except on the conditions set out therein which are to be subscribed to by every grantee as well as by those to whom his grant may be subsequently transferred. The first condition relates to resumption of land. (1) The 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 authorised to be erected. (2) 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 certain cases. (3) 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.

The High Court in its impugned judgment has reproduced extracts from the book on Cantonment Laws by J.P. Mittal, 2nd Edition at page 3, which may well be reproduced here :-

"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 Government of Bengal. Madras and Bombay presidencies between the years of 1789 and 1899. The regulations were mostly of an identical nature. They had a two fold 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 (AIR 1973 Delhi 169, AIR 1979 ALL 170).

Under these regulations and orders, officers not provided with Govt. quarters were allowed to erect houses in the cantonment. For this purpose ground was allotted to them with the condition that no right of propriety 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 Govt. 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 Govt. land in the cantonment on the same condition of resumption of the ground as given above and with a further condition that 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 Govt. 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."

Under Section 280 of the Cantonments Act, 1924, power was given to the Governor General in Council to make rules for the purpose of carrying out the objects of the Cantonments Act, 1924. In particular, these rules could provide for : (a) The manner in which and the authority to which application for permission to occupy land belonging to the Government in a cantonment is to be made: (b) The authority by which such permission may be granted and the conditions to be annexed to the grant of any such permission. In the exercise of this power, the Cantonment Land Administration Rules, 1925 have been framed. These Rules as amended upto 21.12.1935 are produced before us. Under Rules 3 of these Cantonment Land Administration rules the Military Estates Officer of the Cantonment shall prepare and maintain a general land register of all land in the Cantonment in the form prescribed in schedule I and no addition or alteration thereto shall be made except as provided therein. Under Rule 4 of the Rules in force in 1936, the Military Estate Officer was required to maintain a Register of

They were, therefore, unable to produce the file pertaining to this grant. They do, however, have in their possession general land registers maintained under the Cantonment Land administration Rules of 1925 in which they are required by these rules to maintain a record, interalia of the nature of the grant in respect of cantonment lands and the person in whose favour such grant is made. Both these registers are very old registers. They bear the endorsement of the officer who has maintained these registers in the regular course. These registers also show any subsequent changes made in respect of the lands under the relevant columns. Both the registers clearly show that the land is held on old grant terms by Mukherjee. The High Court seems to have rejected the record contained in the land grants registers on the ground that the terms of the grant have not been established because the document of grant itself has not been produced. The terms of the grant, however, are statutorily regulated under order No. 179 of the Governor General in Council of 1836. The administration of lands in Cantonment areas is further regulated by the Cantonment Act, 1924 and the Cantonment Land Administration Rules of 1925. The 1836 Regulations expressly provide that the title to the land in cantonment areas cannot be transferred. But only occupancy rights can be given in respect of the land which remains capable of being resumed by the Government in the manner set out therein. There is no evidence to the contrary led by the respondents. In fact, under the amendment/admission deeds executed on 4/5.8.1983 the Vendors as well as the purchasers have stated that the site is wrongly mentioned as lease hold site instead of ' old grant' site in the four sale deeds. The mistake is being rectified by the execution of the four amending deeds clarifying that the Bungalow No. 39 is held on ' old grant' . Undoubtedly, this was later retracted when cancellation deed was executed cancelling the amendment/admission deeds. Nevertheless, all the statutory provisions clearly indicated that the land being in the cantonment area was held by Mukherjee only as an occupant/licensee and that any transfer of the bungalow and other constructions on the said land required prior approval of the defence establishment. The power of attorney holder also corresponded with the Defence

establishment and asked for mutation in favour of the purchasers.

However, even after they were expressly informed by the appellants of the need for prior permission before transfer, as well as for any further construction on the said land, the respondents proceeded with the construction work resulting in the notice to desist issued by the appellants under Section 185 of the Cantonments Act, 1924. The said section provides that the Board may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Board considers that such erection or re-erection is an offence under Section 184. The Board also has power to direct the alteration or demolition of such unauthorised structure. On the facts before us, this action cannot be faulted.

The respondents drew our attention to a decision of this Court in the case of **Union of India v. Purshotam Dass Tandon and another** (1986 (supp.) SCC 720), where this Court observed that the Union of India had made no effort to establish its title and the grant had not been produced. Hence the terms of the grant or the date of the grant were not known. Therefore, the Union of India could not succeed in its title and the grant had not been produced. Hence the terms of the grant or the date of the grant were not known. Therefore, the Union of india could not succeed in its contention that the land in the cantonment was held on old grant basis. In the present case, however, apart from the requirements of Order No. 179 of Governor General in Council, 1836, the general land register maintained under the Cantonment Land Administration Rules of 1925 has been produced which supports the contention of the appellants that the land is held on old grant basis. The appellants have also led evidence to show that the file containing grant in respect of the said property, is not available with them because it has been stolen in the year 1985... The respondents on the other hand have not produced any document of title pertaining to the said land or

showing the nature of the rights of the respondents over the said land except the sale deeds referred to earlier. The stand of the respondents relating to their rights over the said land has changed from time to time. In the sale deeds executed by the Vendees in favour of the respondents, the land is described as lease hold cantonment land. This was later changed by the respondents in the amendment deeds to old grant land. In the suit, the respondents have contended that they have become the absolute owners of the said land. These bare assertions do not carry any conviction. Had there been any conveyance or lease in respect of the said lands executed in favour of the respondents or their predecessor in title, such conveyance or lease should have come from their custody. There is, therefore, no document before the Court which would show that the respondents were the absolute owners of the said land as now contended by them. The Regulations as well as the general land registers, on the other hand, which are old documents maintained in the regular course and coming from proper custody, clearly indicate that the land is held on old grant basis. This is, therefore, not a case where the appellants had not produced any evidence in support of their contention that the land in the cantonment area was held on old grant basis by Mukherjee.

The respondents have drawn our attention to the decision in the case of **Shri Krishan v. The Kurukshetra University, Kurukshetra (AIR 1976 SC 376)** for showing that any admission made by them in ignorance of legal rights cannot bind them. This judgment does not help the respondents because the fact remains that the respondents have taken a changing stand in relation to the nature of their rights over the disputed land. The admissions, at least, indicate that the respondents were, at the material time, not sure about the exact nature of their right over the said land. Hence they have at one stage described the nature of their rights as lease hold, at another stage as old grant and at a third stage they have retracted from their admission that the land was ' old grant' . The last deed

merely states that they have the same rights as their vendees had in the said land. Looking to the nature of evidence, therefore, which was led in the present case, the High Court was not justified in coming to the conclusion that the land was not held on old grant basis by Mukherjee.

Therefore, since the land is held on old grant basis in the present case, the appellants are entitled to resume the land in accordance with law. In the premises the appeals are allowed, the impugned judgment and order of the High Court is set aside and the suit of the respondents is dismissed with cost.

Sd/-

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(Sujata V. Manohar)

Sd/-

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(R.C. Lahoti)

New Delhi :

March 23, 1999.