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विभाग	
संख्या	
दिनांक	
प्रति	
व्यक्ति	
पता	

NO:701/899/RD/DE/EVACUEE.GEN/89
 Government of India,
 Ministry of Defence,
 Dte General Defence Estates,
 West Block-4, RK Puram,
 New Delhi - 110 066.

83 #4/L
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Dated :

1 June '89.

The Director, Defence Estates,
 Central / Southern / Western / Eastern / Northern Commands
 Lucknow / Pune / Panchkula / Calcutta / Jammu
 NIMA/Agarut.

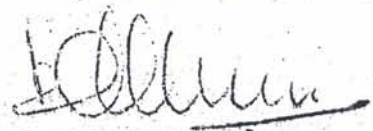
SUB: Rights in Evacuee property in Cantonments
 disposed off by the Rehabilitation Department.

.....

There exists some confusion, and misunderstanding in some offices on the nature of rights in the land/buildings in the Cantonments that became evacuee property and which were sold subsequently through auction or otherwise by the Rehabilitation Department with somebody. Even when a transfer deed granted/executed by the Rehabilitation Department manifests transfer of "free-hold" rights, such rights do not become available to the purchaser. He can derive only the rights the evacuee was entitled to at the time of his emigration or partition of the Country. The basis of this has been clarified in paras 15 to 41 of an appellate order dated 15-9-83 passed by Director, DL&C Central Command in respect of proposed constructions on Sy No. 57, B.L.69 Bareilly Cantonment on a case of Smt. Sushila Rani Tandon. A copy of the said order is annexed to this. Paras 24 to 32 and 36 to 40 therein make the legal position quite clear. All doubts regarding the nature of rights to be reckoned should be decided on this basis.

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Director General
 Defence Estates
 (K.M. Sebastian)

Copy to :-

- All Defence Estates Officers.
- All Cantonment Executive Officers. All ADEOs.
- for information. As regards the offices in Central Command, Dte, DL&C, Central Command letter No. 36755/A/102 dated 24-2-84 refers.

Lands Sec
 36755/A

626

DIRECTOR, DEFENCE LANDS AND CANTONMENTS, CENTRAL COMMAND,
LUCKNOW FUNCTIONING AS APPELLATE AUTHORITY UNDER THE
AUTHORITY OF THE CENTRAL GOVERNMENT, VIDE SPT NO.
115 DATED THE 4TH JULY '83 PUBLISHED IN GAZETTE OF INDIA
PART II SECTION 3 DATED 16, 1978 IN THE MATTER OF
APPEAL TO THE GENERAL OFFICER COMMANDING-IN-CHIEF THE
CENTRAL AREA THE OFFICERS OF THE CANTONMENT BOARDS UNDER
SECTION 107 OF THE CANTONMENTS ACT, 1924 AND IN THE MATTER
OF THE PETITION BY THE CANTONMENT BOARD BAREILLY OF THE
EXISTING NOTICE DATED 27 FEB 83 SUBMITTED BY SMT. SHAKUNTALA
RANI TANDON, SEEKING SANCTION OF THE CANTONMENT BOARD TO
ERECT CERTAIN BUILDINGS IN THE COMPOUND OF BUNGALOW
No. 59 (SY. NO. 57) BAREILLY CANTONMENT.

Place: Premises of the Cantonment Board Bareilly used
as the Camp office of the Appellate Authority.

Date: The 12th day of September 1983.

Present

- (1) Shri P.K. Kumaran, Director, Defence lands & Cantonments,
Central Command, as Appellate Authority.
- (2) Smt. Shakuntala Rani Tandon - Appellant.
- (3) Shri Sanjiv Tandon s/o Appellant, for the Appellant.
- (4) Shri V.K. Shrivastava, Executive Officer, Cantonment
Board Bareilly for and on behalf of the Cantonment
Board Bareilly - Respondent.
- (5) Shri K.N. Kumar, Military Estates Officer,
Bareilly Circle, Bareilly - As witness for
Respondent and intervenor.

1. The appeal under consideration is what is appended
as Annexure (A) to the Writ Petition No. 987/82 filed in
the High Court of Delhi in Smt. Shakuntala Rani Tandon
Vs. Union of India and others.

2. The appeal was received through the Government
Counsel who appeared for the Union of India before the
High Court on the 5th Jan. '83. She received the same
from the Petitioner's (Appellant's) Counsel that day on
the directions of the Court.

3. The appeal purports to be against the order communicated vide Cantonment Board Bareilly letter No.3/A/XX/E-9 dated 19/X/1981, based on the Cantonment Board Resolution No.4 of 19.9.81. The order appealed against had been served on the Appellant (through her husband Sri K.N. Tandon) on 21/X/81.

4. According to the Affidavit filed by the Appellant before the High Court with the said Writ Petition on 8.4.1982, the writ petition came up for preliminary hearing before the High Court and after hearing the arguments the Court was pleased to adjourn the hearing for 17.5.82 to enable the petitioner to file an appeal as provided under section 181 of the Cantonments Act, 1924. She claimed to have filed an appeal dated 14th April 1982 as annexed at Annexure 'A' to the affidavit. She also claimed that it had been sent on 16th April 1982, along with a letter dated 14.4.82 to the General Officer Commanding-in-Chief, Central Command, by Registered Post. It is observed that the said Annexure 'A' is not seen dated.

5. No appeal was received by the Appellate Authority until, a copy of the said Annexure 'A' was transmitted through the Counsel for the Union of India dealing with the said Writ Petition. During the hearing of the appeal the Appellant showed me the postal receipt for having sent a Registered letter addressed to the GOC-in-C on 16.4.82.

6. From the affidavit of the Appellant, it is apparent that no appeal had been filed by her against the order of the Cantonment Board received on her behalf on 21st Oct, 1981, before 16, April 1982.

7. Section 181 of the Cantonments Act, 1924 does not deal with any appeal, but section 274 *ibid*, however, deals with appeals. In fairness to the Appellant, her appeal attributed to be dated 14, April 82 is treated as an appeal under section 274 of the Act.

8. Section 274 of the Cantonments Act, 1924, under which an appeal may be filed against the order of the Cantonment Board passed under section 181 of the Act, runs as follows :-

"274

- (1) Any person aggrieved by any order in the second column of Schedule V may appeal to the authority specified in that behalf in the third column thereof.
- (2) No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the said Schedule. "

9. The period of limitation specified in the Schedule is "thirty days from the date on which the refusal shall have been communicated to the person, applying for sanction".

Hence the period of limitation to file an appeal expired on 20 Nov. 181. No appeal was filed or received within this period. According to the affidavit of the Appellant she sought an opportunity from the High Court to file an appeal only on 8.4. 182 and she sent an appeal on 16 Apr. 182.

10. On facts, and on the affidavit of the Appellant, the appeal is time-barred. Even if the date of appeal is treated as 16 April 182, a period of nearly six months had passed after receipt of the Cantonment Board's order appealed against. Satisfactory explanation has not been offered by the Appellant why the appeal could not be filed within the prescribed period of limitation or within a reasonable period. Her defence: "the appeal is filed beyond time because no hearing was given to me before rejection of the building plans" is not rational or acceptable. It can be a ground for appeal; but not a ground for not filing appeal in proper time.

11. Even though the Appellate Authority is mandated not to admit the appeal vide section 274(2) of the Cantonments Act, 1924 in deference to the instructions of the High Court, I am ignoring this, and examining the appeal on merits.

..... 4/-

12. The Appellant, the Respondent Cantonment Board and the Intervenor MEO were heard by my learned predecessor on the 21st Feb. 1983. He found that reasons, as required under section 181(5) of the Act, had not been given to the Appellant by the Cantonment Board for the refusal to sanction the building notice submitted by the Appellant. He remitted the case back to the Cantonment Board and directed them to convey reasons, after ascertaining from the MEO, and to convey the same to the Appellant and the Appellate Authority so as to reach not later than 04 March 1983.

13. After considering the specific reasons communicated by the MEO regarding his views expressed under section 181(3) of the Act, the Board vide Resolution No. 2 at their Special meeting held on the 28th February 1983 recorded the detailed reasons for rejecting the building application submitted by the Appellant. This together with the associated documents relied upon by the Board were sent to the Appellant vide Cantonment Board letter No. CBB/Bung 69/H. Court/XXX dated 28.2.1983 and was received by the son of the Appellant, on her behalf, on the 01st March 1983.

14. The Appellant had been called upon to submit her reply to the above letter by the 19th March 1983, vide the Appellate Authority's letter No. 45753/LC2 dated 3rd March 1983, received by her on 04 March 1983. Her reply dated 11, March 1983 was received on 16, March 1983. The Respondent also was furnished a copy of the same.

15. The Appellant has sought orders quashing the resolution of the Cantonment Board and the objections of the M.E.O., and the Executive Officer on the following grounds :-

- (1) Land comprising B.No.69 is not under the management of the Central Government.
- (2) The MEO has no jurisdiction.
- (3) G.G.O. No. 179 of 1836 does not apply to the bungalow.

- Drop*
- (4) Certificate of sale under rule 90(15) of the rules framed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 had been granted to her and registered. That shows the property as her free hold.
 - (5) Appellant is the absolute owner with free hold rights given by the Central Government by registered sale deed dated 10th Dec. 1963.
 - (6) Section 181(3) of the Cantonments Act, does not apply.
 - (7) Sub-section (5) of section 181 of the Act had been violated.
 - (8) In the past the MEO and the E.O. had always recognised the Appellant as an undisputed absolute and full owner of Bung. No. 69.

16. The Appellant requested that the documents referred to and/or appended to her appeal and in her Writ Petition No.987/82 in the High Court of Delhi be relied upon. She was given an opportunity before me on 12.9.83 to introduce any other documents or oral evidence in support of her claims and views. She was also given opportunity to examine and comment on the documents/arguments adduced/referred to by the Cantonment Board and the Military Estates Officer. Like-wise the Executive Officer, on behalf of the Cantonment Board and the Military Estates Officer were given opportunities to examine and comment on the documents and arguments relied upon by the Appellant and to produce additional documents, if any, relevant to the issues for fuller and complete appreciation of the aspects of the case.

17. Central to the theme is the extent of the right, title and interest of the Appellant and the Government in the plot of land (Sy.No.57), under and appurtenant to Bungalow No. 69 Bareilly Cantonment.

18. In the matter of the right, title and interest of any person on land I have to rely on the land records maintained by the officially constituted Authority, in the course of his normal duties. If there is a discrepancy between the claim of any individual and the entries in the registers of the duly constituted Authority, the onus of evidencing and proving the changes by due transfer of rights, title, and interest by valid documents devolves on the claimant. } *Info*

19. Rule 3 of the Cantonment Land Administration Rules, 1937 framed under the Cantonments Act, 1924 mandates that the Military Estates Officer shall prepare in the form prescribed therein, a General Land Register of all land in the Cantonment with particulars like Sy.No., area, description, classification by whom managed, land lord, holder of occupancy rights, nature of holder's rights etc. Rule 6 therein lays down how the land is to be classified. Rule 9 deals with management of the land in the Cantonment. Rule 10 of the same Rules mandates that the DEO shall maintain the GLR and shall enter therein :-

"(i) every transfer of right or interest in land in the Cantonment registered under section 54, 59, 107 or 123 of the Transfer of Property Act, 1882, of which information has been sent to him under sub-section(2) of section 287 of the Cantonments Act, 1924, or by the Board, when such transfer necessitates and alteration of the entries, in any of the columns of the register.

(ii) every grant of such right or interest made by the Central Government..... etc ... "

20. I have to rely on such GLR for Bareilly as the basic document.

21. The G.L.R. of Bareilly contains the following entries regarding the plot

- " 1. Sy.No.57;
2. Area ; 2.656 acres.
3. Description; Bungalow No.69
4. Class: B-3
5. By whom managed ; M.E.O.
6. Landlord; Government of India
7. Holder of occupancy rights; Must. Sultan BagumW/o
Moin Khan
8. Nature of holder's right; Old Grant.
9. Remarks ; Govt rights admitted on 25.8.1938 by Must. Sultan Begum. The property has been taken over by the Custodian of Evacuee Property under the Evacuee Property Ordinance of XXVII of 1949. Authority : Govt. of India Ministry of Defence letter No.23/7/L&C/49/862 dated 18.2.50."

22. The Military Lands Manual(Print 1945) identified "old grant" as terms of grant contained in G.G.O. 179 of 1836. Rule 6 of the CLA Rules, 1937 defines "class B-3 land as land which is held by a 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".

Sub-rule(5) of Rule 9 of the CLA Rules, 1937 is "(5). The management of all class B(3) land and class B(4) land shall ordinarily be entrusted to the Military Estates Officer. Provided that the Central Government may entrust the management of any such land to the Board".

23. I have to rely on the above law.

24. The Appellant has claimed that she purchased the property in public auction from the Managing Officer, Evacuee Property, as evidenced by the sale certificate dated 10 Dec, 63. The G.L.R. entries show the nature and extent of the right, title and interest of various parties upto and including the stage when that land and the bungalow were taken over by the Custodian of the Evacuee Property. It is under the authority of the Custodian/Managing Officer of the Evacuee Property and in pursuance of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 that the property was transferred to the Appellant Smt. Sahakuntala Rani Tandon.

25. By taking over the evacuee property under the ordinance (subsequently replaced by the Administration of Evacuee Property Act, 1950) with the emigration of Must. Sultan Begum the rights title and interest accrued to the Custodian/Managing Officer of Evacuee Property cannot be more than what Must. Sultan Begum had.

26. Sub section (1) of Section 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 confers power on the Central Government to acquire evacuee property by publishing a notification to that effect in the official Gazette. Such property shall become part of the compensation pool and may also be disposed off by the Government. B.No.69 was acquired by the Central Government by a notification and was apparently disposed off to Smt. Sahakuntala Rani Tandon. This was done by the Department of Rehabilitation of the Central Government.

27. Subsection (2) of Section 12 of the DP (C&R) Act, 1954 runs as follows :-

"(2) On the publication of a notification under sub section (1), the right, title and interest of any evacuee in the evacuee property specified in notification shall, on and from the beginning of the date on which the notification is so

published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances."(Underlining added for analysis).

28. It has to be appreciated that by such acquisition the Central Government in the Department of Rehabilitation derives free from encumbrances, only the rights, title and interest the emigrant evacuee had and not the rights, title and interest anybody else had. Rights, title and interests of others can be extinguished only separately, by the due process of law, and on payment of compensation.

29. Department of Rehabilitation of the Central Government acquired only the rights and interests of Must. Sultan Begum in B.No.57 and B.No.69 and could transfer and dispose off to a third party only so much, and such rights and interests only.

30. The property which the Managing Officer could transfer in pursuance of Sec. 20 of the DP(C&R) Act, 1954, is only the property Must. Sultana Begum had.

31. Section 8 of the Transfer of Property Act, makes it clear that what passes from the transferor to the transferee is "all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof." The Managing Officer of the Department of Rehabilitation was not capable of transferring the rights, title and interest the Ministry of Defence had in the property. It is clear from the GLR, that the landlord of the plot is Govt. of India (Ministry of Defence), the manager of the land is MEO and the rights of the occupancy holder (which alone the Central Government in the Department of Rehabilitation is capable of transferring through the Managing Officer) is only the rights under the GGO 179 of 1936.

32. The Military Estates Officer drew my attention to various communications exchanged between the Department of Rehabilitation and the Ministry of Defence; the Department of Rehabilitation to their lower functionaries, and those between the Military Estates Officer and the Custodian of Evacuee Property/Managing Officer, to substantiate his view that the right that got transferred to the Rehabilitation Department were only those which Must. Sultan Begum had and that the rights transferred by the Managing Officer Evacuee Property, first provisionally to Smt. Prakash Bai, and later to Smt. Tandon (Appellant) were only those. It had also been made known as such. The Deputy Custodian General's letter No. XXXI(118)(1)/Gen./56 dated the 5th February 1953 to all Custodians (with copy to the Ministry of Defence) and the letter C.S.U.O. No. F 1(364)-56/Comp III/Trop I dated 20.11.59 from the Joint Secretary and C.S.C. Ministry of Rehabilitation to Ministry of Defence (Shri B.N. Verma I.C.S. Jt. Secy) made it clear that allottees of land would hold the same under the same terms and conditions on which the evacuee held it and that the leases, grants, a applicable, would be binding. He also pointed out that vide MEC Agra letter No. F-2/4/43 dated 29.8.50, the Custodian of Evacuee property, Bareilly had been intimated that the site of Dungalow No. 69 (Sy. No. 57) belonged to the Government of India in the Ministry of Defence and was held on old grant terms. The Managing Officer acquired Evacuee Property Bareilly, had vide his letter No. 369/M/D. No. 69 Cantt. dated 25.1.60 intimated the MEC as follows :-

- (i) P. No. 69 had been sold in public auction on 20.6.58, to Smt. Prakash Bai for 37,900/-;
- (ii) The transfer issued in her favour was provisional;

- (iii) The condition specified (i.e. regarding Govt. of India's ownership of land and old grant terms) had been incorporated in the form of admission deed from Smt. Prakash Bai on the format, the specimen of which had been sent by the MEO vide his letter No.F-2/7/(173) dated 16.7.56.
- (iv) The conditions had been announced at the time of the auction.

MEO argued that, as stated by the Appellant herself in her Writ Petition No.987/82, she had got the property transferred from Smt. Prakash Bai and that she could not derive greater rights than what the Managing Officer could transfer to Smt. Prakash Bai.

33. The appellant was given an opportunity to see the documents referred to and to give her views. But, she said, she was not concerned with the communications between the functionaries of the Ministry of Defence and the Ministry of Rehabilitation and she did not want to express anything. She said, she relied on the registered sale certificate dated 10 Dec. 1963 issued by the Managing Officer.

34. Smt. Tandon, the Appellant, in an affidavit, dated 31.7.1967 filed before the MEO had, on oath, solemnly affirmed as below :

"I admit that Dungalow No.69 comprising survey No.57 is held by me under the terms of G.G.O. No.179 of 1836. The land and the trees standing thereon is Govt. property and is under the management of BEO Agra Circle and my position is only holder of occupancy rights under terms of old grants."

The M.E.O. argued that the appellant was taking false position who she held otherwise now. The MEO produced an admission certificate jointly signed by the constituted attorney of Smt. Prakash Bai and the Appellant (Smt Tandon)

submitted while seeking permission for the transfer of the property to the Appellant. The Appellant had therein recognised Govt. of India (Ministry of Defence) to be the owner of the land and had recorded that she would only have the occupancy rights of old grant.

35. I gave the Appellant an opportunity to scrutinise those documents and to render her elucidation. She scrutinised the documents, but said she did not remember, and had, possibly not been guided properly.

36. Section 55(1)(a) of the Transfer of Property Act, 1882 mandates "The seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware and which the buyer could not with ordinary care discover". It has also been provided in the Section that an omission to make such disclosures as are mentioned in the section paragraph (1) clause (a) is fraudulent. In the context of this legal provision I have to hold that both the seller and the buyer were aware that the property transferred was occupancy rights under old grant terms.

37. However, with efflux of time the Appellant developed new perceptions. She had contended in the appeal under my consideration now and in the writ petition CW No.917/82 before the High Court of Delhi, that she has freehold rights in the land and the Bungalow. She has not been able to adduce any evidence in support, and proof of this claim except the documents (sale certificate) purported to have been issued on the 10th Dec. '63 by the Managing Officer, Bareilly on behalf of the Department of Rehabilitation.

38. Annexure P-1 attached to the Writ Petition purports to be true-copy of the sale-certificate. It has not been certified as true-copy.

39. The certificate (Annexure P-1 to the Writ Petition) only states that Smt. Shakuntala Rani Tandon "has been declared the purchaser of the said property". It does not state anything about the extent and nature of the right title and interest transferred in the property. On the top of the certificate the words "certificate of Sale (Free-hold Properties Rule 90(15))" are there. The words cannot be the supreme and reliable evidence to settle conclusively the nature of the rights of the Appellant in the property.

40. The M.E.O. stated that he had repeatedly, over the past many years, requested the Appellant to show the sale-certificate dated 10, Dec. 1963 in original, but that had never been produced. He wanted to see that. I told the Appellant that she could take time and produce the certificate on a later date and the hearing could be concluded thereafter. She declined to avail of the opportunity and said that the original had been submitted to the court in connection with the Writ Petition and that we should go by the copy attached to the Writ Petition and the copies submitted earlier by her.

41. M.E.O. produced a photostat copy (unauthenticated by an Appropriate Authority as True) of a Sale-certificate, dated 10 Dec. 1963 which had been given to his office earlier. On contents it tallied with Annexure P1 of the Writ Petition. But it was found to be on standard printed form wherein blanks for filling the name of the auction bidder, the date of auction, value, date and schedule of property etc. had been filled. Apparently the form used for conveying sale of free-hold properties had been issued. The Appellant did not want to show this transparent fact, it seemed. There was nothing in the document to conclude that Free-hold rights had been transferred on examination of the rights. The NEO contended that he had doubts on the genuineness of the document for the following grounds and that was

why he had insisted on seeking the original.

- (i) The photostat copy did not show any file No. and date of the communications forwarding the certificate.
- (ii) The signature and office-seal, if affixed, on the certificate, were not clear.
- (iii) The Managing Officer, had earlier intimated that the property had been transferred to Smt. Prakash Bai at the auction held on 20.6.58 for Rs.37,300/-. But the sale certificate showed that Smt. Shakuntala Rani was the highest bidder for the property on the same day for the amount of Rs.37,300/-. These were irreconcilable. The request for transfer of property from Smt. Prakash Bai to the Appellant and her own statement in the Writ Petition as to how the property was transferred from Smt. Prakash Bai to her cast doubt on the genuineness of the certificate.

42. On my questioning, the Appellant did not wish to render any clarification.

43. The M.E.O. produced in original the Managing Officer's letter dated 07.2.83 intimating that a suo-moto revision petition had been filed in 1979 under section 24 of the D.P.(C&R) Act, 1954 for cancellation of the sale-certificate dated 10, Dec. '63 issued in favour of the Appellant. It was awaiting decision of the Chief Settlement Commissioner, U.P. Some of the reasons adduced in the petition are the following :-

- (1) The auction purchaser Smt. Prakash Bai was not competent under law to transfer any interest in the property in dispute since she had not perfected her title in the property. Hence, the transfer so effected by the auction purchaser is void in the eye of law.

- (2) It is intriguing that the property under reference was sold to Smt. Prakash Bai while sale certificate has been issued in favour of Smt. Tandon (who is the wife of Shri K.N. Tandon, the then auctioneer who conducted the sale of this property by the Managing Officer on the ground that the auction purchaser transferred her right to Smt. Shakuntala Rani which plea is not sustainable under law as the sale certificate can not be issued to a person other than the auction purchaser.
- (3) The Managing Officer was not competent to issue the sale certificate in the name of Smt. Shakuntala Rani which is bad in law.

44. When asked to comment on the above the Appellant expressed her surprise how such reports were sent to the M.E.O. by the Managing Officer, so late in 1983. She said she received no such revision petition.

45. I do not wish to express any view on this matter except to state that sub-section(2) of Section 24 of the D.P.(C&R) Act, 1954 provides that, if the Chief Settlement Commissioner is satisfied that any lease or allotment granted to a person has been obtained by him by means of fraud, false representation or concealment of any material facts, the Chief Settlement Commissioner may cancel the lease or allotment granted to him.

46. The Urban Land(Ceiling and Regulation) Act, 1976 is applicable in Bareilly Cantonment and there is vacant land appurtenant to the B.No.69, in excess of the ceiling limit applicable. In pursuance of sub section(1) of Section 6 of the said Act, the Appellant had filed a return on the excess vacant land available. No order of the Government under section 20 of the Act, has been passed allowing the Appellant to retain any vacant area in excess of the authorised ceiling limit under the Act. Clause (ii) of

sub section 4 of Section 10 of the Act mandates that the Appellant "shall not alter or cause to be altered the use of such excess vacant land". Construction in accordance with the building plan submitted by the Appellant involves erection of 20 blocks of flats in such vacant lands, in violation of the law.

47. Hence, my findings on the grounds of appeals given by the Appellant (refer para 15 above) are the following:-

- (1) Landlord of the land under an appurtenant to Bungalow BN.69 (Sy. No. 57) Bareilly Cantt. is Government of India in the Ministry of Defence.
- (2) The land is under the management of the M.E.O.
- (3) If the sale certificate dated 10 Dec. '63 issued in favour of the Appellant is not set aside in the revision appeal u/s 24 of the DP(C&R) Act, 1954, the rights that would accrue to the Appellant in the property is that of occupancy holder under G.G.O.No.179 of 1836. The said G.G.O. applies to the property between the successor in interest to the Department of Rehabilitation and the Government of India in the Ministry of Defence.
- (4) The Appellant has no free-hold rights in the land.
- (5) The reference made by the Cantonment Board to the MEO under sec. 181(3) of the Cantonments Act, 1924 before taking a decision on the building notice submitted by the Appellant was in obedience to the law and was proper and warranted.
- (6) The stand of the M.E.O. that there was a dispute between the Appellant and the Government (in the Ministry of Defence) on the right of the Appellant to build on such land, as relevant to Sec. 181(4) of the Cantonment Act is correct and proper, for the following reasons:-

(i) The title of the Appellant as a genuine successor to the Custodian of Evacue Property

to the land has not been recognised by the Government (in the Ministry of Defence).

(ii) Additional constructions on the old grant sites (which were land made available for construction of a house/bungalow without payment of any rent or premium) so as to derive more advantages by additional constructions over and above that for which the land was given is not permissible without the Government of India's specific approval.

Such approval had not been obtained by the Appellant.

(iii) Utilisation of the vacant land for construction was against the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, whatever be the nature of the occupancy rights.

48. The Board did not communicate with their letter No. 3/A/XX/E-9 dated 19-X/1981 intimating rejection of the building notice, the reasons for the refusal, which they were bound to do under sec. 181(5) of the Act. That duty is an action required to be performed posterior to the decision and as such does not affect the decision-making process or the decision itself. The failure to communicate the reasons for the refusal can be a ground for appeal.

But the lapse did not affect the reasons for, and the decision-making process leading to the refusal to sanction the building plan. Hence, the refusals in itself can not be faulted on this count.

49. The Board made amends for the lapse by specifying clearly the reasons for the refusal to sanction the building plan, vide Special CBR No. 2 of 20.2.1983. This was communicated to the Appellant vide their letter No. CBB/Dung.69/H.court/XXX dated 28.2.1983 and was received by the

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Appellant on 01st Mar.83. Thus the requirements of Section 101(5) of the Act have been complied with,

50. On examination of the facts, circumstances, law and merits of the appeal filed by Smt. Shakuntala Rani Tandon against Cantonment Board Bareilly against their Resolution No.4 dated 19.9.01, as amplified vide their Special Resolution No.2 of 20.2.1983 is hereby rejected.

Given over my signature this 15th day of September 1983, at Lucknow.

Sd/-X X X X X X X X

(P.K. KUMARAN)

Director

Defence Lands & Cantonments

Central Command,

(Functioning as Appellate Authority
under Section 274 of the Cantonments
Act, 1924)

C.T.C.