REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6563 OF 2010

JUDGMENT

(Arising out of SLP© No.20368 of 2007)

UNION OF INDIA & ORS. .....APPELLANTS

VERSUS

KAMLA VERMA .....RESPONDENT

●J U D G M E N T

●ANIL R. DAVE, J.

1. Leave granted.

2. Being aggrieved by the judgment dated 19th January, 2007 delivered by the High Court of Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 1661 (M/B) of 1998, the original respondents before the High Court have approached this Court by way of this appeal.

3. The facts giving rise to the litigation in a nutshell are as under:-

The respondent- original petitioner before the High Court had filed the aforesaid writ petition praying that the premises situated at 14, Kasturba Marg, (Old No. 15, Tomb Road) Lucknow Cantt., be de-hired under the policy of Central Government as reflected in Para 19 Clause (c) of the Policy and procedure for dehiring of houses dated 19.11.1979 (as

amended on 19.3.1985) as the premises in question was not being used by the respondents because it was in a dilapidated condition.

4. After considering the fact that the premises was not in good shape and was not in use by the respondents, the High Court allowed the petition by directing the respondents to permit the petitioner to undertake repair

works of the premises in question and to de-hire the same with immediate effect.

5. The High Court came to the conclusion that the petitioner was a landlady and as per Policy of the Central Government, she had a right to get the property de-hired especially when the respondent authorities were not using the same. The High Court had taken into account contents of a

letter dated 29th November, 1996, addressed to the Director, DE written by the Defence Estate Officer of Lucknow Cantt. for coming to the above conclusion. The High Court came to the conclusion that the reference to "old grant" seemed to be misconceived as there was nothing on record to show that the land in question was allotted to the vendor of the petitioner

lady on "old grant". Being aggrieved by the aforesaid judgment, the respondents – Government authorities have filed this appeal.

6. The learned Additional Solicitor General appearing for the appellants - original respondents has submitted that the impugned judgment is bad in law for the reason that certain factual aspects which had been placed on record alongwith the counter affidavit filed before the High Court had not

been considered and, therefore, the conclusion arrived at by the High Court is not correct.

7. It has been submitted by him that the premises in question had been granted on "old grant" terms to Shri Roop Krishan Seth, son of Shri Rai Bahadur Prabhu Dayal Seth. Thereafter under an agreement dated 26th July, 1948, the premises in question had been leased to the present appellants. A

copy of the said agreement was very much on record of the High Court as it had been annexed to the counter affidavit filed by the present appellants – original respondents before the High Court. Subsequently, the property in question had been inherited by Shri Mohan Krishan Seth, son of Shri Roop Krishan Seth. Thereafter, the property in question had been transferred in favour of the present respondent, namely, Smt. Kamla Verma

who was the petitioner before the High Court.

8. So as to substantiate his case, he has drawn our attention to the contents of the agreement dated 26th July, 1948, whereby the property in question had been leased to the appellant authorities. In the preface of the agreement, it has been clearly stated that the property in question was held by Shri Roop Krishan Seth on "cantonment tenure" or in other words it

means “old grant” terms. The said fact denotes that Shri Roop Krishan Seth was not a full-fledged owner of the property in question. Had he been the owner of the property in question, the reference to “cantonment tenure” would not have been made in the said agreement. Moreover, in clause iv (5) of the said agreement, it has been stated that the authorities had a right to resume possession of the whole or any portion of the property in question,

during the period of tenancy without being liable to Shri Roop Krishan Seth in any way. Had Shri Roop Krishan Seth been an owner of the property in question, there would not have been any such clause with regard to resumption of the property i.e. building as well as the land in question, in the lease deed. This fact, according to the learned Additional Solicitor General, shows that the land in question, was given to Shri Roop Krishan

Seth on "cantonment tenure" or "old grant" terms. The respondent had purchased right in respect of the property in question from Shri Mohan Krishan Seth, son of Shri Roop Krishan Seth after the said property was inherited by him upon death of his father and as Shri Roop Krishan Seth was having the property in question on "cantonment tenure", the respondent could not have got better right than what Shri Roop Krishan

Seth had in the property in question. Therefore, even the respondent is not having full ownership right in respect of the property in question, but is having only "cantonment tenure" in respect of the property in question. It has been further submitted by him that it is open to the appellant authorities to resume the land from the one who has been granted the land on "old grant" terms. He has submitted that the land in question is in a cantonment

area and in the past, land in cantonment area, belonging to the government, was given for a limited use to civilians and it was open to the government to resume such land at any time. He has referred to a Judgment delivered in the case of **Chief Executive Officer vs. Surendra Kumar Vakil and Ors. 1999 (3) SCC 555**, to show as to how the term "old grant" is being interpreted.

9. Thereafter it has been submitted that the respondent had filed a civil suit in the court of Additional District and Sessions Judge FTC-6, Lucknow, being Small Causes Case No.2 of 2000. The said suit had been dismissed on 12.12.2006 and while dismissing the suit, the Court had come to the conclusion that as per the general order of the Governor General in

Council bearing No.179, the land and trees standing on the land in question, belong to the Government of India, Ministry of Defence. The said findings have become final and, therefore, it has been submitted that the respondent has no ownership in respect of the land in question. For the afore-stated reasons, it has been submitted that the impugned order is bad in law and, therefore, it deserves to be quashed and set aside.

10. On the other hand, it has been submitted on behalf of the learned advocate appearing for the respondent that the respondent was the owner of the land in question, as the land in question along with super structure, had been purchased by the respondent from Shri Mohan Krishan Seth. The learned advocate has also relied upon the letter dated 29-11-1996, written

by the Defence Estate Officer, Lucknow Cantt., which has been referred to hereinabove. According to him, in view of the contents of the said letter, it is clear that one of the officers of the appellants had opined that the premises in question was in a dilapidated condition and it was not being used and, therefore, recommendation was made for de-hiring the said premises. The said fact, according to the learned advocate, clearly denotes

that the premises in question, belongs to the respondent, otherwise the respondent would not have leased the premises to the appellant authorities. The learned advocate has also submitted that the High Court had rightly allowed the petition and, therefore, the appeal be dismissed.

11. We have heard the learned advocates and have also gone through the contents of judgment delivered in the case of **Chief Executive Officer (Supra).**

12. Upon perusal of the agreement dated 26.7.1948 and upon perusal of the sale deed dated 23rd December, 1996 executed in favour of the respondent, it is crystal clear that the land in question was held by original

grantee Shri Roop Krishan Seth on "old grant" terms under G.G.C. No. 179 dated 12.9.1836. Meaning of the said grant has been clearly explained by this Court in the case of **Chief Executive Officer (Supra)** and that clearly denotes that the vendor who sold the rights in respect of the land in question, was never a full-fledged owner of the said land but he was given the said land only on "old grant" terms. Being allotted the land on "old

grant" terms, the said allottee never became a full-fledged owner and, therefore, he could not have transferred any right better than what he had in respect of the land in question, to the present respondent. Shri Mohan Krishan Seth inherited rights in respect of the said property from late Shri Roop Krishan Seth and ultimately Shri Mohan Krishan Seth transferred his rights to the respondent. So the respondent also got the rights which Shri

Mohan Krishan Seth had in the property in question. Thus, the respondent was also holding the land/property in question on "old grant" terms and she did not become a full-fledged owner of the property in question.

13. In our opinion, the High Court did not consider the fact that the present respondent was holding the land in question only on "old grant" terms and, therefore, she was not a full-fledged owner of the land but she

had the right only in respect of the super-structure put up on the land in question, which had been given on lease to the present appellants.

14. The Learned Additional Solicitor General has drawn our attention to the judgment delivered by this Court in the case of **Chief Executive Officer (supra)** so as to explain the meaning of the term "old grant". Paras 9 and 10 of the said judgment explain the meaning of the term "old grant".

The said paras read as under:

> **"9.** 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, the 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.

10. The High Court in its impugned judgment has reproduced extracts from the book on *Cantonment Laws* by J.P. Mittal, 2nd Edn., at p. 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 Governments of Bengal, Madras and Bombay Presidencies between the years of 1789 and 1899. The regulations were mostly of an identical nature. They had a twofold object in view, that of ensuring sufficient accommodation for military officers; and that of regulation of the grant of land sites. Some of these regulations are

published in this book. These rules, regulations and orders continue to be the law in force in India even after the enforcement of the British statutes (Application to India) Repeal Act, 1960, (*Raj Singh* v. *Union of India*[1], *Mohan Agarwal* v. *Union of India*[2]).

Under these regulations and orders, officers not provided with government quarters were allowed to erect houses in the cantonment. For this purpose ground was allotted to them with the condition that no right of property whatever in the ground

[1] AIR 1973 Del 169
[2] AIR 1979 All 170

was conferred on them and the ground continued to be the property of the State, was resumable at the pleasure of the Government by giving one month's notice and paying the value of the structures as may have been authorised to be erected. The houses or other property built on such grounds were allowed to be transferred by one military officer to another without restrictions. To civilians these could be transferred only with the prior permission of the officer commanding the station.

With the lapse of time civilians were also encouraged to build bungalows on the government

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

15. Even in the instant case, the land in question, was originally permitted to be used by a civilian on "old grant" basis and the said fact is reflected in the lease deed executed by late Shri Roop Krishan Seth. Moreover, even in the sale deed executed in favour of the respondent, it has been stated that the vendor was an "occupancy holder of the land and trees of the aforesaid

premises and owner of super structure of the bungalow…."

16. It is also pertinent to note that even in the land register the Government of India has been shown as a "Landlord" and Shri Mohan Krishan Seth has been shown to be having occupancy right and his nature of right is shown to be of "old grant". These facts had been duly

incorporated in the counter affidavit filed by the present appellants before the High Court.

17. It is also pertinent to note that in a civil suit filed by the respondent in the Court of Additional District and Sessions Judge, FTC-6, Judge Lucknow being Small Causes Case No. 2/2000 for eviction, the respondent had failed to obtain decree against the present appellants. The said suit had been

dismissed. The Court, while dismissing the suit, had clearly come to the conclusion that as per the general order of the GGC No. 179, the land and the trees standing on the land etc. were the property of the Government of India, Ministry of Defence. The Court had come to the conclusion that the land in question was not owned by the present respondent and the present respondent did not challenge the said findings. Unfortunately, the

said fact was also not considered by the High Court while allowing the petition filed by the present respondent.

18. In view of the above legal position, it is always open to the appellants to resume the land in question and the appellants can not be prevented from resuming the land in question. The High Court was in error while considering the respondent as an owner of the property in question.

19. We, therefore, set aside the Order passed by the High Court. The appeal is allowed accordingly. No order as to costs.

.....J.
(P. SATHASIVAM)

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....J.
(ANIL R. DAVE)

New Delhi
August 13, 2010.

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JUDGMENT

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