

PETITIONER:  
CHIEF EXECUTIVE OFFICER

Vs.

RESPONDENT:  
SURENDRA KUMAR VAKIL & ORS.

DATE OF JUDGMENT: 23/03/1999

BENCH:  
Sujata V.Manohar, R.C. Lahoti

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 26.8.1983 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 as set out therein and that the said 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 names 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 therein 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 unintentional 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, 1954 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 Rule 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 Mutation in which every transfer of right or interest in land in the cantonment which necessitated an alteration of the entries in any of the columns of the general land register, was entered. Under Rule 5 as then in force, every fifth year the general land register shall be rewritten so as to include all changes in the rights or interest in land and a fresh register of mutation shall be opened simultaneously. Under Rule 6, for the purpose of the general land register, land in the cantonment is divided into class A land, class B land and class C land. Rules 7 and 8 deal with these different categories of land.

Under the Cantonment Land Administration Rules, 1925 general land registers are being maintained in respect of Sagar Cantonment. These registers were produced before the High Court and were also produced before us. These are old registers maintained in the form prescribed by the said Rules. In these registers the property in question is shown as being held by S.N. Mukherjee on old grant basis. As explained by Mittal in the passage cited above, the tenures under which permission was given to civilians to occupy Government land in the cantonments for construction of bungalows on the condition of a right of resumption of the ground, if required, came to be known as old grant tenures. Such tenures were given in accordance with the terms of the order No.179 issued by the Governor General in Council in

the year 1836. These require that the ownership of land shall remain with the Government and the land cannot be sold by the grantee. Only the house or other property thereon may be transferred. Such transfers would require consent of the officer commanding the station when the transfer is to a person not belonging to the army. In respect of old grant tenure, therefore, the Government retains the right of resumption of land.

In the case of Sh. Raj Singh v. The Union of India and Ors. (AIR 1973 Delhi 169), the Delhi High Court examined the Regulations contained in order No.179 of 1836 regarding the grant of lands situated in cantonment areas and held that the Regulations were a self-contained provision prescribing the manner of grant and resumption of land in cantonment areas. It held that the petitioner therein being a mere occupier of the land under the said Regulations, he was in the position of a licensee whose licence under the grant and under the law was revocable at the pleasure of the licensor. This judgment of the Delhi High Court was approved by this Court in Union of India v. Tek Chand (Civil Appeal No. 3525 of 1983) by its judgment and order dated 5th of January, 1999 passed by S.P. Bharucha and V.N. Khare, JJ.

The respondent, however, contends that since the actual old grant was not produced in evidence by the appellants the case of the appellants that the land was held on old grant basis by Mukherjee is not proved by the appellants. This submission does not appeal to us. The respondents filed a suit claiming title over the land. If any conveyance in respect of this land had been executed at any time by the State/Military Estate Officer in favour of Mukherjee or his predecessor in title, the conveyance ought to have been produced by the person in whose favour it had been executed or his successor in title. Had a lease been granted in respect of the said land in favour of Mukherjee or his predecessor in title, the lessee or his successor in title should have produced the lease deed in his favour. Any grant in favour of the grantee would normally be in the possession of the grantee. The respondents, however, have not produced any title deeds relating to the land in question. They have only produced the document of sale from Dubey to Mukherjee and the four sale deeds from the heirs and legal representatives of Mukherjee in favour of the purchasing respondents.

In none of these documents there is a clear recitation of the nature of the rights in the land held by the Vendor. It is true that the appellants were also required to maintain a file/register of grants. They have not produced the file. The appellants, however, have led evidence to show that the concerned file of grants was stolen in the year 1985. 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, inter alia, 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 these registers clearly show

that the land is held on old grant basis 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 indicate 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 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 costs.