

CASE NO.:

Appeal (civil) 1031 of 1992

Appeal (civil) 1032 of 1992

PETITIONER:

RAMESH KUMAR SATISH KUMAR AND SONS

Vs.

RESPONDENT:

GURU SINGH SABHA (REGD.) AND ORS.

DATE OF JUDGMENT: 30/01/2001

BENCH:

V.N.Khare, S.N.Variava

JUDGMENT:

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J U D G M E N T

S. N. VARIAVA, J.

These Appeals are against a Judgment dated 23rd July, 1991 by which the Letters Patent Appeal against a Judgment dated 4th June, 1991 was summarily dismissed.

Briefly stated the facts are as follows: One Shri Mohan Lal was the owner of one Plot bearing No. I-D/14 B.P. in NIT Faridabad. The said Mohan Lal had built 5 shops. The shops were constructed on a small portion of land belonging to him, but they also occupied an adjacent strip of land which belonged to Rehabilitation Department, Haryana, Chandigarh. The said Mohan Lal had let out these 5 shops to the Appellants in these two Appeals. The said Mohan Lal expired on 3rd February, 1977. By a Circular/Memo dated 28th February, 1984 the Haryana Government decided that "Adjacent Land Correctional Area" should be transferred to occupants on certain conditions. The Appellants applied to the State Government for allotment to them of the portion of the land, on which the shops stood. On 4th May 1985, Mohan Lals widow who had become the owner, donated the land to Mohan Lal and shops to the 1st Respondent Sabha. Pursuant to the Application of the Appellants, on 27th March, 1986, the Government offered the land to the Appellants on payment of certain amounts. On coming to learn of this the 1st Respondent made representations claiming that they were the actual occupants and that the land should be allotted to them. The Government issued a letter dated 24th June, 1987 to the Tehsildar clarifying that the land was to be transferred to the actual occupants. The Government stated that the 1st Respondent was not entitled to get this land transferred to them. The Government clarified that a strip of land used by the 1st Respondent as an approach road could be transferred to them.

As a result of this clarification the Chief Settlement Commissioner, Haryana issued a letter to the Tehsildar to transfer the land to the Appellants. The 1st Respondent then filed a Writ Petition before the High Court of Punjab & Haryana claiming that as they were the actual occupants the land had to be allotted to them and not to the Appellants. This Writ Petition has been allowed by the impugned Order dated 4th June, 1991. In the impugned Order it has been held that as per the policy of the Government dated 28th February, 1984 the land had to be allotted to a person who was in the de jure occupation of the land. It was held that, the 1st Respondent being the owner of the shops and the Appellants being the tenants, it is the 1st Respondent who must be deemed to be in occupation. It is held that the allotment had to be to the 1st Respondent. Mr. Ganguli and Mr. Sanghi have assailed this Order on the ground that under the Circular dated 28th February, 1984 the allotment had to be to the actual occupant and not to the de jure occupant. They submitted that this was clear from the Government's letter dated 24th June, 1987 and also from the fact that the term "occupant" can only mean an actual occupant. In support of their contention that the term "occupant" can only mean an actual occupant, they relied upon the cases in *Amba Prasad v. Abdul Noor Khan and Ors.* reported in 1964 (7) SCR 800, and *Industrial Supplies Pvt. Ltd. v. Union of India* reported in (1980) 4 SCC 341. On the other hand, Mr. Gopal Subramaniam submitted that the Appellants were mere tenants of the shops. He submitted that the strip of land in question was appurtenant to an adjoining land belonging to the 1st Respondent. He submitted that the Government policy was to dispose off "adjacent land correctional area". He submitted that a plain reading of the Policy as well as the Orders and the Forms issued pursuant to this Policy make it very clear that the land was to be allotted to a person who was in de jure occupation of the land. He submitted that, therefore, the impugned Order was correct and required no interference. We have considered arguments of the parties. In our view, the High Court fell in error in coming to the conclusion that under the Policy dated 28th February, 1984 allotment had to be to a person who was in de jure occupation. In our view, the question of interpretation of the term "occupant" would only have arisen if the Government had not clarified as to whom they wanted to allot the land. Once the Government by its letter dated 24th June, 1987 clarified that the land was to be transferred to the actual occupant no question then arose of interpreting the term "occupant" as meaning a de jure occupant. Even otherwise, the authorities relied upon by Mr. Ganguli clearly establish that the term "occupant" means a person in actual occupation. Thus it is the Appellants who are entitled to allotment. Mohan Lal had trespassed on land belonging to the Rehabilitation Department. Thus shops constructed on those lands go with the land. For the above reasons, in our view, the impugned Order cannot be sustained and requires to be set aside.@@

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However before that is done certain aspects needs to be@
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noted. Mr. Ganguli and Mr. Sanghi very fairly admit that portions of the shops stand on land belonging to the 1st Respondent. Between the parties it is agreed that the shops occupy 4 ft. of land belonging to the 1st Respondent. Mr. Ganguli and Mr. Sanghi state that their clients will demolish the portion of the shops falling on the land of the 1st Respondent and hand back that land to the 1st Respondent

within one month from today. In view of these statements no orders need be passed in respect of this 4 ft. strip of land belonging to the 1st Respondent. Further pursuant to an order dated 25th July, 1994 the Appellants have been permitted to deposit rental amounts in this Court. Order dated 9th January, 1998 directs that the amounts deposited are to be kept invested. Now it is held that Appellants are entitled to the land belonging to the Rehabilitation Department and the shops go with the land. Thus Appellants would not have to make payment of rent to the 1st Respondent except for the fact that the shops also stand on 4 ft. of land belonging to the 1st Respondent. This is approximately 1/3rd of the area occupied by the shops. In our view Appellants must therefore pay to the 1st Respondent 1/3rd of the rent paid earlier. We therefore direct that 1/3rd of amount deposited with earned interest thereon be paid by the Registry to the 1st Respondent and the balance with earned interest thereon be returned to the Appellant who deposited the amount. For the reasons set out above and with the above observations the Appeals are allowed. The Writ Petition filed by the 1st Respondent stands dismissed. There will, however, be no Order as to costs.