

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.620 OF 1986

1. Union of India
2. The Military Estate Officer
Poona Circle, Climo Road
Pune 411 001
...Appellants

Versus

1. Razia Noormohamad Begmohamad
2. Qumarijohan A.K.Samar
...Respondents

Shri K.K.Tated for the Appellants

CORAM: A.S.OKA,J.
DATED: JUNE 29,2004

ORAL JUDGMENT:

1. This Second Appeal was admitted by this Court on 21st November 1986. This Court observed in the Order dated 21st November 1986 that the rights of the Respondents vis-a-vis the property having regard to the grant is the substantial question of law :

2. This Second Appeal was called out yesterday and I have heard the submissions of Shri Tated, learned Counsel on behalf of Appellants. However, none was present for the Respondents and therefore the Appeal was adjourned till today. Today also none

appears for the Respondents. Hence, I have no option but to decide the Appeal in their absence.

3. The Appellants are the Defendants and the Respondents herein are the original Plaintiffs. The dispute is about a plot of land together with the structures thereon situated within the Cantonment Area, Pune. The case of the Respondents is that one Noor Mohammed who was the owner of the suit property expired in 1957. By his Will dated 13th August 1950 the Respondents were appointed as executors and trustees of the properties held by Noor Mohammed including the suit property. The Will was probated and Central Bank Executor and Trustee Company Limited was managing the property held by Noor Mohammed as executors and trustees. It is the case of the Respondents that the Central Bank Executor and Trustee Company Limited transferred and handed over the suit property to the Respondents. It is further case of the Respondents that the suit property was taken on lease for a period of 5 years by the Predecessor of Appellant No.1 under the lease dated 5th May 1925 and by a lease dated 9th October 1928 the entire suit property including the land and structure was

taken on lease by the Predecessor of the Appellant No.1 for a period of five years. There was a further lease dated 14th February 1935 in favour of the Predecessor of Appellant No.1. The leases were executed by the deceased Noor Mohammed as the Lessor. It is the case of the Respondents that the Appellant No.1 continued to be lessee in respect of the suit property till the date of filing the suit. The challenge in the suit is to the notice dated 17th September 1971 issued by the Appellant No.1 by which the Respondents were informed that the Appellant No.1 has decided to resume the possession of the suit premises. It was stated in the notice that all the rights easements and interests of the Respondents in the said land as well as the building standing thereon shall cease on expiry of 30 days of the notice in question. The Appellant No.1 offered compensation of Rs.35,453/- to the Respondents as value of the building erected on the land. The case of the Respondents is that the said notice was issued by the Appellant No.1 as the Respondents refused to extend the lease in favour of the Appellant No.1. The contention in the suit is that the notice proceeds on erroneous assumption that the land was granted on "Old Term Grant

Tenure" and as a matter of fact the suit property does not belong to President of India and it is not held on old grant tenure. The challenge in the suit is also to the admission certificate issued by the Central Bank Executor and Trustee Company Limited by which the Respondents were forced to compelled to subscribe to the so called old grant terms.

4. The suit was contested by the Appellants by filing written statement. A specific case was made out that the suit property was held on old grant and terms under the conditions incorporated in G.G.O.14 of 6th January 1827. It is contended that under the said order the Appellant No.1 is entitled to resume the land as the grantee has no right in respect of the land. It was stated in the written statement that the Appellant No.1 was justified in resuming the land.

5. The learned Trial Judge framed various issues. The learned Trial Judge held that there was no evidence on record to show that the suit property was held by the Respondents under the terms of old grant and therefore, the notice was illegal. The

Trial Court therefore passed decree which reads

thus :

- "(1) It is hereby declared that the notice bearing No.701/144/L/L & C/704759/D (Lands) dated 17th September 1971 is illegal and ultra vires and it is hereby declared that the defendants are not entitled to deprive the Plaintiffs of their suit property. It is also declared that the Defendants are not entitled to resume possession of the suit property.
- (2) The Defendants are hereby permanently restrained from resuming the possession and/or otherwise interfering with the enjoyment and vahiwa of the property in suit.
- (3) The Defendants do pay costs of this suit to the Plaintiffs and bear their own."

The said Decree was confirmed in Appeal by the District Court and the findings recorded by the Trial Court were also confirmed. The Appellants have taken exception to the findings of both the Courts below.

4. The learned Counsel appearing for the Appellants submitted that a true copy of the Governor General's Order dated 6th January 1827 was produced on record and was exhibited and marked as Exh.47. He submitted that in view of the said

Government Order it is very clear that the land in question could have been resumed by the Government. He submitted that merely because leases were executed by the predecessor of the Respondents in favour of the predecessor of Appellant No.1 the character of grant will not be changed. He also relied upon the extract from the General Land Register maintained by the Pune Cantonment which is at Exh.52 in the Trial Court which shows that the property was held under old grant i.e. under conditions of G.G.O.No.14 dated 6th January 1827. He submitted that if the holder of the land i.e. predecessor of the Respondents has no right in respect of the land, the Appellant No.1 could have resumed the land at any time after offering compensation in respect of the structure thereon. The learned Counsel further submitted that the Trial Court while passing operative part of the Order has declared that the Appellants are not entitled to deprive the Respondents of the suit property and the Appellants are not entitled to resume the possession of the suit property. He submitted that even assuming that the Appellants could not establish the terms of the grant, the Trial Court could not have passed decree in the

aforesaid manner. He lastly relied upon the admission certificate executed by the Central Bank Executor and Trustee Company Limited under which the property was taken by the Respondents and submitted that conditions of admission certificate very clearly show that no proprietary right was granted to the Respondents.

5. With a view to appreciate the contentions raised by the learned Counsel Shri Tated, it is necessary to refer to the impugned notice dated 17th September 1971. In the said notice it is stated that the land comprising survey No.411 Bungalow No.16 bearing No.16, Elphinstone Road, Pune Cantonment in the sub-registration district of Pune was belonging to the President of India and is held on old grant terms under which the Government is entitled to resume the said land. In the said notice there is no reference to any Government Order dated 6th January 1827. Exh.52 is another document on which reliance placed by the Counsel appearing for the Appellants. The said document is the extract of General Land Register maintained by the Pune Cantonment. The said document records under column, "Nature of holder's right" that it is

old grant under conditions G.G.O.14 of 6th January 1827. The document Exh.47 i.e. G.G.O.dated 6th January 1827 provides that officers who are not provided with public quarters may receive permission to erect the houses on ground within a fortress or military cantonment confers on them no right of property whatever in the ground allotted them for that purpose, which continues to be the property of the State and resumable at the pleasure of the Government. It is true that the contents of the said order support the case of the Appellants. However, it must be noted that no evidence is brought on record to show that the grant in favour of the predecessors of the Respondents is in respect of the government land covered by Governor General's Order dated 6th January 1827 at Exh.47. Even if the reliance is placed specifically on G.G.O.14 of 6th January 1827. The number 14 is conspicuously absent in the document in Exh.47. There is no evidence on record to show that Exh.47 is the G.G.O.14 referred to in Exh.52. In so far as the admission certificate is concerned it is issued by and on behalf of Central Bank Executor and Trustee Company Limited. The said company was acting as executors and Trustee. Even assuming

that the admission certificate incorporates the stringent conditions, the same is not relevant as there was already a grant in favour of the predecessor of the Respondents. It is not the case of the Appellants that the land was granted by admission certificate which was executed on 20th August 1974. Therefore, even if some condition is incorporated in admission certificate, one cannot jump to the conclusion that originally the grant was on the conditions incorporated in the admission certificate.

6. One more aspect cannot be overlooked. In impugned notice dated 17th September 1971, there is no reference to the G.G.O.14 dated 6th January 1827. All that is stated is that the property belongs to President of India and is held on old grant. Considering all these aspects it cannot be said that the Courts below committed an error by holding that the Appellants have not established that the property was granted to the predecessors of the Respondents on old grant under condition G.G.O.14 of 6th January 1827. Apart from the G.G.O.14 of 6th January 1827, the Appellants have neither pleaded nor shown the existence of

statutory power which empowers them to resume the land without taking recourse to due process of law. Therefore, it is very clear on the basis of evidence on record that the Appellants have not established that they have right to resume the land without taking recourse to the due process of law. At the same time merely because the leases were executed in the past in favour of the predecessor of the Appellant No.1, it cannot be said that the absolute right of ownership in favour of the Respondents or their predecessors is established. In view of this position the Trial Court has committed an error by granting declaration that the Appellants are not entitled to resume the possession of the suit property. On the basis of the findings recorded by the Courts below itself the only decree which could have been passed was that the Appellants were not entitled to resume the land on the basis of the notice dated 17th September 1971. However, the effect of decree is that the Appellants are restrained in perpetuity from resuming possession of the land. The Appellants cannot be deprived of their right to take recourse to the provisions of law and to obtain possession of the property in question. It

is needless to say that the Appellants will have to abide by the principles of natural justice as the Respondents have established their long standing possession. It is made clear that no adjudication has been made in this Judgment as regards ownership right claimed by both the parties. Therefore, the impugned Judgments and Decrees are required to be modified.

7. Hence I pass the following order :

i) The Appeal is partly allowed with no order as to costs.

ii) The impugned Judgments and Decrees passed by the Courts below are modified and substituted by following :

"a) It is hereby declared that the notice dated 17th September 1971 bearing No.701/144/L/L & C/704759/D is illegal and the Defendants are not entitled to dispossess the Plaintiffs of the suit property on the basis of the said notice.

b) The Defendants are hereby restrained by Decree

of perpetual injunction from dispossessing the
Plaintiffs of their possession over the suit
property otherwise than by due process of law. The
Defendants are directed to follow principles of
natural justice while adopting the due process of
law.

c) The Defendants will pay costs of the suit to the
Plaintiffs."

. Certified copy is expedited.

JUDGE