

HIGH COURT OF MADHYA PRADESH, JABALPUR

CR. NO. 339/2017

Roby John

-Versus-

Union of India

CR. NO. 331/2017

Smt. Swarnlata Paul

-Versus-

Union of India

CR. NO. 332/2017

Victor Philmon

-Versus-

Union of India

CR. NO. 333/2017

Deepak Karosia

-Versus-

Union of India

CR. NO. 334/2017

Smt. Neelima Samson

-Versus-

Union of India

CR. NO. 335/2017

Smt. Maya Karosia

-Versus-

Union of India

CR. NO. 336/2017

Hemchand Charote

-Versus-

Union of India

CR. NO. 337/2017

Chandrika Prasad

-Versus-

Union of India

C.R. NO. 338/2017

Santosh Singh Thakur

-Versus-

Union of India

CR. NO. 340/2017

Ramchandra Rajak

-Versus-

Union of India

CR. NO. 341/2017

Smt. Chita Rao

-Versus-

Union of India

CR. NO. 342/2017

Sukhram

-Versus-

Union of India

CR. NO. 343/2017

Shanti Bai Jacob

-Versus-

Union of India

CR. NO. 344/2017

Shailendra Rao

-Versus-

Union of India

CR. NO. 345/2017

Amit Rao

-Versus-

Union of India

CR. NO. 346/2017

Charlie Paul

-Versus-

Union of India

CR. NO. 347/2017

Gaurishankar Vinodia

-Versus-

Union of India

CR. NO. 348/2017

Wilson Anthony

-Versus-

Union of India

CR. NO. 349/2017

Marshal Lakra

-Versus-

Union of India

CR. NO. 350/2017

Smt. Sharda Pillai

-Versus-

Union of India

CR. NO. 351/2017

Robin Samuel

-Versus-

Union of India

CR. NO. 352/2017

Tennyson Dayal

-Versus-

Union of India

CR. NO. 353/2017

Sumant Charote

-Versus-

Union of India

CR. NO. 366/2017*C.J. Sarwan***-Versus-***Union of India***CR. NO. 367/2017***Suryakant Singh***-Versus-***Union of India*

CORAM:-

Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Whether approved for reporting ? Yes/No

<i>Whether approved for reporting?</i>	
<i>Law laid down</i>	<i>General Land Record maintained by the Ministry of Defence is statutory in nature and on the basis of the same, land vest in the defence/Board, person continuing possession without valid authority is unauthorized occupant and liable to be evicted according to Public Premises(Eviction of Unauthorized Occupants)Act, 1971.</i>
<i>Significant paragraph Nos.</i>	

Shri V.R.Rao, Senior Advocate with Shri Rakesh Kumar Gupta, for the applicants.
 Shri Vikram Singh, Standing Counsel for the respondent/
 Union of India.

ORDER**(/08/2017)**

Regard being had to similitude of the question involved in the present revision petitions, they are being disposed of by a

common order. In these revision petitions, challenge has been made to order of eviction passed by the Estate Officer and dismissal of appeal under the provisions of Public Premises(Eviction of Unauthorized Occupants) Act, 1971.

2. The facts from Civil Revision No.339/2017 are noted.

3. Property bearing Bungalow No.2, Survey No.6, Howbagh Road, Jabalpur Cantonment was purchased by Allahabad Bank Limited, Jabalpur at a Court Auction held on 1st July, 1910. The said Allahabad Bank vide Conveyance dated 30th day of July 1934, sold the said property to Sarvshri Lanchand, Phoolchand, Hukumchand, Kapoorchand, Shikherchand Jain Sons of Manikchand to whom possession was delivered. It is contended that the owners are now survived by one Raj Kumar Jain Son of Shikhar Chand Jain, Subhodh Jain and Sanjay Jain Sons of Deviki Nandan. It is submitted that the applicant was inducted as a tenant by the erstwhile owners and there are about 36 tenants, who are occupying main house and servant quarters as lawful tenants of the owners. These revisions petitions are filed by these different tenants raising the same issue. It is also submitted that as tenants, they have been paying rent ever since.

4. The respondent Union of India through Ministry of Defence has found them to be the encroachers over the land on the basis

of General Land Register(GLR), maintained by the Defence Estate Officer in view of the Statutory provisions of Rule 3 and 10 of Cantonment Land Administration Rules, 1937 (CLAR). Notices under Section 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the 'Act') were issued. On receipt of notice, the applicants filed reply and contended that they are not encroachers, as they are tenants and they have been paying rent to the private owner. They also submitted photocopies of sale deed executed by the Allahabad Bank and other documents like rent receipts, taxes paid to the Cantonment Board etc. The Estate Officer passed the order of eviction treating them to be unauthorized occupants under the Act. Against the order of eviction, all the applicants filed appeal before the Additional District Judge, Jabalpur and the same remained unsuccessful as dismissed by the impugned order.

5. Learned counsel for the applicant raised 4 issues:

(i) That the action taken by the respondent suffers from delay and laches. He submitted that according to the respondent, the lease was determined by the respondent in the year 1968 but the action is taken in the year 1997, therefore, in view of the provisions of Article 65 of the Indian Limitation Act, the action is barred by limitation.

(ii) The action of the respondent is barred by principle of

res judicata, as they had issued earlier notice in the year 1997 but the said notice was found to be illegal but respondents have now initiated the proceedings afresh in the year 2008.

(iii) The Estate Officer as well as the Appellate Authority has failed to consider that there was no material except GLR with the respondents and they have not established that when the possession was taken by them from the lease holder and how and when the possession of the present applicants became unauthorized occupants.

(iv) There is no discussion by the Estate Officer as well as by the Appellate Authority about the forcible possession taken by the applicants after the resumption of the title of the respondent Union of India, by virtue of GLR to consider their possession as unauthorized occupant under the Act, 1971.

6. Per contra, learned counsel for the respondent supported the order passed by the Estate Officer as well as passed by the Appellate Authority and contended that the respondents have determined lease in favour of Jain brothers and the possession was also taken over by the respondents on 19-08-1968 under the authority of Government of India, Ministry of Defence Letter No. 7/10/L/L&C/66/5266/D(Lands) dated 11-07-1968 (Annexure R-1).

It is contended that after determination and cancellation of lease, the continuation of the applicants in the premises is unauthorized and therefore, they are liable to be evicted in accordance to the provisions of the Act, 1971. There is no illegality in his order.

7. It is apposite to mention that it is not disputed by the counsel for the applicants that the premises in question is a public premises within the definition of public premises under the Act of 1971. The land comprising General Land Register (GLR), Survey No.6 of Jabalpur Cantonment admeasuring of 4.25 acres, classified as B-3 land, described as Bungalow No.2 Howbagh Road, placed under the management of Defence Estate Office Jabalpur Circle, Jabalpur, is owned by the Government of India, Ministry of Defence. The subject site is held on proprietary rights by the Government of India. The Defence Estate Officer has been vested with the powers to initiate proceedings for eviction under Section 4 of Act, 1971 in respect of unauthorized occupation of the public premises.

8. In the case of **Union of India Vs. Tek Chand (1999)3 SCC 565**, the aforesaid GLR was held to be statutory made under Section 43 of the Government of India Act, 1833. In **Mohan Agrawal Vs. Union of India, AIR 1979 All 170**, the legislative

history following the promulgation of Order No.179 under the Government of India Act, 1833 has been traced up to the date of the commencement of the Government of India Act,1833. In the case of **Chief Executive Officer Vs. Surendra Kumar Vakil (1999)3 SCC 555**, the effect of the terms of the tenure grant was considered and it was held that under the said terms ownership of the land remains with the Government and the land cannot be sold by a grantee. The original grantee is vested with the right to build up a house/structure on the land and he may only transfer the same. Such transfer would require the consent of the commanding officer when the transfer is to a person not belonging to the armed forces. The right to resume the land, at any time, after following the procedure prescribed was expressly recognized by the court to be vested in the Union. It was also held that the GLR maintained by the Cantonment Board under the Cantonment Act and the Rules framed thereunder is a public document and the entries therein are conclusive evidence of title.

9. The Apex Court in the case of **Union of India and others Vs. Robbert Zomawla Street (2014) 6 SCC, 707** has held as under :

16. The entries made in the GLR show that it is an old grant and that it is managed by the plaintiff as B3 land. Class B3 is such land which is held by

any private person subject to the conditions that the Central Government has proprietary rights over it. True it is that the plaintiff held the land but the word "held" does not necessarily mean to own with legal title. It is not a word of art and its meaning has to be understood in the context it has been used. In a given context the word "held" may connote both ownership as also possession, but it will not carry the same meaning in all context and circumstances. In the case in hand, the plaintiff held the land but being an old grant the Central Government has the right of its resumption and, therefore, it cannot be said that the plaintiff possesses the land as owner. In view of what we have observed above, the meaning of the word "held" in various dictionaries and explanation of said word in the several decisions of this Court referred to above in no way advance the case of the plaintiff.

17. The tenures under which permission is given to civilians to occupy Government land in the cantonment for construction of bungalows on the condition of a right of resumption, if required, is known as old grant tenures. It is governed by regulation contained in Order No. 179 of 1836 which is self contained and provides for the manner of grant and resumption of land in cantonment area. In respect of old grant tenure, the Government retains the right of resumption. The GLR in unequivocal terms describes the nature of holder's right as "old grant". Thus, the plaintiff has

not been able to establish his title over the suit land in question and, therefore, the plaintiff deserves to be non-suited on this ground alone.

18. However, in deference to Mr. Venugopal, we must answer an ancillary submission projected before us. He points out that, according to the defendants themselves, the land was given as old grant to the predecessor-in-interest of the plaintiff but the said grant has not been produced and in the absence of any explanation by the defendants for its non-production, adverse inference has to be drawn. According to him, once such inference is drawn, the plaintiff's suit deserves to be decreed and was, therefore, rightly decreed by the High Court. This submission of Mr. Venugopal does not appeal to us. It is not possible to accept the contention that since actual grant was not produced, the case pleaded by the defendants that the plaintiff held the land as old grant was not proved. The GLR maintained under the Cantonment Land Administration Rules supports the defendants' contention that the plaintiff held the land on old grant basis. The plaintiff, on the other hand, has not produced any document to show the title of his predecessor-in-interest. Nemo dat quid non habet is the maxim which means no one gives what he does not possess, aptly applies in the case. It needs no emphasis that the successor will not have better title than what his predecessor had. Hence, we reject this submission of Mr. Venugopal.

10. A Coordinate Bench of this court in the case of **Smt. Indra Bai Vs. Defence Estate Officer, Jabalpur and others (WP No.18872/2016)**, decided on 30-11-2016 held that the GLR maintained by the respondent is a conclusive evidence of ownership and possession of the Government of India.

11. In the case of encroachment over the land belonging to the Cantonment Board, the Apex Court in the case of **Sunil Kumar Kori and another Vs. Gopal Das Kabra and others (Panchamarhi Cantonment case) 2016 (10) SCC 467**, held that the encroachers have no right to continue in the land belonging to the Cantonment Board and they are not entitled to be included in the voter list. The Board has been directed to take effective steps for removal of encroachments.

12. In the light of the aforesaid enunciation of law in the present case and upon perusal of the Annexure R-1, it is found that the lease of Sheikharchand Jain was determined and the possession was taken over by the Government of India on 19-08-1968 and by virtue of the statutory provisions and GLR, the said land vested in the Government of India. Respondents have also filed copy of order dated 13-11-1970 Annexure R-2. It is also stated in para-9 of the reply that the determination proceedings were challenged before the High Court in the writ petition, which

was withdrawn. Thus, the status of the present applicants are of unauthorized occupants under the definition of unauthorized occupants under the Act, 1971.

Unauthorized occupants is defined under section 2(g) of Act 1971, which reads as under :

“2(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and included the continuance in occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority(whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever,”

From a bare reading of the aforesaid definition, it is crystal clear that after determination of the lease, which was granted in favour of Sheikhar Chand Jain, continuation of the applicants in the premises in question has become unauthorized occupation and therefore, there is no illegality in the eviction proceedings initiated under Section 4 of the Act, 1971.

13. The contention of Shri V.R.Rao, learned Senior Advocate for

the applicants that the limitation is prescribed for initiating eviction proceedings under Article 65 therefore, if no such action is taken, a right is accrued in favour of the other persons. I do not find any merit in the said contention as the limitation is prescribed for filing a civil suit, whereas the present proceedings are initiated under Special Enactment for taking expeditious proceedings of eviction in respect of a public premises.

14. The next contention of the counsel that the proceedings are barred by doctrine of Res-judicata has also no merit as the continuation of unauthorized occupation or encroachment is a continuing cause of action and because previous notice has been set aside that would not preclude the authority from initiating fresh proceedings. The other contention of the counsel for the applicant that the authorities have failed to record finding that when the respondent has taken over possession and when the applicant had forcibly entered into the possession of the respondents, has no merit or force of law. The Apex Court in the case of **Union of India and others Vs. Robert Zomawla Street (supra)** has held that the entries in the GLR maintained under the Cantonment Land Administration Rules is conclusive evidence of title of land and therefore, by operation of law, the land vest with the respondents and they are not under obligation to establish their possession in a public premises. By

Annexure R-1, they have determined the lease and has also taken the possession. In such cases even paper possession would also be sufficient to invoke the proceedings for eviction under the Act 1971. Once the premise is a public premise and land has vested by virtue of GLR with the respondents, I am of the considered view that the possession of the applicants is of unauthorized occupation and they do not have any right to continue on the same.

15. In view of the aforesaid facts, circumstances and law established by the Apex Court, I do not find any illegality in the order impugned , hence the present revision petition and all other connected revisions are dismissed. No order as to costs.

(VIJAY KUMAR SHUKLA)
JUDGE

hsp.