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SAHODARA DEVI & ORS.

v.

GOVERNMENT OF INDIA & ANR.

March 26, 1971.

B [J. M. SHELAT, I. D. DUA AND V. BHARGAVA, JJ.]

Cantonment Land Administration Rules, 1937, *r.* 27—*Power under rule to grant lease whether discretionary—Use of word 'May', effect of.*

The appellant filed a petition under Art. 226 of the Constitution against the refusal of the Defence Ministry to execute a lease under r. 27 of the Cantonment Land Administration Rules, 1937 in respect of a bungalow C situated in a cantonment area, on occupancy land held on 'old grants lease'. The single Judge directed the respondents to execute the lease but the Division Bench held that the power to grant a lease under r. 27 was discretionary. The Division Bench therefore set aside the orders of the single Judge and issued orders to the respondents to reconsider the request of the appellants for grant of lease under r. 27 and Sch. VII of the Rules in accordance with law. With certificate the present appeal was filed in this D Court. The only question for consideration was whether the appellants were entitled to a direction against the respondents to issue a lease to them under r. 27 and Sch. VII of the 1937 Rules.

HELD: Rule 27 only confers a power in general on the Military Estates Officer to grant leases and, by using the word 'may', it clearly gives him discretion to grant leases in suitable cases. There is the further circumstance that the exercise of the power by the Military Estate Officer has E been made subject to the approval of the Central Government or such other authority as the Central Government may appoint for that purpose. The power of the Military Estates Officer being subject to such discretionary approval or disapproval of another authority cannot possibly be held to be required to be exercised in all cases without any discretion. [234G-235A]

In the present case therefore the High Court in directing a reconsideration of the case in accordance with law was quite correct, so that the ap- F plication of the appellants must be decided afresh after keeping in view the principle that the power to grant a lease under r. 27 is discretionary, but the refusal should only be in suitable cases where sufficient reasons exist for the purpose. [235C]

Sardar Govindrao & Ors. v. *State of Madhya Pradesh,* [1965] 1 S.C.R. 678, distinguished.

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2246 of 1969.

Appeal from the judgment and decree dated April 11, 1969 of the Allahabad High Court in Special Appeal No. 469 of 1968.

H *Yogeshwar Prasad, S. K. Bagga* and *S. Bagga,* for the appellants.

V. A. Seyid Muhammad and *S. P. Nayar,* for the respondents.

The Judgment of the Court was delivered by A

Bhargava, J.—The appellants are admittedly the joint owners of Bungalow No. 45, situated along Tagore Road, in the Cantonment of Kanpur. These premises are recorded in the General Land Register of the Cantonment as occupancy land on old grant terms. It appears that the words "old grant terms" referred to B grants made by the Government under the General Order of the Governor-General in Council dated 12th September, 1836. Subsequently, the first Act to be passed in respect of these lands was the Cantonments Act No. 13 of 1889. This was followed by Cantonments Act No. 15 of 1910 and Cantonments Code, 1912. These were amended by Cantonments Act No. 2 of 1924 which C still continues to be in force. On the 26th June, 1925, Rules were framed for the first time under section 280 of the Cantonments Act of 1924, regulating administration of Cantonment lands. These Rules were, however, superseded by fresh Rules by Government notification dated 23rd November, 1937. The new Rules are described as "Cantonment Land Administration Rules, 1937". Under these Rules, a provision was made in rule 27 for regularisation of old grants by issue of fresh leases. The appellants did not have any documents to show how the original title of their predecessors was acquired in respect of these lands. The earliest document, which the appellants could produce, was a sale-deed executed by Ram Nath and others, sons of Roop Kishore, in favour of Dost Mohammad Estate, on the 8th September, 1943. E This document recited that Roop Kishore, the father of vendors Ram Nath and others, purchased the property in various instalments by documents executed between the years 1901 and 1908. The appellants acquired the rights to the Bungalow by a sale-deed executed in their favour by Dost Mohammad Estate on 30th April, 1958. After taking this sale-deed, they applied for mutation to Cantonment authorities; but objections were raised and F the authorities did not agree to mutate the names of the appellants until the appellants agreed to give an undertaking to be bound by the terms of the Governor-General's Order of September 12, 1936. Their names were then mutated on 13th September, 1961, which had to be followed by a deed of admission executed by the appellants on 15th September, 1961. Subsequently, the G appellants approached the authorities to get their rights defined and to have their possession regularised under r. 27 of the Rules of 1937. The request not having been granted, the appellants, on 12th April, 1966, moved the Military Estates Officer, Lucknow for the same purpose and, according to the appellants, no attention was paid to this request of theirs. On 15th October, 1966, H they sent a reminder to the Military Estates Officer, Lucknow and, in addition, requested him to supply them with a form prescribed by Schedule V of the Rules of 1937. It may be mentioned

A that the lease under r. 27 was required to be executed in the form in Schedule VII and not in Schedule V. On 25th October, 1966, the Military Estates Officer wrote to the appellants to collect the form from the Cantonment Executive Officer, Kanpur Cantonment, who was the Agent of the Military Estates Officer, and to submit it, after completion, to the Military Estates Officer, Lucknow, along with a site plan. The letter contained an additional sentence that this reply sent also disposed of the earlier letter of the appellants dated 12th April, 1966.

The appellants had also, in the meantime, moved the Defence Ministry by a letter dated 27th August, 1966, for grant of a lease under r. 27 read with Schedule VII of the Rules of 1937, quoting an instance of one Mr. Packwood, resident of Kanpur Cantonment, in whose case a similar lease had already been issued. By the letter dated 25th October, 1966, the Joint Secretary to the Defence Ministry informed the appellants that a lease under r. 27 and Sch. VII could not be granted; but, if the appellants so desired, the Government were prepared to consider their case under r. 28(1) and Schedule VIII of those Rules. The appellants made a representation against this letter by a letter dated 1st November, 1966; but, when no reply was received, they gave a notice to the Government on 28th February, 1967, to execute the lease in two months under r. 27 and Sch. VII. Again, there was no reply and, thereupon, the appellants moved a petition under Art. 226 of the Constitution in the High Court of Allahabad on 18th March, 1967, seeking a writ of *mandamus* directing the Military authorities to issue a lease to them under r. 27 and Sch. VII. The petition was heard by a single Judge of the High Court and he issued a direction to the respondents to grant a lease as prayed. He rejected the plea of the respondents that the case fell within Rules 16 to 26 and 28 and not under Rule 27. The respondents appealed to a Division Bench which agreed with the learned single Judge that rules 16-26 and 28 were inapplicable to the case of the appellants. It was, however, of the view that, though the case was covered by r. 27, that rule did not contain any mandatory provision requiring a lease to be given in all cases of old grants and that there was a discretion vested in the authorities acting under that rule not to give a lease in suitable cases. It was also held that the appellants had no right to claim such a lease under that rule. Consequently, the Division Bench set aside the direction of the single Judge and issued orders to the respondents to reconsider the request of the appellants for grant of lease under r. 27 and Sch. VII of the Rules in accordance with law. It is against this order that the appellants have come up to this Court by certificate under Art. 133(1)(b) of the Constitution.

In this appeal, we are concerned with only one single point relating to the nature of the direction contained in r. 27 of the

Rules of 1937. The concurrent decision of the single Judge and the Division Bench, holding that rules 16-26 and 28 are inapplicable, has not been challenged in this case before us. The only point that has been canvassed is whether the appellants are entitled to a direction against the respondents to issue a lease to them under r. 27 and Sch. VII of the Rules of 1937.

Rule 27 of the Rules of 1937 is as follows :—

> "27. Special Lease for the Regularisation of Old Grants.— Notwithstanding anything contained in rules 16 to 26 the Military Officer in any case where a site is held without a regular lease, may, on application by the holder, grant, with the approval of the Central Government or such other authority as the Central Government may appoint for this purpose, a lease of the said land in the form set out in Schedule VII."

In this Rule, thus, the power to grant a lease for regularisation of old grants has been given to the Military Estates Officer by using the word "may", and the power is further subject to the approval of the Central Government or such other authority as the Central Government may appoint for the purpose. In view of this language used, we think that the High Court was quite right in holding that this rule does not envisage a mandatory direction to the Military Estates Officer to grant a lease in all cases where the question of regularisation of old grants arises. Normally, the word "may" is used to grant a discretion and not to indicate a mandatory direction. Had the intention been that the Military Estates Officer must grant a lease in all cases, the word used would have been "shall" instead of "may". It is true that the word "may", in some context, has been interpreted as containing a mandatory direction and the authority given the power has to exercise that power unless there be special reasons. Such a case came before this Court in *Sardar Govindrao and Others* v. *State of Madhya Pradesh* (1). That was a case where a rule relating to grant of money or pension was sought to be enforced. This Court held :—

> "This is an instance where, on the existence of the condition precedent, the grant of money or pension becomes obligatory on the Government notwithstanding that in s. 5(2) the Government has been given the power to pass such orders as it deems fit and in sub-s. (3) the word "may" is used. The word "may" is often read as "shall" or "must" when there is something in the nature of the thing to be done which makes it the duty of the

(1) [1965] S.C.R. 678

person on whom the power is conferred to exercise the power. Section 5(2) is discretionary because it takes into account all cases which may be brought before the Government of persons claiming to be adversely affected by the provisions of s. 3 of the Act. Many such persons may have no claims at all although they may in a general way be said to have been adversely affected by s. 3. If the power was to be discretionary in every case there was no need to enact further than sub-s. (2). The reason why two sub-sections were enacted is not far to seek. That Government may have to select some for consideration under sub-s. (3) and some under s. 7 and may have to dismiss the claims of some others requires the conferment of a discretion and sub-s. (2) does no more than to give that discretion to Government and the word "may" in that sub-section bears its ordinary meaning. The word "may" in sub-s. (3) has, however, a different purport. Under that sub-section, Government must, if it is satisfied that an institution or service must be continued or that there is a descendant of a former ruling chief, grant money or pension to the institution or service or to the descendant of the former ruling chief, as the case may be. Of course, it need not make a grant if the person claiming is not a descendant of a former ruling chief or there is other reasonable ground not to grant money or pension. But, except in those cases where there are good grounds for not granting the pension, Government is bound to make a grant to those who fulfil the required condition and the word "may" in the third sub-section though apparently discretionary has to be read as "must".

It may be noticed that, in that case, the word "may" as used in the general sub-s. (2) was not held to indicate a mandatory direction. It was only in sub-s. (3), because of the special context, that the Court held that the word "may" was equivalent to "shall" or "must". In the case before us, rule 27 only confers a power in general on the Military Estates Officer to grant leases and, by using the word "may", it clearly gives him discretion to grant it in suitable cases. There is further the circumstance that the exercise of the power by the Military Estates Officer has been made subject to the approval of the Central Government or such other authority as the Central Government may appoint for that purpose. If the power had to be exercised by the Military Estates Officer in all cases, its being made subject to the approval of another authority would be meaningless. When a rule envisages approval of the proposed action of the Military Estates Officer, it also implies that his action can be disapproved. This approval or disapproval will necessarily be at the discretion of the Central

Government or the authority appointed by it for that purpose. The power of the Military Estates Officer being subject to such discretionary approval or disapproval of another authority cannot possibly be held to be required to be exercised in all cases without any discretion. The Division Bench was, therefore, perfectly correct in holding that the power under r. 27 is a discretionary power, and both the Military Estates Officer as well as the Central Government or the other authority appointed by it for that purpose in exercising their power have the discretion in suitable cases not to proceed under this rule. The High Court, in directing a reconsideration of the case in accordance with law, was, therefore, quite correct, so that the application of the appellants must be decided afresh, after keeping in view the principle that the power to grant a lease under rule 27 is discretionary; but the refusal should only be in suitable cases where sufficient reasons exist for that purpose.

The appeal fails and is dismissed. In the circumstances of this case, we make no order as to costs.

G. C. *Appeal dismissed.*