

# SUPREME COURT OF INDIA

Surendra Kumar Vakil

Vs.

Chief Executive Officer, M.P.

C.A.No.8484 of 1997

(R.C.Lahoti and G. P. Mathur JJ.)

15.03.2004

## JUDGMENT

### **R. C. Lahoti, J.**

1. The suit property consists of a piece of land measuring 11.37 acres comprising in Survey No.392 and the structure standing thereon known as Bungalow No.39 in Sagar Cantonment area. A suit for declaration of title filed by the review-petitioner was directed to be decreed by the Trial Court and the decree was upheld by the High Court in First Appeal. The Chief Executive Officer of Cantonment Board, Sagar preferred an appeal by special leave which was allowed by this Court and the suit filed by the review-petitioner was directed to be dismissed. A perusal of the judgment under review reveals that in forming opinion against the review-petitioner in the matter of title over the land in suit, this Court placed reliance on Order No. 179 of 1836 of the Governor General in Council where under the land forming part of the suit property is known as one held under 'old grant'. This Court also noted with approval the view of the law taken in *Shri Raj Singh Vs. The Union of India and Ors.*<sup>1</sup> as regards the properties in British Cantonment areas. The judgment sought to be reviewed is reported as 4.

2. In the review petition filed by the review-petitioner, one of the pleas raised is that Order No.179 of 1836 has stood repealed and therefore the judgment of this Court based on the said order was vitiated by an error of law apparent on the face of the record. It is mainly this plea which persuaded the Court to issue notice in review petition. The non-petitioners herein have disputed the availability of any merit in any of the pleas raised by the writ-petitioner and have submitted that no case for review was made out.

3. We have heard the learned counsel for the parties at length and we are satisfied that the judgment under review does not suffer from any such infirmity as to call for recalling of the judgment in exercise of review jurisdiction of this Court.

4. The first submission of the learned counsel for the review- petitioner has been that the GGO No.179 of 1836 has stood repealed by Act No.XXII of 1864 which received the assent

of Governor General on the First day of April, 1864 and came into force on that day. In the submission of the learned counsel for the review-petitioner Sections XVII and XXVIII are relevant which are extracted and reproduced hereunder:

"XVII. And may make Rules and Regulations to provide for certain matters hereinafter mentioned the same to be general or special:

The Local Government shall have power to make Rules and Regulations not inconsistent with the provisions of this Act or of any other law in force, to provide within the limits of any Military Cantonment for the matters hereinafter mentioned, and from time to time to repeal, or alter, such Rules and Regulations. The Rules and Regulations made under this Section may be general for all Military Cantonments in the Territories under the local Government making the same, or special for any one or more of such Cantonment, according as the local Government shall direct."

"XXVIII. Effects of Rules made under Section XVII of the Act in respect of Regulations previously.

Whenever in any Military Cantonment, Rules and Regulations have been made under Section XVII, so much of any Regulation or Act as may be held to empower the Commanding Officer to make local Regulations regarding matter other than Military shall cease to have any effect in such Cantonment, and all local Regulations for any Military Cantonment which may have been made before the promulgation of the Rules and Regulations for such Cantonment made under such Section XVII, shall cease to have any effect. Provided that nothing in this Section shall be held to interfere with any Military Authority vested in the said Commanding Officer under Articles of War."

5. The learned counsel for the review-petitioner submitted that Order No.179 of 1836 is referable to Section XVII and, therefore, stands repealed by Section XXVIII.

6. We have carefully perused the two provisions relied on by the learned counsel and we find no merit in the submission made. Under Section XVII, the Local Government is empowered to make Rules and Regulations generally for all military cantonments in the territories under that Local Government or in respect of one or more of such cantonments. The nature of the Rules and Regulations which can be framed by the Local Government is indicated by the Preamble which reads as under:

"Preamble :

Where it is expedient to make provision for regulating the administration of Civil and Criminal Justice and the superintendence of Police and Conservancy, for protecting the public health within the limits of Military Cantonments and for laying down local Rules and Regulations to be enforced within such limits, it is enacted as follows :"

7. Once the Rules and Regulations have been framed by the Local Government then the power of the Commanding Officer to make local Regulations regarding matters other than military comes to an end.

8. Order No.179 of 1836 issued by Governor General in Council cannot be said to have been issued under Section XVII and, therefore, the question of its ceasing to operate by reference to Section XXVIII does not arise. There are certain Acts and Regulations which have been specifically repealed by Act No.XXII of 1864 as per Section 2 read with the Schedule appended to the Act but Order No.179 of 1836 is not be found mentioned therein.

9. In addition, the learned counsel for the non-petitioners has pointed out that Order No.179 of 1836 was amended by Order No.1001 dated 8th July, 1864 by Governor General in Council and such amendment would not have been made if Order No.179 of 1836 would have stood repealed with effect from 1st April, 1864 by Act No. XXII of 1864. It is also pointed out that the decision of this Court in Chitra Kumari (Smt.) Vs. Union of India & Ors. 86 decided on February 14, 2001 also takes notice of GGO No.179 of 1836 as still in force.

10. The first plea raised by the review-petitioner fails.

11. It was then submitted that in the decision of Nagpur High Court dated 07.10.1949 in Second Appeal No.120 of 1947 in Shrideo Jankiramji Idol Vs. The Governor General in Council, Delhi certain observations have been made regarding General Land Register (GLR) maintained under the Cantonment Land Administration Rules of 1925 and those observations would have a material bearing on the facts of this case. The decision of Nagpur High Court cannot be relied on by the review-petitioner as a precedent because there is no such point of law decided as may be capable of being read as precedent for the purpose of this case. If the judgment though not judgment intra- parties, is yet sought to be relied on as a piece of evidence, then it should have been tendered in evidence which has not been done. Be that as it may, it is not disputed at the Bar that this judgment was very much available before the Court when the appeal was argued and the judgment of Nagpur High Court was specifically referred to in the Note of written submissions made on behalf of respondent in the appeal (review-petitioner herein). A point that has been heard and decided cannot form a ground for review even if assuming that the view taken in the judgment under review is erroneous.

12. The third contention raised on behalf of the review-petitioner relates merely to appreciation of evidence and we do not think it is available to be urged now.

13. No case is made out for entertaining the review petition. It is dismissed.

<sup>1</sup>1973 AIR (Delhi) 169