SUPREME COURT OF INDIA

Arun Lal

Vs.

Union of India

C.A.No.6464 of 2004

(Markandey Katju and T.S. Thakur JJ.)

30.11.2010

JUDGMENT

T.S.Thakur, J.

1. These appeals by special leave arise out of orders passed by the learned Single Judge of the High Court of Allahabad whereby Civil Misc. Writ Petition No.43928 of 2002 filed by the respondent-Union of India has been allowed and order dated 3rd August, 2002 passed by the District Judge, Agra in revision and that dated 24th May, 2002 passed by the Additional Civil Judge, Agra, in execution proceedings filed before the later set aside. The High Court has while allowing the writ petition and setting aside the orders referred to above held that the execution proceedings instituted by the respondent-decree holders were not maintainable in so far as the same related to 2.792 acres of land that stood resumed by the Government of India in terms of a resumption notice dated 23rd September, 1970 and the possession thereof taken over on 6th November, 1970. The short question that arises for our consideration therefore is whether the High Court was right in taking that view and dismissing the execution proceedings in so far as the same related to land measuring 2.792 acres appurtenant of Bungalow No. 194, situate in the Agra cantonment area. The facts giving rise to the controversy have been set out in detail by the High Court and need not, therefore, be repeated by us here except to the extent it is absolutely necessary to do so.

2. Land measuring 3.563 acres situated in Survey No.160 within Agra Cantonment was held in occupancy rights by one Hamid Ali Khan on the strength of a grant under the Government of India. The grantee it appears had constructed what has been described in the orders passed by the Courts below as Bungalow No. 194 situated in the cantonment area at Agra. Pursuant to an application filed jointly by Hamid Ali Khan and Lala Chhail Behari, the Military Estates Officer granted permission for transfer of the Bungalow aforementioned and the land under and appurtenant thereto in terms of letter dated 3rd August, 1946. A sale deed was accordingly executed in respect of the property on 11th September, 1946 by Hamid Ali Khan in favour of Chhail Behari Lal and his two brothers Naval Kishore and Kapoor Chand. The Bungalow in question had been let out by the original grantee to the Military Estate Officer

in June 1942 on monthly rental of Rs.125/-. The purchasers on the basis of the sale in their favour acquired the right to claim the rent payable for the same from the Military Estate Officer. Suit No. OS 842 of 1958 was accordingly filed by the purchasers for recovery of arrears of rent and damages and for vacant possession which suit was decreed for a sum of Rs.1600/- only towards rent and damages. The Court held that in the absence of any material to show that the Government had issued any notice for resumption of the land appurtenant to the bungalow, the Government of India was liable to pay damages for remaining in occupation of the barracks which had been built in the compound of bungalow.

3. The grant holder Naval Kishore and others filed a second suit bearing suit No.6 of 1963 for recovery of rent and damages for use and occupation of the bungalow apparently for the period subsequent to the earlier suit. This suit was also decreed by the Trial Court. The appeal preferred by the Union of India was, however, allowed holding that there was no valid contract between the parties in respect of the bungalow and consequently the claim for rent could not be decreed. The claim for payment for damages also failed on account of non-compliance with the provisions of Section 80 of the CPC.

4. A third suit being suit No.99 of 1968 was then filed by the Naval Kishore and others for recovery of Rs.7800/- as arrears of rent and damages with a prayer for possession by eviction of the Garrison Engineer from the main bungalow and the land over which the Govt. of India had built the barrack. This suit was decreed on 25th October, 1969 but only to the extent of recovery of Rs.8977.50 towards rent. The Trial Court did not go into the question of title to the property as the suit was based on a tenancy in favour of the respondents-Union of India. Two appeals came to be filed against the said judgment and decree. While appeal no.294 of 1969 was filed by Naval Kishore and others, appeal no.66 of 1970 was filed by the Union of India. Both these appeals were heard together and by a common order the appeal filed by the Union of India was dismissed while that filed by the Naval Kishore and others was allowed. The High Court held that although no contractual tenancy came into existence between the parties, a statutory tenancy came into existence under the provisions of the Cantonment (House Accommodation) Act, 1993 and that any such tenancy was not dependent upon the execution of a formal decree. The provisions of Article 299(1) of the Constitution were held to be inapplicable to such tenancy.

5. The High Court also found the composite notice served upon the Union of India under Section 80 CPC and Section 106 of the Transfer of Property Act to be valid and decreed the suit for recovery of possession by ejectment of defendants from the bungalow and the land underlying the same with a direction to remove the barracks that were constructed on a part of the compound failing which the same were directed to be removed under the orders of the Court and the possession delivered to the decree-holder.

6. Civil Second appeal nos.1935 of 1970 and 1936 of 1970 filed by the Union of India filed against the said order were dismissed by order dated 8th February, 1984 passed by the High Court as abated on account of the failure of the appellant to substitute the legal heirs of the plaintiffs- respondents. It was in the above backdrop that execution application no.16 of 1977

was filed by the decree-holder before the Executing Court in which the Union of India filed its objections opposing the execution inter-alia on the ground that the land appurtenant to the Bungalow having been resumed by the Government the possession of the same could be taken away from it in execution of the decree passed in favour of the decree holders. According to the Government, out of a total extent of the total 3.563 acres of land granted to the original grantee Bungalow No.194 was constructed over an area measuring 0.771 only. This left an area measuring 2.792 acres vacant around the bungalow. By an order dated 24th September 1970 the Union of India resumed the aforementioned 0.771 acres of land underlying the bungalow, for which a resumption notice dated 2nd February, 1976 was issued. This notice it is significant to mention, did not make any reference to the remaining extent of 2.729 acres which was appurtenant to the bungalow. Aggrieved by the said resumption order the grantees filed writ petition No.1482 of 1971 which was allowed by a Division Bench of the High Court of Allahabad holding that the Government of India could not take over/resume any building or land except after serving one month's notice and paying to the owner compensation for the property being resumed based on a process or determination with which the erstwhile grantee is also associated. The High Court held that since no such notice was served nor any compensation determined the resumption order was unsustainable. The same was accordingly quashed. Another notice dated 23rd September, 1970 purporting to resume the vacant area measuring 2.792 acres, however, remained unchallenged. The High Court has in the order impugned before us recorded a finding that possession of the said extent of land was taken over by the respondents on 6th November, 1970.

7. The objections filed by the Union of India to the execution proceedings in the above background raised a plea that the decree for delivery of possession to the extent the same related to 2.792 acres of land was rendered inexecutable as the said extent of land stood resumed by it in terms of resumption notice dated 23rd September, 1970 and that possession of the said area was also taken over by the competent authority on 6th November, 1970. The Union of India therefore argued that since the resumption of the land in question had attained finality and since possession of the same was also taken over from the decree holders there was no question of dispossessing the Union of India from the said extent of land in execution to the decree passed in favour of the petitioner. The Civil Judge rejected the objection raised by the Government. The District Judge in revision affirmed that order holding that the objections filed by the Union of India were time barred. Aggrieved by the said orders the Union of India preferred Civil Misc. Petition No.43928 of 2002 before the High Court who framed the following three questions for determination:

> "(1) Whether the land in dispute is an old grant and the resumption of part of the old grant on the land measuring 2.792 acres by notice dated 23.9.1970 of which the possession was taken on 6.11.1970 has become final between the parties?
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> (2) Whether the issue regarding the land being old grant land was directly and substantially in issue between the parties in suit no.842 of 1958, and cannot be re-agitated in the present proceeding on the principle of res judicata?

(3) Whether the objections filed by petitioners under section 47 C.P.C. to the execution of the decree, were barred by limitation?"

8. Answering question no.1 in the affirmative the High Court held that the grant in question was an old grant and that resumption of land measuring 2.792 acres in terms of notice dated 23rd September, 1970 and taking over of possession on 6th November, 1970 had attained finality between the parties. Question no.2 was answered by the High Court in the negative. It was held that the question whether the grant was old or new was not directly and substantially in issue in Suit no.842 of 1958. The principle of res judicata did not, therefore, debar the plea that the grant was an old grant. In so far as question no.3 is concerned, the High Court held that there was no limitation prescribed for filing of objections under Section 47 CPC and hence rejection of objections by the Revisional Court on that ground was not legally correct. The present appeals assail the correctness of the judgment and order of the High Court as already noticed above.

9. Having heard learned counsel for the parties at considerable length we do not find any reason, muchless a compelling one, for us to take a view different from the one taken by the High Court. That land measuring 2.792 acres appurtenant to the bungalow was resumed in terms of notice dated 23rd September, 1970 has not been disputed before us. That the said notice was not assailed by the grantees before any Court or authority is also not in dispute. That possession of the resumed land appurtenant to the bungalow was taken over on 6th November, 1970 has also not been assailed nor is the finding recorded to this effect by the High Court under challenge. At any rate we see no error or perversity in that finding of the High Court to warrant interference. It is common ground that the land appurtenant to the bungalow had been utilised by the Union of India for construction of barracks. The entire extent of 2.792 acres of of land including the one under the barracks could, therefore, be taken over pursuant to the resumption order which was never assailed and had thereby attained finality. Such being the position, the High Court was right in holding that possession of the above extent of land could not be taken away from the Union of India for delivery to the decree-holders. That is because after the resumption of the property and the taking over of the possession by the Union of India in exercise of its rights as the paramount title holder, it was no longer holding the same as a tenant so as to be answerable to the petitioners as its landlords. The Union of India was on the contrary holding the resumed property in its own right and in a capacity that was different from the one in which it had suffered the decree for eviction. This was a significant change in the circumstances in which the decree was passed rendering it inexecutable.

10. So also the question whether the grant of land was old or new has in our opinion been correctly answered by the High Court. There is nothing before us nor was any serious attempt made by learned counsel appearing for the appellant to demonstrate that the finding of the High Court in regard to the said question suffered from any error or perversity. Similarly, the question whether the objections filed by the respondent-judgment debtor were barred by limitation should also not detain us, for we endorse the view taken by the High

Court that such objections could not be ignored or rejected on the ground that the same were filed beyond the period of limitation.

11. That leaves us with the question whether the decree is executable qua the main bungalow itself. We must to the credit of the respondents mention that the executability of the decree qua the main bungalow was not assailed or questioned on behalf of the respondents. As a matter of fact, the possession of the main bungalow appears to have been delivered to the decree-holders, which the decree- holders will be entitled to retain, till such time the Union of India issues any further orders of resumption of the property in exercise of powers vested in it under the relevant provisions of law.

12. In the result these appeals fail and are hereby dismissed but in the circumstances without any orders as to costs.