

SUPREME COURT OF INDIA

Union of India

Vs.

Dinshaw Shapoorji Anklesari

C.A.No.6194 of 2013

(Dr.B.S.Chauhan, Sudhansu Jyoti Mukhopadhaya and Kurian Joseph JJ.)

06.05.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. This appeal is directed against the judgment dated 25th November, 2009 passed by the High Court of Judicature at Bombay in Civil Revision Application No.272 of 2009. By the impugned judgment the High Court dismissed the Revision Application and affirmed the judgment and decree passed by the Appellate Court and the Trial Court.

2. The dispute relates to the piece of property bearing GLR Survey No. 258, admeasuring 0.90 acres which comprise of superstructure consisting of main bungalow, servant quarter and garage situated at Elphinstone Road, Pune Cantonment, Pune (hereinafter referred as the suit premises).

3. The case of the appellants is that the suit premises as aforesaid belongs to the appellants " Pune Cantonment Board. The Governor-General by its order No.14(G.G.O.-14) dated 6th January, 1827 intimated that officers not provided with public quarters may receive permission to erect houses within fortress or military cantonment conferring on them right of property whatever in the ground allotted to them for that purpose, which will continue to be the property of the State, and resumable at the pleasure of the Government. The plot admeasuring 0.90 acres (suit

premises) in question was initially granted to one Nusserwanji Sorabji Anklesaria who erected superstructure, including the Bungalow in question. In the year 1891 he bequeathed the suit bungalow no.1A, Elphinstone Road to his son Maneckhji Nusserwanji Anklesaria. The name of Maneckhji Nusserwanji was registered in General Land Register. Therein it was mentioned that the bungalow in question is held under old grant under conditions of GGO 14 dated 6th January, 1827.

4. An agreement for occupation by Government of the property in a cantonment not requisitioned under the Cantonment (House Accommodation) Act known as Repairing Lease was entered between Maneckji Nasserwanji Anklesaria in one part (First Part) and the Governor General in Council on the other (Second Part) on 29th August, 1941, whereunder property described in Schedule I thereto i.e. Bungalow No. 1-A with servant quarter, garage, etc. was given in possession to the second part (i.e. Governor General in Council) for a consideration of monthly payment of Rs.196/- payable on the first of every month, the first of such payment being made on the first day of August, 1941. As per the said agreement, the appellants were required to maintain the premises i.e. Bungalow No. 1-A with servant quarter, garage etc.. It was agreed upon that if by reason of fire or tempest or other cause not occurred by the willful act or default of the party on the second part, the premises or any part or parts thereof or was in the opinion of the party on the second part is rendered uninhabitable at any time, the said agreement in force, then until the premises or such part and parts thereof as are affected shall be restored or rendered fit for reoccupation to the satisfaction of the party on the second part.

5. Subsequently, by an Indenture of Sale dated 12th November, 1968 between Manekji Nassurwanji Anklesaria and two others and plaintiffs- respondents, Dinshaw Shapurji Anklesaria and two others it was agreed to sell and purchase the lease-hold rights being perpetual grant under the old grant of the Pune Cantonment Board over the suit premises including the bungalow, servant quarters garage, etc. with full rights of ownership of the building for total consideration of Rs. 60,000/-. In the said Indenture of Sale it was narrated that necessary permission on that behalf had been received from the authorities concerned by letter no. 201125/Q(PP) dated 14th June, 1968, signed by the General Officer Commanding in Chief, Head Quarter, Southern Command.

6. The admission certificate with regard to suit premises was issued by the plaintiffs-

respondents on 19th April, 1971 in favour of the Military Cantonment Estate Officer, Poona Circle, Pune.

7. According to appellants, as per terms of old grant, the appellants decided to resume the said property and, therefore, issued notice from its Ministry of Defence being Notice No. 701/27/L/L&C/71/3606/D(Lands) dated 11th June, 1971 to plaintiffs-respondents intimating the intention to resume the suit premises and also informed that the appellants are ready to pay a compensation of Rs.31,537/- as the value of the authorized erection made on the said land. The plaintiffs-respondents were informed that in case the amount of compensation offered is not acceptable to them, the committee of Arbitration will be convened to assess the value of the authorized erection on the land. The cheque for the said amount was attached with the aforesaid notice. The symbolic possession of the bungalow in question was taken on 12th July, 1971.

8. After about two years, the respondent filed Special Civil Application No. 1536/1973 challenging the resumption notice dated 11th June, 1971. Some other individuals who erected bungalows on similarly situated lands which were also resumed, also filed similar special civil applications including Special Civil Application No. 1286 of 1972, etc..

9. By judgment and order dated 5th February, 1979, the Bombay High Court allowed the Special Civil Application No.1286/1972 being Phiroze Temulji Anklesaria Vs. H.C. Vashistha & Others, AIR 1980 Bom 9 and set aside the notice of resumption. The High Court held that there is no evidence whatsoever of the Governments right to resume the land in possession and the terms under which right of such resumption, if any, could be exercised. It further held that most importantly there is no evidence of the right or power of Government to acquire the structure standing on the land in question by arbitrarily or unilaterally determining compensation.

10. Relying on the aforesaid judgment, writ petition preferred by the plaintiffs-respondents in Special Civil Application No.1536/1973 was also allowed by judgment dated 27th February, 1979.

11. Being aggrieved by judgments passed in various special civil applications whereby the High Court set aside the resumption notices, the Union of India filed SLP(C)

Nos.498-511/1980 before this Court. Against the judgment dated 27th February, 1979 passed in the case of plaintiffs- respondents in SCA No. 1536/1973 the defendants-appellants filed SLP(C) No.503/1980 .

12. By order dated 19th March, 1980 leave was granted in SLP(C) Nos.498-511/1980 and they were renumbered as Civil Appeal Nos.608-621/1980.

SLP(C) No.503/1980 filed by the appellants against the judgment dated 27th February, 1979 passed in the case of the plaintiffs-respondents was renumbered as Civil Appeal No.613/1980 after admission.

13. Phiroze Temulji Anklesaria-petitioner in Special Civil Applications Nos. 1286/1972, 1487/1972, 1486/1972 and 1484/1972 had filed civil suits for rent and possession against the Government of India before CJSD, Pune. Same were numbered as Civil Suit No.477/1980, 476/1980, 488/1980 and 475/1980.

The said suits were decreed by the CJSD, Pune relying upon the decision of the Bombay High Court in Phiroze Temulji Anklesaria (supra).

14. Against the aforesaid judgment, the appellants filed appeal Nos.1159/1984, 1160/1984 and 1161/1984. Cross Appeal No.1/1985, Cross Appeal No.2/1985, Cross Appeal No.3/1985 were also filed in those appeals. Second Appeal Nos.15 and 16 of 1989 were subsequently filed before the Bombay High Court.

When Civil Appeal Nos. 608-621/1980 preferred by the appellants against the original judgment in Phiroze Temulji Anklesaria (supra) reached for final hearing before this Court, the abovementioned appeals preferred before the Bombay High Court were called for by this Court on the ground that they were interconnected.

As a result appeals covered by SCA No.1286/72, SCA No.1486/72, SCA No.1487/72, SCA No.1484/72, SCA No.1485/72 got transferred to this Court and numbered as Transferred Case Nos.67 to 72 of 1985 and 11 & 12 of 1987.

15. Transferred Case Nos. 67 to 72 of 1985 and 11&12 of 1987 titled Union of India & Others v. P.T. Ankleshwar (dead) by LRs. & Ors. on hearing were remitted back to

the High Court for disposal by this Court on 20th July, 1988, with the following directions:

1. While considering the merit of the case, the High Court shall not place any reliance upon the Division Bench judgment of the High Court consisting of D.H. Rege and R.A. Jahangir, JJ. rendered in Special Civil Application No. 1286/72 decided on 6/6 February, 1979 against which appeals are pending in this Court.

2. While considering the case, if the High Court finds that the trial court or the first appellate court has placed reliance or made any reference to the aforesaid judgment of the Division Bench, it shall ignore that judgment, to that extent, and the High Court shall decide the matter afresh in accordance with law without taking into consideration or being influenced by the aforesaid judgment of the Division Bench.

3. The parties will be at liberty to adduce additional evidence before the High Court within the period fixed by the High Court.

16. Civil Appeal Nos. 608-621 of 1980 titled Union of India & Others v. P.T. Ankleshwar (dead) by LRs. & Ors. were subsequently taken up by this Court and in the light of observation made on 20th July, 1988 in Transferred Case Nos.67 to 72 of 1985 and 11&12 of 1987, as quoted above, by order dated 25th March, 1992, this Court declared the appeals to be infructuous without prejudice to whatsoever rights to which the appellants are entitled in law.

17. The respondents, thereafter, filed Civil Application No.3382 of 1992 in Special Civil Application No.1536 of 1973 before the Bombay High Court for possession of the suit premises. The Bombay High Court by its order dated 11th September, 1992 directed the appellants to handover symbolic possession of the suit premises bearing survey no.258, Bungalow No.1-A situated at Elphinstone Road, Pune Cantonment, Pune to the respondents.

18. The appellants filed a review application before this Court for review of order dated 25th March, 1992 passed in Civil Appeal Nos.608-621 of 1980 on the ground that only the civil appeals connected with transferred cases in which the issue of

ownership of land and building were interlinked with validity of resumption notices had become infructuous. In other Civil Appeal Nos.620, 610, 613 (the appeal preferred against the judgment in the case of plaintiffs-respondents), 614, 618, 609 and 621 of 1980, the issue of ownership of land and building was not interlinked with validity of resumption notices and hence the same had not become infructuous.

19. By the order dated 13th November, 1995, this Court allowed the review application thereby modifying the order dated 25th March, 1992 passed in Civil Appeal Nos.608-621 of 1980 by setting aside the order of dismissal of the aforesaid civil appeals as infructuous as there were no eviction decrees obtained by any of the bungalow owners.

20. The aforesaid civil appeals including Civil Appeal No.613 of 1980 filed by the Union of India against the plaintiffs-respondents were taken up for hearing on 4th August, 1998 when the following order was passed: Learned Solicitor General states that the Union of India would seek dispossession of the respondent “ occupants from the properties involved in accordance with law and if need be, through a Civil Court by filing suits. In case such steps are taken, any observations made by the High Court which would stand to defeat the remedies sought would not stand in its way. On such stance of the Union of India, Civil Appeals as also the special leave petitions stand disposed of accordingly.

21. The plaintiffs-respondents thereafter filed suit for possession, arrears of rent and damages against the defendants-appellants in the Small Causes Court at Pune numbered as Civil Suit No. 695 of 1999. It was contended therein that the defendants-appellants served resumption notice upon the plaintiffs-respondents which was challenged by the plaintiffs-respondents before the Bombay High Court in SCA No.1536 of 1973 which was allowed and the resumption notice was declared void, inoperative and without legal effect. The said order of the High Court was affirmed in Civil Appeal No.613 of 1980. The appellants filed review application and the same was disposed of recording the statement of learned Solicitor General. An Order which was passed by the High Court with respect to resumption notice was not set aside. Therefore, the occupation of defendants-appellants in the said property is that of lessee. The plaintiffs-respondents are, therefore, entitled to ask for possession of the property from the defendants-appellants as the defendants are trying to set up adverse title.

22. The defendants-appellants contested the suit by filing detailed written statement. It was brought to the notice of the Court that the property was held on old grant terms, therefore the Government of India has every right to resume the property. It was also contended that the Government has resumed the property and the plaintiffs-respondents have no right to ask for possession. It was also contended that the Military Authorities have made a plan to demolish the present structure and construct a new building for accommodation of its officers and therefore, repair for the suit premises was not under taken.

23. In the said suit the Trial Court framed the following issues: |1) Do plaintiffs prove that they are landlords and the | |defendants are tenants of the suit premises? | |2) Do they prove that the defendants have committed breach | |of agreement of lease by not maintaining the property and by| |causing damage to it? | |3) Do they prove that the defendants have disowned the | |title of the plaintiff and thereby committed breach of the | |agreement of lease? | |4) Do they prove that the defendants have caused damage to| |the extent of Rs.4 lac to the suit property? | |5) Do they prove that the defendants are in arrears of | |rent since 1.7.1971 to 30.6.1999 at the rate of Rs.196/- per| |month? | |6) Whether this Court has jurisdiction to entertain, try | |and decide this suit? | |7) What is due to the plaintiffs? | |8) What relief, order and decree? |

24. By judgment and decree dated 9th June, 2005, the Trial Court partially decreed the suit on the ground of breach of terms and conditions of tenancy i.e. non-repair of the suit premises.

The Trial Court directed the defendants-appellants to handover the vacant and peaceful possession of the suit premises together with structure consisting of main bungalow, servant quarter, garage and any other structure thereon to the plaintiffs-respondents.

24.1 With reference to issue nos.1 and 6, it was held that in view of sale deed dated 12th November, 1968 in favour of the Maneckji Ankesaria, the consent letter dated 19th December, 1967 and the lease agreement dated 29th August, 1941 the plaintiffs were only holders of occupancy rights in respect of the land and were owners of the superstructure. The defendants were tenants and hence the suit was between the landlord and the tenant and the Small Causes Court

has jurisdiction to entertain, try and decide the same.

24.2 The issue no.3 was answered in negative with observation that the defendants have legal right of resumption. Mere exercise of such right does not mean that the defendants have denied the lease hold right over the land and ownership of the superstructure of the plaintiff.

24.3 Issue no.5 regarding the defendants being in arrears of rent since 17th July, 1979 to 30th June, 1999 @ Rs.196/- per month was answered in negative with the observation that there was no willful default on part of the defendants and the defendants have deposited arrears of rent along with interest there on @ Rs.9% per annum before the date of hearing of the suit. Thus, defendants are entitled to protections of eviction as per the provisions of sub section 3 of Section 12 of the Bombay Rent Act. The defendants were not in arrears of the rent on the date of hearing of the suit.

24.4 The issue no.2 regarding the breach and terms of the agreement by not maintaining the property and by causing damage to it was answered in affirmative.

24.5 The issue no.4 regarding the plaintiffs entitlement to damages of Rs.4 lakhs was answered in negative for want of evidence.

24.6 The issue no.7 regarding the amount due to the plaintiff was answered in negative.

25. Being aggrieved by the judgment and decree dated 9th June, 2005 passed in Civil Suit No.695 of 99, the appellants preferred Civil Appeal No.26 of 2006 in the District Court, Pune.

26. In Civil Appeal No.26 of 2006, the First Appellate Court by judgment and decree dated 15th January, 2009 while dismissed the appeal and modified the judgment and decree passed by the Trial Court holding that the plaintiffs-respondents are entitled to recover the amount of Rs.20,972/- along with cantonment taxes @ 6 per cent per annum from February, 2000 till the date of actual realization.

27. Being aggrieved by the aforesaid judgment dated 15th January, 2009 the appellants preferred Civil Revision Application No.272 of 2009 before the Bombay High Court. The Bombay High Court dismissed the same giving rise to the present appeal.

28. Mr. Mohan Parasaran, learned Solicitor General of India appearing on behalf of the appellants-Union of India made the following submissions:-

(i) As per Section 2 of the Government Grants Act, 1895, Transfer of Property Act, 1882 is not applicable to such Government grant lands and the Government Grant is taken effect as if the said Act had not been passed.

(ii) Not only the Transfer of Property Act is made inapplicable to the Government but Section 3 of the Government Grants Act,1895 makes it clear that the Government grants is to take effect according to their tenor, notwithstanding any rule of law, Statute or enactment of the Legislature to the contrary to the same.

(iii) (Crown)- Union of India has unfettered discretion to impose any condition, limitation or restriction in its grants and rights, privileges and obligations of the grantee would be regulated only in accordance with the terms of the grant itself though they are inconsistent with the provisions of any Statute or Common Law.

(iv) The possession of the house was taken by the appellant- Union of India from the plaintiffs-respondents in due course of law and that the plaintiffs-respondents was not entitled to any remedy against the Government either by way of a writ petition or a suit or under Section 6 of the Specific Relief Act.

(v) Clause 4 of the Repairing Lease Deed dated 29.08.1941 even protects the Governments right of resumption and therefore, the plaintiffs-respondents cannot derive advantage of the Repairing Lease Deed for claiming right or title over the suit premises.

(vi) In view of the Section 3 of the Government Grants act, 1895, the Bombay Rent Control Act will not be applicable in absence of landlord-tenant relationship, the land being in the nature of a Government grant over which the

super-structure was constructed.

(vii) No right has been vested or granted in the repair lease to the occupant to evict the owner of the land who in this case incidentally proceeded to become the occupant of the super-structure put up by the plaintiffs-respondents. That will not create any legal landlord-tenant relationship as in other cases as the property in question falls in the cantonment area and is governed by Government grants.

29. On the other hand, learned counsel for the plaintiffs-respondents raised following grounds to dismiss the appeal:

(i) The High Courts judgment dated 27.2.1979 passed in the Writ Petition preferred by plaintiffs-respondents in SCA No. 1536/1973 setting aside the notice of resumption dated 11th June, 1971 has reached finality. The legality and propriety of aforesaid decision cannot be raised at this stage.

(ii) In absence of jurisdictional error committed by Courts below, the High Court was right in refusing to interfere with concurrent findings of fact. The scope of Revisional Jurisdiction under Section 115 CPC is limited and the same cannot be exercised to interfere with the finding of fact.

(iii) Since the High Courts approach and analysis is correct, this Court should not exercise its power under Article 136 of the Constitution to set aside the impugned order.

30. The case of the appellants is that the suit premises (land) belongs to Union of India- Pune Cantonment Board. It was allotted by way of grant to one Nusserwanji Sorabji Anklesaria who erected super structure including bungalow, garage and servant quarter. In 1891, the suit bungalow no.1A, Elphinstone Road was bequeathed to Maneckhji Nusserwanji Anklesaria by his father Nusserwanji Sorabji Anklesaria. The name of Maneckhji Nusserwanji was registered in the General Land Register. Therein it was mentioned that the bungalow in question is held under old grant under conditions of GGO 14 dated 6th January, 1827.

The aforesaid fact is also clear from the agreement and repairing lease dated

29th August, 1941 reached between Maneckhji Nusserwanji and the Governor General in Council wherein at clause iii (4) it is mentioned as follows;

(4) Nothing herein shall prejudice the right of the party of the second part to resume under the terms of the Cantonment tenure above referred to; and

(5) In the event of any dispute arising between the party of the first part and the party of the second part as regards the interpretation of any terms or condition herein contained, the same shall be referred to C.R.E. Poona Area whose decision will be final.

31. The consent letter dated 19th December, 1967 written by Maneckji Nassurwanji Anklesaria to the Military Estates Officer, Poona Cantonment, Poona shows that permission for sale of property bearing No.1A, Elphinstone Road, Poona Cantonment, Poona was sought for by Maneckji Nassurwanji Anklesaria and two others as they wanted to sell of their right, title and interest in the property to Dinshaw Shapurji Anklesaria and two others as a part of settlement of the family dispute. Permission was also sought for to complete the said transaction with clear assurance that Dinshaw Shapurji Anklesaria and two others in whose favour the rights are sought to be sold are ready to execute such document in favour of the State as may be required under the existing rules.

32. The Military Estates Officer, Poona Circle in reference to above letter dated 19th December, 1967 informed Maneckji Nassurwanji Anklesaria that sanction was accorded to the transfer by sale of the above bungalow to Dinshaw Shapurji Anklesaria and others and ask them to comply with certain instructions, as evident from the said letter, is quoted below: No. H/517

Office of the Mily. Esates Officer,

Poone Circle, Poona-1, 25 June, 1968.

To,

Maneckji Nassurwanji Anklesaria,

94, Mahatma Gandhi Road,

Poona-1.

Subject: Transfer of B.No.1-B Elphinestone Road, Poona Cantonment.

Dear Sir,

Reference your letter dated 19.12.1967.

2. With the previous concurrence of the GOC-in-C, Southern Command, Poona sanction is hereby accorded to the transfer by sale of the above bungalow to Shri. Dinshaw S. Anklesaria and others of 94-A Mahatma Gandhi Road, Poona-1 for a sum of Rs.60,000/- subject to the condition that the intending purchasers executed and registers the admission certificate of their own expense as per their undertaking dated 3.1.68.

3. Please comply with the following instructions:-

i) It should be mentioned in the sale deed to be executed that the land is held on old Tenure and is not being sold.

ii) The date of execution of the sale and the number and date on which it was accepted for registration should be intimated to this office.

iii) The sale deed duly registered should be forwarded to this office through CPO, Poona for necessary mutation entries being made in the GLR. The document will be returned when no longer required.

Yours faithfully,

Sd/-

Military Estate Officer,

Poona Circle,

(Y.P. Kapoor)

Copy to:-

Shri. Dinshaw S. Anklesaria and others,

94-A, Mahatma Gandhi Road,

Poona-1. “ With reference his undertaking dated 3.1.68 please forward a non-judicial stamp paper to the value of Rs.3.00 together with site plan (one on tracing cloth) .drawn to a scale 40 to an inch in respect of the above bungalow showing the existing authorized buildings to enable this office to take further necessary action in the matter.

The C.R.O, - For information.

Poona-1.

33. Indenture of sale made and executed on 12th November, 1968 by Maneckji Nassurwanji Anklesaria and two others (vendors) in favour of the Dinshaw Shapurji Anklesaria and two others (vendee) reads as follows:- Whereas the vendors are fully seized and possessed of and otherwise well and sufficiently entitled to all the lease “ hold rights in all that piece and parcel of land being perpetual grant under the old grant of the Poona Cantonment and of the full right of ownership of all the building and structure standing on the property known as No.1- A, Elphinestone Road, Poona Cantonment, Poona 1 and which property is more described in the Schedule A hereunder written..the vendors agreed to sell and the purchaser agreed to purchase all the leasehold rights being perpetual grant under the old grant of the Poona Cantonment Board in all that piece and parcel of the land situated within the Registration District of Poona and Registration Sub-District of Taluka Haveli and situated within the limits of the Poona Cantonment Board and within the Revenue limits of Taluka Poona City and bearing Poona Cantonment No.1-A, Elphinestone Road, Poona Cantonment, Poona-1 and bearing G.L.R. and Survey No. 258 and bearing Military Estate House No.517 along with the full rights of ownership of all buildings out “ houses, structures, appurtenances and benefits of all amenities

belonging to or available to the said property and which property is more fully described in the Schedule A hereunder written, free from all encumbrances, charges, burdens..

34. Thereafter, Dinshaw Shapurji Anklesaria purchaser of the bungalow no.1A, Elphinstone Road, Poona Cantonment signed admission certificate dated 19th April, 1971 with following conditions:

Admission Certificate

We, the undersigned, Shri Dinashaw S. Anklesaria residing at 94-A Mahatma Gandhi Road, Poona Cantonment, the purchaser of Bungalow No.1A, Elphinstone Road General Land Register Survey No.258 of Poona Cantonment, Sub District and Taluka Haveli, District Poona, do hereby subscribe to the conditions (reproduced below) of the original grant pertaining to the site thereof and this agreement shall be binding on me as well as my heirs, successors and assigns as the case may be whoever shall be in possession of the said property.

Conditions

1. Permission to occupy ground in a Military Cantonment confers no proprietary right; it continuous the property of the Estate and presumable at the pleasure of Government, but in all practicable case one months notice of resumption will be given and the value of all buildings which may have been authorized to be erected thereon, as shown in the accompanying plan, as estimated by the Committee contemplated in General Order-Separate of 1856, will be paid to the owner.
2. That no buildings are to be erected on the ground other than those now existing and shown on the attached plan no additions or alternations are to be made thereto without the permission of the Officer Commanding the Station.
3. The ground, being the property of Government cannot be sold by the grantee. The buildings may be sold by house owners of the previous permission of the Officer Commanding the Station.

4. That the Military Authorities have the power to cancel the grant if the ground is used for any purpose other than for which it was originally granted.

5. We also agree to abide by any orders and rules that may be passed regarding tenure of land in cantonments.

Place: Poona

Dated: April 1971

Signature of the purchaser of

Bungalow No.1-A, Elphinstone Road

Sy. No.258 Poona Cantonment.

The above conditions have been explained by me to the purchaser of Bungalow No.1-A Elphinstone Road, Poona Cantonment, and have been subscribed to by him in my presence.

Place: Poona

Dated: 19th April, 1971

Military Estates Officer

Poona Circle

(K.C. Agarwal)

35. From the aforesaid records, it is clear that the land measuring 0.90 acres bearing General Land Register Survey No.258 situated at Elphinstone Road, Poona Cantonment, Poona belongs to the appellant. The said land was leased by way of grant originally to Nusserwanji Sorabji Anklesaria under conditions of GGO 14 dated 6th January, 1827. The super structure including bungalow, garage and servant quarter on the plot was constructed by him. In the year 1891, the super structure bequeathed to

his son-Maneckhji Nusserwanji. Maneckhji Nusserwanji Anklesaria and two others sold their right, title and interest over the super structure i.e. bungalow no.1A in favour of Dinshaw Shapurji Anklesaria and two others (nephews of Maneckhji Nusserwanji Anklesaria). Thereby file of the super structure was transferred in favour of Dinshaw Shapurji Anklesaria and two others but the title of the land remained with the appellants.

36. This is also evident from General Land Register- Cantonment 8-A(1) dated 7th March, 2007 and relevant portion of which is as follows: |Extract Form General Land Register- |Cantonment 8-A(1) |Survey No.258 S No.122 |VOL. No.II |PAGE |Details and date of mutation |1 | |Subsidiary Sy. No. |2 | |Volume & Page No. of Register|3 | |Area in Acres/Sq.Ft. |4 |0.90 acre |Description |5 |Bungalow No.1A, | | |Elphinstone Road |Class |6 |B-3 |By whom managed |7 |D.E.O |Landlord |8 |Central Government |Holder of occupancy rights |9 |Maneckhji Nusserwanji |Nature of Holders right |10 |Old Grant conditions |under GGO |of 14 of 6.1.1827 |Rent payable: Central Govt. |11 | |Per annum Cantt. Board | | |Date of expiry of lease |12 | |Remarks |13 | |Station: Pune-1 |Sd/- |Dated: 07, March, 2007 |Defence Estates | | |Officer | | |Pune Circle | | |(SR. Nayyar) |

37. The Government of India from Ministry of Defence by notice dated 11th June, 1971 intimated Dinshaw Shapurji Anklesaria and two others that the land belongs to the President of India i.e. the Government and is held on Old Grant terms under which the Government is entitled to resume the same. It was informed that the Government has resumed the said property under the terms of the aforesaid Old Grant for its use and therefore, in exercise of power conferred under the provisions of the Act agreed to offer a sum of Rs.31,537/- as the value of the authorized erection standing on the said land. It was further intimated that in case if the amount of compensation offered was not acceptable to the respondent, a committee of arbitration will be convened to assess the value of the erection on the land. A cheque for the amount was also attached along with the said notice.

38. The Government Grants Act, 1895 as would be evident from the preamble and Section 2 therein, seeks to clarify the doubts with regard to the extended operation of the Transfer of Property Act. Section 2 of the Act reads as follows:

2. Transfer of Property Act, 1882, not to apply to Government grants.-Nothing

in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of, any person whosoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

39. Not only the Transfer of Property Act is made inapplicable to the Government grants but Section 3 of the Government Grants Act, 1895 further makes it clear that the Government grants is to take effect according to their tenor, notwithstanding any rule of law, statute or enactment of the Legislature to the contrary. Section 3 lays down as follows:- 3. Government grants to take effect according to their tenor.- All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

40. This Court in *Azim Ahmad Kazmi and Others. v. State of Uttar Pradesh and Another*, (2012) 7 SCC 278, has held that the Government grant of lease of land is governed entirely by the terms of the grant. The Court took note of Section 3 of the Government Grants Act, 1895 which is to take effect according to its tenor notwithstanding any other law to the contrary.

41. In *Chief Executive Officer v. Surendra Kumar Vakil and Others*, (1999) 3 SCC 555, this Court has held that the grantee under the old grant terms is a mere occupier/licensee having no title over the land so as to entitle him to transfer the land or to another person without prior consent of the authorities concerned. The Court further held that the regulations as well as the General Land Register which are old documents maintained in the regular course and coming from proper custody clearly indicate that the land was held on old grant basis and this was sufficient for the Government to resume the land in accordance with law.

42. In *Union of India and others v. Kamla Verma*, (2010) 13 SCC 511, this Court has held that it is always open to the Union of India to resume the land held on old grant terms and that the Union of India cannot be prevented from resuming the said land.

43. Therefore, it is clear that the Government has unfettered discretion and under Section 3 impose any condition, limitation or restriction in its grants and the rights,

privileges and obligations of the grantee would be regulated only according to the terms of the grant itself though they may be inconsistent with the provisions of any Statute or Common Law.

44. The grants of lands situated in cantonment area under Old Grants form a self contained provision prescribing the procedure as to the grant and resumption of the land and hence recourse to the Civil Procedure Code or the Specific Relief Act will not be applicable.

45. From the permission for sale of property letter dated 19th December, 1967, Indenture of Sale dated 12th November, 1968 and admission certificate dated 19th April, 1971 signed by the respondent it is clear that the Military Authorities have the power to cancel the grant if the land is used for any purpose other than for it was originally granted.

46. In the suit the plaintiffs-respondents falsely claimed that the suit premises described in para 1 of the plaint is owned by the plaintiffs as freehold property. This would be evident from the pleadings made by the plaintiffs-respondents, as discussed below.

47. The description of the property has been shown at paragraph 1 of the plaint as under:

1. Description of the Property:

All that piece and parcel of property bearing GLR Survey No.258 and corresponding an area of 0.90 acres together with structure consisting of main Bungalow, Servant Quarter Garage and Servant Quarter, and bounded as under:

On or towards the East: Elphinstone Road

On or towards the South: Bungalow No.2, Elphinstone Road
On or towards the West: Bungalow No.13, Moldina Road
On or towards the North: Bungalow No.13, Moledina Road

Paragraphs 2, 3 and 4 of the plaint read as under:

2. That the property described in Para 1 above is owned by plaintiffs as freehold property.

3. That the said property originally belonged to Nusserwanjee Sorabji Anklesaria. Plaintiffs have purchased the property as per conveyance deed dated 12.11.1968 from Shri Maneckaji Nusserwanjee Ankelsaria. That name of plaintiffs was also recorded in GLR Record and which was subsequently removed by the defendant no.2 illegally. The plaintiff has challenged the aforesaid act of defendant no.2 deleting the name of the plaintiffs in Civil Court.

4. That lease deed dated 29.8.1941 was executed by the then owners of the suit property and Union of India. That as per the aforesaid lease deed the said property was leased out to defendants under repairing lease for a period of 5 years. After the expiry of the said period the defendants continued to be in use and occupation of the said property as at tenant holding over on the same terms and conditions as a monthly tenant. Thus the defendants are occupying the said property as a statutory tenant only.

48. The plaintiffs-respondents also misled the Court by stating that the resumption notice dated 11th June, 1971 was set aside by the Bombay High Court and the said order has attained finality.

49. In fact the judgment aforesaid on challenge before this Court in Civil Appeal No.613 of 1980, heard along with other appeals, this Court by order dated 4th August, 1998 made the following observation: Order

Learned Solicitor General states that the Union of India would seek dispossession of the respondent-occupants from the properties involved in accordance with law and if need be, through a Civil Court by filing suits. In case such steps are taken, any observations made by the High Court which would stand to defeat the remedies sought would not stand in its way. On such stance of the Union of India, Civil Appeals as also the special leave petitions stand disposed of accordingly.

50. The liberty given to the Union of India to dispossess the plaintiffs-respondents

from the suit property clearly indicates that the decision of the Bombay High Court that the suit premises do not belong to the Union of India was not acceptable to this Court.

51. The aforesaid misleading pleading made by the plaintiffs- respondents is without any evidence and the same influenced the Court in coming to a wrong conclusion that the plaintiffs-respondents are the landlords and defendants-appellants are the tenants of the suit premises.

52. The Appellate Court also failed to appreciate the evidence and erred in affirming the Trial Courts view that the plaintiffs-respondents are the landlords and defendants-appellants are the tenants.

53. The land of the suit premises belong to the Union of India- appellants herein. Therefore, they cannot be held to be tenants of the suit premises comprising of an area of 0.90 acres together with structure consisting of main Bungalow, Servant Quarter and Garage.

54. The plaintiffs-respondents have only right with regard to the structure built on the suit premises. The Union of India-appellants have a right for resumption of the suit premises, as evident from evidence on record as discussed above. This issue was not properly appreciated by the Trial Court, the Appellate Court and the High Court which also failed to notice the appellants right under Section 2 and 3 of the Government Grants Act, 1895.

55. For the reasons aforesaid, we set aside the impugned judgment dated 25th November, 2009 passed by the High Court of Judicature at Bombay in Civil Revision Application No.272 of 2009, the judgment dated 15th January, 2009 passed by the First Appellate Court and judgment and decree dated 9th June, 2005 passed by the Trial Court. Civil Suit No.695/1999 on the file of Small Causes Court, Pune is dismissed.

56. The appeal is allowed. No order as to costs.