

SUPREME COURT OF INDIA

Usha Kapoor

Vs.

Govt. of India

14.08.2014

JUDGEMENT

Ranjan Gogoi, J.

(1.) The challenge laid by the Appellants to notices dated 14 December, 2001 and 5 February, 2002 having proved futile, this appeal has been filed upon grant of special leave Under Article 136 of the Constitution.

(2.) The first notice dated 14 December, 2001 is one of resumption of land comprising the site of Bungalow No. 1, Elgin Road, bearing General Land Register (GLR) Survey No. 214, New Cantonment, Allahabad measuring 3.20 acres. The said notice has been issued on behalf of the President of India in exercise of powers vested by Order No. 179 of the Governor General -in -Council dated 12 September, 1836. The second notice dated 5 February, 2002 is consequential and required the Appellant to hand over the aforesaid land to the Defence Estates Officer, Allahabad Circle on 11 March, 2002. According to the Appellants, by a sale deed dated 1 September, 1943 executed by and between Kirk Session of the Church of Scotland at Allahabad and Smt. Mohini Devi Kapoor, the predecessor -in -interest of the Appellants, the vendor (Kirk Session) conveyed and sold/transferred to their predecessor (Smt. Mohini Devi Kapoor), a lower roomed tenement or dwelling standing on the said site free from all encumbrances. Another recital in the sale deed described that on or about 2 day of March, 1873, the land, covered by the notice dated 14 December, 2001 was granted to the Reverend J. Williamson Chaplain of the Church of Scotland for the purpose of erecting thereon a Manse and accordingly the Members of the Church erected and built on the said piece of land, a lower roomed tenement/dwelling house for use as a Manse together with outhouses. By a deed of transfer dated 7 November, 1901, Mr. Henry Charles King and Wilkie Adolphus McReddie, Elders of St. Andrews Church of the Scotland at Allahabad transferred to the Kirk Session (Vendor herein), the aforesaid lower roomed tenement or dwelling house which was subsequently the subject matter of the sale deed dated 1 September, 1943. The said sale deed was executed after permission to effect the same was granted by the Governor General -in -Council acting through the Commander -in -Chief, as conveyed by letter dated 30 June, 1943 from the Military Estate Officer, Allahabad Circle, Allahabad.

(3.) BEFORE the High Court, the Appellants, as the writ Petitioners, had contended that they are the owners of the property including the land by virtue of the sale deed dated 1 September, 1943. The claims of the Respondents that the land was covered by an Old Grant had not been substantiated inasmuch as no document showing the actual grant had been laid at any stage before any authority. It was contended that the onus to prove that the land was covered by Old Grant lies upon the Respondents which had not been satisfactorily discharged by production of the relevant records. ;