

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.123 OF 2011

Smt. Tehmina P. Chapgar
(Since deceased through LRs)
Smt. Nurges Talib Khambatta

... Appellant

V/s.

The Union of India & Anr.

... Respondents

.....

Mr. Mangal Bhandari i/b. Ms. Pranjali M. Bhandari, Advocate for the Appellant.

.....

CORAM : R.K. DESHPANDE, J.

DATED : JULY 27, 2015.

P.C.

Special Civil Suit No.1028 of 1987 for declaration and possession of the suit property was dismissed by the trial Court on 30th October, 2002. Civil Appeal No.142 of 2003, preferred by the plaintiff has also been dismissed by the Lower Appellate Court on 23rd August, 2010. Hence, the plaintiff is before this Court in the Second Appeal against the concurrent finding of facts.

2 The claim of the plaintiff was that he has become the owner of the property by virtue of registered sale-deed dated 2nd May, 1958 said to have been executed in her favour by the predecessor in title. The suit challenged basically the notice dated 18th December, 1971, issued by the Government of India to the Plaintiff for resumption of the old grant terms. The letter states that the property is held by the Government on hire and it is in the occupation. The property belongs to Union of India and is held on old grant terms under condition of GO separate of 31st July, 1856, as modified by GGO 338 of 29th March, 1862. The notice states that in exercise of the power of the old grant terms the plaintiff was informed that all the rights, easements and interest which the plaintiff has in the land and also in the building standing thereon, shall cease on expiry of one month from the date of service of notice. The notice offers the payment of sum of Rs.13,824/-, as the value of the authorised erection stands on the suit land.

3 The Courts below have held that the plaintiff has failed to establish that the suit land and the structure standing thereon is held by her in leasehold rights. The Courts have also

relied upon the admission certificate dated 12th September, 1958, signed by the plaintiff. The document is registered and carries with it a map and the description of the property. It is signed by the plaintiff. The document is styled as admission certificate and the plaintiff seems to have been granted permission to occupy ground in the Military Cantonment without conferring any proprietary rights and the grant is made resumable at the pleasure of the Government with one month's notice.

4 The contention of the learned counsel for the appellant that the letter dated 18th December, 1971 of resumption of grant refers to the old grant terms under condition of GO separate of 31st July, 1956, as modified by GGO 338 of 29th March, 1862. He submits that these documents of old grant terms are not produced on record, inspite of repeated demands and the Courts below have committed an error of law in holding that the burden to produce a document lies upon the plaintiff. He submits that in the absence of any such documents produced on record to show the title of the Government of India over the suit property, the Courts below should have passed a decree holding that the plaintiff being the owner of the property on the basis of the registered sale-deed dated 2nd May, 1958, is entitled possession of

the suit property and resumption of land by the Government, as per the communication dated 18th December, 1971 was illegal.

5 The registered document which is the admission certificate dated 12th September, 1958, bears the signature of the plaintiff and it is subsequent to the sale-deed dated 2nd May, 1958, said to have been executed in favour of the plaintiff by the predecessor in occupation of the suit property. The sale deed dated 2nd May, 1958 on the basis of which ownership is claimed has not been produced on record. Be that as it may, the admission certificate dated 12th September, 1958, is signed by the plaintiff is duly registered and contains an admission that the Government of India has granted permission to occupy in the land in military cantonment with no proprietary rights. In view of this document, there was no question of the Government of India producing the earlier terms of grant. Undisputedly, the property was in the possession of the Government at the time of issuance of letter of resumption grant. The plaintiff was, therefore, required to establish better title to the suit property in order to claim a decree for possession. The plaintiff has not only failed to establish his freehold rights and title over the property, but the admission certificate produced on record clearly establish that he

occupied it as the transferee of the interest in the lease hold property possessed by his predecessor in title, and he therefore could not have any better title than the title possessed by his predecessor. No substantial question of law arises.

6 The learned counsel for the appellant has relied upon the decision of the Apex Court in the case of **Union of India Vs. Purushottam Dass Tandon**¹. The Apex Court refused to interfere in its jurisdiction under Article 136 of the Constitution of India a petition challenging the decision of the High Court which was in favour of the allottee. It was a case where the appellant traced his title on the basis of the Courts auction in execution of the decree in 1848 and an assertion was made that since then he was in possession without payment of any rent whatsoever to the Union of India and had perfected his title by way of adverse possession. A case in the alternative was also set up that there was no valid resumption of the lease. The Civil Judge decreed the suit in favour of the appellant and held entitlement to get the rent from Allahabad Polytechnic is established. The 2nd Additional Civil Judge, however allowed the Appeal and reversed the decree passed by the trial Court and it

1 1986(Supp) SCC 720

was held that the Union of India and not the appellant was entitled to get the rent from Allahabad Polytechnic. The Second Appeal preferred against it, was allowed. The High Court held that the auction sale undoubtedly conveyed the right, title and interest which the judgment debtor had on the date of sale. It was consequently the bounden duty of the Union of India to establish that the Judgment debtor held the bungalow on the land of Cantonment area, subject to condition mentioned in GGO No.179 dated 12th September, 1836. It was also held that old grant in favour of the judgment debtor or auction purchaser or their successor was not filed and it appears that the presumption has been drawn that since the bungalow and the land in the suit lies within the Allahabad Cantonment, the Government must be the owners. The Court turned it down holding that it is misconceived which is required to be done out. The matter was carrying before the Apex Court and the Apex Court has dismissed the Appeal.

7 I have gone through the said decision with assistance of the learned counsel appearing for the appellant. The facts of the case are distinct. It was a case where a sale certificate dated 4th August, 1978 was executed in favour of the respondents

therein in execution of a decree. The suit was based on title. On the basis of this document which was produced on record, the Court held that merely because the land is located in Cantonment area that by itself was not enough to hold that the property belong to the Government, more particularly when the respondents therein was enjoying the property without any let or hindrance by the Union of India. In the present case, as the sale-deed dated 2nd May, 1958 has not been produced and apart from this, the nature of the title derived by the plaintiff on the basis of such sale-deed is apparent from the admission certificate dated 12th September, 1958. The Judgment is of therefore no help to the learned counsel.

8 Second Appeal is dismissed.

JUDGE