

CWP-10959-2014 and other connected petitions

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Judgment Reserved on: 19.10.2015

Date of Decision: 29.10.2015

1. CWP-10959-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Smt. Zizan and another

... Respondent(s)

2. CWP-12589-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Tarlok Singh and another

... Respondent(s)

3. CWP-12590-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Balbir Singh and another

... Respondent(s)

4. CWP-12617-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Abhai Gogi and another

... Respondent(s)

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5. CWP-13963-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Chaman Lal and another

... Respondent(s)

6. CWP-13964-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Billo and another

... Respondent(s)

7. CWP-13965-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Lajwanti Devi and another

... Respondent(s)

8. CWP-13966-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Ram Dass and another

... Respondent(s)

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9. CWP-13967-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Aman and another

... Respondent(s)

10. CWP-13968-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Shanti Devi and another

... Respondent(s)

11. CWP-13969-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Inderjit Singh and another

... Respondent(s)

12. CWP-13970-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Rattan Lal and another

... Respondent(s)

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13. CWP-13971-2014

Station Headquarters, Ferozpur Cantt.

... Petitioner(s)

Versus

Nirvail Kaur and another

... Respondent(s)

14. CWP-13972-2014

Station Headquarters, Ferozpur Cantt.

... Petitioner(s)

Versus

Laxmi Devi and another

... Respondent(s)

15. CWP-13973-2014

Station Headquarters, Ferozpur Cantt.

... Petitioner(s)

Versus

Bimla and another

... Respondent(s)

16. CWP-13981-2014

Station Headquarters, Ferozpur Cantt.

... Petitioner(s)

Versus

Susan and another

... Respondent(s)

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17. CWP-13982-2014

Station Headquarters, Ferozpur Cantt.

... Petitioner(s)

Versus

Bhajan Singh and another

... Respondent(s)

18. CWP-13994-2014

Station Headquarters, Ferozpur Cantt.

... Petitioner(s)

Versus

Malkiat Singh and another

... Respondent(s)

19. CWP-14022-2014

Station Headquarters, Ferozpur Cantt.

... Petitioner(s)

Versus

Puran Singh and another

... Respondent(s)

20. CWP-14023-0214

Station Headquarters, Ferozpur Cantt.

... Petitioner(s)

Versus

Deepak and another

... Respondent(s)

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21. CWP-15201-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Dashmesh Singh and another

... Respondent(s)

22. CWP-15205-2014

Station Headquarters, Ferozepur Cantt.

... Petitioner(s)

Versus

Ajaib Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Shivay Dhir, Advocate,
for the petitioner(s) in CWP No.12589 of 2014.

Mr. Abhinav Gupta, Advocate for
the petitioner in CWP No.12590 of 2014.

Mr. Piyush Khanna, Advocate,
for the petitioner (s) in CWP Nos.12617 and 13965 to
13967 of 2014.

Mr. Nimarpreet Sidhu, Advocate,
for the petitioner(s) in CWP Nos.13971, 13973 and
13981 of 2014.

Mr. Sunil Kumar Sharma, Sr. Panel Counsel,
for the petitioner(s) in CWP Nos.13964, 14022, 13968,
13982 and 15205 of 2014.

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Mr. Vivek Singla, Sr. Panel Counsel,
for the petitioner(s) in remaining petitions.

Mr. Tarun Deep Kumar, Advocate,
for respondent No.1 in CWP No.13970-2014.

Mr. K.B.Raheja, Advocate,
for respondent No.1 in remaining petitions.

Mr. Suresh Singla, Addl. A. G. Punjab.

Paramjeet Singh, J.

This order shall dispose of above mentioned writ petitions,
as common questions of fact and law are involved in all these petitions.

All these writ petitions have been filed for setting aside the
order dated 19.12.2013 (Annexure P-1) passed by learned Additional
District Judge, Ferozepur whereby order dated 15.03.2013 (Annexure P-
9) passed by Estate Officer, Station Headquarters, Ferozepur Cantt. has
been set aside and application seeking eviction of the private respondent
(s) from the area in question has been dismissed.

Since the facts in all the writ petitions are identical except
change in survey and bungalow numbers. For brevity, facts are taken
from CWP-10959-2014.

This writ petition pertains to a property measuring 1.60
acres, comprising survey No.210 and known as Bungalow No.84, Jhoke
Road, Ferozepur Cantt. As per the extract of General Land Register (Ex.
P-4 before the Estate Officer and Annexure P-6 to the writ petition)
maintained under the Cantonment Land Administration Rules, 1925, the
said property is shown as held on '**old grant**' terms and stood in the

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name of Syed Ahran Ali Muratab Ali. It was originally granted to Nazir Ali as sanctioned by the Quarters Master General's letter No.2840-B dt. 20.06.1887 to Officer Commanding Lahore Division No.1841 dated 20.06.1887. The property has been re-classified as "A-1" whereas it was earlier shown as "B-3". It was shown to be as evacuee property in the possession of Rehabilitation Department and the Deputy Commissioner, Ferozepur sent communication admitting that the property vests in the Defence Department. Nazir Ali, who was originally the occupancy holder as recorded in the General Land Register died and thereafter it was transferred in the name of Syed Ahran Ali Muratab Ali and nature of holder has been shown as proprietary. However, in column of remarks in extract of General Land Register (Ex. P-3 before the Estate Officer and Annexure P-8 to the writ petition), possession of evacuee property i.e. superstructure standing on the land was handed/taken over on 04.11.2003 and the Deputy Commissioner wrote a letter that ownership of the land vests in the Defence Department. The alleged occupancy holder is stated to have migrated to Pakistan and the property vested in the Rehabilitation Department and the property was subsequently transferred by negotiations to the Defence Department. On inspection, the petitioner found that respondent No.1 is in unauthorized possession on the part of the disputed bungalow measuring 490 square ft. and has constructed a building thereon. As per Section 3 of the Public Premises (Eviction of unauthorized occupants) Act, 1971 (for short, 'PP, Act'), show cause notice under Section 4(1) of the PP, Act was issued to

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respondent No.1. After receiving the notice, respondent No.1 appeared before the Estate Officer and filed written statement to the application for eviction from the premises and raised preliminary objections that notice under Section 4(1) of the PP Act is illegal, null and void and is directly hit by Section 3 of the aforesaid Act, the question of title is involved regarding bungalow No.84, there is no proof of ownership in favour of the petitioner herein and site plan furnished by the petitioner was incorrect. It was also pleaded that respondent No.1 has been in possession of the premises since 1947 and has been paying the rent to the department of custodian, therefore, being in long and continuous possession, she became owner by way of adverse possession and the matter is pending before the Settlement Commissioner, Ferozepur. It was also the stand of respondent No.1 that although, bungalow No.84 is an '*old grant*' property which was in possession of the Muslims, who left for Pakistan after partition and, therefore, the property is vested in the Custodian and is governed by the provisions of Displaced Persons (Compensation and Rehabilitation Act) 1954. This property had not been transferred by the Custodian to the Union of India. No sale deed has been executed or registered by the Custodian in favour of Union of India. The conversion of the land from Class B-IIIrd to Class A-I is illegal, null and void since the entire area is in the occupation of the Civilians and the Army/Station Headquarters, Ferozepur Cantt. did not remain in possession of any portion at any point of time over the premises in question and as such the conversion is also illegal, null and

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void and against the provisions of law.

Rejoinder was also filed before the Estate Officer. It was the stand of the petitioner herein that no question of title is involved regarding bungalow No.84. The sanction of the Central Government vide Ministry of Defence letter No.701/292/RD/DLS/78/DCQ & C dated 23.07.2003 is clear that status of land is A-1 Defence Land on payment of compensation. There is no dispute on the point that the ownership of the land always remained with the Government of India. The payment of superstructures has already been made by the Defence Estate Officer to the Tehsildar, Ferozepur. Neither respondent No.1 comes under the definition of displaced person nor the land i.e. Bungalow No.84, Jhoke Road, Ferozepur Cantt. was ever sold to anyone at any time. The ownership of land of Bungalow No.84 vested with the Government of India, Defence Department, as per General Land Register and communicated vide Ministry letter No.701/292/RD/DLS/78/DCQ & C dated 23.07.2003. Since the Rehabilitation Department had only occupancy rights of the bungalow in question, therefore, no conveyance deed or sale certificate is required. The Deputy Commissioner, Ferozepur vide his letter No.2913/DRA dated 07.10.2003 had also directed that the sale deed is not applicable in this case. All 'Old Grant' properties fall under B(3) land, the management of which is under DEO, Jalandhar circle on behalf of the Government of India. The Rehabilitation Department, Punjab has not challenged the sanction of Central Government. In case the property belongs to Rehabilitation

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Department, then they would have challenged this sanction, which was never done. Respondent No.1 herein is in illegal possession.

While leading evidence, the petitioner examined AW 1 Col. M.S.Mann, AW 2 Kulwant Singh, SDO-IIInd of the Defence Estate Officer, Jalandhar Circle, Jalandhar Cantt. and AW 3 Satish Kumar Arora, J.E. of Cantonment Board, Ferozepur Cantt. The petitioner also produced on record various documents i.e. Letter No.701/292/RD/DLC/78/2818/D (Q & C) dated 23.07.2003 as Ex.P1, letter No.2913-DRA dated 07.10.2003 Ex.P2, Extract form Ex.P3 and Ex.P4, possession certificate Ex.P5 and report regarding delivery of possession dated 04.11.2003 Ex.P6. However, respondent No.1 herein did not lead any evidence despite sufficient opportunities and ultimately her evidence was closed by order by the Estate Officer. The Estate Officer after hearing the parties and evaluating the evidence on record ordered for ejectment of respondent No.1 from the property in dispute, vide order dated 13.04.2005, holding that she is neither authorized to occupy the property in dispute nor any licence has been granted to her to occupy the same nor she is in adverse possession, she is unauthorized occupation of the public premises.

Feeling aggrieved against the order dated 13.04.2005, respondent No.1 preferred appeal which was decided by learned Additional District Judge, Ferozepur vide judgment dated 05.11.2008, whereby the order dated 13.04.2005 was set aside and case was remanded to the Estate Officer for deciding the case afresh after framing

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the issues and affording opportunities to the parties to lead their evidence. In pursuant to the remand order, the Estate Officer framed the following issues:

“(a) Applicant (Onus of Proof on Applicant)

- i) Whether the respondent is in unauthorized occupation of Public Premises measuring 9943 Sq. ft. in Svy No.210, known as 84 Jhoke Road, Ferozepur Cantt. by way of construction of building on said premises without any valid reasons or authority?*
- ii) Whether the present application should be dealt under Punjab Public Premises and Land (Eviction & Rent Recovery) Act 31 of 1959 or Public Premises (Eviction of Unauthorized Occupants) Act 1971 (Section 4 of 1971)?*

(b) Respondent (Onus of Proof on respondent)

- i) Whether the present application is maintainable in the present form or not?*
- ii) Whether respondent comes under definition of displaced persons and can cover under Displaced Persons Rehabilitation Settlement Act?*
- iii) Whether the respondent constructed the building/infrastructure (in his/her possession) before the partitio or after the partition and if so, since when?*

(c) Relief.”

Thereafter, both the parties led their respective evidence. After hearing the parties, the Estate Officer, Station Head Quarters, Ferozepur Cantt. vide order dated 17.11.2009 accepted the application and passed the order of eviction against respondent No.1.

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Aggrieved against the order dated 17.11.2009, respondent No.1 filed appeal which was decided by learned Additional District Judge, Ferozepur vide judgment dated 02.06.2012 whereby order dated 17.11.2009 was set aside and application was remanded to the Estate Officer for deciding the same afresh after framing additional issue regarding title of the disputed property and giving adequate opportunities to the parties to lead their respective evidence in support of their claims.

Thereafter, the Estate Officer framed the following issue:

“Issue a(iii)

Onus of poor on applicant

Whether the title of the property in question vests with the Government of India through Ministry of Defence or not? OPA”

The Estate Officer after considering the evidence on record and hearing the parties, vide order dated 15.03.2013 (Annexure P-9), ordered the eviction of respondent No.1 from the public premises by holding that she is in unauthorized occupation of the public premises as shown in the site plan attached with the show cause notice dated 12.11.2003 as the land in dispute belonged to Government of India, Ministry of Defence and as such held to be a public property. Being dissatisfied, respondent No.1 preferred appeal before learned Additional District Judge, who set aside the order dated 15.03.2013 (Annexure P-9) passed by the Estate Officer and dismissed the application seeking eviction of respondent No.1 from the area in question, vide impugned

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order dated 19.12.2013 (Annexure P-1). Hence, this writ petition.

In pursuance of notice of motion, respondent No.1 put in appearance through her counsel, however, she has not filed any reply/written statement. It is pertinent to mention here that reply/written statement is not required to be filed in such cases as Estate Officer has passed the order dated 15.03.2013 (Annexure P-9) as quasi judicial authority and learned Additional District Judge has passed the impugned order dated 19.12.2013 (Annexure P-1) exercising the appellate powers under Section 9 of the PP Act. The record of the case was summoned which was produced before this Court.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that property in question is recorded in the General Land Register and nature of holder's rights has been mentioned as '*old grant*'. Undisputedly, now the property in question vests in the Defence Department. Actually, the possession was delivered to Nazir Ali and after his death, it was transferred in the name of Syed Ahran Ali Muratab Ali. The alleged occupancy holder had migrated to Pakistan and thereafter the property in dispute was declared as evacuee and vested in the Rehabilitation Department which was subsequently transferred to the Defence Department by negotiations. The Deputy Commissioner, Ferozepur sent communication admitting that the property vests in the Defence Department. In the extract of General Land Register (Annexure

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P-8), it is clearly mentioned that property in dispute is managed by the Ministry of Defence and the Ministry of Defence has also been recorded as holder of occupancy rights. The findings recorded by learned Additional District Judge are not sustainable in the eyes of law and are against the settled principles of law. The appellate authority has erroneously recorded a finding that ownership of Survey No.210 has not been duly proved on the file as the original survey report was not produced on the record.

Per contra, learned counsel for respondent No.1 vehemently opposed the contentions of learned counsel for the petitioner and contended that the issue with regard to the ownership of property has been decided by the authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the property in dispute never vested in the Ministry of Defence. The petitioner is not in legal possession of the property in dispute. The question of title cannot be adjudicated in summary proceedings and the Estate Officer has not appreciated the law properly and the impugned order dated 19.12.2013 (Annexure P-1) is legal, valid and in accordance with law. Reference to the order passed by the Settlement Officer has also been made.

I have considered the rival contentions of learned counsel for the parties and perused the record.

Vide impugned order dated 19.12.2013 (Annexure P-1), learned Additional District Judge has set aside the order dated 15.03.2013 (Annexure P-9) passed by the Estate Officer without setting

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aside the issuewise findings. While setting the order dated 15.03.2013, learned Additional District Judge exercising the powers of appellate authority has recorded the findings in para no.29 and 30 of the impugned judgment.

“29. *The Public Premises Act came into existence in the year 1971 while the appellant is in possession of the area in question since 1947 and to this effect RW 1 has brought on file the copy of the electricity bill, copy of water bills issued by the Cantonment Board and copy of the ration card from Ex.P1 to Ex.P18 but the Estate Officer has not considered these documents regarding their possession over the premises in question, rather it has been held in issue no.a(i) and issue no.a(iii) that the respondent (present appellant) could not prove on record that how the Government of India through the Ministry of Defence is not owner of the property in dispute when the onus to both these issues is upon the applicant and they have to stand on their own legs and not on the weaknesses of the appellant. The respondents have to prove both these issues on the basis of cogent and positive evidence.*

30. *Moreover, the Surety No.210 has not been duly proved on the file as the original survey report was not produced on the record. Therefore, the alleged survey report cannot be believed to be legal and genuine and on the basis of the alleged survey, the classification of the land was effected by the Army Authorities of the Bungalow No.84, Jhoke Road, Ferozepur from Class-B III Land to Class A-1 Land.*

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When it has been admitted that the property in dispute is in possession of the private persons and not used for any purpose of the Army till date and no physical possession till date was taken by the Army. Moreover, the order of the classification, which is to be passed by the appropriate authority was not produced during the course of the trial. No notification allegedly issued by the central Government vide which the property vests with the Central Government has also placed on record. The title of the property is disputed according to the findings recorded by the Appellate Courts twice and the directions were given to frame the proper issues arose from the pleadings of the parties.....”

In view of above findings recorded by learned Additional District Judge, the question that arises for consideration of this Court is whether the petitioner has been able to prove that the property was 'old grant' and is entitled to possession in accordance with law.

Admittedly, originally the property was granted to Nazir Ali as sanctioned by the Quarters Master General's letter No.2840-B dt. 20.06.1887 to Officer Commanding Lahore Division No.1841 dated 20.06.1887 as is evident from the extract of the General Land Register (Ex. P-4 before the Estate Officer and now Annexure P-6). The same is reproduced hereunder for ready reference:

“THE GENERAL LAND REGISTER
PROPOSED AMENDMENT TO
FEROZEPUR CANTONMENT

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Mutations Detail and Date Existing Entries of mutation		
Subsidiary Sy. No.		
Volume and page of register		
Area in Acres/Sft	4	1.60 Acres
Description	5	Bungalow No.84
Class	6	B-3
By whom managed	7	MEO
Land Lord	8	G of I
Holder of occupancy rights	9	Syed Ahran Ali Muratab Ali
Nature of holder's rights	10	Old Grant
Rent payable per annum	11	-
	12	-
Date of Expiry	13	-
Remarks		Previous No.107 originally granted to Nazir Ali as sanctioned by the Quarters Master General's letter No.2840-B dt. 20.06.1887 to Officer Commanding Lahore Division No.1841 dt. 20.06.1887
Station Jalandhar Cantt.		

Dated: 10.09.2003

Sd/-
Defence Estate Officer,
Jalandhar Cantt.”

Thereafter, the property in dispute was transferred to Syed Ahran Ali Muratab Ali. The alleged occupancy holders had migrated to Pakistan at the time of partition of the country and the property was declared as evacuee property. Originally, the property was classified as 'B-3' and nature of holder's right was mentioned as 'Old grant' as mentioned in the extract of General Land Register (Ex. P-4 before the Estate Officer and now Annexure P-6).

It would be apposite to reproduce Section 280 of the Cantonments Act, 1924 which reads as under:

“(1) The Central Government may, after previous

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publication, make rules to carry out the purposes and objects of this Act.

(2) In particulars, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) The manner in which, and the authority to which, application for permission to occupy land belonging to the Government in a cantonment is to be made;

(b) The authority by which such permission may be granted and the conditions to be annexed to the grant of any such permission;

(bb) The allotment to a Board of a share of the rents and profits accruing from property entrusted to its management under the provisions of section 116A;]

(c) The tenure of office, salaries and allowances, provident funds, pensions, gratuities, leave of absence and other conditions of service of servants of Boards;

(d) The circumstances in which security shall be demanded from servants of Boards and the amount and nature of such security;

(g) The keeping of accounts by Boards and the manner in which, such accounts shall be audited and published;

(h) The definition of the persons by whom, and the manner in which, money may be paid out of a cantonment fund;

(i) The preparation of estimates of income and expenditure by Boards and the definition of the persons by whom, and the conditions subject to which, such estimates may be sanctioned;

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(j) The regulation of the procedure of Committees of Arbitration; and

(k) The prescribing of registers, statements and forms to be used and maintained by any authority for the purposes of this Act;

(l) The grant of leave to the members of the Board;

(m) The form of notices required to be sent under this Act and the manner of their service.”

Section 280 of the Cantonments Act, 1924 empowers the Governor General in Council to make rules for the purpose of carrying out the objects of the Cantonments Act, 1924. In particular, these rules could provide for: (a) the manner in which and the authority to which application for permission to occupy land belonging to the Government in a cantonment is to be made; (b) the authority by which such permission may be granted and the conditions to be annexed to the grant of any such permission. In the exercise of this power, the Cantonment Land Administration Rules, 1925 have been framed. Under Rule 3 of these Rules, the Military Estates Officer of the Cantonment shall prepare and maintain a general land register of all lands in the Cantonment in the form prescribed in Schedule I and no addition or alteration thereto shall be made except as provided therein. Under Rule 4 of the Rules in force in 1936, the Military Estate Officer was required to maintain a Register of Mutation in which every transfer of right or interest in land in the cantonment which necessitated an alteration of the entries in any of the columns of the general land register, was entered. Under Rule 5 as then

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in force, every fifth year the general land register shall be rewritten so as to include all changes in the rights or interest in land and a fresh register of mutation shall be opened simultaneously. Under Rule 6, for the purpose of the general land register, land in the cantonment is divided into class A land, class B land and class C land. Rules 7 and 8 deal with these different categories of land.

It would also be apposite to reproduce extracts from the book of Cantonment Laws by J.P.Mittal, 2nd Edition at page 3 which read as under:

"Besides municipal administration, another subject that has always loomed large on the cantonment horizon, is the question of provision of necessary accommodation for military officers near the place of their duty. This led to the issue, from time to time, of certain rules, regulations, and orders by the Governments of Bengal, Madras and Bombay Presidencies between the years of 1789 and 1899. The regulations were mostly of an identical nature. They had a twofold object in view, that of ensuring sufficient accommodation for military officers; and that of regulation of the grant of land sites. Some of these regulations are published in this book. These rules, regulations and orders continue to be the law in force in India even after the enforcement of the British statutes (Application to India) Repeal Act, 1960, (Raj Singh v. Union of India, AIR 1973 Delhi 169., Mohan Agarwal v. Union of India, AIR 1979 Allahabad 170).

Under these regulations and orders, officers not provided with government quarters were allowed to erect

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houses in the cantonment. For this purpose ground was allotted to them with the condition that no right of property whatever in the ground was conferred on them and the ground continued to be the property of the State, was resumable at the pleasure of the Government by giving one month's notice and paying the value of the structures as may have been authorized to be erected. The houses or other property built on such grounds were allowed to be transferred by one military officer to another without restrictions. To civilians these could be transferred only with the prior permission of the officer commanding the station.

With the lapse of time civilians were also encouraged to build bungalows on the government land in the cantonment on the same condition of resumption of the ground as given above and with a further condition that they may be required to rent or sell the same to any military officer. In case of disagreement about the rent or the sale price, the same was to be fixed by a committee of arbitration. These tenures under which permission was given to occupy government land in the cantonments for construction of bungalows came to be known as 'old grant'. Such permission was given mostly on payment of no rent. This is how a large number of bungalows in the cantonments all over India came in the hands of civilians."

The Government Grants Act, 1895, as would be evident from its 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 Government Grants Act, 1895 (for short, 'the 1895 Act') reads as follows:

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"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."

It would also be pertinent to mention here that not only the Transfer of Property Act is made inapplicable to the Government grants but Section 3 of the 1895 Act also makes it clear that the Government grants are to take effect according to their tenor, notwithstanding any rule of law, statute or enactment of the Legislature to the contrary. Section 3 of the 1895 Act 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."

Admittedly, the property in question is shown as held on '**old grant**', therefore, no conveyance deed is required and Transfer of Property Act is not applicable as such.

The issue in hand is no more *res integra*. The Hon'ble Supreme 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

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Court took note of Section 3 of the 1895 Act which is to take effect according to its tenor notwithstanding any other law to the contrary.

In *Chief Executive Officer v. Surendra Kumar Vakil and Others, 1999(2) R.C.R (Civil) 411 : (1999) 3 SCC 555*, the Hon'ble Supreme 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 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.

In *Union of India and others v. Kamla Verma, (2010) 13 SCC 511*, the Hon'ble Supreme 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.

The Hon'ble Supreme Court in *Union of India and Ors. vs. Dinshaw Shapoorji Anklesari and Ors.* 2015 (1) Recent Apex Court Judgments 455 has held as under:

“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.*

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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.”*

In view of above, it is clear that Government has power to impose any condition, limitation or restriction in its grants and the rights and privileges of the grantee would be governed only according to the terms and conditions, itself. Respondent No.1 has failed to produce any evidence to prove her authorized possession over the property in dispute. The various letters and communication specifically possession certificate (Ex.P-5 before the Estate Officer) reveal that possession handed over and taken over certificate was issued by the authorities and rapat roznamcha (Ex.P-6 before the Estate Officer) was also entered. Vide letter dated 28.06.2006 (Ex.P-7 before the Estate Officer), it has been stated by the Government of India, Ministry of Defence that there is no requirement of a conveyance deed because the ownership of the land/property vests with the Defence and the Rehabilitation Department, Govt. of Punjab had only occupancy rights of the bungalow. Even extracts of the General Land Register which have been placed on record

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before the Estate Officer as Ex.P-3, P-4 and P-8 clearly mention that Deputy Commissioner, Ferozepur conveyed that ownership of the land of this property vests with the Defence Department, therefore, no conveyance deed is to be issued. The notices have been issued to the various persons including respondent No.1 and others under the provisions of the Cantonment Act, 1924.

In view of above, it is clear that the petitioner has brought on record extracts of general land registers and registers of mutations which are old documents maintained in the regular course and are coming from proper custody. They are maintained according to relevant rules and regulations. The extracts of general land registers show that respondent No.1 has no right to occupy the land which was held as on '**old grant**' basis. The documents i.e. Ex.P-4 and P-8 before the Estate Officer clearly prove that the land was '**old grant**' and even the possession of land was delivered vide Ex.P-5. It is not the case of respondent No.1 that the petitioner has failed to produce any evidence in support of the claim as mentioned in the application. The findings recorded by learned Additional District Judge are not based on correct appreciation of the documents exhibited on record as referred above. As such, the impugned order dated 19.12.2013 (Annexure P-1) has not been passed on the appreciation of settled principles of law and, therefore, the same is not sustainable. The land stood vested in the Union of India through Ministry of Defence. The petitioner has been able to prove that the property was '**old grant**' and is entitled to possession in accordance with law. The question is answered accordingly. All the impugned

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orders dated 19.12.2013 (Annexure P-1) are set aside and orders dated 15.03.2013 (Annexure P-9) passed by the Estate Officer are restored and applications filed by the petitioner for eviction of respondent No.1 stand allowed.

All the writ petitions are allowed in the aforementioned terms.

29.10.2015
parveen kumar

(Paramjeet Singh)
Judge