

(2009) 01 BOM CK 0059

In the Bombay High Court

Case No : First Appeal No. 81 of 1993 and Civil Application No's. 152 of 2003, 475 of 2004, 5487 of 2007 and 5207 of 2008

Mrs. Dosibai Nanabhoy Jeejeebhoy, represented by (Byram Nanabhoy Jeejeebhoy, Avi Behram Doctor and Behram Doctor) APPELLANT

Vs

The Union of India (UI) RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Cantonments (Extension of Rent Control Laws) Act, 1957 — Section 3, 4, 5
General Clauses Act, 1897 — Section 24
Limitation Act, 1963 — Article 58

Citation : (2009) 4 BomCR 476 : (2009) 111 BOMLR 1014

Hon'ble Judges : R.P. Sondurbaldota, J; P.B. Majmudar, J

Bench : Division Bench

Advocate : Mahendra Shah, K. Presswalla and Rajesh Rathod, instructed by Bilawala and Company, for the Appellant; S.R. Rajguru and Nisha Valani, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—This appeal is directed against the judgment and decree dated 30th September, 1991, passed by the learned Joint Civil Judge, Senior Division at Pune, in Special Civil Suit No. 287 of 1983. By the impugned judgment and decree, the suit filed by the original plaintiff has been dismissed by the learned trial judge.

2. The plaintiff is the original owner of land situate at 11, Staveley Road, Pune Cantonment, along with the main bungalow and various outhouses, servants' quarters etc., hereinafter referred to as "the suit property". The aforesaid suit was filed for a declaration that the suit property vests exclusively with the plaintiff and the defendant has no right, title or interest in the ownership thereon. The plaintiff has also prayed for a declaration that the defendant has no right of resumption in respect of the suit property and the resumption notice

dated 22nd October, 1970 and the letter dated 6th November, 1970 are invalid, void and of no legal effect. A further declaration was also sought in the suit to the effect that the "Admission Certificate" dated 24th April, 1965 is void and not binding on the plaintiff. It is also prayed that the defendant be directed to deliver up the Admission Certificate dated 24th April, 1965 and the said Admission Certificate be cancelled.

3. It is the case of the plaintiff that she is the owner of the suit property viz. all that piece and parcel of land bearing No. 11, Staveley Road, Pune Cantonment, consisting of the main bungalow together with outhouses, servants' quarters, garages, stables and a garden admeasuring about 1 acre and 30 gunthas together with ground, trees, fences, etc. It is the case of the plaintiff that the above suit property was owned absolutely by late Cawasjee Dhunjeeshaw, the father of the plaintiff. It is averred by the plaintiff in the plaint that her father said late Cawasjee Dhunjeeshaw by an indenture dated 23rd June, 1930, between him and the Secretary of State for India in Council leased the dwelling house to the predecessors of defendant in the suit property together with outbuildings, grounds, gardens, trees, fences, ditches, wells, easements and appurtenances to the said dwelling house for a period of five years from 20th April, 1930, at the rate of Rs. 745/excluding conservancy and water taxes. After this lease had expired, a new lease dated 18th July, 1935, was executed between the parties, for another period of five years commencing from 20th April, 1935. After the term of the lease, the defendants' successors of the Secretary of State for India in Council, held the property on the same terms and conditions contained in the said indenture on the basis of the monthly tenancy. According to the plaintiff, after the demise of the original lessor, the late Cawasjee Dhunjeeshaw, the monthly rent in respect of the suit property was being paid by the defendant to the widow of late Cawasjee Dhunjeeshaw, who was given a life interest in the said property. The plaintiff was given the full and absolute interest in the suit property, after her mother's death, and she became an owner and lessor of the suit property. The plaintiff filed a suit bearing R.C.S. No. 1946/1965 on 15th April, 1964 (thereafter renumbered as Suit No. 946 of 1965) in the Court of Civil Judge, Senior Division, Pune, for possession, arrears of rent and damages.

4. According to the plaintiff, the defendant failed to make payment of the rents, taxes and other dues payable in terms of the lease and hence the plaintiff became entitled to terminate the said lease and to take the possession of the said property. It is the case of the plaintiff that on 23rd February, 1965, she had applied for transfer of the suit property in her own name upon her father's death to the Military Estate Officer, Pune Circle, Pune, as she was given to understand that such an application was necessary in Cantonment Area. It is alleged by the plaintiff that taking advantage of the said application, the defendant made a condition of transfer that she should sign an Admission Certificate acknowledging Government proprietary interest in the land. The plaintiff had signed such Admission Certificate on 24th April, 1965. The plaintiff was made to subscribe the condition of the original grant pertaining to the site of the bungalow on the

said suit property. It has been stated in the said Admission Certificate that permission to occupy ground in a military cantonment conferred no proprietary right and that it continued to be the property of the State and was resumable at the pleasure of the Government. It is also the case of the plaintiff that the Civil Judge, Senior Division, Pune, by judgment and decree dated 29th June 1969 in Regular Civil Suit No. 946 of 1965, directed the defendant to hand over possession of the suit property and pay to the plaintiff Rs. 2,845.37 with costs of the suit and future interest on the same. The defendant had challenged the said decree by way of an appeal, being Appeal No. 213 of 1970, in the District Court, Pune. The District Court, Pune, stayed the and execution of the decree in the said appeal.

5. It is the case of the plaintiff that by a purported resumption notice dated 22nd October, 1970, the defendant informed the plaintiff that all rights, easements and interest in the suit property were seized on the expiry of 30 days of the notice. As per the recital in the said notice, the suit property belonged to the defendant and was held on old grant terms. By the said notice, the defendant offered to pay the plaintiff a sum of Rs. 36,268/as the value of the authorised erections standing on the said land. The Military Estate Officer, Pune Circle, requested the plaintiff by letter dated 6th November, 1970 to hand over the possession of the suit property with all the buildings and erections standing thereon to the representative of the defendant on 25th November, 1970, at 11.00 hrs. in terms of the said notice.

6. It is the case of the plaintiff that the defendant was not the owner of the land and was not entitled to resume the land or buildings thereon. The plaintiff made an application before the Assistant District Judge, Pune, in the said appeal No. 213 of 1970, to restrain the defendant from resuming the land. An order was passed on 19th November, 1970 to that effect. The defendant thereafter vide letter dated 23rd January, 1971 enclosed a cheque of Rs. 36,268/towards the purported compensation of the buildings. The plaintiff returned the said cheque in view of the pendency of legal proceedings. In the meanwhile, the Assistant District Judge disposed of the said Appeal No. 213 of 1970 on 28th March, 1972, in favour of the defendant by holding that the provisions of the Rent Act did not apply to the Cantonment. The plaint was thereafter returned for presentation to the Court of Small Causes, Pune on 28th April, 1972 and was numbered as Civil Suit No. 1435 of 1972. The said suit was transferred to the Principal Civil Judge, Senior Division, Pune and numbered as R.C.S. No. 599/1974. According to the plaintiff, by an oversight, no application for injunction against the resumption of the suit property was made on behalf of the plaintiff either before the Small Causes Court or before the Principal Civil Judge, Senior Division, Pune. On 17th May, 1972, the defendant purported to unilaterally resume and assume possession of the suit property. Correspondence ensued between the plaintiff and the defendant for the receipt of compensation amount. The plaintiff ultimately accepted the defendant's cheque for Rs. 36,268/under protest. The plaintiff also applied to the defendant for referring the matter to an arbitration Committee. In

pursuance of the plaintiff's request, one Lt. Col. D. Jagadesan was appointed as a Presiding Officer of the Arbitration Committee. It is the case of the plaintiff that the said Arbitration Committee had not yet determined the plaintiff's claim for additional compensation. The plaintiff has further contended that the above RCS No. 599 of 1974 filed by the plaintiff before the Principal Civil Judge, Senior Division, Pune, was dismissed for default on 29th October, 1979, and that the restoration application filed by the plaintiff is still pending disposal of the Court.

7. It is also the case of the plaintiff that somewhere in May, 1980, she took legal advice on the question of proceedings relating to the purported resumption and her attention was drawn to the judgment of the Bombay High Court in the case of Phiroze Temulji Anklesaria Vs. H.C. Vashistha and Others, , wherein the Division Bench took the view that it could not be laid down as a matter of law that no land in the Pune Cantonment could have been the subject matter of private ownership before or after the settlement of Cantonment limits. In the said case, the Division Bench has set aside the resumption notice, which was identical to the resumption notice in respect of the suit property. It is also the case of the plaintiff that the defendant have been in wrongful possession of the suit property since May, 1972 by way of purported exercise of their so called right of resumption and that they have been wrongly using the suit property without making any payment of rent or mesne profits or other charges payable to the plaintiff which they are bound to pay under the terms of the indenture dated 18th July, 1935. On these and such other averments, the suit was filed by the plaintiff for declarations, as stated above.

8. The suit was resisted by the defendant by filing the written statement at Exhibit 15. The defendant denied the averments and allegations in the suit. According to the defendant, the plaintiff was the owner of only the main bungalow, outhouse, servants quarters, garages and stables and authorised to be built but were not the owners of the land. According to the defendant, the plaintiff was merely holder of occupancy rights in so far as the land admeasuring 1.30 acres bearing S. No. 404 is concerned. The said land was held by the plaintiff's predecessor in title in terms of the old grant under condition No. GGO No. 14 of 6th January, 1827. According to the defendant, the entire property now vests with the Government of India after its resumption on 17th May, 1972. It is the further case of the defendant that the Government had taken on lease a dwelling house in terms of indenture dated 23rd June, 1930 but denies that on the basis of an indenture the plaintiff got any title to the land underneath the dwelling house. It is the case of the defendant in the written statement that loosely worded indenture "by premises" meant only the structures erected on the land and did not include the land. According to the defendant, the plaintiff was trying to mislead the true facts of law. It is denied by the defendant that after expiry of lease in 1935, the Government was holding over the same as statutory tenant on the premises. It is also the case of the defendant that after the war of 1817, the Military had occupied all the land in the limits of Cantonment of Pune and the rights of private parties of private lands were

extinguished. The gazette notification was published in 1828 declaring the limits of Cantonment of Pune. There were no private land or private interest in the Cantonment. Subsequently, Army Officers and selected civilians were granted land for construction of residential accommodation with a clear condition that no proprietary rights will be conferred on grantees. The plaintiff who had inherited the property in 1965, was also explained the conditions which the property was held by her and she voluntarily signed the "Admission Certificate" on 24th April, 1965. According to the defendant, it is not open to the plaintiff to say after seventeen years that she had signed an application erroneously. According to the defendant, the decree was passed by the Civil Judge, Senior Division in RCS No. 946 of 1965. However, the plaintiff has for the reasons best known to her has not bothered to state that the appeal was decided in favour of Government. It is the case of the defendant that the suit property was resumed after a valid notice giving one month's time and an amount of compensation of Rs. 36,268/was offered to the plaintiff.

The plaintiff has never challenged the right of Government for resumption but was contesting that the compensation is payable for the land also. It is the case of the defendant that in the case of P.T. Anklesaria(supra), the Bombay High Court has struck down only the powers of resumption of the Government merely because in the particular property, the Government could not produce the original grant pertaining to the power of resumption. The said decision of the Bombay High Court was, however, challenged in appeal before the Supreme Court in SLP Nos. 608 to 621 of 1980. The Appeals filed by the Government have been admitted by the Supreme Court. According to the defendant, since the plaintiff has already accepted compensation amount in 1976 and had elected for arbitration only to fix the compensation which has already been admitted by the plaintiff and hence the suit is hopelessly barred by limitation and laches. On these and such other averments, the suit of the plaintiff was resisted by the defendants.

9. The learned trial Judge framed 21 issues arising out of the pleadings at Exh. 20. After considering the oral and documentary evidence on record, the learned trial Judge came to the conclusion that the plaintiff has failed to prove that the suit property was owned absolutely by late Cawasjee Dhunjeeshaw, the father of the plaintiff. The trial Court also found that the plaintiff has proved that the suit property was leased to the Secretary of State for India in Council for five years from 20th April, 1930 at the rate of Rs. 745/per month. The trial Court found that the plaintiff has only proved that the property was leased to the defendant. However, the plaintiff has failed to prove that after expiry of indenture dated 18th July, 1935, the successors of the defendants held the suit property on same conditions in the said indenture on the basis of monthly tenancy. The trial Court has found that the plaintiff has failed to prove that she became the owner and lessor of the suit property. The trial Court also found that the plaintiff has failed to prove that the suit property was at all times privately owned by her predecessor in title and by herself. The trial Court also found that the plaintiff has

failed to prove that she signed an Admission Certificate dated 24th April, 1965, not realising the consequences of signing and that she signed the certificate thinking that it was only a mere formality. The learned trial Judge had decided issue Nos. 1, 3 to 17 against the plaintiff. The trial Court also found that the defendants proved that the plaintiff or her predecessors were merely holders of occupancy rights in respect of the suit property. The trial Court also found that the defendant proved that the suit land was held by the plaintiff's predecessor in title in terms of old grant under condition of GGO No. 14, dated 6th January, 1827 and that the entire suit property now vests with Government of India under its resumption dated 17th May, 1972. The learned trial Judge who had framed an additional issue regarding law of limitation also held that the suit of the plaintiff was barred by the law of limitation. On the basis of the aforesaid findings, the learned trial Judge by the impugned judgment and decree dated 30th September, 1991 dismissed the suit of the plaintiff with costs. It is the aforesaid judgment and decree which is impugned in the instant appeal at the instance of the original plaintiff.

10. Since the appellant original plaintiff has expired during the pendency of this appeal, her heirs 1 (a) (b) and (c) have been brought on record, pursuant to the Court's order dated 11th June, 2004. .

11. During the course of hearing of the appeal for final hearing, the appellant plaintiff has tendered on record a Civil Application for amendment of the plaint being Civil Application No. 5207 of 2008. On 17th October, 2008, this Court passed the following order.

1. Arguments concluded in the appeal. Order reserved.

2. During the course of arguments, Civil application is tendered on record for amendment of the plaint. Since, we have heard both the learned Counsels at length in the main appeal, the learned Counsel for respondent is permitted to file reply to the Civil Application on record, latest by 10th November, 2008 and copy may be furnished to the other side before the said date. The learned Counsel for the appellant may file his reply on record by 17th November, 2008. The written submissions on the amendment application of the plaint is permitted to both the sides, the same may be filed latest by 17th November, 2008. Learned Counsel for both sides are also permitted to give short written submissions on the main appeal, latest by 17th November, 2008 with a request that it should be in a precise form and not very lengthy. The judgment will thereafter be pronounced after the aforesaid date at any time.

12. Mr. Mahendra Shah, learned Senior Counsel, appearing for the appellants has submitted that on 29th June, 1969, the Civil Judge, Senior Division, Pune, decreed the suit filed by the plaintiff and ordered the defendant to forthwith give possession of the suit property. The defendant filed an appeal against the said order being Appeal No. 213 of 1970 before the Extra Assistant Judge, Poona at Poona. It was the submission of the plaintiff before the Appellate Court that the

appeal is a continuation of the suit and consequently once the Rent Act has been made applicable by the notification issued in the year 1969, it shall be deemed that the Court gets the jurisdiction and, therefore, the plaint ought not to be returned to the plaintiff under the provisions of Order VII Rule 10 of the CPC Code. According to the plaintiff, the main relief sought for in the suit was for possession and the same relief does occur under the provisions of Transfer of Property Act and, therefore, the said relief ought to have been granted to the plaintiff as it was within the jurisdiction of the Court of Civil Judge, Senior Division. After hearing the parties, the Appellate Court vide judgment and order dated 28th March, 1972 in Appeal No. 213 of 1970, allowed the appeal, set aside the decree of the trial Court and returned the plaint to the plaintiff for presentation to the proper Court. The Appellate Court found that the Civil Judge, Senior Division, conducted the suit as a Small Causes suit and the same was without jurisdiction. Mr. Shah has further submitted that in view of the judgment in the case of P.T. Anklesaria (supra), the Rent Act was applicable to the suit premises and, therefore, the decree was rightly passed by the trial Court and in that view of the matter, the decree passed by the Civil Judge, Senior Division, Pune, can be said to be a valid decree and the same is binding between the parties. It is submitted by Mr. Shah that an identical decree in the case of P.T. Anklesaria has been passed. It is further submitted by Mr. Shah that so far as the judgment delivered in P.T. Anklesaria is not stayed, the said judgments holds the field as the same has not been overruled. It is submitted by Mr. Shah that the plaintiff has led evidence about her title but the respondent has not led any evidence to substantiate its say about handing over the land on the basis of original grant. The original grant has not been produced on record and the burden is on the defendant to prove such grant which they have not been discharged. Mr. Shah has further submitted that the judgment in Anklesaria's case was given by the Bombay High Court in a writ petition in which the petitioner therein had mainly and substantively challenged the resumption notice given by the respondents on the ground that there was no grant whatsoever from the Government of India granting to the petitioner or his predecessor in title, and in any event there is no grant containing any terms for the Government to resume the land. By the impugned resumption notice in the said notice, the executive could not deprive him of whatever right he held in the property whether the right was absolute or limited and the prayer asked for was a writ of mandamus to declare the impugned notice and all actions pursuant thereto as void, ultra vires and of no legal effect and ordering the respondents to cancel the said notice.

13. It is vehemently submitted by Mr. Shah that it was not open for the defendant to deny the title and if the title is denied then the decree for eviction is required to be passed against the defendant for denial of title. Mr. Shah has relied upon certain judgments regarding denial of title to which reference will be made later on. It is submitted by Mr. Shah that the defendant should have produced the original grant which they have failed to produce. He has further

submitted that the defendant had no right to resume the land and such resumption is contrary to law. It is submitted that since no grant is on record and the defendant has not led any evidence in this behalf and the said judgment in Ankalesaria's case is not reversed, the same will operate as a precedent. It is further submitted that the suit is filed within 12 years and is within the limitation. It is submitted that the defendant has not produced any evidence about grant and according to him there is no old grant at all. The defendant has not shown, even in the written statement, as to how, rights over private lands of private parties were extinguished. No evidence has been led, to show that in general, private parties lands were taken away and in particular, whether the land at 11, Staveley Road, Pune Cantonment, of the private party was taken away.

14. It is submitted by Mr. Shah that the decree passed by the Rent Court can be said to be binding decree and when ultimately if the title of the plaintiff is established in law the plaintiff can file a fresh suit for possession. It is submitted by Mr. Shah that u/s 28 of the Rent Act, Rent Court was the only competent Court to pass a decree and the decree passed by the Rent Court is said to be binding between the parties.

15. Mr. Shah also submitted that in Cantonment area there can be private property for which he has relied upon the provisions of the Cantonment Code, 1912. It is submitted by Mr. Shah that document at Exh. 68 cannot be said to be an old grant. It is submitted that it cannot be said that a grant was given for constructing bungalow and other structure in the land belonging to the respondent. It is submitted that in the original plaint, there is already a decree for possession and, therefore, it was not necessary to ask for possession in this Suit. It is submitted by him that the decree passed by the Rent Court is saved in view of the judgment of the Supreme Court in the case of Jaisingh Jairam Tyagi and Others Vs. Mamanchand Ratilal Agarwal and Others, . In the said case the Supreme Court in para 8 observed thus:

8. Shri V.M. Tarkunde, learned Counsel for the appellant urged that Sub-section (4) had to be read in the context of Sub-sections (2) and (3) and that it was to be applied only to cases where notification issued under Sub-section (1) was given retrospective effect under the provisions of Sub-section (2). We see no justification for confining the applicability of Sub-section (4) to cases where notifications are issued with retrospective effect under Sub-section (2). Sub-section (4) in terms is not so confined. It applies to all cases of decrees or orders made before the extension of a State legislation to a cantonment area irrespective of the question whether such extension is retrospective or not. The essential condition to be fulfilled is that the decree or order must have been made as if the State legislation was clearly in force, although, strictly speaking, it was not so in force. In our view, Sub-section (4) is wide enough to save all decrees and orders made by the wrong application of a State rent control and house accommodation legislation to a cantonment area, though such State legislation could not in law have been applied to Cantonment areas at the time of

the passing of the decrees or the orders. We, therefore, hold that the decree obtained by the respondents is saved by the provisions of Section 3, Sub-section (4) of the Cantonment (Extension of Rent Control Laws) Act of 1957, as amended by Act 22 of 1972.

It is submitted by Mr. Shah that the amendment application pressed into service by the appellants is required to be granted and the appellants may be permitted to amend the plaint by taking specific prayer regarding handing over the possession. Mr. Shah has further submitted that since the defendant has failed to lead any evidence about old grant, and since in view of the decree of possession passed by the trial Court, the suit is required to be decreed and it should be held that the admission certificate is null and void and not binding upon the plaintiff. It is submitted that the so called amount of compensation was taken by the plaintiff under protest. Considering the aforesaid, Mr. Shah has submitted that the decree of the trial Court is required to be set aside and the suit of the plaintiff is required to be decreed. Mr. Shah has submitted that the plaintiff has paid full court fees.

16. Mr. Rajguru, learned Counsel appearing for the respondents, on the other hand, submitted that in Cantonment area all lands belonged to Secretary of State. It is submitted that the plaintiff was permitted only to construct building and the land all throughout belonged to the defendant. According to him, permission to occupy ground within the limits of cantonment confers no proprietary rights on the occupant. It is submitted that the plaintiff having signed the admission certificate, cannot take contrary stand. It is submitted that the plaintiff has taken away compensation regarding the constructed portion, as on the land belonging to respondent, the plaintiff was permitted to construct buildings and other construction and, therefore, she was the owner of only constructed portion and the ownership of the land always remain with the defendant. It is submitted that the Plaintiff having given admission certificate as far back as in 1965 cannot file a suit in the year 1983, which on the face of it is hopelessly time barred. It is submitted that the plaintiff is now estopped from changing her stand. It is submitted that the plaintiff was never sold the land and she was having ownership rights only in connection with the bungalow and other construction. It is submitted that survey No. 404 is in Pune Cantonment area. He has relied upon Exhibit 68 at page 45. He has also relied upon Exhibits 31 to 34. In this connection he has relied upon the decision in the case of Raj Singh Vs. The Union of India and Others, . He has also relied upon a decision in the case of Union of India and Ors. v. Harish Chand Anand 1995 Supp (4) SCC 113. According to him, there is nothing to show that the land was also sold to the predecessor in title of the plaintiff. It is submitted that the resumption of the land can also be said to be unilateral. Strong reliance is placed on Exh. 61 regarding document of 1912. He has further submitted that so far as the decree for possession passed by the Rent Court in Civil Suit is concerned, that said decree was set aside by the Appellate Court and, therefore, now it cannot be said that the said decree still subsists. Mr. Rajguru also submitted that the sale deed in

favour of late Cawasjee Dhunjeeshaw was subject to rules and regulations of Government of India and the Cantonment Committee in respect of the tenure of the cantonment lands and as per the judgment in the case of Secretary of State for India in Council v. Satish Chandra Sen reported in LVII Indian Appeals, all the lands in cantonment were acquired for Military purpose but private individuals were allowed to erect houses on various plots, subject to certain restrictions. It is also submitted by Mr. Rajguru that there is also reference in the indenture of trust dated 24th March, 1932 executed by late Cawasjee Dhunjeeshaw wherein it is mentioned that the settlor was having permanent occupancy rights in the land belonging to the Government. It is further submitted that by registered indenture dated 23rd June, 1930, late Cawasjee Dhunjeeshaw leased out the dwelling house to the Secretary of State for India for five years which was extended for another period of five years and the Secretary of State for India in Council held the said property on hire as monthly tenants on the same terms and conditions. After the death of late Cawasjee Dhunjeeshaw in February, 1937, his widow late Mrs. Bachubai Cawasjee was given life interest and after her death, her daughter i.e. the original appellant was given full interest in the said property. It is also submitted that as per gazette notification of 1828 notifying the limits of Pune Cantonment, no private land was allowed to exist within the limits of Pune Cantonment area.

17. It is also submitted that so far as the ratio in the case of Jairam Tyagi (supra) is concerned, the same is applicable only when there is an existing decree in favour of the plaintiff. In the instant case, when there is no decree as the same was set aside by the Appellate Court. The said judgment has no relevance and the Appellate Court order becomes final by which the decree is set aside. Even subsequently, the suit was also dismissed for default. Therefore, the plaintiff cannot rely on the aforesaid original decree of the trial Court which is set aside by the Appellate Court. It is submitted that when the decree was set aside by the Appellate Court and the plaint was returned for presentation to the proper Court, at that stage the defendant had already taken the plea about resumption of the land. It is submitted that under Article 58 of the Limitation Act, suit filed after three years is not maintainable. It is submitted that even prayer for possession is not maintainable as the same is also barred by limitation as per Article 64. It is submitted that the possession was taken in 1972. The suit was required to be filed within three years from that date. It is submitted that the resumption was made in 1970 and such resumption could have been challenged only within three years.

18. We have heard the learned Counsel appearing for the parties at great length. We have also perused and considered the oral and documentary evidence on record. We have also considered the various judgments cited at the Bar by both sides and relevant provisions of law. We have also gone through the written submissions submitted by the learned Counsel appearing for the parties.

19. So far as the first argument of Mr. Shah regarding decree for possession

passed by the trial Court in RCS No. 946 of 1965 is concerned, it is required to be noted that the trial Court decreed the suit on 29th June, 1969 against which an appeal was preferred by the respondent. The operative part of the order of the Appellate Court in the aforesaid Appeal reads as under:

The appeal is allowed. The decree of the trial Court is set aside. The plaint be returned to the plaintiffs respondents for presentation to the property court under the provisions of Order VII Rule 10 of the Code of Civil Procedure. The injunction granted as per Exh. 19 stands vacated. Costs to be the costs in the cause." The plaint was thereafter transferred to the regular Court. It is not in dispute that thereafter the aforesaid suit was dismissed for default. There is nothing on record to show that the suit was thereafter restored to file. Considering the aforesaid factual aspect, which is not in dispute, in our view, it is not possible for us to accept the argument of Mr. Shah that there is also a decree for possession passed by the competent Court in favour of the plaintiff. It is required to be noted that the decree passed under the Rent Act having been set aside by the Appellate Court, it cannot be said that any decree was subsisting in favour of the plaintiff which can be saved as per the judgment of the Supreme Court in the case of *Jairam Tyagi* (supra). Even if the Appellate Court on wrong premises sets aside the decree, then also unless the order of the Appellate Court is set aside by higher forum, the order of the Appellate Court is binding between the parties and the net result of the same is that there was no decree in favour of the plaintiff which could have been executed. In that view of the matter, it cannot be said that there was a valid decree in favour of the plaintiff which could have been saved. Once the decree of the trial Court is set aside by the Appellate Court, that decree cannot remain to be enforceable decree as there is no decree at all and the fact that subsequently the suit was thereafter dismissed for default, and the original suit filed by the plaintiff no longer survives, there can never be said to be any decree in favour of the plaintiff. In that view of the matter, it is not possible for us to accept the say of Mr. Shah that there is already a decree for possession which exists in favour of the plaintiff. Under these circumstances, since there was no decree in existence in favour of the plaintiff, there is no question of saving the said decree and, therefore, the said judgment of the Supreme Court is not applicable in the present case.

20. Mr. Shah thereafter relied upon various judgments on the aspect of denial of title. It is submitted by Mr. Shah that it was not open for the defendant to deny the title of the plaintiff. In the instant case, the plaintiff has filed the suit based on title. According to the defendant, the plaintiff was not having any ownership rights on the land in question. The suit of the plaintiff is not based for getting decree for eviction against the tenant on the ground of denial of title but the suit is for declaration wherein the Plaintiff has claimed declaration of her rights. When both sides have led evidence in connection with the proof of title, the only issue which the trial Court was required to decide was the title of the plaintiff over the suit land.

21. The real question which requires consideration is whether the plaintiff can be said to have proved her title over the suit property as prayed for in the suit. In this connection, the plaintiff has examined her Power of Attorney holder i.e. son of the plaintiff Bahiram Nanabhai Jeejeebhoy, at Exh.24. The said witness has stated that the plaintiff is his mother. He has deposed that the suit land admeasures 1 acre and 30 gunthas. On the said land, there is a dwelling house, a garage, a servant's quarter as well as cooking house which is separate. There is also a structure upon the suit land. He has stated that his grandfather viz. Cawasjee Dhanji Shah had purchased the suit property initially from a person namely one Mr. Irani in 1912. Thereafter his grand father had occupied the suit property and in the year 1930 he had given it to the defendant under registered lease deed dated 23rd June, 1930. The period of lease was five years and on expiry of this lease, it had been renewed for further five years under a registered lease deed dated 18th July, 1935. The said witness has stated that in the year 1932 his grand father had made a settlement deed whereby he gave a life interest regarding suit property to his wife and after the death of his wife, the property devolved upon the plaintiff absolutely and accordingly the plaintiff has become the absolute owner of the suit property. The defendant was paying rent in respect of the suit property to his grand mother. It is stated by the said witness that the suit property was never subjected to any grant or to any old grant. The said witness has deposed that he had filed a suit bearing No. 946 of 1965 for possession and money claim. The said suit was decreed in their favour and that in appeal the Appellate Court directed the plaintiff to present the suit in proper Court. The said witness has further stated that on 23rd February, 1965 the plaintiff made an application to the Cantonment Board, Pune for transferring the suit property in her name due to death of her mother and at that time the Military Estate Officer had made a condition for transfer of property in her name, if she signs an admission certificate. The said witness has stated that the plaintiff did not understand the implications of the admission certificate dated 24th April, 1965. The said witness has further stated that the admission certificate obtained by the Military Estate Officer was illegal. The said witness has also stated that Civil Suit No. 599 of 1974 was dismissed for default and that an application was preferred for restoration being Application No. 691 of 1979 and as per his knowledge, the said application had not been disposed of. In paragraph 9 of his evidence, he has stated that in the year 1982 they came to know about the judgment of the Bombay High Court regarding old grant in the case of one Anklesaria. He has further stated that in that case the Bombay High Court has ruled that the old grant was not in existence and any resumption on the basis of an old grant automatically become void. The said witness has stated that the Government had not produced any old grant in the said case. The said witness has further deposed that the properties did not vest lawfully with the defendant. In the crossexamination, the witness has stated that it is correct to say that the father of the plaintiff is not an original allottee in respect of the suit property. The said witness has also stated that he did not know if by a Gazette of 1827 the individual rights in private lands had been extinguished. The witness denied the

suggestion that the father of plaintiff had purchased the suit property having the knowledge that he had only occupancy rights in the suit property. He has stated that the father of the plaintiff did not obtain any permission from the Central Government for the sale deed. In para 15 the witness has admitted the fact that his mother had accepted the amount of compensation from the Government under protest.

22. At this stage, reference is required to be made to Exhibit Nos. 31 to 35. Exhibit31 is a letter written by the Plaintiff addressed to the Military Estate Officer regarding transfer of suit bungalow in the name of the plaintiff. It has been stated in the said letter that the plaintiff is willing to abide by the terms and conditions of the grant in respect of the property and will abide by the terms and conditions of the Cantonment tenure in respect of the said property. Exhibit32 is also a letter admittedly written by the plaintiff regarding transfer of suit bungalow in the name of the plaintiff. In the said letter, the plaintiff enclosed affidavits of her sisters who have given no objection to transfer the said property in the name of the plaintiff. Exhibits32 to 35 are the affidavits sworn by the sisters of the plaintiff. The mutation entry dated 13th May, 1965 showing the name of the occupant plaintiff as the holder of occupancy right of the property is placed on record at Exhibit36. Exhibit56 is a copy of Government General Order dated 6th January, 1827, which reads as under.

The Honourable the Governor in Council thinks it necessary to explain in General Order that any permission which officers not provided with public quarters may receive to erect houses on ground within a fortress or military cantonment confers on them no right of property whatever in the ground allotted them for that purpose, which continues the property of the State, and resumable at the pleasure of Government.

23. From the said order, it is irrefutable that the land which belongs to the Government about which any grant is allotted to any person, no right of property vests in those persons and the land continues as the property of the State and resumable at the pleasure of the Government. So far as Exhibit61 is concerned, the same is a copy of the registered deed of conveyance dated 25th October, 1912 in respect of the suit property executed by one Khodadad Rustom Irani in favour of father of the plaintiff. Witness No. 1 in his crossexamination has admitted that the plaintiff's father did not obtain any permission from the Central Government for the said deed of conveyance. There is no document on record about the exclusive title by Khodadad Rustom Irani in respect of the suit property.

24. Considering the documentary evidence on record, in our view, the trial Court has rightly found that the plaintiff has failed to establish the title over the suit property. Exhibit68 is the certified true copy of the register of Government land held as per Section 271 of the Cantonment Code, 1912. In the remarks column of the said register, it has been stated that the suit bungalow and some other property had been leased to the Secretary of State for five years from 20th April,

1930 at the rent of Rs. 745/p. m. It is required to be noted that the plaintiff has not led any evidence to prove the title over the suit property, though the initial burden lies on the plaintiff to prove the same.

25. At this stage it is necessary to refer the definition of "lessee" appearing in the Cantonment Code, 1912. The same reads thus:

"lessee" means a person who has been granted permission, whether before or after the commencement of this Code, to occupy, for the purposes of a building site, land belonging to the Government in a cantonment, and includes the successors in interest of a lease.

26. We are not impressed by the argument of Mr. Shah that the defendant has failed to lead any evidence to show that the property was given to the predecessor in title of the Plaintiff on lease. The plaintiff and her predecessor were merely holders of the occupancy right in respect of the suit land which was held by the predecessor in title of the plaintiff in terms of old grant of 1827. So far as the judgment of the Bombay High Court in Anklesaria's case is concerned, the Supreme Court has held as under:

These transferred cases are remitted back to the High Court for disposal, keeping in view 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.M. Rege and R.A. Jahagirdar, JJ. Rendered in Special Civil Application No. 1286/72 decided on 5/6th 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.

In view of the direction contained in para 2 above, the Supreme Court on 25th March, 1992 disposed of the appeals on the ground that the same have become infructuous.

27. Mr. Shah has relied on the judgment of the Supreme Court in the case of Union of India v. Purushotam Dass Tandon 1986 Supp. SCC 720. He has submitted that the burden is on the Union of India to establish its title by producing the particular grant relating to the land ought to be resumed. Mr. Shah has also invited our attention to the various provisions of the Cantonments Act, 1924. He submitted that under the Cantonment laws, a Cantonment Authority such as the Board is in the nature of a Municipality and is essentially a local self Government body and that the Cantonments have from time to time extended the limits which fall within the Cantonment area. To support the case of the plaintiff, Mr. Shah has invited our attention to the provisions of Sections 3, 4, 5

of the Act and submitted that there can be private property within the limits of the Cantonment area.

28. Mr. Rajguru, learned Counsel for the respondent has relied upon the decision in the case of *Kaikhusrus Aderji Ghaswala and Ors. v. Secretary of State for India* in Council 38 IA L.R. 204, wherein it has been held that on a consideration of the Bombay Regulations applicable to cantonments from the year 1819, that the military authorities held the whole cantonment area in full proprietary right. In the said case the appellants were mere licensees of the land in suit, which was not shewn to differ in its tenure and terms from the rest of the cantonment areas. It was held that the houses or bungalows built by them thereon were subject to expropriation at a price to be fixed by the said authorities.

29. In the case of *Secretary of State for India in Council v. Satish Chandra Sen* 57 IA 339, it has been held that it is not necessary implication from the Bengal Cantonment Rules, 1836, that all land within the cantonment in Bengal is Government property but long possession by a private person is not by itself sufficient to establish his title to land so situate. It was further held that the respondent in the said case though entitled to the compensation awarded in respect of the house, was not entitled to the compensation awarded for the land, as he had not established his title thereto.

30. In the case of *Raj Singh (supra)* it has been held that the regulations contained in Order No. 179 of 1836 regarding the grant of lands situated in cantonment areas are provisions of a statutory nature which were continued by the Government of India Act from 1859 to 1935 on the principle embodied in Section 24 of the General Clauses Act, 1897.

31. In the case of *Chief Executive Officer Vs. Surendra Kumar Vakil and Others*, , it has been held by the Supreme Court thus:

17. The respondents drew our attention to a decision of this Court in the case of *Union of India v. Purshotam Dass Tandon* 1986 (Supp) SCC 720, where this Court observed that the Union of India had made no effort to establish its title and the grant had not been produced. Hence the terms of the grant or the date of the grant were not known. Therefore, the Union of India could not succeed in its contention that the land in the cantonment was held on old grant basis. In the present case, however, apart from the requirements of Order No. 170 of Governor General in Council, 1836, the general land register maintained under the Cantonment Land Administration Rules of 1925 has been produced which supports the contention of the appellants that the land is held on old grant basis. The appellants have also led evidence to show that the file containing grant in respect of the said property, is not available with them because it has been stolen in the year 1985. The respondents on the other hand have not produced any document of title pertaining to the said land or showing the nature of the rights of the respondents over the said land except the sale deeds referred to earlier. The stand of the respondents relating to their rights over the said land

has changed from time to time. In the sale deeds executed by the vendees in favour of the respondents, the land is described as leasehold cantonment land. This was later changed by the respondents in the amendment deeds to old grant land. In the suit, the respondents have contended that they have become the absolute owners of the said land. These bare assertions do not carry any conviction. Had there been any conveyance or lease in respect of the said lands executed in favour of the respondents or their predecessor in title, such conveyance or lease should have come from their custody. There is, therefore, no document before the Court which would show that the respondents were the absolute owners of the said land as now contended by them. The Regulations as well as the general land registers, on the other hand, which are old documents maintained in the regular course and coming from proper custody, clearly indicate that the land is held on old grant basis. This is, therefore, not a case where the appellants had not produced any evidence in support of their contention that the land in the cantonment area was held on old grant basis by Mukherjee.

18. The Respondents have drawn our attention to the decision in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, , for showing that any admission made by them in ignorance of legal rights cannot bind them. This judgment does not help the respondents because the fact remains that the respondents have taken a changing stand in relation to the nature of their rights over the disputed land. The admissions, at least, indicate that the respondents were, at the material time, not sure about the exact nature of their right over the said land. Hence they have at one stage described the nature of their rights as leasehold, at another stage as old grant and at a third stage they have retracted from their admissions that the land was old grant. The last deed merely states that they have the same rights as their vendees had in the said land. Looking to the nature of evidence, therefore, which was led in the present case, the High Court was not justified in coming to the conclusion that the land was not held on old grant basis by Mukherjee." According to the learned Counsel for the respondent, the only document of grant is document of 1927 and there is no separate grant. The plaintiff has failed to prove that the property never belonged to Government and that the respondents are not entitled to resume the said land.

32. It is required to be noted that in the original plaint no prayer for possession has been made at all and it is not in dispute that the possession was taken away in the year 1972. The plaint has not filed within three years from the date of dispossession. The resumption notice is of the year 1970. The suit is not filed within three years either from 1970 or even from 1972 when actual possession was taken. Under these circumstances, the Plaintiff with an open eye and with the full knowledge has given the admission certificate on 24th April, 1965. As stated above, though the resumption notice was issued in 1970 and possession was taken in 1972, the suit was filed in the year 1983. Apart from that, after taking compensation, the plaintiff has also asked for higher compensation with a request to refer the matter to Arbitrator. Under these circumstances, the plaintiff

has failed to prove her title over the suit property. The plaintiff has merely taken a chance in view of the judgment of this Court in Anklesaria's case which judgement has been set aside by the Supreme Court. Even otherwise, the period of limitation cannot be extended simply on the ground that subsequently the plaintiff came to know about the Division Bench Judgment of this case in Anklesaria's case. Even otherwise, the plaintiff's rights were already determined when the plaintiff accepted the compensation.

33. Considering the evidence on record, we are of the opinion that the plaintiff has failed to prove her title over the land. The predecessor in title of the plaintiff was given only occupancy right by way of grant and the plaintiff had constructed a superstructure over the land in question for which the plaintiff was offered compensation. The plaintiff had requested for higher compensation for which even a committee was also constituted. Chapter XX of the Cantonment Code, 1912, deals with the Committees of Arbitration. Sections 259 and 260 thereof reads thus:

259. For the purpose of determining the amount of monthly rent to be paid for a house, every committee of arbitration shall estimate, as nearly as may be, the market value of all buildings and authorized additions; and the amount of rent determined upon shall be such percentage on such market value as the Committee of arbitration may think reasonable with reference to the circumstances of the neighbourhood and the period of time and season from which the house is likely to be occupied during the year, and shall include the taxes (if any) levied upon the land, or such proportion thereof as the Committee of arbitration may find to be customarily paid for the time being in the neighbourhood by tenants.

260. (1) The decision of every committee of arbitration shall be determined by the majority of the votes taken at a meeting at which all the members are present.

(2) The decision of every committee of arbitration shall be final." According to the Plaintiff, the Arbitration Committee had not yet determined the plaintiff's claim for additional compensation.

34. The plaintiff had signed the admission certificate on 24th April, 1965. The plaintiff at the relevant time was not bothered to challenge the admission certificate. The admission certificate executed by the plaintiff reads as under:

I, undersigned Mrs. Dosibai Nanabhoy Jeejeebhoy residing at 1, Church Road, Poona, owner of bungalow No. 11, GLR Sy. No. 40A, Staveley Road, Poona Cantonment, Sub District and Taluka Haveli, District Poona bounded on the North by G.L.R. Sy. No. 403 on the South by G.L.R. Sy. No. 405 on the East by G.L.R. Sy. No. 275 and on the West by G.L.R. Sy. No. 400 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 assigned 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 propriety right. It continues the property of the state and resumable at the pleasure of Government, but in all practicable cases one month's notice of resumption will be given and the value of all buildings which may have been authorised to be erected thereon, as shown in the accompanying plans, 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 plans and no additions or alterations are to be made thereto without the permission of the officer commanding the station. A sum of Rs. Nil is being paid to the Central Government as rent per annum.

3. The ground, being the property of Government cannot be sold by the guarantee. The building as may be should by (?) house owner with the previous permission of the Officer Commanding the Station.

4. That the military authorities have the power to cancel the grant if they found it is used for any purpose other than for which it was originally granted.

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

35. Considering the aforesaid aspect of the matter and considering the conduct of the plaintiff, it is crystal clear that the plaintiff, after taking compensation and in fact had asked for higher compensation, has ultimately filed the suit after a great delay in view of the judgment of this Court in Ankalesaria's case. On the contrary, the plaintiff in the meanwhile had asked for higher compensation by asking the defendant to refer the case to the Arbitration Committee for the same. It is required to be noted that so far as Anklesaria's case is concerned, that judgment was set aside by the Supreme Court and, therefore, the ratio in that case is no longer to be made applicable to the present case. Even otherwise, even assuming that the aforesaid judgment is applicable, then also it cannot save the limitation period, as the plaintiff after having accepted the compensation has filed the suit in the year 1983 and the plaintiff was in the meanwhile already dispossessed from the suit property. The suit of the plaintiff for declaration is, therefore, clearly barred by limitation and now after such a long time after having accepted the amount, the clock cannot be set back. The plaintiff by filing the suit has merely taken chance in view of the law declared by this Court in Anklesaria's case. Considering the documentary evidence on record, we are satisfied that the defendant has validly resumed the land and the plaintiff has validly executed the admission certificate. Considering the totality of the evidence on record and considering the facts of the case, we are of the opinion that the plaintiff is not entitled to any relief in the suit and as pointed out earlier, reference to rent Court suit is absolutely irrelevant as the decree passed in the said suit is reversed by the Appellate Court by returning the plaint and

thereafter that suit was dismissed for default. When the decree of the rent court is already set aside by the Appellate Court, whether it is rightly set aside or not, the fact remains that the decree is set aside and, therefore, there is no enforceable decree which can be said to be in existence in favour of the plaintiff so far as that suit is concerned. In our view, the judgment of the appellate court in that case is binding between the parties, unless it is reversed by the Higher Court. Simply because in some other proceedings (i.e. in Anklesaria's case on which strong reliance has been placed by the plaintiff), a different view is taken, that itself cannot take the case of the plaintiff any further. At the cost of repetition, in our opinion, the judgment of the appellate court in the rent case has become final and has attained the finality. The suit of the plaintiff is, therefore, not sustainable at all and, in our view, the trial Court has rightly appreciated the evidence on record and has reached the conclusion that the plaintiff has failed to prove that land was allotted to her and the plaintiff was owner of the land in question or that the admission certificate is nullity. We, therefore, do not find any substance in this appeal. The appeal is accordingly dismissed with costs.

36. So far as the amendment application being Civil Application No. 5207 of 2008 preferred by the appellants herein is concerned, since on merits we found that the plaintiff has failed to prove her case regarding proving her title over the suit property, it is not necessary for us to consider the prayer for amendment of the plaint. However, even otherwise, so far as the prayer for possession is concerned, the same is, on the face of it, barred by limitation as the plaintiff was dispossessed in 1972 and the amendment application is filed in 2008, at the time of final hearing. The Civil Application is nothing but an afterthought and considering the facts and circumstances of the case, in our view, the amendment as sought for in the said Civil application is required to be rejected. The prayer for amendment, therefore, is also rejected. The Civil Application is accordingly rejected.

37. The Appeal and the Civil Application are accordingly dismissed.

38. In view of the above, no orders are required to be passed in connected Civil Applications viz. Civil Application Nos. 152 of 2003, 475 of 2004 and 5487 of 2007 and the same are accordingly disposed of.