

(1988) 04 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No's. 517 of 1980 and 1081 of 1984

Parvati K. Moorjani

APPELLANT

Vs

A. Fonseca

RESPONDENT

Date of Decision : 28-04-1988

Acts Referred:

Cantonments Land Administration Rules, 1937 — Rule 16, 17, 18, 19, 20
Constitution of India, 1950 — Article 226
Contempt of Courts Act, 1971 — Section 2
Transfer of Property Act, 1882 — Section 106
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(4), 11, 11(5), 19, 19(1)

Citation : AIR 1988 Bom 366 : (1988) 2 BomCR 464 : (1988) 90 BOMLR 249

Hon'ble Judges : Sawant, J;Kolse Patil, J;Guttal, J

Bench : Full Bench

Advocate : J. Ramchandani, Dilip Karmik and M. Bharme, for the Appellant;
R.M. Agarwal and K.C. Sidhwa, for the Respondent

Final Decision : Dismissed

Judgement

Sawant, J.—These are two writ petitions which raise some common points, while other points are exclusive to writ petition No. 1081 of 1984. We will, therefore, take the facts from Writ Petition No. 1081 of 1984.

2. In Writ Petition No. 1081 of 1984 the 1st petitioner is the mother, the 2nd petitioner is her sort, and the 3rd petitioner is her married daughter. The late Sherier Irani, the husband of petitioner 1 and the father of petitioners 2 and 3 possessed three pieces of property, namely: .

(1) a building with the land under it and also the vacant land around, situated at GLR Survey No. 709 (Bungalow No. 8, Prince of Wales Drive), Admeasuring 9,145.88 square metres as a lessee under a regular lease;

(2) a building with the land under it and also the vacant land around it, situated at GLR survey No. 158 (Bungalow No. 8, Prince of Wales Road admeasuring 8,175 square metres as a grantee under the Old Grant tenure; and

(3) a building with the land under it as well as the vacant land around it, situated at GLR survey No. 24 (Building No. 4, North Petty Staff Lines) admeasuring 4,249.19 square metres, as a grantee under the Old Grant;

All the said properties are situate in the Cantonment area of Pune. In addition, Sherier and petitioner 1 together had a half share in the vacant land admeasuring 1081.00 square metres situate at Plot No. 50/2, Viman Nagar, Lohagaon, Pune, as a freehold property which is outside the Cantonment area. Their share in the land came to 540.50 sq. metres.

3. On the coining into operation of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act"), sherier and petitioner 1 filed a return u/s 6 of the Act declaring and showing all the aforesaid properties possessed by them. The Competent Authority, under the Act namely the Military Estate Officer, Pune Cantonment, thereafter prepared a draft statement u/s 8 of the Act and invited objections to the same. Sherier and petitioner 1 objected to the draft statement and the Competent Authority after taking into consideration the objections, issued the final statement on Feb. 8, 1982 u/s 9 of the Act. By this statement the Competent Authority overruled all the objections and declared Sherier and petitioner 1 as holders of 12,160.08 square metres excess vacant land.

4. Being aggrieved by the final statement, both Sherier and petitioner 1 filed an appeal to the Director of DL & C, Southern Command, who is the Appellate Authority u/s 33 of the Act and is the 2nd respondent to the petition. By his decision of Oct. 9, 1982, the 2nd respondent dismissed the appeal. Sherier thereafter died on Mar. 31st, 1983. The petitioners have thereafter approached this Court as late as on Jan. 9th, 1984 against the Appellate Order dismissing their appeal.

5. Before we deal with the questions of law, it is necessary to deal with the preliminary objection raised on behalf of the respondents, namely that the petition suffers from laches inasmuch as although the impugned order of the Appellate Authority was passed on Oct. 9, 1982, the petition has been filed about 14 months after the said order and the delay has not been explained. Mr. Karnik, the learned Counsel appearing for the petitioners, tried to meet this contention by pointing out that the late Sherier who was looking after the litigation was ailing, and was in and out of the hospital for some time. After he died, the petitioners had to search for the papers and to get acquainted with the matter to prefer the petition. We are of the view that this explanation is less than satisfactory. The affidavit, which is filed to justify the delay shows that the late Sherier had returned from the hospital on Oct. 27, 1982 and was at home till Jan. 3, 1983. Thereafter he was again at home from Jan. 10, 1983 to Mar 7, 1983. There is no explanation given as to why, when the impugned order was passed on Oct. 9, 1982 either Sherier or petitioner 1, who was also a joint holder of the vacant land and had filed the return with Sheriar, could not have taken steps to approach this Court during the period from Oct. 28, 1982 to Jan. 3,

1983 and from Jan 10, 1983 to March 7, 1983. What is further, there is no satisfactory explanation given also for the inaction on the part of the petitioners between Mar. 31, 1983 and Jan 9, 1984. The version of the petitioners that since Sherier was looking after the litigation, they were not aware of the impugned order or had no papers with them, has no merit in it because even ordinary inquiries with their lawyer who was looking after their work, would have given them the required information. This is, of course, on the presumption that they had either not enquired from their lawyer or their lawyer had not informed them of the same, which version is a little difficult to accept. We are, therefore, of the view that the petition is liable to be rejected on the preliminary ground that it suffers from gross unexplained delay.

6. However, we do not propose to reject the petition on that ground alone because we are informed that a large number of petitions are pending decision on the points raised in this petition. We, therefore, proceed to deal with the points of law raised in the petition.

7. The first ground of attack against the impugned order is that the first three pieces of lands possessed by Sheriar under the Old Grant tenure were held by him neither as an owner nor as a tenant or a mortgagee nor under an irrevocable power of attorney or under a hire-purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities, within the meaning of the expression "to hold" as defined in Sub-clause (1) of Section 2 of the Act. Hence they were not liable to be calculated in the holding of Sherier and petitioner 1. In support of this submission, it was contended that Sherier was at best a licensee with a mere right to occupy the land. There was no fixed tenure of the licence. Under the terms of the Old Grant, the Government had a power to evict Sheriar with a month's notice. On such termination of the licence, Sheriar was only entitled to the value of the buildings as may have been authorised to be erected on the land and the value was to be fixed by the Committee of Arbitrators together with the sum originally paid as the ground fee. It was also stressed that this Court in Writ Petn. No. 1241 of 1979 decided on Jan. 18, 1983 had held that in view of the definition of the expression "to hold" given in the Act, lands under the Old Grants were not amenable to the provisions of the Ceiling Act and that Section 19(1) of the Act had exempted such lands from the provisions of the Act since they belonged to the Government. Reliance was also placed on an observation made by this Court in the judgment dt. April 12, 1987 delivered in Writ Petns. No. 2236 and 2337 of 1983, to which one of us (Sawant, J.) was a party. That decision also pertained to the lands in the Cantonment area given on Old Grants, and this Court had observed that the grantees of such grants were no more than licensees of the land, A reference further was made to the fact that under the Cantonment Land Regulations (Bengal and Bombay), 1887, the conditions for the occupancy of such lands, among others are that the Government has the power to resume the lands at any time, and transfers of the lands can be effected and constructions on such lands made only with the consent of the Officer Commanding the Station, which

conditions normally do not accompany a lease. Rule 27 of the Cantonment Land Administration Rules further provides for a grant of a lease of such lands held without a regular lease implying thereby that such lands are not held on lease. It was also urged that in view of the fact that the present grants were prior to the enactment of the Transfer of Property Act, 1882, they were governed by Regulations and Rules and hence it is the Contonment Land Regulations (Bengal and Bombay), 1887, which applied to such lands, Our attention was further invited to the affidavit filed by the respondents in the present case where even the respondents have in para 3 of the affidavit stated that the grantees under the Old Grant were given the status of mere licensees with occupancy rights until lawfully resumed by the Government. It was also contended that whereas section 42 of the Act had made provisions overriding other laws, customs, usages, agreements, decrees and orders of the Court, Tribunal or other authorities, grants of land were excluded from the said provisions. The other contention of the same genre was that in view of the provisions of Sub-section (5) of Section 11 of the Act, no amount is payable for the lands in question. It should, therefore, be held that the lands in question are not contemplated to be included in the holdings of the persons. The last of the arguments was based on the provisions of Sub-section (2) of Section 19, and it was contended that the said provisions applied to such lands as were held on lease and mere possession of such lands was not enough to attract the provisions of the Act since the Explanation to the said sub-section is in the same language as the definition of the expression "to hold" given in Clause (1) of Section 2 of the Act.

8. We are not impressed by any of the aforesaid arguments which are all directed to show that the occupants of lands under the Old Grant tenure, such as the petitioners, are licensees and not lessees thereof. It must first be remembered that as far as the facts of the present case are concerned, these arguments can be advanced at best only in respect of two of the petitioners' properties, namely GLR Survey No. 158 and GLR Survey No. 24 admeasuring 8,175 and 4,249.19 square metres respectively. Admittedly in the case of the first property, namely GLR Survey No. 709 admeasuring 9,145.88 square metres, there is a regular lease agreement entered into between the parties.

9. Now coming to the argument with regard to the nature of rights of the occupants under the Old Grant, the first of these properties, namely Survey No. 158 was granted to the predecessor-in-title of the petitioners in the year 1853 under G. G. O. of 7-5-1838 on the subject, while the second of the properties at S. No. 24 was granted in the same year on 4-5-1853 under G. G. O. 677 of 15-12-1951. Although the petitioners have not produced the grant and have feigned ignorance of its terms and conditions, the respondents have annexed to their affidavit specimen of two such grants one of the year 1885 and another of 1887. The terms and conditions of both the grants are identical except for the fact that in the later grant an additional 5th stipulation of the payment of the annual rent of Rs. 5/- by the grantee and an additional undertaking are added. The first four identical conditions are as follows :

"1st -- Government retains the power of resumption at any time on giving one month's notice, and paying the value of such buildings as may have been authorised to be erected, (the value to be fixed by a Committee of Arbitration) together with the sum originally paid as ground fee.

2nd -- The ground, being the property of Government, cannot be sold by the grantee. The right of occupancy alone can be sold by the grantee, but not without the sanction of His Excellency the Commander-in-Chief, obtained through the Officer Commanding the Station. The fact of registering such deed of sale does not legalize it, if it is otherwise contrary to regulations.

3rd -- That the buildings to be erected on the ground are to be strictly in accordance with the plan submitted, and that no alterations or additions are to be made thereto without permission of the Officer Commanding.

4th -- That the Military authorities have the power to cancel the grant if the ground be not brought into use for the purpose specified within twelve months.

The fifth condition added in the grant of 1887 is as follows :

"5th -- I agree to pay annually Rs. (5) Five for the plot of ground the use of which has been granted to me, until such time as the new rules regarding tenure of land in Cantonment are promulgated, or for such period as I may be required to do so. I also agree to abide by any orders or rules that may be passed regarding tenure of land in Cantonment."

These conditions show firstly that the grantees have a right to construct buildings on the land, of course, in accordance with the sanctioned plan and the additions and alterations in the buildings have also to be made with the permission of the authorities. Secondly, although the land cannot be sold by the grantee, the right of its occupancy can be sold with the sanction of the authorities. What is more, the said right is also heritable. Thirdly, the grant can be terminated only by giving a notice of one month. On such termination and resumption of the land, the grantee is entitled to the original ground fee paid by him and also to the value of the buildings constructed by him on the land. The value of the building is to be determined by a Committee of Arbitration. Fourthly, the grant was liable to be cancelled if the land was not brought into use for the purpose specified, within twelve months of the grant.

The aforesaid conditions, it appears, governed the Old Grants at least till 1887 in which year the additional stipulation of the payment of nominal annual rent of Rs. 5/- by the grantee and an undertaking to abide by the rules and orders that may be passed in future regarding the tenure of the land was also added, obviously as a matter of precaution. It may be stated that although even under the earlier grants, annual rent was proposed, the stipulations do not appear to have mentioned it.

10. It is also necessary to appreciate, in this connection the genesis of these grants as has been placed on record by the respondents in their affidavit of Feb.

17, 1986. It appears that the Government was in need of residential accommodation on a large scale for its military officers in particular. The Government found that an expensive way to secure sufficient number of houses for the purpose was to offer land to the private individuals and encourage them to construct houses thereon. One of the conditions of such grant was therefore that the authorities could if it was necessary, take possession of the constructed houses on payment of the value thereof to be fixed by the Arbitration Committee. That is why the further stipulation that the houses had to be constructed within one year of the grant. This is also clear from the G. G. O. (Government General Order) of May, 7th, 1838 and Dec. 15, 1851 which are annexed to the affidavit. These stipulations therefore, in terms spell out also the consideration for which the grants of the lands were given. Thirdly, the occupancy rights could be terminated only by giving a notice of one month which is even of a longer duration than the one u/s 106 of the Transfer of Property Act, Although, there is no fixed tenure of the occupancy rights. It is a case akin to the case of a tenancy at will. In case further, where the land is constructed upon and the occupancy rights are terminated, the grantee is entitled to the value of the construction to be decided by an Arbitration Committee. Thus, the grantee under the Old Grant is as good as a lease for the purposes of the present Act. It also appears that to leave no doubt in the matter, subsequently a practice grew whereby rent, though nominal, was stipulated in the terms of the grant. We are, therefore, of the view that the relationship between the Government and the grantee is akin to that of the lessor and the lessee in any case for the purposes of the present Act.

11. In this view of the matter, neither the provisions of the Cantonment Land Regulations, 1887, which provide for restriction on transfer nor those of Rule 27 of the Cantonment Land Administration Rules, 1937 present any difficulty. An agreement of ease can also provide for restrictions on transfer. It, depends upon the terms of the lease. Merely because, therefore, there is a restriction on transfer, the relationship is not necessarily different from that of the lessor and the lessee. As regards Rule 27 of the Cantonment Land Administration Rules, 1937, the provisions thereof speak more in favour of the respondents than the petitioners. Rule 27 reads as follows :

"27. Special lease for the Regularization of Old Grants:

Notwithstanding anything contained in rules 16 to 26, the Military Estate Officer in any case where a site is held without a regular lease, may on application by the holder, without any reference to any superior authority, grant a lease for the said site in the form set out in Schedule VII."

These provisions in terms acknowledge that though sites were granted on lease they were not reduced to regular agreement of lease in writing. Hence powers were granted to such minor functionary as the Military Officer to grant leases in the prescribed form, even without reference to any superior authority. It would be unthinkable that powers to dispose of properties would be granted to such

officers. This will particularly be so in the year 1937, when the Government of India Act was in force. A perusal of the Prescribed Form in Schedule VII shows that it opens by saying "Whereas the rights of the parties hereto in the land and buildings hereinafter described and now occupied by the lessee..... do not appear to be defined in writing and the parties hereto being anxious that they should be so defined" the document of lease is to be executed. If there was any doubt with regard to the relationship between the parties that is dispelled by the said form.

12. As regards the Cantonment Land Regulations (Bengal and Bombay) 1887. Regulation 1999 thereof states as follows :

"1999 Conditions of occupancy :

No ground will be granted except on the following conditions, which are to be subscribed to by every grantee as well as by those to whom his grant may subsequently be transferred :

(a) Resumption of land : Government to retain the power of resumption at any time on giving one month's notice and paying the value of such building as may have been authorised to be erected.

(b) Land belongs to Government: Land cannot be sold by grantee : Transfer of house between military officers : Arbitration in case of transfer on relief: the ground, being in every case the property of Government, cannot be sold by the grantee; but houses or other property thereon situated may be transferred by one military or medical officer or chaplain to another on a joint report being made to the Staff Officer, who will make the requisite entry in the Register, except in the case of relief, when, if required, the terms of the sale or transfer are to be adjusted by a Committee of Arbitration.

(c) Transfer of house to civilian : If the ground has been built upon, the buildings are not to be disposed of to any person who does not belong to the army until the consent of the Officer-Commanding the station has been previously obtained under his hand.

(d) Transfer to native : When it is proposed, with the consent of the Commanding Officer, to transfer possession to a native, the procedure prescribed in Section VII, para 724, is to be adhered to.

Sanction required to any transfer : This rule applies to officers and others in the service of the Government only, but the sale or transfer of any house in cantonments must first receive the sanction of the local military authorities.

(e) Cancellation of grant within 12 months:

The Commanding Officer has power to cancel the grant, if the ground be not brought into use for the purpose specified within twelve months".

The grants which are made in favour of the petitioners also contain the same conditions as pointed out earlier. We have already discussed their implications

and have shown how they spell out the relationship akin to a lease in any case for the purposes of the present Act.

13. It has further to be noted that the word "tenant" has not been defined in the present Act. Therefore, all relationships which satisfy the ingredients of a lease would be covered by the concept of lease under the Act and, as stated earlier, the present relationship does satisfy these ingredients. The relationship, further, is certainly not that of a licensor and a licensee because, an exclusive possession of the land is given to the grantee. The interest which is created by the grant is heritable as well as transferable albeit with the permission of the authorities. The grantee can bring an action for trespass against the authorities, which a mere licensee cannot do. The grantee further has a right to beneficial enjoyment of the land with a right to construct on it and for that purpose enjoys a dominant heritage. It is well settled that what is necessary to find out in each case is the intention of the parties in creating the relationship between them and the terms of the present grant can clearly spell out a right in favour of the grantees to occupy the land for the purposes of construction and to derive rental therefrom so long as the grant is not terminated. The termination of the grant further requires a notice of one month and upon termination the grantee is entitled to the value of the construction made. These terms negate the relationship of a licensor and a licensee.

14. The object of the Act further shows that for the purposes of calculating the surplus vacant land, the Legislature has in mind all lands which are in the actual and lawful possession of the individual. This is particularly clear from the provisions of Sections 11(5) and 19(2) of the Act. Section 11 provides for payment of amount for vacant land which is acquired under the Act and makes a specific mention of the land which is "held under a grant, lease or other tenure from the Government, Central or State, and provides that if under the terms of such grant, lease or other tenure no payment of any amount is to be made on the termination of such grant, lease or other tenure to the grantee of such land, then no amount should be paid as compensation. If, however, payment of amount is provided for thereunder, then such payment or the payment under the Act, whichever is less, is to be made to such grantee, This provision makes it clear that the legislature contemplated that the lands held on grant and other tenures from the Government whether Central or State, should be brought within the purview of the Act.

The provisions of Section 19(2) also show that the Act is applicable to persons who possess any vacant land which is owned by the authorities mentioned in Sub-section (1) of that section, namely the Central Government, the State Government, local authority, or Corporation established by or under the Central or Provincial or State Act, or any Government Company as defined in the Companies Act, etc. By virtue of this provision, the Act has brought within its purview such land possessed by any person whatever the nature of its possession be. The provision, therefore, in terms includes lands such as the present one

held by the petitioners under the Old Grant tenure.

Although, therefore, the expression "to hold" as defined in Section 2(1) of the Act, does not in so many words include land held on grant or other tenure from the Government, the provisions of Sections 11(5) and 19(2) leave no manner of doubt that such lands are within the purview of the Act.

15. The argument advanced on the basis of the provisions of Section 42 of the Act has only to be stated to be rejected. The argument is that since the said overriding provisions do not mention "grants" in addition to laws, customs, usages, decrees, agreements etc., it should be held that lands which are the subject-matter of grants are saved by the Act. In the first instance "agreements" will include the present grants, for the lands are granted on the grantee agreeing to abide by the terms and conditions of the grant. Secondly, if laws, customs, usages, agreements, decrees which have a force of law are overridden by the Act, it is futile to contend that the present grants are not.

16. One of the elementary rules of the interpretation of statutes is that, when there is a doubt about their meaning, the words of the Statute are to be understood in the sense in which they best harmonise with the object of the enactment. In dealing with matters relating to general public, statutes are presumed to use words in their popular rather than the narrowly legal or technical sense. This is particularly so when the narrow interpretation is bound to defeat the object of the Act. General words and phrases are more or less elastic and admit of restriction or extension to suit the legislation in question however wide they may be in the abstract. It is also well recognised that if there is any ambiguity in the phraseology of a statute the construction which facilitates the remedying of the potential abuse is to be preferred, and it is the duty of the Court to place such construction as shall suppress the mischief and advance the remedy. While interpreting various similar Land Reforms Acts the Supreme Court has also adopted a similar approach as is clear from the decisions reported in *Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others*, ; *State of Andhra Pradesh Vs. Mohd. Ashrafuddin*, ; *Begulla Bapi Raju and Others Vs. State of Andhra Pradesh*, , *Begulla Bapi Raju v. State of Andhra Pradesh*, We are, therefore, of the view that under the Act the present lands are includible in the petitioners' holding for the purposes of calculating the surplus or excess vacant land.

17. The argument advanced by Mr. Karnik on the basis of the observations made by this Court in Writ Petition No. 2236 of 1983 and another, with regard to the similar tenures of lands under the Old Grant is also not well merited. It must first be remembered that in that case the question whether the land was held as a lessee or a licensee did not fall for consideration at all, muchless whether the land was held as a lessee for the purposes of the present Act. The question which fell for consideration there was whether the holders of land under the Old Grant were entitled to get their building construction plans sanctioned before they were converted into new freehold tenures and in contravention of the express

directions of the concerned authorities to the contrary, and whether the Cantonment Board could sanction the building plans in such circumstances. It is while dealing with the contention of the petitioners there that they were so entitled, that the particular observations were made. The object in making the said observation was not so much to define the nature of the relationship of the grantees with the Government as to describe the nature of their right to make constructions on the lands which right is as pointed out earlier, even otherwise circumscribed. It is a well recognized principle of construing judgments that they are not to be read as statutes and, the observations made there are to be confined to the issues and the facts involved in that case. As has been held by this Court in *Panjuman Hassomal Advani Vs. Harpal Singh Abnashi Singh Sawhney and Others*, , what is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is impermissible to utilise the observations in one judgment for the purpose of applying them to a different set of facts.

18. As regards the view taken by the Division Bench in Writ Petition No. 1241 of 1979 decided on Jan. 1983 (Bom) 18 it is obviously per incuriam. The Division Bench only referred to the provisions of Sub-section (1) of Section 19 of the Act and did not at all consider the effect of Sub-section (2) thereof which expressly carves out an exception to Sub-section (1). It also appears from the facts of that case that the land in question was granted by the Government to the widow of a war-hero and a part of it was sought to be acquired under the present Act. Obviously motivated by humanitarian considerations the Court in that case prevented the Government from taking by one hand what was given by the other. That decision, therefore, is no authority nor can it be construed as such for the view that the land held from the Government is not governed by the provisions of the Act and we hereby expressly overrule the same.

19. The contention that since in para 3 of the affidavit dt. 17-2-1988 filed by the Asstt. Defence Estate Officer on behalf of the respondents, it is stated that the grantees are mere licensees and hence the lands in question are not amenable to the provisions of the Act are, to say the least misconceived. In the first instance the construction of the documents cannot be left to the parties. Secondly, the said statement is made by the affiant as and by way of his inference of the Government General Orders referred to in the earlier para 2 of the affidavit. He has construed above similar orders and has shown that they purport to grant lease. Lastly, the affidavit has to be read as a whole. In para 5 of the same affidavit the affiant has at three places emphasised that the grantees under the old grants are tenants.

20. In the view we have taken, the two properties in question, namely survey No. 158 and survey No. 24 have to be included for calculation of the surplus vacant land under the Act and the decision of the authorities below to do so is unassailable.

21. That leaves us with only property No. 1, namely GLR Survey No. 709. The

argument was that the original lease of the land was in favour of Gool, the first wife of Sheriar and the lease of the property which was only for 30 years beginning from Dec. 1st, 1947 was to expire on Nov. 30, 1977. Hence on the appointed day, i.e. on 17-2-1975, the unexpired period of the lease being less than ten years, the land was not to be taken into consideration for calculating the surplus vacant land with the petitioners by virtue of Sub-clause (ii) of the Explanation to Section 4(11) of the Act.

The facts relating to the land are as follows : Although Gool died in 1953, she had bequeathed her rights in the land to Sherier by her will. Sherier married petitioner 1 after Gool's death. He obtained letters of administration in respect of the land in his name on Aug. 28, 1954 from the Civil Judge, Senior Division, Pune, on the basis of Gool's will. Sherier had thus become the sole holder of all the leasehold rights in the land. There is no dispute further that both Sherier and petitioner 1, when they filed their present returns on Aug. 12, 1976 showed this land in their holdings. It further appears that before his death on Mar. 31, 1983 and while the present proceedings were still pending before the Competent Authority, Sherier had exercised the option on Mar. 7, 1980 to renew the lease for a further period of 30 years which option was reserved to the lessee under the agreement of lease. Since, although the land was originally granted only for residential purposes, it was already converted to a non-residential use, there was a correspondence between Sherier and thereafter the petitioners and the authorities, and ultimately the order renewing the lease was passed on Feb. 29, 1984 in favour of Sherier with retrospective effect from 1st Dec. 1977. Thereafter on May 18, 1983 (Sherier having died on Mar. 31, 1983) all the present three petitioners applied for transfer of the leasehold interests in the land to the 3rd petitioner Mehroo under an alleged will left by Sherier, the will being dated April 15, 1975. It is after this application that the land was mutated in the register of properties in the name of the 3rd petitioner. These facts are sufficient to negative the contention that the land has to be excluded from the calculation of the petitioners' holding on the ground that on the appointed day the unexpired period of the lease was less than ten years. The authorities below have rightly held that Sherier had two options of renewal of the lease, each of 30 years and he had in fact exercised the option which became operative from 1st Dec. 1977. Hence the unexpired period of the lease of the land could not be said to be less than ten years on the appointed day.

22. There were two other submissions made in respect of the same land. The first was patently dishonest and was advanced by suppressing the fact that Gool had left the will in favour of Sherier and Sherier had in fact obtained the letters of administration on the basis of the said will. The submission was that Gool had died intestate leaving Sherier and the 3rd petitioner (her daughter) as heirs. The lease was thereafter renewed in the name of the 3rd petitioner as shown in Exhibit "A" to the petition. Hence the land which belonged to the 3rd petitioner could not have been shown by Sherier and the 1st petitioner in their return. It was then left to the respondents to bring to the notice of this Court all the

aforesaid facts relating to the will left by Gool, the letters of administration obtained by Sherier and the application made by the petitioners on May 10, 1983 to get the land transferred in the name of the 3rd petitioner and the consequent mutation in her name. It is obvious from these facts that Sherier being the sole owner of the land, he had to show it in his return and the land was calculable in the holding of the family.

The suppression from the Court of the aforesaid facts relating to the will is certainly a serious matter calling for proper proceedings against the guilty. We are therefore separately issuing notices against the petitioners for the contempt of this Court.

23. The second of the submissions was that since Sherier had made a will on April 15, 1970, i.e. prior to the appointed day whereunder he had bequeathed the land to the 3rd petitioner, the land was not calculable in the holding of the family of the late Sherier and the 1st and the 2nd petitioner. Assuming that the will is a genuine document (it is not registered), the will could take effect only from the date of Sherier's death, i.e. from Mar. 31, 1983. Under the provisions of Sub-sections (1) and (3) of Section 5 and Sub-section (4) of Section 10, and Section 27 of the Act any transfer of land after 15-2-1975/15-2-1976 has to be ignored. Hence there is no merit in this contention as well.

24. The last contention is that the authorities have erred in including in the vacant land, the land which is unbuildable under the Cantonment Rules which permit only one-third of the land to be built, the rest two-third being required to be kept compulsorily vacant. Since the authorities had included even such two-third unbuildable land, the calculation of the excess vacant land is erroneous. This argument is based on the provisions of Section 2(q)(i) of the Act, under which land on which construction of a building is not permissible under the Building Regulations in force in the area in question, is to be excluded from the definition of "Vacant Land".

The argument is deceptive and seeks to confuse the provisions of Section 2(q)(i) with those of Section 2(q)(ii). The provisions of Section 2(q)(ii) have been considered by the Supreme Court in a decision reported in *State of Uttar Pradesh and Others Vs. L.J. Johnson and Others*, . But we are not concerned with them while dealing with the present argument. The two provisions cover two distinct areas. While Section 2(q)(i) refers to the land on no part of which construction is permitted because of its being in green belt etc., Section 2(q)(ii) relates to the land on which construction is permitted but land appurtenant thereto is required to be kept vacant. In the latter case, the building is constructed by exhausting the entire F. S. I. which is calculated by taking into consideration the appurtenant land as well. Further while further calculating the vacant land, the maximum area that is deductible from the land on which there is a building is one thousand square metres as provided u/s 2(q), and no more. The argument that where by the local regulations two-third of the land is required to be kept vacant, such two-third of the land should be deducted from the calculation of the vacant land has

therefore to be rejected.

25. Hence the calculation of the areas from the first two properties, namely GLR Survey No. 709 and GLR Survey No. 158 in the vacant land held by the petitioners is both valid and proper. The authorities have completely excluded the third property namely GLR Survey No. 24 and there is no dispute with regard to the fourth property. Hence we do not see any error in the decision of the authorities below.

26. In view of our aforesaid answers to the relevant issues, the issues raised in Writ Petition No. 517 of 1980 also stand answered and the decision of the lower authority there is confirmed.

27. The petitions are, therefore, dismissed, and the Rules in both the petitions are discharged with costs.

28. Issue a notice of contempt to the petitioners to show cause why action should not be taken against them for suppressing the will left by Gool, the first wife of Sherier Irani, bequeathing all her rights, title and interests in the land comprised in GLR Survey No. 709 (Bungalow No. 9, Prince of Wales Drive) and also the fact that Sherier Irani had obtained letters of administration from the Court on the basis of the said will and was thus the sole holder of the said land.

29. Notice to be returnable before us in Chamber on 13th June, 1988.