

(2000) 01 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13353 of 1992

Purshottam Das Tandon

APPELLANT

Vs

Military Estate Officer

RESPONDENT

Date of Decision : 07-01-2000

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 1(2), 7
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114

Citation : AIR 2000 All 127 : (2000) 1 UPLBEC 738

Hon'ble Judges : Ram Kishore Singh, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : R.K. Jain and Hari Prasad Pandey, for the Appellant; S.N. Srivastava, Senior Standing Counsel, V.K. Singh, A.K. Singh and Satish Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner prays under Article 226 of the constitution to issue a Writ of Mandamus directing the Respondents to (i) mutate his name as "Private Owner" of "Bungalow No. 29, Chaitham Lines, Survey No. 143, Old Cantonment Allahabad (hereinafter referred to as the Bungalow) and (ii) accept property taxes from him in regard thereto and (iii) to award him costs.

The Backdrop :--

2. From the writ petition, counter-affidavits and Rejoinder thereto exchanged between the parties, and the records called for at the request of learned counsel for both sides it is apparent that in regard to the bungalow there were series of litigations, which are necessary to be mentioned first in seriatim.

2.1 In execution of a decree against the judgment-debtors-Scott and Spencer, the bungalow was auction sold on 26th November, 1848 and purchased for Rs. 2,900/- by the decree-holder Lala Manohar Lal, (Grand Father of the Petitioner)

and that auction sale was confirmed by the Court on 27-12-1848.

2.2 The Respondents on behalf of the Union of India on the strength of Governor General's Order No. 179 dated 12th September, 1836 tried to take possession of the bungalow by issuing resumption notice on 26th December, 1968 to the petitioner. The petitioner filed Writ Petition No. 175 of 1969 before this Court challenging this notice alleging, inter alia, that the bungalow is in his possession being his private property, which he had got through auction sale and family settlement; that the Union of India is not the owner of the disputed property; and that his title was also perfected by adverse possession. His claim was contended by the Respondents on various grounds which are not necessary to be mentioned.

This writ petition was finally dismissed with certain liberties to both parties vide Order dated 6th July, 1970, the relevant portion of which reads thus :--

"The petitioner challenged the validity of this notice on several grounds. It has been alleged that it violates the Fundamental Rights of the petitioner guaranteed under Article 31(2) of the Constitution and that the notice is confiscatory in nature. It has also been alleged that the Order No. 179 dated 12th September, 1836, is no longer in existence and is not applicable to Allahabad. It has been stressed that the land was not subject to any resumption and that the petitioner has perfected his title by adverse possession. It has also been alleged that the Governor General's Order No. 179 is no longer operative by virtue of the operation of the Government of India Act, 1935 as also the Constitution of India. The respondents have in the counter-affidavit controverted the various points raised in the petition. They have filed a supplementary affidavit to show that the aforesaid Order No. 179 is still in operation and is applicable to all such lands. A perusal of the pleadings shows that several questions of a highly controversial nature arise in this case. The petitioner challenges the very title of the Government to the land and also its power to resume possession over the land. In paragraph (sic) of the principal counter-affidavit filed on behalf of the President of India as well as the Military Estate Officer, Lucknow, it has been stated that "in case the petitioner does not hand over possession in pursuance of this notice, the respondents do not propose to forthwith evict the petitioner by use of force. They will have recourse to appropriate proceedings either by filing regular suit for the ejectment of the petitioner or by having recourse to any other valid provision of law authorising them to get possession of the Government land. In either case the petitioner will get an adequate opportunity to get the question of title or the adequacy of compensation offered determined by the local authority." It is thus clear that the respondents have given up the threat (held out in the impugned notice) of dispossession without recourse to process of law. In this situation, the further threat in the impugned notice that on its service upon the petitioner his rights, easements and interests in the land will cease, has also become a pious hope. Since the petitioner himself has an alternative remedy for getting his title adjudicated in a Court of law and since the respondents have

made it clear that they are not going to evict the petitioner by force and without having recourse to Courts of law coupled with the fact that a highly disputed question of title is involved, this is a fit case where parties be left to the alternative remedies at law."

2.3 The petitioner filed Suit No. 147 of 1971 in the Court of Additional District Judge, Allahabad against "Harijan Sevak Sangh" and Allahabad Polytechnic dubbing the former as tenant and the latter as subtenant of the tenant for arrears of rent and their ejection from the bungalow. During submissions it is claimed that this suit has been decreed, without disclosing the date of judgment and the decree or the findings recorded therein.

2.4 The Allahabad Polytechnic filed original Suit No. 161 of 1973 in the Court of the Civil Judge, Allahabad asserting itself to be tenant of the petitioner and impleading him and the Union of India as Defendant Nos. 1 and 2 respectively claiming following reliefs :--

"(a) The defendant Nos. 1 and 2 be asked to interplead among themselves to establish their respective rights with regard to the amount of rent due from the plaintiff in respect of premises No. 29, Chaitham Lines, Allahabad Cantonment, and declare that the plaintiff is fully discharged from the liability of the payment of rent due against it to defendants Nos. 1 and 2 upto 30-6-1973.

(b) Plaintiff be awarded the costs of the suit.

(c) Any other relief deemed fair and just be passed in favour of the plaintiff against the defendants or any of them."

It's case was as follow :-- The Bungalow is claimed by the Defendant No. 1 in his occupancy right under Old Grant incorporation in Government General's Order No. 179 dated 12th September, 1936. The said premises consists of 22 Acres of lands and few scattered buildings. The said premises having been vacated by an organisation Ishwar Saran Ashram, the plaintiff took it on a monthly rental of Rs. 185/- from the defendant No. 1 for play ground for student and for accommodating its staff. Since 1-6-1964 the plaintiff has regularly paid rent to defendant No. 1 till June, 1970 from the account of the institution through crossed cheques. The Defendant No. 1, however, neither issued receipts to the plaintiff for the payment of the rent made to him nor the plaintiff ever pressed for the same as the payments were made through Bank. The Defendant No. 2 by registered notices dated 23rd February, 1971 and 26th June, 1971 informed the plaintiff that the premises has been resumed by the Government of India with effect from 31st January, 1969 and it has become the property of the Government of India, Ministry of Defence, from the aforesaid date. Defendant No. 2 requested the plaintiff, as it was in occupation to pay rent at the rate of Rs. 185/- p.m. to defendant No. 2 with effect from 31st January, 1969, as the defendant No. 1, the Ex-owner, ceased to have any title therein from the said date. The defendant No. 1 also by notice dated 11th June, 1971, wrongly addressed to "Harijan Sewak Sangh" and "Ishwar Saran Ashram" with ulterior

motive demanded rent of premises No. 29, Chaitham Lines from 1st July, 1970 to 31st May, 1971 failing which threatened to terminate the tenancy and forceful dispossession. In reply to the aforesaid notice dated 11th June, 1971, the plaintiff vide its letter dated 30th January, 1975 informed defendant No. 1 that Military Estates Officer, Lucknow Circle, an employee and representative of defendant No. 2, had also by registered notice dated 26-5-1971 claimed rent from it with effect from 31-1-1969 on the ground of resumption of the premises in question alleging that he had ceased to have any title or interest. In order to fully get itself absolved it requested the defendant No. 1 to settle the matter with the Government of India to enable it to pay the entire arrears of rent to the rightful person. The defendant No. 1 instead of settling the matter with defendant No. 2, again served notice dated 9th August, 1971 claiming rent from 1st July, 1970 to 31st May, 1971, in default threatened to terminate tenancy and eviction. The plaintiff again replied the said notice strongly protesting the allegation of holding it as a sub-tenant of Harijan Sewak Sangh and others. Knowing well that plaintiff alone is the tenant in possession of the disputed premises still the defendant No. 1 filed Suit No. 147 of 1971 in the Court of Civil Judge, Allahabad, impleading Harijan Sewak "Sangh, Harijan Ashram and Ishwar Saran Ashram as defendants. As the plaintiff is not certain about the respective rights of the defendants, as both of them are claiming themselves to be the owner of the disputed property, it is just and proper that they be asked to interplead between themselves to prove their rights with records to the disputed property.

The petitioner. who was defendant No. 1 in the suit filed written statement claiming to be as "owner" and "landlord" of the premises alleging to this effect.-- The premises has been in the tenancy of the "Harijan Sewak Sangh", a registered body since long time, which runs and owns institutions known as "Ishwar Saran Ashram" and "Harijan Ashram" on an agreed rental of Rs. 185/- p.m. which used to commence from 1st day and end on the last day of the every English Calendar Month. Due to default in payment of rent and sub-tenancy created by the said "Harijan Sewak Sangh" in favour of the "Allahabad Polytechnic", the defendant No. 1 was compelled to terminate the tenancy of "Harijan Sewak Sangh" by registered notice and institute Suit No. 147 of 1971.

The case set forth by the Union of India Defendant No. 2 in its written statement was to this effect.-- Survey plot No. 143 of old Cantonment Board, Allahabad has an area of 22.38 acres. Bungalow Nos. 23, 27 and 29, Chaitham Lines were constructed thereupon. This land was held by Man Mohan Das for residential purposes on old grant terms under Governor General's Order No. 179 of 12-9-1836, under condition No. 6(1) of which this was resumable by the Government at any time. In 1939 the Executive Officer, Cantonment Board, Allahabad reported that Bungalow No. 29 has been rented out by the landlord to the U. P. State Government for using it for Basic Training College. Due sanction was accorded for using this bungalow for Basic Training College from year to year with effect from 1-8-1939 upto 31-3-1950. Man Mohan Das had died in 1952 and

under the deed of family settlement the bungalow in question fell to the share of Defendant No. 1. After some correspondence the Principal of the College informed the Government that the bungalow has been vacated in June, 1951 by the Education Department. The Executive Officer, Cantonment Board was asked to intimate as to who is using the Bungalow whereupon it was reported that the bungalow is being used as hostel for students of Civil Engineering School since 1955. By letter dated 14-9-1965 the Secretary, Technical Education Department of the U. P. Government requested the Secretary, Ministry of Defence, Government of India to transfer the site for use of Allahabad Polytechnic. The Government of India ultimately decided to resume possession of the site with the bungalow standing thereon and accordingly the resumption notice dated 26-12-1969 was issued and served on Defendant No. 1 asking him to hand over vacant possession of the site along with superstructures thereon on 31-1-1969 to the Military Estate Officer, Lucknow Circle, Lucknow and receive Rs. 3,500/- as value of the structure. Defendant No. 1 filed Writ Petition No. 175 of 1969, which was dismissed on 6-7-1990. With effect from 31-1-1969 Defendant No. 1 Has no right or interest in either the land or bungalow and the answering defendant being supreme owner has got every right and interest therein. The plaintiff being admittedly a tenant of the bungalow, became tenant of the answering defendant and as such liable to pay rent to the answering defendant. The suit has presumably been filed under Order XXXV, Rule 1 of the CPC but the plaintiff being a tenant has got no right to file it being barred by the provisions of Order XXXV, Rule 5 of the Code of Civil Procedure. The suit merits dismissal with special cost to the answering defendant.

Following five issues were framed for adjudication.--

"(1) Which of the defendant is the owner of the disputed premises and entitled to receive rent thereof?

(2) Whether the plaintiff is not entitled to sue under Order XXXV, Rule 5 of C.P.C. as alleged by the defendant?

(3) Whether notice u/s 80, C.P.C. served upon the defendant No. 2 is legal and valid.

(4) Whether the suit has been undervalued and Court fee paid is insufficient.

(5) To what relief, if any, is the plaintiff entitled."

It appears that Issue No. 2 was decided as a preliminary issue by the Additional Civil Judge, Allahabad vide his Order dated 20-10-1976 (which has been brought on the record through an affidavit dated 17-12--1999) holding "that the present suit is not barred by Order 35, Rule 5, CPC.

Vide judgment and Decree dated 31st May, 1997 this suit was decreed after making following observations and recording following findings.--

"(i) I find that in the present interpleader suit the only question involved is

whether the defendant No. 1 entitled to get rent can be easily answered on the basis, that defendant No. 2 has admitted the continuance of possession of defendant No, 1 till he is validly evicted by taking recourse of law.

(ii) In every case the defendant No. 2 should get the order of eviction passed after determination of his title by a competent Court of jurisdiction before he can say that he is entitled to realise the, rent.

(iii) The conduct of defendant No. 2 in the previous case is estoppel against him regarding the claim of rent or getting defendant No. 1 evicted.

(iv) I, therefore, hold that defendant No. 1 is entitled to get the rent against defendant No. 2, Issues are answered accordingly.

(v) The defendant No. 1 Sri Purshottam Das Tandon will be entitled to get the payment of rent deposited by the plaintiff.

2.4A The Union of India defendant No. 2 challenged this judgment and decree in Civil Appeal No. 555 of 1977. The IInd Additional District Judge, Allahabad, vide his judgment and decree dated 4-8-1978, dismissed the suit and allowed the appeal with costs throughout. The judgment shows that following points had cropped up for adjudication :

" 1. Whether the predecessor-in-interest of defendant No. 1 held the disputed property under G.G.O. No. 179 of 1836?

2. Whether the defendant No. 2 appellant is the owner of the disputed property bereft of the super-structures standing thereon, and whether he was entitled to resume the same?

3. Whether the defendant-respondent No. 1 has perfected his title to the suit property by adverse possession.

4. Who out of the defendant-appellant No. 2 and the defendant-respondent No. 1 is entitled to receive rent in respect of the disputed property?

5. Whether the disputed property as bereft of the super-structures, has come to be resumed by the defendant-appellant Union pf India?

It further shows that point Nos. 1, 2, 4 and 5 aforementioned were answered in the affirmative and point No. 3 was answered in the negative and the finding of the trial Court about the title of Defendant No. 1 was set aside.

2.4B The petitioner challenged this appellate judgment and decree before this Court in second Appeal No. 2866 of 1978. A stand was taken by the tenant-Allahabad Polytechnic that after the resumption notice its landlord has changed. This Second Appeal was allowed vide judgment and decree dated 27th November, 1981 of this Court rejecting the case of the Union of India, observing and holding to this effect:--

"(i) The Controversy in the suit mainly turns round the determination of the

question whether the property in suit belonged to the Cantonment as alleged by the Union of India or it was private property of the predecessor of the appellant having been acquired at an auction sale."

(ii) The Sale Certificate shows that in execution of a decree held by Lala Manohar Lal against George Spencer the property was sold for Rs. 2,900/- and purchased by the decree-holder Lala Manohar Lal. The auction sale undoubtedly conveyed the right, title and interest which the judgment-debtor had.

(iii) It is admitted that after the purchase Lala Manohar Lal entered into possession and his possession continued till his death and of his successors continues up-to-date.

(iv) It was consequently emboldened duty of the Union of India to establish that the judgment-debtors George Spencer and Mr. Scott held the Bungalow and the appurtenant land subject to the condition mentioned in G.G.O. No. 179, dated 12th September, 1836. No old grant in favour of the judgment-debtors was filed. The Court is, therefore, entitled to draw an adverse inference against the Union of India.

(v) Under misconception the Appellate Court presumed that since the Bungalow and the land lie within the precincts of Cantonment, therefore, the Cantonment must be deemed to be owner, which should be repelled outright. Even in connection with the G.G.O. of 1836 private ownership of land and houses within Cantonment limits was fully recognised.

(vi) The Union of India instead of filing the necessary evidence regarding grant has merely chosen to rely on an admission of the appellant said to be contained in Ext. 8..... There is no admission of the appellant or his predecessor of the title of the Union or its predecessors and the appellant and his predecessors have been enjoying this property without let or hindrance by the Union of India and consequently by lapse of time for more than 100 years have acquired title even if it is assumed that title was with the Government, at any time. The admission in paper No. 67-C is vague and ambiguous. No explanation was sought from the appellant regarding this and this admission does not and cannot be taken to pass title which can only pass by a deed of transfer duly registered."

(vii) "There is yet another matter in this case which also leads to the same conclusion. On the threat to resume the grant under the so-called Governor General Order of 1936, the appellant was compelled to file a writ petition in the High Court and on the understanding given by the Union of India they do not wish to take the law in their own hands and to summarily evict the appellant, the writ petition was dismissed.

(viii) In this particular case it appears that the plaintiff was not discharged by the Court.

(ix) Giving the matter my very anxious consideration I come to the conclusion that the property belongs to the appellant, that there is no proof of grant in

favour of the Respondent and as a necessary result recourse cannot be had to a mere notice to evict the appellant.

(x) The appellant and not the Union of India is the person entitled to receive rent of the property in suit from the Allahabad Polytechnic.

(xi) The judgment of the trial Court is restored"

2.4C The Union of India challenged this judgment and decree in Civil Appeal No. 5931 of 1983 before the Supreme Court which was dismissed vide order dated 21st February, 1964, observing as follows :--

"We are unable to find any ground for interference under Article 136 of the Constitution. The Union of India made no effort to establish its title. The grant has not been produced. We do not know the terms of the grant. We do not even know the date of the grant. Reliance was placed on the alleged admission, which we consider to be no admission at all. In fact, the alleged admission was made after the dispute had started and it is inconceivable that the respondent would have made any admission acknowledging the title of the Government. On the other hand in the very application (Exhibit P-6) he has repeatedly asserted that he is the owner of the land. The appeal is, therefore, dismissed with costs."

2.5 The petitioner moved an application before the Executive Officer, Cantonment to mutate his name as "owner" in the Government Land Register and allow him to deposit property taxes of the premises on the strength of the Order of the Supreme Court aforesaid.

2.6 He also filed an application dated 8-4-1977 before the Competent Authority (Urban Land Ceiling, Lucknow Cantonment) seeking exemption of excess vacant land on the ground that he wants to utilise it for construction of dwelling house for the weaker section of the society.

2.7 The petitioner on account of non action ultimately moved this Court under Article 226 of the Constitution by filing writ petition bearing C.M.W.P. No. 3985 of 1992 for granting following reliefs :--

" (i) to issue a writ of mandamus directing the respondent Nos. 1 and 3 to mutate the name of the petitioner in pursuance of the Hon"ble Supreme Courts judgment in their record and directions be issued to accept property taxes from the petitioner.

(ii) to issue directions to respondent No. 2 to dispose of all applications of the petitioners pending before the Competent Authority."

2.7A This Court disposed of this writ petition vide its Order dated 7-1-1992 which reads thus :--

"Heard the learned counsel for the petitioner and Mrs. Poonam Srivastava for the Union of India.

Pursuant to letter dated 24-3-1977 (Annexure-7 to the writ petition), the

petitioner claims to have filed an application dated 8-4-1977 (Annexure-8 to the writ petition) claiming exemption from a portion of the Urban Land Ceiling Act. The provisions under which the exemption was claimed has not been set out in the application, but the learned counsel for the petitioner states that the exemption was claimed u/s 21 of the Act. Since sufficient time has elapsed and the application needs decision by the appropriate authority, I direct the Competent Authority, Military Estate Officer, Urban Land Ceiling, Lucknow, respondent No. 2 to dispose of the petitioner's application (Annexure-8) within two months from the date of presentation of a certified copy of this order. Learned counsel for the petitioner also submitted before me that the matter u/s 6 of the Act is also pending before the same very authority and that also needs decision. If that is so, the Competent Authority shall dispose of the matter within the aforesaid period.

With these observations and directions the writ petition is disposed of."

2.8 On 21-4-1992 this writ petition was filed by the petitioner.

2.9 During the pendency of this writ petition the petitioner filed Writ Petition No. 22134 of 1993 with following prayers.--

"(i) A writ, order or direction in the nature of Mandamus directing the respondents to decide the petitioner's applications dated 10-7-92 and 25-4-93 against the order rejecting the petitioner's application u/s 21 of the Urban Land Ceiling Act.

(ii) A writ, order or direction in the nature of Mandamus directing the respondent No. 3 to mutate the name of the petitioner as a Private Owner of Bungalow No. 29 Chaitham Lines Survey No. 143 and also accept the property taxes."

The cause of action set forth by him was passing of the order dated 11-6-1992 by the Joint Secretary, Ministry of Defence, Govt. of India refusing to grant exemption under the Urban Land Ceiling Act to his request for exemption of excess vacant land for constructing dwelling units for weaker section of the society and refusal by the Respondents to mutate his name and to accept properties taxes.

The record of this writ petition discloses that the Respondents through their counter-affidavit seriously contested the claim of the petitioner by taking one of the ground in regard to non-adjudication of title in the interpleader suit.

Vide order dated 19-9-1996 this writ petition was disposed of, which reads thus :--

"Heard Sri Govind Krishna for the petitioner and Sri Rakesh Dwivedi Additional Advocate General for the respondents.

The only prayer made by the petitioner is that the respondents may be commanded by issuing a writ in the nature of mandamus that the application pending before the concerned authority u/s 21 of the Urban Land Ceiling Act,

1972 be directed to be decided.

Having heard the learned counsel, we direct that if till date, the application made u/s 21 of the Act has not been disposed of, the same be disposed of expeditiously, say within four weeks from the date of presentation of a certified copy of this order. With this direction, the petition is disposed of. The interim order, if any, stands vacated."

The Pleadings of Parties in the Writ Petition :--

3. The petitioner asserts as follows :-- In the dispute in regard to title of the Bungalow between the petitioner and the Union of India, he was declared owner by this Court in Second Appeal No. 2866 of 1992, which was also confirmed by the Supreme Court. Pursuant to the judgment of the Supreme Court he filed several applications before the respondents regarding mutation of his name and to give details of the due of property taxes showing his willingness to deposit the same but neither the details thereof was supplied nor was he permitted to deposit the same asserting that the Bungalow is no more his property. He also made representation dated 16-3-1982 before the Defence Minister but no action has been taken. The Property taxes due to non-acceptance has accumulated to the tune of several thousands and the act of the Respondents in not accepting the due taxes from him is arbitrary and against the provisions of law. He is being unnecessarily harassed on account of wilful non-compliance of the judgment of this Court and of the Supreme Court for which the respondents are also liable for punishment under the Contempt of Courts Act. There is no other alternative and efficacious remedy than to move this Court.

3.1 In their short counter-affidavit dated 9th May, 1997 the respondents allege that since the petitioner has filed another Writ Petition No. 22134 of 1993 before this Court on similar facts and prayer No. 2 of which was same as in this writ petition, in which counter-affidavit was filed by them, and after hearing both sides that writ petition was disposed of vide order dated 19-9-1996 with a direction to the authority to decide his application filed u/s 21 of the Urban Land Ceiling Act, and thus the present writ petition has become infructuous and not maintainable and be dismissed as such otherwise the respondents will suffer great injustice, requesting to have the records of Writ Petition No. 22134 of 1993.

3.2 The petitioner filed rejoinder dated 10th April, 1998 which was sworn by his son, stating, inter alia, to this effect:--

Writ Petition No. 22134 of 1993 was filed on a different cause of action though one of the prayers was mutation of his name and, thus, it has been wrongly stated that this writ petition is not maintainable; it has not become infructuous as alleged and be decided on merits as no adjudication was made in regard to Prayer No. (ii) made in Writ Petition No. 22134 of 1993; Vide order dated 19-9-1996 a mandamus was also issued to the respondents, pursuant to which the respondents accepted the property tax from the petitioner but they did not record his name.

3.3 The respondents filed "second supplementary counter to the rejoinder-affidavit" alleging, inter alia to this effect:--

It being not clear as to what was the real dispute involved in the suit thus for making the whole matter clear, it is necessary to file plaint and the written statements filed therein as Annexures 1, 2 and 3 respectively, which may be taken on record; It is important to mention that there was no dispute of title; In the suit the dispute was as to which of the defendants is entitled to receive rent; The judgment held that since the petitioner was receiving rent prior to resumption and as he was not going to be evicted by the Union of India so far except in accordance with law, he will continue to get rent from the tenants; Thus, the disputes in the suit were (i) between the landlord and the tenant, and (ii) the question of land lordship, and (iii) the right to receive rent; and that in regard to title, in view of the order of this Court in his Writ Petition No. 175 of 1969, a suit was required to be filed by the petitioner.

3.4 In their supplementary counter-affidavit dated 2-11-1998 the respondents have stated to this effect:--

The instant writ petition as well as Writ Petition No. 22134 of 1993 should have been decided together but since the later writ petition was decided first to bring correct facts and law to the notice of this Court and to overcome the technical objection relating to the facts stated in the counter-affidavit of that writ petition, this supplementary counter-affidavit is being filed bringing certain facts which goes to the root of the matter which will enable this Court to pronounce judgment; the claim of the petitioner is based on the sale certificate dated 12-4-1848. through which title is being claimed; Petitioner's Writ Petition No. 175 of 1969, challenging resumption by the Union of India, was dismissed on the ground of alternative remedy with a direction to him to get title adjudicated by a competent Court; since the only dispute in the interpleader suit filed by Allahabad Polytechnic was, who has the right to get rent from the plaintiff, and the dispute of title of land between the Union and the petitioner was not involved, the right of land lordship alone could be determined; Right to received rent on the strength of ownership is altogether different from the land lordship; In last paragraph of its judgment this Court had clarified that as Allahabad Polytechnic was the tenant of and paying rent to the appellant as long the appellant is not evicted from the house by taking recourse to a legal proceeding, the demand of rent by the Union of India was wholly uncalled for who should have first taken proceeding for ejectment of the appellant, and after its success in that suit should have made a demand for rent, and without that the appellant's right to realise rent could not be disturbed; The disputed Bungalow stands recorded in General Land Register (copy, appended as Annexure SCA-3) in B-3 category and the Government of India shown as its "owner" and the land management is by the Military Estate Officer; at no point of time either Manmohan Das, who was recorded as holder of occupancy right, or his predecessor or his successors, questioned the authenticity of the entries in the

General Land Register; When Manmohan Das died on 18-7-1952, his successors were required to get their name substituted inasmuch as Clause 5 of the General Order by Governor General in Council No. 179 dated 12-9-1836 (copy appended as Annexure-SCA 3A) required all grant to be registered and the Cantonment Land Administration Rules, 1925 required preparation and maintenance of GLR of all lands in prescribed form, and the Successor Rules, 1937 also imposed the same requirement and require mutation in the register and. therefore, the successors of Manmohan Das should have promptly applied for mutation but this was not done; the petitioner applied for mutation of his name through application dated 21-10-1952 (Copy appended as Annexure-SCA 4), based on family settlement stating that the property has been transferred to him in accordance with the family settlement, without obtaining prior permission on account of misconception on the part of his father, and thus this irregularity be condoned; as prior permission is required only in a case where the land/property belongs to the Government of India and thus it amounts to admission of the ownership of the property being vested in the Government of India; When the petitioner made this application he was fully aware of the entries, yet he took no objection in regard to the land being owned by the Government of India and the management by the Defence Estate Officer of the old grant; In his application dated 1-10-1992 (Copy appended as Annexure-SCA 5), filed before the Defence Estate Officer, Lucknow Circle, for grant of permission to transfer, he stated that the site of Bungalow No. 29 is a Cantonment tenure (as old grant); By his letter dated 3-12-1963 (Annexure-SCA 6) the petitioner had himself requested the Cantonment Board to look out to the interest of the trees on the lands in question; the Cantonment Executive Officer vide letter dated 17-1-1966 acting as an agent of Defence Estate Officer, informed the petitioner that if he so desires he can purchase 4 green trees standing on the land in question; but when the petitioner did not opt to purchase, they were put to auction, which was held on 19-2-1966 and 4-3-1966, and the sale price was deposited in the Government treasury, all within his knowledge; in the year 1940 the Defence Estate Officer/Collector had fixed rents of agricultural/non-agricultural sites in the Cantonment, as required under Rule 8 of the Land Administration Rules, 1937, under which rent is to be fixed only in regard to the land belonging to the Government of India; a true copy of the charts prepared by the two authorities on 9-4-1940 (Copy Annexures SCA 7 and 8 respectively) describing Survey No. 143 as B-3 category; in his application (Annexure-SCA 9), filed by the petitioner for permission to transfer Bungalow No. 29 to various persons also he described the land as old grant; On various occasions the Cantonment Executive Officer acting as an agent of the Defence Estate Officer had issued letters authorising the contractors to enter into the Bungalow and cut the trees, which were sold at public auction, which established that the land was always managed by the Defence Executive Officer on behalf of the Defence Estate Officer and treated to be owned by the Government of India to which either the petitioner or his predecessors took no objection till the beginning of the dispute; this Court has not recorded any finding about the nature or manner in which the property

belongs to the petitioner nor has determined the nature of the right of the petitioner; This Court held, in the absence of proof about the grant, that the petitioner could not be evicted by mere notice of resumption; it is being advised to state that this judgment is not a final determination of the nature of the petitioner's right, leaving out specifically to the Union of India to institute legal proceedings for his eviction; thus if the petitioner wants to be recorded as freehold or otherwise of the property, he must institute a suit for establishing his right, as held by this Court in Writ Petition No. 175 of 1969; the Supreme Court had merely refused to interfere with the Judgment of this Court under Article 136 of the Constitution of India and has not independently examined the nature of the rights of the petitioner and of the Union of India; in the interpleader suit proceeding, the Court did not issue any declaration in favour of the petitioner for recording his name; the sale certificate shows that the property sold was Bungalow known as "General Pauli Saheb Wala" which proves that it is a Government Property; in the maps of the years 1902-04 and 1910-11 of the Survey of India relating to old Cantonment, Survey No. 143 Bungalow No. 29 has been shown in the old Cantonment, which existed from prior to 1801 or in any case from 1801 and had this Bungalow been privately owned property of the predecessors of the petitioner in these maps would not have included within the limits of the Cantonment; the entire property under the Cantonment was earlier governed by General Orders issued by the Governor General in Council, the Cantonment Act, 1889, the Government Grants Act, 1895, and the Cantonment Act, 1910; with effect from 1924, the entire Cantonment matters are governed by the Cantonment Act, 1924, the Government of India has framed a number of Rules in order to manage the properties of the Cantonment; the Administration of property, maintenance of record and mutation are governed by the Cantonment Land Administration Rules, 1937 (copy appended as SCA-12); under Rule 10 of these Rules the maintenance of General Land Register is maintained and all mutations are made in different columns; Under Rule 15, sale of land under Cantonment is prohibited without definite orders of the Central Government and it was neither pleaded nor proved by the petitioner that the Central Government ever passed an order of sale of the land, from the Sale Register, it is clear that it was in respect of sale of Bungalow No. 29, on the basis of which the petitioner is recorded as holder of occupancy right, which was held by the earlier occupier, namely, A Scott and George Spencer; the word "owner" has been defined u/s 2(XXVI) of the Cantonment Act as "includes any person who is receiving or is entitled to receive the rent of any building or land whether on his own account or on behalf of himself and other or an agent or trustee or who would so receive the rent or be entitled to receive it, if the building or land were left to a tenant"; there is no provision under Rule 10 for making mutation, other than already done in favour of the petitioner, and thus the application filed by the petitioner was not maintainable and no further orders would be passed; the rejection of the subsequent writ petition filed for same prayer will have the force of res judicata and the instant writ petition is not maintainable on this ground; and that in view of the decisions of this Court in Jaipal Vs. Board of

Revenue and Others, ; Lekhraj v. Board of Revenue 1981 RD 18 and Shiv Raj Gupta v. Board of Revenue 1989 ALR (Revenue Section) 30 this writ petition filed for direction to mutate his name is not maintainable.

3.5 In his Rejoinder to this supplementary counter-affidavit, the petitioner has stated to this effect :--

Both writ petitions, being on different causes of action, were not decided together; the claim of the petitioner in regard to his absolute ownership rights was based on the basis of the auction sale certificate executed on 12-8-1849, as well as by adverse possession as decided by this Court in the Second Appeal; it is wrong to say that only the main building was purchased as the word "Bungalow" included open apartment also, the boundaries of which and its location were also given in the sale certificate, which was considered upto the Supreme Court; in the interpleader suit it was decided that defendant No. 2 should have filed a suit for determination of rights in which Issue No. 1 was decided in his favour; in AIR 1988 Ori 8 (sic) it has been held that title can be adjudicated in an interpleader suit, which amounts to a suit for declaration of title; this Court in the Second Appeal has held that the land of the petitioner is not a Cantonment land of which he is owner in his private capacity and the classification of the land in a Cantonment area are for those lands which are vested and owned by the Government; is not correct, as alleged by the Respondents, that the petitioner is an occupant tenant in view of the judgments of this Court and of the Supreme Court; the petitioner had applied for mutating his same after the death of his father, when this property came to his share; the G.G.O. 179 of 1836 is not applicable to the land of the petitioner, as held by the Courts; the Rules are applicable, whether the lands are of Government or are private; Since (Annexure-SCA 5) is not original document, hence it could not be verified and replied, which does not amount to an admission that the lands belong to the Government of India; it was not necessary that permission from Government for transferring private ownership lands was also required; the Rules for maintenance of General Land Register itself says that private land should be shown; since the land lies within the limits of the Cantonment, hence application was moved to the concerned authority, who are responsible for maintaining the record; he is not aware, if any rent has been fixed for agricultural or non-agricultural sites in the Cantonment area; he had never paid any rent nor was there any demand by the Government at any stage; Survey No. 143 belonging to him, is shown in B-I category whereas the Government Record in G.L.R. is shown as B-3 category and thus there is a contradiction in the record itself; being a private land his land should have been shown in any category; the land is not held on old grant terms, 1836; Annexure No. SCA-9 was moved as the property was HUF; the auction sale of 1849 was in respect of the building and the appurtenant land; there was no need for the Courts to issue any declaration that the petitioner's name be recorded as free-hold owner; it is wrong to say that Survey No. 143, situated at the edge of the Cantonment, could not have been shown within the Cantonment area, if it was private property of the petitioner; all

properties -- Government or Private -- were included in the Cantonment area to make it a compact area; Since the petitioner's private land was also included in the area and as such Rules and Regulations are applicable; permission for transfer of the lands was necessary from the Government; the Respondents have failed to show the terms on which the previous occupiers A. Scott and George Spencer were holding the lands; the principles of res-judicata are not applicable in the present case; and that M.E.O. is the officer appointed under the Act for maintenance of record, mutation and acceptance of tax.

The submissions :--

4. Sri S. N. Srivastava, learned Senior Standing Counsel for the Union of India, appearing on behalf of the Respondents raised twofold preliminary objections in regard to maintainability of this writ petition :--

(i) For the grant of same reliefs the petitioner had moved earlier this Court in C.M.W.P. No. 3985 of 1992 which, however, was not pressed and thus deemed to have been refused by this Court. This fact has been deliberately suppressed. Under Chapter XXII, Rules 1(2) and 7 of the Rules of Court it was mandatory for the petitioner to disclose filing of that writ application and the orders passed thereon in this writ petition but the said requirement have not been complied with by him. thus it be dismissed as not maintainable.

(ii) The petitioner during the pendency of the instant writ petition had also prayed for granting same reliefs through yet another writ petition bearing C.M.W.P. No. 22134 of 1993 which, however, having been decided earlier thought that relief was again not pressed by the petitioner and naturally deemed to have been refused, thus it is barred on account of res judicata. It is well settled that the principles of res Judicata, enshrined in Section 11 of the CPC read with Explanations I and IV attached thereto, apply to writ proceedings. Vide Daryao and Others Vs. The State of U.P. and Others, ; Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, ; G.K. Dudani and Others Vs. S.D. Sharma and Others, ; Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, ; The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, . Thus this writ be dismissed as not maintainable for this additional ground of res judicata also.

(iii) The cause of action for non-acceptance of the property Taxes from the petitioner and non-mutation of his name, if at all had first arisen either before the issuance of the Resumption notice or soon thereafter but before filing of his Writ Petition No. 175 of 1969 filed for quashing Resumption notice and was relinquished. Thus on account of applicability of the principles enshrined in Order II, Rule 2, C.P.C. to the writ proceedings, this writ petition be dismissed.

5. Sri Ravi Kiran Jain, learned Senior Counsel appearing on behalf of the petitioner, and following him, Sri H. P. Pandey replied as follows :-

(i) The rules were not in existence when the instant writ petition was filed. It is true that the aforesaid writ petitions were filed by the petitioner but the prayers for commanding the respondents to mutate his name in the General Land Register and accept property taxes from him were not the only prayers, which were not at all pressed either, and thus not adjudicated by this Court and, therefore, cannot be said to have been refused by this Court and thus it was not necessary for the petitioner to have stated those facts in this writ petition or subsequently through a Supplementary Affidavit. The object of Rules 1(2) and 7 of the Chapter XXII of the Rules is to compel a petitioner to disclose in substance the order passed in his earlier writ petition so that he could not obtain an order contrary to the earlier order/ orders rejecting that writ petition. Rule 7 applies to factually rejected writ petitions alone.

(ii) The doctrine of res judicata is not applicable for these reasons :-

(a) In the aforementioned two writ petitions the main relief prayed for were different which could not have been asked in this writ petition and the reliefs for mutation and acceptance of property taxes were merely consequential which were also not adjudicated;

(b) The reliefs prayed for in regard to non-mutation and non-acceptance of the property taxes in the aforementioned two writ petitions, were not dependant on adjudication of the main relief prayed for therein which was apparently different and which alone was pressed and granted;

(c) Those writ petitions were decided favourably in respect to the prayers pressed therein only and no finding was recorded in regard to the reliefs prayed for in the instant writ petition, besides no order, speaking or otherwise, was passed rejecting that prayer. During pendency of this application the respondents started accepting property taxes from the petitioner.

(iii) As the Respondents had not raised the plea of res judicata in the subsequent Writ Petition No. 22134 of 1993 on account of pendency of this writ petition though they should have, and hence cannot raise this plea in this writ petition on account of waiver, acquiescence and/or abandonment.

(iv) The principles underlying Order II, Rule 2 are not applicable for the reason that "if there is a misjoinder of causes of action and a claim in regard to one such cause of action which should not have been raised in a suit is not claimed, it cannot amount to relinquishment of part or the whole of the claim within the meaning of Order II, Rule 2 of the Code of Civil Procedure".

In support of the aforesaid submissions reliance was placed on Mallhari Vaman Kramavant v. Vinayak Ravji Kramavant AIR 1929 Bom 323; Thakur Hardeo Baksh Singh v. Pt. Vidya Dhar AIR 1945 Oudh 70 ; Shivashankar Prasad Shah and Others Vs. Baikunth Nath Singh and Others, ; Sidramappa Vs. Rajashetty and Others, ; Ms. Wazir Khanam v. Deputy Director of Consolidation Meerut 1975 AWC 481 ; Ganesh Jha Vs. Baidyanath Jha and Others, ; Commissioner of

Income Tax, Bombay City Vs. Bombay Burmah Trading Corpn., Bombay, ; Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead) by L. Rs., ; Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, ; and Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, .

6. Sri Srivastava, in reply, apart from reiterating his submissions contended that the decisions referred to Mr. Jain do not deal with Rules 1(2) and 7 Chapter XXI of the Rules of Court; that the principles of *res judicata* applies; that the decisions cited by him support his submissions and thereby his preliminary objection be accepted and this writ petition be rejected as not maintainable; and that the property taxes have been accepted only in relation to the Bungalow and not of the lands.

7. However, both learned counsel had also proceeded to address us on merits.

7.1 The contentions of Mr. Jain and following him of Pande were as follows :--

(a) Pursuant to the judgment of the Supreme Court the petitioner rightly moved the respondents for mutation of his name as "owner" in the General Land Register as well as for acceptance of property taxes from him but the respondents arbitrarily sat tight over the matter -- neither allowing nor rejecting his prayers. The reliefs prayed for are fit to be granted as the order passed by the Supreme Court affirming the Second Appellate Judgment of this Court upholding the petitioner's title and ownership of the disputed property against the Union of India which is binding on the respondents who are its employees. In that civil proceeding the Union of India, too, had claimed title which, however, was not accepted. The findings recorded in the civil proceeding holding non-title of the Union and title as well as ownership of the petitioner both shall operate as *res judicata*.

(b) Since the respondents under the Cantonment Act (Sections 185 187 261 266 and 268 Chapter XII) were/are bound to correct their own records, their refusal to discharge their statutory duties has given a cause of action for the petitioner to ventilate his grievance before this Court.

(c) The respondents had not produced the alleged grant in favour of the judgment-debtors Mr. Scott and Mr. Spencer, earlier for which an adverse inference was correctly drawn up by this Court in the Second Appeal and has not been produced even now in this proceeding. Thus a further adverse inference be drawn up by us.

Reliance was placed on a Division Bench decision of our Court in *Union of India v. Messrs Alopi Prasad and Sons*, 1980 ALJ 76.

7.2 With reference to the decisions of the Supreme Court in *Spencer & Co. Ltd. v. Vishwadarshan Pvt. Ltd.* 1994 ACJ 57 and *G.K. Dudani (supra)*, the second one was also relied, by Sri Srivastava though in regard to the applicability of *res judicata*, Sri Jain vehemently contended that we should take the words as

expressed in the judgment of the Supreme Court in the Civil Appeal in the sense in which they were used and apply them to the facts of the instant case and cannot sit over them as an Appellate Court.

7.3 The order passed by the Supreme Court in the Civil Appeal has to be complied with by the respondents.

7.4 On the other hand Sri Srivastava contended as follows :--

(i) In the judgments rendered in the Interpleader Suit the Union of India was not directed to mutate the name of the Defendant No. 1 (petitioner herein) and accept property taxes from him which will also not operate as res judicata for these reasons :--

(a) In view of the provisions as contained in Rule 5 of Order XXXV of the CPC and Section 116 of the Evidence Act it was not open for the Tenant-Allahabad Polytechnic to deny his Landlord's (Petitioner's) entitlement to receive rent and thus the judgments were passed contrary to the said provision and thus are nullity. In this regard he placed reliance on Yeshwant Bhikaji Vilankar Vs. Sadashiv Govind Arekar,

(b) In view of the legal position explained in the decisions in AIR 1933 230 (Privy Council) AIR 1950 17 (Privy Council); Nand Lal Mahton Vs. Naubat Mahton and Others, ; Udho and Others Vs. Smt. Khimian and Others, ; Mahboob Sahab Vs. Syed Ismail and Others, , in order to operate a judgment as res judicata between the co-defendants, one of the conditions precedent is that whether the decision rendered on a particular issue was necessary to be decided in the interpleader suit in order to grant relief to the plaintiff in which he had claimed the sole relief that the defendant Nos. 1 and 2 be asked to implead between themselves to establish their respective rights in regard to the rent due from him of the Bungalow which was in its occupation as tenant and thus no other issue except the issue of entitlement to received the rent was necessary to be adjudicated and, thus, the findings recorded therein in regard to other issues do not operate as res judicata. The question of title at best can be said to have been gone into incidentally which was not in issue either directly or Substantially.

(c) Even through the petitioner had not set up any claim of acquisition of title by adverse possession in his written statement in the interpleader suit nor was an issue framed in this regard thus this Court in the Second Appeal has erroneously observed that the appellant (i.e. petitioner) and his predecessor by laps of time for more than 100 years have acquired title as they have been enjoying the property without let or hindrance by the Union.

(d) This Court in the Second Appeal has specifically held that so long Union of India does not eject the petitioner in accordance with law it has no right to demand rent from his tenant and, thus, it is crystal clear that the right of the Union of India to eject the petitioner was left open to be exercised by the Union of India. This finding is binding on the petitioner as res judicata.

The judgment of this Court, for the aforementioned apparent reasons, is clearly not final in regard to the question of title of the property in dispute and thus not res judicata. Reliance in this context was placed by him on *Jamuna Oil Mills v. The Additional District Judge, Allahabad* 1978 ALJ 618.

(e) From the order of the Supreme Court it is clear that it had refused to interfere with the Second Appellate Judgment of this Court under Article 136 of the Constitution and thus it cannot be said that the judgment of this Court stood merged with that of the Supreme Court. What is the effect of an order passed by the Supreme Court at the stage of admission itself has been explained by Supreme Court in *Supreme Court Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, and State of Manipur Vs. Thingujam Brojen Meetei*, .

(f) The order of the Supreme Court in the interpleader suit was considered by the Supreme Court itself in *Chief Executive Officer Vs. Surendra Kumar Vakil and Others*, and explained away by holding that in the absence of the old grant the entries made in the old Land Record Register maintained under the Rules will be taken as evidence of old grant and thus there is no question of a drawing an adverse inference by us in this proceeding.

(g) G.G.O. No. 179 dated 12-9-1836 having been held by the Supreme Court in *Union of India and others Vs. Harish Chand Anand*, in *Chief Executive Officer supra* as valid and having statutory force the petitioner is not entitled to the reliefs prayed for.

(ii) Vide order dated 6-7-1970 passed by this Court the petitioner's earliest Writ Petition No. 175 of 1969, in which he had claimed to be the owner of and title to the property in question and had sought for such declarations were not accepted, rather his writ petition was disposed of with a direction to him to get his title declared by a Competent Court Authority or which is binding on him and operate as resjudicata as for such a declaration he never moved such a Court or Authority and thus this writ petition is not maintainable.

(iii) As the name of the Judgment-debtor was recorded as "occupier" and that of the Union of India stood/stands recorded till date as "Landlord" in the General Land Register maintained in due discharge of the statutory duties and the petitioner being a Successor-in-Interest of the Decree-holder/ Auction-purchaser cannot derive a better title than that of the Judgment-debtor and, accordingly, he was rightly shown as "occupier" of the disputed Bungalow like his predecessor-in-interest and no change was/is required.

(iv) From perusal of the mutation application filed by him it is clear that he had admitted the Union of India as Landlord of the Bungalow which is binding on him.

(v) In regard to the trees standing on the appurtenant land the Union has been exercising its right unobstructed by the petitioner. The land appurtenant to the disputed Bungalow and the latter both are situated within the Cantonment area

are thereby subject to the provisions of Cantonment Laws and under the provisions of which any land lying within the Cantonment area vests in the Union of India and thereby the Bungalow and the land appurtenant both are properties of the Union of India and not of the petitioner.

In this regard he placed reliance on the Tan Secretary of State for India in Council Vs. Mulla, ; Raghubar Dayal and Another Vs. Secretary of State For India, ; Ram Dass and Another Vs. Secretary of State and Another, ; AIR 1931 1 (Privy Council) and Sohan Singh v. Governor-General in Council AIR 1947 PC 178 and the judgment dated October 14, 1998 of the Supreme Court in Civil Appeal No. 219 of 1980, President of India v. Laxman Das.

(vi) The mutation application filed by the petitioner was itself not maintainable and thus rightly no action was taken. Cantonment Land Administrative Rules, 1925 have been framed in exercise of powers conferred u/s 280 of the Cantonment Act, Chapter II of which provides for classification, transfer of land and standard table of rent management, Rule 3 casts a duty on the Military Estate Officer to maintain General Land Register of all lands in the Cantonments; Sub-rule (2) of Rule 3 states that no addition or alteration shall be made in General Land Register except with the previous sanction of the Central Government or such other authority as the Central Government may appoint for this purpose. Classification of land is given in Rule 4; Rules 7 and 10 also provide similar provisions; and accordingly, the application for mutation filed by the petitioner in the absence of non-compliance of the aforesaid provision was not maintainable.

(vii) Undisputedly the name of the predecessor-in-interest of the petitioner having been recorded untruly as an "occupier" and that of the Union of India as "landlord" of the Bungalow, the name of the petitioner cannot be recorded as private owner and. that, too, after more than 150 years by now. His claim for mutation is barred on account of waiver, acquiescence and/or abandonment.

Accordingly this writ petition be dismissed with exemplary costs.

8. Sri Jain and Sri Pandey, in reply to the aforementioned contentions, apart from reiterating what were already submitted, contended as follows :-

(1) The question of title/ownership having been considered necessary was gone into in the interpleader suit filed after the first Writ petition, after deciding Issue No. 2 against the Union and correctly distinguishing the Bombay decision cited by Sri Srivastava which is apparent from the judgment of the trial Court itself. The first appellate Court also considered necessary to deal with the same though it decided erroneously in favour of the Union of India by completely misconceiving the factual/legal position, misapplying the theory of presumption and misconstruing the alleged admission of the petitioner in the mutation application. This judgment was rightly set aside by this Court in the Second Appeal which, too, considered necessary to adjudicate the question of title and ownership and adjudicated it in favour of the petitioner after taking into account

the fact that the plaintiff was not discharged on the first hearing. The judgment of the Supreme Court clearly states that the Union of India had failed to establish its title. All these findings are binding on the Union of India/ respondents as res judicata. As held in Syed Shamshul Haque Vs. Sitram Singh and Others, , question of title in an interpleader suit is required to be gone into. In the suit the plaintiff had not denied the Land lordship of the petitioner and had merely took up a defence on account of service of the notice of resumption issued by the Union and hence that suit was maintainable. Thus, there is no force in the submission of Sri Srivastava that the finding recorded in the interpleader suit are nullity and/or not binding on the Union of India/Respondents. Since this judgment is inter-party its subsequent distinction even by the Supreme Court is of no help to the respondents.

(ii) In the suit the relationship of landlord and tenant was decided with reference to the petitioner's title. Reliance was placed in this regard on Budhu Mal Vs. Mahabir Prasad and Others, and Smt. Munni Devi and others Vs. The Xth Additional District and Sessions Judge, Agra and others, .

(iii) In view of one of the categorical finding recorded by the High Court that within a Cantonment area there exists private properties the defence set forth by the respondents be rejected. There are various provisions in the Cantonment Code, the Cantonment Act and the Rules framed thereunder, which deal with the private properties. Thus, the argument made by Sri Srivastava are thoroughly misconceived and be rejected forthwith.

(iv) The identity of the disputed property, which includes Bungalow No. 29 and the lands appurtenant thereto both, was not put in doubt ever but the respondents are now mala fide setting up a plea that the appurtenant land of the Bungalow was not subject of dispute in the earlier civil proceeding and thus this plea is fit to be outright rejected.

Accordingly, the respondent should be saddled with heavy cost.

The questions involved :--

9. Thus, the following questions crop up which require our adjudication :--

(i) Whether in view of non-disclosure by the petitioner in this writ petition in regard to filing of his earlier C.M.W.P. No. 3985 of 1992 disposed of on 7-1-1992 in which relief No. 1 was same in view of Rule 1(2) of Chapter XXII of the Rules of the Court, 1952 it is liable to be dismissed ?

(ii) Whether in view of the provisions as contained in Rule 1(2), Chapter XXII of the Rules of the Court the instant writ petition is to be dismissed ?

(iii) Whether this writ petition is not maintainable on account of applicability of the principles enshrined under Order II, Rule 2 of the Code Civil Procedure ?

(iv) Whether the observations made by this Court vide its order dated 6-7-1970 while dismissing petitioner's earlier writ petition No. 175 of 1969 and whether

the order dated 7-1-1992 disposing of C.M.W.P. No. 3985 of 1992 in which relief No. 1 and the relief claimed in this writ petition both are same and relief No. 1 was not pressed, thus naturally not adjudicated, and whether the order dated 19-9-1996 disposing of C.M.W.P. No. 22134 of 1993 which was filed subsequently but disposed of earlier, in which the 2nd (sic) relief was the same as in this writ petition though not pressed, will operate as res judicata and bar the maintainability of this writ petition ?

(v) Whether in view of non-raising of any objection by the respondents in regard to non maintainability of C.M.W.P. No. 22134 of 1993 on account of pendency of this writ petition, which they should have raised constitute estoppel, waiver, acquiescence and/ or abandonment and thereby they can question the maintainability of this writ petition ?

(vi) Whether the findings recorded in the Interpleader Suit in favour of the petitioner and against the Union of India in the Second Appeal and by the Supreme Court operate as res judicata against the respondents ?

(vii) Whether the mutation application of the petitioner was not maintainable ? and whether for that reason the respondents were justified in not passing orders thereon?; If the answer of the first question is the negative then whether this Court will be justified in issuing a writ of mandamus ?

(viii) Whether the respondents were justified in not accepting the Property Taxes of the Bungalow in question from the petitioner earlier ?

(ix) Whether in the facts and circumstances this Court should saddle one or the other party with heavy costs ?

Our Findings :--

10. We take up question No. (1) first.

10.1 Rule 1(2) of Chapter XXII of the Rules of the Court which were in existence much before 1992 when this writ petition was filed, reads thus :--

"The application shall set out concisely in numbered paragraphs the facts upon which the applicant relies and the grounds upon which the Court is asked to issue a direction, order or writ, and shall conclude with a prayer stating clearly, so far as the circumstances permit, the exact nature of the relief sought. The application shall be accompanied by an affidavit (or affidavits) verifying the facts stated therein by reference to the numbers of the paragraphs of the application containing the facts.

All Corrections and alterations in the application shall be initiated by the Oath Commissioners before whom such affidavit (or affidavits) is (or are) sworn.

Such affidavit (or affidavits) shall be restricted to facts which are within deponent's own knowledge and such affidavit shall further state whether the applicant has filed in any capacity whatsoever, any previous application or

applications on the same facts and, if so, the orders passed thereon.

10.2 The provisions of Rule 1(2) Chapter XXII, as it stands upto the first part, was considered by the Supreme Court in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, and it was held that "if the affidavit was defective in any manner, the High Court instead of dismissing the petition in limine should have given the appellant a reasonable opportunity to file a better affidavit complying with the provisions of Rule 1 Chapter XXII of the Rules".

10.3 The declaration of law by the Supreme Court was rendered when this Court had proceeded to dismiss Civil Misc. Writ Petition No, 2071 of 1959 in limine in view of the defects in the affidavit which were not filed in terms of the aforementioned Rule. To us it appears that the Rule as it existed before 1992, and even now, is not mandatory, as had the rules prescribed consequence of its non-compliance entailing dismissing of the writ petition, we could have held it to be mandatory. However, it is not suggested that a petitioner is not at all required to comply with these provisions. If he deliberately omits to do so, then such an omission may entail dismissal of his writ petition. The submission of Mr. Srivastava in this regard is thus not accepted.

10.4 Question No. (i) is answered in favour of the petitioner.

11. Re : Question No. (ii) :--

11.1 Rule 7, Chapter XX of the Rules of the Court reads thus :--

"No Second application on same facts.-- Where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts."

11.2 The language of Rule 7 being crystal clear it requires no further discussion. Here there is no explanation attached like Explanation V with Section 11 of the Code of Civil Procedure. Thus if a writ petition has been rejected only factually, and not fictionally as contemplated in the Explanation V attached with Section 11 of the Code of Civil Procedure, then the second writ petition on the same "cause of action", which means bundle of facts, would be barred under Rule 7.

11.3 C.M.W.P. No. 3985 of 1992 was not rejected in regard to the reliefs prayed for therein. Thus Question No. (ii) is answered in favour of the petitioner.

12. Re : Question No. (iii) :--

12.1 Order II, Rule 2 of the Code of Civil Procedure, as it exists in our State (Uttar Pradesh) reads thus :--

"2. Suit to include the whole claim.-- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the "suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.--Where a plaintiff omits to sue in respect of,

or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.-- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation I -- For the purpose of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Explanation II -- For the purposes of this rule a claim for ejectment of the defendant from immovable property let out to him and a claim for money due from him on account of rent or compensation for use and occupation of that property, shall be deemed to be claims in respect of distinct causes of action."

12,2 Following L. Kashi Nath Seth Vs. Collector, Central Excise, Allahabad and Others, , a Division Bench decision of our Court, and a Full Bench of the Kerala High Court in M.P. Raghavan Nair Vs. State Insurance Officer and Others, , relied, upon by Sri Srivastava, which had held that the principles underlying Order II, Rule 2 of the CPC are applicable to petitions under Article 226 of the Constitution of India as they are not to be regarded as embodying technical rules of procedure but based upon the principles of public policy aiming at justice, the securing of which is the very object of Article 226 of the Constitution of India, we would have held that this writ petition is not maintainable, but having found a 5-Bench Judge decision of the Supreme Court in Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), quoting with approval Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, (in which it was observed that the bar of Order II, Rule 2 may not apply to writ proceedings), holding categorically that the "provisions of Order II, Rule 2 apply only to suits", which is binding on us, we hold that this writ petition is not barred under this provision.

12.3 Question No. (iii) is answered accordingly in favour of the petitioner.

13. Now we proceed to consider Question Nos. (iv) and (v).

13.1 For better appreciation of arguments of both learned counsel in regard to applicability of the principles of res judicata we refresh ourselves with the provisions of Section 11 of the Code of Civil Procedure, which reads thus :--

"11. Res judicata -- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation-I -- The expression "former suit" shall denote a suit which has been

decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation-II -- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation-III -- The matter above-referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly by the other.

Explanation-IV-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation-V-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation-VI -- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation-VII -- The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as reference, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation-VIII -- An issue heard and finally decided by a Court of limited jurisdiction competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

13.2 Since there cannot be any quarrel in regard to applicability of the principles of res judicata/constructive res judicata to writ proceedings, we do not propose to discuss the judgments cited by the learned counsel for the parties.

13.3. The emphasis of Mr. Jain that due to pendency of this writ petition it was not necessary for the petitioner to press relief No. 2 of this petition and so he did not press that relief nor was any order passed by this Court rejecting the petitioner's relief No. 2 so it will not operate as res judicata against him. He placed strong reliance on the cases of Ms. Wazir Khanam v. Deputy Director of Consolidation, Meerut 1975 AWC 481 ; Sidramappa Vs. Rajashetty and Others, ; and Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead) by L. Rs.,

13.4 We have also perused these judgments cited at the Bar which are well known.

13.5. The order dated 6th July 1970 passed in C.M.W.P. No. 175 of 1969 shows that this Court directed that the petitioner will not be evicted from the suit property except through due process of law holding that the facts involved in the writ petition are highly disputed question of title so the parties should get their title decided in a proper proceeding.

13.6 Undisputedly up till now neither the petitioner nor has the respondents taken the matter of adjudication of title before any civil Court expressly in terms of the order aforesaid.

13.7 Sarguja Transport (supra) and Forward Construction Co. v. Prabhat Mandal (Regd.) Andheri (supra) relied upon by Mr. Srivastava answer this question in favour of the respondents. Through writ petition No. 22134 of 1993 same relief was claimed which is being claimed in the present writ petition but this Court, however, had not allowed the same. It is clear that the facts of the present case are clearly distinguishable from the facts in the cases of Sidramappa (supra) and Narayana Prabhu Venkateswara Prabhu (supra) relied upon by Mr. Jain.

13.8 We do not find substance in the argument of Mr. Jain that the respondents cannot raise the question of applicability of res judicata in this proceeding as the reliefs claimed for by the petitioner was not pressed by him earlier at all.

13.9 We find substance in the argument of Mr. Srivastava that principles of res judicata, as enshrined in the Explanations I and V to Section 11 of the Code of Civil Procedure, forbids the petitioner to get his relief of mutation and acceptance of property taxes from this Court as this relief was claimed in the earlier writ petition No. 3985 of 1992 and the subsequent writ petition No. 22134 of 1992, but not pressed by the petitioner.

13.10 Question Nos. (iv) and (v) are thus I answered in favour of the respondents.

14. Re : Question Nos. (vi) to (viii) :--

In Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, the Supreme Court laid down as follows :-- "..... But after holding that the preliminary objection had substance, the High Court proceeded to decide the question relating to the satisfaction of the pre-conditions u/s 34(1-A), although the correct course for it to follow after sustaining the preliminary objection was to have dismissed the writ petition....."

In P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, the Supreme Court reiterated the same view in following words :--

"..... .Once the High Court held that the writ jurisdiction cannot be invoked, it could not proceed to examine the contentions raised by Dr. Gupta on merits. The moment the High Court held that it had no jurisdiction to entertain the writ petition, it became functus officio and therefore, its decision on the merits of the contention is of no consequence and at any rate could not conclude the matter

against the petitioner....."

14.1 Thus we refrain ourselves in expressing our views in regard to Question Nos. (vi) to (viii) and leave them to be adjudicated in the civil suit which may be filed either by the petitioner or by the respondents in terms of the order dated 6th July, 1970 passed by this Court in the petitioner's earliest writ petition No 165 of 1969.

15. The remedy of the petitioner was/is in terms referred to in the order aforementioned and not to rush repeatedly to this Court by filing successive writ petitions.

16. It is also consistent practice of this Court that it does not interfere in mutation matters *Jaipal Vs. Board of Revenue and Others*, ; and *Shiv Raj Gupta v. Board of Revenue* 1989 ALR (Rev. Section) 30). It was also held by the Supreme Court in *Smt. Sawarni Vs. Smt. Inder Kaur and Others*, that mutation of a property does not created or extinguish title nor has it any presumptive value of title.

17. Now we take up the last question. Having regard to the peculiar facts and circumstances we are of the view that the parties should be left to bear their own costs of this writ proceeding.

The Result :--

18. Consequently this writ petition is dismissed but without cost. Before parting it is clarified that the order dated 6th July 1970 in Writ Petition No. 165 of 1969 is binding on both parties and thus the respondents also cannot take any coercive action against the petitioner in regard to the Bungalow save and except in accordance with law.

19. The office is directed to hand over a copy of this order within one week to Sri S. N. Srivastava, learned Senior Standing Counsel for the Union for its intimation to the Union.