

(1924) 02 AHC CK 0052
In the Allahabad High Court

Raghubar Dayal and Another

APPELLANT

Vs

Secretary of State For India

RESPONDENT

Date of Decision : 19-02-1924

Acts Referred:

Cantonments (House Accommodation) Act, 1902 — Section 11(c)

Easements Act, 1882 — Section 56

Specific Relief Act, 1877 — Section 42

Citation : AIR 1924 All 415 : 78 Ind. Cas. 642

Hon'ble Judges : Sulaiman, J;Lindsay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Lindsay, J.—This appeal has arisen out of a suit filed by the Secretary of State for India in Council in the Court of the Subordinate Judge of Meerut for the purpose of obtaining a declaration that a deed of sale executed by the first defendant, Baghubar Dayal, in favour of the second defendant, Mr. Thomas Singlehurst, on the 28th July 1919 and registered on the 9th August 1919 was null and void and ineffectual on the ground that the previous consent of the Military authorities had not been obtained, and that the transfer was detrimental to the interests of the Military officers in the Meerut Cantonment.

2. The reason for the suit is indicated in para. 6 of the plaint.

3. u/s 11 (c) of the Cantonments (House Accommodation) Act of 1902 (Act II of 1902) which was in force at the time the suit was brought, no notice u/s 6 of the Act can issue in respect of a house in Cantonment occupied by the owner; in other words, where the owner of such a house is in actual occupation he cannot be required, by notice u/s 6, to let the house to a Military officer. The declaration sought for in the plaint was, therefore, being asked for in order to have it established that the Military authorities were not under any legal obligation to treat the second defendant, Single-hurst, as the owner of the house conveyed by the deed in question for the purposes of the Act just referred to.

4. The house is described as Bungalow No. 42 Bedford Bow, in the Meerut Cantonment.

5. It is not disputed in this case that the land upon which this bungalow stands is Cantonment land and, therefore, the property of Government. Nor is it disputed that at the time when this conveyance was executed the vendor, Raghubar Dayal, was entitled to be treated as the owner of the house.

6. The case for the plaintiff was that the relations between him and the defendant, Raghubar Dayal, were governed by certain rules set forth in Appendix IV, Volume II of Army Regulations, India, para. 35.

7. The rules in question purport to regulate the conditions upon which land in Cantonments was granted prior to the introduction of the Cantonment Code in the year 1899. It is declared that the conditions are to be subscribed to by every grantee of Cantonment land as well as by every person to whom the grant may be subsequently transferred. The particular condition with which we are here concerned is laid down in the following terms:

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.

8. It is upon this condition that the plaintiff rests his case. No previous sanction to the transfer now in question having been obtained from the authority mentioned in the condition, it is claimed that the plaintiff (and under him the Military authorities) has the right to ignore the transfer.

9. The first and second defendants resisted the suit on the same grounds. It was denied that the house had ever been sold to the defendants or their predecessors subject to the condition just mentioned, and it was claimed in substance that the house was held and had been held free of any of the conditions imposed by the Army Regulations cited in the plaint.

10. It was pleaded that these Regulations had not the force of law and could not be resorted to in order to affect the right of transfer as laid down in the Transfer of Property Act. It was also pleaded that there was no cause of action for the suit; that the plaintiff was not entitled to maintain a suit for declaration; and, in any case, that the declaration should not be granted on the ground that the Military authorities in withholding sanction had acted in an unjust, illegal and arbitrary manner.

11. The Subordinate Judge has found in favour of the plaintiff. He was of opinion that the suit was maintainable J that the plaintiff had a cause of action; that the relations of the parties were governed by the Army Regulations quoted in the plaint; fiat the first defendant was bound by the condition requiring previous consent to the transfer, and that such consent not having been obtained the plaintiff was not obliged to recognize the transfer and to treat the defendant as the owner of the house for the purposes of the Cantonments

(House Accommodation) Act, 1902. In the result, the Court below gave the plaintiff a decree declaring that the sale-deed in dispute was not binding and is ineffectual as against the Military authorities of the Cantonment.

12. The memorandum of appeal submitted to this Court embodies the various pleas which were raised by way of defence in the Court below. The purely technical pleas have not been strongly pressed before us nor, indeed, could they have been.

13. It being admitted that the land on which the house in dispute has been erected is the property of the plaintiff it could soaroely be contended that the plaintiff has not such an interest in the property in dispute as would entitle him to maintain a suit for declaration u/s 42 of the Specific Relief Act.

14. And, clearly, if the relations between the parties are governed by the Army Regulations the plaintiff had a cause of action for it is plain that the transfer to the second defendant was made in spite of an express refusal of the Military authorities to accord sanction to the sale. Mr. O'Connor has argued the case on the merits and has contended that the Military authorities have no right to withhold sanction; that the Regulations upon which the plaintiff relies have not the force of law and cannot interfere with the right to transfer the house; that the grant of the land was not made subject to the conditions contained in these Regulations and that the want of sanction cannot invalidate the sale or justify the plaintiff in ignoring it so as to deprive the purchaser, Single hurst, of the protection afforded by Section 11, Clause (c) of the Cantonments (House Accommodation) Act, 1902.

15. In the course of the arguments we have been referred to the history of the site of the bungalow in dispute and it will be as well here to set out the relevant facts in this connection. There was produced in the Court below a set of the registers relating to the transfer of houses in the Meerut Cantonment and these books have been inspected by us during the hearing of the appeal.

16. The earliest entry we can find is contained in a register which, so far as we can ascertain, must have been prepared for the first time soon after the year 1833.

17. On the 16th Sepetember 1833, a General Order was issued by the Commander-in-Chief directing that a register should be kept in the office of the principal Staff officer in certain Cantonments, including Meerut, for the purpose of recording all transfers of houses, bungalows or gardens in Cantonments. It was ordered that all proprietors of houses, etc., should forward to the Staff Officer concerned a memorandum stating when they purchased or become proprietors of the houses, from whom they obtained them and the dimensions of their different compounds. It was further directed that all future transfers of houses should be entered in the register. (See the compilation of orders printed in the Gazette of India of the 5th November 1898 V 371.

18. There can be little doubt that the first volume of the registers produced before us must have been prepared in accordance with these instructions. "We find, then, that the first entry relating to the site of the house now in question shows that a house on this plot was in the occupation of a gentleman named McGarison who was a Civil Surgeon.

19. On the 18th December 1844 we find it stated that the house on this site was transferred by one Charles Madden, Civil Surgeon, to Major Matthew Smith of H.M.'s 9th Foot.

20. On the 29th July 1852 this officer transferred the house to Lt,-General Sir Joseph Tnaokwell, G.C.B.

21. From this date till the 7th February 1874 the house seems to have remained the property of the Thackwell family.

22. On this latter date, according to an entry in another volume of the register, the house, which was then in ruins was sold by the Cantonment Magistrate at public auotion and was purchased by one E.C. Roberts, a person who did not belong to the Army.

23. Roberts, on the 20th November 1895, sold the house to a Mrs. Steventon who, on the 2nd July 1901, made a gift of it in favour of a minor named D.M. Bower.

24. On the 21st March 1912, G.T. Bower, the certificated guardian of the minor owner.f sold the house to Raghubar Dayal, the"first defendant in the present suit, and for the purposes of this case it is important to notice what took place on this occasion.

25. The Cantonment Magistrate having been informed of this proposed transfer wrote-both to the guardian and to Raghubar Dayal pointing out that, in accordance with Army Regulations, bungalows in Cantonments could not be sold without first obtaining the sanction of the Officer Commanding the Station. Both parties were further informed that the land being the property of Government could not be sold and that no sanction would be given to the transfer unless a declaration was made in writing that the land was not being sold and :that all that was being transferred was the bungalow together with the out-houses. (See the correspondence at p. 34 of the printed record).

26. Bower, the guardian, replied to the Cantonment Magistrate by letter Ex. 4, dated the 29th March 1912, that he " noted " that the bungalow could not be sold without the sanetion of the Officer Commanding. He further stated that both he and the purchaser (Raghubar Dayal) were aware that the, land was the property of Government and could not be sold. (See page 35 of the printed record.)

27. After this correspondence the Cantonment Magistrate obtained the sanction of the Officer Commanding at Meerut and this fact was notified to Bower by letter

(Ex. 6) dated the 23rd April 1912.

28. It is clearly established, therefore, that when Raghubar Dayal acquired this house in the year 1912 he was made aware of the fact that the Military authorities were-applying the rules laid down in the Anaafcr Regulations and were insisting that the conditions contained in the Regulations governed the transfer of the property and in the circumstances it did not lie in the mouth of Raghubar Dayal to plead, as he did plead in para. 12 of his written statement, that "the bungalow in dispute was never sold to any predecessor of the defendants or to himself, subject to the condition stated in Clause (c) of Rule 35, Army Regulations India Vol. II."

29. That was without doubt a false plea. Raghubar Dayal was well aware that the sale to him had been made subject to the condition in Clause (c).

30. That falsity of this statement is further demonstrated by the fact that on the 29th July 1919 when he was arranging to sell this house to Singlehurst he made an application to the Contonment Magistrate asking him to obtain the sanction of the Officer Cammanding the Station to the sale of the house and praying that the sale should be registered. He quoted the Army Regulations in this application and obviously knew all about them (see p. 45 of the printed record). He admits this knowledge in a later letter sent by him to the Cantonment Magistrate, on the 12th August 1919.

31. We may further note that in another letter, printed at pages 51 et seq of the record, Raghubar Dayal described himself to the Contonment Magistrate as a practising Barrister of nearly twenty years standing with considerable knowledge of Cantonment Law.

32. Whatever be the legal consequences of the notice given to Raghubar Dayal when he was purchasing in the year 1912, it is clear on all hands that he knew that he was taking subject to the condition that the exercise of the right to transfer the house he was buying could only be made with the previous sanction of the Officer Commanding the Station.

33. With regard to the plea that these Army Regulations relied upon by the plaintiff have no statutory authority and have not the force of law, we think it is well-founded, and we are unable to agree with the Subordinate Judge who took the contrary view. He refers to the Bombay Regulations whom were oited before their Lordships of the Privy Council in the in Khiakhusru Aderji v. Secretary of State (1) and seems to have thought that the Army Regulations with which we are dealing in this case stand on the same footing. But that is not so. The Bombay Regulations in question were statutory enactments made under the powers reserved to the Governor-in-Council prior to the introduction of the Government of India Act, 1833.

34. The Army Regulations with which we are here concerned cannot, so far as we can ascertain, be traced to any statutory origin.

35. The various rules and orders to which the collective name of Army Regulations, India, was subsequently given were all coated and set out in an Appendix to the Cantonments (House Accommodation) Bill which was introduced in the Council of the Governor-General in India for the purpose of making Laws and Regulations on the 4th November 1898.

36. The Appendix is to be found in the Gazette of India on the 5th November, 1898 at pp. 366, et seq.

37. These orders which issued from time to time between the years 1789 and 1887 are all set out here and are described in various ways, e.g., General Orders, Extracts from Proceedings of the Governor-General-in-Council, General Orders by the Commander-in-Chief, Resolutions of the Military Board," etc." They cannot, in our opinion, be treated as rules having the force of law; they appear rather to be departmental rules issued with a view to the regulation of administrative business in the Army Department.

38. The particular rules which we have to consider in this case, et, the rules regulating the occupation of land and the disposal of premises and buildings were first promulgated by a General Order of the Governor-General in Council, No. 179, dated the 12th September 1836 and these rules were re-published from time to time with amendments and variations till they assumed their present shape in Army Regulations, India, 1887, Section 17 (see page 394 of the Gazette of India, Part V of the 5th November 1898.)

39. The General Order of 1836 imposed practically the same restrictions upon the transfer of houses in Cantonments as those which are set up by the plaintiff in the present case. It was expressly laid down that where Cantonment land had been built upon, the buildings could not be disposed of to any person not belonging to the Army until the consent of the Officer Commanding the Station had been previously obtained under his hand.

40. Now, while it might be conceded that this rule, having no force as law could not operate as per se to invalidate a transfer which is good under the ordinary law, it may, nevertheless, be that a person who has taken a grant of Cantonment land subject to this rule may be bound by it. It is true that in the present case we have no evidence of the terms in which the grants of the land upon which the bungalow in dispute now stands was first made. No document of grant is forthcoming-nor indeed do we know when the grant was made. There is, however, little doubt that a house had been erected on the land by the year 1833 and before the promulgation of the General Order of 1836.

41. Up till the year 1874 when the house was transferred to a Civilian named Roberts, the house and the site had remained in occupation of persons who actually belonged or were deemed to belong to the Army.

42. Since the date of the transfer to Roberts the house has changed hands several times, the transferee in each instance being a person not belonging to

the Army, and it is the fact that each of these transfers, down to the transfer in favour of Raghubar Dayal in 1912, has been recorded in the register of transfers maintained by the Cantonment Magistrate. We cannot imagine that any of these transfers could have been made without the previous sanction of the Officer Commanding the Station. It must be presumed that the Cantonment Magistrate in each case acted in accordance with the Army Regulations which were certainly binding upon him as a Military Officer--and we have direct evidence in the case of the transfer to Raghubar Dayal that the previous sanction of the Officer Commanding the Station was sought and obtained before the transfer was registered. We have already pointed out that the conditions governing the transfer of the house were brought to Raghubar Dayal's notice and accepted by him. We have referred, moreover, to the fact that Raghubar Dayal sought previous sanction when he was about to transfer to the defendant Singlehurst.

43. While there is, therefore, no available evidence to show what conditions were attached to the grant of the site of the house when it was first built, there is in our opinion ample evidence to show that Raghubar Dayal took the house in 1912 subject to the limitation imposed by the rule upon the right of transfer and we hold that, in the circumstances, he is bound by the condition.

44. In the Poona case referred to above *Kaikhusr Aderji v. Secretary of State for India* 12 Ind. Cas. 117 : 86 B, 1 : 16 C.W. N 909 : 10 M.L.T. 97: (1911) 3 M.W.N. 28 : 14 C.L.J. 268 : 18 Bom. L.R. 718 : 8 A.L.J. 1219 : 21 M.L.J. 1100, 38 I.A. 204 (P.c.) it was held that the appellants and their predecessors-in-title held merely upon Cantonment Tenure and had no status therefore other than that of licensees. That, in our opinion, is the status of Raghubar Dayal and of his successors-in-interest since his death. It is not claimed here, as it was in the Poona case, that the land is not the property of Government. On the contrary, it is admitted freely that the land does belong to the Government. Raghubar Dayal and his predecessors held no lease, it is not pretended that they did, and, that being so, they could not be more than licensees, and, therefore, bound by the conditions of the license. Each transfer as it was made and sanctioned amounted to nothing more than the transfer of a license. That was the view taken by Russell, J., in the judgment of the Bombay High Court, and we understand that" view to have been accepted by their Lordships of the Privy Council.

45. At page 9 of the report, dealing with the meaning of the word "sanctioned" endorsed upon the document of transfer in favour of the predecessor-in-title of the appellants, he observed as follows:

What is the meaning of the word "sanctioned" in Ex. 71?.. The only meaning I have been able to attribute to that word upon Ex. 71 is that, in accordance with the rules and Regulations then prevailing upon the subject, the Brigadier-General permitted and ratified the surrender by Beyts, and the admittance of Dorabji Pastonji. I cannot believe that it was intended to refer merely to the transfer of one name in place of another in the register, for otherwise the register would be a purely useless and unnecessary document. By the use of the word"

sanctioned" I take it what the Brigadier General meant was that, inasmuch as Mr. Beyts had surrendered all his rights to this Cantonment property the Brigadier-General was willing to substitute Dorabji Pastonji for him under the then prevailing orders and regulations under which, as we know, it was entirely ultra vires for the Brigadier-General to allow or to connive at allowing the vendee of those rights to acquire any proprietary rights whatever in the land itself.

46. Adopting the view laid down in this passage of the judgment, we bold that each transfer in the present case made with the previous assent of the proper Military authority amounted merely to the admission of a new licensee upon the conditions prevailing at the time with respect to the transfer of houses in the Meerut Cantonment.

47. Raghubar Dayal, therefore, came in as a licensee in 1912 and took the premises in dispute subject to the condition that he had no right to transfer them without the previous sanction of the Officer Commanding the Station.

48. The transfer now under consideration having been made without such sanction and in violation of the condition the plaintiff is not bound to recognize it.

49. We are of opinion, therefore, that the decision of the Subordinate Judge is correct and should be affirmed, and we dismiss this appeal accordingly with costs including in this Court fees on the higher scale.

Sulaiman, J.

50. The plaintiff's case as set forth in the plaint was that all the land in Meerut Cantonment was the property of Government and was acquired between the years 1811 and 1815, that under certain Army Regulations 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, and that the defendant No. 1 by a deed dated the 28th of July 1919 sold the bungalow in dispute to defendant No. 2 without having obtained any such consent. The plaintiff, therefore, prayed that the sale-deed might be declared null and void and ineffectual inasmuch as it was executed without obtaining the previous consent of the Military authorities, and was detrimental to the interest of the Military Officers.

51. The defendants did not deny that the site belonged to the Government. They did not specifically set up any lease or specific grant in their favour but took their stand on the broad ground that they had a transferable interest in the house.

52. The learned Subordinate Judge has given the plaintiff a declaration that the sale-deed of the house is not binding on, and is ineffective as against, the Military authorities.

53. There is no direct evidence to show under what conditions the land was originally occupied by the predecessor-in-title of the defendants. Nor is there any evidence to show for how long before 1842 this house had existed. There is no

lease or written grant that can be traced. The previous history of the devolution of this house has been fully set forth in the judgment of my learned colleague. All that is known is that this land lies within the Cantonment and has been occupied by a house which has been transferred from time to time with the consent of the Military authorities.

54. I agree that the Army Regulations relied upon by the plaintiff have not the force of law by themselves to render the transfer altogether invalid. They, however, have a special bearing on the case which I propose to consider.

55. The Regulations of 1807 required that no bungalow or quarters within the Cantonment was to be sold to or occupied by any one not belonging to the Army, and that if any individual other than an Army Officer purchased it he must remove the materials. But the house as such was in no case to be made over to a Civilian. Under the Regulations of 1833 a register was to be kept in which transfers of such houses were to be duly entered. The General Order of the Governor-General in Council No. 179, dated the 12th of September 1836, is particularly important inasmuch as the Regulations thereby brought into force for the first time authorised transfer to a non-military officer under certain restrictions, A right of resumption subject to a payment of compensation was reserved, the ground itself could not be sold, but the house might be transferred without restriction by a Military or Medical officer to another such Military or Medical officer, and if the ground had been built upon the house was not to be disposed of to any one not belonging to the Military Department without the sanction of the Commanding Officer, and in case of sales of houses over Rs. 5,000 in value the sales had to be subject to the sanction by the Government of India.

56. There can be no doubt that the Regulations of 1836 were in full force till long after 1842 when the existence of this house is distinctly established. As the house is situated within the Cantonment and as there were these old Regulations in force under which originally a house could not be sold to a Civilian at all and later on it could be sold only with the sanction of the Commanding Officer, it is fair to presume, in the absence of any direct evidence as to the actual terms on which the site was originally occupied, that the permission was subject to this reservation. It is unthinkable that Military Officers who, at any rate, were themselves bound by those Regulations would have made a grant of a site in defiance of the Regulations in force. The defendants are not setting up lessee's rights in the land. They can at best be mere licensees whose predecessors were allowed to occupy the land by building a house on it subject to certain restrictions. My learned brother has shown how the successive transfers of this house prior to the transfer in question were duly entered in the register of houses which fact in a way implies the sanction of the military authorities.

57. u/s 56 of the Indian Easements Act a license as such cannot be transferred. It is clear, therefore, that the legal effect of the past sanctions was simply to continue the license in favour of the transferees. It was, so to speak, a fresh

license with the coming in of each new transferee. It would follow, therefore, that defendant No. 2 cannot claim the benefit of that license unless the plaintiff agrees to renew the license in his favour, that is to say, the defendant No. 2 can have no right to insist on retaining the house as a place of residence and in that way occupy the site unless he obtains the consent of the plaintiff.

58. On the other hand, it has to be noted that even under the Regulations of 1807 if a house situated in the Cantonment was sold to an individual other than a Military officer, the transferee was entitled to remove the materials of the house.

59. The Regulations of 1836 in no way affected the rights of the occupiers of houses to transfer the materials. Nor is there anything in the previous history of this house which would suggest that the J proprietary interest in the materials of the house did not vest in the persons who had occupied it from time to time, or were not transferable.

60. The defendant No. 1, who was indisputably the owner of the house and was occupying the site with the consent of the plaintiff, has by a registered sale-deed transferred the house as it stands with all the materials et cetera. He has purported to transfer the right of residence plus the proprietary interest in the materials of the house. So far as the materials go, they have under the registered deed been sold absolutely to the defendant No. 2. And I know of no ground under which it can be said that the sale of those materials "is null and void ineffectual. Neither the plaintiff nor the Military authorities can refuse to recognise that ownership in the materials has passed to the defendant No. 2. But I have already remarked that the right of residence cannot pass to the defendant No. 2 unless the plaintiff agrees to it.

61. The decree passed by the Court below is not very happily worded as it declares that the sale-deed of the house is not binding and is ineffective as against the Military authorities. If I had thought that by this the learned Subordinate Judge meant that the military authorities could ignore the sale-deed absolutely and treat the defendant No. 1 as still the owner of the house then I would not have wholly agreed with him. I, however, think that all that he meant was that the defendant No. 2 had no absolute right to occupy the site without the consent of the Military authorities and on such terms as they choose to impose on him.

62. I also would, therefore, uphold the decree of the Court below and dismiss the appeal with costs.

63. By the Court: The appeal is dismissed with costs including in this Court fees on the higher scale.