
(1973) 09 AHC CK 0007
In the Allahabad High Court
Case No : Sp. A. No. 30 of 1972

Smt. Bhagwati Devi

APPELLANT

Vs

The President of India and another

RESPONDENT

Date of Decision : 11-09-1973

Acts Referred:

Governor Generals Order No. 179 — Clause 6

Citation : (1973) 09 AHC CK 0007

Hon'ble Judges : Satish Chandra, J;A. Banerjee, J

Bench : Division Bench

Judgement

Satish Chandra, J.—The Appellant claims that she is the owner in possession of premises No. 23 B.I. Lines Meerut Cantonment. On 23-1-1969 the Military Estates Officer, Meerut Cantonment, served upon the Appellant a notice stating that the Govt. has decided to resume the property and it required the Appellant to hand over possession thereof by 28-2-1969. A cheque for Rs. 6,650. 00 was annexed with the notice as compensation for the various structures standing on the land. The Appellant challenged the validity of this notice by way of a writ petition in this Court. A learned single Judge held that the case of the Appellant that the land was owned by her as private property and not under an old grant which was subject to cantonment tenure was without merit and was an afterthought. The land was held by the Appellant and her predecessors as an old grant subject to cantonment tenure. He held that the old grants were governed by Governor General's Order No. 179 dt. 12-9-1836. This order was in force and is still in force even after the commencement of the Constitution. It was equally applicable to Meerut Cantonment. Construing Clause 6 of this order the learned single Judge held that an offer of compensation is merely an offer to take over the buildings if the Appellant is agreeable and does not involve the process of compulsory acquisition. The Appellant is free to demolish the buildings and remove the bricks and mortar leaving the land in vacant state to be taken possession of by the Govt. There is no compulsion that the Appellant must part with the buildings for the value offered. The Govt. has made an offer that the

Appellant may surrender the buildings in return for the compensation mentioned and it is for the Appellant either to accept the offer or to hand over the lands in a vacant state after pulling down the buildings. The learned Judge held:

I am unable to agree with the argument that resumption of the land is conditional upon the payment of the value of the buildings thereon or that the acquisition of the buildings is a necessary concomitant of the resumption of the land.... If the price is not acceptable to the Petitioners, they are at liberty to reject the offer and remove the buildings or negotiate for the price.

On these findings it was held that the notice does not disclose any legal infirmity and should not be quashed. The writ petition was dismissed. Aggrieved, the Petitioner has come up in appeal.

2. For reasons mentioned by him we are in agreement with the learned single Judge that the Appellant held land subject to cantonment tenure and that Order No. 179 of 12-9-1836 was still in force and was applicable to the Cantonment of Meerut. We deem it unnecessary to reiterate the reasons given by the learned single Judge in support of this view.

3. We are, however, unable to agree on the construction of Clause 6 of this Order. Clause 6 is headed as "Conditions of Occupancy". It reads:

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

1st.... The Govt. to retain the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorised to be erected.

To us it appears that this clause confers upon the Govt. power to resume the grant. The power of resumption is conditioned upon the giving of one month's notice and on paying the value of such buildings as may have been authorised to be erected. We are unable to construe this clause as conferring an unfettered power of resumption. Clearly, two conditions precedent are to be satisfied before the power of resumption can be exercised. The grantee's interest can come to an end only after he has been given one month's notice and paid the value of the authorised buildings. It cannot hence be said that the Govt. acquires right to take possession of the land on the expiry of one month's notice. The paying of the value of the buildings is as much a condition as is the giving of one month's notice before the power to resume can be effectively exercised.

4. The learned Standing Counsel invited our attention to the decision of the Delhi High Court in *Raj Singh Vs. The Union of India and Others*, . With respect, we are unable to agree with the view that the only right of the grantee is to claim compensation and the Govt. can take possession at any time after the expiry of one month's notice.

5. Under Clause 6 of this Order the Government is to pay the value of the buildings. This order does not lay down the criterion or the method of assessing the value. According to the counter-affidavit filed on behalf of the Govt. the valuation had been fixed by the Govt. according to the assessment made by the Military Engineering Service Authorities as provided in Standing Order No. 241, a copy of which is Annexure-C to the counter-affidavit. A perusal of this standing order shows that the Govt. took the view that it was necessary to adopt a system that will give the owner a fair compensation for his buildings, as such, proper allowance being made for the type of construction and depreciation. As all valuations have to be substantiated in a court of law it was thought essential that they should be supported by accurate details. The Order then proceeds to give detailed instructions as to how the valuation will be estimated. The estimate has to be on the current market, rates. It says that the walls, foundations etc. must be examined most carefully by making holes, digging trenches etc., to determine in what manner and to what extent the workmanship and specifications actually incorporated in the buildings differ from the specifications priced in para. 1(b). The age of the building; has also to be determined. Its remaining life is then estimated and thereafter the detailed procedure of evaluating the current value is prescribed. It will thus be seen that the assessment of the value of the buildings has to be done objectively, by known standards.

6. It is evident that the assessment of value of the buildings for paying compensation to the grantee is a proceeding which affects the civil rights of the grantee. In our opinion the principles of natural justice are attracted to such proceedings. It is now well settled that the principles of natural justice apply to administrative proceedings if they affect a person's civil rights. See *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, and *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . It was stated in the latter case that the aim of rules of natural justice is to secure natural justice or to prevent miscarriage of justice.

7. The Appellant stated in the writ petition that the notice of resumption has been issued to her without giving her any opportunity to represent her case. The Petitioner has not been given an Opportunity to prove the market value of the property. In reply it has been stated that there is no provision of any opportunity of being heard. The value of the buildings had to be fixed by the Military Engineering Service Authorities as provided in Standing Order No. 241. It is thus clear that though the Govt. purported to act in accordance with Standing Order No. 241 yet the Appellant was not allowed to participate in the enquiry. A perusal of that Standing Order shows that the valuations have to be substantiated in a court of law and so they have to be supported by accurate details. (Even though the Appellant has challenged the valuation yet no effort has been made on behalf of the Respondents to file a copy of the valuation report made by the Military Engineering Service Authorities. According to that assessment the value of the buildings is Rs. 6,650/-, while according to the Appellant its value is not less than Rs. 1,00,000/-. In our opinion the principles of natural justice were clearly

attracted and they were undoubtedly contravened by the authorities.

8. The impugned notice was invalid in so far as it proceeded to resume the grant on payment of Rs. 6,650/- as the value of the structures standing on the said land.

9. In the result the appeal succeeds and is allowed. The judgment of the learned single Judge is modified and the writ petition is allowed. The impugned notice dt. 23-1-1969 is quashed. The parties may, however, bear their own costs.