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**(1995) 07 SC CK 0048**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 1868 of 1979

Union of India and others — APPELLANT

Vs

Harish Chand Anand — RESPONDENT

**Date of Decision :** 26-07-1995

**Acts Referred:**
Government Grants Act, 1895 — Section 3

**Citation :** AIR 1996 SC 203 : AIR 1995 SC 203 : (1995) 6 JT 144 : (1995) 4 SCALE 586 : (1995) 4 SCC 113 Supp : (1995) 2 SCR 347 Supp

**Hon'ble Judges :** K. S. Paripoornan, J;K. Ramaswamy, J

**Bench :** Division Bench

**Advocate :** P.P. Malhortra, Y.P. Mahajan and C.V.S. Rao, for the Appellant;

**Final Decision :** Allowed

## Judgement

1. This is an appeal by Certificate granted by the High Court by order dated December 14, 1978 with a question as under :

Whether the only right of the grantee is to claim compensation and whether the Government can take possession at any time after expiry of one month in view of Governor General's Order No. 179 dated 12th September, 1836?

2. In view of the Certificate granted by the High Court under Article 133(1) of the Constitution, the question arises whether the State is entitled to resume land granted u/s 3 of Government Grant Act, 1895 without prior determination of the amount for the structure. Though the respondent has been served, he has not appeared, either in person or through counsel. We have taken the assistance of counsel for the appellant and we have perused the judgment of the Delhi High Court reported in Raj Singh Vs. The Union of India and Others, , and the Division Bench judgment of the High Court of Allahabad reported in Bhagwati Devi v. President of India (1974) 72 All L J 43, which was relied on and followed by the Division Bench in this case to hold that it is a condition precedent that the State should give notice to the respondent, determine the compensation and then

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resume the property granted to the respondent. The question, therefore, is whether it is a condition precedent for the Government to resume the land only after determination of the compensation and payment thereof or on the issuance of the notice as required under the Grant and on expiry thereof. To appreciate the contention, it is necessary to look to the provisions of the Grant itself. u/s 3 of the Act the Governor General in Council exercised the power and granted licence to the respondent to erect the structure on the Government land. The conditions of the Grant are :

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: -

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

3. The other clauses are not relevant for the purpose of this case. Hence they are omitted.

4. In the Order No. 179 of 1836, the Governor General in Council had issued the regulation empowering the Governor General to rescind authorised orders in force till then and to substitute for them by regulations. The regulations in order No. 179 of 1836 are statutory regulations made by the Governor General in Council in exercise of his statutory power. The convenants for the Grant clearly empower the Government retaining its power of resumption at any time. The conditions precedent are : to issue one month's notice and payment of the value of such building as may have been authorised to be erected.

5. The Division Bench of the Delhi High Court has left open the question of mode of determination of the value of the building to be determined in accordance with the relevant provisions of the law. The Division Bench of the Allahabad High Court in Bhagwati Devi's case, (supra) in paragraph 7, had held that though the Government is entitled to resume the land, the grantee is entitled to a prior opportunity to represent his case before the competent authority in determination of the value of the building and for payment of the value of such building resumed by the State.

6. It would appear that detailed instructions in that behalf were made in the Standing Order No. 241 which was produced before the Division Bench of the High Court of Allahabad in which Military Engineer was instructed to evaluate the value of the building which was resumed by the Government for payment of the amount to the erstwhile licencee. We are not concerned in this appeal as to the method of valuation. Suffice it to state that the Order No. 241 though does not contemplate of issuing prior notice to erstwhile licencee whose licence has been determined under Clause 1 of the Grant, before determination of the actual amount, the erstwhile grantee is entitled to a notice, so that the grantee would be at liberty to place before the competent authority all relevant material for

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determining the value of the building and for payment of the amount thereof. It is seen that it is not a condition precedent to determine, at the first instance, the compensation after giving an opportunity; make payment thereof and then to resume the property. What is a condition precedent is issuance of one month's notice and on expiry thereof the Government is entitled to resume the land. The amount is to be determined as required under the relevant provisions after giving opportunity and which could be done thereafter. After all, the property would be resumed for public use and determination of value of the building errected is a ministerial act and payment thereof is the resultant consequence. This process would take some time and if the reasoning of the High Court of Allahabad is given effect to, it would defeat the public purpose. The view of the Delhi High Court is consistent with the scheme and appears to be pragmatic and realistic. The High Court, therefore, was not right in its conclusion that it is a condition precedent to determine the amount of the value of the building in the first instance and payment thereof before resumption of the property.

7. The appeal is accordingly allowed, but since the respondent is not present, without costs.

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