

(1974) 09 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 771 of 1973

Union of India (UOI) and Another

APPELLANT

Vs

Mrs. Hardarshan Sahi

RESPONDENT

Date of Decision : 04-09-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1975 P&H 228

Hon'ble Judges : R.S. Narula, C.J.;Prem Chand Jain, J

Bench : Division Bench

Advocate : Kuldip Singh, Bar-at-law, for the Appellant; D.S. Nehra and Arun Nahra, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, C.J.—Bungalow on plot No. 63, the Mall. Jullandur Cantt. along with the rights in the grant of the plot, was purchased by one Hukum Chnd in a Court auction on 14-2-1953. The respondent purchased the same from Hukam Chand for Rs. 15,000/- by sale-deed, dated September 6, 1960 (Annexure "C" to the writ petition). Another Rs. 15,000/- are alleged to have been spent by her on installing a tube-well in a part of that property. With the permission of the Cantonment Board, dated May 7, 1966, the respondent made some construction and alterations in the building which were completed in 1968, at an aliened cost of Rupees 1,50,000/-. Notice, dated January 20, 1972 (Annexure "A" to the petition), was issued by the Government of India in the Ministry of Defence to the respondent wherein it was slated that out of the land measuring 3.07 aeres comprised in the site of bungalow No. 63 belonging to the President of India (and held by the respondent on "old grant" terms under the Governor General's Order No. 179, dated September 12, 1836), a portion thereof measuring 1.499 acres had been decided to be resumed hy the Government (which area had been shown in the plan Annexure "B" attached to the notice Annexure "A"); and the respondent should quit and deliver possession of the said piece of land with

structures standing thereon to the Military Estates Officer, Jullundur Cantonment, on the expiry of one month from the date of service of the notice whereafter the respondent's occupation and any rights, easements and interest of hers would cease from that date. It was further stated in the notice that the Government was prepared to pay to the respondent, and offered to pay her a sum of Rs. 1,966/- only as the value of the authorised erections standing on the plot of the land which was sought to be resumed. A cheque for that amount was stated to have been attached with the notice. The said notice was sought to be quashed by a writ in the nature of Certiorari in Civil Writ 566 of 1972, dated February 16, 1972, filed by the respondent. The Central Government was sought to be prohibited from taking any part of the land of the respondent out of the plot in dispute. The writ petition was resisted by the Union of India as well as by the Military Estates Officer, Jullundur Cantonment, but was allowed by the order of Dhillon, J., dated October 23, 1973, on the solitary ground that the order for resuming part of the land granted to the respondent could not have been lawfully passed without affording the respondent an opportunity to show cause why the particular part of the land should not be resumed. The learned Judge observed that it was the admitted case of both sides that the entire land under bungalow No. 63 was not being resumed, but the respondent was sought to be deprived of only a portion thereof, and that though there is no doubt that it is open to the Government to resume the whole of the land forming the subject-matter of the grant by giving one month's notice and by paying the value of the buildings erected thereupon, position would be different if a portion of the land is being resumed which might affect the amenities available to the grantee thereby affecting her civil rights. Such a thing, it was held, cannot be done without affording an opportunity of being heard to the grantee. The reason for so holding ascribed by the learned Judge is that if the grantee is given notice, it would be open to her to convince the competent authorities that if they need an area of only 1.499 acres of land, their purpose may be equally served by taking some portion of the premises of the bungalow other than the one proposed to be taken so that the respondent can also continue to enjoy the amenities attached to the house, and the Government can also have the quantum of land required by it. It was in this situation that the civil rights of the respondent were held to have been adversely affected by the impugned order without affording her an opportunity of being heard in violation of the law laid down by their Lordships of the Supreme Court in the State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . The ratio of the decision of the Division Bench of the Andhra Pradesh High Court in the The State of Andhra Pradesh Vs. Gathala Abhishekam and Others, , was held by the Judge in Chambers to have been varied to the above extent by the authoritative pronouncement of their Lordships of the Supreme Court in Dr. (Miss) Binapani Dei's case (supra). The only other point on which relief has been granted to the respondent by the learned Single Judge is that the petitioner is entitled to be heard even so far as the question of payment of the value of the building constructed by her on the resumed portion is concerned.

2. In this appeal against the above said judgment, order and direction of the learned Single Judge, it has been vehemently argued by Mr. Kuldip Singh, Bar-at-Law, the learned counsel for the Union of India, that the very terms of the grant clearly show that the grant is resumable at any time by the Government without assigning any reason, and that, therefore, there is no right in the grantee to claim or insist upon any right of her being heard before the power to resume the grant is exercised by the Central Government. The learned counsel called in aid the same judgment of the Division Bench of the Andhra Pradesh High Court in *Gathala Abhishekam's* case (supra), and the judgment of a learned Single Judge of this Court (C. G. Suri, J. as he then was) in Civil Writ No. 1440 of 1971 - *B. S. Bal v. President of India*, decided on 19-12-1972 (Punj and Har). I am, however, of the view that Dhillon, J. was correct in holding that the effect of the judgment of the Andhra Pradesh High Court has been substantially watered down by the authoritative pronouncement of their Lordships of the Supreme Court in *Dr. (Miss) Binapani Dei's* case insofar as it goes. I am also in full agreement with the observations of the learned Judge in Chambers that things would have been entirely different if the entire plot forming the subject-matter of the grant was to be resumed. In that event there would be no cause to be shown by the grantee against the resumption in view of the absolute right of the grantor to resume the grant. Things are, however, substantially different in a case where the Government wants to resume a portion of the land forming the subject-matter of the grant, it does not need any argument to demonstrate that resuming an exactly identical area of land out of a plot on which a bungalow has been built at one place or at any other place may make all the difference for the grantee with whom the remaining land is going to be left, though it may not make any difference at all for the Government insofar as its requirement for a particular area of the land abutting on the road or otherwise is concerned. In such an event it is manifest that the civil rights of the grantee to hold the remaining land after a part of the grant is resumed are seriously jeopardised by the selection of the area which may in one event practically destroy the remaining grant also, and in another event may not either affect the same at all or affect it negligibly. In such a situation it appears to me to be axiomatic that principles of natural justice would at once come in and require the Central Government to consider the objections and/or the alternative suggestions of the respondent, and then finally decide which portion of the property they would like to take. Of course the decision of the Government after hearing the respondent is not subject to any argument, appeal or scrutiny. At the same time it must be remembered that Government in a welfare State like ours is the guardian of the citizens, and their rights, comforts and amenities, and as such it is not too much to expect from it that it would so far as possible accommodate its citizens including grantees of land without substantially affecting its own rights and requirements. There is no doubt that the application of the principles of natural justice can be excluded by proper Legislation or even by a covenant in an appropriate case, but no law has been shown to us which deprives the respondent of the right to invoke the said principles in a case of this type. The principles of natural justice are not any rigid

rules, but form an essential feature and part of the rule of law to which our Constitution has committed us. The argument of Mr. Kuldip Singh to the effect that in the absence of a specific provision in the grant requiring an opportunity of hearing being given to the grantee before any part of her grant is resumed, no question of satisfying principles of natural justice can arise, is wholly without merit. Principles of natural justice will always step in where civil rights of a person are involved, or where some quasi-judicial and judicial function has to be exercised unless the application of any of those principles is expressly excluded by the relevant law or grant. There is no such exclusion of the principles of natural justice in this case. Those principles must therefore, apply both to the question of resumption of a part of the grant, and also to the question of determination of the quantum of compensation to which the respondent is entitled. Her being heard in connection with the determination of the quantum cannot deprive her of her right to follow up the matter in the stipulated arbitration proceedings or any other appropriate proceedings in case she is not satisfied with the fixation of the amount even after she has been heard.

3. The only other argument advanced by Mr. Kuldip Singh is that in view of the following stipulation in the admission deed Annexure R-VIII, the respondent is estopped from claiming any right to be heard before the resumption of a part of the grant:--

"I, Shrimati Hardarshan Sahi, wife of Colonel G. S. Sahi, Deputy Chief Engineer. Headquarters Eastern Command. Lucknow, holder of bungalow No. 63 (Survey No. 382) Jullundur Cantonment, do hereby declare and admit that the site appurtenant to the above property and forming its compound as shown in the plan attached hereto belongs to Government and is held by me subject to the conditions, limitations and disabilities laid down in the G. G. O. No. 179, dated the 12th September, 1836. I also further declare that all the trees standing thereon/grown thereon belong to Government of India, Ministry of Defence."

The above-quoted admission of the respondent merely amounts to her stepping into the shoes of the original grantee of the property, and does not, in my opinion, add to her liabilities in any manner. Nothing contained in the admission deed reproduced above is capable of being interpreted to mean that she agreed to deprive herself of the right conferred on her by the principles of natural justice to be heard in the matter of the Government's decision to deprive her of one or the other part of the grant.

4. No other argument was advanced in this case by the learned counsel for the Union of India. This appeal must, therefore, fail, and is accordingly dismissed with costs.

Prem Chand Jain, J.

5. I agree.