

(1960) 05 CAL CK 0031

In the Calcutta High Court

Case No : Appeal from Original Decree No. 83 of 1954

Union of India (UOI)

APPELLANT

Vs

Hemanta Kumar Bose

RESPONDENT

Date of Decision : 24-05-1960

Acts Referred:

Cantonments Act, 1889 — Section 32(2), 7
Cantonments Act, 1924 — Section 280
Cantonments Code, 1899 — Section 205, 259, 261, 266, 268
Cantonments Land Administration Rules, 1925 — Rule 3
Cantonments Land Administration Rules, 1937 — Rule 3
Civil Procedure Code, 1908 (CPC) — Order 11 Rule 21
Evidence Act, 1872 — Section 114, 116, 35, 5
Limitation Act, 1963 — Article 149
Public Works Code, 1878 — Section 2
Registration Act, 1877 — Section 54, 55
West Bengal Land Registration Act, 1876 — Section 14, 15, 19(2), 27

Citation : (1961) 2 ILR (Cal) 86

Hon'ble Judges : Guha, J; Banerjee, J

Bench : Division Bench

Advocate : S.M. Bose, General, J. Majumdar, Additional Government Pleader and M.M. Sen, for the Appellant; Subimal Roy, P.K. Deb and B.N. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

Banerjee, J.—The property in dispute is land measuring 3 bighas 2 kattas and 5 chittaks, be that a little more or less, situate within the geographical limits of Barrackpore Cantonment, in the District of 24-Parganas. On the disputed plot stands a bungalow, which bears a distinguishing number being 43, Middle Road.

2. The Union of India, asserted ownership over the disputed plot of land and instituted a suit claiming declaration that the land in suit belonged exclusively to the Plaintiff and that the Defendants had no right thereto save and "except the right to occupy the land until resumed at the will of the Plaintiff. The suit was

dismissed by the trial court. Hence this appeal.

3. In order to appreciate the rival contentions of the parties hereto, it will be helpful "to trace the history of the birth and growth of Barrackpore, Cantonment.

4. The history dates back to the year 1775 A.D. By that time the East India Company had gained a military victory over the army of Nawab Siraj-udowla (in 1757 A.D.) and had also obtained the Diwani of Bengal, Bihar and Orissa from Emperos Shah Alam II (in 1765 A.D.). Clive had succeeded in laying the foundation of a kingdom for the Company in Eastern India, the British Parliament had recognised the need for bringing about some sort of parliamentary control over the vast territories under virtual administration of a private Corporation and had passed the Regulating Act (in 1773 A.D.) introducing some sort of supervision over the administration, carried on by the East India Company.

5. Administration of a country includes maintenance of 3Q armed force and men of the army require to be housed. In India, the system was to house military men to permanent military townships, called cantonments, generally situate a few miles away from civilian towns.

6. The history of establishment of Cantonments in different; parts of India is not uniform. Some were established on land acquired by conquest, some on land ceded under treaties, others on land purchased or acquired.

7. The Barrackpore Cantonment appears to have been established on land acquired on payment of, compensation to the holders thereof.

THE FIRST PHASE (1774?1775)

8. The earliest document, exhibited in the instant case, touching on the establishment of a new camp at Barrackpore and the payment of compensation of the Raiyats, whose plots of land were going to be taken over for that purpose, is Ext. 5, an extract from a draft letter addressed to the President and members of the Calcutta Committee of Revenue, dated April 4, 1774 set out hereinbelow:

We will allow the sum of 5,786 rupees to be paid the Boytts in consideration of the loss they have sustained by the Establishment of the New Camp, but we desire that you will call them before you and ask them if they are satisfied with the appraisement and if they are that you will cause them immediately to be paid and in the proportions due to each. If they are not satisfied we desire you will depute your Secretary to the spot to make a new valuation of the property taken from the Boytts rating it at its full value, and paying them for the same upon the spo t if it does not differ much from the amount given in by the Aumeejns? If the difference should be very great you will then consider it yourselves and either determine on it or report it to us.

9. Next in chronology of exhibited documents, there is the letter, Ext. 5(a), dated March 31, 1775, by two of the members of the Calcutta Committee of Revenue to "Warren Hastings, the Governor-General, recommending grant of remission of

revenue, for two kists, to the Zeoninders (or Farmers of revenue). A material extract from the said letter is set out below:

In consequence of the Establishment of the new camp in the Dhees Barrackpore and Farahatty the Farmers of the Calcutta Purgunnah have claimed a Remission of Revenue account their Falgun and Cheyt tists amounting to Rs. 2,000 alleging that the Roytts of these Dhees for a considerable Cricut(sic) contiguous to the ground appropriated by the camp have deserted their habitations for which reasons they have requested that they may be permitted to withhold the above sum until the truth of their allegations can be ascertained.

The crop having been gathered previous to the appropriation of the Ground for the camp, we do not conceive they can have suffered by the desertion of the Boytts in so great a degree as they set fourth? Nevertheless as these Farmers have punctually made good their Engage i merits to Government ever since the commencement of their lease? notwithstanding they have been considerable sufferers thereby, we have consented to appoint an Aumeen to investigate the loss which they allege to have sustained, his report whereof shall be submitted to you oil his Return. In the meanwhile for the reasons we have assigned we request your permission to suspend the above demand until we know the result of the Aumeen's enquiry.

We beg leave further to acquaint you, that in consequence of Major Morgan's application to our President an Aumeen was appointed to measure the spot of ground allotted for the site of the Camp and to ascertain it's value in order that the Byotts might have some consideration made them for their Trees, Houses and the inconvenience they might be subjected to by being obliged to quit their Habitations and Lands which they rented contiguous thereto.

10. The area of land at first acquired appears to have measured 185 bighas 5 kattas. The price paid, namely, Rs. 5,786 included price of trees standing on the land. This appears from the certified copy of an extract of account, marked Ext. 5(b) bearing date April 4, 1775.

11. The above documents show how the Cantonment was peacefully established, on payment of compensation to the Raiyats, who deserted their hearth and home and meekly submitted to the appropriation of their land for the purposes of the Cantonment.

THE PERIOD BETWEEN 1776?1783

12. The history of the further growth of the Cantonment, if any, between the years 1776 to 1783 does not appear from the evidence on record.

THE SECOND PHASE (1784?1785)

13. Acquisition of further land for the extension of Cantonment appears to have become necessary at this stage. Touchet, an Assistant Collector of District 24-Parganas, who was in charge of acquiring land for the Cantonment, had the

unfortunate task of dealing with hard boiled type of people this time, who would not part with their land and houses for the asking. The extent of land required and the type of opposition confronted appears from letter Ext. 5(e) dated March 9, 1784, addressed by the said Assistant Collector to the Committee of Revenue, an extract from which is quoted below:

I have been duly honoured with your letter of the 12th February directing me to put the Quarter Master General in possession of certain ground marked out for the use of the Cantonments at Barrackpore and at the same time to make an adjustment of the claims of the People occupying the land.

I proceeded to Barreakpore and in company with the Quarter Master General marked off the Ground proposed to be included in the Cantonments.

This land may be rated under three districts Heads, first Byotty ground about two hundred and fifty Begas to the-Delivery of which no objection whatever has been made, Second Ground belonging to the Puttah Factory about three hundred Begas and which Mr. Prinsep is willing to give up upon condition that the committee give him a pattah for some other Ground actually in his possession and for which he already has Mofussil Pottahs and grant him a Sunnud in perpetuity for the Batparrah Talluk which he now has only for his life.

Thirdly, Bermuttar & C a, Ground being the property of Bramins and others about Four Hundred Begas, principally situated on the River side, both about and below the Cantonments, and which the Proprietors refuse to give up. I have endeavoured according to your Directions to make them accept of other Lands in Exchange and have repeatedly offered to make them a fair compensation for their Expense in removing but this they absolutely refused, declaring that they will only quit their Houses with their Lives I have had their building and Trees valued by an Aumeen, whose Statement I have now the Honour to lay before you. The value of this ground may be estimated at about Eleven thousand Rupees more.

14. The value of trees and structures belonging to the recalcitrant Brahmins was estimated (in all likelihood by Touchet, the Assistant Collector) at Rs. 17,025-4-0. This will appear from Ext. 5(f).

15. The Raiyati holders were no problems, they being mostly submissive. Princep, referred to in letter Ext. 5(e) was an planter. He was willing to give up the land in his possession provided he was given equal quantity of land elsewhere. Monetary compensation for him. His attitude is evidenced by Ext. 5(c), a letter dated March 10, 1784, which is set out below:

I have received notice from Mr. Touchet, Collector of the twenty-four pergunnahs, to surrender about 255 begas of the Puttah Factory land for the Extension of Barrackpore Cantonments to the North of their present limits.

As these lands form a part of the Ground which I expected to hold Rent free in Condition of giving up some valuable claims on the Board of Trade; and as their

situation and the Boundary Fence I made round them at a considerable expense, from a Barrier against too near an approach of the Troops to the Manufactory, I cannot but feel great Loss and inconvenience in complying with this order. But as the acquisition of this ground has been stated a case of absolute necessity, to the Health and convenience of the Troops. I am content to submit to their alienation and shall endeavour to remove my Plantation to a greater distance from Cantonment.

But as you will doubtless think me (equally with the Natives who are to be also removed) entitled to some Equivalent or consideration for giving so materially my interest and convenience; I would beg leave to propose, that in lieu of any pecuniary Compensation, I may be allowed to possess the whole of my indigo lands, upon the same footing as the Nuxat of Anilpore has been granted by the Hon^{ble} the Governor-General and Council namely Mocurrey Pottah paying the full established annual rent to Government instead of Life hold Tennure under which I hold Tenure under which I hold the Boatparsh Talook.

On this condition, Gentlemen, I am ready not only to give up the land required for Camp, but to waive my claim on the Board of Trade, and to pay rent for the remaining Puttah Land according to the Jumma.

For your further information, I beg leave to enclose a State of Indigo land, and also of those hitherto belonging to the Puttah Manufactory, distinguishing the Quarter Masters intended assumption.

16. Ultimately, however, Princep was bought out, as appears from the following extract from the proceedings of the Committee of Revenue dated April 21, 1784 (Ext. 5p).

The grant belonging to Mr. Princep and which is required for the use of the Cantonments at Barrackpore must be estimated and paid for in like manner with the property of the other inhabitants.

17. So far as the Brahminical holders were concerned, neither persuasion nor concession proved effective against their reluctance to give up their houses, gardens and lands for military occupation. At the same time, the military authorities were determined in getting immediate possession of the holdings of the Brahminical oppositions. Five letters, exhibited in this case, are illustrative of this state of affairs:

(i) Letters, with enclosures, from the Committee of Revenue to the Governor-General, dated March 15, 1784, and the order thereon (Ext. 5g).

Gentlemen

Enclosed we transmit you the copy of a letter which we have received from the Provincial Commander in Chief, and direct you immediately give the necessary orders for concluding the business at Barrackpore agreeable to his request.

Fort William. We are and etc.

the 15th March, 1784

(signed) Edwd. Wheler. John Stables.

Enclosure

Gentleman?

In consequence of the grant objection made by the proprietors to deliver the Ground which Colonel Muir pointed out as necessary be added to the Cantonments of Barrackpore, I yesterday took the trouble of going to view the different pieces of land, and by ordering the Houses and gardens of Taggut Ram Choudrie and the Major part of the Bramins to remain untouched. I have the pleasure to inform the Board, that they and the other proprietors have consented to give up the remaining parcels of land upon receiving an equivalent, I have therefore now to request that a proper person may be sent to Bar-raokpore to value the lands and Houses that are to be taken possession, in order that the Committee of Revenue may be enabled finally to conclude the Business.

(ii) Letter, with enclosures, from the Committee of Revenue to the Governor-General, dated April 14, 1784 [Ext. 5(h) with Ext. 5(i) and 5(i)].

We transmit you herewith copies of a letter and enclosure which we have received from the provincial Commander-in-Chief:

The absolute necessity of the Ground applied for by this Provincial Commander in Chief appearing from his frequent representations to us, for the purpose of enlarging the Cantonments at Barrackpore as well as for preventing the sale of spirituous Liquors within the limits thereof which we understand is the case and to guard against other ill consequences such as the Commander-in-Chief mentions; and your exertions to acquire the consent of the proprietors for the delivery of the Ground in question having proved ineffectual we direct you positively to induce the inhabitants to remove first paying them a full compensation for the ground.

Enclosures Letters- from Gs. Stibbert, dated April 9, 1784.

I am extremely sorry to be under the necessity of troubling you again on the subject of the Land applied for to be added to the Cantonments at Barrackpore but by the accompanying letter to me from Colonel Machpherson. You will perceive that the proprietors notwithstanding the Declaration which they personally made to me of being satisfied,, have started objections to the surrendering of it at the time when a Gentleman under the authority of the Committee went up to deliver it over. I must therefore, request since it seems impossible to procure the voluntary consent of the owners to give up the ground, that the Board will be pleased to issue a peremptory order for dispossessing them.

The danger of fire to which the Cantonments are exposed by being built on so contracted a space of Ground, renders it absolutely necessary that they should be extended, it is but a few days ago that they escaped this accident as you will see by the accompanying Extract of a letter from Lieutenant Smith quarter master, to Lieutenant Colonel Machpherson giving an account of a fire which destroyed a bazar-contiguous to the officers Bungalow.

Enclosure: Letter from Quarter Master General, dated April 8, 1784.

I have the honour to acquaint you that agreeable to your orders I went up to Barrackpore to receive from the Committee of Revenue the Ground ordered in addition to the Cantonments.

Mr. Touchet went up as I conceived to deliver of the Ground and I accompanied him to point out what was required. He told me that he must go down to Calcutta to make his report to the Committee before-he could finish the business.

A few days after you were pleased to give up to Jaggetram Choudry his Ground upon the Right Mr. Spottswood came up on the part of the Committee avowedly to deliver over the ground, and I went through the Ceremony of shewing the Ground in the same manner I did to Mr. Touchet, leaving what you had given up to the Solicitations of the Chowdry.

The people upon the left seeing the success of those upon the right, naturally concluded that noise and Clamour would have the same good effect in preventing their Ground groom being added to the Cantonments, and went in a body to Mr. Spotswood; upon which he declared that he was to deliver over the Ground for the Cantonments to me on a Suppositor, that the Riots were all willing; but as they were not, he must also make his report to the Committee; however that he had no doubt of being authorised to write me a public letter in two or three days to take possession of the Ground required; this was about fifteen days ago, and I have not heard from him or the Committee since.

The indulgence shown the Choudry, who is a riotous troublesome man, has encouraged those upon the left to be clamorous and if they are heard and indulged, the man whose Ground is next will begin and so on to the last man whose property comes within the prescribed Limits, the delay in the delivery of the Ground, and the attention to their applications have made them so exceedingly insolent to me particularly a Relation of the Choudry named Nandcomar, that is with great difficulty I could refrain from Chastising him upon the spot but having been acting only conformable to your orders in the execution of my duty, I entreat Sir, that this man may be called to an account for his impertinent and insolent behaviour to me:

Mr. Spotts was present when Nundcomar behaved so very ill.

18. On the aforesaid letter there was an order (Ext. 5K) passed to the following

effect:

Order.

Ordered Mr. Spottiswood be furnished with a copy of the above letters and that he be directed to proceed to Barrackpore and endeavour to persuade the inhabitants to quit the Ground and to tender them a full and ample Compensation for their property. Agreed the following letter be written to the Hon^{ble} Board.

Hon^{ble} Sir and Sirs,

We have received the Letter of the 14th instant with the enclosures?

We have already informed your Hon^{ble} Board that our exertions to prevail with the inhabitants at Barrackpore to remove from the ground required for the Cantonments and to accept of a compensation for their property have proved ineffectual and from the temper of the people we are clearly of opinion that unless they are peremptory ordered to be removed for the purpose of accommodating the public no other mode will induce them to it.

In obedience to your orders we have again deputed one of our Assistants endeavour to induce them to quit the Ground and accept of a Compensation.

(iii) Letter Ext. 5(1), dated April 26, 1784, from Spottiswood, an Assistant in the service of the Company showing that military patience had given way in the meantime and possession of land from everybody had been taken by the local military authorities, acting under the Command of the Provincial Commander in Chief:

Agreeable to your orders of the 19th instant, I again proceeded to Barrackpore, to endeavour to persuade the Inhabitants to quit the Ground required for the Cantonments, and to tender them a full Compensation for their property. But on my Arrival there found the Quarter Master General had taken possession of it on the 8th instant, excepting that belonging to the Putta Factory, I then called on him to know under whose authority he acted, when he furnished me with a copy of his orders from the Provincial Commander-in-Chief, which I have the pleasure to enclose.

The Ryotts came in a Body to me to complain. I repeatedly made them offers of a full compensation for their Property, but they Peremptorily refused accepting any whatever.

Calcutta.

I am with respect and Co.

the 26th April, 1784.

Signed/Jas, Spottiswoods; copy

To Lieuttt. Colonel A Machpherson,
Quarter Master General.

Enclosure in letters from:

Mr. Spottiswood.

Sir,

I enclose to you a copy of a letter to me from the Council in their Revenue Department by which you will see that the Committee are directed to remove the Proprietors from the Ground required for the enlargement of the Cantonments at Barrackpore in consequence-whereof you will take immediate possession of it and leave the Committee to settle with the present possessors.

Fort William

I am and c.

16th April, 1784.

(Signed) G. Stibbert.

(iv) Letter Ext. 5(m), dated April 28, 1784, showing approval of the Committee of Revenue of the direct action taken by the local military officers.

We have received your letter of the 26th Instant with the enclosures.

As the Ground at Barrackpore required for the use of the Cantonments has been taken possession of by the Quarter Master General and no inducements are likely to prevail on the inhabitants to relinquish it voluntarily L we must from the evident necessity of the case confirm the steps taken by the Quarter Master General and direct you in consequence to tender the proprietors a full compensation for the property, but at any rate to secure the possession of the Ground to the company for the use of the Cantonments.

(v) To curtain dropped on the unhappy controversy over acquisition of further land by the end of June, 1784, as will appear from the following letter by Spottiswood to the Committee of Revenue [ex. 5(n)] dated June 30, 1784.

On receipt of your order of the 3rd Ultimo with copy of a letter from the Hon"ble Board, I again tendered to the inhabitants of Barrackpore and ca. a full compensation for their property, which had been taken possession of by the Quarter Master General for the use of the Cantonments, but they refused accepting any whatever?

I have now the pleasure to inforrr you that most of the inhabitants of Barrackpore and Chunderpuckariah are now come to Calcutta, and agree to accept of payment for their property and I make no doubt but those of Chanuck will soon follow their Example-

I beg leave to inclose you the following Estimates of the land, houses, trees, and Ca. of each of the above places, viz., No. I Barrackpore Amounting to Rs. 25,903"?12

2. Chanderpuchkariah 647"

3. Chanuck 4,629" 2

Sicca Rupee 31,180

As many of the proprietors remain here in expectation of receiving immediate payment, I have to request you will be pleased to furnish me with the above amount as soon as possible.

19. In the next year (1785) the Cantonment area appears to have been further enlarged by purchase of John Macintyre's Bungalow and surrounding lands, as will appear from Ext. 5(d) Minutes of the Council dated August 1, 1785 which is quoted below:

Minutes of Council 1st August, to be sent to the Public Department. Const. 1st August No. 18.

The Governor General informs the Board that having been lately at Barrackpore he has seen the ground and Bungalow which Captain Macintyre offered to let or sell to the Company in his letter of the 16th April, recorded on the proceedings of the 2nd May but which the Board declined to take. The Governor General is of opinion that an inconvenience would be suffered by their vicinity to the Cantonments and a disadvantage accrue to the Company's interest were the Bungalow etc. to be purchased by an individual and that is purchased by the company the Commander-in-Chief or officer commanding the Brigade or occasionally the members of the Board might be accommodated in the Bungalow and benefit derived to the Cantonment at large by the purchase of the ground on which the Bungalow is built as it lies to the south end of the Cantonments and is upwards of 22 bighas it is therefore proposed that, if Capt. Macintyre will leave the price of the Bungalow and ground to be determined by the arbitration of three inhabitants of Calcutta named by the Board they should be purchased for company's use.

The Board agrees to the Governor General's proposition and resolves that Mr. Joseph Price and Messrs. Thornhill and Macferson be requested to arbitrate on this occasion to decide for which the premises are ordered to be purchased.

20. Up to the year 1785 the history of acquisition land for the purposes of Barrackpore Cantonment evidences an uncompromising endeavour on the part of the authorities to exclude private ownership of land within the Cantonment area.

THE PERIOD BETWEEN 1787?1851

21. There is no material on the record showing further acquisition of land for the Cantonment, during the period. There is however, a record of survey of Mouja

Barrackpore Cantonment, made during the years 1847-48 (Ext. D), which shows that an area of 889.44 statute acres was included within the Mouja Ext. 11 is the certified copy of a Revenue survey map of village Barrackpore Cantonment (Survey made in 1851), which shows that an area of 889 acres 1 rood 31 poles was included in the map. "Whether the survey Record (Ext. D) relates to this map we are not sure. But it may be the survey made in the year 1847-48 ultimately culminated in the preparation of the map of 1851.

THE PERIOD BETWEEN 1859-1907

22. During this period we have four documents showing what the Barrackpore Cantonment was in extent. The first one is Ext. 10, an extract from the Moujaivar Register of Parganas Calcutta, District 24: Parganas. A Mouzawar Register, as is well known is a Register prepared under Sections 14 and 15 of the Land Registration Act, 1876. The purpose of the Register is to show inter alia, the Mouja situated in each local division, and the Register must " contain inter alia, total area of Mouja, if ascertained by survey or their authentic measurement. The document Ext. 10 shows the area of Barrackpore Cantonment as 889 acres 1 rood 31. poles and odds. The Register is of the year 1883.

23. In addition to the Register, Ext. 10, there are three extracts from the "Calcutta Gazette", respectively, marked, Ext. 12, Ext. 12(a) and Ext. 12(b). The first extract contains a statement of the boundaries of the Barrackpore Cantonment as in the year 1880. the second extract gives the boundaries as in the year 1887. The last extract gives the boundaries as in the year 1907.

24. This is all the evidence of the extent, area and boundaries of the Barrackpore Cantonment that we have in this period, excepting that we have the report of a case, J.H. Robinson v. Carey which throws a good of light on the state of affair at Barrackpore.

THE TEAR 1864

25. We have an important piece of evidence of the terms and conditions under which house building and occupation of houses within the Barrackpore Cantonment area were allowed, in or about the year 1864" in the form of a judgment delivered by this Court in the case J.H. Robinson v. Carey (1864) 1 Corylon's Reports 137. The facts of that case were as hereinafter stated.

26. One James Hamilton Robinson was residing with his wife at No. 7 River Bank, Barrackpore, which he had taken unfurnished at a rent of Rs. 150 per month, but without the permission of the Commanding Officer. The house contained a large bungalow and several out houses. There was a cyclone on October 5, 1864 and tents and other quarters, where some of the troops were barracked were uprooted. This necessitated the removal of the troops to a permanently built house and the Cantonment Magistrate chose the house occupied by Robinson. Two days after the cyclone, he gave notice to Robinson to vacate within twenty-four hours. Protests and opposition by Robinson went in vain and on the

following morning the Lahore Light Horse marched into the house of Robinson, forcibly evicted him and occupied the house in its entirety. Two days afterwards Robinson was allowed to remove his furniture, which had been damaged in the meantime. Robinson, thereupon sued Col. Carey, who had given orders to the Lahore Horse to march into Robinson's Bungalow, for trespass and claimed damages. The case came up for hearing before Norman, J., and His Lordship after an elaborate examination of the Rules and Regulations governing house construction and occupation, prevailing at that time, decreed the claim of Plaintiff Robinson for damages, holding at the same time that the land whereon the house was built was Government land and the occupation of the house was subject to restrictions imposed by the Rules and Regulations. A relevant extract from the judgment is quoted below:

From a perusal of the regulations and orders above set forth it appears clear that the Government allowed or encouraged officers to build houses within Cantonments, subject to certain conditions and restrictions.. Throughout the regulations and orders, and particularly by the Resolutions of the Military Board, 29th March 1808 and the Governor General's order 12th September, 1836, the Government recognises, in the most distinct manner, the property in the houses and bungalows so built, as distinct from property in the soil on which they stand.

Originally officers were not allowed to sell the Bungalow to any persons not in the service. But gradually the restrictions were relaxed or removed, and officers were permitted to sell to persons not belonging to the army after obtaining the consent of the Commanding Officer of the station. Persons not belonging to the army acquiring houses in Cantonments take them subject to certain rights reserved to the Government, and to rights given to officers of claiming them, for purchase or hire at the option of the owner. The Government can only resume the land on paying the owner full compensation for the value of the buildings, and under the order of 1836, on giving one month's notice.

Within these limits, and subject to these rights the ownership of houses in Cantonments is absolute. I think that the Military authorities have no right whatever to appropriate, to their own uses, houses the private property of individuals in Cantonments except subject to the conditions prescribed by the military regulations on the faith of which the houses were built or purchased. Therefore, the ground of justification relied on by the Advocate General for the Defendant wholly fails. The principles and rules laid down in the cases relied upon by the Advocate General *Perry v. Fit Z horde* 8. Q.B. 957; *Burling v. Reed* 11 Q.B. 904 and *Davis v. Williams* 16 Q.B. 547 which relate to the rights of commoners to pull down houses unlawfully built upon, and obstructing their enjoyment of the common, have no application to a case where a house has been built with the assent of the Government the owner of the soil, and is occupied on known and defined conditions.

The third issue raised was, whether Mr. Robinson, not having obtained the consent of the Commanding Officer to occupy the house, had any such right of

possession as entitled him to maintain the action. The ease of *Graham v. Peat* 1 East 244 and *Harper v. Gharlesworth* 4 B & C 574 were cited by Mr. Woodroffe on this point. They shew that a person in actual possession, holding under a lease paid by statute, had a possession sufficient to enable him to maintain trespass against a wrong order the peculiarity of the present case is that the Defendant is the person whose consent was necessary to perfect Mr. Robinson's title. But by not having this consent the Defendant did not acquire any title or interest. I think that defective as Mr. Robinson's title was he had a sufficient possession to entitle him to maintain an action against any true owner except a person who would justify under the owner. See *Chanber v. Donaldson* 11 East 65. It may be that his title was imperfect, but if so, the property and right of possession of the house remained in the prior owner and was not, in any sense forfeited to the Crown. The Commanding Officer was a mere stranger and trespasser.

I think the Plaintiff is entitled to a decree. He proved that his furniture was damaged to the extent of rupees 200. He has not claimed any large damages, but I think he is fairly entitled to be indemnified, and I therefore, award him Rupees 500 as damages, with costs on scale No. 2.

27. The aforesaid judgment was affirmed in appeal by Barnes Peacock, C.J. and Morgan J. The appellate judgment is reported in (1886) I India Jurist 88.

PERIOD FROM 1908?1948

28. During this period, two maps, one of the year 1928 [Ext. 11(a)] and the other of the year 1948 [Ext. 11(b)] were prepared, showing the extent of the Barrackpore Cantonment area. Neither of the two maps are printed in the Paper book.

29. There is also the jurisdiction list of Police Stations of Barrackpore Subdivision (Ext. C) prepared during this period which goes to show that an area of 889.00 acres was included within the Barrackpore Cantonment.

HISTORY OF LEGISLATION REGARDING CANTONMENTS

30. Until the year 1864 there was no legislated enactment governing land holdings within Cantonments. A motely collection of General Orders, proceedings of the Governor-General in Council, Resolutions of the Military Board, orders issued by the Commander in Chief or officers lower down in the military hierarchy and Army Regulations were all the rules that applied to the municipal administration of Cantonments. A useful collection of these rules, partly collected from old departmental manuals euphemistically called Codes (e.g., Grace's Code, Carroll's Code Jephon's Code) was reprinted in the "Gazette of India" of November 8, 1898 (Part v. p. 366) as an appendix to the Cantonments (House Accommodation) Bill and we shall refer to them hereafter.

31. On April 1, 1864 was passed Act XXII of 1864 (Act for the Regulation of Civil and Criminal Justice in Military Cantonments) which Act was succeeded by

another similar Act known as the Cantonment Act III of 1880. On October 11, 1889, was passed the Cantonment Act XIII of 1889. In exercise of rule making powers under the said Act the Government framed the Cantonment Code of 1889.

32. Next in Chronology comes the Cantonment (House Accommodation) Act II of 1902.

33. In the year 1910 was enacted the Cantonment Act XV of 1910, which repealed the earlier Cantonment Act of 1889. There was also a body of rules framed under the Act of 1910, known the Cantonment Code of 1912.

34. On April 1, 1923 came to operation the Cantonments (House Accommodation) Act VI of 1923, a consolidating Act and a successor to earlier enactment on the subject.

35 On May 1, 1924, came into operation the Cantonment Act III of 1924, which, with the occasional amendments is the present Cantonment Act.

36. Two sets of rules framed under the Cantonment Act of 1924 known as the Cantonment Land Administration Rules, 1925 and its successor the Cantonment Land Administration Rules of 1937, will have to be referred to for the purposes of this appeal.

37. This in short is the historical background, which we shall have to bear in mind in this appeal.

THE DISPUTED PLOT OF LAND

38. One Robert Swinhoe executed his last will and testament, on October 21, 1837, and bequeathed his real and personal estate" and property unto his wife Caroline Swinhoe. The Defendants contend that the estate of Swinhoe included the disputed property. The will was probated in the Supreme Court of Judicature at Fort William in Bengal and Ext. B is the certified copy of the said probated will.

39. It appears from Ext. I, an unregistered conveyance between James Walch, Administrator General, and W.F. Gillanders and another, dated September 15, 1860, that Mrs. Swinhoe died in the year 1845 leaving a last testament and will. By an order, dated March 14, 1860, made by the Supreme Court, the Administrator-General of Bengal took over administration of the estate of Mrs. Caroline Swinhoe deceased on the failure of the executors appointed by her to do their duties, and according to direction contained in the will put to public auction, amongst others, the disputed property, with the Bungalow thereon, and sold the same without warranty of title for the consideration of a sum of Rs. 4,000 to Robert Belchambers, a trustee appointed by William Ferguson Gillanders. Thereafter, the said Robert Belchambers and William Ferguson Gillanders sold the disputed property, with the Bungalow thereon to one Mutty Lall Ghosh Collay for the consideration of Rs. 5,000 by a registered conveyance, dated September 1, 1864 [Ext. 1(1)]. On June 10, 1885, the said Mutty Lall Ghose Collay sold the disputed property with the Bungalow thereon to one Eldred Melville Smith by a

registered conveyance [Ext. 1(5)]. The said Eldred Melville Smith, in his turn sold the disputed property and the structures thereon to W.C. Bonnerjee Esqr., Barrister-at-Law, by a registered conveyance, dated July 10, 1885 [Ext. 1(2)]. W.C. Bonerjee died in the year 1906, leaving a will, under which he appointed his widow Hemangini Banerjee as the sole executrix. The will was proved before the High Court of England and administration of the properties of the deceased in Bengal was granted to one Baney Madhab Mookerjee, as the constituted attorney of the sole executrix. On the death of the sole executrix, Hemangini Banerjee, the said Baney Madhab Mookerjee took out administration de bonis non (with a copy of the will annexed) of the property and credits of the said W.C. Banerjee deceased, on June 10, 1910, from the Calcutta High Court and on May 9, 1911 obtained an order from the said High Court to sell the disputed property with the structures thereon and thereafter as such administrator sold the said property to Pramatha Nath Kar, a Calcutta Solicitor, for the consideration of Rs. 14,000 by a conveyance, dated October 1912 [Ext. 1(3)].

40. It further appears that during his life time the said Pramatha Nath Kar had leased out the disputed property, with the Bungalow thereon to one Charles Reid Boggat first on October 12, 1923 (Ext. P) and thereafter on March 16, 1926 (Ext. P 1.) for different terms and had also thereafter leased out the same to the Secretary of State for India in Council on July 15, 1925 for a term (Ext. P 2).

41. It also appears that Saraju Bala, widow of Pramatha Nath Kar, became absolutely entitled to the estate of her husband including the disputed property under the last will and testament of husband [Ext. G and G(I)]. On December 23, 1940 she executed a deed of settlement (Ext. B) whereby she appointed Hemendra Kumar Bose and Rabindra Nath Kar, the Defendants, trustees to hold the disputed property in trust for her daughter Swarnalata Bose and her grandsons, named in the said deed of settlement.

42. It may not be out of place to mention here that in the rate bills and receipts of Barrackpore Cantonment from 1912 to 1933 (Ext. M Series) the name of the Assessee appears as W.C. Banerjee, thereafter for a period as P.C. Kar for W.C. Banerjee, and lastly as P.C. Kar.

THE GENESIS OF THE PRESENT DISPUTE

43. On March 14, 1941, Rabindra Chandra Kar, Defendant No. 2 for self and his co-trustee addressed a letter (Ext. 13) to the Military Estates Officer praying for mutation of the name of himself and his co-trustee Hemendra Kumar Bose in the Cantonment records, in place of the last recorded owner Saraju Bala Kar.

44. The letter contained the erroneous idea that Saraju Bala Kar was the last recorded owner, which she was not. The Military Estates Officer found from his records that W.C. Banerjee was that last recorded owner of the Bungalow and, therefore, he asked for particulars as to how P.C. Kar and thereafter Saraju Bala Kar came to possess the same. This will appear from his letter, dated March 24, 1941 [Ext. 13(a)]. By two letters [Ext. 13(b) and 13(c)], respectively dated

March 26, 1941, and June 5, 1941, the Defendant No. 2 submitted particulars of the title claimed and also sent documents in support thereof to the Military Estates Officer.

45. Thereupon, on June 21, 1941 the Military Estates Officer wrote to Sm. Saraju Bala Kar, the following letter [Ext. 13(d)].

From a perusal of the settlement Deed forwarded by Mr. B. C. Kar it is observed that Mr. H." K. Bose and R. C. Kar have been appointed by you as trustees and the above property has been transferred to them¹

2. It is noticed that in the deed of settlement the land of Bungalow on 43 Middle Road, Barrackpore Cantonment, which belong's to the Government of India in Defence Department has also been erroneously shown to be transferred along with the building standing on it. Please note that as the land belongs to the Government of India, the late P. C. Kar and his predecessor in title had only occupancy rights in the land and those rights can be transferred.

3. The Government of India, is, therefore, unable to recognise the said transfer. So that this may now be rectified. Will you kindly sign the attached Declaration Deed on a Rupee one stamped paper and have it registered and sent to this office.

46. The declaration form [Ext. 13(e)] enclosed was to the following effect:

I, Saraju Bala Kar (widow of late P.C. Kar) do hereby declare that in the deed of settlement, dated 23rd December, 1940, registered in Book No. 1 Vol. No. 5, pages 175 to 186, Being No. 61 for the year 1941 on, page 5 or wherever they odour in the deed regarding Bungalow No. 43 Middle Road, Barrackpore Cantonment, the words "together with the piece or parcel of land" have erroneously been shown therein. I by execution of this deed hereby declare and admit that the site appurtenant to the Bungalow No. 43, Middle Road, Barrackpore Cantonment, belongs to the Government of India and is held by me subject to the condition, limitations and disabilities laid down in the Governor General order No. 179, dated 12th September 1836.

47. After exchange of several more letters and in interview with the then Military Estates Officer Mr. Marshall; the Defendant No. 2 expressed his unwillingness to execute any declaration at all. This is evidenced in his letter, dated August 31, 1942 [Ext. 13(1)] corresponding to its copy Ext. E(2) material portion from which is quoted below:

I feel I might to give a short resume of what transpired at the interview that I had with Major Marshall on the subject. I had all along maintained that by reason of the Government having effected series of necessary mutation in the name of the predecessors in interest of the settler in this case on more than one occasion

and ever since the first conveyance produced before him, it was not now open to Government to challenge such mutation on the documents which include not only the building but the land as well and my point had been that the Government is now estopped having had knowledge of such series of transfer from questioning the validity of the present settlement. I had in support produced all the conveyances copies of which had all been kept with in the office. Major Marshall had produced the necessary register from your record to show that such mutation was effected on those conveyances. He had also indicated to me that he will send the copy of the documents along with my contention to the Government Solicitor for opinion as he indicated that he was unable to decide the points raised by me. In these circumstances, I would request you to invite the opinion of the Government Solicitor on the points before any action is taken.

I had also indicated that if I was interested in the property personally and not as a trustee, I would have readily acquiesced in your request which, being in a fiduciary capacity I feel it difficult to accede to unless I was feued with an opinion on the facts placed, that my contentions were not correct.

I may inform you that Mrs. S. B. Kar, the Settlor, died on the 12th of July last and as such the question of any declaration by her cannot arise now.

48. In reply, the Military Estates Officer took up the attitude that he should recommend to the Government of India to file a suit for establishing the Government's right in the land. This will appear from letter [Ext. 13(m)] corresponding to its copy Ext. E(3), dated September 1, 1942, a material portion from which is quoted below:

Your contention that " by reason of the Government having effected series of necessary mutation in the name of the predecessors in interest of the Settlor in this case on more than one occasion and ever since the first conveyance produced by him, it was not now open to. Government to challenge such mutation on the documents which include not only the building but the land as well" is not correct. As you are aware that it has been ruled by various High Courts that the mere fact of recording the mutations does not admit absolute proprietary right of the ""occupancy holder" in the property, but it is only for purpose of taxation. It has also been held that in such cases Government's proprietary rights are not affected. In view of the position explained above, it is necessary to consult the Government Solicitor in this case. Will you kindly reconsider the matter and let me know as early as possible your final decision regarding execution of the deed forwarded under this office No. B/15/354, dated the 21 June, 1941.

If no reply is received from you by the 10th October, 1942 it will be assumed that the legal heirs of the deceased are not willing to execute the deed and I regret I will be obliged to recommend to the Government of India to file a suit for establishing Government's right in the land at risk and cost.

49. The attitude was reported by the Military Estates Officer, in his letter [Ext.

13(p)] dated November 17, 1942, and drew the following- reply, dated November 19, 1942 [Ext. 13(q)] from the Defendant No. 2:

We have since received the opinion of Mr. S.N. Banerjee (Sr.), Barrister-at-law, and we have been advised that as trustees it would be improper for us to make any such declaration as is required by you, a? the title made out does not warrant the same. We, therefore, regret we cannot sign any such declaration.

50. It was in these circumstances that the suit, out of which this appeal arises was filed by the then Governor in Council on February 19, 1945.

PLEADINGS

51. According to the case made by the Plaintiff all lands within the limits of Barrackpore (near the Barrackpore Cantonment) including the site of Bungalow No. 43, Middle Road, are owned by the Government and since the establishment of the Cantonment there has been no private ownership of land within its area. After acquisition of Bungalow No. 43, the late W. C. Bonerjee took steps, in the year 1902, to have his name mutated in the Register of Government lands kept by the Cantonment Magistrate, in accordance with Section 205 of the Cantonment Code, 1899.

52. On being informed that by a series of devolution of interest the Bungalow had passed into the hands of the Defendants (namely Hemendra Kumar Bose and Rabindra Chandra Kar, the trustees, appointed by Saraju Bala Kar) and on going through the documents of title furnished by the Defendants, in support of their claim for mutation, the Plaintiff came to know that some? of the owners of the bungalow had purported to transfer the land, on which the bungalow stood. Since the land was Government land and could not be transferred, the Military Estates Officer wrote to the Defendants calling upon them to have a declaration signed and registered by Saraju Bala Kar, whose estate the Defendants held as trustees, admitting thereby that the land was Government land and held by her "subject to the condition, "limitations and disabilities laid down in the Governor-General "order So. 179, dated 12th September 1836. The said Sarajii Bala Kar did not in her life time sign the declaration and the Defendants also, as her trustees, did refuse to sign the said declaration. Since the conduct of the Defendants tended to raise a dispute regarding the title of the Plaintiff to the land in suit, the Plaintiff was forced to bring the suit, out of which this appeal arises for declaration of title. The prayer made by the Plaintiff was:

A declaration that the lands in suit belong exclusively to the Plaintiff and that the Defendants have no right thereto, except the right to occupy the land until resend at the will of the Plaintiff.

53. The Defendants filed a joint written statement and denied that the land in suit belonged to the Government or that the Plaintiff was the owner of the soil. They further denied that the said land was leased out for erection of buildings, subject to restrictions as alleged or at all. They did not admit that all lands within

the limits of the Cantonment area was exclusively owned by the Government or that within such limits there was no land in private ownership. The affirmative case made by the Defendants was that the disputed land was private land of which the ownership and possession had been and were with the Defendants' predecessors in title and with the Defendants for more than a century, to the knowledge of the Plaintiff and its officers. It was further alleged that by continuous possession in full assertion of ownership the Defendants acquired title to the disputed properties by adverse possession. It was also contended that from before the year 1836, the disputed land had been transferred from one person to another in fee simple, and such transfers were registered by the Government. As such, the Plaintiff was not entitled to dispute the title of the Defendants and was estopped from doing so. The Defendants took the stand that the Plaintiff had no right to call upon Saraju Bala to sign the declaration, as demanded, and the Defendants as her trustees could not sign the same.

THE DISPUTE OVER PRODUCTION OF DOCUMENTS

54. It is necessary for us at this stage to refer to certain applications and orders relating to discovery and production of documents.

55. On April 30, 1945, the Defendants filed an application for a direction on the Plaintiff to make discovery on oath of documents in its possession and power relating to any matter in question in the suit. That application was allowed and the Plaintiff was given time till November 12, 1945 to file documents. The Plaintiff, however, could not file the documents within time allowed. On March 23, 1946 the Plaintiff filed in court certain letters of the Revenue Department, certain proceedings of the Governor-General in Council and an extract from Lord Curzon's book on "British Government in India". Although the "firisti" made reference to certain Registers and Revenue Survey Maps, no such documents were filed in court. Thereupon, the Defendants filed another application, on August 1, 1947, for further and better affidavit as to documents and for discovery. By its order, dated September 13, 1947, the court below allowed the application. On November 27, 1947, Harish Chandra Khanna, Head Clerk of the Military Estates Officer, Bengal Circle, Barrackpore, filed an affidavit as to documents, therein stating that all documents in possession or power of the Plaintiff and to the knowledge of the Department and himself relating to the matters in question in the suit, had been filed and the Plaintiff did not have any other document in its possession. The Defendants tried to get certified copy of certain Registers from the Cantonment records on payment of fees, but failed [Ext. E(4), Q(1), E(5), E(1)]. Thereafter the attention of the Government Pleader, appearing for the Plaintiff being drawn to the fact that the Registers and Maps referred to in the "firisti" had not been filed in court, the said Government Pleader by his letter (Ext. E), dated July 22, 1948, addressed to the Advocate for the Defendants, admitted that the "Extract from the Register" had not been filed through oversight and supplied him with a certified copy of a relevant entry in the Register. The Government Pleader also assured, in his said letter, that there

would be a second affidavit filed remedying the defects as to the affidavit of documents. This was, however, not done till November 28, 1948, when Khanna, the Head Clerk in the Military Estates Office, who had filed the first affidavit as to documents filed a second affidavit therewith annexing copy of an extract from "Register of Government Land "held by lessees outside Bazars (Section 266, Cantonment Code, "1899)," which document was later on marked as Ext.. 1(a) and a certified copy of which had been supplied by the Government Pleader to the Defendants" Advocate also with his letter (Ext. F) above referred to. It was further stated in the said affidavit that through inadvertence extracts from the General Land Register maintained under r. 3 of the Cantonment Administration Rule, 1937, had not been disclosed earlier and those documents also [which were later on marked Ext. 9 to 9(g)] were filed along with the said affidavit. By an order dated November 28, 1949. the Court below directed the said documents to be kept on the record, so that their acceptance or otherwise might be considered at the time of hearing.

56. By their applications, dated January 16, 1950, the Defendants alleged that the Plaintiffs were suppressing from the court two classes of Registers, namely, the Register of Private lands and Register of Transfers to be kept under the Regulation of 1810, and also the Cantonment Code of 1899, and also the General Land Register of Barrackpore Cantonment to be kept under Cantonment Land Administration Rules 1925 and 1937, and the Defendants prayed that the Plaintiffs should be directed either to produce the said Registers before the court or alternatively file an affidavit by a responsible officer to prove the non existence of such Registers. On the said affidavit the court below passed the following order:

Let the Military Estates Officer or some responsible Officer above the rank of Head Clerk, say, Secretary or Assistant Secretary swear an affidavit to the effect if there be the register.

57. Thereupon the Military Estates Officer affirmed an affidavit on March 2, 1950 to the following effect:

3. The relevant extract of the General Land Register of the Barrackpore Cantonment kept under Rule 3 of the Cantonment Land Administration Rules, 1925 and 1937, and maintained by Military Estates Officer was filed on 28th November, 1949, although a copy thereof was made over to the Defendants" lawyer as early as 22nd July, 1948.

4. The Registers prescribed under Sections 268 and 269 of the Cantonment Code, 1899, were maintained by the Cantonment Magistrate.

5. The Defendants have by their petition dated 16th January, 1950, demanded from the Plaintiff the Registers mentioned in foregoing" paragraph. I and my officers after due and diligent search have obtained them from the Cantonment Board Office and these are filed today by a separate Firisti,

6. The Registers maintained under Sections 268 and 269 of the Cantonment Code of 1899 were not asked for from the Plaintiff previous to 16th January, 1950.

7. As the Registers mentioned in paragraph 5 were maintained and kept by the Cantonment Magistrate (now the Cantonment Board) and were not in the M.E.O. my Head Clerk Mr. Khanna, who swore to affidavits of documents earlier was not aware of it and he did not suppress anything as alleged.

58. Along with the said affidavit, one bound volume of Register, maintained u/s 268 of the Cantonment Code, 1899, one bound volume of Register maintained u/s 269 of the said Code a certified" copy of the Revenue Survey Map of 1851 of the Barrackpore Cantonment were filed.

59. The Defendants found fault even with the last affidavit filed on behalf of the Plaintiff and filed an application on March 21, 1950, praying for dismissal of the Plaintiff's suit under the provisions of Order XI, Rule 21 of the Code of Civil Procedure, inter alia on the following grounds:

13. That along with the said affidavit certain Register and papers were filed by the Plaintiff in court alleged to be Registers under Sections 268 and 269 of the Cantonment Code, 1899 which your Petitioners have inspected in court with your honour's due permission. As a result of such inspection it has transpired that the Register which is alleged to be the Register of Transfer of Immovable Property u/s 269/27A, the Cantonment Code, 1899, and purports to be commencing from the (sic) July, 1906 and ending with 1912 does not disclose entries in respect of transactions relating to the properties in Barrackpore Cantonment subsequent to 1912 and which from the point of view of the Defendants are material for the purpose of determination of the issue in the suit between the parties.

14. The said Register is mutilated inasmuch as at the end of the same, some pages have been stitched which appears from a perusal of them to be torn off pages from the earlier register which recorded transactions up to the year 1906.

15. In-the said Register which has been disclosed the property in suit has been shown to be recorded in the name of W.C. Bonerjee as the transferor in the column maintained, but do not show the earlier transactions on which your Petitioner rely as such earlier entries will go conclusively to prove that the Plaintiff submitted and registered successive transfers of the said property down to said W.C. Bonerjee since the year 1860 and each of those documents, the basis of the said transfer, and which have been disclosed by your Petitioner, the transfer includes not only structures but the land as well and the Plaintiff allowed and acquiesced in each and every such transactions by having them recorded.

16. Your Petitioners further state that at the time the Deed of trust in favour of the applicants were produced before the Military Estates Officer for mutation by the applicant, the applicant Rabindra Chandra Kar have had inspection of the said Register up to 1906, a few pages from which has been attached to the Register

now produced and disclosed. In respect of the entries in the said Register relating to 43, Middle Road, Barrackpore then known as Bungalow No. 43, Barrackpore, your Petitioner found series of entries relating to the said premises on the basis of successive transfer deed which were noted against the said property.

17. Your Petitioners submit that those portion of the said Register up to 1906 have been deliberately held back by the Plaintiff as the entries therein would adversely affect act (sic) as positive proofs against the contention of the Plaintiff in this suit.

18. Your Petitioners have therefore, reasons to believe those material pages were torn off with a definite purpose to suppress the relevant informations from the court and thus a public document was mutilated to prevent its production as evidence in court which your Petitioners humbly submit is a criminal offence.

60. The Plaintiff filed a petition of objection to the application made by the Defendants and characterised the same as mala fide, vexatious and misconceived. The court below disposed of the aforesaid application on May 18, 1950, in the following manner:

The M.E.O. was bound to keep some register under statute. As a matter of fact, some of these were produced in the suit of 18⁴ but now they are not traced and could not be found. The learned lawyer insist, that the Plaintiff must state when it was lost in the office, whether it was lost or destroyed, if lost, how and when lost, if destroyed when and under whose orders. The M. E.O. is unable to answer any of these questions because there is no record of these in the office. It may be argued that the management of office is lamentable and the Defendant is perfectly entitled to the argument that he might have presumptions in his favour, but that is no ground saying that the affidavit is not in form or that the Plaintiff is deliberately suppressing any register. Under the Cantonment Code, the Cantonment Board keeps the registers and that the Plaintiff has got them and filed it in court. I find that there is no wilful suppression by the Plaintiff and that the affidavit is in order. Defendant is perfectly entitled to all presumptions of law, for the non-productions of the register which the Plaintiff is bound to keep but which could not be traced from office. The case is a very old one and it now should be allowed to proceed. The petition of the Defendant is rejected.

61. It was with this state of documentary evidence, filed on behalf of the Plaintiff, that the parties went to trial.

ORDER No. 94, DATED MAY 14, 1953

We need at this stage, take note of one order passed, by the trial court, during the hearing of the suit, which records a concession made by Plaintiff State:

(Order No. 94 dated 14th May, 1953). "It is contended on behalf of the Plaintiff,

that the entire lands within the Barrackpore Cantonment area are lands acquired by the Government in the long past but at the same time it is conceded by the learned Advocate for the Plaintiff that it is not possible for the Government (Plaintiff) to prove acquisition of the disputed land or for the matter of that any particular parcel of land within the said area, in any particular mode, or on any particular date. This fact is noted at the instance of the learned Advocate for the Defendants.

JUDGMENT OF THE TRIAL COURT

62. (a) The learned Subordinate Judge started with the theory that the Defendants were entitled to an adverse presumption against Plaintiff u/s 114(g) of the Evidence Act, for non-production of certain documents called for by the defence and not produced by the Plaintiff. The documents which the learned Subordinate Judge found to have been withheld were (i) the Register of Private Land and Register of Transfer to be kept under the Regulation of 1810, and also the Cantonment Code of 1899 and (ii) the General Land Register of the Barrackpore Cantonment to be kept under the Cantonment Land Administration Rule 1925 and 1927.

(b) The learned Subordinate Judge further found that the Mouzawari Register of Barrackpore (Ext. 10). showing that an area of 889.00 acres of land as the "khas Sarkar" of the Government may be admissible in evidence u/s 5 of the Evidence Act to prove the possession of the Government but such an entry in the Register was not sufficient to establish the title of the Government to the property.

(c) In view of the concession made by the Plaintiff Union (recorded in Order No. 94, dated May 14, 1953), the learned subordinate Judge proceeded on the basis that there was no proof of acquisition of the disputed land by the Government.

(d) The onus to establish that the disputed land exclusively belonged to the Government, according to the learned Subordinate Judge, did lie on the Plaintiff. The learned Subordinate Judge, however, characterised the argument, advanced on behalf of the Plaintiff Union, in this respect as astute and we quote below his observation:

The learned Advocate for the Plaintiff conceded that the onus initially lies on the Government to prove its claim but it was astutely argued by him that this initial onus is discharged by a presumption of law and also by showing that the disputed lands were entered in the register of Government lands, as shown by Exts. 1 and 1(a), maintained u/s 266 of the Cantonment Code of 1889, and that they were not included in the register of private lands maintained u/s 268 of the said Code (Ext. 2), although a cryptic entry, as already pointed out above, was made with regard to them in the Register of Transfers of Immovable Property maintained u/s 269 of the said Code, as per Ext. 3(a). It was further contended on behalf of the Plaintiff that the initial, burden which lay upon the Plaintiff Government has also been discharged by admission to the effect, that the lands in, question were entered and registered in a "Cantonment Register" in some of

the documents filed by the Defendants in order to show the devolutions and transfers with regard to the disputed lands by their predecessors-in-interest.

(e) The learned Subordinate Judge also found that neither party, had shown at what point of time the site on the ground land first came into occupation of the Defendants' predecessor in title. He also found that there was no evidence whatsoever, on the side of the Plaintiff, to show that the disputed, land or for the matter of that, the Bungalow No. 43 was ever in occupation of any Military Officer, or that it was transferred by a Military Officer to a Civilian or that the occupation began under any lease or license or grant of any sort from the Government. On the other hand, the learned Subordinate Judge found that the Defendants had proved their possession of the disputed land together with the bungalow No. 43 for about 100 years, since. 1837. The learned Subordinate Judge also found that) there was nothing to show that any permission had ever been granted by the Military Authorities or by the Government for the construction of Bungalow No. 43 or that any condition or restriction was ever imposed on the occupiers of the suit land at any point of time regarding their right to transfer them.

(f) According to the learned Subordinate Judge the conveyance dated September 1, 1864 (Ext. 1/1), by Robert Belchambers and W.E. Gillanders to Mutty Lal Ghose Colley was registered at Barrackpore on September 3, 1864 by a Military Officer, Major N.R. Sneydy, who was designated therein as the Registrar of Deeds. He was the Cantonment Magistrate also. That document purported to transfer an absolute title in the- suit land from the vendors to the vendee, and it was registered by a Military Officer who had full knowledge about the contents thereof. The next conveyance, dated June 10, 1885 (Ext. 1/5), by the said Mutty Lal Ghose Colley to E. M. Smith, also purported to transfer absolute title in the suit land from the vendor to the vendee, and the learned Subordinate Judge observed, it was registered without any objection from the Government or the Military authorities.

(g) The learned Subordinate Judge thereafter referred to several documents touching on the devolution of title to succeeding transferees, for example, est. E/6, Ext. 1/2, Ext. J, Ext. K, Ext. 1/1, Ext. 1/3, and also to certain rent counterfoils books and Municipal Tax bills and lastly to a registered lease between P.C. Kar and the Secretary of State for India in Council, dated July 15, 1935 (Ext. P/2), under which the disputed Land and Bungalow No. 43 were leased to the Government for one year from July 15, 1935 and observed that the tenancy created in favour of the Government was continuing and the Government was holding over even after the expiry of the period fixed by the lease and the Government was estopped u/s 116 of the Evidence Act from denying or disputing the title of the Defendants landlords so long as the lease was continuing. Referring further to the lease (Ext. P/2) the learned Subordinate Judge found that under Clause 9 of the same, in case of compulsory acquisition of the demised land for a public purpose, the terms granted would cease and

determine at the option of the landlord and the landlord would become entitled to the whole of the compensation money. The aforesaid provision, according to the learned Subordinate Judge could not but be an absolute disclaimer on the part of the Government of ownership or title in the soil of the disputed land.

(h) Referring to the case of *Sohan Singh v. Governor-General in Council* AIR [1947] P.C. 178 relied upon by the Plaintiff Union which was also a case where there was a dispute between the Government and private individual as to whom compensation money for acquisition of property under Land Acquisition Act would be payable the learned Subordinate Judge held that the case was distinguishable on the following line of reasoning:

It was further held in that case that where it is shown that the Government did actually acquire certain land for the Cantonment in 1849-50 and it is established that the site in dispute is in the centre of the cantonment area, that no other land in the centre of area is privately owned, that in 1849-50 the site was already built upon or was about to be built upon and was included on the plan of the land which Government was proposing to acquire for the cantonment, the proper conclusion was that the site was acquired by Government. Thus, it will be clear that in the said Rawalpindi Cantonment case all the conditions required for the purpose of establishing acquisition of the land by the Government were fulfilled. But it is not so in the present case. I have already referred to the concession made by the learned Advocate for the Plaintiff that it is not possible to prove the acquisition of the disputed land by the Government in any particular mode or at any particular time in the long past when the Barrackpore Cantonment was first established in 1775 A.D. or subsequent thereto. Moreover, the Revenue Survey Map of 1851 (Ext. 11) as well as the Maps [Exts. 11(a) and 11(b)] filed by the Plaintiff show that the suit lands are not at all in the centre of the Barrackpore Cantonment but they are rather towards its boundary though not exactly on the border.

(i) From the documents [Ext. 1 series], Ext. 5(5) a letter by the Cantonment Officer to P.C. Kar for refund of tax, Ext. G the probated will (if P.C. Kar bequeathing his estate to his wife Sarajubala, Ext. II, deed of settlement by Saraju Bala making the Defendants trustees in respect of the trust thereunder and conveying the disputed properties in fee simple to the trustees, the learned Subordinate Judge came to the conclusion that the Defendants and their predecessors in title had been dealing with the disputed land in assertion of a hostile title to the knowledge of the Government since 1800 to 1940, covering a period of about 80 years, and therefore acquired an absolute and indefeasible right in the disputed land by virtue of adverse possession against the Government within the meaning of Article 149 of the Indian Limitation Act.

(j) The learned Subordinate Judge was of the opinion that the entries in the Register of Government Lands (Ext. 1 and 1a) were not sufficient to prove the Government's alleged title with regard to the disputed land. The line of reasoning adopted by him is quoted below:

According to his version (D.W. 1) Major Marshall sent a office Record clerk who produced the Register of Transfers in presence of the D.W. 1. The said officer verified the successive transfers with regard to the suit lands and the Bungalow in question since 1860 onwards on the basis of conveyances which had been produced before him. The D.W. 1 stated on oath that he saw the said Register of, transfers and found the details of all successive transfers in respect of the disputed property were in it with effect from 1860 or thereabout. According to his further evidence a part of the said identical Register has been produced by the Plaintiff in this suit and marked Ext. 3, but this is a composition of a part of the old Register and a later Register bound together for the purpose of concealing the real state of things with regard to the property in suit and for the purpose of concealing the record of successive transfers relating to it. Then he said that the page marked as Ext. A/1 and the pages on the right-hand side below that are parts of the older Register of Transfers, while the bulk of the Ext. 3 and the pages up to the page marked as Ext. A are parts of a later Register combined together. In cross-examination he (D.W. 1) had to confess that he has no papers to show that P.C. Kar ever applied for mutation of his name or that he got his name mutated. He conceded that he could not imagine anybody who might be interested in tampering with the records of the Military office relating to the property in suit and that the composition of the Registers spoken of by him might be due: to accident, inadvertence or anything else. I have already pointed out above the defects in the Register of Transfers which is Ext. 3, as well as the particular entry in it which is Ext. 3(a) besides the discrepancies appearing at the pages marked Exts. A and A (1). The name of W.C. Bonerjee appears in it (vide Ext. 3a) as the transferor whereas the correct position would have been to record his name as a transferee from Mutty Lal Ghose Colley some details of which were entered in the Register of Government Land outside Bazars kept u/s 266. Cantonment Code 1899 (Ext. 1a, certified copy of which is Ex. 8). The registered deed dated 10th Juno, 1885, by which W.C. Banerjee acquired his title to the suit lands through his Benamdar E.M. Smith finds mention in this Register. A special note was made in column (g) of it that the date of permission to occupy the site was not obtainable. The date of registry of the site as per column (c) in it is 27th February, 1902 and thus it is established by this Register itself that the Government had no record to show that the occupation of the suit lands by W.C. Bonnerjee or any of his predecessor in interest began on the basis of any permission, lease or license from the Government.

(k) The learned Subordinate Judge then gave "a short resume "of the Regulations and Laws relating 1o lands, in Military "Cantonments" beginning from the Minutes of the Council, dated June 16, 1780, and ending with the Cantonment Land Administration Rules 1937 and observed as follows:

From a review of the aforesaid legislations and facts brought to light, I am convinced that there is ample scope for existence of private lands absolutely owned and possessed by private individuals within the limits of the Barrackpore Cantonment. It was incumbent on the Plaintiff to prove that the suit land vested

in Government by means of acquisition at; any particular point of time. but the Plaintiff Government has utterly failed to prove it. (1) The learned Subordinate Judge also came to the conclusion that there was no substance in the Plaintiffs contention that the Defendants had practically admitted that W.C. Bonerjee's name stood registered in the Register of Government Land maintained u/s 266 of the Cantonment Code of 1899 and, therefore, the cases relied upon by the Plaintiff, namely, making the Defendants trustees in respect of the trust there possession against the Government within the meaning of Article the cases of (1906) L.R. 34 I.A. 27 (Privy Council); Mahadeo and Others Vs. Baleshwar Prasad and Others, on the evidentiary value of admission, were of irrelevant consideration. Then again the learned Subordinate Judge held that the cases of Bank of upper India v. Secretary of State ILR All. 222 and Onkarmal v. Secretary of State 56 LC.813 relied upon by the Plaintiff, were distinguish able on facts. He also held that the cases of The Secretary Cantonment Committee, Banackpur v. Satin h Chandra Sen 53 C.LJand Sardar Sujan Singh v. Secretary of State A.LR. [1936] Pes 217 did not go to lay down any general proposition that there was a presumption in favour of the Government that all lands within the limits- off the "Cantonment belonged to the Government". The learned Subordinate Judge was of the opinion that 1he promulgation of G.O.G.G. No. 179 of 1836 did not negative the existence of private ownership of land within the limits of the Cantonment.

(m) On the threefold ground that the Plaintiff had failed to prove any vestige of title to the suit land, alternatively, being a lessee under the Defendant in respect of the disputed lands, the Plaintiff was estopped from questioning the proprietary right of the Defendant or alternatively the Plaintiff's title if any, was barred by adverse possession by the Defendants, the learned Subordinate Judge came to the conclusion that the Plaintiff was entitled to no relief and dismissed the suit with costs.

63. The propriety of the aforesaid decision is being disputed before us at the instance of the Plaintiff Union.

Decision.

64. The Union of India as Plaintiff, sought for a declaration that the disputed land belonged exclusively to itself and that the Defendants had no right thereto save and except the right to occupy the land until resumed at the will of the Plaintiff. It is beyond dispute that as Plaintiff, the Union of India must succeed on its own title and must not be assisted by any weakness, real or apparent," in the case made by the Defendants. The first question for our consideration, therefore, is how far, if at all, the Plaintiff has succeeded in discharging the onus of proving its title.

65. In the plaint the Plaintiff claimed to be the owner of the disputed land but did not plead as to how it came to own the land. The Plaintiff led evidence (Ext. 5 series) to show that the entirety of land, within the area known as the

Barrackpore Cantonment had been acquired by the Government in the, distant past, on payment of price for the land. Nevertheless, the Plaintiff was forced to concede that it was not possible for the Plaintiff to prove acquisition of the disputed land or for the matter of that any particular parcel of land within the Cantonment Area, in any particular mode or on any particular date. The above concession, made on behalf of the Plaintiff, is recorded in Order No. 94 dated May 14, 1953. The position, therefore, is that there is no direct evidence of Plaintiff's title to the disputed land by right of acquisition.

66. The question is whether there is any indirect evidence or presumptive proof of the title, claimed by the Plaintiff" to the disputed land.

67. The learned Advocate-General contended that all lands within the Cantonment Area, excepting such as were expressly recognised to be private land, were Government owned land or must be deemed or presumed to be as such. He argued further that there were certain Survey Maps. Survey Reports and Registers which would go to show that the disputed land was all along treated as Government owned land. Lastly he contended that there were internal indication, in what the Defendants claimed to be their documents of title, that the Defendants or their predecessors had no fee simple title in the disputed land.

68. The arguments advanced by the learned Advocate-General deserve careful and detailed consideration.

69. The learned Advocate-General analysed the provisions of the General Orders, Proceedings of the Governor-General in Council, Resolutions of the Military Board, Orders issued by the Commander-in-Chief or other Army Officers, the Army Regulations the Cantonment Acts and Codes, and also other Acts relating to Cantonments and contended that the provisions therein contained were inconsistent with the existence of any privately owned land within the Barrackpore Cantonment. He drew our attention to:

(a) General Order, dated April 27, 1789, which prohibited erection of private bungalows or buildings within the limits of Cantonment, except with the permission of the Commander-in-Chief. Such buildings when erected, with the permission as aforesaid, were not to be considered as private buildings nor suffered to be removed nor transferable. The buildings were however subject to removal for Military requirement.

(b) Extract from Proceedings of the Governor-General in Council, dated June 25, 1801, which prohibited grant of ground within the limits of Cantonment for the purpose of making garden. Possession of existing gardens, within the Cantonment Area, was not, however, to be interfered with but such gardens were made resumable for public purposes. The Commanding Officer of the station was invested with power to remove the garden with as little inconvenience to their proprietors as circumstances would admit.

(c) Extract from the Proceedings of the Governor-General in Council, dated

August 6, 1801, which contained directions as to which land within the Cantonment shall not be enclosed and which shall be left open. The order contained further direction that for the due performance of public duties, Military Officers might be required to build their bungalows within the limits of the Cantonments but such bungalows must be constructed in to uniform manner, must be of equal dimensions and must also be equidistant from one another. The order contained the further provisions that all public grounds held or possessed by indulgence must be appropriated for bungalows or for other public purposes whenever such grounds shall be so wanted.

(d) Extract from the Proceeding of the Vice-President in Council, dated February 18, 1802, which provided that whenever any bungalow within the Barrackpore station shall be for sale the same must be offered in the first instance to such Military Officers who may not have already been provided with bungalows and the privilege of purchasing bungalows at Barrackpore must be confined to officers of Native Corps.

(e) General Order of the Commander-in-Chief, dated April 13, 1806, which provided for the de-limitation and the marking out of the boundaries of Cantonments. The order contained a recommendation that the officers must spend as little as possible when constructing bungalows within Cantonment Area.

(f) Extract from Deputy Adjutant General's letter, dated April 24, 1806, which made known that His Lordship (possibly meaning the Governor-General) will not sanction the occupation as dwelling house of any mosque, temple or other building of a religious description without the most positive assurance of all concerned that such occupation will not be objectionable or offensive to the religious habits and feelings of the persons who may be affected thereby.

(g) General Order by Governor-General in Council, dated September 28, 1807 which set up a committee of Arbitration to settle fair valuation of buildings to be sold by one Military Officer to his successor in office. The order further provided that houses within Cantonment must not be sold to or occupied by Civilians and if persons who were not officers purchased any house they must remove the building materials, because the ground within the limits of Cantonment must be kept and appropriated exclusively to the use of troops.

(h) Resolution of the Military Board, dated September 17, 1811, providing for the construction of boundary pillars to delimit the boundaries of Cantonments.

(i) General Order by the Commander-in-Chief, dated October 7, 1811, providing for preservation of plans of Cantonments then under preparation.

(j) General Order by the Governor-General in Council, dated June 5, 1813, which amended the Arbitration Committee Rules of September 28, 1807 and provided for an appeal to the Government against the valuation made by the Committee.

(k) General Order by the Governor-General in Council No. 245, dated August- 19, 1824, forbidding encroachment of Cantonment Ground, intended for the exercise

of troops, by Military Officers who had started cultivation thereon and making ! them personally, responsible for such acts.

(l) General Order by Governor-General in Council No. 105, dated April 5, 182-5, which provided, that all orders then in force prohibiting the levy of taxes or impositions or the letting of Cantonment lands would have operation in all situations, where-ever British Troops might be stationed, whether in camps or Cantonments within or beyond the British frontier.

(m) Military Board Circular, dated June 11, 1833, providing for making over of surplus Cantonment land to the local civil revenue authorities.

(n) General Order by the Commander-in-Chief, dated September 16, 1833, providing for maintenance of a Register in, the office of the principal staff officer at Dum Dum, Barrackpore, Dinapore, Benaras, Cawnpore, Agra. Meerut and Kurnaul of the sale or transfer of any houses, bungalows, or gardens within the limits of these Cantonments. The order directed the proprietors of houses, etc., to send to the different staff officers a memorandum stating when they purchased or became proprietors, of such houses, etc., from whom they obtained them and the dimension of their different compounds. The order further provided that in future whenever any house or piece of ground within the Cantonments above-mentioned would be sold or transferred, the person making the transfer must report the same to the officer concerned for entry in the Register.

(o) General Order of the Governor-General in Council No. 59, dated March 5, 1835, which provided that all questions respecting the resumption and appropriation of Cantonment lands shall be referred through the Department of the Quarter Master General of the Army for information of the Commander-in-Chief for the final decision of Government. The order further directed that no deviation for the limit about to be fixed to Cantonments by the surveys then in progress, nor alteration in ?the extent of enclosures surrounding bungalows, bazars, lines and roads within them shall be permitted without the previous sanction of the Government.

(p) Letter from the Quarter Master General to officers Commanding Division, doted March 24, 1835, calling attention to the General Order No. 59, dated March 5, 1835, and reminding the officers that occupation of land within the boundary pillars for purposes unconnected with troops and public establishments in recent times, and brought to the notice to the Government was at variance with the orders issued against such occupation and further reminding I hem that there must be no alteration of marks or boundaries of sites or bazars and also reminding them that conversion of Cantonment land for cultivation will entail personal liabilities for the officers.

(q) General Order by the Governor-General in Council No. 179, dated September 12, 1836, by which the various orders relating to the occupation of ground and the disposal of premises and building situate within I he Military Cantonments were rescinded and a. consolidating order inter alia relating to application for

land, alteration of -boundaries of sites, closing or opening of roads, conditions of occupancy resumption" of land, transfer of houses to Military Officer and to natives, Committee of Arbitration for valuation of houses and appeals against valuation made by the Committee of Arbitration.

The learned Advocate-General invited our particular attention to Clauses 2, 3, 5 and 6 of the Order which are set out below:

2. As the health and comfort of the troops are paramount considerations to which all others must give way, the Commanding Officer will be held responsible that no ground is occupied in-any way calculated to be injurious to either, or to the appearance of the Cantonment; and in forwarding any application for a grant, he must certify that it is not objectionable in those or any other respects.

3. When no objection occurs the application is to be forwarded through the prescribed channel, by the Commanding Officer of the Stations to the Quarter Master General of the Army, who, if the Commander in Chief approves, will submit it for the orders of Government.

5. All grants are to be registered by the officer of the Quarter Master General's Department attached to the division, and at stations where no such officer may be present, by the executive officer of public Works, to whom also, in such cases, applications for ground are to be addressed ; and all grants are to be immediately noted upon the plan of the Cantonment in the Quarter Master General's office.

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: 1st?The Government 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. 2nd?The ground, being in every case the property of Government cannot be" sold by the grantee but houses or other property thereon situated may be transferred by one military or medical officer to another without restriction, except in the case of relief?s, when, if required, the terms of sale or transfer are to be adjusted by a Committee of Arbitration. 3rd?If the ground has been built upon, the buildings are not to be disposed of to any person, of whatever description who does not belong to the army, until the consent of the officer Commanding the station shall have been previously i obtained under his hand. 4th?When it is proposed, with the consent of the General Officer, to transfer possession to a native, should the value of the house, buildings or property to be so transferred exceed its. 5,000 the sale must have been obtained through His Excellency the Commander-in-Chief.

(r) General Order by the Governor-General in Council No. 74, dated April 10, 1837, No. 154, dated July 14, 1840, No. 174, dated. August 5, 1840, relating to the composition of the Committee of Arbitration set up by Government Order No. 179 of 1836.

(s) General Order by the Commander-in-Chief, dated January 28. 1853, reminding officers that no buildings or grounds should be allotted for private purposes without authority previously obtained in the prescribed manner and all such grants must be duly registered.

(t) General Order by the President in Council No. 700, dated July 3, 1855, which provided that all houses in Military Cantonment not being occupied by a person belonging to the Army, on duty at the station, or whose residence therein may have been authorised by the Government, which may be deemed by the Commanding Officer of the Station suitable for the accommodation of officers shall be claimable, for purchase or hire at the option of the owner.

(u) General Regulations of the Bengal Army, 1855, providing for delimitation, of boundaries of Cantonments and for bazars and villages within the Cantonment and against cultivation of Cantonment land, and for enforcement of sanitation, manner of occupation of building devoted to religious usage and for building plans, registration of grants, resumption of lands, transfer of lands and for Committee of Arbitration to fix valuation.

70. The learned Advocate-General invited our particular attention to Clauses 10, 11, 12, 13, 14 and 15 of the said Regulation which are set out below:

10. All applications for unoccupied ground, within, the limits of a cantonment for the purposes of being enclosed, built upon or in any way appropriated to private purposes, are invariably to be accompanied by a rough plan of the site designated, including a portion of the Cantonment adjacent to it exhibiting the Public buildings, roads or private estates by which it is founded.

They are to be forwarded through the officer in charge of the Cantonment register, who in transmitting them to the officer commanding the station will record his opinion upon them and state any objection that may occur to him regarding the proposed appropriation of land.

11. When no objection occurs, the application is to be forwarded, through the regular channel, to the Quarter Master General of the-Army, for submission to the Commander in Chief.

Application are to be in the following form:

To?The Assistant Quarter Master General (or other Staff officer, as the case may be).

Sir, I request you will apply for permission for me to occupy the ground herein described.

I have, etc., Signed.

12. All such grants are to be duly registered and Government retains the power of resuming any grant of ground on giving one month"s notice and paying the value of such buildings as may have been authorised to be erected.

13. At stations where an officer of the Quarter Master General's Department is serving, such officer will keep the cantonment register ; but where there may be no officer of the Quarter Master General's department the duty will be performed by the Cantonment Joint Magistrate, where one is allowed or otherwise by the Staff Officer of the station (by GOCO,. dated January 21, 1864, para. 13 was altered as follows:

The Cantonment-register will be kept by the Cantonment Magistrates where one is allowed, or otherwise by the Staff Officer of the Station.)

14. The ground of an estate cannot be sold by the grantee, but houses or other property thereon may be transferred by one military or medical: officer to another without restriction, except at the period of a relief, when, if required, the terms of sale or rent are to be adjusted by a Committee of Arbitration.

The transfer thereof to any person not belonging to the army can be effected with the consent of the Officer Commanding the station unless the property exceeds the value of Rs. 5,000 and the purchaser is a native, in which case the sanction of Government must be previously obtained, through the regular channel.

15. All houses in a Cantonment, being the property of non residents, or persons not belonging to the army, and which may be deemed by the Commanding Officer of the station suitable for the accommodation of officers, are claimable for purchase or hire, at the option of the owner in the former case, at valuation, and in the latter, at a rent to be fixed, in the event of any disagreement, by a committee of Arbitration, whose decision is to be conclusive, unless reversed by Government for whose orders the proceedings are to be submitted through the regular channel whenever the proprietor of the premises is dissatisfied.

(v) Code Regulations for Public Works Department, 1858 providing for the boundaries of Cantonments, plans of Cantonments including that of Military bazars, boundaries of villages, within Cantonments, size of officers compound, boundaries of bazaars, prohibition against alteration of boundaries and cultivation of unoccupied Cantonment lands without Special sanction of the Government, transfer of surplus land to civil authorities, grants of lands for private buildings, application for such grant, registration of such grant, conditions of occupancy in land so granted, resumption of such land, restriction on transfer of such grants, cancellation of such grants and Committee of Arbitration to fix valuation.

I Condition 1 of the "Conditions of occupancy" as in Clause 6 of the Regulation made it expressly clear that the ground covered by grants was the property of the Government and was not saleable by the grantee.

(w) General Order by the Governor-General in Council No. 084, dated July 7, 1862, notifying that authority will be taken for the return pi ion of the land on which any building stood, neglected and unrepaired whenever it so appeared.

(x) General Order of the Governor-General in Council No. 1001. dated December 8, 1804, wherein it appeared:

It having been brought, to the notice of the Government that in the some cases owners of houses in Military Cantonments have made use of the right

to sell or rent their houses at their option which is secure to them by general orders, so as to evade the plain intention of the Government in issuing those orders, e.g., by electing to sell when Military Officers have claimed the houses, in order to force them to waive their claims and then renting the houses at whatever rent they could obtain to persons not belonging to the Cantonment,? the Right Honourable the Governor-General in Council is pleased to direct the substitute of the following for para. 7 of the Governor-General's order 179, dated September 12, 1836, as amended by Governor-General's order 700, dated 3rd July. 1855.

The substituted paragraph provided for power to require owner to let houses to Military Officers and also provided for a time limit for vacation of house, on sale, to another Military Officer.

(y) General Order by the Commander-in-Chief No. 5 dated January 10, 1868, containing a warning against appropriation of land in Military Cantonments in contravention of the regulation of the service and providing:

As this is not the first occasion on which embarrassment has been oasured by the sanction of the Commander-in-Chief being anticipated. I am iistructed to request that the commanding officers be strictly prohibited from allowing one to occupy a site in a Military Cantonment under any circumstances whatever, until His Excellency's approval shall have been officially received.

(z) Regulations and orders for the army of the Bengal Presidency 187-3 providing for delimitation of boundaries of ?Cantonments and for boundaries of bazars and villages within the Cantonment for prohibition against alteration of boundaries except with sanction for, transfer of surplus land to civil author, rities and also providing for rules for letting out or sale of private buildings and grant of land.

71. The learned Advocate-General invited our special attention to rr. 1963, 1964, 1965, 1966. 1979. 1980 10S1, 1982, 1983, 1984 set out below:

1963. A military cantonment is, as its designation implies, a locality sot apart primarily for military and medical officers, chaplains, soldiers, subordinates attached to the troops, and their families, for whom houses situated within such limits are by priority of right available Regimental officers are required ordinarily to live near the lines of their respective corps,

1964. Civil and political officers of Government,, serving under the Public Works Department, were added by G.O, No. 62 of 1874 are permitted to reside within the limits of military cantonment whenever the public interests may require that they should so reside, or whenever special grounds may exist for granting the

indulgence, such as the want of other available shelter or the necessity of ensuring their (Personal safety; but those exceptions are not ordinarily to interfere with the priority of right possessed by military officers or others on duty at the station to the houses within its boundaries.

1965 In the event of a house in cantonments occupied by a non-military resident being required for an officer a formal notice should be served on the occupant requiring him to vacate by a certain date and warning him that, in the event of his declining or failing to comply, legal proceedings will be taken to enforce compliance. Should the notice (which should be personally served if possible) fail of effect, intimation of the same should be forwarded to the local Government in; order that the necessary steps may be taken in the matter.

Commanding officers should not, however, have recourse to this measure except under the most unavoidable circumstances, when houses are legally claimable and absolutely necessary for the accommodation of officers whose services are actually required in the station, and for whom shelter is not available within a fairly reasonable distance of their duty. In the case of Civil and political officers application for their removal are to be made to the Commander-in-Chief through the Quarter-Master-General for submission to Government.

1966. The owner of any house in a military cantonment not occupied by a person belonging to the army on duty at the station, or by a person in the service of Government directed or authorised by Government to reside therein, may be required to rent the same to my military officer belonging to the station who may require it to reside in if the officer commanding the station is satisfied that there is no other suitable house available, with due regard to the rank of the claimant and to the duties he may have to perform.

In every such case, however, if the owner shall have formerly intimated to the officer who has so obtained the house his desire to sell rather than to let it, and the offer shall not have been accepted the officer shall at any time be required to vacate it within a week of his receiving notice through, the staff officer of the station that the house has been sold, with "the consent of the Commanding officer of the Station, to another military officer on duty at the station who requires it for his own residence.

The rent to be paid in such cases, or the price to be paid for the house when the claimant accedes to the owner's desire that he shall purchase it, shall be fixed, in the event of the parties disagreeing as to the amount by a Committee of Arbitration to be assembled by order of the officer commanding the division or district after he has fully satisfied himself as to the necessity for the same, and that the application for the committee is not opposed to the orders of Government.

1979. In no case is any cantonment land to be enclosed or occupied without the sanction of the Commander-in-Chief; and commanding officer are strictly prohibited from allowing any one to occupy a site under any circumstances

whatever, until such sanction shall have been officially received ; nor are the boundaries of compounds to be changed, old roads closed or new ones opened without similar authority.

Building sites granted to officers in military cantonments should be no larger than is absolutely necessary conforming as far as practicable to the dimensions laid down.

1980. All applications for unoccupied ground for the purpose of being enclosed, built upon or in any way appropriated to private purposes are to be forwarded, for transmission to the officer commanding the station through the office of the Quarter-Master-General's department at the station, or, in his absence through the Cantonment Magistrate Or staff officer of the station, as the case may be.

1981. The health and comfort of the troops are paramount considerations to which all others must give way, and the Commanding officer will be held responsible that no ground is occupied in any way calculated to be injurious to either, or to the appearance of the cantonment. In forwarding to the Quarter-Master-General any application for a grant he must certify that it is not objectionable in these or any other respects.

1982. All such applications shall be made according to Appendix No. 28 and must be accompanied by a sketch of rough plan of the site applied for, embracing the portion of the cantonment adjacent to it, and exhibiting the roads, public buildings or private estates by which it is bounded; also any line of railway proposed or actually passing through the cantonment: and, where the line of railway does not immediately abut on the ground applied for, the direction and distance are to be shown.

This plan is to be authenticated by the officer of the Quarter-Master-General's department at the station or when no such officer is present by the Executive Engineer of the division in which the cantonment may be situated. Such applications must also be accompanied by a certificate from the Executive Engineer of the division to the effect that no departmental objection is known to the application, and that the grant, if made, does not seem likely to interfere with any building existing or likely to be required.

1983. All grants are to be registered (Public Works Code, Section 2, Chapter IX) by the Cantonment Magistrate, where one is allowed, or otherwise by the Staff officer of the station ; and all grants are to be immediately noted on the plan of the cantonment in the Quarter-Master General's Office.

1984. No ground will be granted except on the following conditions, which are to be subscribed to by every grantee as well as by those to whom his grant may subsequently be transferred:

(a) Government 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.

(b) The ground, being in every case the property of Government cannot be sold by the grantee but houses or other property thereon situated may be transferred by one military or medical officer or chaplain to another on a joint report being made to the Staff Officer, who will make the requisite entry in the register, except in the case of relief, when, if required, the terms of the sale or transfer are to be adjusted by a committee of Arbitration.

(c) 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 shall have been previously obtained under his hand.

(d) When it is proposed, with the consent of the Commanding Officer of the station, to transfer possession to a native, the sale must not be effected until the sanction of the local Government shall have been obtained [by G.O. No. 282, dated October 4, 1875 Clause (b) was re-constructed in the form in which it appears in paragraph 42 of the Regulations of 1880 and G.O. No. 184 and No. 188, respectively dated July 11, 1876, the second and third sub-clause of Clause (d) printed in that paragraph were introduced.]

(e) The Commanding officer shall have power to cancel the grant if the ground be not brought into use for the purpose specified within twelve months.

(aa) Regulations and Orders for the Army of the Bengal Presidency, 1880, of which rr. 19, 20, 21, 22, 23, 24 and 33 dealt with letting or sale of private buildings and rr. 37, 38, 39, 40, 41 and 42 dealt "with grant of land. The rules are set out below:

19. A military Cantonment is as its designation implies a locality set apart primarily for military and medical officers, chaplains, soldiers, subordinates attached to the troops, and the officers and subordinates of all departments connected with the housing and supplies of the troops, for whom houses situated within such limits are by priority of right available.

Regimental officers are required ordinarily to live near the barracks or houses of their respective corps.

20. Civil and political officers of Government, and officials belonging to the Public Work Department and railway, are permitted to reside within the limits of military cantonments whenever the public interest may require that they should so reside, or whenever special grounds may exist for granting the indulgence, such as the want of other available shelter, or the necessity of ensuring their personal safety; but these exceptions are not ordinarily to interfere with the priority of right possessed by military officers or others on duty at the station to have houses within its boundaries.

21. In the event of a house in cantonments occupied by a non-military resident

being required for an officer, a formal notice should be served on the occupant requiring him to vacate by a certain date, and warning him that, in the event of his declining or failing to comply, legal proceedings will be taken to enforce compliance.

Should the notice (which should be personally served if possible) fail of effect, intimation of the same should be forwarded to the Local Government in order that the necessary steps may be taken in the matter.

Commanding officers should not, however, have recourse to this measure except under the most unavoidable circumstances, when houses are legally claimable and absolutely necessary for the accommodation of officers, whose services are actually required in the station and for whom shelter is not available within a fairly reasonable distance of their duty.

In the case of officials mentioned in paragraph 20, applications for their removal are to be made to the Commander-in-Chief through the Quarter Master General for submission to Government.

22. The owner of any house in a Military Cantonment not occupied by a person belonging to the army on duty at the station, or by a person directed or authorised by Government to reside therein (para. 20) may be required to rent the same to any military officer belonging to the station who may require it to reside in if the officer commanding the station is satisfied that there is no other suitable house available with due regard to the rank of the claimant and to the duties he may have to perform.

In every such case however, if the owner may have formerly intimated to the officer who has so obtained the house his desire to sell rather than to let it and the offer has not been accepted, the officer may at any time be required to vacate it within a week of his receiving notice through the staff officer of the station that the house has, with the consent of the Commanding Officer of the Station, been sold to another military officer on duty at the station who requires it for his own residence.

The rent to be paid in such cases, or the price to be paid for the house when if, the claimant accedes to the owner's desire that he shall, purchase it, is to be fixed, in the event of the parties disagreeing as to the amount, by a Committee of Arbitration, to be assembled by order of the Officer Commanding the division or district after he has fully satisfied himself as to the necessity for the same and that the application for the Committee is not opposed to the orders of Government (para. 30).

23. In all cases of dispute, the owner should be called upon previous to the assembly of the Committee of Arbitration, to elect whether he will rent or sell his house. Should he elect to rent the house, the Committee cannot compel him to sell it.

24. Houses situated within the limits of Military Cantonments that may be

declared to be for hire can only, according to these regulations and customs, be let by the month.

33. In cases where buildings in cantonments are required for public purposes, the officer of the Public Works Department in executive charge will under the authority of the Officer Commanding the division or district, settle for the valuation and purchase of the same, according to the rules of the Public Work Department; and recourse is only to be had to Committees of Arbitration in the event of any disagreement and on the application of the Executive Engineer or of the proprietor of the premises.

37. In no case is any cantonment land to be enclosed or occupied without the sanction of the Commander-in-Chief, and Commanding Officers are strictly prohibited from allowing any one to occupy a site, under any circumstances whatever, until such sanction has been officially received; nor are the boundaries of compounds to be changed, old roads closed, or new ones opened without similar authority.

Building sites granted to officers in military cantonments should, be no larger than is absolutely necessary, conforming as far as practicable to the dimensions laid down in the Public Works Code.

38. All applications for unoccupied ground, for the purpose of being enclosed, built upon or in any way appropriated to private purposes are to be forwarded for transmission: to the Officer Commanding the station, through the officer of the Quarter Master General's Department at the station or in his absence, through the Cantonment Magistrate or Staff Officer of the station, as the case may be.

39. The health and comfort of the troops are paramount considerations to which all others must give way, and the Commanding Officer will be held responsible that no ground is occupied in any way calculated to be injurious to either or to the appearance of the cantonment. In forwarding to the Quarter Master General any application for a grant, he must certify that it is not objectionable in these or any other respects.

40. All such applications are to be made according to Appendix No. 24 and must be accompanied by a sketch or rough plan of the site applied for, embracing the portion of the Cantonment adjacent to it and exhibiting the roads, public buildings or private estates by which it is bounded: also any line of railway proposed or actually passing through the cantonment, and, where the line of railway does not immediately abut on the ground applied for, the direction and distance are to be shown.

This plan is to be authenticated by the officer of the Quarter Master General's Department at the station, or, when no such officer is present, by the Executive Engineer of the division in which the Cantonment may be situated.

Such applications must also be accompanied by a certificate from the Executive Engineer of the division to the effect that no departmental objection is known to

the application and that the grant, if made, docs not seem likely to interfere with any building existing or likely to be required.

41. All grants are to be registered (Public Works. Code, Edition of 1878, para. 162, p. 201) by the Cantonment Magistrate, where one is allowed, or otherwise by the Staff Officer of the station; and all grants are to be immediately noted on the plan of the cantonment in the Quarter Master General's office;).

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

(a) Government 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.

(b) The ground, being in every ease the property of Government cannot be sold by the grantee; but houses or other property thereon situated may he transferred by one military or medical officer or chaplain to another on a joint report basing made to the Staff Officer, who will make the requisite entry in the register, except in the case of relief, when if required, the terms of the sale or transfer are to be; adjusted by a Committee of Arbitration.

(c) If the ground has been built upon, the building 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.

(d) [(By G.O. No. 117, dated July 10, 1882, the following was substituted for Clause (d))]:

When it is proposed, with the consent of the Commanding Officer, to transfer possession to a native the procedure prescribed in Section 7, para 38 (as revised by General [order No. 38 of 1882) is to be adhered to.

This rule applies to officers and others in the service of Government only, but the sale or transfer of any house in cantonments must first receive the sanction of the local authorities.

When it is proposed, with the consent-of the Commanding Officer, to transfer possession lo a native, should the value of the house buildings or property to be so transferred exceed Rs. 6.000 the same must not be effected until the sanction of Government has been obtained through the Commander-in-Chief.

This rule applies to officers in the service of Government only but the sale or transfer of any house in Cantonments must first receive the sanction of the Military Authorities.

All applications for permission to sell, to a native, Cantonment house property exceeding in value the above amount are to include the name and status of the proposed purchaser and to be accompanied by a certificate from the civil officer

of the district that there is no objection to the sale.

(bb) Army Regulation, of India, 1887.

72. The learned Advocate-General drew our particular attention to rr. 1936, 1937, 1938, 1939, 1940, 1941, 1950 and 1951, providing for letting or sale of private buildings and to rr. 1994, 1995, 1996, 1991 and 199b providing for grant of land. The Rules are set out below:

1936. A military Cantonment is, as its designation implies a locality set apart primarily for military and medical officers, chaplains, soldiers, subordinates attached to the troops, and the officers and subordinates of all departments connected with the housing and supplies of the troops, for whom houses situated within such limits are by priority of right available.

Regimental officers are required ordinarily to live near the barracks or lines of their respective corps.

1937. Civil and political officers of Government and officials belonging to the Public Works Department and railways are permitted to reside within the limits of military Cantonment whenever the public interest may require that they should so reside, or whenever special grounds may exist for granting the indulgence, such as the want of other available shelter or the necessity of ensuring their personal safety; but these exceptions are not ordinarily to interfere with the priority of right possessed by military officers or others on duty at the station to the houses within its boundaries.

Officials of the Government Telegraph Department are also permitted to reside within the limits of military Cantonments under the foregoing conditions when the main telegraph office lies within Cantonment limits. (This clause was added by G.O. No. 41 of 1890.)

1938. In the event of a house in Cantonments occupied by a non-military resident being required for an officer, a formal notice should be served on the occupant requiring him to vacate by a certain date, and warning him that, in the event of his declining or failing to comply, legal proceedings will be taken to enforce compliance. Should the notice (which should be personally served, if possible) fail to effect, intimation of the same should be forwarded to the local Government in order that the necessary steps may be taken in the matter.

Commanding officers should not, however, have recourse to this measure except under the most unavoidable circumstances, when houses are legally claimable and absolutely necessary for the accommodation of officers whose services are actually required in the station for whom shelter is not available within a fairly reasonable distance of their duty. In the case of officials mentioned in para. 1937 applications for their removal are to be made to the Commander-in-Chief through the Quarter Master General for submission to Government.

1939. The owner of any house in a military Cantonment not occupied by a

person belonging to the army on duty at the station or by a person directed or authorised by Government to reside therein (para. 1937) may be required to rent the same to any military officer belonging to the station who may require it to reside in, if the Officer Commanding the "station is satisfied that there is no other suitable house available, with the due regard to "the rank of the claimant and to the duties he may have to perform.

In every such case, however, if the owner may have formerly intimated to the officer who has so obtained the house his desire to sell rather, than to let it, and the offer has not been accepted, the officer may at any time be required to vacate it within a week of his receiving notice through the Staff Officer of the station that the house has, with the consent of the Commanding Officer of the station, been, sold to another military officer on duty at the station who requires it for his own residence.

The rent to be paid in such cases, or the price to be paid for the house when the claimant accedes to the owner's desire that he shall purchase it is to be fixed, in the event of the parties disagreeing as to the amount, by a Committee of Arbitration to be assembled by order of the Officer Commanding the Division or district after he has fully satisfied himself as to the necessity for the same, and that the application for the committee is not opposed to the orders of Government (para. 1947).

1940 In all cases of dispute the owner should be called upon, previous to the assembly of the Committee of Arbitration, to elect whether he will rent or sell his house. Should he elect to rent the house, the committee cannot compel him to sell it.

1941., Houses situated within the limits of military, cantonments that may be declared to be for hire can only according to these regulations and customs, be let by the month.

1950. In cases where buildings in cantonments are required for public purposes, the officer of the Public Works Department in executive charge will, under the authority of the officer commanding the division or district, settle for the valuation and purchase of the same according to the rules of the Public Works Department, and recourse is only to be had to Committees of Arbitration in the event of any disagreement and on the application of the Executive Engineer or of the Proprietor of the premises.

1951. Whenever it may be necessary to rent buildings for the use of the troops, the officer of the Public Works Department on the spot is in all cases to arrange for the hiring of such buildings and to obtain sanction for the arrangements in communication with and assisted by, the local military authorities and officers commanding stations are to bear in mind and that they are bound to direct the officer of the Public Works Department to make all necessary provision for accommodating the troops in any emergency, whenever this is possible rather than to act themselves, and thus accept a grave pecuniary responsibility in the

event of their action being disapproved of.

When, however, the local military authorities have been obliged to act them; selves owing to the absence of the Executive Engineer from the station, it is the duty of such officer on his return to suggest to them any modification of the arrangements which his knowledge and experience might suggest as better for the soldier or more for the interest of Government: and also to submit the arrangements for sanction as if originally made-by himself.

1994. In no case is any cantonment land to be enclosed or occupied without the sanction of the General Officer Commanding, and commanding officers are strictly prohibited from allowing any one to occupy a site-under any circumstances whatever, until such sanction has been officially received; nor are the boundaries of compounds to be changed, without similar authority (para. 1994 is printed as altered by G. O-No. 51 of 1887).

Building sites granted to officers in military Cantonments should be no larger than is absolutely necessary, conforming as far as possible to the dimensions laid down in the Public Works Code. (Paragraph 1994 A was inserted by G.O. No. 51 of 1887).

1994. A. No old roads in Cantonments are to be closed or new ones opened without the sanction of the Commander in Chief.

1995. All applications for unoccupied ground, for the purpose of being enclosed, built upon or in any way appropriated to private purposes, are to be forwarded, for transmission to the officer commanding the station through the officer of the Quarter Master General's Department at the station, or in his absence, through the Cantonment Magistrate or staff officer of the station, as the ease may be.

1996. The health and comfort of the troops are paramount consideration to which all others must give way and the Commanding Officer will beheld responsible that no ground is occupied in any way calculated to be injurious to either or to the appearance of the Cantonment. In forwarding to the Assistant or Deputy Assistant (the words "Assistant" or "Deputy Assistant" were inserted by G.O. No. 51 of 1887) Quarter Master General any application for a grant, he must certify that it is not objectionable in these or any other respects.

1997. All such applications are to be made on Bengal form No. 85 and must be accompanied by a Bombay form No. 212 sketch or rough plan of the site applied for, embracing the portion of the cantonment adjacent, to it, and exhibiting the roads, public buildings or private estates by which it is bounded; also any line o railway proposed or actually-passing through the cantonment; and where the line of railway does not immediately on the ground applied for, the direction and distance (sic) to be shown.

This plan is to be authenticated by an officer of the Quarter Master General's Department at the station, or when no such officer is present, by the Executive Engineer of the division, to the effect that no departmental objection is known to

the application, and that the grant, if made, does not seem likely "to interfere with any building existing or likely to be required.

1998. All grants are to be registered (Public Works Code, Edition of 1878, para. 162, p. 201) by the Cantonment Magistrate, where one is allowed, otherwise by the Staff Officer of the station and all grants are to be immediately noted on the plan of the Cantonment in the Quarter Master General's office

1999. No ground will be granted except on the following conditions, which are to be subscribed to by every grantee as well as by those to whom his grant may subsequently be transferred:

(a) Government 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.

(b) The ground, being in every case the property of Government cannot be sold by the grantee; but houses or other property thereon situated may be transferred by one military or medical officer or chaplain to another on a joint report being made to the Staff Officer, who will make the requisite entry in the register, except in the case of relief, when, if required, the terms of the sale or transfer are to be "adjusted by a Committee of Arbitration.

(c) 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.

(d) When it is proposed, with consent of the Commanding Officer, to transfer possession to a native the procedure prescribed in Section VII, para. 724, is to be adhered to. This Rule applies to officers and others in the service of Government only, but the sale or transfer of any house in Cantonments must first receive the sanction of the local military authorities

(e) The Commanding Officer has power to cancel the grant if the ground be not brought into use for the purpose specified within twelve months.

Further, the learned Advocate-General referred to the pentad of enactments, namely, Act for the regulation of Civil and Criminal Justice in Military Cantonments, being Act XXII of 1864 and the four Successive Cantonment Acts being Act III of 1880, Act XIII of 1889, Act XV of 1910 and Act II of 1924 and also invited our attention to the rules made under the rule making power of the Government under the aforesaid Acts (e.g. Section 280 of Act II of 1924) relating to permission to occupy Land, conditions annexed to. such, permission and preparation and maintenance of registers of Cantonment properties. He also invited our attention to the two Cantonments (House Accommodation) Acts, being Act II of 1902 and Act VI of 1923 dealing with appropriation of houses for Military purposes.

73. Lastly, the learned Advocate-General invited our attention to the Cantonment

Land Administration Rules, 1937, framed u/s 280 of the Cantonments Act, 1924, of which the salient features may be described as follows:

(a) They seek to secure all possible military requirements and to prevent encroachment on Government rights by providing a detailed procedure for the management of all Cantonments land based upon, a scientific classification and a complete record of every piece of land in a Cantonment.

(b) They are designed to safeguard the financial interest of the Government of India and incidentally of Cantonment funds by ensuring that whatever land is disposed of in future to private persons or associations it, shall be leased on terms which will secure an adequate return to the lesser and adequate security of tenure to the lessee.

74. Basing on the analysis of the provisions of the General orders, proceeding in Governor-General in Council, Resolutions of the Military Hoard, orders issued by the Commander-in-Chief or other Army Officers, the Army Regulations, the Cantonment Acts and the Rules framed 1 hereunder and the Cantonments (House Accommodation) Act, the learned Advocate-General contended that the provisions in the aforesaid Orders, Proceedings, Resolutions. Regulations, Acts and Rules were inconsistent with the existence of any privately owned land within the Cantonment. it cannot be said that in so far as the Orders, Resolutions. Regulation and Statutory provision go there is no substance in the argument advanced by the learned Advocate-General in so far as it goes. We have here to before noticed how the Barrackpore Cantonment, came into being and also noticed the determination of the Military authorities to exclude private ownership of land within the area, which they-intended to set up as a Cantonment.

75. Thereafter, beginning from. 1789: there are the General Orders, Proceedings, Resolutions, Regulations and Rules, prohibiting uncontrolled construction of private buildings, the laying of gardens without permission, and the making of enclosures; providing for the sale and the letting out of private building in the manner prescribed and also providing for" the manner of construction of houses; prescribing precarious occupancy right in land granted to private individuals and also retaining right of resumption of lands so granted. These only go to suggest that within the Barrackpore Cantonment area the Government tried to act as the proprietor of most of the land and that there was very little scope for existence of private proprietorship in any land within such area.

76. Mr. Subimal Roy, learned Counsel for the Respondent, however, contended, with some emphasis, that the analysis of the Orders, Proceedings, Regulations, Acts and Rules, as made by the learned Advocate-General was incomplete. On a proper analysis, lie argued it would appear that existence of privately owned land within the Barrackpore Cantonment area was throughout recognised.

77. Mr. Boy invited our attention, in the first place, to Governor-General's order, dated January 6, 1827, applicable to Bombay (printed at p. 399, Part, V, "Gazette

of India," November 5, 1898), which is to the following effect;

78. The Honourable the Governor-in-Council thinks it necessary to explain in General Orders that any permission which officers not provided with public quarter may receive to erect houses on ground within a fortress or military Cantonment confers on them no right to property whatever in the ground allotted them for that purpose, which continues the property of the State and resumable at the pleasure of the Government.

79. Mr. Boy, also invited our attention to Government (Bombay) General Order, dated 30th October, 1832 (printed at p. 399, Part V, "Gazette of India", dated November 5, 1898) set out below:

As *** no private landed property is to be included within the limits of Cantonments, in which the whole of the ground belongs to Government, the Right Honourable the Governor-in-Council is pleased to declare that Commanding Officers have the power of removing from Cantonments and preventing the residence therein, of any person not being an officer or soldier belonging to the force, and that it is not the duty of Commanding Officers of Cantonments to remove from within the limits all such person whose residence therein they may deem objectionable under due responsibility to superior authority for the proper exercise of this power.

80. Mr. Roy contended that the absence of corresponding provisions in the Orders, Resolutions, Regulations, Statutory Provisions and Rules, applicable to Barrackpore Cantonment, was significant and reinforced his contention that there was possibility of existences of private property within the area very much. It is true that the provisions of Orders, Regulations, Rules, etc., applicable to Barrackpore Cantonment are not as, explicit against the existence of private property within the Barrackpore Cantonment area as the Bombay orders are, but, nevertheless the history of the establishment of the Barrackpore Cantonment and the domineering control exercised over user of lands within the Cantonment of Barrackpore as already noticed, are not consistent with the existence of private property within such area although they do not expressly rule out the possibility of the existence of private property within the area.

81. Mr. Roy in the next place, invited our attention to the Code of 1899, with particular reference to:

(i) Section 261 providing for preparation and maintenance of a general plan showing:

(a) ***

(b) all land (if any) which does not belong to the Government and all houses (if any) situate thereon.

(ii) Section 268 providing for maintenance of register showing in regard to all land (if any) which is private property and the buildings situate thereon.

82. He contended that the Code of 1899 expressly contemplated existence of private land within Cantonment areas and that must put an end to all speculations about no existence of privately owned land, within such areas.

The contention made by Mr. Roy is attractive but is not of any real substance in the context of the present dispute. Sections 261 and 268 of the Code of 1899 are enabling sections or sections imposing a duty where it need be exercised, and apply to all Cantonments throughout India. Within some Cantonments there may exist some private lands. But because there are provisions for maintenance of plans or registers showing privately owned land, that would not go to show that. within the Barrackpore Cantonment there must have been private lands of the type claimed to be owned by the Defendants. There is, however,- a register of private land within Barrackpore Cantonment marked Ext. 2, (not printed in the paper book). That document bears marks of cancellation and the type of property sought to be included in the said document is different from the disputed property. Mr. Roy tried to utilise that exhibit as evidence of existence of private land within Barrackpore, Cantonment. We are not impressed with evidentiary value of a cancelled document. We shall have, however, occasion to refer to the document hereafter.

83. If the learned Advocate-General had aspired to succeed merely on his analysis of the General Orders, Proceedings of the Governor-General in Council, Resolution, Regulations and Rules, his argument might not have been conclusive but the learned Advocate-General did not rest content with his analysis aforesaid. He went further and contended that there were documentary evidence showing that the disputed land was not private land. He referred to:

(a) Ext. D.?True copy of Land Records and Survey of Mouja Barrackpore Cantonment, 1847-48, showing that an area of 889.44 statute acres were included, within the Cantonment.

(b) Ext. 11.?-Certified: copy of the Revenue Survey map of Mouja Barrackpore Cantonment, surveyed in 1861, showing that an area of 889 acres 1 Rood 31 poles was covered by the Cantonment.

(c) Exts. 11(a) and 11(b)?maps of Barraekpore Cantonment respectively prepared in the years 1928 and 1948.

(d) Ext. 10, certified copy of an extract of Mouzawan Register of Pargana Calcutta, prepared in the year 1883, showing that Barrackpore Cantonment area belonged in Khas to the Government and contained an area of acres 889-1-31 and odds.

(e) Ext. 1(a) (of which Ext. 1 is the book cover)?being an entry from the Register of Government land, held by lessees outside bazars, prepared u/s 266 of Cantonment Code, 1899, and maintained by the Barrackpore Cantonment. The date on which the entry was made in the Register was February 27, 1902. Tinter column (s) "number of the site as "shown on the General plan of the Cantonment

"maintained u/s 261, Cantonment Code 1899" appear the word.-, and figures "No. 43". Under column (e) "dimension of the site", appear the words 5 bighas and 11 cottahs. Below the aforesaid entry there is a conversion of the area into acreage by some body in pencil, being the figure 1.83. Under column (g) "(i) if the hide was occupied before the commencement of the Cantonment Code 1899, the date of "permission to occupy the site or (ii) if the site was "occupied after the commencement of this Code the "date of the lease executed by the lessee u/ s 259, "ibid." There appears the words "The site was "occupied before the commencement of the Cantonment Code of 1899". The date of permission to occupy the site is not obtainable. Under column (b) "name and description of lessee at the date of "registry" appear the words W.C. Banerjee Esq., "Barrister-at-Law, Bar Library, High Court, "Calcutta, No. 6, Park Street". Under column (i) "name and description of the lessee's agent (if any) "at the date of the Registry" appear the words "Rai "P. C. Banerjee (Bahadur Dakshineswar, Ariadali, "P.C. Under column (j) "nature of the lessees "right under the Cantonment Code, 1899 or under "any other provision of law including the particulars "of any special right of occupancy" appear the words "By registered Deed, dated 10th June, 1885." Under column (1) "estimated value of buildings on "the site of the date of the registry" appear the words land-figures Rs. 20,000. Twenty thousand." (f) Ext. 3a (of which Ext. 3. is the cover) being an entry in the-Register of transfer of immovable property prepared under the a. 269 of the Cantonment Code 1899 and maintained by the Barrackpore Cantonment-during the years 1906-1912. Under column (c), "distinguishing Number of the site as recorded in "the Register maintained u/s 266 or 268 of the "Cantonment Code 1899, as the case maybe" appear the figures "43". Under column (d) ;"Na-me of the Transferor" appear the words W.C. Banerjee "Esq."

84. The learned Advocate-General strongly relied on the maps (Exts. 11, 11a and lib) and contended that as much as the disputed plot of land was included within the area shown as the Cantonment in the said maps, it must be treated as Cantonment land-. He argued that his above contention found, reinforcement from the fact that the disputed land was shown in. the Register (Ext. 1a) as Government land held by a lessee outside bazars within the Cantonment.

85. The learned Advocate-General lastly laid particular emphasis on the words "Khas Sarkar" appearing in the Mouzawari Register (Ext. 10) and contended that it meant that the entire Barrackpore Cantonment area was Khas property" of the Union Government.

86. So far as Ext. 3(a) Register of Transfer of Immovable-Property was concerned, the learned Advocate-General conceded that the document was worthlessly kept but nevertheless contended that it would not demolish even though it did not establish the claim made by the Union Government.

The learned Advocate-General also drew our attention to Ext. 2, cancelled. Register of Private lands and contended that the non-inclusion of the disputed land in the aforesaid Register of Private Lands only went to show that the

disputed land had been correctly entered in Ext. 1a, the Register of Government land.

87. Mr. Subimal Roy, learned Counsel for the Respondent tried to repel the arguments advanced by the learned Advocate-General with a two-fold-answer.

88. He contended in the first place that a presumption should be drawn against the Appellant because of non-production of important documentary evidence in its possession. In the next place he contended that the evidentiary value of the documents relied upon by the Appellant, was not much in the present context and they would not exclude the possibility of the disputed land being privately owned land.

89. The first branch of the argument, advanced by Mr. Roy was accepted by the learned Subordinate Judge and he did draw a presumption against the Appellant. Elaborating his argument Mr. Roy contended further that the Government had failed to produce earlier Register, statutorily to be maintained, namely, Register of Immovable Properties u/s 19(2) of Act XXII of 1864, Register of Immovable property u/s 27(ii) of Act III of 1880. He further contended that the Appellant was withholding the Register of Private land and Register of Transfer to be kept under the Regulation of 1810 and also the Cantonment Code of 1899 and also the entire General Land Register of Barrackpore Cantonment to be kept under the Cantonment Land Administration Rule, 1925 and 1937. Mr. Roy strongly contended that the non-production of the Registers statutorily to be maintained by the Government was a serious matter and there should be an adverse presumption drawn against the Government u/s 114 illustration (g) of the Indian Evidence Act.

90. We have already dealt with the rival contentions of non-production of documents hereto before.

91. On the affidavit filed by both the parties the learned Subordinate Judge was not satisfied that there had been any wilful, suppression of documentary evidence in its possession, by the Plaintiff. This will appear from Order No. 63, dated May 18, 1950. Nevertheless, the learned Subordinate Judge passed the following strange order:

Defendant is perfectly entitled to all presumptions of law for the non-production of the Register which the Plaintiff is bound to keep but which could not be traced from the office.

The learned Subordinate Judge did draw an adverse inference against the Plaintiff u/s 114(g) of the Indian Evidence Act. In our opinion the learned Subordinate Judge should not have drawn such an adverse inference because he was himself satisfied that there had been no suppression of document by the Plaintiff.

92. In the case of Kunwar Mahabir Singh v. Kunwar Rohini Ramanadhwaj [1933] 37 C.W.N. 657 : AIR [1933] P.O. 87. Lord Thankerton observed:

The circumstances under which the court would be entitled to draw inference unfavourable to the Respondent are provided for by Section 114(g) of the Evidence Act, and the court must be satisfied that the evidence could be produced. The Appellant has not attempted to prove that, the account books are in existence and could be produced. It is not, regrettable that the right of discovery is not fully taken advantage of in such a case as this where documentary evidence if it is still available might afford valuable evidence. But the Appellant's failure to exhaust this source cannot be used against the Respondent....

93. Then again in the case of (1934) L.R. 61 I.A. 177 (Privy Council) Lord Thankerton again observed as follows:

It should be added that the Appellants maintained that in the absence of production of the grant of 1810 by the Respondent, the court should presume that the terms of grant would negative the Respondent's case, in view of Section 114, of the Evidence Act, illustration (g), but it is sufficient to say that there is no evidence that the grant could be produced. The Respondent's natural father stated in evidence that neither he nor the Respondent had it, and he was not cross-examined on this point. Nor did the Appellants seek to ascertain by discovery the existence or the whereabouts of the grant.

94. The third observation by Lord Thankerton is to be found in the case of Ramanathan Chettiar v. Viswanathan Chettiar AIR [1941] P.C. 43. In that case the manager of a joint trading family executed a mortgage for himself and on behalf of his minor brother to pay off trade debts. The mortgagee brought a suit to enforce the mortgage. On being summoned to produce his account books in answer to order for discovery the manager brother filed an affidavit to the effect that the documents were not, and never; had been in his possession or under his control. The manager also filed an affidavit to the effect that the accounts had been given to two Panchayatdars both of whom were dead and he did not know in whose possession the documents were. The trial court then made the following entry in the order sheet, "Petition by the Plaintiff to direct Defendants 1 and 2 to discover on oath. Statements filed many be taken as sufficient, "Petition closed". No further steps were taken by the Plaintiff in the matter. The High Court, on appeal, held that the Defendant had deliberately withheld this evidence from the court, which was particularly within their knowledge and that the conclusion was irresistible that had it been produced, it would have been fatal to their case. On appeal to the Privy Council, Lord Thankerton observed:

95. Their Lordships agree with the view of the Subordinate Judge. The evidence acquiesced in by the Respondent negatives any deliberate withholding on the part of either Defendant there is no reason why the Appellant, should have even had the documents or have known what they contained and there is no ground for any adverse inference.

96. This being of the state of the law the learned Subordinate Judge should not

have drawn any adverse inference against the Plaintiff Union Government when he was satisfied that there had been no wilful suppression in the matter of production of document.

97. Mr. Subimal Roy, learned Counsel for the Respondents did not try to support the contention of the learned Subordinate Judge in form in which it was arrived at. He contended that the documents in existence or at least should have been in existence and Plaintiff Government had not made sufficient efforts to find out or to discover the documents, wanted by the Defendants and to produce the same in court. As such an inference adverse to the Plaintiff should be drawn.

98. So far as the Registers required to be kept under the Acts of 1864 and 1880 are concerned, no question of drawing any adverse inference arises because they were never called for from the Plaintiffs by the Defendants.

99. So far as the Register of Private Land and the Registers of Transfer to be kept under the Regulation of 1810 and also the Cantonment Code of 1899 are concerned, they were no doubt called for by the Defendants in the application, dated January 16, 1950. But nobody could show to us any Regulation of the year 1810. We are not sure whether any such Regulation existed. Therefore, no question of production of any Register maintained under such a Regulation arises. Two Registers maintained under the Cantonment Code of 1899 were produced in court and were marked Exts. 1 and 3 and relevant entries there from were respectively marked Exts. 1a and 3a. Also were produced certain extracts from the General Land Register of the Barrackpore Cantonment, maintained under r. 3 of the Cantonment Land Administration Rule, 1937, marked Exts. 9? 9(g).

100. Mr. Roy contended that ext". 3. the Register of Transfer of Immovable Property commenced from the year 1906 and ended with the year 1912. Moreover, it was a mutilated document or a combination, of pages torn from an old Register and attached to what purported to be a fresh Register. He, therefore, contended that there must have been an earlier Register maintained under the Cantonment Code of 1899 which was withheld. He also contended that there must be a Register maintained under the said Code, subsequent to the year 1921, which was also withheld. He made a grievance that the whole of the General Land Register maintained under the Cantonment Land-Administration Rules of 1937 had not been deliberately produced, but only selected entries there from had been, exhibited, [Ext. 9 to 9(g)]. According to him there was no point in withholding the entire original Register and exhibiting there from only such selected entries as the Plaintiff Government needed to utilise. Lastly, he relied on Ext. E, a certified copy of an entry, dated November 20, 1930, from the General Land Register of Barrackpore Cantonment Sadarbazar (prepared under the Cantonment Land Administration Rules of 1925) which Register he complained, did exist but was not produced by the Plaintiff Government.

101. He complained that the searches for the Registers, after the Defendants call

for the discovery, were made perfunctorily and by incompetent persons and in the absence of proper attempt to search, discover and produce the documents, an adverse inference should be drawn against the Plaintiff Government.

102. The evidence as regards search for the documents was given by two witnesses on behalf of the Government P.W. 1, H.C. Khanna, Head Clerk, Military Estates Officer, and P.W. 2, Aran Kumar Bhattacharjee, Record Keeper of the Barrackpore Cantonment Board, since 1947. "The relevant portion of the evidence of the two witnesses are hereinbelow set out:

(a) P.W. 1 H.C. Khanna

I could not trace out prior Registers of plans except those which have been filed although I made thorough searches for them. (Then says) The searches were made in my presence by the Cantonment Board Record Keeper. The result of the search was communicated to the Military Estates Officer by the Executive Officer, Cantonment Board.

Cross-Examination

There is a Record Keeper who keeps a Register relating to the Cantonment.

I do not know whether there is any List or Register in which all records Kept in the Cantonment Record, room are entered. The said record room is attached to the Cantonment Board office. Record of Records kept there are maintained.

(b) P.W. 2 Arun Kumar Bhattacharjee

I am the Record Keeper of the Barrackpore Cantonment Board since 1947 The General Land Register and plan relating to 43, Middle Road were called from our office by the Military Estates Officer. The registers were found in the Record Room and they were made over to the said officer. But no plan was found and so it could not be made over. I made a thorough search to find out whether any plan or any other register existed, but nothing else was found. I informed the said Officer about it, by letters which are Exts. 4 to 4(b) (The exhibits were shown). Mr. Khanna, Head Clerk of the Military Estates Office, was present with me at the time of making searches.

Cross-Examination

103. I. work under the Executive Officer Cantonment Board,; and not under the Military Estates Officer. The letter wrote to my superior officer, calling for the records. But I do not remember the date, month or year of such requisition. It might be in 1950. I cannot say from what earliest period, the records were available in our Record Room. There is no list, or register of records or anything in writing to show what records, are kept in our Record Room. The records are kept there according to Cantonment Account Code. The records are arranged according to the said Code, and lists of all records arranged in the racks are

pasted on the racks. Such written lists affixed to the racks enumerate the records kept thereon. There was no case of missing of any record from the Record Room to my knowledge. I did not verify the records when I took over charge. I have knowledge about records prior to 1947. I am not aware of any case, of earlier records being lost, destroyed or misled (sic). The General Land Registers are not kept in our Record Room, but they are kept in safe custody of the Overseers. There is no registers of Transfers in our Record Room and I do not know where they are kept. I do not know where registers of Government lands are kept, but they are not kept in our Record Room. Only the records relating to accounts such as Cash Books, Receipt Books, Bills, etc., regarding Cantonment accounts are kept in the Record Room in my charge, and no records or registers relating to lands are kept there.

104. It appears that P.W. 2, the Record Keeper does not know much about the Record Room. In 1953 he gave his age to be 25 years. At the time when he joined office in 1947 he was still within his teens. He cannot be said to be an experienced Record Keeper. It appears, however, that he was made to make a thorough search by P.W. 1, the Head Clerk of Military Estates Office and all the relevant materials that were found were produced in court. It is unfortunate that the Plaintiff Government had no better man to conduct the search, the Record Keeper himself being a man of not much experience. But, nevertheless, the Plaintiff Government did all that could be done under the circumstances and employed the best agency under its control for the search for the documents and registers. The Military Estates Officer, who had been ordered... (Vide Order No. 56, dated 17-1-50, to affirm an affidavit about the existence or otherwise of the documents, sought, to be discovered, did file an affidavit on March 2, 1950, indicating therein the documents which were obtained on search.

105. In our opinion:

(a) the Plaintiff has done its best in searching all the documents in its possession or control and that notwithstanding that their earlier affidavits as to documents were careless.

(b) The documents which could not be produced possibly did not exist, at the time when they were searched for, otherwise they could be found on search (excepting the register u/s 3 of the Land Administration Rule, 1937, to which we shall later on refer).

(c) The documents sought to be discovered were old documents, and it is not astonishing that they could not be discovered on search.

(d) We believe in the evidence of P.W. 1 and hold that he did his best in the matter of searching out available documents in possession of the Government.

(e) The learned Subordinate Judge emphasised on a statement made by P. W. 2, in cross-examination, to the effect that General Registers were not kept in the Record Room but were kept in custody of the Overseer; he further stated that he

did not know, where; the Register of Government lands or private lands were kept. According to the learned Subordinate Judge after this type of evidence, the Defendant would fully become "entitled to the presumption of Section 114(g) of the Evidence Act for non-production of "the plans and other documents called for by the defence and not produced by the Plaintiff."

106. The plans were never called for and we do not understand how the learned Subordinate Judge could think do drawing any prestimption against the Plaintiff for non-production of the plans.

107. Then again the learned Subordinate Judge put a value on the evidence of P. W. 2, Arun Kumar Bhattacharjee, which was more than what it deserved. That witness knows very little. He no doubt stated at first that General Land Registers were kept in the custody of the overseer. He, however, modified the statement during the course of his cross-examination and said that he did not know where such Registers were kept. He tried to be positive on one point, namely, that the Registers were not kept in the Record Room. But it was from the same Record Room that the Registers (Exts. 1, 2, and 3) were discovered and filed in court. We have already expressed our opinion that the said P.W. 2 was a man of little experience about what the Record Room contained. Though inexperienced, we have reasons to believe, he made an honest effort to find out the required documents and produce all that he could lay his hands upon. It was a matter of misfortune of the Government that they did not have a more competent Record Keeper to look for the required documents. But a misfortune is not a dereliction of duty and no adverse inference should be drawn against the Plaintiff to the effect that it had not made an honest effort to produce the documents called for, because the men who had marched for the documents were not very competent people.

108. Moreover, the documents called for by the Defendant were mostly ancient documents and we are not sure that they actually existed in possession of the Plaintiff, at the time when the Plaintiff was directed to produce the same.

(g) The foregoing observation, however, will not apply to the Registers kept under the Cantonment Land Administration. Rules, 1935, extracts wherefrom were exhibited by the Plaintiff and marked Exts. 9 to 9(g). The date, which the certified copy of extracts bear, is February 1, 1946. The suit out of which this appeal arises, was filed on February 19, 1945V Therefore the position is that the said Register existed even one year after the filing of the suit. Why the whole of this Register, although called for, was not produced and exhibited has not been explained. Therefore in respect of this document the question undoubtedly arises whether an adverse inference should be drawn against the Plaintiff.

109. We have already seen that in the-Register (Ext. 1) the land -A suit stood entered as Government land. There is no evidence that at any time thereafter any body tried to have that entry corrected as an erroneous entry. It cannot, therefore, be expected that the Register kept under the Cantonment Land

Administration Rules, would contain any entry to the effect that the land in dispute was private land. Exhibits 9 to 9(g) show that certain plots of land, occupied by the Royal Calcutta Turf Club, a mosque and a dharmasala and the Calcutta Corporation were sold to the occupiers by the Government between 1923 to 1926 and were treated as private lands within the Cantonment a plot of land was left out of the Cantonment area, it being doubted whether the same at all fell within the Cantonment boundaries, such plots were treated as private lands. It was contended before us, on behalf of the Plaintiff Government, that those were the only private lands within the boundaries of Barrackpore Cantonment. The contention was emphatically disputed on behalf of the Defendant Respondents. We are not sure of the position. In the absence of any further evidence, however, that the disputed plot of land, which was at one time treated as Government land was later on treated as private land of the Respondent, it is not possible for us to draw the inference that the Register, under Cantonment Land Administration Rule, 1935, must have contained an entry showing private. character of the land in dispute. Although we condemn the conduct of the Government in not producing the whole of the Register kept under the flutes, and although, we are of the further opinion that the non-production of the aforesaid documents might have furnished as occasion for drawing an inference against the Plaintiff, we are not prepared to; draw an inference to that effect, for reasons; hereinbefore stated,; that the Register must have contained an entry about the private character of the disputed land.

110. The inference, if any to be drawn u/s 114(g) of the Indian Evidence Act, against the Plaintiff is considerably outweighed by the other evidence of the records.

111. We have, therefore, to overrule the conclusion of the learned Subordinate Judge that an inference, adverse to the Plaintiff, should be drawn for non-production of documentary evidence.

112. We now turn to the other branch of Mr. Hoy's argument on. this point. Mr. "Roy contended that the Registers [Exts. 1, 1(a), 2 and 3)] were all worthlessly kept or alternatively contained internal evidence showing existence of private lands within the Cantonment areas. Mr. Roy invited our attention to the entry under column (g) of the Register (Ext. 1a) which was to the effect the site was occupied before the commencement of the Cantonment Code, 1899, The date of permission to occupy the site is not obtainable. Mr. Roy contended that the Government did not know how dependant's predecessor-in-interest came to occupy the land. Not knowing the date of permission to occupy the disputed land the Government should not have presumed any permissive occupation of the land, and on that assumptive basis entered the disputed land in the Register of Government land. He also invited our attention to the entries under columns (h) and (j) of the Register (Ext. 1a) which went to show that W.C. Bonerjee was in occupation under right conferred on him by a registered deed, dated June 10, 1885, presumably the conveyance (Ext. 12) between Eldred Melville Smith and

W.C. Bonerjee. Mr. Roy contended that under column (j) the nature of the lessees' right only was to be written and not the right of a person who claimed to have acquired the property in fee simple right. Mr. Roy, therefore, contended that no value should be attached to the Register (Ext. 1a) and it should not be presumed, basing on that document alone, that the disputed land was Government Land.

113. We are not satisfied with this argument of Mr. Roy. Exhibit 1(a) is an ancient document of the year 1902. It does not appear that W.C. Bonerjee himself ever objected to the inclusion of his name in the Register of Government land instead of in the Register of Private land. The entry of the conveyance by which W.C. Bonerjee acquired title to the property, under column (j) of the Register, is not inexplicable, if the authorities treated the conveyance as a deed of sale of a leasehold interest in the disputed property. It was also sought to be argued that Ext. 1(a) contained a spurious entry, namely, 1.83 written in pencil. This argument is wholly misconceived. In most of the pages of the Register, such entries exist, representing some body's endeavour to convert the Indian measurement of land into acreage. We are not prepared to condemn the Register (Ext. 1a) as of worthless evidentiary value, for the reasons contended for by Mr. Roy.

114. So far as Ext. 2(a) the cancelled Register of Private land is concerned Mr. Roy raised a two-fold argument. He argued in the first place, there was no explanation forthcoming as to why the Register [Exts. 2 and 2(a)] was opened and why it was thereafter cancelled page by page. Also there was no explanation as to when and by whom the said register was cancelled. He argued in the next place that because W.C. Bonerjee's name had been erroneously or wrongfully entered in the Register of Government land in respect of the disputed land [Exts. 1 and 1(a)], the disputed land was not included in the register of Private land (Ext. 2). Mr. Roy contended that no inference should be drawn against the Plaintiff because of the non-inclusion of the disputed plot of land in the Register of private land.

115. The value of exhibit 2, a cancelled document, is not much. There is also no explanation forthcoming as to why it was cancelled. But nevertheless, the document does not lend support to the contention raised by Mr. Roy. We have already expressed the view that the Register (Ext. 1 and Ext. 1a) goes to show that the disputed plot of land was treated, even as far back as 1902, as Government land. The fact that a Register of private land was at one time opened would not necessarily imply that the disputed land should have been therein entered. Mr. Roy's argument proceeded on the supposition that the disputed land has been erroneously and wrongfully entered in the Register (Ext. 1 and Ext. 1a). Since we hold a different view about the evidentiary value of Ext. 1 and Ext. 1(a) we do not find any justification for the contention that the disputed land should have been entered as private land in the Register (Ext. 2). We are of the opinion that Ext. 2 is not of much assistance to the contention either of the

Plaintiff Appellant or the Defendant Respondent.

116. We now turn to the other Register, namely, Register of Transfer of Immovable Property maintained u/s 269 of the atonement Code of 1899 (Ext. 3 and Ext. 3a).

117. Section 269 of the Cantonment Code is hereinbelow set out:

289(1) The Contonant magistrate shall maintain a Register of Transfers, is where he shall from time to time enter reference to all transfers of immovable property?

(a) registered in his own office, where he is himself Registrar or Sub-Registrar of the Cantonment under the Indian Registration Act, 1877, or

(b) appearing in the copies forwarded to him by the Registrar of the District u/s 32, Sub-section (2) the Cantonments Act, 1889, as the case maybe.

(2) The register of transfer shall contain the following particulars, namely:

(a) a serial number for each transfer;

(b) the date of registry:

(c) the distinguishing number of the site, as recorded in the register maintained u/s 266, 267, or 268 as the case may be ;

(d) the name of the transferor;

(e) the name of the transferee;

(f) the nature of the transfer, that is to say, whether by sale, mortgage, gift, exchange or bequest;

(g) the date of the transfer; and,

(h) where the cantonment has been constituted a district or sub-district for the purposes of the Indian Registration Act, 1877, reference to the Indexes Nos. I, II and III kept in the cantonment under Sections 54 and 55 of that Act.

Explanation?In this section the expression "date of registry" means the date of entry in the register maintained hereunder.

118. Register [Exts. 3 and 3(a)] contains an entry relating to Bungalow No. 43, excepting two columns, in the register, all the Tither columns are blank. Under column (o.) "distinguishing "number of the site" is written "No. 43," under column (d) ""Name of the transferor" is written W.C Bonerjee Esq. As we have already observed W.C. (Bonerjee purchased the disputed property in 1885 and remained in possession of the property until his death in the year 1906. The administrator of his estate sold the disputed property to Pramatha Nath Kar in the year "1912. Mr. Roy contended that the aforesaid Register covered a period of 1906 to 1912 during that period there was no transaction in respect of the disputed property, which would make W.C. Bonerjee a transferor in respect of

property. He contrasted this entry (Ext. 3a) in the Register with the entry in the Register, Ext. 1(a) and emphasised on the discrepancy between the two namely that in Ext. 1a, W.C. Bonerjee was described as the lessee but in the Register (Ext. 3a) he was described as the transferor. Mr. Roy contended this" would go to show the worthless nature of the Ext. 3a. Mr. Roy invited our attention, in the next place, to the following finding of the learned Subordinate Judge

119. The authenticity and evidentiary value of Ext. 3 and Ext. 3(a) have been challenged by the defence side by showing two pages in it marked Ext. A and A(I) in their favour which do not tally in respect of the number of entries in the left hand page with those in the right hand page. There are 6 entries in Ext. A where as there are 5 in Ext. A(I) instead of 6. There is no room for doubt that there is such discrepancy, which is clearly borne out by entries No. 37-42 in Ext. A, whereas Nos. 8-10" find mention in the next page to the page marked as Ext. A(I). The learned Advocate for the Plaintiff was good enough to concede that this discrepancy might be the result of misplacement or loss of some page in this old register, which could not be explained.

120. Relying on the aforesaid observation, Mr. Roy contended that no reliance should be placed on Ext. 3(a) at all. We accept Mr. Roy's contention that the Register [Exts. 3 and 3(a)] has not been properly kept and contain mistakes. That detracts a good deal from its evidentiary value. We are not prepared to say, however, that the said Register is a spurious document, as was suggested in course of argument by Mr. Roy. In our opinion Register [Exts. 3 and 3(a)] lends little support to the contention raised by the Plaintiff Appellant, if not for anything else because of the fact that it was worthlessly kept. It cannot be utilised by the Plaintiff Appellant in support of its case, it cannot also be utilised by the Defendants Respondents in proof of their contentions.

121. Of the several Registers exhibited in the case the Register of Government land (Ext. 1 and Ext. 1a) alone lends support to the case made by the Plaintiff Appellant. The evidentiary value! of the other registers [Exts. 2, 2(a) and Exts. 3, 3(a)] is little and need not be considered.

122. Before we leave this branch of the argument, it is necessary for us to make one observation regarding plans Exts. 11, 11(a) and 11(b). Ext. 11(b) is a map prepared in the year 1948, that! is to say about three years after the filing of the suit. Mr. Roy contended that the aforesaid document should not be taken into consideration at all, because it might have been prepared with a purpose. We are not much impressed with contention, because there is no material difference between the map Ext. 11(b) and" the earlier maps Ext. 11 and 11(a). Therefore, the position is that if the earlier maps do support the contention of the Plaintiff Appellant, Ext. 11(b) also will.

123. Mr. Roy invited our attention to the history of land acquisition for Barrackpore Cantonment as appearing from documentary evidence, and contended that the acquisition would cover about 1355 bighas and 5 cottahs and

not 889 acres. We are not satisfied with the arithmetic of Mr. Roy because he, ignores about 22 bighas the land of Macintyre, which was also acquired, as will appear from Ext. 5(d), read with Ext. 5(c). In the next place the history of the process of acquisition as appearing from documentary evidence may not be a complete history. Nevertheless, it appears from Ext. D, the Mouzawari Register and the map Ext. 11, that since 1847 the Cantonment area was treated to comprise about 889 acres of land. We have no reason to doubt the authenticity or the correctness of these two documents. Mr. Roy arrived at the figure 1355 bighas 5 cottahs on the basis of land acquisition made up to the year 1785; more plots of land must have been subsequently made Cantonment land so as to make up an acreage of 889, as appearing in Ext. D and Ext. 11.

124. Mr. Roy alternatively argued that if, however, it was assumed for the sake of argument that the area of Barrackpore Cantonment was 889 acres, as appearing in exts D and 11 and if the disputed plot of land geographically fell within the boundaries of that Cantonment his contention would be that every bit of land within the Cantonment boundaries was not Government land and that there were some private plots of land included therein of which the disputed plot of land was one. We shall have to consider this branch of argument of Mr. Roy later on in this judgment.

125. We now turn to the other arguments advanced by the learned" Advocate-General. The learned Advocate-General contended that the learned Subordinate Judge was wrong in over emphasizing on the Defendant's documents of title (Ext. 1 series). He contended that the Government would not be bound by any statement contained in the said documents, because Government! was no party to the aforesaid deeds. He strongly criticised the observations by the learned Subordinate Judge based on the assumption that Major N. R. Sneyd, a Military Officer and Cantonment Magistrate what also the Registrar of Deeds had registered the conveyance (Ext. 1/1) by Bedchambers and others it Motilal Ghose Colley, with full knowledge of the contents it hereof. He contended that the Cantonment Magistrate while acting as ex-officio Registrar was not acting as a Military Officer or a representative of the Government. If the deed presented for registration was otherwise in form and was properly stamped, the Registrar was bound to register the same and had no power to refuse registration. No question of estoppel would arise against the Government merely because of the fact that the Cantonment Magistrate had registered successive documents of transfer, in which the vendors claimed to convey fee simple title to the disputed land.

126. The Registration Act gives little discretion to the Registrar; he is bound either to register when he is satisfied by the admission of the parties that the deed had been executed and no disovetion is given to him to enquire further into the matter. If the person executing a document appears before the Registrar and admits execution and if the deed is otherwise in form and properly stamped, it is the duty of the registering officer to register the deed. With any other matter he is not concerned.

127. Mr. Roy, learned Advocate for the Respondent, tried to repel this argument by contending that even if the Government was not estopped from disputing the absolute title of the Defendants, merely by reason of registration of the documents it was estopped by conduct. He contended that in the matter of construction of house on the disputed land in the matter of addition Or alteration thereto, the Defendants or their predecessors in interest had never sought for or obtained the permission of the Cantonment Authorities and had not even conformed to the standard specified for construction of houses. Had the disputed land been Government land, this could not happen. It is true that there is no evidence showing that permission had been taken from the Cantonment Authorities to build on the land; at the same time there is no evidence going to show that the Defendants or their predecessors went on as they liked in the matter of construction of the house on the disputed land. Without more we are unable to assume that the Defendants' predecessors-in-interest had built on the disputed land without permission, or in violation of the Rules. We, therefore, overrule the contention of Mr. Roy that the Government was bound by any law of estoppel from disputing the absolute title of the Defendants with the disputed land.

128. We have now to consider some of the case laws relied upon by the learned Advocate-General, namely:

Kai Khusm A. Ghaswala v. Secretary of State for India-in-Council (1911) L.R. 38, I.R. 204. In that case the Secretary of State used to eject the Appellants from premises within the limits of Poona Cantonment on the ground that the land belonged to the Government of Bombay and was only held by the Appellants on Military or Cantonment tenure which entitled the Government to resume it at their pleasure, subject to compensation for building which the tenant might have erected thereon. The Appellants contended that they were entitled to compensation on the basis of private ownership and not as mere licensees. Lord Robson delivering the judgment of the Board observed as follows:

The Poona Cantonment dates from the year 1817, and was formed after the defeat of the Peishwa at the battle of Kirkeo. In exercise of the right of conquest the military authorities at the time marked off a considerable area of land, about five square miles (which was cultivated or capable of cultivation only to a very slight extent), for the occupation and convenience of their troops. They soon set about to frame regulation for the appropriation and control of this area. Up to 1834 the Presidency of Bombay was governed by regulations made by the Governor in Council, and the first regulations affecting this cantonment appear to be those issued in 1819. By Bombay Regulation 1 of 1819, Section 4, it is provided that the limits of the cantonments at which any corps or considerable detachment may be quartered shall be fixed by the commanding officer in concert with the zillah magistrate or criminal judge, and directing these authorities to report thereon to the Governor in Council. On September 14, 1820, the Governor in Council directs the Commander-in-Chief to issue instructions

carrying into immediate effect the provisions of Regulation I of 1819.

129. The precise delimitation of the Poona Cantonment was accordingly then commenced, and the correspondence during the years immediately ensuing particularly a letter dated September 24, 1822, from the Collector to the Commissioner) shows that the military authorities were making arrangements and agreements with the owners of the lands belonging to Poona such as would indemnify them for the loss they sustained by being deprived of their rights of occupancy. -On May 4; 1823, the Commissioner, Mr. Camplin, writes to the Collector to inform him that the whole of the land which had been sketched out as necessary for the cantonment by the military authorities must be given-up, and asking for a report on any arrangements that might inconsequence be requisite for indemnifying the present holders of the land. It seems reasonably clear, therefore, that from the first the military authorities were conscious, as they would scarcely help being, of the inconvenience and risk of having absolute owners of land within the cantonment, and of the necessity for propitiating them by proper settlements and compensation. Even if the Appellant established that his house was built at or before the time the cantonment was formed, there is still, under the circumstances of the case, a strong probability that he was duly compensated along with other proprietors for the change in his position as owner to that of licensee. This probability is rendered stronger as the history of the cantonment proceeds.

130. Bombay Regulation III of 1826, Section 21, provides that the limits of cantonments shall be subject to the approval therein mentioned and adds in which limits privato property is not to be included. Bombay Regulation XXII of 1827, Section 21, is to the same effect.

131. On September 29, 1827, a Government proclamation was issued for the information of the Poona district, notifying that the cantonment boundaries were fixed, prohibiting cultivation within that area, and warning all persons that the produce of such cultivation would be subject to appropriation without compensation.

132. It is unnecessary to go in detail through the numerous succeeding regulations which show how strictly the military authorities asserted their proprietary rights. They are summarised in Aithohtion's Cantonment Code of 1836, and in Jameson's Cantonment Code of 1850, and they make it clear that, though permission to occupy ground was frequently given, especially for the building of officers houses or bungalows, such permission carried with it no sort of proprietary right, and the buildings were liable to expropriation at a price to be fixed by the authorities. The permission of the commanding officer was necessary even for the sale or letting of this house thus built. In this state of things it is impossible to say that mere possession or occupation of the bungalow on this site affords any presumption whatever that the possessor or his predecessors in title were owners in fee. The presumption is all the other way, and that adverse presumption is strengthened when the history of the site comes

to be examined. It has been traced to the year 1843, when it was occupied by an army surgeon. It afterwards came into the hands of a contractor, Numdram Sundarji and in 1860 he is found petitioning the Commander-in-Chief against a proposal by the Military authorities to remove his bungalow along with others for various reasons, which illustrated the limited and precarious character of his tenure. Again, in 1882, Adarji Dorbji applied for permission to build a fowl shed on the site, and duly obtained the sanction of the Commander-in-Chief. These circumstances tend to show that the Appellants' predecessors in title did not regard the property as differing in its tenure and terms from other property in the cantonment.

(b) *The Secretary of State for India v. Mulla* AIR [1022] All. 57. In that case -the Respondent on the basis of purchase, between the years 1895-1896, was in possession of certain plots of land within Shah Jahanpur Cantonment. He never paid any rent in respect of the aforesaid plots of land and his name stood recorded in Cantonment Register as proprietor. In the year 1911 an officer of the Cantonment altered the entry in the Register and declared Mulla to be a tenant and later on assessed a sum of Rs. 5-8-0 as rent. In the year 1916 the Cantonment Authority sued to eject Mulla. The suit was decreed by the trial court. The learned District Judge on appeal reversed the decree in so far as it was a decree for eviction. The Secretary of State appealed against the decree to the Allahabad High Court, Stuart, J., decreed the appeal with the following observation:

What is the position of Mulla There is a very long series of decisions from 1866 onwards; *Carey v. Robinson*, Indian Jurist, new series Vol., p. 88, *Ram Chand v. Collector of Mirzapur*, N.W.P. High Court Reports of 1968, p. 7; *Paterson v. Secretary of State* ILR All, 669, *Secretary of State v. Jaggan Prasad* ILR All. 148, *Secretary of State v. Vamanray Narayan Chiplunkar* ILR Bor. 137, *Bank of Upper India Ltd., Mussoorie v. Secretary of State* ILR All 229. The last decision is a decision of their Lordships of the Privy Council. From those decisions it is clear that the Secretary of State is absolute owner of all Cantonment land, unless it can be proved satisfactorily that he has parted with the ownership. In the absence of evidence, as is the case here, all cantonment land belongs to the Secretary of State. There can be no adverse possession against him. The only position open to a person occupying land in cantonments which has not been specifically transferred by the Secretary of State, is the position of a tenant or the position of a licensee. It has been found on the facts that Mulla is not; a tenant: He has never paid rent. His position is that of a licensee, and it is open to the Secretary of State to eject him at will by revoking his license. This appeal must therefore succeed.

(c) (1931) ILR 58 858 (Privy Council) . This case is of particular interest because it deals with land-holding within the Cantonment of Barrackpore. In this case the Government notified for acquisition of a plot comprising some 5 1/2 bighas of land, with a house upon it, situated in the Barrackpore Cantonment, in

possession of the Respondent. The Collector valued the building at Rs. 11,467-11, which together with Rs. 1,720-2-5 being the Statutory allowance of 15 per cent, for compulsory acquisition, he awarded to the Respondent. He valued the land at Rs. 9,510-10, but refused to award any part of this to the Respondent on the ground that the land being Cantonment land was the property of the Government. The Respondent claimed a reference and a special Land Acquisition Judge held that the Respondent was entitled to the value of the land also and passed accordingly in his favour. The Secretary of State appealed to the High Court but the appeal was dismissed. Thereupon there was an appeal taken to the Privy Council. Sir George Lowndes who delivered judgment of the Board observed:

Their Lordships, however, have no doubt that when Government are acquiring immovable property for a public purpose under Act I of 1894, it is for the person claiming compensation to establish his title to it affirmatively.

133. The difficulty in the present case arises mainly from the fact that the acquired property is admittedly within the Barrackpore Cantonment, and the tenure of such property is in many cases of a somewhat anomalous character. It seems clear that much at all events of the land comprised in this cantonment, and probably in other cantonments in different parts of India, was originally acquired by Government for military purposes, but that private individuals were allowed to erect houses upon various plots. Government appear to have encouraged this form of development as providing a simple solution of the varying demand for officers' quarters, and to have recognised, subject to certain restrictions, rights of private ownership in the buildings while at the same time retaining in themselves the property in the soil. This is sometimes referred to as "military or Cantonment tenure.

134. His Lordship, thereafter, referred to the General Order of the Governor-General in Council No. 179, dated September 12, 1836, and particularly to Clause 6 thereof (hereinbefore quoted at pp. 34-35 of this judgment) and observed:

It is contended for the Appellant that these rules and in particular para. 2 of Clause 6, declare all lands in cantonments to be the property of Government. Their Lordships are not satisfied that this is the necessary implication, though the rules certainly suggest that some, and probably the greater part, of the land was at that time Government property.

For the Respondent it is contended that under these rules a register and plan were to be kept upon which all grants by Government were to be entered, and reliance is placed upon the fact that no such records are produced. Their Lordships are driven to the conclusion that these provisions have been disregarded by the military authorities but in the absence of any proof that the Respondents buildings were erected after 1836, they think that no presumption

can be drawn in.

Turning now to what is known about the Barrackpore Cantonment in particulars number of Official letters have been produced, commencing with one from Warren Hastings, dated February 2, 1775 which make it clear that between that date and 1814: Government acquired a considerable quantity of land for the cantonment, and a survey map has been put in evidence dated in 1851, which shows the cantonment as consisting of 889 acres 1 rood 31 poles. It is on a small scale but in great detail, and. shows the plot the subject of this appeal with buildings upon it which are no doubt those of which the value has been awarded to the Respondent by the Collector. An entry has also been produced from the mauzawari register, dated September 30, 1853, in which the Barrackpore cantonment with the same area as above is entered as a mehal "khas sircar" which seems to mean in the possession of Government. Counsel for the Respondent has objected to the admissibility of this entry, but there is no trace of any objection having been taken to it in the courts in India and their Lordships think that it is admissible, for what it is worth, u/s 35 of the Indian Evidence. Act. Their Lordships hold that the fair inference from these facts, taken in connection with the Rules of 1836, is that, much, and possibly most, of the land in this cantonment was and is the property of Government, that houses were erected upon it by the licensees of Government, the buildings being recognised as the property of the persons by whom they were erected, and the land remaining in the ownership of Government, but that there may nevertheless have been Within the cantonment limits some land which was never acquired by Government, and of which the ownership was always in private hands.

135. If it lay upon the Appellant to prove the acquisition of the particular plot which is the subject of this appeal, there can be no doubt that he has failed to do so. Both courts in India have come to this conclusion, and considering that this disposes of Government's claim to the land, they have, as their Lordships think, assumed that it must be the property of the Respondent. Their Lordships are unable to concur in this assumption. In their opinion the Respondent, in order to succeed in his claim to compensation for the land, must prove his title to it in the ordinary way. The plot in question may have been privately owned, and may have passed from such owners to the Respondent, but there is in their Lordship's opinion no ground for assuming this; it must be a matter of proof by the Respondent and it is upon this that the Respondent's claim to the compensation money must stand or fall."

136. His Lordship then discussed the Respondents' documents of title and expressed the following opinion:

Their Lordships think therefore that the title of the Respondent must be taken to be a purely possessor one, and whether dating from 1900 or from 1871 seems to be immaterial as it is clear from the map referred to above that the property had

been included in the cantonment at all events from 1851.

Under these circumstances their Lordships are unable to hold that possession of the land with the house standing upon it from 1900 or even from 1871 if that can be assumed, is any proof of title to the land. It is in every way consistent with a mere cantonment tenure which has never been denied by Government but which would carry with it no property in the land. Indeed the facts that no assessment is levied, and that no private title has been registered suggest this as the more probable origin of the Respondent's possession.

137. Reference has been made in the arguments to the case of *Robinson v. Carey Cor. Rep. 137* which came before the High Court of Calcutta in 1865. In this case, which was concerned with another house in the Barrackpore Cantonment, Norman J., the trial judge, delivered himself as follows: "With respect to the property of the soil in cantonments, where there is no evidence that the land is part of a settled estate, there being no proof that it pays revenue to the Government, nothing in fact to show that it is held by any other tenure, I think it must be taken that the soil is the property of the Government, and that the occupation by the owners of bungalows is permissive." Whether this would be sufficient to establish the title of Government where the burden was upon them, may be open to doubt, but their Lordships think that it affords a very cogent answer to a merely possessor title;

139. In *Ghaswala v. Secretary of State for India L.R. 38, 1, A.I. 204* a case very similar to the present one, but dealing with a house in the Poona Cantonment, came before this Board. The Bombay Regulations, by which the case was governed, provided definitely that no private property was to be included in the cantonment, and the absence of any corresponding provision in the Bengal Regulations no doubt weakens the application of the decision. But much of Lord Robson's judgment is in point. There as here, a paper title of sorts was relied on, but it was put aside as of no weight, and the real question was the effect of long possession. The Cantonment was founded in 1822, and official correspondence was put in which showed, as in the present case, that in the immediately ensuing years the military authorities are arranging for the indemnification of the expropriated owners.

It seems reasonably clear therefore," Lord Robson says *L.R. 36 IndAp 215, 216*, "that from the first the military authority were conscious, as they could scarcely help being of the inconvenience and risk of having absolute owners of land within the cantonment, and of the necessity of propitiating them by proper settlements and compensation. Even if the Appellant established that his house was built at or before the time the cantonment was formed, there is still under the circumstances of the case, a strong probability that he was duly compensated along with other proprietors for the change in his position as owner to that of licensee.

140. He goes on to point out that this "probability" is made stronger by the provision of Bom. Reg. III of 1826, which laid down that private property was not to be included in the cantonment limits, and he continues "In this state of things it is impossible to say that mere possession or occupation of the bungalow on this site affords any presumption whatever that the possessor or his predecessors in title were owners in fee. The presumption is all the other way".

(d) *Sardar Sujan Singh v. Secretary of State for India* AIR [1933] Pes 217. In this case the lands in dispute were situated within the Peshwar Cantonment. The Military Estate Officer issued notices to the Appellants declaring that the lands, comprising the sites of the bungalows concerned, belonged to the Government and were held by the Appellants on Cantonment tenure, and asserting that the Government was entitled to resume those lands on payment for the buildings thereon. He announced resumption on a future date and actually resumed them later on. The properties were thereafter acquired and in the award the Collector held that the sites of the bungalows concerned were Government properties and fixed compensation for the buildings on the land and none for the land itself. The Appellants caused a reference to be made and inter alia, claimed the value of the land also. One of the questions, that arose for consideration, was who was the owner of the sites in which the buildings stood. His Lordship then referred to some of the Rules, Regulations and Orders published in "Gazette of India" of November 8, 1898. hereinbefore referred to and also" to Clause 6 of the General Order No. 179, dated September 12, 1836 and to certain amendments thereto between the years 1836 and 1855, to the Order of the Commander-in-Chief, dated January 20, 1853, to the General Regulations of the Bengal Army 1855, to the Code Regulation of the Public Works Departments 1858, to the General Order of the Governor General No. 1001 of 1864, to the Regulations and Orders for the Army of the Bengal Presidency 1873 and 1880, to the Army Regulations India, 1887, and came to the conclusion that they had no statutory force but nevertheless held:

In both 115 P.R. 1882 (*Hodgkinson v. Fitzherbert*) and 46 All 426 (*Baghubar Dayal v. Secretary of State*) finding that occupiers of houses were holding on Cantonment Tenure based on General Order No. 179, the learned Judges were careful to note that this was not because it had any statutory force. Cantonment tenure has however been found to prevail in many cantonments in India and to be binding on occupiers of houses, and instances of rulings to this effect placed in chronological order are:

Date. Cantonment.

71 P.R. *Poley v. McMurdo*. . . Nov. 1873 Rawalpindi

115 P.R. 1882 *Hodgkinson v. Fitzherbert*

22-12-1881 Ambala

30 B. 137 *Secy, of State v. Vamanrav Narayan* . . 16-8-1905 Poona

33 A 229, Bank of Upper India v. Secy, of State.

29-10-1910 Dehra Dun.

36 B 1, Kaikhusru v. Secy, of State .. 27-6-1911 Poona

56 I.C. 813, Onkar Mal v. Secy of State . 10-5-1920 Not known.

45 B 277: 64 I.C. 582 and 584, Mangaldas v. Assistant Collector. .. 14-6-1920 Ahmedabad.

66 I.C. 582, Secy, of State v. Mulla .. 6-2-1922 Shahjahanpur.

46 A 427, Baghubar Dayal v. Secy, of State .. 19-2-1924 Meerut.

58 C 858, Secy of State v. Satish Ch. Sen . 14-10-1930 Barrackpore.

1933 Pesh 56, Cantonment Board v. Sant Saran

14-2-1933 Rawalpindi.

Unpullished Soham Singh v. Secy, of State . . 4-2-36 Rawalpindi.

do Fazal Ilahi v. Secy, of State

4-2-1936 Rawalpindi.

do Danjibhoy v. Secy, of State

2-6-1936 Rawalpindi.

With these decisions before us, nothing that the Appellants do not deny that the lands did belong to Government after Peshwar Cantonment came into private occupation, we feel that no argument is necessary to establish that. If General Order No. 179, dated 12th September 1836 or any order or regulation embodying its provisions applied to Peshwar Cantonment at and after its inception in 1851, the onus is on the Appellants to show that the original Private occupation was not that of a licensee and that they themselves are not licensee holding under cantonment tenure.

General Order No. 174, dated 5th August, 1840, and General Order, dated 20th January 1853, show that General Order No. 179 (as amended), was in full force on those dates at all cantonments within the Bengal Presidency. On the latter date but not on the former the Peshwar Cantonment was in existence and was within the Bengal Presidency.

141. There is no ground whatever for doubting that it was in force between 1851 and 1853, and it has manifestly been in force (by inclusion of its terms) in subsequent rules and regulations ever since. All the houses concerned in these appeals were certainly built after 1851, all except one were in existence before

1856, and there is no evidence whatever as to any specific terms being made between Government and the first occupiers. The one house built after 1886 was built on land privately occupied before 1866. We are therefore, bound, in conformity with their Lordships' ruling in the Barrackpore case of 1930 to rely on presumption and to record the finding that the first occupiers held on cantonment tenure and were licensees.

(e) *Soham Singh v. Governor-General in Council* AIR [1947] P.C. 178. In that case the Appellant had been in possession of the disputed land within Rawalpindi Cantonment and had erected a bungalow thereon. The Government resumed the land and later on acquired the bungalow. The land Acquisition Collector made an award in favour of the Appellant for the value of the building only. The Appellant claimed compensation for the land also. The question that was agitated before the Privy Council was whether the land within the Cantonment area, on which the building stood was privately owned land. Sir John Beaumont, who delivered the judgment of the Board, found that the land tenure in Rawalpindi Cantonment was governed by Clause 6 of the Governor-General's order 179 of 1836 and observed as follow:

Before the District Judge the file in the Land Acquisition Proceedings of 1849-1850, when the Cantonment Area was defined, was not available, though the plan referred to in such file was produced. The learned District Judge found the plan unintelligible without the production of the file. When the matter came before the High Court the file had been discovered and was put in evidence by leave of the court. Sale dealt exhaustively with the documents in this file and their Lordships agree generally with the conclusions of the learned Judge. The Land Acquisition file is contained in Part II of the record before the Board, and it is not easy to follow. It contains a statement No. 1 which is headed "statement regarding compensation showing lands pertaining to Rawalpindi Cantonment prepared in 1849-1850." This statement contains the same number of plots, namely 558, as shown on the plan, and the Statement and plan clearly go together; Their Lordships agree with Sale, J. in thinking that the site on which bungalow No. 160 stands can be identified with plots Nos. 451 and 453. In Statement No. 1, No. 451 is shown as in the ownership of Barkat Ullah and No. 453 as in the ownership of Amir Shahabaz and Gauhar. The statement does not show the consideration which was to be paid by Government which, as the High court pointed out, was to be an annual payment. Further statements included in the file contain a rather smaller area than that comprised in the first statement, 2,069 bighas against 2,481 bighas, and these statements show the compensation to be paid by Government from these two facts. Mr. Pritt, on behalf of the Appellants, has argued that the first statement and the plan merely show the property which Government contemplated acquiring, that the later statements show the property actually acquired, and that the site of bungalow No. 160 cannot be identified on such later statements. This suggestion is ingenious, but their Lordships are not satisfied that it is correct. The persons shown as owners of plots Nos. 451 and 453, with other plots, in the first

statement are shown as receiving compensation for land taken in the later statement though it is impossible to identify the land in respect of which compensation was payable. At this distance of time, however, it is natural that there should be difficulty in ascertaining exactly what happened. But if it be established, as their Lordships hold that it is, that the land in dispute is in the centre of the Cantonment area, that no other land in centre of the area is privately owned, that in 1849-1850 this land was either already built upon or was about to be built upon, and that the site was included on the plan of the land which Government was proposing to acquire, their Lordships think that the proper conclusion is that the land was acquired by Government and they would require cogent evidence to induce them to reach any other conclusion. They find no such cogent evidence.

142. On the aforesaid authorities the learned Advocate-General contended that there was little scope for existence of private land within Cantonment areas, for less in Barrackpore Cantonment.

Mr. Subimal Roy tried to distinguish the aforesaid cases on the following lines of reasoning:

(i) Regarding Ghaswala's case (supra) he argued, that the case was decided on the special provision of Section 21 of Bombay Regulation III of 1826, which provided for the limits of the Containment and added that within the Cantonment limits, private property must not be included. Section 21 of the Bombay Regulation XXII of 1827, Mr. Roy pointed out, was to the same effect.

(ii) Regarding the case of Secretary of State for India v. Mulla (supra). Mr. Roy contended that the proposition of law enunciated in the said decision, namely, that the Secretary of State must be treated as absolute owner unless it was proved that he had parted with the ownership thereof, was too broadly stated and was opposed to the decision of the Privy Council in Satish Chandra Sen's case (supra).

(iii) Regarding Satish Sen's case (supra) he contended that in that case the Plaintiff Respondent failed only because he could not discharge the Plaintiff's onus and affirmatively prove that the disputed land was private land. He further contended that in Satish Sen's case the Appellant Secretary of State also could not prove that the disputed Cantonment land was Government land and he relied on the following observation in the judgment?"If it lay upon the Appellant to prove the acquisition of the particular plot which is the subject of this appeal there can be no" doubt that he has failed to do so."

(iv) Regarding Sardar Sujana Singh's case (supra). Mr. Roy contended that in that case also the Appellants failed because they could not affirmatively prove that they were the owners of the land and not licensees. The Government was not called upon to prove that the land was Cantonment land. Had it been so called upon, it could not but fail in affirmatively proving its title to the land.

(v) Regarding Sohan Singh's case (supra) Mr. Roy contended that there were certain special feature in that case which made it distinguishable from the present one; In the first place the disputed land was located in the centre of the Cantonment area, where no other land was privately owned. In the second place as far back as 1849 the disputed land was shown in the plan of land, which the Government intended to acquire for Cantonment purposes; from this their Lordships held that the disputed land must have been acquired for the Cantonment. In the absence of the aforesaid special features Mr. Roy contended, the aforesaid case was no authority for the purpose of present case.

143. Mr. Roy may be right in his contention that excepting in Poona Cantonment (and may be in a few other Cantonments) where existence of private land was expressly excluded by Regulations, it is not possible to say with certainty that because a plot of land is geographically situated within the limits of: a Cantonment area it is Cantonment lands. So far as Barrackpore Cantonment is concerned it appears that although the area was originally acquired by the Government for military purposes; private individuals were allowed to erect houses upon plots of land within the Cantonment area. Government appears to have encouraged this form of development as providing a simple solution of the varying demand for officer's quarters and appears to have recognised private ownership in the buildings subject to certain restrictions. But taking into consideration the history of the growth of Barrackpore Cantonment and the various Orders, Rules and Regulations governing possession of lands and building's within the Cantonment it may only be reasonable to hold that the greater part of the land within the Cantonment was owned by the Government.

144. The result is that in order to succeed the Appellant must prove that the disputed land was Government property. In our opinion the Appellant has succeeded in proving this.

145. In the first place there are the maps (Ext. 11a and 11b) which go to show that the disputed plot of land (plot 43, later on marked as 308) was within the geographical ambit of the Barrackpore Cantonment area. Since the year 1851, the map of the Barrackpore Cantonment area has not very much changed. This will appear from the comparison with the two subsequent maps (Ext. 11a and Ext. 11b). A look into the aforesaid map will satisfy anybody that although not near the centre of the Cantonment the disputed plot was well within the boundary of the Cantonment,- thus leaving no manner of doubt that it was situated within the Cantonment boundaries. Mr. Roy in his (fairness also did not dispute the fact that the disputed land was situated within the boundaries of the Barrackpore Cantonment.

146. In the next place there is the Register of Government land, prepared u/s 266 of Cantonment Code, 1899, of which Ext. 1a is certified copy of the relevant entry, which goes to show that, as far back as 1902 the disputed land was entered in the Register as Government land, in occupation of W.C. Bonerjee. It is no doubt true that the dimensions of the disputed land, was entered as 5 bighas

11 cottah instead of 3 bighas 2 cottahs and 5 chittacks, which is the area of the disputed land and it is also (true that in the said Register it was noted that the date of permission to occupy the site was not obtainable. But all these will not wholly nullify the evidentiary value of Ext. 1(a). The person or persons responsible for maintaining the Register may have been guilty of lapses in not giving the correct area of the plot of land or in not being able to record how and when the: disputed land came into private occupation, but the outstanding fact remains that even so far back as 1902 the disputed plot of land was treated as Government land and was entered as such in the Register statutorily to be maintained. We have no reason to suppose that such an entry was purposively made with, the ulterior object of depriving a private owner of his ownership of the disputed plot of land.

147. Lastly there is-the Mouzawari Register (Ext. 10) which shows that the entirety of the 889 acres of land covered within Barrackpore Cantonment as depicted in map Ext. 11 series" was Government land. We have already: stated that the disputed land is within that acreage. This Mouzawari Register as the Privy Council held in Satish Sen's case (supra) was admissible in evidence, for what it was worth u/s 35 of the Indian Evidence Act. It may not be the best type of evidence for proving that the disputed plot of land was Government land but nevertheless it is some evidence leading to that conclusion. If the whole of the 889 acres was khas Government land a part-of it could not be otherwise.

148. In Satish Sen's case (supra) this Register (Ext. 1a) was not produced. Therefore it was that their Lordships observed that had it lain upon the Appellant Government to prove the acquisition of the disputed plot it must be deemed to have failed to do so. In this case fortunately for the Government it has produced the Register and that makes all difference.

149. Taking all the facts and circumstances together we are of the opinion that the Appellant Government succeeded in proving that the disputed land was Government land within the Cantonment. Once that is established the consequences must follow and the Defendants would have mere possessory interest in land, subject to resumption at any time at the will of the Plaintiff.

One other point argued by Mr. Roy deserves notice. In the year 1935, the Secretary of State for India represented by the Garrison Engineer of Ishapore had taken a lease of "all that brick built message or dwelling house situate at No. 43 Middle Road within the Military Cantonment of Barrackpore together with all fittings and fixtures, out buildings, filtered water taps, electric points, switches, meter board, grounds; garden, trees, fences, hedges ditches, easement, appurtenances whatsoever to the said message dwelling house" for a period of one year at the monthly rent of Rs. 150. Mr. Roy contended that the document of lease (Ext. P. 2) contained a clear admission of the proprietary right of the lessor. We are unable to! agree with Mr. Roy. The lesser, predecessor in interest of the Defendant had a possessory right over the land and ownership of the bungalows. If a lease of such right had been taken by the Government that would not

amount to an admission of proprietorship of the Defendants predecessor in interest over the disputed land.

150. In our view the learned Subordinate Judge was wrong in dismissing the Plaintiffs' case. We hold that the Plaintiff Appellant has substantially proved its case and is entitled to the relief prayed for. We, therefore, set aside the judgment and decree of the trial court and pass a decree in favour of the Appellant.

151. This appeal is allowed with costs.

Guha, J.

152. I agree.