

PURSHOTTAM DAS TANDON DEAD BY LRS.

v.

MILITARY ESTATE OFFICER & ORS.

(Civil Appeal No. 2147 of 2006)

AUGUST 13, 2014

[**RANJAN GOGOI AND M.Y. EQBAL, JJ.**]

Government grants – Property purchased by predecessors of the appellant in auction – Resumption notice by Union of India leading to writ petition – Case of UOI that the land on which the property stood was the subject of old grant under which a right of resumption as also title to the land vested in the Union; and only the building was conveyed to the predecessors of the appellant – High Court holding that the parties to move to civil court for adjudication of title – Suit seeking eviction of tenant and sub-tenant by appellant – Notice by UOI demanding rent from occupants – Inter-pleader suit by one of the tenant – Decree therein that appellant entitled to receive rent in respect of the property, upheld by Supreme Court – Writ petition by appellant seeking mutation of property-bungalow as owners – Dismissal of, holding that in terms of the order in earlier writ petition, dispute required adjudication in a civil suit – Application by the appellant seeking sanction of plan to raise construction – Rejection of, in view of the resumption order – Aggrieved, appellant filing another writ petition asserting his ownership of the property – Disposed of, holding that in the inter-pleader suit it was already decided that the property belonged to the appellant and the question of title to the property had become res judicata – Order challenged before Supreme Court – Matter remanded back to the High Court on the issue of res judicata – High Court holding that the decree in the inter-pleader suit that appellant to be entitled to receive the rent, would not operate as a res judicata so as to confer any finality to the

- A *issue of title – Parties left with the option of adjudication of title in a suit for declaration – On appeal, held: Subject matter of the two proceedings-inter-pleader suit and the appeals arising therefrom and the writ petitions filed by appellant not directly and substantially the same so as to attract the*
- B *principle of res judicata enshrined in s. 11 CPC – Having regard to the nature of the dispute and the highly contentious issue raised, and the earlier order in the writ petition, no infirmity in the impugned order, so as to warrant interference – Code of Civil Procedure, 1908 – s. 11 – Res judicata – Cantonment Act, 1924 – ss. 181, 274.*
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The grandfather of the appellant purchased the property in a court auction in the year 1848. The Union of India issued a resumption notice in respect of the said property in the year 1968. The appellant filed a writ

D petition. The Union of India contended that the land on which the property stood was the subject of old grant under which a right of resumption as also title to the land vested in the Union; and that it was only the building which was conveyed to the predecessors of the appellant

E and the same could always be resumed subject to payment of compensation to be assessed on the cost of the building. The High Court relegated the parties to the remedy of a civil suit being highly disputed question of fact relating to title. The appellant filed a suit seeking

F eviction of the tenants and sub-tenants in the property. The Union of India served notice upon the said two occupants demanding rent. One of the tenant filed an inter-pleader suit. The trial court held that the appellant was entitled to receive rent. The said order was upheld

G in the second appeal as also special leave petition. The appellant filed W.P. No.13353 of 1992 to mutate the name of the petitioners as owners of Bungalow. The writ petition was dismissed on 07.01.2000 holding that the dispute required resolution in a regular civil suit in terms

H of the earlier order in the writ petition. The appellant also

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filed an application before the competent authority u/s. 181 of the Cantonment Act, 1924 seeking sanction of plan to raise construction and the same was rejected. The appellant then filed W.P. No.28558/02 asserting his ownership of the property-bungalow. The High Court disposed of the petition requiring the appellant to file appeal u/s. 274 of the Cantonment Act against the order of rejection. The High Court held that in the inter-pleader suit it was already decided that the property belonged to the appellant and the question of title to the property had become res judicata. Thereafter, in the appeal filed by the Cantonment Board, this Court remanded the matter to the High Court in view of the apparent inconsistency in the two orders of the High Court on issue of res judicata. The High Court dismissed the writ petition holding that the decree passed in the inter-pleader suit holding the appellant to be entitled to receive the rent in respect of the property would not operate as a res judicata so as to confer any finality to the issue of title in respect of the property; and the relief claimed therein would be adjudicated in a suit for declaration of title. Hence, the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1. The conclusion of the High Court in the impugned order appear to be based on three principal grounds. Firstly, the High Court held that the decree in the proceedings arising out of the inter-pleader suit as affirmed by this Court merely decided the entitlement of the appellant to receive rent in respect of the property and in fact the question of title to the property was neither in issue in the said proceedings nor was the same decided. In this regard the High Court specifically noticed that in the judgment rendered in the Second Appeal, the High Court had specifically recognized the right of the Union of India to take out legal proceedings for eviction of the appellant thereby clearly indicating that the issue of title

A was not conclusively determined in the said inter-pleader
 suit and the proceedings arising therefrom. Alternatively,
 the High Court held that if the said decree is to be
 understood as one of determination of title to the property
 the same would be without jurisdiction as a decree
 B declaring title in an inter-pleader suit filed by a tenant is
 barred under the provisions of Order XXXV Rule 5 CPC.
 [Para 12] [1094-F-H; 1095-A-B]

C 1.2. A reading of the judgment passed in Second
 Appeal clearly indicates that while deciding on the
 entitlement of the appellant to receive rent in respect of
 the property, the High Court had held that without taking
 recourse to legal proceedings to evict the appellants from
 the property, the Union of India could not have the
 demanded rent in respect thereof. [Para 13] [1095-B-C]

D 1.3. The issue of title was kept open in the
 proceedings of the Second Appeal. The subject matter of
 the inter-pleader suit and the proceedings arising
 therefrom clearly pertains to the entitlement of the
 presently contesting parties to receive rent in respect of
 E the property in question. On the other hand, in the writ
 petitions, the appellant, claiming ownership, had sought
 mutation, as a owner, in the cantonment records and also
 the permission to raise construction, a right flowing from
 the incidence of ownership of the land. The subject matter
 F of the two proceedings i.e. inter-pleader suit and the
 appeals arising therefrom and the writ petitions filed by
 the appellant are, therefore, not directly and substantially
 the same so as to attract the principle of res judicata
 enshrined in Section 11 of the Code of Civil Procedure.
 G [Para 14] [1095-F-H; 1096-A]

H 1.4. Having regard to the nature of the dispute and
 the highly contentious issue raised, if in view of the
 earlier order dated 06.07.1970 passed in the writ petition,
 the High Court had dismissed the writ petitions leaving

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it open for the appellant to avail the remedy of civil suit to get the title to the property adjudicated by a competent civil court, no fault, muchless any infirmity, can be found so as to warrant interference. [Para 15] [1096-B-C] A

1.5. Though the litigation between the parties in the instant case has been going on for nearly five decades there is some lack of clarity whether it is title to Bungalow or is it title to the land over which the said property is located that has been the bone of contention between the parties over this great expanse of time. Though the resumption notice leading to writ petition No. 175 of 1969 was in respect of the bungalow, the subsequent claim of the appellants seem to be to the land itself in view of the reliefs sought in Writ Petition No. 13353 of 1992 and Civil Misc. Writ Petition No.28558 of 2002. The same were instituted after rejection of the appellant's claims made in the application/representations filed before the cantonment authority for reliefs that were based on claims of ownership of the land. The stand of the cantonment authority in Writ Petition No. 175 of 1969 was based on the terms of the old grant issued by the Governor General in Council on 12.09.1836. The legal effect of the terms of the said grant has been dealt with by this Court and have been understood to be conveying a lease of the building standing on the cantonment land with the power of resumption in the cantonment authority subject to payment of compensation for the cost of the building and not as a lease of the land itself. [Para 16] [1096-D-H; 1097-A-B] B
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Chief Executive Officer Vs. Surendra Kumar Vakil & Ors. 1999 (2) SCR 118 : (1999) 3 SCC 555 *and Union of India & Ors. Vs. Kamla Verma* (2010) 13 SCC 511 – relied on. G

Case Law Reference:

1999 (2) SCR 118 Relied on Para 16 H

A (2010) 13 SCC 511 Relied on Para 16

CIVIL APPELLATE JURISDICTION : Civil Appeal No..
2147 of 2006.

B From the Judgment and Order dated 27.05.2005 of the
High Court of Judicature at Allahabad in Civil Misc. Writ
Petition Nos. 13353 of 1992 and 28558 of 2002

S. R. Singh Ankur Yadav, Sushant Kumar, Ujjawal Pandey,
Shree Pal Singh for the Appellants.

C R. S. Suri, S. Wasim A. Qadri, Sunita Rao, B. V. Balram
Das (for Anil Katiyar) for the Respondents.

The Judgment of the Court was delivered by

D **RANJAN GOGOI, J.** 1. The challenge in this appeal is
against the common order dated 27.05.2005 passed by the
High Court of Judicature at Allahabad in Civil Misc. Writ
Petition No. 13353 of 1992 and Civil Misc. Writ Petition No.
28558 of 2002. The High Court, by the impugned order, has
E dismissed both the writ petitions filed by the appellant and has
further held that the entitlement of the appellant to the reliefs
claimed therein will have to be adjudicated in a suit for
declaration of title.

F 2. The elaborate facts will necessarily have to be recited
for the purposes of bringing out the controversy involved and
also to embark upon a scrutiny of the correctness of the
impugned conclusions recorded by the High Court in the order
under challenge.

G 3. The suit property is Bungalow No. 29, Chaitham Lines,
Allahabad covered by Survey No. 143, Old Cantonment,
Allahabad. There is no dispute that late Lala Manohar Lal
grandfather of the present appellant had purchased the said
property for a sum of Rs. 2900/- in a Court auction held on
H 25.11.1848. The auction sale was confirmed by the Court on

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27.12.1848. The possession of the property of the predecessors-in-interest of the appellant and thereafter of the appellant is not in dispute. A

4. The Union of India issued a resumption notice dated 26.12.1968 in respect of the property in question. The appellant instituted Civil Misc. Writ Petition No. 175 of 1969 before the Allahabad High Court contending that the property was purchased by his predecessors-in-interest and had fallen to his share in a family settlement. The Union of India sought to resist the claim of the appellant by asserting that the land on which the property stood was the subject of old grant dated 12.09.1836 issued by the Governor General in Council under which a right of resumption was vested in the Union. It was further contended on behalf of the Union of India that under the clauses of the aforesaid grant it was only the building which was conveyed to the predecessors of the appellant and the same could always be resumed subject to payment of compensation to be assessed on the cost of the building. It appears that the Union of India had also asserted that, in any event, under the terms of the old grant title to the land had remained with the Union and was not and in fact could not have been transferred to the predecessors-in-interest of the appellant. B
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5. The writ petition was disposed of by the Allahabad High Court on 06.07.1970 by holding that as highly disputed questions of fact relating to title had arisen such issues would not be appropriate for adjudication in the exercise of the writ jurisdiction. The parties, therefore, were relegated to the remedy of a civil suit. However, in the said proceeding an undertaking was made on behalf of the Union of India that the appellant would not be evicted from the property except in accordance with law. F
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6. Around this time the appellant instituted Civil Suit No. 147 of 1971 in the Court of the Additional District Judge, Allahabad seeking eviction of Allahabad Polytechnic and H

A Harijan Sewak Sangh who were the tenants and sub-tenants in the property. The Union of India served notice upon the aforesaid two occupants of the property demanding rent claiming to be the owner thereof. Allahabad Polytechnic, therefore, filed an inter-pleader suit No. 161 of 1973 in the Court of the Civil Judge, Allahabad impleading the appellant and the Union of India as Defendants 1 and 2 in the suit. In the said suit it was prayed that the defendants may inter-plead so that the right to collect rent of the property in dispute could be determined. In Second Appeal No.2866 arising out of the aforesaid suit, the decree of the learned trial court that the appellant and not the Union of India was entitled to receive rent was affirmed. The said decree was, in turn, affirmed by this Court on 22.02.1984 by dismissal of the special leave petition filed by the Union of India.

D 7. It appears that on the strength of the aforesaid order passed by this Court the appellant moved an application before the Executive Officer of the Cantonment Board, Allahabad, for mutation of his name in respect of the property in question and for permission to deposit the property tax etc. The aforesaid application was filed on the claim that the appellant is the owner of the property. It also appears that the appellant had filed an application dated 08.04.1977 seeking exemption of excess land under the provisions of the U.P. Urban Land Holding Ceiling Act, 1932 on the ground that he intended to raise accommodation thereon for economically weaker sections. What happened thereafter is not very relevant except that on 21.04.1992 Civil Misc. Writ Petition No. 13353 of 1992 was filed by the appellant for "*issue a writ of mandamus directing the respondents to mutate the name of the petitioners as owners of Bungalow No 29 Chaitham Lines, Allahabad and also to accept the property tax.*" The aforesaid writ petition was dismissed on 07.01.2000 by holding that in view of the judgment dated 6.7.1970 passed in Civil Misc. Writ Petition No. 175 of 1969 which was binding on the parties the dispute required resolution in a regular civil suit which could be filed

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by either of the parties in terms of the judgment of the High Court dated 06.07.1970. The issue as to whether the judgment of the High Court in Second Appeal No. 2866 of 1978 arising out of the inter-pleader suit would operate as a *res judicata* on the question of title to the property was not decided by the High Court. The aforesaid judgment and order of the High Court dated 07.01.2000 was the subject matter of challenge before this Court in Civil Appeal No. 7284 of 2001 at the instance of the appellant.

8. It appears that the appellant had also filed an application before the competent authority under Section 181 of the Cantonment Act, 1924 for sanction of plans for raising further additional construction on the land. The said application was rejected on 14.03.2002. The order of rejection available in the original records of the case indicates that the rejection was made in view of the resumption order dated 26.12.1968 and also on account of objections of the cantonment authority with regard to the ownership of the appellant to the land. Aggrieved, the appellant filed Civil Misc. Writ Petition No. 28558 of 2002. In the said writ petition while the appellant asserted his ownership of the property i.e. Bungalow as well as the appurtenant land the Union of India denied such ownership. The High Court of Allahabad by its order dated 05.03.2003 disposed of the writ petition by requiring the appeal filed by the appellant under Section 274 of the Cantonment Act against the order of rejection dated 14.03.2002 which was pending, to be disposed of. However, the High Court in its aforesaid order dated 05.03.2003 recorded findings/observations to the effect that in Second Appeal No. 2866 of 1978, arising out of the inter-pleader suit, the property in dispute has already been held by the High Court to be belonging to the appellant and that the said decision was upheld by this Court on 22.02.1984. On the said basis the High Court recorded its conclusion that the question of title to the property had become *res judicata* and cannot be raked up again.

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A 9. The aforesaid judgment dated 05.03.2003 was challenged before this Court by the Cantonment Board in Civil Appeal No. 6637 of 2003. Both the appeals were disposed of by this Court on 19.12.2003 by remanding the matter to the High court in view of the apparent inconsistency in the two orders of the High Court on the issue of *res judicata*. The present impugned order dated 27.05.2005 of the High Court has been passed pursuant to the aforesaid remand made by this court by its order dated 19.12.2003.

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C 10. We have heard Shri S.R. Singh, learned senior counsel for the appellant and Shri R.S. Suri, learned senior counsel for the respondents.

D 11. The High Court, by the impugned order, has taken the view that the judgment and decree passed in the inter-pleader suit holding the appellant to be entitled to receive the rent in respect of the property would not operate as a *res judicata* so as to confer any finality to the issue of title in respect of the property. Thereafter, taking into account the judgment dated 06.07.1970 rendered by the High Court in Civil Misc. Writ E Petition No. 175 of 1969, the High Court left the parties with the option of moving the civil court for adjudication of title. Accordingly, the writ petitions were dismissed.

F 12. The aforesaid conclusion of the High Court appear to be based on three principal grounds. Firstly, the High Court held that the decree in the proceedings arising out of the inter-pleader suit as affirmed by this Court merely decided the entitlement of the appellant to receive rent in respect of the property and in fact the question of title to the property was neither in issue in the said proceedings nor was the same G decided. In this regard the High Court specifically noticed that in the judgment rendered in the Second Appeal No. 2866 of 1978 the High Court had specifically recognized the right of the Union of India to take out legal proceedings for eviction of the appellant thereby clearly indicating that the issue of title was H not conclusively determined in the said inter-pleader suit and

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the proceedings arising therefrom. Alternatively, the High Court held that if the said decree is to be understood as one of determination of title to the property the same would be without jurisdiction as a decree declaring title in an inter-pleader suit filed by a tenant is barred under the provisions of Order XXXV Rule 5 of the Code of Civil Procedure.

13. A reading of the judgment dated 27.11.1981 passed in Second Appeal No. 2866 of 1978 clearly indicates that while deciding on the entitlement of the appellant to receive rent in respect of the property the High Court had held that without taking recourse to legal proceedings to evict the appellants from the property, the Union of India could not have the demanded rent in respect thereof. In fact, in the aforesaid judgment dated 27.11.1981 passed in Second Appeal No.2866 of 1978 it was clearly observed that :

"The Union of India should first have taken proceedings for ejectment of the appellant and then alone after success in the ejectment suit should have been a demand for rent and without that the appellant's right to rent could not be disturbed. This also leads to the conclusion that it is the appellant to whom the rent is payable by the Allahabad Polytechnic unless the appellant is evicted by due process of law."

14. From the above, it is abundantly clear that the issue of title was kept open in the proceedings of the Second Appeal. The subject matter of the inter-pleader suit and the proceedings arising therefrom clearly pertains to the entitlement of the presently contesting parties to receive rent in respect of the property in question. On the other hand, in the writ petitions, the appellant, claiming ownership, had sought mutation, as a owner, in the cantonment records and also the permission to raise construction, a right flowing from the incidence of ownership of the land. The subject matter of the two proceedings i.e. inter-pleader suit and the appeals arising therefrom and the writ petitions filed by the appellant are,

A therefore, not directly and substantially the same so as to attract the principle of *res judicata* enshrined in Section 11 of the Code of Civil Procedure. Certainty of the above principle would not require us to trace the elaborate case law readily available on the subject.

B 15. Having regard to the nature of the dispute and the highly contentious issue raised, if in view of the earlier order dated 06.07.1970 passed in Civil Misc. Writ Petition No.175 of 1969, the High Court had dismissed the Writ Petitions leaving it open for the appellant to avail the remedy of civil suit to get the title to the property adjudicated by a competent civil court, no fault, muchless any infirmity, can be found so as to warrant our interference. Accordingly, the civil appeal will have to be dismissed which we hereby do.

D 16. Before parting, we deem it necessary to mention that though the litigation between the parties in the present case has been going on for nearly five decades there is some lack of clarity whether it is title to Bungalow No.29, Chaitham Lines, Allahabad or is it title to the land over which the said property is located that has been the bone of contention between the parties over this great expanse of time. Though the resumption notice dated 26.12.1968 leading to Civil Misc. Writ Petition No. 175 of 1969 was in respect of the bungalow, the subsequent claim of the appellants seem to be to the land itself in view of the reliefs sought in the Civil Misc. Writ Petition No. 13353 of 1992 and Civil Misc. Writ Petition No.28558 of 2002. The same, as noticed, were instituted after rejection of the appellant's claims made in the application/representations filed before the cantonment authority for reliefs that were based on claims of ownership of the land. The stand of the cantonment authority in the Civil Misc. Writ Petition No.175 of 1969, noted by us, is based on the terms of the old grant issued by the Governor General in Council on 12.09.1836. The legal effect of the terms of the said grant has been dealt with by this Court in *Chief Executive Officer Vs. Surendra Kumar Vakil & Ors.*¹

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and *Union of India & Ors. Vs. Kamla Verma*² and have been understood to be conveying a lease of the building standing on the cantonment land with the power of resumption in the cantonment authority subject to payment of compensation for the cost of the building and not as a lease of the land itself.

17. The above position has been emphasised for being kept in mind while dealing with all possible future litigations concerning the property in question without, of course, expressing any opinion on the merits of the claims/contention of any of the parties.

Nidhi Jain

Appeal dismissed.