**A.F.R.**
**Reserved on 19.09.2019**
**Delivered on 19.12.2019**

**Court No. - 1**

**Case :**- WRIT - C No. - 46421 of 2006
**Petitioner :**- Chandra Prakash Shivhare
**Respondent :**- Union Of India And Another
**Counsel for Petitioner :**- Pankaj Bhatia,M.I. Farooqui
**Counsel for Respondent :**- A.S.G.I. 2006/2008, Ajai Bhanot, B.N. Singh, K.N.Yadav, Manoj Kumar Singh

connected with

**Case :**- WRIT - C No. - 24748 of 2019
**Petitioner :**- Chandra Prakash Shivhare
**Respondent :**- Union Of India And 4 Others
**Counsel for Petitioner :**- Ashish Jaiswal, Madan Gopal Sharma
**Counsel for Respondent :**- A.S.G.I., Chandra Bhan Gupta, Shyam Mani Shukla, Swarn Lata Suman

and

**Case :**- WRIT - C No. - 57082 of 2017
**Petitioner :**- Chandra Prakash Shivhare
**Respondent :**- Union Of India And 3 Others
**Counsel for Petitioner :**- Archit Mandhyan, Mohd. Hesamuddin Khan
**Counsel for Respondent :**- A.S.G.I., Chandra Bhan Gupta, Om Prakash Gupta

**Hon'ble Ramesh Sinha,J.**
**Hon'ble Ajit Kumar,J.**

***(Delivered by Ajit Kumar,J.)***

**1.** Since all the three above matters are connected and the reliefs claimed in two matters is on the basis of the pleadings raised and relief claimed in the leading writ petition bearing Writ- C No.- 46421 of 2006, all the three writ petitions are being heard and decided by this common judgment taking Writ- C No.- 46421 of 2006 as leading case.

**2**. Heard Sri Archit Mandhyan and Sri Ashish Jaiswal learned counsels appearing for the petitioner, Sri O.P. Gupta, learned counsel appearing for the Union of India and Sri Chandra

Bhan Gupta, learned counsel appearing for the Cantonment Board.

**3**. By means of the present writ petition under Article 226 of the Constitution, the petitioner has questioned the order dated 22nd November, 2001 passed by the Estate Officer, Agra, Cantt. Exercising power under the Public Premises (Eviction of Unauthorised occupants) Act, 1971 (for short 'Act, 1971') and the order of the District Judge, Agra, dated 10th August, 2006, whereby appeal of the petitioner under the Act, 1971 has come to be rejected.

**4**. Briefly stated facts of the case are that the property in question is the land property with construction of a bungalow so recorded as Bungalow No.- 178 situate at Namiyar Mohalla, Ajmer Road, Agra. It has been the property of the Defence department and so recorded as well as a defence property under Defence Land Register. It so happened that the territorial limits of the cantonment board were excised and the area where the bungalow situates was brought within the municipal limits of the then Municipality of Agra, admeasuring 198.303 acres approximately and, accordingly, Ministry of Defence vide Circular No.- 79 dated 9th February,1957 excised the said area from the limits of the cantonment of Agra. With the exclusion of the area including the bungalow from the territorial limits of the cantonment board, Agra, the petitioner being in possession, it appears, applied for sanction of map to raise construction over the land in question before Nagar Mahaplika Parishad, Agra and Nagar Mahapalika Parishad, Agra approved the same on 28th March, 1958. With the approval so granted by the Nagar Mahapalika Parishad, Agra, the petitioner raised construction over the same. On 26th October, 1998, the petitioner was served with a

notice under the signature and seal of the Estate officer under the Act, 1971.

**5**. The petitioner submitted reply asking for certain papers mentioned therein so that he may contest the matter. Thereafter, the petitioner filed a detailed objection to the notice before the Prescribed Authority of Agra Cantt. and requested for recall of the notice dated 11th November, 1998 and dropping of the proceedings. When nothing happened in the matter petitioner approached this Court and this Court vide order dated 27th January, 1999 passed in CMWP No.- 3190 of 1999 directed the prescribed authority to decide the objection of the petitioner and also supply the copies of documents requested by the petitioner. Again when nothing happened, the petitioner filed another petition and this Court vide order dated 8th August, 2001 directed the respondent No.3 to decide the objection of the petitioner and pass appropriate orders after affording opportunity of hearing to the petitioner. In compliance of the above order the prescribed authority under the order dated 22th November, 2001 rejected the objection of the petitioner and held the constructions to be unauthorized without there being any approval of the competent authority and, accordingly, directed for removal of the same. The petitioner then preferred a statutory appeal against the order passed by the prescribed authority and the same has also come to be rejected.

**6**. Having heard learned counsel for the parties and their arguments raised across the Bar and having perused the record, what we find that the moot question for our consideration in the present case is as to whether a property already recorded as a Defence property within the erstwhile territorial limit of

cantonment, would cease to be a property of Government of India, defence department, in the event, the area of the cantonment board stands excised and the area where the defence property situates, comes within the extended municipal limits of the local Municipality. In the event the answer is in affirmative, say 'Yes', the impugned orders would be quashed and in the event the answer is in negative, the impugned orders would be upheld and the petitioner would be liable to remove the unauthorized construction. Accordingly, we framed following two questions to be answered in the present petition:-

(A). Whether the bungalow No.178 situate at Namiyar Mohalla, Ajmer Road, Agra ceased to be a defence property with the extention of the municipal limits and the land over which bungalow falls coming within the municipal limits; and

(B). Whether the defence Estate Officer acting as Prescribed Authority can exercise power under the Act, 1971 in respect of a property that falls within the municipal limits of a Municipality of Agra.

**7**. Now coming to the first question, we needed to trace out the history, if any pleaded, that has led to the occupation by the petitioner of the bungalow in question. Bungalow No.- 178 is admitted to the petitioner to be belonging initially to the defence department. The petitioner's claim to be in possession of the bungalow is since 1970 on-wards. Prior to the 19th February, 1957 the General Land Register, maintained by the Cantonment Board (for short 'GLR') admittedly show area as survey number in question within the cantonment board and the letter dated 30th November, 1957 issued by the Defence authority that the area where the bungalow stands stood transferred to the territorial

authority of Municipality, Agra and the GLR showed entry in respect of the bungalow as occupied by private individual and the date of acquisition and possession column contains a remark “not-known”. Municipal records shows that name of Shri G.D. Shiv Hare had been entered over the bungalow as tax of house receipts have been filed along with writ petition. Jal Sansthan receipt also stands in the name of Smt. G.D. Shiv Hare.

**8**. Nowhere it has been stated in the pleadings raised in the writ petition as to how the petitioner has entered into possession of the property. He is not the son of Mr. G.D. Shiv Hare whose name is recorded in the Municipal records with Chandra Prakash Shivhare (1981-86). So, at the most the status of the petitioner as an occupant would be of a sub-lessee/ sub-grantee. The original lessee or grantee seems to have passed away much earlier and there are no pleadings to that effect in the present writ petition. The bungalow property is admitted to the parties to be a subject matter of old grant. The petitioner not being a valid transferree from the defence department, the question is as to whether the bungalow in question ceased to be a defence property with the enforcement of the Municipality in the area. The notification states that the area ceases to be a defence area but from the perusal of the Government of India notification dated 26th December, 1961, it is very much clear that the property that was under use for non military purposes before excision, their control remains with the Ministry of Defence under Rule 2(B) of the ACR Rules. However, the minutes of Separation Committee show that the civil area notified can be transferred to the State Government free of cost but subject to certain formalities to be carried out.

**9**. It is not disputed that the both the Municipality as well

as the Cantonment Board are the local bodies in their own rights having an operational area as per the respective Acts, under which they have been constituted. The Municipality governing the area of civil residents is a local body as in the present case constituted under the U.P. Municipal Corporation Act, 1959, an erstwhile municipality governed under the U.P. Municipalities Act, 1916 whereas the Cantonment Board operates basically in an area defined as cantonment of the defence under the erstwhile Cantonment Act, 1924, later superseded by the Cantonments Act, 2006. The landed property falling in the cantonment area may be also in occupation of a civilian if it is either under the old grant by the Government of India or under the lease of the department of the Defence. But the landed property of the cantonment which is recorded as such in the defence land register to be a defence property cannot be in the ownership of a private individual unless there is lease in perpetuity to that effect or by way of conveyance of sale. The Cantonment Act, 2006 provides for incorporation of a Cantonment Board for general administration of the land falling in the cantonment area in the same manner as the municipality in a civil area. An extension of Municipality to such area which was earlier under the territorial limits of the Cantonment Board, if it has been excised by the Government of India, Ministry of Defence, it is the general administration of such area that would stand transferred from the Cantonment Board to the Municipality or the Municipal Corporation as the case may be, but a land that belongs to the defence, may be under the lease or old grant by the Ministry of Defence, Government of India in favour of civilian, would not automatically get transferred either to that individual who is the occupier of the property or to the Municipal Corporation. The title shall remain with the defence department

unless and until it is transferred in the name of occupier by the competent authority. The letter of the Under Secretary to the Government of India, Ministry of Defence written to the Director, Military Land and Cantonment explaining the excision of the civilian area from cantonment clarifies eight points. The letter in its entirety is reproduced hereunder:-

*"No. 18/13/G/L & C/52/1028/ LC/ D/ (C&L)*
*Government of India*
*Ministry of Defence*
*New Delhi, the 7th February, 1955*

*To*

*The Director, Military Land and Cantonments*
*Excision of Civil areas from Cantonments*

*Sir,*

*I am directed to say that the question of terms on which assets located in the areas to be excised from cantonments may be dealt with has been under the consideration of the Government of India. It has now been decided that the following broad principles shall govern the excision of civil areas from cantonment:-*

*(a) Cantonments Board's assets and liabilities the area be transferred to the successor local body free of any compensation except for such financial adjustment which may be necessary in the local circumstances of each case.*

*(b) Income and expenditure be divided on the basis of actual income from a source, such as octroi, should normally be divided on population basis, a different method may, however, be adopted if the local conditions warrant the adoption of such a course.*

*(c) Government right in the leased sites etc., be transferred to the State Government, free of cost, subject to the condition that the income derived from such areas will be utilized for the resident of those areas exclusively.*

*(d) Vacant lands be retained for future use or eventual disposal by the Government of India.*

*(e) M.E.S. Properties, if any, be retained for use or eventual disposal.*

*(f) To report on the extent of, and terms on which the properties*

*vesting in and belonging to the cantonment Board should be appropritioned between the two local bodies.*

*(g) To report on the needs of the two areas for the construction of new buildings, consequent upon the transfer of those existing to either local body, with financial effect.*

*(h) To report on any other matter relevant to excision in so far as financial adjustment or apportionment of assets and liabilities or assignment of easement/ ammonities is concerned.*

*Yours faithfully*
*Sd/-*
*Deputy Secretary to the Govt. of India"*

**10**. From the bare reading of the aforesaid clauses given under the letter it is clearly revealed that Government right in the lease sites would be transferred to the State Government free of cost and that income derived shall be utilized for the residents of such area.

**11**. However, in order to make effective those transfer of the defence property to the State Government, it is required to have necessary approval of the competent authority. The letter of the Government of India, Ministry of Defence earlier issued in this regard dated 26th December, 1961 clearly stipulates following conditions:-

*"2. As the lands excised from Agra Cantt. were surplus to Defence requirements, being in use for non-Military purposes before excision, their control remains with the Ministry of Defence under Rule 2(b) of the ACR Rules. The M.E.O. Agra Circle, is therefore, responsible for management of these lands under Rules 3(b) ibid and specific orders to this effect are not necessary.*

*3. In accordance with the minutes of the Separation Committee the M.E.O. Agra Circle, should initiate immediately proposals for:-*

*(a) Transfer of lease hold site inside the ex-notified civil area, to State Govt. free of cost.*

*(b) Conversion into free hold of all old grant and lease hold sites outside ex-notified civil area, on payment by the holders of conversion value at the rate of 25 times the current market rent in 5 easy instalments. In this connection the method followed in Sitapur Cantt. may be adopted.*

*(c) Disposal of vacant sites, by dividing into suitable plots, wherever necessary.*

*4. A site plan distinctly showing the sites involved and a statement containing GLR entries, should be furnished with each proposals."*

**12**. From the reading of the aforesaid notification it is quite clear that although the area stood excised following extension of the municipal limits but the excision is only for the purposes of the municipal function. The rights and title do continue with the Union of India, Ministry of Defence. As in the earlier part of this order, we have discussed that the defence land register also shows that bungalow No. 178 to be in occupation of private individual but the land and bungalow do continue to be recorded as such and, accordingly, the property is a defence property. The petitioner in the entire pleadings has not disclosed as to how he has come to occupy the land of bungalow in question. He is not able to demonstrate any lease in his favour or in favour of his predecessor-in-interest and, therefore, his continuance is only subject to approval of the defence department and any construction upon vacant land or remodeling of the house necessarily required the approval of the competent authority. Merely because Agra Municipality had sanctioned some map for construction of building over the area, does not mean that the constructions have become legal. It may be legal for the authority to have exercised power under an Act but the question is whether sanction of Map was as per the lease agreement and the application was moved by the lessee. However, in the present case

map was applied by the occupier who was not beneficiary of either lease agreement or old grant and so no such exercise could have been, in the absence of consent of the owner of the property and, the entire proceedings of sanction of map would be rendered *void* in the absence of consent of the owner and in our considered opinion, the owner has authority to question the constructions and if found illegal get it demolished. In the present case, therefore, we are of firm view that since the land of bungalow No.178 continued to belong to the defence department and the petitioner has failed to demonstrate either from the pleadings or from the document that he is valid transferee of the property he can defend constructions that have been rendered illegal for want of necessary sanction. A transfer of an area from the cantonment to the municipality, is a mere transfer for the purposes of municipal functions from one local body to the other local body but rights and title of the property of the original owner does continue and there can be no *ipso facto* transfer of title on extension of municipal limits to the area of such property. Thus following findings of the Prescribed Authority cannot be held bad as we do not find any perversity in the same:-

> *(1) The land in question, sy.no.131/381, B. No. 178, Ajmer Road, Namnir Agra Cantt. is Defence land owned by the Govt. of India, Ministry of Defence.*
>
> *(2) Although it was excised alongwith other area, and merged with the Municipal area vide SRO No. 312 dated 25.6.1957 but this transfer has taken effect only in r/o Municipal function. The management of lands falling with in the excised area of Agra Cantt. still remains with the Defence Estates Officer, Agra Circle, Agra Cantt.*
>
> *(3) It is clear from the Govt. orders issued vide their letter No. 18/1/ G/ L&C/ 58 dated 26.12.1961 that after the excision the administrative control of the area remained with the Ministry of Defence, Govt. of India and management comes under the D.E.O. Agra Circle, Agra Cantt. Till the formalities stipulated*

*in para 3 and 4 of the said Govt. order are completed and the transfer of these lands to the State Govt. takes place, these lands remain under the management of D.E.O. Agra Circle, Agra Cantt."*

**13.** In taking the above view we find support in the judgment of the Apex Court in the case of **Chief Executive Officer v. Surendra Kumar Vakil and others (1999) 3 SCC 555.** In the said case a suit had been decreed of the vendors and vendees on the ground that one S.N. Mukharjee who was a occupancy holder and as such recorded in the GLR had died in the year 1972 leaving behind 11 legal heirs, who validly succeeded the property. However, their names could not be mutated in the records over Bungalow No. 39 as they did not apply for the same. The heirs who had ultimately sold out the property in favour of the 24 persons by a registered sale deeds dated 26th February, 1983 through power of attorney holder Gopal Das Soni. The property was described as old grant of the cantonment board and so vendees were to abide by the terms and conditions on which the land was held in the name of ancestors of the vendors. The amendment deeds further came to be registered in respect of those sale deed to the effect that lease deed got wrongly transcribed as the land was of 'old grant' type. The Military Estate Officer issued notices on 3rd October, 1993 to the vendores for validating the terms and conditions of the old grant by dividing the property into four shares prior to the sanction of the competent authority and hence notices were also issued to the purchasers to show cause why action for resumption of the site be not taken against them. The plea taken by the respondents was that in view of the 'old grant' seller were having occupancy rights over the Bungalow No. 39, therefore, they validly transferred the rights to the purchasers. The Cantonment Board lost the suit and first appeal as well and so

filed an appeal before the Apex Court. Apex Court repelled the arguments of the respondents and their claim on the legal principles *qua* 'old grant' and accepted the appeal vide paragraph Nos. 12, 13, 14, 15, 16, 17, 18 and 19 that run as under:-

> *12. Under the Cantonment Land Administration Rules, 1925 General Land Registers are being maintained in respect of Sagar Cantonment. These registers were produced before the High Court and were also produced before us. These are old registers maintained in the form prescribed by the said Rules. In these registers the property in question is shown as being held by S.N. Mukherjee on old grant basis. As explained by Mittal in the passage cited above, the tenures under which permission was given to civilians to occupy Government land in the cantonments for construction of bungalows on the condition of a right of resumption of the ground, if required, came to be know as old grant tenures. Such tenures were given in accordance with the terms of the order No.179 issued by the Governor General in Council in the year 1836. These require that the ownership of land shall remain with the Government and the land cannot be sold by the grantee. Only the house or other property thereon may be transferred. Such transfers would require consent of the officer commanding the station when the transfer is to a person not belonging to the army. In respect of old grant tenure, therefore, the Government retains the right of resumption of land.*
>
> *13. In the case of Raj Singh v. Union of India, AIR 1973 Delhi 169, the Delhi High Court examined the Regulations contained in order No.179 of 1836 regarding the grant of lands situated in cantonment areas and held that the Regulations were a self-contained provision prescribing the manner of grant and resumption of land in cantonment areas. It held that the petitioner therein being a mere occupier of the land under the said Regulations, he was in the position of a licensee whose licence under the grant and under the law was revocable at the pleasure of the licensor. This judgment of the Delhi High Court was approved by this Court in Union of India v. Tek Chand (Civil Appeal No. 3525 of 1983) by its judgment and order dated 5th of January, 1999 passed by S.P. Bharucha and V.N. Khare, JJ.*
>
> *14. The respondent, however, contends that since the actual old grant was not produced in evidence by the appellants the case of the appellants that the land was held on old grant basis by Mukherjee is not proved by the appellants. This submission does*

*not appeal to us. The respondents filed a suit claiming title over the land. If any conveyance in respect of this land had been executed at any time by the State/Military Estate Officer in favour of Mukherjee or his predecessor in title, the conveyance ought to have been produced by the person in whose favour it had been executed or his successor in title. Had a lease been granted in respect of the said land in favour of Mukherjee or his predecessor in title, the lessee or his successor in title should have produced the lease deed in his favour. Any grant in favour of the grantee would normally be in the possession of the grantee. The respondents, however, have not produced any title deeds relating to the land in question. They have only produced the document of sale from Dubey to Mukherjee and the four sale deeds from the heirs and legal representatives of Mukherjee in favour of the purchasing respondents. In none of these documents there is a clear recitation of the nature of the rights in the land held by the Vendor.*

*15. It is true that the appellants were also required to maintain a file/register of grants. They have not produced the file. The appellants, however, have led evidence to show that the concerned file of grants was stolen in the year 1985. They were, therefore, unable to produce the file pertaining to this grant. They do, however, have in their possession general land registers maintained under the Cantonment Land Administration Rules of 1925 in which they are required by these rules to maintain a record, inter alia, of the nature of the grant in respect of cantonment lands and the person in whose favour such grant is made. Both these registers are very old registers. They bear the endorsement of the officer who has maintained these registers in the regular course. These registers also show any subsequent changes made in respect of the lands under the relevant columns. Both these registers clearly show that the land is held on old grant basis by Mukherjee. The High Court seems to have rejected the record contained in the land grants registers on the ground that the terms of the grant have not been established because the document of grant itself has not been produced. The terms of the grant, however, are statutorily regulated under order No.179 of the Governor General in Council of 1836. The administration of lands in Cantonment areas is further regulated by the Cantonment Act, 1924 and the Cantonment Land Administration Rules of 1925. The 1836 Regulations expressly provide that the title to the land in cantonment areas cannot be transferred. But only occupancy rights can be given in respect of the land which remains capable of being resumed by the Government in the manner set out therein. There is no evidence to the contrary led by the respondents. In fact, under the amendment/admission deeds executed on 4/5.8.1983 the Vendors as well as the purchasers*

*have stated that the site is wrongly mentioned as lease hold site instead of 'old grant' site in the four sale deeds. The mistake is being rectified by the execution of the four amending deeds clarifying that the Bungalow No.39 is held on 'old grant'. Undoubtedly, this was later retracted when cancellation deed was executed cancelling the amendment/admission deeds. Nevertheless, all the statutory provisions clearly indicate that the land being in the cantonment area was held by Mukherjee only as an occupant/licensee and that any transfer of the bungalow and other constructions on the said land required prior approval of the defence establishment. The power of attorney holder also corresponded with the Defence establishment and asked for mutation in favour of the purchasers.*

*16. However, even after they were expressly informed by the appellants of the need for prior permission before transfer, as well as for any further construction on the said land, the respondents proceeded with the construction work resulting in the notice to desist issued by the appellants under Section 185 of the Cantonments Act, 1924. The said section provides that the Board may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Board considers that such erection or re-erection is an offence under Section 184. The Board also has power to direct the alteration or demolition of such unauthorised structure. On the facts before us, this action cannot be faulted.*

*17. The respondents drew our attention to a decision of this Court in the case of Union of India v. Purshotam Dass Tandon and another, 1986 Supp. SCC 720, where this Court observed that the Union of India had made no effort to establish its title and the grant had not been produced. Hence the terms of the grant or the date of the grant were not known. Therefore, the Union of India could not succeed in its contention that the land in the cantonment was held on old grant basis. In the present case, however, apart from the requirements of Order No.179 of Governor General in Council, 1836, the general land register maintained under the Cantonment Land Administration Rules of 1925 has been produced which supports the contention of the appellants that the land is held on old grant basis. The appellants have also led evidence to show that the file containing grant in respect of the said property, is not available with them because it has been stolen in the year 1985. The respondents on the other hand have not produced any document of title pertaining to the said land or showing the nature of the rights of the respondents over the said land except the sale deeds referred to earlier. The stand of the respondents relating to their*

*rights over the said land has changed from time to time. In the sale deeds executed by the Vendees in favour of the respondents, the land is described as lease hold cantonment land. This was later changed by the respondents in the amendment deeds to old grant land. In the suit, the respondents have contended that they have become the absolute owners of the said land. These bare assertions do not carry any conviction. Had there been any conveyance or lease in respect of the said lands executed in favour of the respondents or their predecessor in title, such conveyance or lease should have come from their custody. There is, therefore, no document before the Court which would show that the respondents were the absolute owners of the said land as now contended by them. The Regulations as well as the general land registers, on the other hand, which are old documents maintained in the regular course and coming from proper custody, clearly indicate that the land is held on old grant basis. This is, therefore, not a case where the appellants had not produced any evidence in support of their contention that the land in the cantonment area was held on old grant basis by Mukherjee.*

*18. The respondents have drawn our attention to the decision in the case of Shri Krishan v. The Kurukshetra University, AIR 1976 SC 376 for showing that any admission made by them in ignorance of legal rights cannot bind them. This judgment does not help the respondents because the fact remains that the respondents have taken a changing stand in relation to the nature of their rights over the disputed land. The admissions, at least, indicate that the respondents were, at the material time, not sure about the exact nature of their right over the said land. Hence they have at one stage described the nature of their rights as lease hold, at another stage as old grant and at a third stage they have retracted from their admission that the land was 'old grant'. The last deed merely states that they have the same rights as their Vendees had in the said land. Looking to the nature of evidence, therefore, which was led in the present case, the High Court was not justified in coming to the conclusion that the land was not held on old grant basis by Mukherjee.*

*19. Therefore, since the land is held on old grant basis in the present case, the appellants are entitled to resume the land in accordance with law. In the premises the appeals are allowed, the impugned judgment and order of the High Court is set aside and the suit of the respondents is dismissed with costs."*

**14**. The case of the petitioner is even worse. Vide paragraph 4 of the writ petition he has claimed that his ancestors were occupant of Bungalow No. 178 and possibly because of old grant

only. However, he has not been able to produce any document to that effect inasmuch as he could not establish his right of succession, to *wit,* whether he is a direct descent of the original grantee or by way of sub-lessee or any sale agreement. He has sought to set up the claim of the entry in the name of Pyare Lal, possibly as his ancestor whose name had been entered on account of sale deed in the year 1957 but no such document has been brought on record to establish as to whether such sale was with permission of the competent authority or not. Sri G.D. Shivhare whose name finds entry in GLR, as a old grantee, the petitioner could not have obtained a better title than that of the old grantee, provided he produced any such document. Under the circumstances, therefore, the petitioner like the vendor and vendees in the above said case could not have claimed a valid right to raise constructions in the absence of proper sanction of the competent authority.

**15**. In view of the above we find merit in the argument advanced by the learned counsel for the respondent that merely because the property has occupied by civilian under an old grant basis, such a grantee only has status of mere occupier and does not become the title holder of the property. The petitioner has not produced any document that he has the old grant in favour of his predecessor-in-interest. He does not also show as to how he has come to occupy the property in the year 1970. At the most, therefore, he is an occupant, may be unauthorized one.

**16**. Now coming to the second question, it is necessary to first go through the relevant provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which is relevant herein, to find answer to the question. Vide Section 2 of the Act,

1971 defines the premises and public premises separately. Vide Section 2 (c) and 2 (e) of the Act, 1971 are, accordingly, reproduced hereunder:-

> *2 (c) "premises" means any land or any building or part of a building and includes, -*
> ***(i)*** *the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and*
> ***(ii)*** *any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;*
> *2 (e) "public premises" means -*
> *(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;"*

**17**. From a bare reading of the aforesaid provision, it is clear that Legislature has used the word 'Premises' in a generic sense, comprehending in it the land, the structure standing over it and every such other activity in forms of any fixture for the beneficial enjoyment of the premises and the public premises are such that belong to the Central Government. We have already held that land and the house standing thereupon as bungalow No.- 178 is admittedly a property belong to the defence department and so it is a defence property. Section 5A & B provide for the removal of unauthorized constructions if made over and above such land of property and Section 5B empowers the authority to remove the unauthorized construction by undertaking of demolition exercise. Section 5C also provides for sealing of the unauthorized constructions. The relevant Section 5A, 5B and 5C of the Act, 1971 are reproduced hereunder:-

> ***"5A. Power to remove unauthorised constructions, etc.—*** *(1) No person shall—*

*(a) erect or place or raise any building or [any movable or immovable structure or fixture],*

*(b) display or spread any goods.*

*(c) bring or keep any cattle or other animal, on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.*

*(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.*

*(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue.]*

***5B. Order of demolition of unauthorised construction**.— (1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the estate officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid, make an order, for reasons to be recorded therein, directing*

*that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order.*

*Provided that no order under this sub-section shall be made unless the person concerned has been given by means of a notice [of not less than seven days] served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.*

*(2) Where the erection or work has not been completed, the estate officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under section 9.*

*(3) The estate officer shall cause every order made under sub-section (1), or, as the case may be, under sub-section (2), to be affixed on the outer door, or some other conspicuous part, of the public premises.*

*(4) Where no appeal has been preferred against the order of demolition made by the estate officer under sub-section (1) or where an order of demolition made by the estate officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the appellate officer on appeal, and, on the failure of the person to comply with the order within such period, the estate officer or any other officer duly authorised by the estate officer in this behalf, may cause the erection or work to which the order relates to be demolished.*

*(5) Where an erection or work has been demolished, the estate officer may, by order, require the person concerned to pay the expenses of such demolition within such time, and in such number of instalments, as may be specified in the order.]*

***5C. Power to seal unauthorised constructions**.— (1) It shall be lawful for the estate officer, at any time, before or after making an order of demolition under section 5B, to make an order directing the sealing of such erection or work or of the public premises in which such erection or work has been*

*commenced or is being carried on or has been completed in such manner as may be prescribed, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.*

*(2) Where any erection or work or any premises in which any erection or work is being carried on has, or have been sealed, the estate officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.*

*(3) No person shall remove such seal except—*

*(a) under an order made by the estate officer under sub-section (2); or*

*(b) under an order of the appellate officer made in an appeal under this Act.]"*

**18**. The Estate Officer is the officer who is appointed by the Central Government under Section 3 of the Act, 1971 by the notifying such officer in the Official Gazette. Sub-section (b) of Section 3 provides the power to be exercised by such officer within the defined local limits to be notified by the Government or the categories of public premises in respect of which, the Estate Officer shall exercise powers conferred and perform the duties imposed by the State under the Act. Section 3 of the Act, 1971 in its entirety is reproduced hereunder:-

*"3. Appointment of estate officers.—The Central Government may, by notification in the Official Gazette,—*

*(a) appoint such persons, being gazetted officers of Government [8] [or of the Government of any Union Territory] or officers of equivalent rank of the 2[statutory authority], as it thinks fit, to be estate officers for the purposes of this Act:*

*[Provided that no officer of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with Speaker of the Lok Sabha:*

*Provided further that an officer of a statutory authority shall*

*only be appointed as an estate officer in respect of the public premises controlled by that authority; and]*

*(b)* ***define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under this Act."***

*(emphasis added)*

**19**. From the perusal of the aforesaid provisions, it is very much clear that not only the local limits in respect of which the power should be exercised by the State Officer but it could be also property specific. The Military Estate Officer, namely Defence Officer appointed and notified by the Central Government to exercise the power under the Act, 1971 in the present case is not disputed. What is disputed is that since area has stood transferred from the cantonment limits to the local limit, the Military Estate Officer as such could not have exercised the power.

**20**. We do not find merit in the above argument for the simple reason that sub-section (b) of Section 3 not only talks of notifying the limits but also of the property. Admittedly, the bungalow No. 178 is the defence property and to that extent, therefore, it stands notified as a defence property. The notification of the 1957 by which municipal limits of Agra has been extended and the cantonment area has been excised, it equally saves the property of the Central Government particularly the defence where there is no proper exercise has been carried out transferring the property to the State Government. No document has been led, nor, anywhere it has been pleaded that the bungalow No.178 itself has stood *ipso facto* transferred with the notification of extension of municipal limits to the area where the bungalow situates.

**21**. Since we have already held that the property belongs to

the defence department, it was a public premises for the purposes of Section 5B of the Act, 1971 and, therefore, the defence estate officer who has been assigned the duties of Presiding Officer to act under the Act, 1971 has the jurisdiction and so he rightly exercised the same in the present case. We do not find any error in the authority of the Defence Estate Officer exercising power under the Act, 1971. The question of constructions whether it would fall in the category of unauthorized use of the public premises or in contravention of conditions prescribed under the old grant, we may hold that the petitioner since has not been able to demonstrate that he had old grant in his favour and that he had otherwise been a valid lessee, any construction or alteration of the existing structure by the petitioner required prior sanction and in the event no such permission had been accorded, raising of the structure may be with the sanction of the local development authority, would not validate the development activity and the constructions made in that regard. Thus, we are of the view that the Defence State Officer, who exercised the power as Presiding Officer under the relevant provisions of the Act, 1971 rightly exercised the power and we do not find any fault at his end in the matter.

**22**. In view of the above the writ petition being Writ- C No.- 46421 of 2006 lacks merit and is, accordingly, dismissed and so other two writ petitions are also dismissed.

**Order Date :-** 19.12.2019
Atmesh

(Ajit Kumar,J.) (Ramesh Sinha,J.)