REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 16949-16950 OF 2017

(Arising out of SLP (Civil) Nos.15836-15837 of 2009)

Union of India .....Appellant

:Versus:

Vijay Krishna Uniyal (D) through L.Rs. ....Respondents

J U D G M E N T

A.M. KHANWILKAR, J.

1. Leave granted.

2. These appeals emanate from the judgment and decree dated 28th February, 2008 of the High Court of Uttarakhand at Nainital in Second Appeal No.206 of 2001 and also the order dated 19th June, 2008 in Review Application No.668 of 2008.

3. The central issue involved in these appeals is: whether the High Court, while dismissing the second appeal filed by the plaintiff (original respondent) being devoid of merit and despite upholding the concurrent finding of fact recorded by two Courts below on the factum of ownership of the land, was justified in making an observation which has the potential of reopening the already settled issue of title in respect of the suit property?

4. The original respondent Vijay Krishna Uniyal, claiming to be the owner and in possession of the immovable property admeasuring 3.398 acres, known as Wolfsburn Estate, situated at Survey No.11, Landour Cantonment, Mussoorie (hereinafter referred to as "the suit property"), on which a building existed, consisting of many rooms in which a block for watchman and other structures existed, was served with a notice dated 19th August, 1985 issued by the Under Secretary to the Government of India, for and on behalf of President of India, bearing No.701/64/R&D/ L&C/74/1805/D(Lands), to quit and deliver possession of

the land together with structures standing thereon, to the agent of Government (Defence Estate Officer, Meerut Circle, Meerut Cantonment), on the expiry of one month's notice from the date of its receipt. It was also made amply clear that on expiry of the said period, any right regarding occupation or easement and interest in the said property shall cease to exist. The said notice reads thus:

"No. 701/64/R&D/L&C/74/1805/D(Lands)
Government of India, Ministry of Defence.

New Delhi
19th Aug, 1985

To Shri. Vijaya Krishan Uniyal,
Sy. No. 11, Wolf Burn Estate,
Landour Cantonment

NOTICE

WHEREAS the land comprising Sy. No.11 the site of B. No. known as Wolf Burn Estate, Landour Cantonment measuring 3.398 acres and bounded as follows:

On the North by Sy. No.13
On the South by Sy. No.173 and 163
On the East by Sy. No.170
On the West by Sy. No.163

Belongs to the President of India *(hereinafter called the Govt.)* ***and is held by you on 'old Grant' terms under the Governor General order No.179 of 12.9.1836 under hw Government are entitled to resume the said land.***

2. AND WHEREAS Government has decided to resume the said land and the buildings standing thereon.

3. NOW therefore, in exercise of the power hereinafter mentioned, the Government hereby give notice to you to quit and

deliver possession of the aforesaid land together with structures standing thereon to the agent for government (Defence Estates Officer, Meerut Circle, Meerut Cantt), on the expiry of the one month notice from the date of receipt of this notice. Please note that on the expiry of one month from the date of service of this notice your occupation and any right easement and interest you may have in the said land and buildings standing thereon shall cease as from that date.

4. TAKE NOTICE further that Government are prepared to pay and so offer you the sum of Rs.17,275/- (Rupees Seventeen thousand two hundred and seventy five) only as the value of the authorised erections standing on the aforesaid land. A cheque for this amount is enclosed herewith.

Sd/-
(A.K. GOYAL)
Under Secretary to the Government of India
For and on behalf of President of India"

(emphasis supplied)

5. After receipt of the said notice, the original respondent filed a civil suit before the Court of Civil Judge, Court No.1, Dehradun, Mussoorie, being Suit No.484 of 1985, for simpliciter permanent injunction restraining the appellants, its officers' or representatives and servants from dispossessing him from the suit property pursuant to the aforementioned notice dated 19th August, 1985. An alternative relief was prayed that a reasonable and adequate compensation in respect of the suit property be

determined by the appellant on the principles laid down by law, for acquisition of the immovable property after giving an opportunity to the plaintiff (original respondent) of being heard before he is compelled to deliver possession of the suit property to the appellant. The reliefs claimed in the said suit read thus:

"The plaintiff, therefore, begs to claim a decree against the defendant for:-

1 *Permanent injunction restraining the defendant, its officers, representatives and servants from dispossessing the plaintiff from the immovable property known as Wolfsburn Estate, situate at Survey No.11, Landour Cantonment, Mussoorie in pursuance of the notice No. 701/64/R&D/L&C/74/1805/D Lands dated 19th August 1985 issued by the Under Secretary to the Government of India. Ministry of Defence, New Delhi. In the Alternative a reasonable and adequate compensation for Wolfsburn Estate be determined by the defendant on the principles laid down by law for the acquisition of the immovable property after giving an opportunity to the plaintiff of being heard and paid to the plaintiff before he is made liable to deliver possession of the said property to the defendant.*
2 *Full costs of this suit against the defendant.*
3 *Any other relief or reliefs which in the opinion of the learned Court the plaintiff is entitled to.*

Vijay Krishan Uniyal

Plaintiff

By the pen of
(Indu Mouli Uniyal)
Duly constituted attorney"

6. From the tenor of the plaint, it is amply clear that the suit was filed on the basis of title acquired by the plaintiff in the suit property vide registered Sale Deed dated 14th August, 1980. On that assertion, it is pleaded that the defendant has no right to take possession of the suit property in the guise of being owner thereof. The plaintiff claimed to be in settled occupation of the suit property. The plaintiff also asserted that he has occupancy rights in the suit property which were analogous to the ownership rights vested in him. On that basis, it was pleaded that possession of the suit property can be taken over only by way of acquisition and payment of reasonable compensation therefor to the plaintiff. The plaintiff also set up an alternative plea that he has acquired full ownership rights in the suit property on account of long and undisturbed possession, without payment of any rent for over 60 years.

7. The assertions made by the plaintiff were contested by the appellant by filing written statement. It was categorically

stated that the plaintiff, under the registered sale deed, had purchased only occupancy rights from the previous holder and was not the absolute owner of the property. The property belongs to the appellant and it was open to the appellant to resume the same in terms of Old Grant for national defence requirement. The appellant categorically denied the assertion of the plaintiff that the occupancy rights were analogous to ownership rights or that the plaintiff had become the absolute owner of the suit property by adverse possession. It was asserted by the appellant that it wanted to resume the land which was granted originally on Old Grant terms to a private occupancy holder. It is not a case of acquisition of the suit property but resumption thereof, in terms of the stipulations in the Old Grant. Regarding the prayer for awarding reasonable compensation, the appellant stated that it was open to the plaintiff (original respondent) to request the Government to constitute a Committee of Arbitration for determination of reasonable compensation in terms of the Old Grant regulations issued by the then

Governor General in Council vide General Order No.179 dated 12th August, 1836. It was also asserted by the appellant that it was incorrect to contend that the plaintiff was not offered any compensation at all. Further, the plaintiff will be entitled for suitable compensation only in respect of the structures and not in relation to the land as such. The appellant, thus, prayed that the suit deserves to be dismissed. On the basis of the pleadings, the Trial Court framed four issues which read thus:

"1. ***Whether the plaintiff is absolute owner of the property in dispute and as such the property cannot be resumed?***
2. Whether the suit is bad for want of notice u/s 80 of C.P.C.?
3. ***Whether the defendant has right to resume the property*** *and the plaintiff is entitled only for the compensation?*
4. Relief?"

(emphasis supplied)

8. Both the parties adduced oral and documentary evidence in support of their respective stand. The Trial Court, however, answered the issues against the plaintiff (original respondent) and has held that the suit property belongs to the Government of India. Further, the possession of the

plaintiff (original respondent) was limited to occupancy rights therein derived from the Old Grant in favour of his predecessor in title. The Trial Court held that the defendant had right to resume the property and the plaintiff (original respondent) was entitled only to get compensation for the structure. Accordingly, the Trial Court dismissed the suit in entirety vide judgment and decree dated 16th October, 1997.

9. Aggrieved, the plaintiff (original respondent) filed Civil Appeal No.69 of 1997 before the Court of Additional District Judge-II, Dehradun. The Appellate Court formulated four points for its consideration, which read thus:-

> *"1.* ***Whether appellant/plaintiff happens to be owner of suit property****?*
> *2. Whether effect of non-issuance of notice of section 80 C.P.C. is detrimental?*
> *3.* ***Whether defendants/respondents have got rights in the property*** *and plaintiff is entitled, to get compensation only?*
> *4. Whether the plaintiff is entitled to get the relief(s) sought?"*

(emphasis supplied)

The Appellate Court, after analysing the evidence and documents and admission deed executed by the plaintiff,

available on record, answered the questions posed before it, in particular regarding the ownership of the suit property. The First Appellate Court upheld the finding of fact recorded by the Trial Court - that the suit property belongs to the Government of India and the plaintiff (original respondent) was not the owner thereof. The relevant extract from the decision of the First Appellate Court reads thus:

> *"I heard both the parties and perused the evidence & document available on record.* ***Question before me is as to whether appellant/plaintiff happens to be owner of suit property or not****? Second question is as to whether notice dated 09th August, 1985 which was issued to the appellant, the same was to as per rules or not. Another question is as to whether appellant is entitled to get any compensation or not?*
> ***As far as ownership is concerned, document which was filed by the appellant/plaintiff in support of his case, he filed the sale deed 23A1 in those documents.***
> ***According to the same, he purchased this property from S. Jodh Singh, S. Jogender Singh, S. Harbhajan Singh, S. Ranjit Singh and others.*** *Thus, defendant/respondents if have raised this contention that this land belonged to the Government of India. Appellant/plaintiff does not have ownership right on this property.* ***In support of this case they filed documents vide list 20C and 27C and documents were filed through 35C also in which 38C is the said admission deed in which appellant/plaintiff has admitted that a this property vests in the Government of India an in the declaration deed 39C, it has been admitted that rights of Government of India vest in this Property and it was also admitted that if its resumption is done, then compensation for the construction would be paid to him. Similarly, Jogender Singh who sold this property to appellant/plaintiff, he too had executed such deed in favour of opposite party. From these documents, it becomes evident that this suit place belongs to the Government of India and appellant/plaintiff is not owner***

of the suit land. *Thus, this conclusion of the learned lower court is as per rules land according to the records."*

(emphasis supplied)

10. As regards the question of compensation, the First Appellate Court opined that the plaintiff (original respondent) would be entitled for compensation for which he must first approach the Government for appointment of an Arbitrator to determine appropriate compensation to be paid to him. Resultantly, the First Appellate Court was pleased to partly allow the appeal by setting aside the judgment of the Trial Court only on the issue of compensation. The operative order passed by the First Appellate Court modifying the decree passed by the Trial Court, reads thus:

"ORDER

Appeal of the appellant is allowed partially and judgment of lower court about compensation is set-aside. Appellant/plaintiff is entitled to get compensation for the suit property he would submit application to the defendants for this compensation and after hearing, defendant would determine this compensation. Both parties to bear their respective expenses."

11. Against the decision of the First Appellate Court, the plaintiff (original respondent) approached the High Court

of Uttarakhand at Nainital by way of Second Appeal No.206 of 2001. After hearing the parties, the learned Single Judge of the High Court vide order dated 14th July, 1999, was pleased to admit the second appeal by framing two substantial questions of law. The said order reads thus:

"*Heard Sri Ravi Kiran Jain, learned Senior Counsel appearing for the appellants.*

It is submitted that by notice dated 19.08.1985 as contained in annexure-2 to the affidavit, the property in question was resumed by the respondent and an amount of Rs.17,275/- was offered as compensation. It is submitted that the amount of compensation was arrived at arbitrarily without giving any opportunity to the appellant for determining the amount of compensation. The submission is that the appellant cannot be dispossessed and the respondent a cannot resume the land on the basis of such a notice. His next submission is that no evidence has been adduced to the effect that the land belongs to the respondent. The defendant respondent have relied upon certain admission of the plaintiff/appellant which alone is not enough.

Learned Counsel relies upon the Judgment of this Court in Second Appeal No.286 of 1978 Purshottam Das Tandon Vs. Union of India, decided on 27th November, 1981.

Having heard learned counsel for the appellant and having considered the Judgment reference to in support of his arguments, the appeal is admitted on the following substantial questions of law:-

1. ***Whether the notice dated 19.08.1985 would entitle the defendant respondent to resume the land and dispossess the plaintiff appellant without giving him opportunity of hearing for determining the amount of compensation?***

2. ***Whether in the absence of any other evidence adduced by the defendants respondents, on the basis of alleged admission of the plaintiff/appellant, alone the property can be held to be belonging to the respondents and can thereby be resumed by them?***

Issue notice to the respondents.
Call for record of the trial court and list for hearing on 21st September, 1999."

(emphasis supplied)

12. The second appeal was finally heard by the learned Single Judge and by judgment and decree dated 28th February, 2008, it was dismissed on the finding that it lacked merit. For the purpose of examining the issues as have arisen for consideration of this Court, it will be useful to reproduce the relevant portion from the said decision which reads thus:

"xxx xxx xxx

15. ***So far as the aforesaid submission made by counsel for the appellant with regard to ownership is concerned, both the courts below have given the concurrent findings on this issue have come to the conclusion that the property belong to the Union of India.***

16. xxx xxx xxx

17. ***Counsel for the appellant has pressed on the registered sale deed dated 14.08.1980 executed in his favour which shows a prima facie case with regard to ownership of the property in dispute in his favour.***

Perusal of record also reveals that the plaintiff is in possession of the same.

18. ***Without entering into the title over the property in dispute,*** *it is made clear that the appellant shall not be evicted from the property in dispute, except in accordance with law. The appellant shall get full opportunity if the eviction proceedings are initiated against him.* ***The findings recorded by the trial court as well as appellant court shall not come in the way of the appellant and the appellant shall be at liberty to take his defence and the same shall be decided in accordance with law.***

19. Subject to the aforesaid observations, ***second appeal lacks merit and is dismissed.*** *No order as to costs."*

(emphasis supplied)

13. The appellant is aggrieved by the observations made by the learned Single Judge in paragraphs 17 and 18, which, according to the appellant, has the potential of taking away the effect of the concurrent finding of fact recorded by two courts below and upheld by the High Court; and would embolden the respondent to re-agitate the issue of ownership which has already been settled. Therefore, the appellant filed Review Application No.668 of 2008 before the High Court in the disposed of Second Appeal No.206 of 2001. The learned Single Judge vide

judgment and order dated 19th June, 2008, however, dismissed the said review application. The order passed on review application reads thus:

"Heard Sri. D. Barthwal, counsel for the appellant and none for the respondent.

Present application has been filed for reviewing the order dated 28.2.2008 as mentioned in paragraph 3 to the following effect:

'3. Because of the aforesaid finding even though the second appeal of the plaintiffs has been dismissed the Hon'ble High Court took away effect of the concluded findings of fact and left the matter to be re-agitated again which is illegal and improper.'

I have already referred that there is a registered sale deed in favour of the appellant on 14th August 1980 executed in his favour. In the written filed by the defendant, it was stated that the plaintiff is not the owner of the property in question and the plaintiffs was entitled for compensation only on the resumption of the property.

In view of the aforesaid, I have directed that the appellant shall not be evicted from the property in dispute except in accordance with law and he shall get full opportunity to defend himself, if the proceedings are initiated against him.

In view of the aforesaid, no ground for review is made out.

Review application is dismissed."

14. The appellant has, therefore, approached this Court by way of these appeals challenging both the decisions of the learned Single Judge of the High Court, against the observations made in paragraphs 17 and 18 of the

impugned judgment dated 28th February, 2008 whilst dismissing the second appeal and also the judgment dated 19th June, 2008 in Review Application. According to the appellant, the observations were wholly unwarranted and are in the teeth of the concurrent finding of fact recorded by two Courts on the issue of ownership of the property and also opposed to the settled legal position. It is contended by the appellant that the suit property was held by the plaintiff (original respondent) on Old Grant terms which was classified as B-3 category. The property changed hands by sale deed dated 2nd August, 1948 from Charles Gorden Stewart to Mrs. E. Walsh and then from Mrs. E. Walsh to Sardar Kartar Singh and others vide sale deed dated 15th December, 1970 and finally from Sardarni Satwant Kaur to Shri Vijay Krishna Uniyal, plaintiff (original respondent) vide sale deed dated 14th August, 1980. From these documents, it was evident that the transferors have had transferred only the buildings in favour of the transferees and it is clearly stated in each of these registered sale deeds that the land and trees are the

property of the Government of India. Thus, the land and trees could never have been purchased by any of the transferees. The appellant has relied on the terms of the Old Grant governed under GGI 170 dated 12th September, 1836, which enabled the Government to resume the Old Grant after giving one month's notice. According to the appellant, the regulations empowering the Governor General to rescind or substitute authorised orders in force are statutory regulations. Further, the High Court and the Subordinate Courts did not find any infirmity in the suit notice dated 19th August, 1985 which was issued to resume the suit property. It was, therefore, not open to the High Court to make any observation which has had the potential of giving rise to reopening the finding regarding title and ownership of the property already adjudicated upon, directly and substantially in the suit for permanent injunction filed by the plaintiff (original respondent). According to the appellant, the plaintiff (original respondent) was not the absolute owner of the suit property. That factual position was admitted by the

plaintiff (original respondent) vide registered admission deed dated 14th August, 1980 and declaration deed dated 14th August, 1980, which unambiguously record that the ownership right in the suit property was that of Union of India. Further, it is also declared that the Union of India had the right to resume the property. These documents were contemporaneously executed along with the sale deed dated 14th August, 1980, which was registered on 19th August, 1980. Further, the plaintiff had raised the issue of ownership and title on the basis of the registered sale deed dated 14th August, 1980 and invited the Trial Court as well as the First Appellate Court to adjudicate the issue of ownership of the property. Therefore, it is not open to the plaintiff (original respondent) to now contend that the said issue was only ancillary to the relief of permanent injunction as prayed against the appellant to cease and desist from going ahead with the suit notice dated 19th August, 1985. Moreover, the plaintiff (original respondent) in the second appeal invited the High Court to formulate two substantial questions of law, which were ascribable to

the concurrent finding of fact, recorded by two Courts below, about the ownership of the suit property. According to the appellant, the original respondent did not press or argue the first substantial question of law before the High Court, knowing full well that the decision in the case of ***Union of India and Ors. Vs. Harish Chand Anand***,[1] was directly on the point wherein it has been held that the amount of compensation would be determined under the relevant provisions after giving opportunity to the occupant, which could be done even after resuming the suit property and taking possession. In that, determination of value of the building erected on the land under resumption was a ministerial act and the payment thereof was the resultant consequence. According to the appellant, on the second substantial question of law, the two Courts below concurrently found, as of fact, that the ownership of the suit property was of the Government of India and it was duly admitted by the plaintiff (original respondent) in the declaration contemporaneously

1 1995 Supp. (4) SCC 113

executed at the time of registration of the sale deed in his favour, dated 14th August, 1980. The appellant relies on the decisions of this Court in support of the argument that if the land was covered by the Old Grants and categorised as B-3, it was open to the Government to resume the land after giving one month's notice in terms of the Old Grant and regulations framed thereunder. Reliance has been placed on ***State of U.P. Vs. Zahoor Ahmeda and Anr.,***[2] ***Harish Chand Anand***, (supra), ***Chief Executive Officer Vs. Surendra Kumar Vakil & Ors.***,[3] ***Union of India and Ors. Vs. Kamla Verma***,[4] ***Azim Ahmad Kazmi and Ors. Vs. State of Uttar Pradesh and Anr.***,[5] ***Union of India and Ors. Vs. Robert Zomawia Street***,[6] ***Purshottam Das Tandon (Dead) by Legal Representatives Vs. Military Estate Officer and Ors.***,[7] and ***Usha Kapoor and Ors. Vs. Government of India and Ors.*** [8]

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2 (1973) 2 SCC 547
3 (1999) 3 SCC 555
4 (2010) 13 SCC 511
5 (2012) 7 SCC 278
6 (2014) 6 SCC 707
7 (2014) 9 SCC 344
8 (2014) 16 SCC 481

15. The appellant would contend that the plaintiff is entitled only for reasonable compensation for the structure standing on the suit property. According to the appellant, the continued possession of the plaintiff (original respondent) despite such notice is illegal possession. This view taken by the two Courts below has not been overturned by the High Court. As a matter of fact, the High Court dismissed the second appeal on the finding that it lacked merit. However, by a sweeping observation it has undermined the concurrent finding of fact regarding ownership of the subject land recorded by two Courts below without reversing the same. Thus, the prima facie opinion noted by the learned Single Judge is contrary to the indisputable facts and the material on record and as such, the liberty granted to the plaintiff (original respondent) to take up the plea of ownership of the suit property in the proposed eviction action, cannot be countenanced. That plea would be barred by the principles of constructive *res judicata*. In response to the stand taken by the respondents before this Court, it was contended

that it is not open to the respondents in these appeals of the defendant (appellant), to invite this Court to overturn the concurrent finding of fact in relation to the issue of ownership of the suit property, having failed to challenge the decree of dismissal of the suit for relief of permanent injunction on the basis of title and ownership of the plaintiff in the suit property. Admittedly, the plaintiff did not file a suit for appropriate declaration despite the assertion of the defendant in the suit notice regarding its ownership. Besides, the plaintiff had clearly admitted the ownership of the suit property of the Government of India as stated in the declaration contemporaneously executed along with the registered sale deed. Admittedly, the sale deed makes reference to the registered agreement to sell. The recitals and stipulations in the registered agreement to sell, executed in favour of the plaintiff, dated 13th September, 1979 which was prelude to the execution of the subject registered sale deed is a clear testimony of admission of ownership of suit land of the appellant. No declaration has been sought in the suit as originally filed

or by amending the same that the recitals in the said documents are illegal and not binding on the plaintiff. According to the appellant, it is not open to the plaintiff or persons claiming through or under him to challenge the concurrent finding of fact relating to the ownership of land or to insist for sustaining the impugned observation in the judgment under challenge, without filing an appeal against the decree rejecting the relief of permanent injunction which, in fact, has been upheld even by the High Court by dismissing the second appeal on the finding that it lacked merit. The appellant prays that the stated observations in paragraphs 17 and 18 of the impugned judgment and decree deserve to be set aside and effaced from the record.

16. The respondents (heirs and legal representatives of the deceased plaintiff – original respondent), however, contend that these appeals be dismissed as the same do not raise any substantial question of law of great public importance warranting interference by this Court. It is contended by the learned counsel for the respondents that the High Court was justified in leaving the question

regarding ownership of the suit property open, with liberty to the respondents to raise the same in the eviction proceedings. That was in accord with the dictum of this Court in ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs. and Ors.***,[9] ***Sajjadanashin Sayed MD. B.E. EDR (D) by LRs. Vs. Musa Dadabhai Ummer and Ors.***,[10] and ***Gram Panchayat of Village Naulakha Vs. Ujagar Singh and Ors.***[11] It is also contended that the appellant, despite the directions of this Court vide order dated 24th February, 2010, has failed to produce the alleged Old Grant - which is the core of the dispute and essential to substantiate the ownership of the land as also the rights of the plaintiff in that behalf. Reliance is placed on ***Union of India Vs. Purushotam Dass Tandon and Anr.***,[12] to contend that as the Government has failed to produce the original old grant, it cannot claim any title in respect of the suit property. According to the respondents, the terms of grant can be established only through such document in

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9 (2008) 4 SCC 594

10 (2000) 3 SCC 350

11 (2000) 7 SCC 543

12 1986 (Supp.) SCC 720

terms of Section 97 of the Evidence Act. It is then submitted that the appellant has produced the original grant register of Landour Cantonment, which mentions that the grant in this case was "Fee Simple" under Walsh Settlement of 1842, indicative of the nature of rights of the landholders and predecessor in title of the plaintiff. Additionally, it is submitted that if this Court is inclined to entertain these appeal, this is a fit case to relegate the parties before the High Court. Inasmuch as the High Court though formulated two substantial questions of law, did not choose to answer the same, much less advert thereto in the impugned judgment. Reliance is placed on the decision of this Court in the case of ***Satyendra Kumar (Dead) through LRs. Vs. Mast Ram Uniyal (Dead) though LRs***[13]. According to the respondents, it is open to them to assail the findings in the judgment under appeal without filing any cross objection or cross appeal. For that, reliance has been placed in the case of ***Ravinder Kumar Sharma Vs. State of Assam and Ors.***[14]; ***S. Nazeer***

13 (2013) 14 SCC 367

14 (1999) 7 SCC 435

Ahmed Vs. State Bank of Mysore and Ors.,[15] ***Balbir Kaur and Anr. Vs. Uttar Pradesh Secondary Education Services Selection Board, Allahabad and Ors.,***[16] and ***Management of Sundaram Industries Limited Vs. Sundaram Industries Employees Union***[17].

17. It is further submitted by the respondents that the Courts below are not expected to decide the question of title in an injunction suit. Relying on the observations in ***Anathula Sudhakar*** (supra), it is contended that the High Court has rightly avoided to examine the issue of ownership of the suit property and left it open to be considered if raised by the respondents in eviction proceedings. Emphasis has been placed on the dictum in paragraph 21(c) of the aforesaid reported decision in this behalf. It is then contended that framing of an issue and rendering a finding on the factum of absolute ownership was not necessary to decide the suit for injunction, especially, when the plaintiff had pleaded long occupation,

15 (2007) 11 SCC 75
16 (2008) 12 SCC 1
17 (2014) 2 SCC 600

possessory rights and ownership by adverse possession to describe himself as an owner. It is the appellant who raised the plea based on an alleged Government Grant given under GGO 179 of 1836. Thus, the question of ownership or title was only an ancillary issue to the suit for injunction and not an essential requirement. Further, since it was admitted position that the plaintiff (original respondent) was in possession of the suit property, the burden to prove that the ownership of the suit property was of the Government, was on the defendant who had set up that claim in terms of Section 110 of the Evidence Act. It is then contended that the finding on title in a suit for injunction, as in the present case, would not be binding in a subsequent case for declaration of title and for which reason also, the observation made by the High Court cannot be faulted. Reliance has been placed on the decision of this Court in ***Sajjadanashin Sayed*** (supra) and ***Gram Panchayat of Village Naulakha*** (supra). It is then contended without prejudice that the findings recorded by the Trial Court and First Appellate Court are

contrary to the record and untenable in law. It is submitted that the Trial Court and First Appellate Court committed palpable error in accepting the unsubstantiated defence of the appellant on the factum of grant of land was made under Governor General's orders (GGO 179 of 1836), without having produced the relevant official document in support of that claim. The burden of proving the ownership of the land was on the appellant (defendant) which was wrongly shifted to the plaintiff (original respondent). As a matter of fact, the Courts below ought to have drawn an adverse inference against the appellant (defendant). The respondents have placed reliance on the dictum in ***Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Ors.***,[18]and ***National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Ors.***,[19] to contend that it was obligatory on the part of the defendant to produce the documents in their possession. The respondents would then contend that the Grant Register of Landour Cantonment (Exhibit 79-C) produced by the appellant

18 (1968) 3 SCR 862

19 (1988) 1 SCC 626

(original defendant) reveals that the land in question was held under Fee Simple, vide Wells Register Order dated 14th October, 1842. That evidence established that the ownership over the land was of the grantee. Reliance has been placed on "Words and Phrases legally defined", "Halsbury's Laws of England" and "Black's Law Dictionary" in support of this contention. In addition, reliance has been placed on the dictum of this Court in paragraph 15 of the judgment in ***Surendra Kumar Vakil*** (supra), to contend that in the present case, the appellant produced certified extracts of the Grant Register clearly showing that the grant was absolute and the land was held under Fee Simple. Reliance is placed on illustration (g) of Section 114 of the Evidence Act to contend that as the land was held under Fee Simple, terms and conditions applicable in that behalf would prevail over the rule of law, statute/enactment of the legislature. In support, reliance is placed on the decision of this Court in ***Express Newspapers Pvt. Ltd. and Ors. Vs. Union of India and***

Ors.[20]. The respondents would contend that certain presumptions would be wrong, on the basis of a book called "Cantonment Laws" by J.P. Mittal, and such presumptions were belied by the documentary evidence in the form of Grant Register (Exhibit 79-C). In reference to the admission deed/declarations given by the plaintiff contemporaneously executed alongwith the registered sale deed, it is contended that the same can neither be conclusive nor binding. The same have been obtained by the Cantonment Authorities under mistaken impression of facts/ law or by suppression of facts and law. Certainly, that can be no basis to determine the title or ownership of the suit property. To buttress this submission, reliance has been placed on ***Muhammad Imam Ali Khan Vs. Sardar Husain Khan***,[21] and on ***Nagubai Ammal and Ors. Vs. B. Shama Rao and Ors.***,[22] as well as in ***Kishori Lal Vs. Chaltibai.***[23]

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20 (1986) 1 SCC 133
21 (1897-98) 25 IA 161
22 (1956) 1 SCR 451
23 (1959) SCR Suppl.(1) 698 = AIR 1959 SC 504

18. The crux of the argument of the respondents in reference to the documents on record is: being a case of "Fee Simple" and, therefore, a private estate held in private ownership built prior to 1882, which was in existence prior to the establishment of the Landour Cantonmnet, it must follow that absolute ownership was of the grantee. Concededly, no such case has been specifically pleaded in the plaint nor argued before the Trial Court or the Appellate Courts.

19. According to the respondents, the question regarding title and ownership of the suit property was a complicated question of fact and law, which could not be directly or substantially put in issue in a suit for simpliciter permanent injunction, which was filed to protect the possession of the plaintiff. Hence, no fault can be found with the observations made by the learned Single Judge of the High Court in paragraphs 17 and 18 to keep the said issue open, with liberty to the respondents to agitate the same in the event eviction proceedings are resorted to by

the appellant. Hence, the same should not be interfered with.

20. We have heard Mr. P.S. Patwalia and Mr. A.K. Sanghi, learned senior counsel appearing for the appellant, and Mr. C.U. Singh, learned senior counsel appearing for the respondents.

21. Having given our thoughtful consideration, we find force in the argument canvassed by both parties that the High Court has failed to analyse the matter in the manner it ought to have done whilst dealing with second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, "CPC") at the stage of final hearing. The High Court in the present case has not even adverted to the two substantial questions of law as were framed in terms of its order dated 14th July, 1999, nor has it analysed the matter appropriately. Be that as it may, the appellant (defendant) alone has assailed the impugned judgment. The plaintiff (original respondent) has acquiesced of the decree rejecting the relief of permanent injunction, having failed to file

cross appeal or for that matter cross objections against the impugned judgment.

22. After deep cogitation, we think it apposite to first examine the central issue raised by the appellant. For that, we must analyse the judgment rendered by the High Court dated 28th February, 2008. From paragraphs 1 to 14, the Court has adverted to the relevant facts which gave rise to the filing of the second appeal. Paragraph 15, if read on its own, would give an impression that the Court recorded the submission of the counsel for the plaintiff (original respondent) and rejected the same having noticed that two Courts below have concurrently found that the property belongs to the appellant. Indeed, it has done so in a cryptic manner without proper analysis of the relevant facts. Further, rejection of that contention was not enough to answer the two substantial questions of law formulated in terms of its order dated 14th July, 1999. The substantial question formulated was whether, in absence of any other evidence adduced by the defendant, the

property can be held to be that of the defendant only on the basis of the alleged admission of the plaintiff.

23. Be that as it may, the High Court having rejected the plaintiff's challenge to the concurrent finding on the issue of ownership (as is discerned from paragraph 15 of the impugned judgment) and then finally concluded that the second appeal lacked merit and dismissed the same, it is unfathomable how it could then observe that the evidence in the shape of registered sale deed dated 14th August, 1980 would prima facie show the ownership of the suit property of the plaintiff. Merely because the possession of the suit property was with the plaintiff, that by itself cannot be reckoned as an evidence on the issue of ownership of the suit property. We must recap that the claim of the plaintiff for grant of permanent injunction was founded on his title and ownership of the suit property because of the registered sale deed dated 14th August, 1980. No doubt, the High Court made reference to the said document dated 14th August, 1980 for recording its prima

facie view about the ownership of the suit property of the plaintiff. It is also true that the registered sale deed dated 14th August, 1980, does not make any mention about the fact that the suit property was given to the predecessor in title of the plaintiff under the Old Grant and classified as "B-3" category or that it belongs to the Government of India. Presumably, the High Court proceeded to record its prima facie view in paragraph 17, relying merely on the said registered sale deed. It completely glossed over the crucial fact that the sale deed was the culmination of the registered agreement to sell executed between the plaintiff (original respondent) and his predecessor in title dated 13th September, 1979, to which reference has been made in the registered sale deed as under:-

24.

"WHEREAS the Vendors have agreed with the purchaser for the absolute sale to him of the said Wolfsburn Estate, situate at Landour Cantt, Mussoorie at a price of Rs.25000/- (Rupees twenty five thousand) only vide agreement dated 13th day of September, 1979 registered as No. 9517 in Book I Volume 1634 on pages 352 to 356 on 23.11.1979 at the office of the Sub Registrar, Dehra Dun."

By reference to the aforementioned registered agreement to sell, the same got incorporated into the sale deed. The registered agreement to sell executed in favour of the plaintiff, in no uncertain terms, admits the fact that the suit property belongs to the Government and the right which is being transferred is only the right of enjoyment of possession of the said land granted under the Old Grant, which enured to the predecessor in title of the plaintiff. The relevant recital in the registered agreement to sell reads thus:-

> *"IT IS HEREBY MADE CLEAR that the land under the Cantonment Survey No.11 of the Wolfsburn Estate hereby* ***and herein transferred belong to the Government of India. Only the rights of enjoyment of possession of the said land granted under the Old Grant and held by late Mrs. Edythe Walsh and after her the said Shri. M.J. Godin as executor and trustee of her will and finally by the vendors are being transferred together with the building structures erected and standing thereon by the vendors to the purchaser. The trees standing in the said Wolfsburn Estate also belong to the Government of India and only the right to enjoy the usufruct is the subject matter of the same in the said trees."***
>
> (emphasis supplied)

25. Notably, this registered agreement to sell refers to the title and interest of the previous owner of the suit property which was derived by him from the immediate predecessor

in title in terms of registered sale deed dated 15th December, 1970. Indisputably, even the said registered sale deed dated 15th December, 1970 between Shri. M.J. Godin and Sardar Kartar Singh and five others restates the fact that the suit property belongs to the Government, with limited right to enjoyment of possession thereof, as can be discerned from the recitals in the said deed, which reads thus:-

> "IT IS HEREBY MADE CLEAR that the land under the Cantonment Survey Number 11 of the Wolfsburn Estate property herein transferred belong to the Government of India. Only the rights of enjoyment of possession of the said land granted under the Old Grant and held by the late Mrs. Edythe Walsh deceased and after her the Vendor as the Executor and Trustee of her Will together with the building structures erected and standing thereon are being transferred by the Vendor to the Purchasers by virtue of this Deed. Similarly the trees standing in the said Wolfsburn Estate also being to Government of India and only the right to enjoy the usufruct is the subject matter of the sale in the said trees."

26. There is one more registered sale deed which has come on record, between Mr. Charles Gorden Stewart and Mrs. E. Walsh dated 2nd August, 1948. The same has bearing on the issue of ownership of the suit property. Even this sale deed concededly restates that the suit

property vests in the Government. The relevant recital reads thus:-

"WHEREAS the land appertaining to Wolfsburn Estate and the trees standing thereon / vest in Government. The purchaser herebefore declares that she shall execute and register at her own expense a deed of Admission in favour of Government."

27. Indubitably, the plaintiff acquired the suit property under the registered sale deed dated 14th August, 1980 on the same terms and, therefore, executed the admission deed and declaration contemporaneously at the time of registration of the sale deed on 19th August, 1980. The admission deed executed by the plaintiff reads thus:-

"*ADMISSION DEED*

I, Vijay Krishna Uniyal, son of Pandit Maheshanand Uniyal, at present staying at 4, Elspath Collage, Masonic Lodge Road Mussoorie and holder of occupancy rights of Wolfsburn Estate, Cantonment Survey No. 11, Landour Cantonment, Mussoorie admeasuring 3.398 acres do hereby admit the proprietary title of Government of India in the land as well as in the trees standing thereon occupied by me and pertaining to the above mentioned property as shown in the Survey plan subject to the proprietary title of Government of India, the land which is held by me on 'Old Grant' terms (GGO 179 of 12.9.1836) nothing in the admission is to prejudice the rights, privileges and easements hereinafter enjoyed by me or by my successors interest in the aforesaid land.

The land is bounded on the

North by – Survey No.13.

South by – Survey No.16

East by – Survey No.170

West by – Road

Sd/-

(VIJAY KRISHNA UNIYAL)
Holder of occupancy rights

Witness

1 *Paratap Singh, 24 Chaman Estate Mussoorie*
2 *Sd/- Trim Lodge Mussoorie"*

Similarly, the declaration deed executed by the plaintiff reads thus:-

"DECLARATION DEED

I, Vijay Krishna Uniyal, son of Pandit Maheshanand Uniyal, at present staying at 4, Elspath Collage, Masonic Lodge Road Mussoorie and owner of Wolfsburn Estate, Cantonment Survey No.11, Landour Cantonment, Mussoorie admeasuring 3.398 acres do hereby declare on oath:-

a *That I admit Government's rights to the resumption of the property*
b *That in case of resumption I will be paid compensation for the authorized structures only, as assessed by the Department under the normal procedure and the sale price should not form basis for compensation; and*
c *That I would be treated as holder of property and there will be no sub-division.*

Sd/-
(VIJAY KRISHNA UNIYAL)
Holder of occupancy rights
14.8.1980

Witness

1 *Paratap Singh, 24 Chaman Estate Mussoorie*
2 *Sd/- Trim Lodge Mussoorie"*

28. The plaintiff, advisedly, after receipt of the suit notice dated 19th August, 1985, wherein it is asserted that the suit property is Government land given under Old Grant classified as "B-3" category and that the Government wants to resume the same, chose to file suit simpliciter for permanent injunction against the appellant (defendant) from dispossessing the plaintiff from the suit property pursuant to the suit notice. In the wake of clear stand taken in the suit notice, the plaintiff ought to have filed the suit for a declaration that the claim set-up by the defendant in the suit notice of ownership of the suit property is illegal. Obviously, the plaintiff was aware that the only right passed on to him was for enjoyment of the suit property granted under the Old Grant as class "B-3". The land belonged to the Government of India.

29. Indeed, the plaintiff did set up a claim of ownership of the suit property, firstly, on the basis of registered sale deed dated 14th August, 1980; secondly, having

occupancy rights in the suit property which was analogous to ownership rights; and thirdly, that the plaintiff has full ownership rights by adverse possession over the suit property being in long and undisturbed possession without payment of any rent for over 60 years. As regards the claim of absolute ownership of the plaintiff on the basis of rights derived under the registered sale deed dated 14th August, 1980, the same cannot be countenanced. In the backdrop of the factual position emerging from the registered agreement to sell dated 13th September, 1979, which preceded the execution of the subject registered sale deed dated 14th August, 1980, the plaintiff executed the admission deed and declaration deed contemporaneously with full understanding and knowledge. The High Court while recording prima facie opinion in paragraph 17, has not adverted to these essential facts and documents. Had the High Court adverted to these facts and indisputable evidence which were taken into account by the Trial Court and the First Appellate Court, it could have never recorded such prima facie observation in favour of the plaintiff,

about the ownership of the suit property. The appellant (defendant) is, therefore, justified in challenging the prima facie opinion noted in paragraph 17 of the impugned judgment. That observation has been made despite having upheld the concurrent finding on the issue of ownership of the suit property rendered by two Courts below, as noted in paragraph 15 of the impugned judgment. The appellant must, therefore, succeed in this appeal to the extent that the first sentence in paragraph 17 should be effaced. As that observation was the foundation to give liberty to the plaintiff to agitate the question of title over the suit property in the event the plaintiff was required to face eviction proceedings, the said liberty would also get effaced. In that event, it will not be permissible for the plaintiff or persons claiming through or under the plaintiff, to raise the issue of ownership of the suit property in any proceedings henceforth or for that matter in collateral proceeding.

30. The respondents (successors in title of the plaintiff), relying on other documents and precedents, would contend that the issue of title and ownership of the suit property was not directly and substantially involved in the suit for permanent injunction simpliciter filed by the plaintiff. Thus, it would be open to the plaintiff or persons claiming through or under him to raise the issue of title of the suit property in collateral proceedings, such as eviction from the suit property. This argument deserves to be rejected. In the present case, the plaintiff challenged the suit notice dated 19th August, 1985, on the assertion that he is the absolute owner in possession of the suit property on the basis of a registered sale deed dated 14th August, 1980. By this assertion, the plaintiff implicitly denied the claim of the appellant-defendant that the suit property belonged to the Government and was given under Old Grant falling in class B-3. Besides that assertion in the suit notice, the appellant-defendant had also unambiguously asserted in the written statement filed to contest the suit stating that the suit property belonged to

the Government of India and was given to the grantee under Old Building Grants falling in class B-3, amenable to resumption after giving one month's notice. In the backdrop of such pleadings, the Trial Court framed issues, including relating to ownership of the suit property. Issue No.1 was whether the plaintiff was the absolute owner of the suit property as was asserted by him and, if so, whether the property being a private estate could not be resumed by the Government on the assumption that it is Government land. Similar contest was carried before the First Appellate Court. Even the First Appellate Court after analysing the documents Exhibits 20C, 27C, 35C, 38C and 39C, amongst others, held that it has been admitted by the plaintiff that the suit property vests in the Government of India which was amenable to resumption on payment of compensation for construction to the grantee/occupant. The First Appellate Court, in no uncertain terms, concluded that the suit property belonged to the Government of India and the plaintiff was not the owner of the suit property but merely enjoyed right

to possession thereof under the Old Grant as derived by him from his predecessor in title. Thus, it is not a case of ancillary issue examined by the civil court of limited jurisdiction called upon to consider the relief of permanent injunction simpliciter. It was a direct and substantial issue considered by the Trial Court and upheld by the First Appellate Court and for that matter, even by the High Court, while dismissing the second appeal on the ground that it lacked merit, as can be discerned from paragraphs 15 and 19 of the impugned judgment. In the fact situation of the case on hand, it was not a complicated issue on facts or law, considering the indisputable recitals in the registered agreement to sell and the registered sale deeds coupled with the admission deed and the declaration deed contemporaneously executed by the plaintiff. In such a situation, the finding of fact recorded against the plaintiff will bind the plaintiff and operate as constructive *res judicata* in a subsequent suit for declaration of title or otherwise.

31. The respondents have relied on the dictum in ***Anathula Sudhakar*** (supra). We fail to understand as to how this decision will be of any help to the respondents (successor in title of the plaintiff). In that case, the Court summarized the legal position on the question as to whether the averments regarding title can be considered in a suit for injunction simpliciter in absence of pleadings and issue relating to title. The respondents, however, have selectively relied on the last sentence of paragraph 21(c) of the reported decision, while overlooking the earlier part of the same paragraph. Paragraph 21 (c) reads thus:

"21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) *xxx xxx xxx*

(b) *xxx xxx xxx*

(c) *But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar[24]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction."*

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24 Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202

The Court has noted that a finding of title cannot be recorded in a suit for injunction unless there are necessary and appropriate issues regarding title. This presupposes that it is not impermissible to do so. Further, where the averments regarding title are absent in a plaint and where there is no issue relating to title, the Court will not investigate or examine or render a finding on a question of title in a suit for injunction. In the present case, however, we find that not only there are clear pleadings relating to title but both sides proceeded with the trial on that assertion and invited the Court not only to frame issue regarding ownership and title in the suit property but also produced evidence in support of their respective claim in that behalf, which has been duly analysed by the Trial Court and the First Appellate Court. In the last sentence in paragraph 21(c) of the reported decision, no doubt, this Court has observed that the parties must be relegated to the remedy of a comprehensive suit by way of title instead of deciding that issue in a suit for injunction. However, that may be necessary in matters involving

complicated questions of fact and law relating to title. In the present case, as observed earlier, the issue regarding title and ownership was directly put in issue and was a substantial issue adjudicated by the Court albeit in a suit for simpliciter injunction. It was not a complicated issue either on facts or in law. It has been rightly answered on the basis of admitted and indisputable facts discerned from the registered documents, admission deed, declaration deed and other documents. The decision in the case of ***Gram Panchayat of Village Naulakha*** (supra), is on the facts of that case, as is discerned from paragraphs 3 and 9 to 11 of the reported decision. The decision in the case of ***Purshottam Das Tandon,*** (2014) 9 SCC 344, is also on the facts of that case. The Court found that the claim of ownership of land was a contentious issue and was left open by the High Court in writ jurisdiction to be adjudicated by a competent civil court. In the present case, the fact situation leaves no manner of doubt that the issue of ownership of the suit property was directly and substantially put in issue before the civil court and was made subject matter of the suit.

32. Even the decision in the case of ***Sajjadanashin Sayed*** (supra), will be of no avail to the respondents. In paragraph 18, the Court has considered the issue under consideration and noted that one has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue. Paragraph 18 of the said decision reads thus:-

> *"18. In India, Mulla has referred to similar tests (Mulla, 15th Edn., p. 104). The learned author says : A matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter 'directly and substantially' in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was 'directly and substantially' in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case.* ***The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was 'necessary' to be decided for adjudicating on the principal issue and was decided, it would have to be treated as 'directly and substantially' in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a latter case, (Mulla, p. 104). One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (Ishwer Singh v. Sarwan Singh and Syed Mohd. Salie Labbai v. Mohd. Hanifa[25]). We are of the view that the above summary in Mulla is a correct statement of the law."***
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> (emphasis supplied)

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25 (1976) 4 SCC 780

33. In the present case, we have adverted to the plaint, written statement, the issues framed by the Courts below and the judgments directly and substantially adjudicating the issue of title and ownership. Realizing this difficulty, the respondents relying on the decisions of this Court in ***Ravinder Kumar Sharma*** (supra); ***S. Nazeer Ahmed*** (supra), ***Balbir Kaur*** (supra); and ***Management of Sundaram Industries Limited*** (supra), would contend that it is open to the respondents to challenge the adverse findings recorded by the two Courts below on the issue of title and ownership of the suit property, without filling a formal cross objection in the present appeals. We are conscious of the fact that the plenary jurisdiction of this Court under Article 136 of the Constitution is not limited to the dispensation provided in Order XLI Rule 22 of CPC. However, permitting the respondents to assail the findings of the Courts below on the issue of ownership of property would be to overlook the cardinal principle that the Court would not ordinarily make an order, direction or decree placing the party appealing to it in a position more

disadvantageous than in what it would have been had it not appealed [see ***Management of Sundaram Industries Limited*** (supra), para 20]. Further, the impugned judgment of the High Court dismissing the second appeal was certainly not in favour of the plaintiff. It was to uphold the decree and order rejecting the relief of permanent injunction. Therefore, the argument now canvassed by the respondents will not be for sustaining the operative order or decree passed by the High Court as such. For, if accepted, it will inevitably entail in not only reversing the concurrent findings recorded by the Courts below on the issue of ownership but would also necessitate reversal of the decree passed by the Courts below rejecting the relief of permanent injunction. That could be done only if the plaintiff were to challenge the decree of rejection of the relief of permanent injunction in reference to the suit notice. Absent such a challenge by way of an appeal or cross objection, the decree to be sustained will be that of the First Appellate Court of partly allowing the appeal of the plaintiff (original respondent) to the extent of claim of

compensation on the premise that the plaintiff will get compensation towards construction in terms of the regulations. A priori, the decisions relied upon by the respondents in the case of ***Balbir Kaur*** (supra), ***S. Nazeer Ahmed*** (supra), ***Panchayat of Village Naulakha*** (supra), and ***Ravinder Kumar Sharma*** (supra), will be of no avail to the respondents. Moreover, permitting the respondents to argue beyond the facts admitted in the registered agreement to sell and the registered sale deeds and the admission deed as well as the declaration deed, will be to encourage an argument that the plaintiff has derived title in the suit property more than what his predecessors in title have had enjoyed - of occupancy/possessory rights alone. The maxim - *Nemo dat quod non habet* must be borne in mind, which means no one gives what he does not possess. For the view that we have taken, we find no legal basis to relegate the parties before the High Court for fresh consideration of the second appeal.

34. The legal position regarding the efficacy of the Old Grant falling in class B-3 has been examined in successive decisions by this Court, as pressed into service by the appellant and lastly in ***Usha Kapoor*** (supra). This decision has considered all the earlier decisions of this Court on the point including those relied upon by the respondents. Even in the reported case, the Old Grant was falling in class B-3. The Court adverted to all the earlier decisions including the elucidation from the book on Cantonment Laws by J.P. Mittal, to which reference was made by the respondents - to restate the legal position that the terms of the tenure granted under Order No.179 dated 12th September, 1836 was that the ownership of the land remained with the Government and the land cannot be sold by the grantee. The original grantee is vested with the right to build a house/structure on the land and he may only transfer the same. Such transfer would require the consent of the Commanding Officer when the transfer is to a person not belonging to the Armed Forces. The right to resume the land at any time after following the

procedure prescribed has expressly been recognized to be vesting in the Government. The status of the holder of class B-3 land has also been adverted to in paragraphs 14 and 15 of the said decision. It is true that in the present case, the appellant (defendant) did not produce the Old Grant in relation to the suit property, but had produced the GLR extract. It is well settled that GLR extract is conclusive of the fact that the land is covered by Old Grant and the rights enjoyed by the plaintiff were merely possessory or occupancy rights in respect of the structures thereon. It is not necessary to dilate on the other authorities which are already considered in this decision.

35. Suffice it to observe that in absence of any challenge to the judgment and decree passed by the High Court in second appeal rejecting the second appeal on the ground that it lacked merit, the respondents (successors in title of the plaintiff) can neither succeed nor can be permitted to agitate before this Court about the correctness of the finding recorded by the Courts below on the issue of

ownership of the suit property of Government of India and that the plaintiff is not the absolute owner thereof. The finding of fact so recorded will bind the respondents. The only issue that has been left open in terms of the decree passed by the First Appellate Court and upheld by the High Court consequent to rejection of the second appeal, is about determination of compensation for the structure in terms of the Old Grant and regulations in relation thereto.

36. The appellant has rightly relied upon the decisions of this Court which have exposited that determination of appropriate and reasonable compensation can be done even later by referring the matter to the Arbitrator as per the regulations (see ***Harish Chand Anand*** (supra), paras 2 and 5) . That, therefore, cannot come in the way of the appellant to proceed further on the basis of the suit notice dated 19th August, 1985, the validity whereof is unassailable.

37. Notably, on a close reading of the liberty given by the High Court to the plaintiff, it is plain that the liberty is limited to raise the issue of title relating to the suit

property in the event any eviction proceedings are resorted to by the appellant. Such liberty, as is well settled will be hit by principles of constructive *res judicata* in the fact situation of this case. Further, it is certainly not a liberty to file a fresh suit for declaration of title and ownership, which the plaintiff ought to have filed earlier or at least amended the suit by seeking appropriate declaration.

38. For the view we have taken, it is not necessary to burden this judgment with other authorities and contentions pressed into service by the parties, to avoid prolixity of this judgment.

39. Accordingly, these appeals must succeed. We are in agreement with the grievance of the appellant that the High Court, having upheld the concurrent finding of fact on the issue of ownership of the suit property and dismissed the second appeal on the ground that it lacked merit, should have eschewed from making observations as made in paragraphs 17 and 18 of the impugned judgment. Further, on the basis of such observations, the High Court unjustly granted liberty to the plaintiff (original

respondent) to raise the issue of title in the event eviction proceedings are initiated against him. The High Court also committed manifest error in clarifying that if such a plea was raised, the same ought to be decided without being influenced by the findings given by the Trial Court.

40. Accordingly, we set aside the aforementioned observations made by the High Court in paragraphs 17 and 18 of the impugned judgment dated 28th February, 2008 in Second Appeal No.206 of 2001. For the same reasons, we also set aside the impugned judgment and order dated 19th June, 2008 in Miscellaneous Review Application No.668 of 2008.

41. A priori, in furtherance of notice dated 19th August, 1985 the appellant is free to take possession of the suit property in accordance with law. However, the respondents are granted time to hand over vacant and peaceful possession of the suit property until 31st January, 2018.

42. We clarify that if the respondents have any grievance regarding the quantum of compensation determined by the Arbitrator in respect of the structures standing on the suit property, it will be open to them to pursue appropriate legal remedies as per law.

43. The appeals are allowed in the above terms with no order as to costs.

.....J.
(Kurian Joseph)

.....J.
(A.M. Khanwilkar)

New Delhi;
October 23, 2017.