Dasondha Singh and others
v.
The Punjab State

Khosla, J.

thereof in any mine, or in any class of mines, either absolutely or subject to conditions."

It was held that although the word "shall" was used the provision with regard to notice was merely directory and not mandatory. This case is almost on all fours with the case before me.

For the reasons given above, I hold that there was no irregularity or non-compliance with the mandatory provisions of section 15. The mandatory provision is confined to the publication of the proclamation in the Official Gazette. The rest of the section is merely directory. That being so, failure to notify the proclamation at the Patwarkhanas and the Post Offices cannot be said to be an irregularity, and the levy is, therefore, valid. This appeal fails and I dismiss it, but as an important point of law was involved I make no order as to costs.

APPELLATE CIVIL

Before Bishan Narain, J.

HARI KISHAN DASS, BANKER,—*Defendant-Appellant.*

versus

UNION OF INDIA THROUGH MILITARY ESTATE OFFICER, DELHI,—*Plaintiff-Respondent.*

Civil Regular Second Appeal No. 146 of 1952

1955

October, 21st

Building Grants—Land in Cantonment granted for building—Ownership of such land retained by Government along with the power of resumption on giving one month's notice *and value of buildings—Power to transfer building by grantee given with the sanction of the prescribed authority—Standing trees on such land—Right to such trees, whether of the Government or the grantee—Trees not in existence at the time of the grant, effect of.*

Held, that the trees are associated with the site rather than with the building. The owner of the site is the owner of the trees standing thereon and as the site belongs to Government so do the trees.

Held also, that it makes no difference that the trees did not exist at the time of the grant. If trees are part of the land on which they stand then whether they were in existence at the time of the grant or have grown since the grant of land is immaterial because immediately on growth they become part of the land and vest in the owner thereof. Similarly, whether the trees are of spontaneous or wild growth or are planted by the grantee they form part of the land on which they stand. This principle is based on the well known maxim *quicquid plantatur solo solo cedit*, i.e., whatever is planted on the soil becomes the part of the soil.

Second Appeal from the decree of the Court of Shri Tika Jagjit Singh Bedi, District Judge. Ambala, dated the 20th day of October, 1951, affirming that of Shri W. Augustine, Senior Sub-Judge, Ambala, dated the 21st November, 1950, granting a decree for Rs. 96 and for declaration that the trees standing on the site and grounds of the Bungalow No. 14, are the absolute property of the Government with costs to the plaintiff against the defendant. Appellate Court left the parties to bear their own costs.

H. L. SARIN, for Appellant.

D. N. AWASTHY, for Respondent.

JUDGMENT

Bishan Narain, J.

BISHAN NARAIN, J. This second appeal arises out of a suit filed by the Indian Union for a declaration that the trees standing on the gound of Bungalow 14 (Survey No. 104) Ambala Cantonment are the absolute property of the Government and claimed a decree for Rs. 96 as the price of two trees cut by defendant Hari Kishan Dass. The

defendant in spite of this suit claimed *inter alia* that he was the absolute owner of the trees standing on this ground. The trial Court decreed the suit and the defendant's appeal was dismissed by the District Judge Ambala. The defendant has filed this second appeal to this Court.

Hari Kishan Dass, Banker
v.
Union of India through Military Estate Officer, Delhi

Bishan Narain, J.

The facts material for the decision of this appeal are no longer in dispute. The land in suit is situated in Ambala Cantonment. It appears that on 12th September, 1836, in supersession of previous orders an "Order No. 179" of the Governor-General in Council was notified dealing with the applications to build on unoccupied lands in Cantonments. It is common ground that the site as distinct from superstructure belongs to the Government and it is covered by this 1836 Order. The defendant's case is that his grandfather had purchased this bungalow with the ground in 1887-88 subject to the terms of this Order and admits that he had cut two of the trees from the ground and removed them. The allegations in the plaint by the Indian Union are that the two trees were cut and removed on or about 30th October, 1947. The defendant's case is that these trees were not in existence at the time when the grant was made under 1836 Order. Clause 6 of this Order is in these terms—

> "No ground will be granted except on the following conditions which are to be subscribed by every grantee, as well as by those to whom his grant may subsequently be transferred.
>
> First :—The Government to retain the power of resumption at any time on giving one month's notice and paying the value of such building as may have been authorised to be erected.

Hari Kishan Dass, Banker
v.
Union of India through Military Estate Officer, Delhi

Bishan Narain, J.

Second:—The ground, being in every case the property of Government cannot be sold by the grantee, but houses or other property thereon situated may be transferred by one military or medical officer to another without restriction, except in the case of reliefs, when, if required, the terms of sale or transfer are to be adjusted by a Committee of Arbitration.

Third:—If the ground has been built upon, the buildings are not to be disposed of to any person, of whatever description, who does not belong to the army until the consent of the Officer Commanding the Station shall have been previously obtained under his hand.

Fourth:—When it is proposed, with the consent of the General Officer, to transfer possession to a native, should the value of the house, buildings or property to be so transferred exceed Rs. 5,000 the sale must not be effected, until the sanction of Government shall have been obtained through His Excellency the Commander-in-Chief."

It is contended for the appellant that under paras 2 and 4 of this clause trees standing on the land at the time of the grant or of subsequent growth vested in the grantee and therefore the defendant had full right to cut the trees and remove them. The only question that required decision in this case is whether the Indian Union or the defendant is entitled to the trees standing on the ground granted by the former to the latter.

Hari Kishan Dass, Banker
v.
Union of India through Military Estate Officer, Delhi

Bishan Narain, J.

Now admittedly the occupation of the land has been granted to the grantee on the terms laid down in the Order of 1836. Clause 6 of this Order states that the grant has been made "on the following conditions" which are described in this Order itself and it, therefore, follows that this is the contract and the only contract between the parties laying down the conditions of the grant. There is no mention of trees in this Order. It is for the defendant to prove that the Indian Union transferred or purported to transfer the trees standing on this land to him by means of this Order of 1836. Now para 2 expressly states that the ground, i.e., site is the property of the Government and cannot be sold by the grantee. The defendant must, therefore, base his title to these trees and the right to cut them down "either upon this, first, that it is a necessary incident of the lease by reason of the objects of the lease; or, secondly, under some positive law; or, thirdly, under some custom to be incorporated in the lease; or fourthly, under the express terms of the lease" as was authoritatively laid down by their Lordships of the Privy Council in *Ruttonji Edulji Shet* v. *The Collector of Tanna and the Conservator of Forests* (1). In the present case the defendant does not rely for this purpose on any custom nor does he base his claim on the basis of any positive law. There is no express condition in the order under consideration which by express terms transfers trees on this land to the defendant nor can it be said that it is a necessary incident of the grant by reason of its purpose particularly when it is not suggested that these trees were cut with a view to erect a building on the site. I may state here that it is common ground that the site was granted by the Government for the purpose of constructing a building. The defendant's case,

(1) 11 Moore's Ind. App. 295 at p. 314

Hari Kishan Dass, Banker *v.* Union of India through Military Estate Officer, Delhi

Bishan Narain, J.

however, is that paras 2 and 4 of the conditions by necessary implications transfer the trees to the occupant of the land and for this purpose reliance is placed on "house or other property situated thereon" in para 2 and the argument is that there can be no "other property" on the land besides houses but trees. Similarly reliance is placed on the words "house, building or property" occurring in para 4 for necessary implication that these words include trees. Now it will be noticed that the term "property situated thereon" is rather an inapt term to be used for trees. It appears to me that word "property" in these paras is not used in the sense of an article which is the subject-matter of ownership but in the sense of superstructure or in the sense analogous to "houses" or "building". This Order of 1836 was considered in *Harichand and others* v. *Secretary of State* (1). In that case certain bungalows in the Cantonment of Peshawar were acquired. The claimants who held the land under the Order of 1836 claimed compensation for the trees and gardens etc. The Privy Council held that under para 1 on resumption of land by one month's notice the claimant is entitled to compensation for "buildings" only and then their Lordships proceeded to observe—

> "Anything which might be done by the grantee in the way of utilising the ground surrounding the building for the purposes of amenity or enjoyment was as the Court below has held associated rather with the site than with the building. If the compensation has to be restricted, as it has to be in this case, to the value of the buildings, their Lordships agree with the Court below

(1) A.I.R. 1939 P.C. 235

> that no additional allowance should be made in respect of amenities such as trees and gardens and so on associated with the enjoyment of the bungalows."

Hari Kishan Dass, Banker
v.
Union of India through Military Estate Officer, Delhi

Bishan Narain, J.

It is, therefore, obvious that according to the Privy Council trees are associated with the site rather than with the building. If this be so, then the owner of the site is the owner of the trees standing thereon and as the site belongs to Government so do the trees. The necessary inference to be drawn from this decision is that in the opinion of their Lordships of the Privy Council the grant of 1836 did not transfer trees whether existing at the time of the grant or of subsequent growth to the grantee. It was held by the Privy Council in *Ruttonji Edulji Shet* v. *The Collector or Tanna and the Conservator of Forests* (1), that trees on the land were part of the land and the right to cut down and sell them was incident to the proprietorship of the land. For these reasons, I am of the opinion that Clause 6 is not susceptible of the implications that the trees were transferred by the Indian Union to the grantee. It must therefore be held that as the land as well as the trees thereon vested with the Union of India, the defendant had no right to cut the trees in dispute.

It was then argued that these trees did not exist at the time when the grant was made and, therefore, the Government could not claim them as their property. Now if trees are part of the land on which they stand then whether they were in existence at the time of the grant or have grown since the grant of land is immaterial because immediately on growth they become part of the land and vest in the owner thereof. Similarly whether

(1) 11 Moore's Ind. App. 295

Hari Kishan Dass, Banker
v.
Union of India through Military Estate Officer, Delhi

Bishan Narain, J.

the trees are of spontaneous or wild growth or are planted by the grantee they form part of the land on which they stand. This principle is based on the well known maxim *quicquid plantatur solo solo cedit*, i.e. whatever is planted on the soil becomes the part of the soil. The Privy Council in *Harichand's* case cited above made no such distinction as suggested by Mr. H. L. Sarin for the appellant and in fact held that the grantee was not entitled to compensation on the ground that he had done something in the way of utilizing it. Mr. H. L. Sarin strongly relied on *The Governor-General in Council* v. *Mr. D. E. Rivett and others* (1). In that case Falshaw, J., was dealing with the grantee's right to remove trees that had naturally fallen down without payment of any fee etc., and it was held that the grantee had a right to remove such trees. The present case, however, relates to trees that had been cut down by the grantee and decision of Falshaw, J., is distinguishable on this account. I, therefore, hold that the trees that were cut by the defendant in the present case belonged to the Union of India. It was not urged before me that the value of the trees that were cut down was not Rs. 96.

The result is that I dismiss this appeal but in the circumstances of the case, I leave the parties to bear their own costs.

APPELLATE CRIMINAL

Before Falshaw, J.

ROSHAN,—*Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 90 of 1955

1955

October, 28th

Evidence Act (I of 1872)—Section 32(2)—Record of evidence at an identification parade held by a Magistrate —Whether record of such proceedings is admissible in

(1) 1953 P.L.R. 224