

## CIVIL REFERENCE.

*Before Falshaw and Dua, JJ.*

KUL BHUSHAN PARKASH,—*Petitioner.*

*versus*

THE CANTONMENT BOARD, AMBALA CANTT.,—  
*Respondent.*

Civil Reference No. 2 of 1956

*Cantonments Act (II of 1924)—Section 99(2) (f)—“Public purpose” and “in the occupation of the Central or any State Government”—Appropriation of bungalow for the residence of Government Officers—Whether can be said to be for public purpose and in the occupation of the Government.*

1958

Sept., 3rd

*Held*, that the appropriation of a bungalow under the provisions of the Cantonments (House Accommodation) Act, No. VI of 1923. on a lease by the Central Government for the purpose of lodging Government Officers (having been allotted to army officers for their residence) is clearly covered by the expression “public purpose”. As the lease has been executed in favour of the Government, it is only reasonable to hold that it is in the occupation of the Government—the actual lessee of the property. The fact that the Government have permitted one of their military officers to be in the actual physical occupation of the premises makes no real difference. The Central or any State Government cannot occupy any building except through some individual and if Government appropriates or takes certain property for public purpose (in this case for the purpose of lodging the military officers) and occupies it through its own officers, whether civil or military, it can reasonably be considered to be in the occupation of the Government within the meaning of section 99 of the Cantonments Act.

*Case referred by Shri P. N. Bhanot, Additional District Magistrate, Ambala, for decision on some points which he thought essential in disposing of an appeal against the assessment made by the Assessment Committee, Ambala Cantt. by the Hon'ble Judges of the High Court under Section 84(2) of the Cantonment Act, 1924.*

*Case referred by Hon'ble Mr. Justice Bishan Narain on 2nd December, 1957, to a Division Bench for opinion on the legal point involved in the case and later on decided by a D.B. consisting of Hon'ble Mr. Justice D. Falshaw, and Hon'ble Mr. Justice Inder Dev Dua, on 3rd September, 1958.*

SHAMAIR CHAND and P. C. JAIN, for Petitioner.

B. D. MEHRA and M. R. MEHTA, for Respondent.

### JUDGMENT

Dua, J.

DUA, J.—This is a reference made to this Court by the Additional District Magistrate, Ambala, under section 84(2) of the Cantonment Act, 1924, because he entertained a reasonable doubt as to the liability of assessment of house tax of bungalow No. 127-B, Bank Road, Ambala Cantonment. The assessment committee of the Cantonment Board, Ambala, assessed house tax on the bungalow in question at Rs. 900. The owners appealed against this assessment to the District Magistrate who having entertained a reasonable doubt as to the legality of the assessment made this reference as stated above. The case originally came up for hearing before Bishan Narain, J. who after going through the various provision of the Cantonment Act, 1924, observed that the bungalow in question appeared in his opinion to be exempt from assessment but in view of the serious financial implications and in the absence of any decision of any Court on this question, he referred the case for decision by a larger Bench. The case has now been placed before us for decision and we have heard Mr. Shamair Chand, Advocate, on behalf of the owners and Mr. B. D. Mehra Advocate on behalf of the Cantonment Board.

The facts are not in dispute and have been fully stated in the order of reference. They need

not be repeated. Half the bungalow has been appropriated under the provisions of the Cantonments (House Accommodation) Act No. VI of 1923 on a lease by the Central Government because the premises were considered suitable for occupation by a military officer as contemplated in section 7 of the Cantonment Act, of 1924. This appropriation of the premises which are being used for the purpose of lodging Government Officers (having been allotted to army officers for their residence) is clearly covered by the expression "public purpose". As the lease has been executed in favour of the Government, I think it is only reasonable to hold that it is in the occupation of the Government—the actual lessee of the property. The fact that the Government have permitted one of their military officers to be in the actual physical occupation of the premises would in my opinion make no real difference.

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Mr. B. D. Mehra, the learned counsel for the Cantonment Board laid great stress on the language of section 99(2)(f) of the Cantonment Act which reads thus—

"99. (2) The following buildings and lands shall be exempt from any tax on property other than a tax imposed to cover the costs of specific services rendered by the Board, namely:—

- |     |   |   |   |   |
|-----|---|---|---|---|
| (a) | * | * | * | * |
| (b) | * | * | * | * |
| (c) | * | * | * | * |
| (d) | * | * | * | * |
| (e) | * | * | * | * |

(f) any buildings of lands used or acquired for any public purpose, which are the property of the Government,

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or in the occupation of the Central  
or any State Government.”

The argument of the learned counsel is that looking at the language of this clause, it is the actual occupant of the premises who is to be considered to be in its occupation. In other words, the person in whose physical occupation the building is, he alone is intended by the section to be in its occupation. Developing this argument he concludes that the Central or any State Government cannot be considered to be in occupation of the building in question. After giving my most anxious thought to this argument I regret I cannot agree with the learned counsel. The Central or any State Government cannot occupy any building except through some individual and if Government appropriates or takes certain property for public purpose (in this case for the purpose of lodging the military officers) and occupies it through its own officers, whether civil or military, I think it can reasonably be considered to be in the occupation of the Government within the meaning of section 99 of the Cantonment Act. As I have said above, the learned Single Judge who made this reference was also inclined to take the view which I am taking. It may incidentally be stated that even if there be some doubt in the construction to be placed on this clause, I would nevertheless be inclined to construe it in favour of the citizen, because the question relates to imposition of tax.

In view of what has been stated above my answer to the three points referred would be, in the affirmative so far as points No. 1 and 2 are concerned and in the negative so far as point No. 3 is concerned.

Falshaw, J.

FALSHAW, J.—I agree. —

B.R.T.