Before Ram Chand Gupta, J.

UNION OF INDIA,—*Appellant*

versus

SHAM SUNDER DASS AND ANOTHER,—*Respondents*

RSA No. 1999 of 1983

9th May, 2011

Code of Civil Procedure, 1908—Limitation Act, 1963—S. 5-Public Premises (Eviction of Unauthorized Occupation) Act, 1971—S.15-Union of India issuing notice for resumption of defence land & building standing thereon and directing to deliver possession within 30 days—UOI also remitting cheque as value of structure standing on land—Plaintiffs failing to hand over possession of property even after expiry of notice period—UOI initiating proceedings under provisions of 1971 Act—Trial Court holding notice relating to resumption illegal, void, unconstitutional and against principles of natural justice—UOI failing to file appeal within prescribed period of limitation—1st Appellate Court dismissing application for condonation of delay and as a consequence thereto dismissing appeal—Whether dismissal of an appeal from a decree on ground that appeal is barred by limitation is a decision in appeal—Held, yes—Where a decision is given on merits by trial Court and appeal is dismissed on ground of limitation etc. such dismissal amounts to appeal hearing heard & finally decided on merits—Appeal filed by UOI held to be maintainable—UOI satisfactorily explaining 67 days delay in filing appeal—1st Appellate Court committing illegality in dismissing application for condonation of delay—Order of 1st appellate Court declining request for condonation of delay set aside—Trial Court holding that plaintiffs are in possession of property on "OLD GRANT" terms—As per Reg. 6 of order dated 12th September, 1836, UOI has a right to resume site without assigning any reason and only requirement is to give one month notice—Findings of trial Court holding that no opportunity of hearing was given to plaintiffs before issuing notice

held to be illegal—However, plaintiffs held to be entitled to an opportunity of hearing before determining quantum of compensation to be paid to them on account of acquisition of building standing on land.

Held, that even if an appeal is rejected on the ground that it was presented out of time, the same is a decree within the definition of a decree obtaining in the Code. Hence, there is no force in the argument that the present Regular Second Appeal is not maintainable.

(Paras 27 & 28)

Further held, that the delay in filing the appeal has been satisfactorily explained by appellant-defendant, as the file was dealt at various offices under the Ministry of defence, New Delhi, and it was only after obtaining opinion of Legal Advisor (Defence), decision was conveyed to Military Estates Officer, Ambala Circle, Ambala Cantt to file appeal by Director General, Defence Lands and Cantonments, Ministry of Defence, New Delhi on 21st August, 1980 and only few days were taken in preparing the appeal, which was filed on 30th August, 1980. Hence, learned first appellate Court has committed illegality in dismissing the application filed by appellant-defendant for condonation of delay in filing the appeal. The said order is set aside. Application filed under Section 5 of the Limitation Act by appellant-defendant is allowed and the delay in filing the appeal is hereby condoned.

(Para 34 & 35)

Further held, that the respondent-plaintiffs are to be dealt with strictly and in accordance with the conditions of grant as mentioned in G.G.O. No. 179 dated 12th September, 1836. The present respondent-plaintiffs have stepped into the shoes of their predecessors. As per Regulation 6 of the said order, Union of India is having right to resume the site without assigning any reason and the only requirement is to give one month notice, which has been given in the present case. Hence, the learned trial Court has committed illegality in declaring the resumption notice as illegal on the ground that no opportunity of hearing was given to respondent-plaintiffs before issuing the said notice and that no opportunity was given to respondent-plaintiffs of being heard to determine the compensation. Learned trial Court after coming to the conclusion that the property was held by respondent-plaintiffs on "OLD GRANT" terms has committed illegality in holding that the notice is illegal.

(Paras 63 & 68)

Further held, that no opportunity of hearing was given to respondent-plaintiffs before determining the quantum of compensation to be paid to them on account of acquisition of the building standing on the land belonging to Union of India as the construction is a permissible one. Hence, respondent-plaintiffs are having right to be heard even if there is no such specific provision in G.G.O. No. 179. Hence, impugned notice to the extent it conveys the compensation payable regarding acquisition of building as only Rs. 64,126 can be said to be bad in law. It is incumbent upon the respondent-plaintiffs to afford an opportunity of hearing to the grantee in regard to the determination of quantum of value of the resumed building.

(Paras 70 & 71)

Code of Civil Procedure, 1908—O. 41 Rl.27 & S.151—Appeal heard on merits and reserved for orders—Plaintiffs filing application for permission to lead additional evidence to produce some documents—Plaintiffs failing to show as to how said documents are necessary for deciding appeal—Application dismissed being devoid of merit.

Held, that no cross-appeal/cross objections were filed by respondents-plaintiffs before first appellate Court. Rather the appeal filed by present appellant-defendant was contested by respondents-plaintiffs on the ground of limitation and the same was dismissed on the ground of limitation only. Most of the documents, which are sought to be produced by way of additional evidence are copies of some notifications, Acts and some judgments regarding some other properties and some notices, issued to some other occupants of Cantonment properties. None of documents which are sought to be produced by way of additional evidence is essential for the decision of present controversy between the parties. Hence, the present application filed by respondents-plaintiffs for adducing additional evidence under Order 41 Rule 27 read with Section 151 of the Code is hereby, dismissed being devoid of merit.

(Paras 45 & 47)

Ms. Ranjana Sahi, Advocate, *for the appellant*.

Sanjay Majithia, Sr. Advocate with Shailender Mohan, *Advocate for the respondents*.

S.D. Bansal, Advocate for the applicant-respondent in C.M. Nos. 3368-69 of 2011.

RAM CHAND GUPTA, J.

(1) Facts leading to the present Regular Second Appeal are as under :

(2) Respondents-plaintiffs filed a suit for declaration that Notice No. 1/41/L/L&C/69 dated 21st March, 1975/7th April, 1975 issued by Deputy Director, Military Land and Cantonments, Ministry of defence (ML&C) New Delhi, relating to the resumption of Bungalow No. 102, the Mall, Ambala Cantt, measuring 1.60 acres or thereabout and bounded as follows :

On the North	–	By Road
On the South	–	Survey No. 357 (Bungalow No. 103)
On the East	–	Road
On the West	–	Survey No. 358,

is illegal, null, void and unconstitutional and against the principles of natural justice and hence, not binding upon the rights of the respondents-plaintiffs and defendant has acquired no right, title or interest therein.

(3) It has been averred that respondents-plaintiffs are owners in possession of the property in dispute and that the impugned notice, duly described in para No. 2 of the plaint, had been served upon them by appellant-defendant-Union of India by referring Bungalow in dispute as an 'OLD GRANT" terms under the Government and, hence, Government decided to resume the said land and the building standing thereon and hence, in exercise of powers vested in the Government, the notice to quit the same is being given and respondents-plaintiffs were asked to deliver the possession of the same alongwith structure standing thereon to the Military Estate Officer, Ambala Circle, Ambala Cantt., on the expiry of one month from the date of service of the notice. It has also been made clear in the notice that on the expiry of one month from the date of service of the notice, the occupation of the respondents-plaintiffs and all rights, easements and interests therein belonging to them in the said land and building standing thereon shall cease to exist from the said date. Notice was also accompanied by a cheque for a sum of Rs. 64126 as value of authorised erection standing on the said land. However, the said cheque was returned by respondents-

plaintiffs.—*vide* their letter dated 18th April, 1975 protesting that the resumption of the property is vague and indefinite and no ground or reason has been mentioned in the notice for resumption of the property and the amount of compensation is highly inadequate and was not acceptable.

(4) The said notice has been challenged by respondents-plaintiffs on the ground that no property belonging to citizen of India can be acquired except in accordance with law and that the notice is also in conflict with the provisions of the Land Acquisition Act, 1894, Cantonment Act, 1924 and House Accommodation Act, 1926 ; that no public purpose for resumption has been mentioned in the notice ; that the notice is also discriminatory as the bungalow, of the private holders and similarly situated bungalows of other persons have not been resumed ; that the Rules and Regulations have ceased to have any effect in view of Article 13 of the Constitution of India as the same are inconsistent with the Constitution of India and the Laws of India ; that under GIR No. 287/D, Ambala Cantt, dated 12th September, 1936 property cannot be resumed ; that the compensation offered for the lease hold rights is inadequate as respondents-plaintiffs had spent Rs. 1,00,000 in renovating the same and the present market value of the same is more than Rs. 3,00,000 ; that the value of lease hold rights is about Rs. 50,000 ; that the value of other gates, hedges and wires etc. is Rs. 10,000 and value of annexe is Rs. 50,000 ; that no notice has been given to respondents-plaintiffs before issuing notice of resumption and hence, the notice is also in contravention of principles of natural justice.

(5) It has also been averred that no notice and no opportunity of hearing has also been given to the respondents-plaintiffs before assessing the market value of the structure standing on the land in dispute. Plea has also been taken that even a trespasser cannot be dispossessed except with the authority of law. Notice under Section 80 of the Code of Civil Procedure (for short 'the Code') was also served upon appellant-defendant before filing the suit.

(6) Appellant-defendant contested the suit filed by respondents-plaintiffs, *inter alia*, on the ground that the land in dispute is defence land measuring 1.60 acres out of survey No. 356, known as Bungalow No. 102 and the same was held by respondents-plaintiffs under "OLD GRANT" terms governed by G.G.O. No. 179 dated 12th September, 1836. A notice

of resumption of the said property was duly given to respondents-plaintiffs directing them to hand over the same within 30 days, as per terms and conditions of the said G.G.O. However, as respondents-plaintiffs had refused to hand over the possession of the property in dispute, even after expiry of notice period, hence, now they are unauthorised occupants of the public premises and hence, appellant-defendant-Union of India have started proceedings under the provisions of Public Premises (Eviction of Unauthorised Occupation) Act, 1971 (Central Act XI of 1971), (for short 'the 1971 Act') in the Court of Estate Officer, Ambala Circle, Ambala Cantt., and therefore, it is contended that jurisdiction of Civil Court is barred as provided under section 15 of the 1971 Act. Specific plea has been taken that respondents-plaintiffs are in possession of the land in dispute as licencees of appellant-defendant-Union of India on "OLD GRANT" term under G.G.O. No. 179, dated 12th September, 1836 and that President of India is not bound to give any reason to resume the property and that notice has been issued as per terms and conditions of the said G.G.O. No. 179. It has also been contended that present case cannot be termed as a land acquisition case and it also cannot be said that all the previous contract agreements, Rules and Regulations ceased to operate after commencement of the Constitution. The G.G.O. No. 179, under which permission to use the land was granted, is legally binding on respondents-plaintiffs and the building has been resumed under the terms and conditions of the said G.G.O. Specific plea has been taken that terms and conditions of the said G.G.O. have been admitted by respondents-plaintiffs and hence now they cannot take the plea that the same is not binding upon them. It has also been pleaded that compensation offered to respondents-plaintiffs have been correctly assessed by Military Engineers for the super structure authorised to be erected on the land in dispute and that no compensation of land is liable to be paid to respondents-plaintiffs as the entire land of Bunglaow in question belongs to Government of India, Ministry of Defence and these facts were duly admitted by respondents-plaintiffs when the land was given to them under the terms and conditions of G.G.O. No. 179. Further plea has been taken that depreciated value of the super structure is payable to the respondents-plaintiffs and hence, an amount of Rs. 64,126 was offered to them and however, it was admitted that the cheque was returned by respondents-plaintiffs. The receipt of notice under Section 80 of the Code was admitted, however, the plea has been taken that the same was not tenable and hence the same was ignored.

(7) In replication to the written statement filed by respondents-plaintiffs, it has been denied that they are in possession of the property in dispute under "OLD GRANT" terms as per G.G.O. No. 179 dated 12th September, 1836.

(8) From the pleadings of the parties, following issues were framed by learned trial Court :—

"1. Whether the impugned notice detailed in para No. 2 of the plaint is illegal, unconstitutional, without jurisdiction, ultra vires as alleged in the plaint ? OPP

2. Whether the Civil Courts have no jurisdiction to entertain the present suit ? OPD

3. Relief."

(9) Parties adduced evidence in support of their respective contentions before learned trial Court. Learned trial Court decided issue No. 1 in favour of respondents-plaintiffs by holding that the same is against the principles of natural justice, as no opportunity of being heard was given to respondents-plaintiffs before issuing the said notice and that no opportunity was also being given to respondents-plaintiffs before assessing value of the super structure and that even notice is discriminatory as no such notice has been given to owners of building in the vicinity.

(10) Issue No. 2 has also been decided in favour of respondents-plaintiffs and against appellant-defendant.

(11) Issue No. 3 has also been decided in favour of respondents-plaintiffs and against defendants and however, while deciding issue No. 3, it was observed that the property in dispute is being held by respondents-plaintiffs on "OLD GRANT" terms and they are bound by terms of G.G.O. No. 179 dated 12th September, 1936 on the ground mainly that the said fact has been admitted by respondents-plaintiffs, as is clear from the recital in sale deed Ex. D1,—*vide* which the property in dispute was purchased by respondents-plaintiffs from previous owner.

(12) As a sequel to findings on various issues, suit of respondents-plaintiffs was decreed and a decree for declaration has been granted in their

favour to the effect that the impugned notice issued by Deputy Director, Military Lands and Cantonments, Ministry of defence, M.L. & C, DTE, New Delhi, relating to resumption of property in dispute is illegal, void, unconstitutional, and against the principles of natural justice and not binding upon the rights of the respondents-plaintiffs.

(13) Aggrieved by the said judgment and decree passed by learned trial Court, appellant-defendant filed appeal before learned District Judge, Ambala, however, as the appeal was not filed within prescribed period of limitation, an application under Section 5 of the Limitation Act was also filed for condonation of delay in filing the appeal.

(14) The application was contested by respondents-plaintiffs. Learned first appellate Court framed the following issue on the application for condonation of delay in filing appeal under Section 5 of the Limitation Act and reply thereof :

"Whether there are sufficient grounds for condonation of delay ?"

(15) Parties adduced evidence in support of their respective contentions on the said issue. Appellant-defendant examined Shri A.P. Singh, Military Estates Officer, Ambala Cantt., as AW1 and Shri R.K. Srivastav, Surveyor and Draftsman, Military Estates Officer, Ambala Cantt., as AW2. However, no evidence was adduced by respondents-plaintiffs on the point. Learned first appellate Court,—*vide* impugned judgment and decree dismissed the application filed by appellant-defendant for condonation of delay in filing the appeal and as a consequence thereto dismissed the appeal as well, as having not been filed within prescribed period of limitation and decree-sheet was prepared accordingly.

(16) Aggrieved against the said judgment and decree passed by learned first appellate court, the present Regular Second Appeal has been filed by appellant-defendant, which was admitted for hearing by this Court on 7th December, 1983, without framing substantial questions of law.

(17) A Full Bench of this Court in the case **Ghanpat** *versus* **Ram Devi, (1)** had taken a view that in view of Section 41 of the Punjab Courts Act, the amended provisions of Section 100 of the Code of Civil Procedure,

(1) AIR 1978 Pb. & Hy. 137

as amended in 1976, were not applicable to the second appeals filed in this Court and accordingly, no substantial question of law was framed, nor the aforesaid regular second appeals were admitted on any such substantial question of law. However, the Hon'ble Apex Court in the case of **Kulwant Kaur** *versus* **Gurdial Singh Mann (dead) by L. Rs (2)** has held that after amendment of Code of Civil Procedure in the year 1976, thereby amending Section 100, Section 41 of the Punjab Courts Act had become redundant and repugnant to the Central Act, i.e., Code of Civil Procedure and therefore was to be ignored and therefore, the second appeal shall only lie to this Court under Section 100 of the amended Code of Civil Procedure, on a substantial question of law.

(18) It may be mentioned here that though question of law was not framed at the time of admission of present appeal, and however, it has been observed by Full Bench of this Court in **Dayal Sarup** *versus* **Om Parkash (since deceased) through L.Rs and others, (3)** that this Court can formulate question of law as contemplated under Section 100 of the Code of Civil Procedure at any point of time before hearing of the appeal, even without amending the grounds of appeal. It has also been held that it is the duty of the Court to formulate substantial question of law while hearing the appeal under Sections 100(4) and 100(5) of the Code and question of law can be permitted to be raised at any stage of proceedings.

(19) Hence, in view of this legal proposition, learned counsel for the appellant-defendant was asked to file substantial questions of law, stated to be arising in this appeal

(20) Learned counsel for the appellant-defendant has filed the following substantial questions of law, stated to be arising in this appeal :—

"1. Whether the notice of resumption dated 7th April, 1975 is illegal as it is a condition precedent to give opportunity of being heard and determine the compensation ?

2. Whether having come to the finding and held the property in suit "OLD GRANT BASIS' the notice issued under Claim 6 of the G.G.O. No. 179 of 12th September 1836 could be set aside as illegal and arbitrary ?

(2) J.T. 2001 (4) S.C. 158 = AIR 2001 S.C. 1273
(3) (2010-4) 160 P.L.R. 1

3. Whether the impugned judgment and decree rendered by learned Courts below are against law ?

4. Whether the appeal could be dismissed being barred by time without adjudicating the other issues and law points ?"

(21) I have heard learned counsel for the parties on the substantial questions of law, stated to be arising in this appeal, and have gone through the whole record carefully.

(22) At the very outset, an objection has been taken by learned counsel for the respondents-defendants about maintainability of present Regular Second Appeal, on the ground that the first appellate Court has not decided the appeal on merits and rather the same has been dismissed on the ground of limitation only and hence, it is contended that proper course for the appellant-defendant was to file a revision under Section 115 of the Code and not a Regular Second Appeal. On the point he has placed reliance upon number of judgments rendered in **The Commissioner, Hubli-Dharwad Municipal Corporation** *versus* **Shrishail and others, (4) Jogendra Prasad Singh and another** *versus* **Satya Narayan Singh and others, (5) Rambharose Singh** *versus* **Hemlata Aathle (6), Daya Ram** *versus* **Divisional Eng. (O&M), M.P. Elec. Board, (7) Buta Ram** *versus* **Harnam Singh,** decided on 11th August, 2009 in C.R. No. 221 of 2005, **S. Satnam Singh and others** *versus* **Surender Kaur and another, (8)** and **Kh. Ali Mohd.** *versus* **Chief Secretary to Govt. and others, (9).**

(23) On the other hand, it has been contended by learned counsel for the appellant-defendant-Union of India that as appeal filed by appellant-defendant has been dismissed by learned first appellate Court, may be on the ground of limitation, the same amounts to decision in appeal and hence, judgment and decree passed by learned trial Court has merged in the judgment and decree passed by learned appellate Court. It is further contended that decree was also prepared in this case by learned first

(4) AIR 2004 Karnataka 75
(5) 2002 (2) ICC 330
(6) AIR 1994 M.P. 198
(7) 2001 (5) S.L.T. 68
(8) AIR 2009 S.C. 1089
(9) 2009 (4) R.C.R. (Civil) 818

appellate Court and, hence, it is contended that only Regular Second Appeal is maintainable against the impugned judgment and decree passed by learned appellate Court, on the substantial questions of law, arising in this appeal. She has also placed reliance upon **Shyam Sundar Sarma** *versus* **Pannalal Jaiswal and others, (10).**

(24) The question whether an appeal, accompanied by an application for condonation of delay in filing the appeal, is an appeal in the eyes of law, when the application for condonation of delay in filing the appeal is dismissed and consequently appeal is also dismissed being barred by limitation, in view of Section 3 of the Limitation Act, came to be considered by Privy Council in **Nagendranath** *versus* **Suresh Chandra, (11)** and it was observed as under :—

> "There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the terms, and that it is no less an appeal because it is irregular or incompetent."

(25) A Bench of three Hon'ble Judges of Hon'ble Apex Court in **Messers Mela Ram and sons** *versus* **Commissioner of Income-tax, Punjab (12),** considered this specific question and came to the conclusion that an appeal presented after limitation is an appeal and an order dismissing it as time barred is one based in appeal by placing reliance upon decision of Privy Council in **Nagendranath's** case *(supra)* and observed as under :—

> "9. But the question still remains whether the view taken in 1949 Bom 400 and 1952 Bom 157, than an appeal which is filed beyond the period of limitation is, in the eye of law, no appeal, unless and until there is a condonation of delay, and that, in consequence, an order passed thereon cannot be held to be passed in appeal so as to fall within Section 31, is right. Now, a right of appeal is a substantive right, and is a creature of the statute.

(10) AIR 2005 S.C. 226
(11) 1932 P.C. 165
(12) AIR 1956 S.C. 367 = 1956 (1) S.C.R. 166

Section 30(1) confers on the assessee a right of appeal against certain orders, and an order of assessment under section 23 is one of them. The appellant therefore had a substantive right under section 30(1) to prefer appeals against orders of assessment made by the Income-tax Officer. Then, we come to section 30(2), which enacts a period of limitation within which this right is to be exercised. If an appeal, is not presented within that time, does that cease to be an appeal as provided under section 20(1)?

It is well established that rules of limitation, pertain to the domain of adjectival law, and that they operate only to bar the remedy but not to extinguish the right. An appeal preferred in accordance with section 30(1) must, therefore, be an appeal in the eye of law, though having been presented beyond the period mentioned in section 30(2) it is liable to be dismissed in limine. There might be a provision in the statute that at the end of the period of limitation prescribed, the right would be extinguished, as for example, section 28 of the Limitation Act ; but there is none such here.

On the other hand, in conferring a right of appeal under section 30(1) and prescribed a period of limitation for the exercise thereof separately under section 30(2), the legislature has evinced an intention to maintain the distinction well-recognised under the general law between what is a substantive right and what is a matter of procedural law. In **Nagendranth** *versus* **Suresh Chandra Dey** (3) Sir Dinshaw Mulla construing the word 'appeal' in the third column of Article 182 of the Limitation Act observed :

> "There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and that it is no less an appeal because it is irregular or incompetent".

These observations were referred to with approval and adopted by this Court in **Raja Kulkarni and others** *versus* **The State of Bombay,** AIR 1954 SC 73. In **Promotho Nath Roy** *versus* **W. A. Lee,** AIR 1921 Cal 415, an order dismissing an application as barred by limitation after rejecting an application under Section 5 of the Limitation Act to excuse the delay in presentation was held to be one "passed on appeal" within the meaning of section 109 of the Civil Procedure Code. On the principles laid down in these decisions, it must be held that an appeal presented out of time is an appeal, and an order dismissing it as time-barred is one passed in appeal."

In later judgment rendered by four Hon'ble Judges of Apex Court in **Sheodan Singh** *versus* **Daryao Kunwar (13),** the question again arises whether dismissal of an appeal from a decree on the ground that appeal was barred by limitation was a decision in appeal, it was observed as under :—

"14.....We are therefore of opinion that whether a decision is given on the merits by the trial Court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial Court on the merits itself amounts to the appeal being hear and finally decided on the merits whatever may be the ground of dismissal of the appeal."

(26) In a recent judgment rendered by a Bench of three Judges of Hon'ble Apex Court in **Shyam Sundar Sarma's** case *(supra)* by relying upon **Negendra Nath's case** *(supra),* **Sheo Dan's case** *(supra)* and **Messers Mela Ram and Sons'** case *(supra)* and while considering **Rattan Singh** *versus* **Vijay Singh and others, (14)** it was observed as under :—

"12. Learned counsel placed reliance on the decision in **Ratansingh** *versus* **Vijaysingh and others** (2001) SCC 469 rendered by two learned Judges of this Court and pointed out that it was

(13) AIR 1966 S.C. 1332 = 1966 (3) S.C.R. 300

(14) (2001) 1 S.C.C. 469

held therein that dismissal of an application for condonation of delay would not amount to a decree and, therefore, dismissal of an appeal as time barred was also not a decree. That decision was rendered in the context of Article 136 of the Limitation Act. 1963 and in the light of the departure made from the previous position obtaining under Article 182 of the Limitation Act, 1908, But we must point out with respect that the decisions of this Court in Messers Mela Ram and Sons and Sheodan Singh (supra) were not brought to the notice of their Lordships. The principle laid down by a three Judge Bench of this Court in M/s Mela Ram and Sons (supra) and that stated in Sheodan Singh (supra) was, thus, not noticed and the view expressed by the two Judge Bench, cannot be accepted as laying down the correct law on the question. Of course, their Lordships have stated that they were aware that some decisions of the High Court have taken the view that even rejecting an appeal on the ground that it was presented out of time is a decree within the definition of a decree obtaining in the Code. Thereafter noticing the decision of the Calcutta High Court above referred to, their Lordships in conclusion apparently agree with the decision of the Calcutta High Court. Though the decision of the Privy Council in **Nagendra Nath Dey** *versus* **Suresh Chandra Dey** (supra) was referred to, it was not applied on the ground that it was based on Article 182 of the Limitation Act, 1908, and there was a departure in the legal position in view of Article 136 of the Limitation Act, 1963. But with respect, we must point out that the decision really conflicts with the ratio of the decision in Messrs Mela Ram and Sons and Sheodan Singh *(supra)* and another decision of this Court rendered by two learned Judges in **Rani Choudhury** *versus* **Lt. Col. Suraj Jit Choudhury** [(1982) 2 SCC 596)]. In **Essar Constructions** *versus* **N. P. Rama Krishna Reddy,** 2000(3) RCR (Civil) 281 : [(2000) 6 SCC 94) brought to our notice two other learned Judges of this Court, left open the question. Hence, reliance placed on that decision is of no avail to the appellant."

(27) Hence, in view of the aforementioned legal proposition settled by Hon'ble Apex Court even if an appeal is rejected on the ground that it was presented out of time, the same is a decree within the definition of a decree obtaining in the Code.

(28) Hence, there is no force in the argument of learned counsel for the respondents-plaintiffs that the present Regular Second Appeal is not maintainable.

(29) It has been contended by learned counsel for the appellant-defendant that there was only about 67 days' delay in filing the appeal and that sufficient reasons have been given by appellant-defendant in the application and in the affidavit filed before learned first appellate Court for condoning the delay in filing the appeal and even evidence adduced by appellant-defendant on the point remained unrebutted as no evidence was adduced by respondents-plaintiffs and, however, illegality has been committed by learned first appellate Court in declining the request of appellant-defendant for condoning the delay in filing the appeal and, hence, it is contended that learned first appellate Court should have condoned the delay in filing the appeal and should have decided the same on merits, taking into consideration the law point involved in this case. Hence, it is contended that substantial question of law No. 4, as framed above, is required to be decided in favour of appellant-defendant and against respondents-plaintiffs.

(30) On the other hand, it has been contended by learned counsel for the respondents-plaintiffs that no ground for condonation of delay in filing the appeal was made out by appellant-defendant and, hence, learned first appellate Court has rightly dismissed the application for condonation of delay and rightly dismissed the appeal as has not been filed within prescribed period of limitation.

(31) Law on the point of condonation of delay in filing the appeal has been settled by Hon'ble Apex Court in a recent judgment rendered in **Oriental Aroma Chemical Industries Limited** *versus* **Gujarat Industrial Development Corporation and another (15),** wherein after placing upon all the previous judgments rendered by Hon'ble Apex Court, it was observed that no hard and fast rule can be laid down in dealing with the applications

(15) 2010 (2) R.C.R. (Civil) 284 = 2010 (2) RAJ 205 = J.T. 2010 (2) S.C. 389 = (2010) 5 S.C.C. 459 = 2010 (88) A.I.C. 220

for condonation of delay and that a liberal approach in condoning the delay of short duration and stricter approach, where the delay is inordinate, should be adopted. It was further observed that though for condonation of delay, same yardstick should be applied for deciding the application for condonation of delay filed by private individuals and the state and, however, certain amount of latitude is not impermissible in the later case because the State represents the collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay, Relevant paragraph of the same reads as under :—

> "8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate— **Collector, Land Acquisition, Anantnag** *versus* **Mst. Katiji** (1987) 2 SCC 107, **N. Balakrishnan** *versus* **M. Krishnamurthy,** 1992 (2) RCR (Civil) 578 : (1998) 7 SCC 123 and **Vedabai** *versus* **Shantaram Baburao Patil,** 2001 (3) RCR (Civil) 831 : (2001) 9 SCC 106. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while

emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay—**G. Ramegowda** *versus* **Spl. Land Acquisition Officer,** 1988 (1) RRR 555 : (1988) 2 SCC 142, **State of Haryana** *versus* **Chandra Mani,** 1996(2) RRR 82 : (1996) 3 SCC 132, **State of U.P.** *versus* **Harish Chandra,** 1996(2) SCT 712 : (1996) 9 SCC 309, **State of Bihar** *versus* **Ratan Lal Sahu,** (1996) 10 SCC 635, **State of Nagaland** *versus* **Lipok Ao,** 2005(2) RCR (Crl.) 414 : 2005 (2) RCR (Civil) 375 : 2005(2) Apex Criminal 75 : (2005) 3 SCC 752, and **State (NCT of Delhi)** *versus* **Ahmed Jaan** 2008(4) RCR (Criminal) 119 : 2008(4) RCR (Civil) 126 : 2008 (4) SCT 25 : 2008(2) RCR (Rent) 234 : 2008(5) RAJ 214 : (2008) 14 SCC 582."

(32) Hence, in view of this legal proposition this Court is to see as to whether learned first appellate Court has committed illegality in declining the request of appellant-defendant for condonation of delay of 67 days in filing the appeal.

(33) A careful perusal of the application and the affidavit filed on the point on behalf of appellant-defendant before learned first appellate Court shows that the following grounds were taken for condonation of delay :—

"(i) the decision of the learned lower court was referred to the legal advisor (defence) which was received back on 19th June, 1980 in the office of the Director General, Defence Lands and Cantonments, Ministry of defence, New Delhi. It was again referred to Ministry of Defence on 21st June, 1980 for apprising them of the position. The case was examined by them and they felt that the judgment of the learned lower court will have far reaching impact because fundamental issues have been raised in the judgment.

(ii) the case was received back in the Directorate General, DL&C New Delhi on 22nd July, 1980 for re-examining on certain issues.

(iii) the case was again submitted to the Ministry of Defence with complete data on 16th August, 1980. The Ministry of Defence felt that the judgment in question has raised fundamental points and on both these points the decision of the Court will have wide repercussions on a large number of cases and larger public interest will be very adversely and materially effected if an appeal is not filed against the judgment of the Sub Judge 1st Class, Ambala.

(iv) In view of above case was once again referred to the Legal Advisor (Defence) on 18th August, 1980. The Legal Advisor (Defence) then advised to file an appeal alongwith the application for condonation of delay.

(v) The decision of the Legal Advisor (Defence) was conveyed to me by the Director General, Defence Lands & Cantonments, Ministry of Defence, New Delhi on 21st August, 1980. The period from 22nd August, 1980 to 29th August, 1980 has been taken in consultation with the District Attorney, Ambala and preparing the appeal."

(34) Evidence was also adduced on the point by appellant-defendant, which remained unrebutted. Hence, in my view the delay in filing the appeal has been satisfactorily explained by appellant-defendant, as the file was dealt at various levels in various offices under the Ministry of Defence, New Delhi, and it was only after obtaining opinion of Legal Advisor (Defence), decision was conveyed to Military Estates Officer, Ambala Circle, Ambala Cantt., to file appeal by Director General, Defence Lands & Cantonments, Ministry of Defence, New Delhi, on 21st August, 1980 and only few days were taken in preparing the appeal, which was filed on 30th August, 1980. Hence, learned first appellant Court has committed illegality in dismissing the application filed by appellant-defendant for condonation of delay in filing the appeal.

(35) The said order is set aside. Application filed under Section 5 of the Limitation Act by appellant-defendant is allowed and the delay in filing the appeal is hereby condoned and hence, substantial question of law No. 4 as aforementioned, is decided in favour of appellant-defendant and against respondents-plaintiffs.

(36) However, it has been contended by learned counsel for the appellant-defendant that the present Regular Second Appeal is lying admitted since the year 1983 and hence, she does not press for remanding this case to learned first appellate Court for decision afresh on merits on the points involved in this case. Rather, it has been contended that appellant-defendants does not press for reversing the finding of facts recorded by learned trial Court and, however, it is argued that the present appeal be decided only on the substantial questions of law, as framed above, as learned trial Court has committed illegality in decreeing the suit of respondents-plaintiffs, after holding that respondents-plaintiffs are in possession of the property in dispute as "OLD GRANT" terms, and after holding that they are bound by terms and conditions of G.G.O. No. 179.

(37) Hence, in view of submission made by learned counsel for the appellant-defendant, I have also heard learned counsel for the parties on the substantial questions of law Nos. 1 to 3, stated to be arising in this appeal, and have gone through the whole record carefully.

(38) It may be mentioned here that after hearing of this appeal on merit on the substantial questions of law, as framed above, and after the same was reserved for order by this Court and however before the order could be pronounced, an application under Order 41 Rule 27 read with Section 151 of the Code for permission to lead additional evidence on behalf of the respondents-plaintiffs was filed. It has been averred that while all the issues were decided in favour of respondents-plaintiffs by learned trial Court and their suit was also decreed and, however, while deciding issue No. 3, it was observed that respondents-plaintiffs have stepped into the shoes of their predecessor-in-interest and are bound by the same terms and conditions under which property was held by their predecessor-in-interest and, hence, respondents-plaintiffs intend to challenge the said finding of learned trial Court on issue No. 3.

(39) The application has been opposed by filing reply by appellant-defendant.

(40) I have also heard learned counsel for the parties on the said application as well.

(41) It has been contended by learned counsel for the respondents-plaintiffs that respondents-plaintiffs could have challenged the finding recorded by learned trial Court under Issue No. 3 by filing cross-appeal/ objections and yet under Order 41 Rule 22 of the Code, respondents-plaintiffs can assail finding of the Courts below at the time of hearing of the appeal filed by the other party. It has been contended that in order to prove the fact that neither the appellant-defendant were owners of the land underneath Bungalow no. 102, the Mall Road, Ambala Cantt. measuring 1.82 acres in dispute, nor it was recorded in the record maintained by appellant-defendant that the land under Bungalow in dispute vests in them, the respondents-plaintiffs seek to lead additional evidence. It has been contended that proposed additional evidence is very necessary for the just decision of the case and it has been held in number of cases, where additional evidence helps the Court to pronounce the judgment more effectively and judicially, the said proposed additional evidence can be allowed. On the point, reliance has been placed upon a number of judgments reported as **S. Nazeer Ahmed** *versus* **State Bank of Mysore and others, (16) Gurdial Singh and others** *versus* **Mam Chand and others, (17) Chandgi** *versus* **Mehar Chand and others, (18) Mehar Chand** *versus* **Lachhmi, (19) A.P. State Wakf Board, Hyderabad** *versus* **All India Shia conference (Branch A.P.) and others, (20) Ravinder Singh** *versus* **Parkash Singh and others, (21) M/s. Amba Maa Mills** *versus* **Haryana State Indl. Dev. Corp. and another (22) Gurdial Singh** *versus* **Rashpal Kaur, (23) Dilbagh Singh** *versus* **Amar Singh (24) V.K. Chhabra** *versus* **Samir Bhatia and others, (25)**

(16) 2007 (1) R.C.R. (Civil) 705
(17) 2011 (1) R.C.R. (Civil) 690
(18) AIR 1998 Pb. & Hr. 197
(19) 1994 (3) RRR 210
(20) 2000 (2) Apex Court Judgments 293
(21) 2009 (5) RCR (Civil) 249
(22) 2007 (3) RCR (Civil) 637
(23) 2003 (4) RCR (Civil) 248
(24) 2000 (1) PLR 339
(25) 1999 (2) PLJ 424

Basakha Singh *versus* **Jit Singh, (26) Pargat Singh** *versus* **Jit Singh, (27) North Eastern Railway Administration, Gorkhpur** *versus* **Bhagwan Das, (D) By LRs. (28) Punjab Wakf Board** *versus* **Shri Neeko, (29) Gurdial Singh** *versus* **Gulshan Kumar, (30) Shyam Gopal Bindal and others** *versus* **Land Acquisition Officer and another, (31) Jaipur Development Authority** *versus* **Smt. Kailshwati Devi, (32) Billa Jagan Mohan Reddy and another** *versus* **Billa Sanjeeva Reddy and others (33), Gurnek Singh** *versus* **Gurbachan Singh (34), Durga Bhagwati Industries, Hathras and others** *versus* **Om Parkash Lohia and others (35), M/s Ganpati Udyog, Village and P.O. Kulana and another** *versus* **Punjab National Bank and others (36), M/s Bawa Cotton Ginning Ice and Oil Industries** *versus* **State Bank of Patiala (37), Gurmek Singh** *versus* **Gurbachann Singh (38) and Ashwani Kumar** *versus* **Gopal Krishan (39).**

(42) On the other hand, it has been contended by learned counsel for the appellant-defendant that the present appeal is being decided on substantial questions of law, as it is a Regular Second Appeal, and not on facts. It is further contended that no cross-appeal/cross-objections were filed by respondents-plaintiffs before first appellate Court and rather the appeal of appellant-defendant was contested by respondents-plaintiffs on the ground of limitation and that by accepting the plea of respondents-plaintiffs, learned first appellate Court illegally declined the request of appellant-defendant for condonation of delay and did not hear the appeal on merit. It is further contended that present Regular Second Appeal is lying

(26) 1996 (3) PLR 45
(27) 1995 (2) RRR 602
(28) 2008 (3) Civil Court Cases 226
(29) 2004 (3) Civil Court Cases 52
(30) 1999 (4) RCR (Civil) 127
(31) AIR 2010 S.C. 690
(32) AIR 1997 S.C. 3243
(33) 1994 (2) All India Land Law Reporter 537
(34) 1992 (2) PLR 205
(35) 2006 (2) RCR (Rent) 313
(36) 1996 (2) PLR 437
(37) 1994 ISJ (Banking) 233
(38) 1993 Civil Court Cases 135 (P&H)
(39) 1989 (2) CLJ (Civil, Crl. & Rev.) 406

admitted since the year 1983 and now, when the case was also heard on merit by this Court and reserved for orders, i.e., after about 27 years since the appeal was admitted, present application for adducing additional evidence has been filed without making any ground as to why additional evidence should be allowed, at this stage. She has also contended that the application is only for placing on record additional documents and Annexures and hence, the same is not maintainable. It is further contended that moreover the controversy which is now being raised by learned counsel for the respondents-plaintiffs before this Court and for which the additional documents are sought to be produced has already been settled by Hon'ble Apex Court in **Chitra Kumar (Smt.)** *versus* **Union of India and others (40),** a Division Bench judgment of this Court rendered in **Tek Chand and others** *versus* **Union of India and another (41)** and another case of Hon'ble Apex Court in **Chief Executive Officer** *versus* **Surendra Kumar Vakil and others (42).** It has also been contended that learned trial Court has decided correctly this point after placing reliance upon recital in sale deed, Ex. D1, showing the purchase by present respondents-plaintiffs from original owner on "OLD GRANT" terms.

(43) The additional evidence sought to be produced by respondents-plaintiffs can be summarised as under :—

"(1) copy of the Cantonment Manual, 1909 ;

(2) copy of the notification No. 278, dated 19th December, 1873 of Military Department ;

(3) copy of the notification No. 1488, dated 10th August, 1887 ;

(4) copy of numerical list of houses in Ambala Cantonment with names of owners and registered rents.

(5) copy of site plan of Ambala Cantonment ;

(6) copy of sale deed No. 712, dated 18th December, 1892 ;

(7) copy of extract from general land register, maintained by appellant-defendant containing relevant entries pertaining to property in dispute ;

(40) (2001) 3 S.C.C. 208
(41) AIR 1980 Pb. & Hy. 339
(42) (1999) 3 S.C.C. 555

(8) copy of sale deed, dated 28th January, 1938 ;

(9) copy of petition deed, dated 30th March, 1944 ;

(10) copy of letter of Defence Estates Office, Ambala Circle, Ambala Cantt., dated 3rd November, 2008 ;

(11) copy of letter of Defence Estates Office, Ambala Circle, Ambala Cantt., dated 28th November, 2008 ;

(12) copy of letter of Military Estates Office, Ambala Circle, Ambala Cantonment, dated 6th October, 1941 ;

(13) copy of extract of Cantonment Laws, 2006, containing some instructions regarding resumption of bungalow ;

(14) copy of proceedings of resumption notices in some other cases ;

(15) another extract from Cantonment Laws, 2006, regarding resumption notice ;

(16) copy of notification, dated 5th September, 1971 of Ministry of Home Affairs ;

(17) copy of notification, dated 17th January, 1973 of Ministry of Home Affairs ;

(18) copy of some other notifications ;

(19) another extract from the Cantonment Laws ;

(20) copies of some other resumption notices ;

(21) copy of judgment passed in Civil Suit No. 72 of 1975 by the then Senior Sub Judge, Ambala, in case Wing Commander Nagina Singh and Smt. Swaran Kaur *versus* Union of India ;

(22) copy of judgment passed by then Senior Sub Judge, Ambala, in Civil Suit No. 87 of 1974 in case Vijay Kumar Sharma and others *versus* Union of India, decided on 19th January, 1979 ;

(23) copy of notice issued to Punjab Wakf Board, Ambala Cantt., dated 22nd January, 1971 ;

(24) copy of judgment dated 29th April, 1978, passed by the then Senior Sub Judge, Ambala, in case Punjab Wakf Board *versus* Union of India ;

(25) copy of another judgment passed by this Court in Mahesh Chander and others *versus* the Union of India and another, in C.W.P. No. 871 of 1971, dated 2nd March, 1971 ;

(26) copy of order passed by the then Sub Judge, Ist Class, Ambala in case of Wing Commander Sanwal Shah and another *versus* Union of India, dated 26th August, 1976.

(27) copy of judgment passed by the then Senior Sub Judge, Ambala in Civil Suit No. 87/1974 in case of Vijay Kumar Sharma and others *versus* Union of India, dated 19th January, 1979 ;

(28) copy of notice dated 11th March, 1970, issued to Secretary, Punjab Wakf Board, Ambala Cantt. ;

(29) copy of judgment passed by the then Senior Sub Judge, Ambala, dated 29th April, 1978, in case of Punjab Wakf Board *versus* Union of India ;

(30) copy of another extract of Cantonment Laws regarding Management of Cantonment Board ;

(31) copy of another judgment passed by District Judge Ambala, at Simla, dated 24th July, 1919 ;

(32) Extract from General Land Register-Cantonment 8-A(1), regarding GGO No. 260 of 7th May, 1838 ;

(33) copy of some information received from Lok Sabha Secretariat, containing House Accommodation Bill ;

(34) copy of notification dated 4th November, 1994 of Punjab Government,—vide which Cantonments House Accommodation Act 1902 was enforced ;

(35) copy of list of Cantonments notified under the Cantonments House Accommodation) Act, 1902 and 1923 ;

(36) copy of notification dated 19th April, 1927 regarding enforcement of Cantonments (House Accommodation) Act ;

(37) copy of statement of a witness in case Tejinder Singh versus State of Haryana and others ;

(38) copy of some other notifications ;

(39) copy of Financial Department regarding Building Grants for certain Educational Institutions ;

(40) copy of assessment of income tax reports ;

(41) copy of some other notifications ;

(42) copy of Punjab Gazette, dated 27th January, 1911 ;

(43) copy of British Parliamentary papers ;

(44) copy of Indian Councils Acts, 1861, 1892 and 1909 ;

(45) copy of imperial Gazetteer of India ;

(46) copy of Cantonment House Accommodation Act, 1923 ;

(47) copy of imperial gazette year 1909 ;

(48) copy of military land manual/cantonment land compensation Rules ;

(49) copy of cantonment manual, pages of some book ;

(50) copy of Ambala Gazetteer, pages of some book ;

(51) copy of Ambala bye-laws, pages of some book ;

(52) copy of rights of Ambala Cannt., 1909, pages of some book ;

(53) Cantonment Act, 1864 ;

(44) There is no dispute regarding the legal proposition that under Order 41 Rule 27 and Section 107 of the Code, additional evidence can be permitted by appellate Court for coming to just conclusion and for any other substantial cause even if the documents were within the knowledge of the appellant and that the documentary evidence, which cannot be created or manufactured for the first time after decision of the suit, i.e., any official document, whose authenticity is not in dispute and is capable of arriving the Court to take final decision in respect of dispute between the parties, such evidence can be allowed to be taken on the record.

(45) Hence, so far as legal proposition on the point, as held in the aforementioned authorities, on which reliance has been placed on behalf of the respondents-plaintiffs is concerned, there is no dispute. However, the present Regular Second Appeal is being decided by this Court on substantial questions of law. No cross-appeal/cross objections were filed by respondents-plaintiffs before learned first appellate Court. Rather the appeal filed by present appellant-defendant was contested by respondents-plaintiffs on the ground of limitation and the same was dismissed on the ground of limitation only. Most of the documents, which are sought to be produced by way of additional evidence, as detailed above, are copies of some notifications, acts and some judgments regarding some other properties and some notices, issued to some other occupants of cantonment properties. Learned counsel for the respondents-plaintiffs, at the time of arguments, has failed to convince this Court as to how the said documents are necessary for deciding the present appeal and the present controversy in dispute.

(46) On similar facts, in **Chitra Kumari's** case *(supra)* in which case challenge was also to the notice issued by Union of India for resumption of a bungalow situated in Ambala Cantonment on **"OLD GRANT"** terms, many documents were sought to be produced by way of additional evidence at the stage of Regular Second Appeal. However, it was observed by Hon'ble Apex Court as under :–

> "32.....The practice of annexing irrelevant documents and trying to rely on them for the first time in the appeal or in the review petitions in the High Court should be deprecated."

It was further observed by Hon'ble Apex Court as under :—

> "34. That appellants never went in appeal against the judgment of the trial Court. Even before the first appellate Court it has not been stated that their submissions were not dealt with and/or that the portion of the judgment permitting resumption, after due process of law, could not have been granted. On the contrary the first appellate Court is also clarifying that the Government can resume after following due process of law. This shows that even before the first appellate Court it was an admitted position that the Government was the owner of the land and that the land was on old-grant terms."

(47) In the present case as well observations, while deciding Issue No. 3, have been given by learned trial Court on the basis of recital made in the sale-deed, on the basis of which respondents-plaintiffs are claiming right in the property in dispute, as will be discussed in the later part of the judgment and hence, in my view, none of the aforementioned documents, which are sought to be produced by way of additional evidence is essential for the decision of present controversy between the parties. Hence, the present application filed by respondents-plaintiffs for adducing additional evidence under Order 41 Rule 27 read with Section 151 of the Code is, hereby, dismissed being devoid of merit.

(48) It has been vehemently contended by learned counsel for the appellant-defendant that though learned trial Court has held while deciding Issue No. 3 that respondents-plaintiffs are in possession of property in dispute as an **"OLD GRANT"** terms under the Government and, however, the notice has been held illegal merely on the ground that no opportunity of being heard was issued to respondents-plaintiffs before issuing the said notice and that no opportunity of hearing was also given to respondents-plaintiffs before deciding the claim of compensation and hence, the same is against the rule of natural justice. However, it is contended that the said point has already been decided in **Tek Chand's** case by a Division Bench of this Court, and in the cases of **Surendra Kumar Vakil and others** *(supra)* and **Chitra Kumari** *(supra)* by Hon'ble Apex Court.

(49) It has also been contended that respondents-plaintiffs have not come to the Court with clean hands. They have not disclosed as to how they came in possession of the property in dispute. It is further contended that however, sale deed,—*vide* which respondents-plaintiffs became owner of the super structure standing on the land belonging to Union of India has been placed on record by appellant-defendant as Ex. D1 and as per recital of the said deed, it has been admitted by both the parties, i.e., vendor and vendee, i.e., present respondents-plaintiffs, that the land on which building was standing was owned by Union of India and hence, it is contended that only building was transferred in favour of respondents-plaintiffs by previous owner and hence, it is contended that respondents-plaintiffs now cannot take the plea that Union of India is not owner of the land on which building in dispute is standing. It is further contended that law has also been well

settled that the resumption notice cannot be held illegal merely on the ground that quantum of compensation has not been properly determined after giving notice to the respondents-plaintiffs. Rather, it has been stated that the said fact can be decided later on in separate proceedings. Hence, it is contended that possession of respondents-plaintiffs over the property in dispute has become unauthorised, after expiry of period of one month of the receipt of resumption notice. It is also contended that appellant-defendant is proceeding as per law and that after expiry of period of notice, proceedings have been initiated by appellant-defendant under the 1971 Act for eviction of respondents-plaintiffs before the competent authority.

(50) On the other hand, it has been contended by learned counsel for the respondents-plaintiffs that admission in sale deed, Ex. D1, is not binding upon the respondents-plaintiffs as the same was under duress and coercion being applied by Estate Officer, while granting permission to vendors of respondents-plaintiffs to execute sale deed in their favour. It is further contended that however, it was for appellant-defendant to prove that the land in dispute was on the basis of **"OLD GRANT"** terms under G.G.O. No. 179 and, however, they have failed to prove the said fact. He has also placed reliance upon **Union of India** *versus* **Dewan Chand Pashwaria etc.,** in RSA No. 1350 of 1968, decided on 6th March, 1980 by this Court and the judgment passed by Hon'ble Apex Court dated 11th April, 1996, dismissing appeal against the said judgment. Reliance has also been placed upon **Union of India and another** *versus* **Mrs. Hardarshan Sahi,** a decision rendered by this Court in LPA No. 771 of 1973 and judgment passed by Hon'ble Apex Court in Special Leave Petition (Civil) No. 408 of 1975 dated 22nd July, 1976,—*vide* which the Special Leave Petition was allowed to be withdrawn. He has also placed reliance upon **Bhagwati Devi** *versus* **President of India through the Under Secretary to the Government of India, Ministry of Defence, New Delhi and another, (43)** and a decision of Hon'ble Apex Court in Civil Appeal No. 1944 of 1975 decided on 12th May, 1994 in **Union of India and others** *versus* **Bajrang Prasad Singal (deed) by L.Rs,** dismissing the appeal filed by Union of India. He has also placed reliance upon **State of Haryana and another** *versus* **Tejinder Mohan Singh Liberhan and another,** passed in RSA No. 3824 of 2006 decided on 9th November, 2006.

(43) 1974 A.L.J. 43

(51) He has also laid much stress on the point that the impugned notice issued by appellant-defendant is without affording any opportunity of hearing to respondents-plaintiffs and hence, the same is against principle of natural justice and hence, it is contended that learned trial Court has rightly held that the same cannot be sustained in the eyes of law. On the point he has placed reliance upon **Municipal Committee, Hoshiarpur** *versus* **Punjab State Electricity Board and others, (44) Bhajan Kaur** *versus* **State of Punjab and others, (45) Northern Indian Glass Industries Limited** *versus* **State of Haryana and others, (46) Suresh Chandra Nanhory** *versus* **Rajendra Rajak and others, (47) Charan Dass** *versus* **Municipal Committee, Samana and another, (48)** and **State of Haryana** *versus* **Ram Kishan and others, (49).**

(52) In the present case respondents-plaintiffs have not come to the Court with clean hands to seek decree of declaration for getting the resumption notice issued by Government of India, Ministry of Defence declared illegal and void. A vague plea has been taken that respondent-plaintiffs are owners in possession of the premises in dispute. Even in their replication to the written statement filed by respondent-plaintiffs, same vague plea has been taken that they are owners in possession without specifying as to how they became owners of the property in dispute. There is no dispute that they have been continuing in possession. However, in order to prove that appellant-defendant is owner of the land, upon which structure owned by respondent-plaintiffs is standing, appellant-defendant has placed on record copy of sale deed, Ex. D1, which was admittedly executed in favour of respondent-plaintiffs by previous owners. The said deed is signed by both the parties, including the present respondent-plaintiffs. *Vide* Ex. D1, the property in dispute as well as some other property situated at Dehradun was sold by previous owners, namely, Brij Bhushan Lal and Gopi Nath alias Gopal Krishan to the present respondent-plaintiffs. In the sale deed, property

(44) 2010 (4) R.C.R. (Civil) 859
(45) 2010 (3) R.C.R. (Civil) 750
(46) 2008 (2) P.L.R. 459 (Pb. & Hy.)
(47) 2007 (1) P.L.R. 11 (S.C.)
(48) 1989 P.L.J. 160 (P&H)
(49) 1988 P.L.J. 353

in dispute has been described as Bungalow No. 102, the Mall, Ambala Cantt., giving boundaries of the same. On the first page of sale deed Ex. D1, it has been mentioned as under :—

> " ....The land pertaining to the said bungalow No. 102 alongwith Trees, standing thereon is the property of the Union of India (Ministry of Defence) and is held by the said owners as **"OLD GRANT".**

In later part of the sale deed it has again been written as under :—

> "....The vendees have satisfied themselves that the land underneath the Bungalow No. 102 at Ambala Cantt. is an **'OLD GRANT'** and there is no impediments in the transfer thereof to the vendees. The vendors have applied for the sanction of transfer in favour of the said vendees and copy of draft sale deed has been submitted to the competent authority for sanction of the transfer of the said Bungalow No. 102 at Ambala Cantt. and sanction for transfer has been obtained from the Military Estate Officer's Office,—*vide* Memo No. BC.9/218/A/11, dated 24th April, 1962. The vendors have also assured the vendees and the later had agreed that the land underneath the Bungalow No. 102 at Ambala Cantt. bounded as herein before mentioned is the property of the Union of India, Ministry of Defence, alongwith trees standing therein."

(53) Hence, in view of the aforementioned admission made in Ex. D1, which is best evidence on the point, it does lie in the mouth of respondent-plaintiffs now to say that the Union of India is having no concern with the property in dispute and that the same is not in their possession as **'OLD GRANT"** terms and that the same is not governed by terms and conditions of G.O.G. No. 179, dated 12th September, 1836.

(54) Under Section 21 of the Indian Evidence Act, 1872, admissions are held as relevant piece of evidence. It was for respondent-plaintiffs to explain the said admission. However, they have not taken any plea in their suit regarding the said admission. Rather, as already discussed above, they had not even mentioned about the said sale deed in the plaint, as well as in the replication. On the similar facts, Hon'ble Apex Court in **Chitra Kumari's** case *(supra)* observed as under :—

> "31. He submits that these cases are fully covered by the authority of this Court in **Surendra Kumar Vakil's case** *(Supra)*. He further submits that an admission is a strong piece of evidence

and is relevant and admissible by virtue of Section 21 of the Indian Evidence Act. He submits that such an admission would be binding unless he is able to explain away such admission. He submits that neither of the Appellants have given any explanation or even stated that the admission was given under force or compulsion. He submits that counsel cannot for the first time, in arguments during SLP, supply explanation on behalf of their clients. He submits that the Appellants have no case at all and the Appeals must be dismissed.

32. We have considered the rival submission. In our view Mr. Rohtagi is quite right. It is now too late in the day for Mr. Andhyarujina's clients to take a contrary stand. Mr. Yogeshwar Prasad's clients have on facts lost in all Courts below. Notice to produce documents, given belatedly in some other case, is of no relevance so far as these Appeals are concerned. The practice of annexing irrelevant documents and trying to rely on them for the first time in the Appeal or in the Review Petitions in the High Court should be deprecated."

(55) Hence, learned trial Court has rightly held that in view of aforementioned admission on the part of respondents-plaintiffs in sale deed Ex. D1, on the basis which they came in possession of the property in standing is not owned by Government of India or that possession in not on **"OLD GRANT"** terms, as per general order by G.G.O. No. 179, dated 12th September, 1836.

(56) Respondents-plaintiffs have stepped into the shoes of their vendors. Vendors had made it clear that land underneath the building in dispute belongs to Union of India and they were in possession of the same on **"OLD GRANT"** terms. Vendors of respondents-plaintiffs could transfer only those rights which they were having in the property in dispute. They made it clear that they were having rights in the super structure only and that the land belongs to Government of India. Hence,—*vide* sale deed, Ex.D1, only ownership of the building has been transferred in favour of respondents-plaintiffs and not the land, as they were not owners of the land as the owner of the land is Union of India.

(57) In **Surendra Kumar Vakil's case** *(supra)*, similar point came up for consideration before Hon'ble Apex Court. That case was regarding Bungalow situated in Sagar Cantonment area. The said Bungalow was purchased by one M and his wife from D in 1927. Terms of the sale deed did not disclose the nature of the rights possessed by D over the said property. M, who was the occupancy-holder as recorded in the General Land Register died in the year 1972 and thereafter his heirs, whose names were not mutated, sold the entire property consisting of the Bungalow in favour of respondents by four registered sale deeds. One S obtained power of attorney from both the vendors as well as the vendees and taking all the proceedings in connection with it, and requested the Military Estate Officer that the Bungalow may be transferred in the names of purchasers. The Military Estate Officer issued the notice to the vendors as well as the vendees stating therein that the said area was held on **"OLD GRANT"** terms in the name of M and that the vendors divided the entire land into four portions, without obtaining the prior sanction of the competent authority in contravention of the terms of the grant on which the site was held and that the sale in favour of purchasers was also without obtaining the prior sanction of the competent authority and in contravention of the terms of the grant, which would attract action for the resumption of the site. It was held by Hon'ble Apex Court that the such tenures were given in accordance with the terms of Order No. 179 issued by Governor General-in-Council in the year 1836, and that the regulations contained in G.G.O. No. 179 of 1836 regarding the grant of lands situated in cantonment areas are self contained procedure prescribing the manner of grant and resumption of land in cantonment areas, which provides that ownership of land shall remain with the Government and that the land cannot be sold by the grantee and that the only house or property thereon may be transferred and even such transfers would be required consent of the officer commanding the station when the transfer is to a person not belonging to the Army and hence, it was held that in respect of **"OLD GRANT"** tenure the Government retains the right of resumption of the land. It was also held that the terms of grant are statutorily regulated under Order No. 179 of the Governor General-in-Council of 1836 and that the administration of lands in cantonment areas is further regulated by the Cantonments Act, 1924 and the Cantonment Land Administration Rules of 1925. It is also observed that 1836 Regulations expressly provide that the title to the land in cantonment areas cannot be

transferred but only occupancy rights can by given in respect of the land which remains capable of being resumed by the Government in the manner set out therein and, hence, it was held that land in cantonment area was held by M only as an occupant/licensee whose licence under the grant and under the law was revocable at the pleasure of the licensor. In that case as well contention was raised that since actual old grant was not produced in evidence by the appellants, i.e., Union of India, it cannot be held that the old Grant was not governed by Order No. 179 of 1836 of the Governor General-in-Council and however, the said plea was not accepted. The earlier decision of Hon'ble Apex Court in **Union of India** *versus* **Purushotam Das Tandon (50)** was also distinguished. Relevant paragraphs of the judgment *read* as under :—

> "13. In the case of **Shri Raj Singh** *versus* **The Union of India and Ors.,** 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** *versus* **Tek Chand,** 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

(50) 1986 Suppl. S.C.C. 720

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."

(58) In later decision of Hon'ble Apex Court in **Chitra Kumari's case** *(supra)*, which was regarding a bungalow situated in Ambala Cantonment, Hon'ble Apex Court placed reliance upon **Surendra Kumar Vakil's case** *(supra)*. In that case it was also observed that once it is admitted that the land was on **"OLD GRANT"** terms, it is irrelevant to argue that it is not shown that the Ambala was under Bengal Army and that the same would be the decision when on evidence, the Court has held that the land is on **"OLD GRANT"** terms.

(59) So far as **Dewan Chand Pashwaria etc.'s case** *(supra)* is concerned, the same is not applicable to the facts of present case. However, in that case as well, it was held that appellant admitted that the Government has right to resume the land granted under the said order and, however, it was observed that there in no provision in the said order which authorised it to take possession by executive action in case grantee fails to surrender possession, after the resumption order.

(60) However, in the present case, appellant-defendant is proceeding as per law. After respondents-plaintiffs failed to deliver possession, after expiry of period of notice of resumption, proceedings have been initiated for ejectment of respondents-plaintiffs before the Military Estate Officer, under the 1971 Act. Hence, the said judgment is of no help to the respondents-plaintiffs.

(61) In **Tejinder Mohan Singh Liberhan's case** *(supra)*, there was concurrent findings of both the Courts below that plaintiffs were able to prove that they were owners in possession of the property in dispute and it cannot be proved that the property was owned by previous owners as an **"OLD GRANT"** term, whereas, in the present case, it has been proved as a fact in view of recital in sale deed Ex.D1 that the property was held as an **"OLD GRANT"** term by previous owners and hence, the said judgment is also of no help to respondents-plaintiffs.

(62) So far as the main point, on which the present regular second appeal has been filed as to whether learned trial Court was right in decreeing the suit of respondents-plaintiffs even by holding that they are in possession of the property in dispute on **"OLD GRANT"** terms and that the resumption notice is illegal and void as the same has been issued without giving opportunity of hearing to respondents-plaintiffs, is concerned, the said point has been settled by a Division Bench of this Court in **Tek Chand's case** *(supra)*. That was also a case pertaining to Bungalow situated in Ambala Cantonment and the notice issued under Regulation 6 of G.G.O. No. 179, dated 12th September, 1836 was challenged on the ground that no opportunity of hearing was given before issuing notice and that even compensation for acquisition of super structure has also been determined without affording any opportunity to the plaintiffs and however, the said plea was not accepted by this Court by observing as under :—

> 11. In view of the above, the contention that the Central Government was not within its right to invoke the provisions of regulation 6, cannot be countenanced. The petitioners are to be dealt with strictly in accordance with the conditions of grant that they had agreed to abide by when accepting the grant of the land for the purpose of erecting superstructure thereon which now along with the site stands resumed. No doubt the Government in the past as also in regard to persons mentioned in Para 23 of the petition had invoked the provisions of the Land Acquisition Act for acquiring the superstructures on the grant lands. This at best tantamounts to some concession having been shown to such persons by the Government and such a concession cannot be claimed as a matter of right and if the petitioners were not

given that concession, that action of the Central Government cannot be termed as discriminatory, for when one comes to stake one's claim, then one is restricted to limit one's claim to the one which one is entitled to in law.

12. Now we examine the petitioners contention that before issuing the notice and before determining the quantum of compensation, they should have been afforded an opportunity of hearing. They sought support for this contention from a Division Bench decision of this Court reported as **Union of India** *versus* **Mrs. Har Darshan Sahi** and drew our pointed attention to the following observations thereof :—

> "The argument of Mr. Kuldip Singh to the effect that in the absence of a specific provision in the grant requiring an opportunity of hearing being given to the grantee before any part of her grant is resumed, no question of satisfying principles of natural justice can arise, is wholly without merit. Principles of natural justice will always step in where civil rights of a person are involved or where some quasi-judicial and judicial function has to be exercised unless the application of any of those Principles is expressly excluded by the relevant law or grant. There is no such exclusion of the principles of natural justice in this case. Those principles must, therefore, apply both to the question of resumption of a part of the grant, and also to the question of determination of the quantum of compensation to which the respondent is entitled."

The ratio of Mrs. Hardarshan Sahi's case *(supra)* itself has been pressed before us on behalf on the respondents, also to counter the submission aforesaid. The emphasis on behalf of the respondents is laid on the following observations of Chief Justice Narula who spoke thus for the Bench in the aforesaid case :—

> "I am also in full agreement with the observations of the learned Judge in Chambers that things would have been entirely different if the entire plot formng the subject-matter of the grant was to be resumed. In that event, there would be no

cause to be shown by the grantee against the resumption in view of the absolute right of the grantor to resume the grant. Things are, however substantially different in a case where the Government wants to resume a portion of the land forming the subject-matter of the grant. It does not need any argument to demonstrate that resuming an exactly identical area of land out of a plot on which a bungalow has been built at one place or at any other place may make all the difference for the grantee with whom the remaining land is going to be left though it may not make any difference at all for the Government insofar as its requirement for a particular area of the land abutting on the road or otherwise is concerned. In such an event is manifest that the civil rights of the grantee to hold the remaining land after a part of the grant is resumed or seriously jeopardized by the selection of the area which may in one event practically destory the remaining grant also and in another event may not either affect the same at all or affect it negligibly. In such a situation it appears to me to be axiomatic that principles of natural justice would at once come in and require the Central Government to hear the objections and/or the alternative suggestions of the respondent and then finally decide which portion of the property they would like to take. Of course, the decision of the Government after hearing the respondent is not subject to any argument appeal or scrutiny". The facts in Mrs. Hardarshan Sahi's case (AIR 1975 Punjab and Haryana 228) *(supra)* were that only part of the grant land was sought to be resumed and it was for that reason that this Court held that before issuing the notice of resumption, the grantee ought to have been given an opportunity of hearing. The position in the present case is entirely different in that the whole of the grant is sought to be resumed and, therefore, the question of affording any opportunity as envisaged in Mrs. Hardarshan Sahi's case *(supra)* does not arise.

13. As regards the affording of an opportunity in regard to determination of quantum of compensation, it may be observed that the action of resumption of the grant land and its superstructures thereon is not conditional in the prior payment of the value of the superstructures. That is a liability that follows from the action of resumption. The position of the grantee being that of licence, once the licence is resumed, his position becomes that of a trespasser and he cannot hold on to the resumed property to which he would be so entitled if it is held that payment of the value of the superstructures on the grant land in the event of resumption of the grant, would be condition precedent to the resumption thereof and the determination of the value would be made after affording an opportunity of hearing to the grantee.

14. We are also not prepared to go the whole hog with the counsel for the respondents when he, on the strength of the ratio of a judgment of the Allahabed High Court in **Bhagwati Devi** *versus* **President of India 1972 All LJ 382,** canvassed that if offer of compensation was not acceptable to the grantee, he could remove the material within the period stipulated in the notice and give vacant possession of the site to the respondents.

15. Regulation 6 of the Grants Act imposes two conditions on the Government for resuming the grant, i.e., (1) that it would give one month's notice and (2) that it would pay the value of the permitted building that might have been constructed on the grant land. This regulation has to be interpreted in a manner that it neither thwarts the purpose behind the said provisions of resumption of the grant as and when considered necessary by the grantor nor does it put in jeopardy the grantee's right to receive in accordance with law, full value of the building that he was permitted, to raise on the grant land. When so construed, the extreme contention, in our view of "leave it" or "take it" advanced on behalf of the respondents in regard to the payment of value of the superstructures, cannot pass muster. With great respect, we find ourselves unable to subscribe to the view enunciated in **Bhagwati Devi's case 1972 All LJ 382** *(supra).*

We are of the view, as already observed, that the operation of the order of resumption cannot wait the payment of the value of the building. The order of resumption becomes operative on the date of expiry of period of one month from the date of receipt of the notice. Thereafter, even of the grantee tries to stay in the building, he does so as a trespasser and not as a grantee or a licensee and can be dealt with as such in accordance with law. It would, however, be incumbent upon the respondents to afford an opportunity of hearing to the grantee in regard to the determination of the quantum of value of the resumed building. In the event of the grantee not accepting the quantum of compensation that may be determined after hearing him by the competent authority, it would be open to the grantee to challenge the inadequacy of compensation in an ordinary Civil Court and seek recovery of what he considers to be the just and legal compensation for the resumed building.

In the said case, Hon'ble Division Bench concluded as under :—

"(i) that the resumption of the building and the site underneath became operative on the date of the expiry of one petitioners under regulation 6 in question, as the resumption of the building is not dependent on the prior payment of the value of the building ;

(ii) that it was incumbent upon the respondents to afford an opprotunity of hearing to the petitioners at the time of determining of the quantum of value of the building resumed ; and

(iii) that since the petitioners had not been afforded an opportunity of hearing in regard to the quantum of compensation for the resumed building, we direct the respondents to afford an opportunity of hearing to the petitioners in regard to the assessment of the quantum of compensation for the resumed building and thereafter quantify the compensation for the said building."

(63) Facts of present case are similar to **Tek Chand's case** *(supra)*. Respondents-plaintiffs are to be dealt with strictly and in accordance with the conditions of grant as mentioned in G.G.O. No. 179, dated 12th September, 1836. The present respondent-plaintiffs have stepped into the shoes of their predecessors. As per Regulation 6 of the said order, the Union of India is having right to resume the site without assigning any reason and the only requirement is to give one month notice, which has been given in the present case. In this case even **Hardarshan Sahi's case** *(supra)* on which reliance has been placed upon counsel for the respondent-plaintiffs has also been discussed. So far as the fact that no notice was issued before determining the question of compensation is concerned, it was held that the grantee should have been afftorded an opportunity of hearing and however, it was held that operation of order of resumption cannot wait the payment of value of the building and that order for resumption comes into operation on the date of expiry of period of one month from the date of receipt of notice and it would, however be incumbent upon the Government to afford an opportunity of hearing to the grantee in regard to the determination of quantum of value of resumed building. It was further held that in the event of the grantee not accepting the quantum of compensation, that may be determined, after hearing him by the competent authority and it will be open to the grantee to challenge the inadequacy of compensation in an ordinary Civil Court and seek just and legal compensation for the resumed building.

(64) This point also came up for consideration before Hon'ble Delhi High Court in **Raj Singh** *versus* **The Union of India and others, (51)** and it was observed that quantum of compensation would have to be considered in an independent proceedings between the ex-grantee and the Government.

(65) Hon'ble Apex Court in **Union of India and others** *versus* **Harish Chand Anand, (52),** approved the decision of Hon'ble Delhi High Court in **Raj Singh's case** *(supra)*.

(66) In **Harish Chand Anand's case** *(supra)*, the question before Hon'ble Apex Court was "Whether the only right of the grantee is to claim compensation and whether the Government can take possession at any time

(51) AIR 1973 Delhi 169
(52) 1995 Supp. (4) S.C.C. 113

after expiry of one month in view of Governor General's Order No. 179, dated 12th September, 1836?" and it was observed as under :—

"2. In view of the certificate granted by the High Court under Article 133 (1) of the Constitution, the question arises whether the State is entitled to resume land granted under Section 3 of the Government Grants Act, 1895 without prior determination of the amount for the structure. Though the respondent has been served, he has not appeared, either in person or through counsel. We have taken the assistance of counsel for the appellant and we have perused the judgment of the Delhi High Court reported in **Raj Singh** *versus* **Union of India** and the Division Bench Judgment of the High Court of Allahabed reported in **Bhagwati Devi** *versus* **President of India** which was relied on and followed by the Division Bench in this case to hold that it is a condition precedent that the State should give notice to the respondent, determine the compensation and then resume the property granted to the respondent. The question, therefore, is whether it is a condition precedent for the Government to resume the land only after determination of the compensation and payment thereof or on the issuance of the notice as required under the grant and on expiry thereof. To appreciate the contention, it is necessary to look to the provisions of the grant itself. Under Section 3 of the Act, the governor General-in-Council exercised the power and granted licence to the respondent to erect the structure on the Government land. The conditions of the grant are :

'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 payment of the value of such buildings as may have been authorised to be erected'.

The other clauses are not relevant for the purpose of this case. Hence, they are omitted.

3. In the Order No. 179 of 1836, the Governor General-in-Council had issued the regulation empowering the Governor General to rescind authorised orders in force till then and to substitute for them by regulations. The regulations in Order No. 179 of 1836 are statutory regulations made by the Governor General-in-Council in exercise of his statutory power. The covenants for the grant clearly empower the Government retaining its power of resumption at any time. The conditions precedents are-to issue one month's notice and payment of the value of such building as may have been authorised to be erected.

4. The Division Bench of the Delhi High Court has left open the question of mode of determination of the value of the building to be determined in accordance with the relevant provisions of the law. The Division Bench of the Allahabad High Court in **Bhagwati Devi** case in para 7 had held that though the government is entitled to resume the land, the grantee is entitled to a prior opportunity to represent his case before the competent authority in determination of the value of the building and for payment of the value of such building resumed by the State.

5. It would appear that detailed instructions in that behalf were made in the Standing Order No. 241 which was produced before the Division Bench of the High Court of Allahabad in which the Military Engineer was instructed to evaluate the value of the building which was resumed by the government for payment of the amount to the erstwhile licensee. We are not concerned in this appeal as to the method of valuation. Suffice it to state that the Order No. 241 though does not contemplate issuing of prior notice to erstwhile licensee whose license has been determined under clause I of the grant, before determination of the actual amount, the erstwhile grantee is entitled to a notice, so that the grantee would be at liberty to place before the competent authority all relevant material for determining the value of the building and for payment of the

amount thereof. It is seen that it is not a condition precedent to determine, at the first instance, the compensation after giving an opportunity make payment thereof and then to resume the property. What is a condition precedent is issuance of one month's notice and on expiry thereof the Government is entitled to resume the land. The amount is to be determined as required under the relevant provision after giving opportunity and which could be done thereafter. After all, the property would be resumed for public use and determination of value of the building erected is a ministerial act and payment thereof is the resultant consequence. This process would take some time and if the reasoning of the High Court of Allahabad is given effect to, it would defeat the public pupose. the view of the Delhi High Court is consistent with the scheme and appears to be pragmatic and realistic. The High Court, therefore, was not right in its conclusion that it is a condition precedent to determine the amount of the value of the building in the first instance and payment thereof before resumption of the property."

(67) The point again came up for consideration before Hon'ble Apex Court in **Chitra Kumari's case** *(supra)*, which was also regarding a Bungalow situated in Ambala Cantonment. Learned Apex Court discussed all the previous judgments on the point, i.e. **Union of India** *versus* **Purushotam Das Tandon's case** (supra), **Surendra Kumar Vakil's case** (supra) and **Harish Chand Anand's case** (supra) and observed as under :-

"15 In Civil Appeals arising out of SLP (C) Nos. 22436-22437 of 1997 also the bungalow and land are in Ambala Cantonment. The notice of resumption was given on 30th July, 1971. The Suit was filed in the Court of the Sub-Judge, Ist Class, Ambala. In this Suit it was contended that it was not proved that the land was on old grant terms. It was also urged that the terms of the old grant did not permit resumption of land. However, no evidence was led to prove that plaintiffs were owners. Plaintiff/ Appellant and his witnesses did not depose that land did not belong to the Respondents. The Respondents had brought on record and got exhibited an admission in writing, by the

predecessors of the Appellants, that the land was on old grant terms, the G.G.O. No. 179, dated 12th September, 1836 and the Register of Land Records. In this case on the basis of evidence on record the Trial Court dismissed the Suit."

It was further observed as under :—

"23 Mr. Andhyarujina submitted that earlier the Himachal Pradesh High Court had, in the case of **Durga Das Sud** *versus* **Union of India,** taken the view that principles of natural justice had to be complied with and that no notice of resumption could be given unless and until compensation was first fixed after hearing the concerned parties. He pointed out that the Allahabad High Court had taken the same view in the case of **Mohan Agarwal** *versus* **Union of India.** He submitted that this was the law which prevailed. He submitted that because of this law the trial Court took an easy way out and decided his clients' suit only on the narrow point of principles of natural justice not having been followed. He submitted that it has no where been mentioned that his clients had not pursued or had given up their case that the land was not on old grant terms. He submitted that merely because the Trial Court took an easy way out and did not decide all the points urged by his clients would be no reason for depriving the Appellants of their valuable right. He submitted that as his clients had succeeded in the trial Court they did not need to file an Appeal. He submitted that before the first Appellate Court also his clients succeeded. He submitted that only in 1995, in Harish Chand case, this Court overruled the view taken by Allahabad High Court and the Himachal Pardesh High Court and approved a contrary view taken by the Delhi High Court in Raj Singh case. He submitted that the trial Court and Appellate Court decided in his clients favour only on the basis of the law then existing. He submitted that the Courts chose to decide the case merely on one point, even though his clients had at all stages not given up the case that the land was not on old grant terms. He submitted that his client cannot be made to suffer because the Courts chose not to decide other aspects.

24. Mr. Andhyarujina relied upon Section 110 of the Indian Evidence Act and submitted that whenever a question arises whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. He submits that the Appellants and their predecessors in title have been in possession since at least 1926. He submits that the burden was entirely on the Respondents to show that they were not the owners. He submits that the only way that the burden could have been discharged was to produce the old grant. He submits that merely producing a Register in which it has been mentioned that the property is on old grant terms is not sufficient. He submits that the Register and the copy of G.G.O. No. 179 of 1836 would be secondary evidence. He submitted that such evidence would be barred under the provisions of Section 91 of the Indian Evidence Act unless it was shown that the old grant was not available. He submitted that in this case no evidence had been led to show that the old grant, if there was one, had been lost or misplaced or that it was not available. He submitted that mere production of Register or a cyclostyled copy of the terms of the grant was no evidence at all."

(68) Hence, in view of my above discussion, it is held that learned trial court has committed illegality in declaring the resumption notice as illegal on the ground that no opportunity of hearing was given to respondents-plaintiffs before issuing the said notice and that no opportunity was given to respondent-plaintiffs of being heard to determine the compensation. Learned trial Court after coming to the conclusion that the property was held by respondent-plaintiffs on **"OLD GRANT"** terms has committed illegality in holding that the notice is illegal.

(69) Hence, substantial questions of law Nos. 1 to 3, as framed above, are decided in favour of appellant-defendant and against respondent-plaintiffs.

(70) However, it is admitted fact that no opportunity of hearing was given to respondent-plaintiffs before determining the quantum of

compensation to be paid to them on account of acquisition of the building standing on the land belonging to Union of India as the construction is a permissible one. Hence, respondent-plaintiffs are having right to be heard even if there is no such specific provision in G.G.O. No. 179, as has been held by Division Bench of this court in **Tek Chand's case** (supra).

(71) Hence, impugned notice to the extent it conveys the compensation payable regarding acquisition of building as only Rs. 64,126 can be said to be bad in law. It is incumbent upon the respondent-plaintiffs to afford an opportunity of hearing to the grantee in regard to the determination of quantum of value of the resumed building.

(72) As a sequel to my above discussion, the present regular second appeal is accepted. Impugned judgment and decree passed by learned Courts below are set aside. As a consequence thereof, suit filed by respondent-plaintiffs stands dismissed. It is furtheer held as under :—

(i) That the resumption of building and the site underneath became operative on the date of expiry of one month's notice (from the date of receipt) given to respondent-plaintiffs under regulation 6 in question as the resumption of building is not dependent on the prior payments of the value of the building.

(ii) That it was incumbent upon appellants-defendant to afford an opportunity of hearing to the respondent-plaintiffs at the time of determining of the quantum of building resumed; and

(iii) That since the respondent-plaintiffs had not been afforded an opportunity of hearing in regard to the quantum of compensation for the resumed building, it is directed that respondent-plaintiffs be afforded an opprotunity of hearing by appellant-defendant in regard to the assessment of compensation for the resumed building and thereafter quantify the compensation for the said building.

R.N.R.