IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 15 OF 1987
WITH
SECOND APPEAL NO. 16 OF 1987

1. The Union of India,
   Secretariat New Delhi,
   Summons to be served on the Secretary
   Ministry of Defence, Secretariat South Block
   New Delhi.

2. The Military Estate Officer,
   Pune Circle, Rajendra Singhji
   Road, Pune-1 … Appellants

Vs.

1. T. S. Anklesaria, a Private Trust,
   Having its office at
   No. 19, Right Flank Lines,
   Pune No-40 by its sole Trustee.

2. Shri P. T. Anklesaria, age 58
   years, residing at 19 Right
   Flank Lines, Pune-40 Trustee.
   (since deceased through its
   Legal heirs)

2(a) Mrs. Ashish Dinyar Devitre
   Daughter, No. 2 Prince of
   Wales Road, Pune

2(b) Mrs. Kalomare Phiroze Anklesaria
   (son) address at No. 6, Elliot
   Lines, Pune.

RAJESHWARI RAMESH PILLAI
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2(c) Mr. Mahyar Phiroze Anklesaria
(son) address at No. 17, Right
Flank Lines, Pune.

2(d) Mr. Tehmurasp Phiroze Anklesaria
(son) address at No. 19,
Right Flank Lines, Pune.

2(e) Mr. Tehmuraap Phiroze Anklesaria
(son) – Deleted as per Courts order
Dated 3rd February 2012 passed in
CA/611/09

2(f) Mrs. Nawaz Subhendum Sanyal
(daughter) R/at. Castellino Road
Pune.

2(g) Mrs. Mahyar Phiroze Anklesaria
(son) (No. 2(a), 2(b), 2(c) having address at
Castellino Road, Pune)

3. Mrs. Roshan Phiroze Anklesariya
Age 57, residing at 19, R.P.L.
Pune-50

4. Mrs. Ashish Dinyar Devitre
Age 34 yrs., Occupation : Household
residing at No. 19, R.F.L.
Pune-40 … Respondents

Mr. Atul Damle, Senior Advocate a/w. Mr. Rui Rodrigues, Ms. Payal Vardhan and Mr. Jainendra Sheth for the Appellants.
Mr. R. D. Soni a/w. Mr. Sandeep Parikh, Ms. Dhanashree Gaikaiwari and Mr. Ayaz Bilawala i/b. M/s. Bilawala & Co. for Respondents.

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CORAM: GAURI GODSE, J.
RESERVED ON: 16th JULY 2026
PRONOUNCED ON: 18th NOVEMBER 2026

JUDGMENT :

QUESTIONS OF LAW:

1. The second appeals were admitted on 20th February 1987 by passing the following order :

> *"Admit. Notice on points 3-4-5 framed for determination by the lower appellate court in paragraph no. 6 of its judgment"*

2. The points for determination framed in paragraph 6 of the impugned judgment of the first appellate court read as under :

> *3. Whether the suit should be brought under Bombay Rent Act or under T.P. Act ?*
>
> *4. Whether the Plaintiffs have served valid notice on the defendant ?*
>
> *5. Whether the plaintiffs are entitled to possession?*

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BASIC FACTS:

2. The appellants are the original defendants. Respondent No. 1 is the original Plaintiff No. 1 and is the Trust formed by Plaintiff No. 2. The remaining respondents are heirs and legal representatives of the original Plaintiff No. 2. By the Trial Court's judgment and decree impugned in these second appeals, the plaintiffs' suit is decreed, thereby directing the defendants to hand over vacant and peaceful possession of the suit property, and the defendants are directed to pay Rs.8000/- by way of damages. The Trial Court rejected the prayer for recovery of the arrears of rent. The District Court dismissed the defendants' first appeal.

3. The plaintiffs had also filed a first appeal against the dismissal of their prayer for arrears of rent for the period from 29th December 1972 to 30th November 1980. The plaintiffs' first appeal was partly allowed. The Trial Court's decree, to the extent of dismissal of the plaintiffs' prayer for arrears of rent, was set aside, and the plaintiffs are granted set-off from the amount they have already received under protest pursuant to the order of resumption passed by the defendants. Hence, the original defendants have filed the two separate second appeals.

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SUIT PROPERTY:

4. Land situated at Survey No. 742, admeasuring 0.85 acres, in the Pune Cantonment Area at Pune, together with all construction, including the bungalow.

PLEADINGS IN THE PLAINT:

5. T.S. Anklesaria was the absolute owner of the suit property. The defendants first took the suit property on hire under The Cantonments (House Accommodation) Act, 1923 ("The Cantonments Act"), and thereafter entered into a lease deed from time to time with the original owner. The last such lease was styled as "Repairing Lease" executed on 19th April 1940 for a period of five years commencing from 21st February 1938. The agreed rent was Rs.167.11 per month. The said lease expired on 21st February 1943. After expiry of the said lease, the defendants became monthly tenants under the prevailing law at that time, and monthly tenancy commenced from the 22nd day of each calendar month. Thus, the defendants continued to hold over the suit premises as monthly tenants.

6. While the defendants were holding over the suit

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property as monthly tenants, Defendant No. 1 issued a notice dated 29th January 1972, informing Plaintiff No. 2 that the land admeasuring 0.85 acres was granted to the predecessor in title of Plaintiff No. 2 on old grant terms and was liable to be resumed. The defendants declared the resumption amount for the structure and paid Rs. 29,596/-, which the plaintiffs received under protest. After the resumption order, the defendants stopped paying monthly rent. The plaintiffs had challenged the said resumption notice by filing Special Civil Application No. 1286 of 1972. The Division Bench of this Court decided the said Special Civil Application and held that the defendants could not act on the resumption notice, and thus declared the resumption notice to be without any authority of law. Therefore, the defendants are not owners of the land.

7. The plaintiffs constructed the structure standing on the said land, and the building was let out to the defendants on a repairing lease. Thus, the plaintiffs are absolute owners of the land and the structure standing thereon. By issuing the resumption notice dated 29th January 1972, the defendants renounced their original character as lessees and thus

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sought to claim a superior title. Thus, the defendants' action amounted to a denial of the plaintiffs' title. The plaintiffs therefore were entitled to forfeit the amount issued under the resumption notice and were thus entitled to recover possession of the suit property. The plaintiffs issued a notice dated 5th June 1980 forfeiting the defendants' tenancy, calling upon them to hand over possession of the suit property.

8. The suit structure was not maintained in accordance with the terms and conditions of the Repairing Lease, and the defendants' negligence and willful default caused part of the property to collapse and be substantially damaged. The plaintiffs therefore estimated the loss and damage caused by the defendants' negligence. The defendants were in arrears of rent of Rs. 18,536/- up to 21st August 1980, and the plaintiffs initiated proceedings to recover possession of the suit property, arrears of rent, and damages quantified at Rs. 12000/-. The defendants entered the property under the Cantonments Act, and thus the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Rent Act") did not apply to the defendants' tenancy. Hence, the plaintiffs filed a suit for possession and recovery of

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arrears of rent and compensation before the civil court.

PLEADINGS IN THE WRITTEN STATEMENT:

9. The defendants filed the written statement and denied the suit claim. They contended that, as per the General Land Register (GLR) maintained by the defendants, the land in question belonged to the Government (i.e., the Union of India), and the plaintiffs were the occupancy holders of the land. The suit property was resumed under the old grant terms vide Government of India Ministry of Defence letter dated 29th January 1972 on payment of compensation for the structure. Further, the defendants contended that, following the Division Bench's decision in the Special Civil Application filed to challenge the resumption notice, they were restrained from resuming the property; however, no decision was taken on ownership of the land or restoration of possession. They filed an appeal before the Apex Court, which was pending.

10. The compensation paid by the defendants was much higher than the rent amount. The defendants were monthly tenants of the structure, and the plaintiffs were required to maintain the property. The defendants denied the allegation of causing any damage and denied the claim for damages.

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The defendants contended that they owned the land and, given the monthly tenancy of the structure, the civil court had no jurisdiction to try and entertain the suit.

FINDINGS BY BOTH COURTS:

11. The trial court held that the civil court had jurisdiction to try and entertain the suit and that the suit was maintainable. The trial court further held that the defendants could not prove that the suit land was held by the plaintiffs under the old grant. It was held that T.S. Anklesaria was the absolute owner of the suit property and the plaintiffs were entitled to recover the rent. The trial court held that the defendants were not entitled to resume the suit land on the ground that it was situated in the cantonment area. Since the defendants denied title and had set up a superior title, the plaintiffs were entitled to recover possession. It held that the defendants were to maintain the suit property under the terms and conditions of the lease, and the plaintiffs were entitled to recover damages. The Trial Court held that the plaintiffs proved that the defendants first hired the suit property under the Cantonment Act and that the Rent Act was not applicable. The trial court held that the plaintiffs were entitled

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to recover rent, damages and possession.

12. Both parties filed separate civil appeals, which the District Court decided by a common judgment. The learned District Judge partly allowed the plaintiffs' appeal, holding that they were also entitled to arrears of rent for the period refused by the trial court; however, it held that the amount would stand adjusted by the compensation paid by the defendants under the resumption notice. The First Appellate Court held that the suit was maintainable under the Transfer of Property Act, 1882 ("TP Act"), and that, in view of the notice issued by the plaintiffs, the tenancy rights/leasehold rights in favour of the defendants were terminated. The First Appellate Court rejected the defendants' contention regarding their rights under the Cantonment Act, and dismissed their appeal, confirming the trial court's decree.

SUBMISSIONS ON BEHALF OF APPELLANTS:

13. Learned senior counsel for the appellants ("defendants") submitted that the suit property is situated in the cantonment area and, under the Government General Order ("GGO") dated 6th January 1827, the land belongs to

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the Government, and the grantee had rights in the superstructure. Thus, the suit property was held by the plaintiffs under the Old Grant. The Grantee, Jiwajee Sooltan Alee, applied on 14th February 1885 for permission to construct an additional room. On 15th August 1918, T. S. Anklesaria applied for permission to purchase the suit bungalow from Abdul Kadar Abdul Taiyab. The plaintiffs have produced the sale deed dated 6th September 1918. The Cantonment Magistrate intimated T. S. Anklesaria that only occupancy rights in the land had been transferred, and that such occupancy rights were subject to the conditions applicable to all lands in the cantonment. Thus, only occupancy rights were transferred to the original grantee through whom T. S. Anklesaria claimed a right in the suit property. The defendants obtained the suit structure under a five-year lease on 19th October 1929 and thereafter on a monthly tenancy commencing on 4th May 1935. The structure was hired under a Repairing Lease on 19th April 1938 on a monthly tenancy commencing from 21st February 1938.

14. Learned senior counsel for the appellants relied upon clause 5 of the Deed of the Repairing Lease dated 19th April

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1940, which provided for handing over possession to the lessee on termination by Resumption Notice. Accordingly, a resumption notice dated 29th January 1972 was issued offering compensation. The plaintiffs had challenged the notice in this High Court. By Order dated 5th February 1979, the Division Bench declared the notice unlawful and held that the appellants could not act on it. However, the Division Bench did not formally quash and set aside the resumption notice. The appellants filed a Special Leave Petition ("SLP"), and the respondents (plaintiffs) also preferred an SLP seeking possession. During the pendency of the appeals before the Apex Court, the Trial Court decreed the suit, relying on the Division Bench's findings and observations. This Court admitted the second appeals, and they were thereafter transferred to the Supreme Court.

15. By Order dated 20th July 1988, the Supreme Court retransferred these second appeals to this Court, directing that they be decided in accordance with the law, uninfluenced by the findings and observations of the Division Bench in the order deciding the challenge to the resumption notice. The Supreme Court also retransferred the connected

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First Appeals arising out of four similarly situated separate suits between the same parties, which had also been transferred to the Apex Court. The Apex Court granted liberty to lead additional evidence. Pursuant to a common order dated 19th April 1991 passed by the Division Bench in the connected First Appeals and these Second Appeals, the appellants were permitted to lead additional evidence, and the proceedings were transferred to the Trial Court for recording evidence. Accordingly, the appellants led separate additional evidence in all the first appeals and these second appeals.

16. The Apex Court, by Order dated 25th March 1992, disposed of all the appeals arising out of the Division Bench's Order as infructuous in view of the Order dated 20th July 1988. The Union of India filed a review petition, which was disposed of on 13th January 1995, confirming the Order dated 25th March 1992 pertaining to the present second appeals; the said order pertaining to the other appeals was recalled, and the appeals were directed to be listed for hearing. Those appeals were disposed of on 4th August 1998 by recording the statement of the learned Solicitor General of

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India on behalf of the Union of India that it would seek dispossession of the occupants in accordance with law. By recording the statement, the Apex Court clarified that if such steps were taken, the Division Bench's observations would not stand in the way of the Union of India. In the connected First Appeals, the plaintiffs (occupants) were in possession of the respective properties; hence, they withdrew the respective suits and the First Appeals were disposed of.

17. According to learned senior counsel for the appellants, in view of the Order dated 20th July 1988 passed by the Apex Court, this Court cannot rely on the Division Bench's decision for considering the issue of title to the land in the present second appeals. The pleadings in the written statement regarding the applicability of the Government Grants Act, 1885, are relevant in deciding the issue of ownership over the land and the plaintiffs' entitlement to seek possession of the land. In view of Sections 2 and 3 of the Government Grants Act, 1885, the suit was not maintainable.

18. Learned senior counsel for the appellants relied upon the Apex Court's decision in ***Union of India and Another vs. Dinshaw Shapoorji Anklesari and Others***[1] ("***Dinshaw***

1 (2014) 14 SCC 204

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Shapoorji Anklesari"), pertaining to a similar bungalow, where the appellants had relied upon a similar entry in the GLR showing that the land was granted under the Old Grant under the GGO dated 6th January 1827. The Apex Court relied on its decision in *Chief Executive Officer vs. Surendra Kumar Vakil and Others*[2] ("*Surendra Kumar Vakil*") and held that the Grants of land situated in the cantonment area were under the Old Grants, which form a self-contained provision prescribing the procedure for the grant and resumption of land; hence, recourse to the Civil Procedure Code or the Specific Relief Act was not applicable. The Apex Court observed that in the Order dated 4th August 1998 (in the appeals before the Apex Court arising out of the connected First Appeals) the Apex Court had clearly indicated that the decision of the Division Bench of this High Court holding that the suit premises did not belong to the Union of India was not acceptable to the Apex Court. It was held that the land belonged to the Union of India and it had the right of resumption.

19. As per the plaintiffs' pleadings, the defendants last held the suit bungalow under the Repairing Lease dated 19th April

2 (1999) 3 SCC 555

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1940 for a period of five years commencing from 21st February 1939. The said lease was not extended further, and according to the plaintiffs, the defendants continued as monthly tenants. The plaintiffs have therefore also prayed for recovery of rent. Learned senior counsel for the appellants submitted that the Rent Act was extended to the Pune cantonment area by notification dated 27th December 1969 under the provisions of The Cantonments (Extension of Rent Control Laws) Act, 1957. Hence, based on the plaintiffs' pleadings, the dispute was between the landlord and the tenants relating to recovery of rent and possession. Hence, the dispute, as pleaded by the plaintiffs, falls within the purview of Section 28 of the Rent Act, which confers exclusive jurisdiction on courts established under the said Act. Accordingly, the civil court's jurisdiction is barred, and the provisions of the TP Act do not apply to the present suit for maintaining the suit in the Civil Court.

20. The Trial Court referred to the letter dated 28th October 1927 to hold that the suit property was first hired under the provisions of the Cantonment Act; however, the letter does not refer to that Act. Plaintiff No. 2, in his cross-examination,

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admitted that the suit was filed based on the Repairing Lease and not a lease under the Cantonment Act. Learned senior counsel for the appellants relied upon the terms and conditions of the Repairing Lease, which does not refer to the Cantonment Act. Hence, he submitted that the trial court's finding that the Rent Act would not apply was erroneous and that, in the absence of any prayer for a declaration of title, the suit simpliciter for possession and arrears of rent was not maintainable.

21. According to the learned senior counsel for the appellants, the first appellate court has wrongly held that there was no dispute that the defendants, under the powers vested under the Cantonment Act, entered into communication with the plaintiffs. However, the plaintiffs failed to prove that the property was taken under the provisions of the Cantonment Act. The plaintiffs have not challenged the appellate court's finding that the TP Act would apply. However, under Section 2 of the Government Grants Act, 1895, the TP Act cannot be applied to the suit property. Hence, in view of these findings, the first question of law must be answered in favour of the appellants, and the suit

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deserves dismissal.

22. On the point of service of valid notice to the defendants, learned senior counsel for the appellants submitted that the plaintiffs relied on the notice dated 5th June 1980 issued under Section 80 of the CPC and Sections 106 and 111 of the TP Act. However, the TP Act would not apply to the suit property in view of the Government Grants Act, 1885. Without prejudice to the appellants' contentions, if the plaintiffs' case is admitted, the subject matter of the suit falls within the scope of the Rent Act. Hence, the notice issued under the provisions of the TP Act cannot be accepted as valid notice for maintaining the suit.

23. The first appellate court erroneously held that the notice was also given under section 111(g) of the TP Act and the Court was concerned with the notice under Section 106 of the TP Act; hence, the defendants' possession was that of a tenant holding over the property. Learned senior counsel for the appellants, however, submitted that, since the initial lease was under the Repairing Lease and not under the Cantonment Act, the provisions of the Rent Act would apply, and the question of seeking possession by relying on the TP

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Act would not arise. Hence, the second question of law must also be answered in favour of the appellants by holding that no valid notice was issued to maintain the suit.

24. As regards the third question of law on the plaintiffs' entitlement to possession of the suit property, learned senior counsel for the appellants submitted that the land belongs to the Central Government and was granted on the Old Grant terms, with occupancy rights granted only to the grantee, i.e., the predecessor-in-title of plaintiff no. 2. To establish the ownership, learned senior counsel for the appellants relied upon the GLR entry stating that the landlord is the Central Government and the property is managed by the Military Estate Officer. The Cantonment Land Administration Rules, 1937 ("Cantonment Rules") provide that the General Land Register is maintained of all the lands in the cantonment. Thus, according to the learned senior counsel for the appellants, the trustees of the T.S. Anklesaria Trust hold only occupancy rights. In view of the nature of the occupancy rights under the old grants, the plaintiffs were not entitled to maintain the suit on the ground of termination of lease.

25. As to the structure, the documents on record establish

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that the plaintiffs constructed it only based on the occupancy rights granted by the Central Government. To support his submissions, learned senior counsel for the appellants relied on the extract of the GLR at Exhibit 55, which records the suit land as ‘Class B-3’ and the plaintiffs’ names as holders of occupancy rights and the nature of holding on Old Grant conditions of GGO dated 6th January 1827 (Exhibit 226). The application dated 14th February 1885 by the original grantee seeking permission to construct an additional room, and the order passed below it at Exhibit-139, also refer only to the occupancy rights in the land and the Government’s right of resumption. Learned senior counsel for the appellants interpreted Exhibit-139 to mean that the Government retained the power of resumption on one month’s notice and on the condition that the structure could not be transferred without the Government's permission. Hence, according to learned senior counsel for the appellants, the original grantee could have sold only the right of occupancy, and the Union of India's ownership rights were not affected, as the occupancy rights were the only rights granted to the original holder.

26. Learned senior counsel for the appellants further relied

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upon four documents produced during the recording of the additional evidence. He submitted that the documents produced while recording additional evidence would support the appellants' contention that the Central Government owns the land. The additional documents are a letter dated 15th August 1918 by T. S. Anklesaria informing the Cantonment Committee of his willingness to purchase the suit bungalow, along with the necessary undertaking, a letter by the Cantonment Magistrate, informing that only an occupancy right in the land has been transferred subject to conditions to all lands in the Cantonment, a release deed between the predecessor-in-title of T. S. Anklesaria and his sister which also stated that only occupancy right in the land has been transferred subject to the conditions applicable to all lands in the Cantonment.

27. Learned senior counsel for the appellants also relied on the cross-examination of plaintiff no. 2, regarding admissions that the notices and letters issued by the defendants do not show that they were issued under the Cantonments Act. According to learned senior counsel for the appellants, the plaintiffs never applied to correct the entries in the GLR. Hence, in view of the entries in the GLR, the other

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documents and the plaintiffs' admission in cross-examination, would squarely show that the land belonged to the Central Government and that the structure was constructed by the original holder, i.e., the plaintiffs' predecessor-in-title, under the occupancy rights granted by the Central Government.

28. In view of the orders passed by the Apex Court, learned senior counsel for the appellants submitted that the findings recorded by both courts on the resumption notice cannot be considered, and this Court needs to examine the evidence and the additional evidence regarding the ownership rights claimed by the appellants. With reference to the challenge to the resumption notice, he relied upon the order passed by the Apex Court on 20th July 1988. By the said order, the Apex Court had transferred back the second appeals with a direction that, while considering the second appeals, the findings recorded by both the courts based on the order passed by the Division Bench shall not be considered, and the appeals are required to be decided uninfluenced by the observations made by the Division Bench. Hence, learned senior counsel for the appellants submitted that, in the present second appeals, the issue of

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ownership needs to be considered independently of the Division Bench's observations relied upon by both courts.

29. As to the land, the defendants have retained ownership rights, and the plaintiffs were not entitled to seek possession of the land. As to the structure, the plaintiffs took no action under the Rent Act; thus, in the civil suit claiming absolute ownership rights in respect of the land and the structure, the plaintiffs would not be entitled to seek possession in the absence of any supporting title documents. Both courts have relied upon the sale dated 6th September 1918 (Exhibit 137) entered into between T. S. Anklesaria and the original grantee. However, the evidence would show that T. S. Anklesaria was informed that only occupancy rights in the land had been transferred. He thus submitted that the said sale deed would not confer any ownership rights in the land on the plaintiffs, as it does not record any source of title of the predecessor-in-title of T. S. Anklesaria. Learned senior counsel for the appellants therefore submitted that the questions of law be answered in favour of the appellants and both the second appeals be allowed by dismissing the respondents' suit.

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SUBMISSIONS ON BEHALF OF RESPONDENTS:

30. Learned counsel for the respondents ("plaintiffs") interpreted the order passed by the Apex Court to mean that the resumption notice stands cancelled in view of the order passed by the Division Bench of this Court and confirmed by the Apex Court. Hence, so far as the issue of ownership of the land is concerned, the appellants are not entitled to reagitate the same. In view of the Apex Court's directions, the present second appeals are to be decided independently of the findings recorded by both courts, which relied on the Division Bench's observations.

31. Learned counsel for the plaintiffs submitted that the suit is filed for eviction under the provisions of the T. P. Act. The plaintiffs pleaded that they own the suit property and acquired their rights by a registered sale deed dated 6th September 1918 from one Abdulkadar Bohri. The sale deed is produced at Exhibit 137, which supports the plaintiffs' case of absolute ownership. The plaintiffs have further pleaded that they leased out the suit property to the defendants under the provisions of the Cantonment Act. Hence, the civil court had jurisdiction to try and entertain the suit. The plaintiffs

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issued the notice of termination dated 5th June 1980 under Section 106 read with Section 111 of the TP Act. Thus, in view of the determination of tenancy under the said notice, the defendants were not entitled to retain possession of the suit property.

32. To support his submissions on the applicability of the Cantonment Act, he relied upon the definition of ("house") and the conditions under which the lease document was executed in respect of the structure. The learned counsel for the plaintiffs relied on the procedure described under Section 7 of the Cantonment Act to support the execution of the lease document under the Cantonment Act. By letter dated 18th July 1929, the Authority, exercising powers under Sections 6 and 7 of the Cantonment Act, called upon the plaintiffs to execute a lease of the suit bungalow for five years. He submitted that a comparison of the contents of the Repairing Lease and the provisions of the Cantonment Act would show that the agreement executed in favour of the defendants falls within the purview of Sections 6 and 7 of the said Act, read with the definition under Section 2.

33. Learned counsel for the plaintiffs further submitted that

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the suit land admittedly is situated within the Cantonment area and comes within the jurisdiction of the Union of India, Ministry of Defence. Hence, the Central Government has exclusive rights to deal with the cantonment areas. Accordingly, by notification dated 27th December 1969, it was notified that the provisions of Section 4(1) of the Cantonment Act stood substituted in respect of the cantonment areas under the control of the Ministry of Defence, Government of India. Hence, the provisions of the Rent Act were not applicable to the suit property.

34. Learned counsel for the plaintiffs further submitted that the defendants never pleaded that the provisions of the Rent Act would apply. However, the defendants pleaded that the suit was not maintainable under the provisions of the TP Act in view of the Repairing Lease executed in favour of the defendants. Thus, even as per the defendants' pleadings, the source of the defendants' possession was the Repairing Lease, which clearly appears to have been executed under the provisions of the Cantonment Act.

35. To support his submissions that the defendants' authority to occupy the suit property was only a Repairing

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Lease, learned counsel for the plaintiffs relied on three lease deeds produced on record. The last and third lease deed dated 19th April 1940 contained the same terms and conditions as the first two deeds, except for the title of the deed as a Repairing Lease. Learned counsel for the plaintiffs therefore submitted that the change in the nomenclature of the title of the document would not change the relationship between the parties as landlord and tenant. All three lease deeds produced on record were in accordance with the procedural terms and conditions prescribed under the said Cantonment Act. Hence, there is no question of applicability of the provisions of the Rent Act. Learned counsel for the plaintiffs submitted that the lease term expired by efflux of time and was not renewed. Hence, the plaintiffs were entitled to seek possession on the ground of termination of the lease in favour of the defendants.

36. Learned counsel for the plaintiffs further submitted that the defendants have relied upon the resumption notice and claimed a superior title to the land. The defendants contended that the land was granted under the old grant to the plaintiffs' predecessor-in-title; however, they have not

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proved this by producing any documentary evidence. The defendants would therefore forfeit their rights under the lease deed in view of Section 111(g)(2) of the TP Act. Learned counsel for the plaintiffs therefore submitted that the GLR relied upon by the defendants would not change the original character of the land which was always owned by the plaintiffs' predecessors in title. In the absence of specific pleadings and supporting evidence, the defendants are not entitled to rely on the documents for the first time in the second appeal to contend that the land belonged to the defendants as absolute owners. He submits that the plaintiffs had purchased the property in 1918 by way of a registered sale deed. The defendants did not produce the entries in the GLR for the period from 1918 to 1932. Learned Counsel for the plaintiffs referred to the cross-examination of the defendants' witness while recording additional evidence. He submitted that the witness admitted that the entries prior to 1932 were not available to support the defendants' title. Thus, the defendants' claim based on the entries in the GLR prior to the title document in favour of the plaintiffs would not be consequential.

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37. Learned counsel for the plaintiffs relied upon Section 18 of the Cantonment Act. According to him, the Government Grants Act, 1885 is repealed, and the savings clause would not help the appellant, as the Union of India has not filed any suit. Learned counsel for the plaintiffs relied on Section 116 of the Evidence Act and submitted that a tenant in possession of the demised premises is estopped from questioning the landlord's title as long as the tenant does not surrender possession of the demised premises. In the present case, the defendants must first surrender possession and then file a suit for declaration of title. To support his submissions, learned counsel for the plaintiffs relied upon the Apex Court's decision in ***State of Andhra Pradesh Vs D. Raghukul Pershad (Dead) by Lrs. And Others***[3] ("***D. Raghukul Pershad***"). The Apex Court held that no relief of declaration of title can be sought in a suit for eviction, and the lessee must first surrender possession and then file a suit for declaration of title.

38. Learned counsel for the plaintiffs therefore submitted that, irrespective of the efforts made pursuant to the resumption notice and assuming, without admitting, that the

3 (2012) 8 SCC 584

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resumption notice subsists as on date, the same would not confer any absolute title on the defendants in the absence of any title document. He therefore submitted that, in the absence of any right, title, or interest pleaded and proved by the defendants in respect of the land and the structure standing thereon, the findings recorded by both courts in favour of the plaintiffs would not warrant any interference in these second appeals.

39. The findings of fact in respect of the plaintiffs' title, recorded concurrently, cannot be reappreciated in the second appeals, except for the additional documents produced on record pursuant to the Apex Court's order. To support his submissions, learned counsel for the plaintiffs relied upon the Apex Court's decision in ***Santosh Hazari vs. Purushottam Tiwari***[4] ("***Santosh Hazari***"). He further submitted that none of the documents produced by way of additional evidence supports the defendants' contention of absolute ownership. Hence, the questions of law framed by this Court regarding the points for determination framed by the first appellate court must be answered in favour of the appellants.

40. The findings recorded by both courts are not based

4 (2001) 3 SCC 179

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solely on the observations of the Division Bench while deciding the challenge to the resumption notice. Hence, irrespective of those findings, the plaintiffs have proved absolute title to the suit property. Once the defendants' rights under the Repairing Lease come to an end by efflux of time and the lease is not renewed, the defendants are not entitled to retain possession of the suit property.

41. Learned Counsel for the plaintiffs submitted that the defendants had challenged the order passed by the Division Bench in the connected first appeals. However, a statement was made on behalf of the defendants and the appeals were disposed of. Thus, the Apex Court recorded no finding on the merits. The connected first appeals and the present second appeals were retransferred to this court for decision on merits without considering the observations of the Division Bench, in the order deciding the challenge to the resumption notice. The final order dated 4th August 1998 passed by the Apex Court in the connected appeals clearly recorded the learned Additional Solicitor General's statement that the Union of India would take possession of the subject premises by initiating appropriate proceedings. However, no

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proceedings have been initiated in respect of the similarly situated premises.

42. The provisions of the Cantonment Land Administration Rules, 1937, and the Military Land Manual would be relevant for adjudication of the issue of title. Section 18 of the Act provides for issuing notice of devolution of interest in a house in a cantonment. From these provisions of the said Act, it is clear that only a notice is required to be given to the Cantonment Authority of any transfer in respect of the property situated in the Cantonment area. The Military Land Manual states that land classified as B3 is not Crown property. Hence, the entries in the GLR do not support the defendants' contention of absolute ownership in the suit land.

43. Learned counsel for the plaintiffs relied upon the Apex Court's decision in ***Kaikhosrou (Chick) Kavasji Framji and Anr. Vs Union of India and Anr.***[5] ("***Kaikhosrou***"). The Apex Court held that the Union of India could not resort to a summary procedure for eviction in view of the statement made by the learned Additional Solicitor General before the Apex Court. The Apex Court also observed that the question of declaration of ownership can be decided by the civil court

5 (2019) 20 SCC 705

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alone and not in summary proceedings. The decision of ***Dinshaw Shapoorji*** relied upon by the learned counsel for the appellants pertains to distinct facts and therefore would not apply to the present case. In that decision, the Apex Court considered the terms of the lease deed and the lessor's admission certificate, and, on the facts, held against the lessor and in favour of the Union of India. Even otherwise, in view of the subsequent decision in ***Kaikhosrou,*** the issue is settled regarding the fact that the Union of India is required to file a suit for declaration of title and the lessor cannot be dispossessed in summary proceedings.

44. Learned counsel for the plaintiffs relied upon the sequence of orders passed by this Court and the Apex Court. He submits that despite the additional evidence produced by the defendants, they cannot prove absolute title over the land and the structure thereon. He therefore submits that the questions of law must be answered in favour of the plaintiffs and the impugned judgments and decrees must be confirmed by dismissing the second appeals.

CONSIDERATION OF SUBMISSIONS:

45. A perusal of the pleadings shows that the suit is filed on

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the ground of absolute ownership of the land and the bungalow constructed thereon. According to the plaintiffs, the defendants occupied the suit property in view of the leasehold rights created under the provisions of the Cantonment Act. Hence, according to the plaintiffs, the Rent Act is not applicable to the defendants' tenancy. Hence, the civil court had the jurisdiction to try and entertain the suit. The plaintiffs pleaded the cause of action, stating that the monthly tenancy was terminated by a statutory notice dated 5th June 1980. Because the defendants failed to comply with the notice, the cause of action arose on 22nd August 1980 for seeking possession, arrears of rent, and damages.

46. The defendants claim absolute ownership of the suit land and contend that only occupancy rights in the suit land were granted on an old grant basis to the predecessor-in-title of the plaintiffs. The plaintiffs' predecessor-in-title constructed the structure, and the defendants were granted possession of the structure on the terms and conditions of the lease agreement. Thus, the defendants claim absolute ownership over the suit land and rights under the lease agreement in the suit bungalow. In view of the payment of compensation of

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Rs. 29,596/- under the resumption notice, the defendants contended that no cause of action arose on the ground of non-payment of the building's monthly rent.

47. The first question of law is "*Whether the suit should be brought under Bombay Rent Act or under T.P. Act ?*". To decide the first question of law, it is necessary to examine the pleadings in the plaint. According to the plaintiffs, the first lease dated 19th October 1929 was executed under the provisions of the Cantonment Act. In paragraph 4 of the plaint, it is pleaded that the last lease document styled as the repairing lease, which commenced on 21st February 1938 for five years, ended on 21st February 1943. It is further pleaded that no fresh lease was entered into, and thereafter the defendants became monthly tenants of the plaintiffs; hence, the defendants continued to hold over the property as monthly tenants. The plaintiffs have described the suit property as the land and the bungalow. The pleadings regarding the lease documents relate to the entire suit property, that is, the land and the bungalow. Hence, on a plain reading of the plaint, the plaintiffs claim a landlord-tenant relationship between the parties. However, the

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plaintiffs claimed that, as the defendants entered into the suit property under the provisions of the Cantonment Act, the Rent Act did not apply and, therefore, the civil court had jurisdiction to try and entertain the suit.

48. Section 3 of the Cantonment Act provides for the Central Government to issue a notification declaring the operation of the said Act in any Cantonment or part of the Cantonment. In the present case, it is undisputed that the Cantonment Act is applicable to the area where the suit property is situated. Chapter III of the Cantonment Act provides for appropriation of houses. Under Section 5, when a military officer cannot secure suitable accommodation in the cantonment on reasonable terms by private agreement, a house situated in a Cantonment shall be liable to appropriation by the Central Government on a lease, in the manner and subject to the conditions provided under the Act. Section 6 sets out the conditions under which houses may be appropriated to enforce the liability under Section 5 and, accordingly, requires notice to be served on the owner of a suitable house for occupation by a military officer or a military mess, as the case may be, within the Cantonment. Section 7

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provides for the procedure for taking the house on lease. The letter dated 18th July 1929, at Exhibit 64, is a notice to the owner calling upon him to execute a five-year lease deed. The lease document dated 19th October 1929 at Exhibit 127 contains the conditions contemplated under Section 7 of the Cantonment Act. Thus, the plaintiffs' submissions that the lease document dated 19th October 1929 at Exhibit 127 between the parties was executed as prescribed under Sections 6 and 7 of the Cantonment Act have substance.

49. However, nothing is on record to show that the subsequent agreements dated 10th August 1935 at Exhibit 130 and the Repairing Lease document dated 19th April 1940 at Exhibit 62 were executed in accordance with the procedure prescribed under Sections 6 and 7 of the Cantonment Act. Therefore, the said subsequent agreements appear to have been privately executed.

50. In exercise of powers conferred by Section 3 of the Cantonments (Extension of Rent Control Laws) Act 1957, the Central Government, by notification dated 27th December 1969, published in the Gazette on 29th December 1969, extended the Rent Act to all the cantonments in the State of

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Maharashtra, except the Cantonments of Aurangabad and Kamptee, with modifications to Sections 2, 3, 4, 5 and 6 of the Rent Act. The exemption provision contained in Section 4(1) of the Rent Act was substituted as under;

"(1) Nothing contained in this Act shall apply to –

(i) any premises within a cantonment belonging to the Government or Cantonment Board;

(ii) any tenancy or other like relationship created by a grant from the Government in respect of premises within the Cantonment, taken on lease or requisitioned by the Government; or

(iii) *any house within a cantonment, which is, or may be, appropriated by the Central Government on lease under the Cantonments (House-Accommodation) Act 1923, (6 of 1923)"*.

51. Thus, in view of the substituted Section 4(1)(ii) of the Rent Act, nothing contained in the Rent Act shall apply to any tenancy or like relationship in respect of premises within the Cantonment taken on lease by the Government. Accordingly, in view of the substituted exemption clause, the Rent Act does not apply to the suit property.

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52. It is necessary to discuss the second part of the first question of law regarding the TP Act, together with the second question of law, that is, "*Whether the Plaintiffs have served valid notice on the defendant?",* and the third question of law, that is, "*Whether the plaintiffs are entitled to possession?".*

53. As far as ownership of the land is concerned, both parties claim absolute ownership. The plaintiffs have filed the suit based on absolute ownership of the land and the suit bungalow. The plaintiffs rely on the sale deed dated 6th September 1918 at Exhibit 137 to claim absolute ownership of the land and the structure. However, the sale deed does not refer to any source of title to the suit land in favour of the plaintiffs' predecessor-in-title. Even if the sale deed records that the vendor is the owner of the suit land and the suit bungalow, the sale deed would transfer only the vendor's valid title and nothing more.

54. The extract of the GLR at Exhibit 55 refers to the suit land as Class B-3 and the names of the plaintiffs are entered as holders of occupancy rights. The holders' rights are described as an old grant under conditions of GGO dated 6th

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January 1827. The GGO dated 6th January 1827 is also produced at Exhibit 226, which provides that any permission to erect a house on the ground within the military Cantonment confers no right of property in the ground allotted for that purpose, and that the property continues to be the property of the State and is resumable at the pleasure of government.

55. The Military Lands Manual defines the Class B lands in Rule 8. The Class B-3 is defined as under:

"Class "B" (3) land .- Land, hereinafter called Class "B" (3) land, which is granted to any private person under the provisions of these rules, or which has been granted in the past to any private person, or may be presumed to have been so granted, under the provisions of the Cantonment Code of 1899 or 1912 or under any executive orders, previously in force, subject to conditions under which the Government of India reserve, or have reserved to themselves the proprietary rights in the soil"

56. Rule 8 (ii) of the Manual further explains the reason for the classification as under:

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"(ii) It must be clearly understood that the mere classification of land in Class 'B' (3) does not prove that the land is the property of the Crown. The definition of Class 'B' (3) land has been so drafted as to enable the Military Estate Officer, in conformity with the legal presumption quoted in the introduction to the commentary, to place provisionally in that Class all land the title to which is disputed by private parties, provided that there are any grounds for presuming that it originally formed the subject of a Government grant under the terms of which the Government retained proprietary rights in the soil. In certain cantonments there are areas of admittedly private land. In such circumstances, and in the exceptional cases where it is definitely known that the Government of India can claim no proprietary rights, the land must be classed as 'private'; but Military Estate Officers will naturally be careful not to class land as private, except upon the fullest and most careful consideration of all the facts of the case."

57. In the present case, the plaintiffs never challenged the entry in the GLR classifying the land as Class B(3). Rule 8(ii), as reproduced in the above paragraph, clearly explains that

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where it is definitely known that the Government of India can claim no proprietary rights, the land must be classed as 'private'. In the present case, the land is not seen classified as private, and the GLR entry classifies the land as Class B(3). Learned counsel for the plaintiffs contended that since the GLR extract prior to the date of the plaintiffs' sale deed is not on record, the subsequent extract would not prove that the land was not owned by the plaintiffs' predecessor-in-title. There is no substance in such argument, inasmuch as the sale deed relied upon by the plaintiffs does not refer to a source of valid title to the land that confers absolute ownership on the plaintiffs' predecessor-in-title. Hence, a mere reference in the sale deed that the vendor, that is, the plaintiffs' predecessor-in-title, was the absolute owner of the land would not confer a valid title on the plaintiffs.

58. The plaintiffs' title to the land cannot be accepted as absolute without any valid title document. Even after the sale in favour of the plaintiffs, the entry in the GLR recorded the nature of the holder's right as under the old Grant, subject to the conditions of the GGO dated 6th January 1827. Thus, it is clear that no document of title over the land in favour of the

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plaintiffs or their predecessor-in-title was produced at any time when an application was made to make an entry in the GLR.

59. In the present case, there is no dispute that the plaintiffs' predecessor-in-title constructed the suit bungalow. The permission letter at Exhibit 139 in favour of the plaintiffs' predecessor-in-title for construction of an additional room also refers only to the right of occupancy, which can be sold only with the Government's sanction. The permission letter clarifies that the Government retains the power of resumption. The lease agreement also provides an option to issue a resumption notice, and the lessor, i.e., the plaintiffs, agreed to hand over possession upon expiry of the resumption notice. The lease agreements also clarify that it shall not affect any grant or license under which the land is held from the Crown, including the right of resumption, if any, under such grant.

60. I have also perused the additional documents, that is, the letter dated 15th August 1918 by T. S. Anklesaria informing the Cantonment Committee of his willingness to purchase the suit bungalow, along with the necessary

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undertaking, a letter by the Cantonment Magistrate, informing that only an occupancy right in the land has been transferred, and a release deed between the predecessor-in-title of T. S. Anklesaria and his sister, which also stated that only occupancy right in the land has been transferred. Thus, all these documents on record show that the land was not privately owned and it was given on an old grant basis.

61. In ***Surendra Kumar Vakil*****,** the appeals before the Apex Court pertained to a property in Sagar Cantonment, at Jabalpur. As per the GLR maintained under the Cantonment Land Administration Rules of 1925, the said property was shown as held on “old grant” terms and was described as B-3 land. The purchaser’s construction application was rejected, and thereafter the purchaser filed a suit for uninterrupted use of the property and for a declaration of title. The trial court decreed the suit, and the High Court dismissed the appeal. Hence, the defendants filed an appeal before the Apex Court. The question before the Apex Court was whether the land was held on an old grant basis. The cantonment area was governed by the general order of the Governor-General-in-Council bearing No. 179 of the year

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1836, known as the Bengal Regulations of 1836. The Apex Court in paragraph 10 reproduced the extract from the book on Cantonment Laws from the High Court's judgment, which read as under;

*"**10.** The High Court in its impugned judgment has reproduced extracts from the book on Cantonment Laws by J.P. Mittal, 2nd Edn., at p. 3, which may well be reproduced here:*

> *"Besides municipal administration, another subject that has always loomed large on the cantonment horizon, is the question of provision of necessary accommodation for military officers near the place of their duty. This led to the issue, from time to time, of certain rules, regulations, and orders by the Governments of Bengal, Madras and Bombay Presidencies between the years of 1789 and 1899. The regulations were mostly of an identical nature. They had a twofold object in view, that of ensuring sufficient accommodation for military officers; and that of regulation of the grant of land sites. Some of these regulations are published in this book. These rules, regulations and orders continue to be the law in force in India even after the enforcement of the British statutes (Application to India) Repeal Act, 1960, (Raj Singh v. Union of India[AIR 1973 Del 169] , Mohan Agarwal v. Union of India [AIR 1979 All 170 : 1979 All LJ 304]).*

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Under these regulations and orders, officers not provided with government quarters were allowed to erect houses in the cantonment. For this purpose ground was allotted to them with the condition that no right of property whatever in the ground was conferred on them and the ground continued to be the property of the State, was resumable at the pleasure of the Government by giving one month's notice and paying the value of the structures as may have been authorised to be erected. The houses or other property built on such grounds were allowed to be transferred by one military officer to another without restrictions. To civilians these could be transferred only with the prior permission of the officer commanding the station.

With the lapse of time civilians were also encouraged to build bungalows on the government land in the cantonment on the same condition of resumption of the ground as given above and with a further condition that they may be required to rent or sell the same to any military officer. In case of disagreement about the rent or the sale price, the same was to be fixed by a committee of arbitration. These tenures under which permission was given to occupy government land in the cantonments for construction of bungalows came to be known as 'old grant'. Such permission was given mostly on payment of no rent. This is how a large number of bungalows in the cantonments all over India came in the hands of civilians."

62. The Apex Court referred to the Cantonment Land

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Administration Rules, 1925, as amended up to 21st December 1935, framed under Section 280 of the Cantonments Act, 1924, which govern the purpose of maintaining the GLR and the classification of land as Class A, Class B, and Class C. The Apex Court held that the administration of lands in cantonment areas is regulated by the Cantonments Act, 1924 and the Cantonment Land Administration Rules of 1925, and the 1836 Regulations, which expressly provided that the title to the land in cantonment areas cannot be transferred and only occupancy rights can be given in respect of the land which remains capable of being resumed by the Government in the manner set out therein. The Union of India did not produce the terms of the old grant on the ground that they were misplaced. However, based on the other material on record, the Apex Court held that no document showed that the purchaser/occupier was the absolute owner of the said land. The Apex Court held that the Regulations and the GLR clearly indicated that the land was held on an old grant basis; therefore, the government was entitled to resume the land in accordance with law. Hence, the decree was set aside.

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63. In ***Dinshaw Shapoorji Anklesari***, the dispute related to a property in Pune Cantonment, and the appellants before the Apex Court contended that the plot was initially granted to one Nusserwanji Sorabji Anklesaria, who erected a superstructure and bequeathed it to his son Maneckji, whose name was registered in the GLR. The GLR entry described the property as an old grant under GGO dated 6th January 1827. No requisition under the Cantonments Act was made to acquire the house accommodation. By executing a repairing lease, the structure was given to the Governor-General in Council in possession on a monthly payment. Subsequently, an indenture of sale was executed between the said Maneckji and two others and the plaintiffs, that is, the respondents before the Apex Court, and it was agreed to sell and purchase the leasehold rights being the perpetual grant under the old grant over the suit premises, including the bungalow, with full ownership rights of the building. Under the old grant terms, the Union of India issued a notice of resumption by offering compensation. Thereafter, the respondents before the Apex Court, that is, the plaintiffs, filed a special civil application before the Bombay High Court challenging the resumption notice.

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64. In ***Dinshaw Shapoorji Anklesari***, the Apex Court referred to the Division Bench's order in the present case, which declared the resumption notice unlawful. Based on the decision of the Division Bench, in the present case, the special civil application in the case of ***Dinshaw Shapoorji Anklesari*** was also allowed by the Division Bench of this Court. Hence, the Union of India approached the Apex Court. The Apex Court has referred to the present second appeals and the connected first appeals transferred to the Apex Court and the order dated 20th July 1988, by which the present second appeals and the connected first appeals were retransferred to this Court with a clarification that the issue of title must be decided, influenced by the observations of the Division Bench.

65. In ***Dinshaw Shapoorji Anklesari***, the Apex Court also referred to the Order dated 25th March 1992 disposing of the appeals before the Apex Court as infructuous in view of the order dated 20th July 1988 and the order dated 13th January 1995, allowing the review petition, thereby modifying the order dated 25th March 1992. The review order set aside the dismissal of the civil appeals as infructuous, maintaining the

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disposal order only in respect of the civil appeals pertaining to the present case, that is, the appeal of P. T. Anklesaria.

66. In ***Dinshaw Shapoorji Anklesari,*** the plaintiffs filed an application before the Bombay High Court for possession of the suit premises, and the Union of India was directed to hand over symbolic possession. After the review order, the Apex Court disposed of the appeals filed by the Union of India on 4th August 1998, recording the learned Solicitor General's statement that the Union of India would seek dispossession of the occupants in accordance with law. The Apex Court thus clarified that if the Union of India took such steps, the Division Bench's observations (in the order declaring the resumption notices unlawful) would not defeat the Union of India's remedies. Thereafter, the respondents before the Apex Court in ***Dinshaw Shapoorji Anklesari*** had filed a suit in the Small Causes Court for possession, arrears of rent and damages on the same grounds as are raised in the present second appeals.

67. In ***Dinshaw Shapoorji Anklesari's*** case, the trial court held that the plaintiffs therein were only holders of occupancy rights in respect of the land and were owners of the

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superstructure. It held that the defendants were tenants; hence, the suit was between landlord and tenant, and the Small Causes Court had jurisdiction to entertain, try, and decide it. The trial court further held that merely exercising the right of resumption did not mean the defendants had denied the plaintiff's lease rights over the land and ownership of the superstructure. The defendants were held entitled to protection under Section 12 of the Rent Act, and it was held that they were not in arrears of rent on the date of hearing of the suit. However, the suit was decreed for possession on the ground of breach of the terms and conditions of tenancy, i.e., non-repair of the suit premises. The Appellate Court confirmed the possession decree, and the Bombay High Court dismissed the Civil Revision Application by confirming the decree. Hence, the Union of India approached the Apex Court in ***Dinshaw Shapoorji Anklesari.***

68. In ***Dinshaw Shapoorji Anklesari,*** the Apex Court allowed the Union of India's appeal and set aside the impugned decree by dismissing the suit. The Apex Court referred to and relied upon the decision in ***Surendra Kumar Vakil*** and, on the available record, including the extract of the

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GLR describing the suit premises as on an old grant basis, held that the land belonged to the Union of India and was leased out by way of grant to the original occupier under the conditions of GGO dated 6th January 1987. The Apex Court further held that the TP Act is made inapplicable to the Government Grants, but Section 3 of the Government Grants Act 1895 makes it clear that the Government Grants are to take effect according to their tenor, notwithstanding any rule of law, statute, or enactment of the legislature to the contrary. The Apex Court further held that the Government has unfettered discretion and, under Section 3, may impose any condition, limitation or restriction in its grants, and the rights, privileges and obligations of the grantee would be regulated only according to the terms of the grant itself, though they may be inconsistent with the provisions of any statute or common law. The Apex Court thus held that grants of lands situated in cantonment areas under old grants form a self-contained provision prescribing the procedure for the grant and resumption of the land, and hence recourse to the Civil Procedure Code or the Specific Relief Act will not be applicable.

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69. With reference to the order passed by the Apex Court, in the review petition, modifying the order, disposing of the appeals as infructuous (in appeals challenging the Order of the Division Bench declaring the resumption notices unlawful), the Apex Court in ***Dinshaw Shapoorji Anklesari,*** held that the liberty given to the Union of India to dispossess the plaintiffs (occupants) clearly indicated that the decision of the Division Bench (declaring the resumption notices unlawful) that the premises do not belong to the Union of India was not acceptable to the Apex Court. The Apex Court accordingly concluded in paragraph 51 as under:

"51. The land of the suit premises belongs to the Union of India, the appellants herein. Therefore, they cannot be held to be the tenants of the suit premises comprising of an area of 0.90 acres together with structure consisting of main bungalow, servant quarters and garage. The respondent-plaintiffs have only the right with regard to the structure built on the suit premises. The appellant Union of India have a right for resumption of the suit premises, as is evident from the evidence on record as discussed above. This issue was not properly appreciated by the trial court, the appellate court and the High Court which also failed to notice the appellants' right under Sections 2 and 3 of the Government Grants Act, 1895."

emphasis applied by me

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70. In the present case, the appellants first obtained the suit bungalow under a lease agreement dated 19th October 1929 at Exhibit 127, executed under Sections 6 and 7 of the Cantonment Act for a period of five years. Thereafter, a private agreement dated 10th August 1935 was executed on a monthly tenancy commencing from 4th May 1935. This agreement specified no lease period and could be terminated by either party on one month's notice. The third agreement, styled as a repairing lease and dated 19th April 1940, was executed for a five-year term commencing on 19th April 1938 and ending on 21st February 1943. This agreement provided for termination at the end of the five-year term or at the end of any subsequent completed year of the tenancy upon giving 6 months' prior written notice. However, no such notice was issued and the defendants continued in possession. The agreement also permitted the lessee, that is, the appellants, with an option to issue a notice of resumption. The agreement further clarified that it would not affect the provisions of any grant or license under which the land is held from the Crown, including the right of resumption. Thus, a conjoint reading of the termination clause, which requires 6 months' written notice and the option of issuing a resumption

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notice, shows that the appellants' right to resume the suit property, that is, the land and the structure, is protected.

71. Therefore, in view of the similar facts, as in ***Dinshaw Shapoorji Anklesari***, the legal principles settled by the Apex Court squarely apply to the present case. As held by the Apex Court, the appellants cannot be held as tenants of the suit premises, that is, the land and the structure thereon and that the respondents, that is, the plaintiffs, have only the right with regard to the structure built on the suit land. The Division Bench of this Court has declared the resumption notice dated 5th February 1979 unlawful on the ground that no authority was shown to resume the property. In these second appeals, there is no issue regarding the validity of any other resumption notice. While retransferring the second appeals, the Apex Court directed that the issue of title be decided, uninfluenced by the Division Bench's observations. The Apex Court, in ***Dinshaw Shapoorji Anklesari***, after discussing the order passed by the Division Bench as well as the Apex Court in the appeals challenging the order of the Division Bench, held in similar facts, that the Union of India cannot be held to be a tenant and has a right to resume the suit

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property.

72. Therefore, in the similar facts of the present case, as discussed in the above paragraphs, the material on record shows that the land was granted on old grant terms and the lease agreements provide an option for resumption. Since the Union of India cannot be held as a tenant, there is no question of terminating the tenancy by issuing notice under Section 106 read with Section 111(g) of the TP Act. The second part of the first question of law on the provisions of the TP Act is therefore accordingly answered in favour of the appellants.

73. The plaintiffs issued a notice dated 5th June 1980, produced at Exhibit 59, under Section 80 of the CPC and under Sections 106 and 111(g) of the TP Act, by alleging non-payment of rent and termination by efflux of time. The trial court did not address the validity of the suit notice under Section 106 read with Section 111(g) of the TP Act. The trial court recorded only that the notice complied with Section 80 of the CPC. The first appellate court framed a point for determination on the validity of the suit notice and held that after the five-year term of the repairing lease expired, the

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defendants continued as holding over under Section 111(g) of the TP Act; hence, the 15-day notice under Section 106 of the TP Act was valid.

74. In the present case, the lease agreement separately regulates the termination at the end of the term or at the end of any subsequent completed year of the tenancy, upon giving at least six months' previous written notice of the intention to determine the same. However, the plaintiffs did not issue such notice, and the defendants continued to occupy the suit property. In view of the right of resumption under Clause 5, determination under Section 111(g)(2) does not arise. The Division Bench declared the resumption notice dated 29th January 1972 unlawful. However, in view of the Apex Court's order, the issue of title must be decided in the present second appeals independently of the Division Bench's observations and findings. Hence, even if the resumption notice is declared unlawful by the Division Bench of this Court, the terms and conditions of the lease agreement providing the option for issuing a resumption are interpreted, for the purpose of the validity of the suit notice and the plaintiffs' entitlement to seek possession on the

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ground of termination of the lease.

75. Although the plaintiffs contend that they accepted the compensation without prejudice to their rights and contentions, non-payment of monthly rent after receiving the compensation amount does not amount to a breach of the terms of the agreement or a valid ground to determine the lease. The ground of efflux of time is not available, as after the lease period expired, the defendants continued to occupy the premises. The plaintiffs issued a 15-day notice dated 5th June 1980 and filed the suit on 1st December 1980, that is, before expiry of the six-month period provided in the agreement. Since the suit was filed before expiry of the six-month period as agreed in the lease agreement, the notice issued by relying upon Sections 106 and 111 of the TP Act cannot be termed valid for seeking possession. Accordingly, the second question of law is answered in favour of the defendants by holding that the suit notice issued by the plaintiffs is not valid.

76. In ***Kaikhosrou,*** the impugned order by the Bombay High Court dismissed the writ petition and upheld the issuance of notice dated 31st July 2001 under the Public

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Premises (Eviction of Unauthorised Occupants) Act, 1971. The Apex Court observed that the said notice was issued after the Apex Court passed the review order in the appeals challenging the Division Bench's order declaring the resumption notices unlawful. The Apex Court referred to all the orders mentioned in the above paragraphs pertaining to the appeals challenging the Division Bench's order (declaring the resumption notices unlawful). The Apex Court also referred to the order recording the statement of the learned Solicitor General of India regarding taking recourse, in accordance with law, to dispossess the occupants. Hence, the Apex Court held that the Union of India cannot be permitted to go back on its statement and take recourse to summary procedure under the Public Premises (Eviction of Unauthorised Occupants) Act. The Apex Court held that the Division Bench's Order dated 6th February 1979 (declaring the resumption notices unlawful) would not merge in the Apex Court's order dated 4th August 1998 (recording the learned Solicitor General of India's statement that recourse in accordance with law would be taken to dispossess the plaintiffs/occupants). Thus, this decision does not apply to the present case, where the Apex Court directed that these

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second appeals be decided independently of the Division Bench's observations and findings (in the order declaring the resumption notices unlawful).

77. In ***D. Raghukul Pershad***, the respondents before the Apex Court filed a suit for eviction, which was decreed on the ground that the appellants, i.e. the State Government, did not prove title to the land. The first appellate court held that the State Government was estopped from setting up title so long as it had not surrendered possession of the land to the lessees, that is, the plaintiffs, and further held that it had not been able to establish its title to the land. The High Court dismissed the second appeal, holding that the State Government cannot be permitted to deny the plaintiff’s title under Section 116 of the Evidence Act. The Apex Court set aside the findings on title; however, it held that the State Government shall vacate the suit land and may file for declaration of title and consequential relief. In this context, the Apex Court held that a tenant let into possession by the landlord cannot deny the landlord’s title, however defective it may be, so long as the possession is not surrendered. In the present case, the theory of estoppel would not be applicable

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as the plaintiffs have filed the suit for possession on the ground of absolute ownership of the land and structure and determination of lease under Section 111(g) of the TP Act in view of the resumption notice issued by the Union of India. In the present case. However, the appellants' right of resumption is protected under the terms of the agreement. Hence, the decision in ***D. Raghukul Pershad*** would not apply in the present case.

78. In ***Santosh Hazari***, the Apex Court held that the paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. In the present case, in view of the Apex Court's order, directing that these second appeals be decided uninfluenced by the findings and observations of the Division Bench and to ignore the findings in the impugned judgments based on the Division Bench's observations and also granting liberty to lead additional evidence, I have carefully examined the entire documentary and oral evidence as well as the additional evidence. Hence, to decide the substantial questions of law framed in these

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second appeals, the entire evidence was required to be appreciated. Therefore, the respondents' submissions that, in view of the legal principles settled in ***Santosh Hazari,*** this court cannot appreciate the evidence have no substance.

79. The suit property is described as both the land and the suit bungalow. As to the land, there is no satisfactory evidence to show the plaintiffs' absolute ownership. The suit is seeking possession of the land and the bungalow and recovery of rent and damages. Even if the terms of the old grant are not on record, this will neither defeat the appellants' case nor enure to the plaintiffs' benefit in seeking absolute ownership. The construction of the bungalow by a grantee will only create a right in the structure but not convert the occupancy right into an ownership right and will not confer absolute title. The GLR entries create a strong presumption in favour of the appellants and create doubt on the plaintiffs' claim of absolute ownership. The Division Bench declared the resumption notice unlawful, as the Union of India could not show any right governing resumption. However, the court did not decide the title. The plaintiffs have not prayed for any declaration of title. Hence, the plaintiffs would not be entitled to seek possession of the suit property as prayed in the

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present suit. Accordingly, the third question of law is answered in favour of the defendants by holding that the plaintiffs are not entitled to seek possession.

80. It is, however, clarified that the plaintiffs' right, if any, under the terms of the lease agreements to seek possession of the suit bungalow is kept open.

81. No question of law is framed as regards the prayer for arrears of rent, set-off and damages. In view of the compensation amount paid along with the resumption notice, which the plaintiffs accepted, the First Appellate Court rightly set aside the Trial Court's decree to the extent of refusing arrears of rent and granted set-off from the compensation amount received by the plaintiffs. Accordingly, the claim for additional damages is also correctly dismissed. Therefore, the impugned judgments and decrees would warrant an interference only in respect of the decree for possession.

82. Therefore, the second appeals are partly allowed by passing the following order:

(i) The Judgment and Decree dated 30th April 1986 passed by the 7th Additional District Judge, Pune, in

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the plaintiffs' Civil Appeal No. 90 of 1985, is confirmed.

(ii) The Judgment and Decree dated 30th April 1986 passed by the 7th Additional District Judge, Pune, in the defendants' Civil Appeal No. 945 of 1985 is quashed and set aside.

(iii) Civil Appeal No. 945 of 1984 is partly allowed, and the Judgment and Decree dated 27th April 1984 passed by the Civil Judge, Senior Division, Pune, in Special Civil Suit No. 477 of 1980 is quashed and set aside to the extent of the decree in favour of the plaintiffs to recover possession of the suit property, directing inquiry on mesne profits and costs.

(iv) The Judgment and decree dated 27th April 1984 passed by the Civil Judge, Senior Division, Pune, in Special Civil Suit No. 477 of 1980 accordingly stands modified in the aforesaid terms.

(v) There will be no order as to costs.

[GAURI GODSE, J.]

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