

A.F.R.



2025:AHC:174433-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No.3

**CORAM : HON'BLE SHEKHAR B. SARAF, J.
HON'BLE PRAVEEN KUMAR GIRI, J.**

WRIT-C NO.61072 OF 2012

AHMAD ALI KHAN

V.

STATE OF UTTAR PRADESH AND OTHERS

For the Petitioner : Mr. Vinayak Mithal, Advocate

For the Respondents : Mr. Arimardan Singh Rajpoot, Additional Chief Standing Counsel for the State respondents and Mr. Shashi Prakash Singh, Additional Solicitor General of India assisted by Mr. Chandra Prakash Yadav, Advocate for the Union of India

Last heard on September 16, 2025
Pronounced on September 25, 2025

HON'BLE PRAVEEN KUMAR GIRI, J. : This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has made

the following prayers :

“(a) issue writ, order of direction of in the nature of CERTIORARI calling for the records and quashing the objection raised by respondent no. 3 dated 26.10.2012 (Annexure-1 to the present writ petition).

(b) issue writ, order or direction in the nature of MANDAMUS commanding the respondent no.3 to register the instrument presented in his office by the petitioner on 26.10.2012 for registration of agreement-to-sell with respect to property described as Bungalow No.132, Survey No.56, British Calvary (B.C) Lines, Bungalow Area, Meerut Cantt.”

FACTS

2. The factual matrix of the present writ petition is delineated below :

- (a) The Sub Registrar, IV, Sadar, Meerut vide order dated October 26, 2012 made objections in registering the agreement to sale entered into by the petitioner, Ahmad Ali Khan, with Sri Ajay Gupta and Smt. Parul Gupta in respect of a property known as Bungalow No.132, Survey No.56, British Calvary (B.C.) Lines, Bungalow Area, Meerut Cantt. relying upon the decision of this Court in Writ C No. 12897 of 2008 (Cantonment Board, Varanasi vs. State of U.P. and others) decided on 28.10.2010, PIL No. 74227 of 2010 (Virendra Kumar and Others vs. State of U.P. and others) decided on 22.12.2010 and the Circular issued by the government of Uttar Pradesh dated 21.02.2011. The objection/letter dated October 26, 2012 is quoted below :

"कार्यालय उप निबन्धक चतुर्थ, मेरठ

आपति पर्ची

महोदय,

आप द्वारा मेरे समक्ष निबन्धन हेतु प्रस्तुत विक्रय अनुबन्ध-पत्र जोकि बंगला नम्बर 132, सर्वे नम्बर 56 ब्रिटिश कैलवरी (बी०सी०) लाईन्स, बंगला एरिया, मेरठ कैण्ट की 2994.23 वर्गमी० भूमि से सम्बन्धित है के सम्बन्ध में आपको अवगत कराया जाता है कि रिट याचिका संख्या - 12897/2008, कैण्टूनमेन्ट बोर्ड, वाराणसी बनाम, उ०प्र० सरकार व अन्य में मा०उच्च० न्यायालय, इलाहाबाद द्वारा

दिनांक 28-08-2010 को पारित निर्णय आदेश व तत्पश्चात् पी०आई०एल संख्या 74227/2010, विरेन्द्र कुमार व अन्य बनाम् उ०प्र० सरकार व अन्य में मा० उच्च० न्यायालय, इलाहाबाद द्वारा दिनांक 22-12-2010 को पारित आदेश के अनुक्रम में उ०प्र० शासन द्वारा जारी पत्र संख्या 523/ग्यारह-5-2011 दिनांक 21-02-2011 पर कार्यालय महानिरीक्षक, निबन्धन, उ०प्र०, इलाहाबाद के पत्र संख्या 860/विधि नियम दिनांक 04-03-2011 के निर्देशानुसार मेरठ कैण्ट में स्थित सम्पत्तियों के अन्तरण से सम्बन्धित किसी भी प्रलेख जैसे विक्रय-पत्र, दान-पत्र, पट्टा, इकरारनामा आदि का इस कार्यालय में दिनांक 03-03-2011 से निबन्धन बिना मेरठ कैण्ट बोर्ड, मेरठ / रक्षा सम्पदा अधिकारी, मेरठ कैण्ट (जैसी भी स्थिति हो) द्वारा जारी एन०ओ०सी० / अनुमति के नहीं किया जा रहा है। अतः यदि आप द्वारा प्रस्तुत प्रलेख के साथ मेरठ कैण्ट बोर्ड, मेरठ/रक्षा सम्पदा अधिकारी, मेरठ कैण्ट (यथा स्थिति) की एन०ओ०सी०/ अनुमति होगी तो प्रलेख का निबन्धन अवश्य किया जायेगा। आपने अनुमति नहीं प्रस्तुत की है इसलिये कृपया सम्बन्धित अनुमति के साथ ही प्रस्तुत करें तभी निबन्धन की कार्यवाही की जायेगी।

sd/- dated 26.10.2012

उप निबन्धक चतुर्थ
मेरठ सदर, मेरठ

- (b) The petitioner has entered into an agreement to sale of a property belonging to the Union of India situated in Cantonment area and controlled by Cantonment Board. The petitioner itself has admitted this fact in the agreement to sale. The agreement to sale in question is being quoted below :

"विक्रय-अनुबन्ध ।

स्टाम्प शुल्क : अंकन 90,000/- रुपये।

कब्जा विक्रय पत्र की रजिस्ट्री के समय प्रदान किया जायेगा।

हम कि श्री अहमद अली खान पुत्र श्री अरशद अली खान, निवासी ग्राम कोताना, तहसील बड़ौत, जिला बागपत, वर्तमान निवासी 305, हरी लक्ष्मी लोक, ईब्ज क्रॉसिंग, मेरठ (उ०प्र०):-----प्रथम पक्ष ॥

व

श्री अजय गुप्ता पुत्र स्वर्गीय श्री आर०के० गुप्ता व श्रीमती पारूल गुप्ता धर्मपत्नी श्री अजय गुप्ता, निवासीगण ए-2, शास्त्रीनगर, मेरठ शहर :-: द्वितीय पक्ष ॥

जो कि सम्पूर्ण बंगला नम्बर 132 सर्वे नम्बर 56 ब्रिटिश कैलवरी (बी०सी०) लाईन्स, बंगला एरिया, मेरठ कैन्ट जिसकी ओल्ड ग्रान्ट भूमि का क्षेत्रफल 2994.23 वर्ग मीटर है निम्न सीमित जो संलग्न मानचित्र में लाल रंग से दिखलाया गया है, के प्रथम पक्ष व्यक्तिगत स्वामी एवं वास्तविक अधिकारी हैं। प्रथम पक्ष ने उपरोक्त बंगले को द्वारा विक्रय-पत्र दिनांक 18.05.2006 ई० को श्री तेजपाल सिंह चतरथ व श्रीमती सुरजीत पुरी व श्रीमती कमल चढ़ा से खरीद किया था कि जिसकी रजिस्ट्री बही नम्बर 1

जिल्द 1995 के सुफे 315/345 में नम्बर 214 पर दिनांक 11.01.2008 ई० कार्यालय उप निबन्धक चतुर्थ मेरठ हुई तथा उपरोक्त बंगला आज की तिथि तक प्रत्येक प्रकार के ऋण तथा भार आदि से उन्मुक्त एवं वैधानिक त्रुटियों तथा दोषों आदि से मुक्त तथा रहित है और प्रथम पक्ष को उसके विक्रय तथा हस्तान्तरित आदि करने के समस्त स्वामित्व एवं अधिकार प्राप्त हैं। कोई वैधानिक त्रुटि अथवा दोष प्रथम पक्ष के विक्रय अधिकारों में बाधक नहीं है। प्रथम पक्ष ने उपरोक्त बंगले को विक्रय करने का अनुबन्ध द्वितीय पक्ष से अंकन 45,00,000/- रुपये (पैंतालिस लाख रुपये) में तय कर लिया है और कुल मूल्य के मध्ये अंकन 25,00,000/- रुपये (पच्चीस लाख रुपये) अग्रिम धनराशि के रूप में प्रथम पक्ष ने द्वितीय पक्ष से निम्नप्रकार प्राप्त कर लिये हैं। अतः उभय पक्ष निम्न नियमों से बाध्य होते हैं :-

01. यह कि द्वितीय पक्ष आज की तिथि से एक वर्ष की अवधि के अन्तर्गत उपरोक्त सम्पत्ति का विक्रय पत्र प्रथम पक्ष से अपने अथवा अपने मनोनीत व्यक्ति के पक्ष में निष्पादित कराकर रजिस्ट्री करा लेंगे तथा अवशेष धनराशि विक्रय पत्र की रजिस्ट्री के समय चुकता कर देंगे और कब्जा विक्रय पत्र की रजिस्ट्री के समय प्रथम पक्ष द्वितीय पक्ष से प्राप्त कर लेंगे, कोई आपत्ति नहीं होगी।

02. यह कि इस अनुबन्ध के द्वारा बंगले का निर्माण सम्पूर्ण रूप से तथा भूमि से सम्बन्धित केवल ओल्ड ग्रान्ट अधिकारों को विक्रय करने का अनुबन्ध किया गया है। भूमि भारत सरकार की मिलकियत है इसलिए यह अनुबन्ध भूमि से सम्बन्धित नहीं है।

03. यह कि विक्रय पत्र से सम्बन्धित स्टाम्प व फीस आदि का समस्त खर्चा द्वितीय पक्ष स्वयं वहन करेंगे।

04. यह कि यदि उपरोक्त अवधि के अन्तर्गत प्रथम पक्ष विक्रय पत्र रजिस्ट्री करने में कोई आपत्ति अथवा इंकार करेंगे तब द्वितीय पक्ष को विक्रय पत्र न्यायालय के द्वारा न्यायालय के खर्चे सहित रजिस्ट्री करा लेने का अधिकार प्राप्त होगा जिसमें प्रथम पक्ष को कोई आपत्ति नहीं होगी।

05. यह कि सीलिंग की भूमि से सम्बन्धित जो विवाद विचाराधीन है उनके समाप्त हो जाने के उपरांत यथा प्रकार भूमि इस अनुबन्ध के अन्तर्गत समझी जायेगी।

06. यह कि द्वितीय पक्ष के नाम परिवर्तन का प्रार्थना-पत्र रक्षा सम्पदा अधिकारी के कार्यालय में विचाराधीन है उसकी कार्यवाही प्रथम पक्ष लगातार करते रहेंगे और उस कार्यवाही को पूर्ण कराने में सहयोग करेंगे।

07. यह कि उभय पक्ष एवं उनके उत्तराधिकारी उपरोक्त विक्रय अनुबन्ध के पाबन्द रहेंगे। अतः यह विक्रय अनुबन्ध लिख दिया कि प्रमाणित हो और उचित समय पर उपयोगी हो। इति ॥

सीमायें उपरोक्त सम्पत्ति :-

पूरब : बंगला नम्बर 131.

पश्चिम : बंगला नम्बर 133.

उत्तर : सरकारी सड़क विख्यात बैरेक स्ट्रीट।

दक्षिण : बंगला नम्बर 140.

विवरण प्राप्ति अग्रिम धनराशि :-

01. अंकन 5,00,000/- रुपये (पांच लाख रुपये) प्रथम पक्ष ने द्वितीय पक्ष से द्वारा चैक संख्या 167014 दिनांक 04.10.2011 ई० मौसूमा जम्मू एण्ड काश्मीर बैंक लि० प्राप्त किये।

02. अंकन 20,00,000/- रुपये (बीस लाख रुपये) प्रथम पक्ष ने द्वितीय पक्ष से द्वारा चैक संख्या 172694 दिनांक 09.07.2012 ई० मौसूमा जम्मू एण्ड काश्मीर बैंक लि० प्राप्त किये।

तहरीर तारीख : 26.10.2012 ई० मसविदा श्री देवेंद्र कुमार गर्ग, प्रलेखक, मेरठ ।"

CONTENTIONS OF THE PETITIONER

3. Learned counsel appearing on behalf of the petitioner has made the following submissions :

- a. The petitioner had purchased the old grant rights for Bungalow No.132, Survey No.56, British Calvary (B.C.) Lines, Bungalow Area, Meerut Cantt vide sale deed dated 18.05.2006 executed by Sri Tejpal Singh Chatrath, Smt. Surjeet Puri and Smt. Kamal Chaddha who were the recorded holders of occupancy right with respect to the aforesaid Bungalow. The petitioner entered into an agreement to sale with Sri Ajay Gupta and Smt. Parul Gupta on 26.10.2012 for total consideration of Rs.45.00 lacs out of which the petitioner has accepted Rs.25.00 lacs as advance payment. Petitioner had applied for registration of the said agreement to sale on which objections were raised by the Sub Registrar.
- b. There is no provision in the Registration Act, 1908 enabling the Sub Registrar to deny the registration of any deed, therefore, he cannot deny registering the agreement to sale in favour of a third person by the petitioner.
- c. The petitioner is in possession of the aforesaid Bungalow and as per the agreement to sale, the possession will be delivered to the vendees at the time of execution of the sale deed. As per the agreement to sale, the time period for execution of the sale deed has been fixed to be one year.

- d. The agreement to sale is only with respect to the superstructure upon the land and there is no agreement to sale with respect to the land. In fact, the petitioner has admitted in the agreement to sale that the land is in the ownership of the Central Government and the agreement to sale does not include the land and as such agreement to sale has nothing to do with the land.
- e. For the execution of such agreement, no prior permission of the Cantonment Board is required. However, the Sub Registrar in view of the circular dated 21.02.2011; circulated on 04.03.2011 has raised objection to the effect that the document presented cannot be registered in the absence of permission by the Defence Estate Officer of the Cantonment Board, Meerut.
- f. The aforesaid circular is based upon two Division Bench orders of this Hon'ble Court which prohibit the execution of a deed relating to land. There is no prohibition with respect to the registration of an instrument relating to an agreement to transfer a superstructure. Hence, none of the documents that form the basis of the objections are applicable in the facts of the present case.
- g. A contract for sale is not transfer and this is evident from the proviso to Section 54 of the Transfer of Property Act. Hence, registration of an agreement to transfer does not imply the transfer of the property or a sale. Under such circumstances, the instrument presented before the Sub Registrar does not amount to sale and as such is not barred. In fact, Rules have been framed under the Cantonment Act, 1924 that are called as Transfer of Property in Cantonment (Form of Notice and Manner of giving such Notice) Rules, 1985 which provides that only upon registration of the transfer of title that notice is

required to be given to the Cantonment Board and not prior to getting the instrument registered. The registered instrument of transfer is to be provided to the Cantonment Board along with notice of transfer. This is evident from perusal of Rule 3 as well as from perusal of Form-A provided for in the said Rules.

- h. The Sub Registrar cannot refuse to register the agreement to sale inasmuch as the document becomes compulsorily registrable as contemplated under Section 17(1A) of the Registration Act, 1908 (hereinafter referred to as 'the Registration Act'), therefore, the Sub Registrar has failed in his duty to register the instrument and the objections raised by the respondent no. 3 is de hors the statutory provision contained under Section 17(1A) of the Registration Act.
- i. The Sub Registrar has misread and misinterpreted the judgments and orders of this Court, which relate only to transfer of land. The case of transfer of land is clearly distinguishable from a case of transfer of super structure inasmuch as the ownership of the land stands vested in the Central Government and any transfer of land by a private person without permission or notice to the Central Government clouds the title of the Central Government and as such prior permission or notice is necessary. However, so far as transfer of superstructure is concerned ownership vests in the person to whom it was granted and the ownership of the superstructure can be transferred by a private arrangement. It is for this reason that Rules have been framed by the Cantonment to give notice of such transfer after such transfer gets affected.
- j. In the present matter, it is not in dispute that on the demise of the recorded holder of occupancy rights in the year 1997, the

legal heirs namely Capt. Tej Pal Singh (son), Mrs. Surjeet Puri and Mrs. Kanwal Chaddha (Daughters) had moved an application for mutation which remained pending at the end of the concerned authorities. Thereafter, when the rights came to be transferred to the petitioner pursuant to the sale deed dated 18.05.2006, the petitioner had also applied for mutation vide his letter dated 10.04.2008. It is, therefore, apparent that the onus casted upon the petitioner was duly discharged by him and nothing more remained to be done on his part. In such a situation it does not lie in the mouth of the respondents to allege that there did not exist any valid title with the petitioner to enter into an agreement to sell. Such being the situation the agreement to sell as executed by the petitioner in favour of Mr. Ajay Gupta and Mrs. Parul Gupta is in accordance with the provision of law which holds the field and any inference to the contrary sought to be made by the Defense Estate Officer is wholly misconceived.

- k. It is not the case of the petitioner that the land is being sold by him but it is only property standing upon the land which is sought to be transferred by the petitioner.

CONTENTIONS OF RESPONDENTS

4. Learned counsel appearing on behalf of the respondents has rebutted the arguments of the petitioners and made the following submissions:

- a. The petitioner has not obtained the land in a legal manner as provided under the law as without prior permission of the Central Government, no property can be transferred to any person as is provided under Rule 15 of the Cantonment Land Administration Rules, 1937 (hereinafter referred to as 'the Cantonment Rules, 1937').

- b. No property can be transferred without prior permission of the authority of Cantonment Board/Central Government as per Rule 15 of the Cantonment Rules, 1937 as well as the Circular Dated 21.01.2011 issued by Government of Uttar Pradesh and the decisions of this Court.
- c. The property in question admeasuring 2994.23 sq.mtrs is held on Old Grant Terms and recorded occupancy holders of the premises are Major Jaswant Singh Chatrath and Smt. Tirath Kaur, under the management of Defence Estate Officer Meerut Circle, Meerut Cantt.
- d. On demise of recorded Holder of Occupancy Rights during 1997 their legal heirs, namely, Capt. Tejpal Singh (son), Mrs Surjit Puri and Mrs Kanwal Chadha (daughter) had applied for mutation in their favour but before their names could be recorded in the General Land Register maintained by Defence Estate Officer, Meerut, the said legal heirs transferred the property to Shri Ahmed Ali Khan S/o Arshad Ali Khan by virtue of sale deed registered on 18.05.2006. Hence, their request for mutation is also required to be rejected due to violation of Old Grant Terms. Through a general power of attorney, Shri. Arshad Ali Khan, Shri Ahmed Ali Khan applied for mutation of property in his name vide letter dated 16.04.2008, which is still pending and the property still stands recorded in the General Land Register, Meerut Cantt in the names of Major Jawant Singh Chatrath and Smt. Tirath Kaur. However, Shri Ahmed Ali Khan has submitted a registered admission declaration deed dated 07.10.2008 admitting title of Govt. over the land and trees standing thereon and also the term of 'Old Grant' under the General Order by the Governor General in Council, No.179 dated 12.09.1836 (hereinafter

referred to as 'the GGO-179 dated 12.09.1836'). As per term of 'Old Grant', prior permission for any sale/purchase is needed.

- e. The GGO-179 dated 12.09.1836 deals with grant of land in cantonments. It is provided that in every such case the property of the Government could not be sold by the grantee but houses or other property thereon situated could be transferred subject to certain restrictions. It further provided that the Government retained the power to resume the land on giving due notice and paying the value of such buildings as may have been authorized to be erected thereon.
- f. Such individuals, currently in possession of the houses, are merely grantees (licensees) or lessees of land with absolutely no ownership rights on the land that continues to vest with the Government and the occupancy holders are permitted to transfer their occupancy rights or leasehold rights only of the authorized structures built by them on such Government land subject to certain terms and conditions which includes prior permission as per Clause 6 of GGO-179 dated 12.09.1836, in cases of all Old Grant Properties.
- g. The Delhi High Court in **Shital Parshad Jain v. Union of India and others** reported in AIR 1991 Del 253 has held, that GGO 179 dated 12.09.1836 had statutory force and is an existing law in force.
- h. The Supreme Court in **Chief Executive Officer v. Surendra Kumar Vakil** reported in 1999 (3) SCC 555, has held that the terms of the grant are statutorily regulated under GGO-179 dated 12.09.1836. Further the Supreme Court in **Chitra Kumari v. Union of India and others** reported in (2001)3

SCC 208 has taken notice that the GGO-179 dated 12.09.1836 is still in force.

- i. In a Cantonment, covered earlier under the Cantonments Act, 1924 and presently under the Cantonments Act, 2006 and for properties given on the Old Grant Terms, the rights of ownership is only of the super-structures, which, though transferred by sale deed, needs to be compulsorily recorded in the General Land Register as the Holder of Occupancy Rights in the first instance. Further, it is an admitted fact that the land within Cantonment is either leased out or held on Old Grant terms belongs to the Government of India, Ministry of Defence. As such land tenure within Cantonments is very different from what is prevalent and commonly understood in Municipal areas. The difference is explained in detail hereinafter. For convenience and to arrive at a just/fair conclusion, ALL LANDS WITHIN CANTONMENTS ARE OWNED BY THE GOVERNMENT OF INDIA, MINISTRY OF DEFENCE. Hence, when a property is purchased within a Cantonment only the superstructure can be bought and sold, the rights of occupation of land do not automatically get transferred to the purchaser of the superstructure or house property, thereon. The sale has to be permitted by the Government of India, Ministry of Defence prior to the purchase and if all legal/statutory requirements are fulfilled, as laid down in this connection, then the Government of India, Ministry of Defence recognizes the purchaser by mutating his/her name in the GLR.
- j. The municipal areas where private land exists, sale/purchase of land alongwith the building is a legally tenable transaction. Thus, there the purchaser becomes owner of both land and building thereon. But not in the peculiar cases of land within a

Cantonment where only the superstructure is sold and purchased. Even this purchase is qualified by the fact that Government of India, Ministry of Defence should recognize this as per procedure delineated herein before.

- k. The refusal orders passed by respondent nos.2 and 3 are in accordance with law and also the order passed by this Court in writ petition No.12897/2008 followed by the order passed in writ petition (PIL) No.74227/2010.
- l. As per GGO-179 dated 12.09.1836 Old Grant rights cannot be purchased/Transferred without obtaining prior approval of Government of India, Ministry of Defence. It is also stated that Shri Tejpal Singh Chatrath, Smt. Surjit Puri and Smt. Kamal Chaddha are till date not the recorded Holder of Occupancy and the Government has not yet sanctioned mutation in their favour till date.
- m. This Court in its order dated 28.08.2010 has clearly stated that "we direct the Sub Registrar (Registration) not to register any document and not to execute any sale deed/lease deed", without there being no objection or permission of Defence Estates Officer. Therefore, the agreement to sell dated 26.10.2012 presented by the petitioner before the Sub Registrar IV Meerut is null and void as it is well covered under the legal terminology/nomenclature used in the said order of this Court.
- n. The agreement to sell any property tantamounts to sale subsequently as per terms settled in the agreement. So, if the sale deed or the lease deed cannot be executed or registered by the Sub Register without obtaining 'no objection' or 'permission' of the Defence Estates Officer, then the agreement to sell which is a document prior to sale deed, cannot be

registered without obtaining No Objection or permission of the Defence Estates Officer as per direction given by this Court. Therefore, the agreement to sell cannot be registered by the respondent No.3.

- o. The superstructure in question is on defence land, and there is no material on record to demonstrate that the said construction was made after the permission of the competent authority.
- p. It is submitted that the orders passed by this Court as stated in preceding paragraphs, apply to the property of the Cantonment Area even if the land is not sold. The order dated 28.8.2010 directs the Sub Registrar (Registration) not to register any document and not to execute any sale deed/lease deed of the land falling within the Cantonment Board. Usually in Cantonment Areas only superstructure is sold due to the land belonging to Ministry of Defence. But if the superstructure is sold without the 'permission' or 'no objection' of Cantonment Board then the intention of this Court will be defeated. Everybody will come with a document not selling the land on which superstructure stands, as the land is not his and rightfully he is not entitled to sell it because he has no title on it. In Cantonment Area only superstructure belongs to private persons, not the land.
- q. It is submitted that if an agreement to sale is registered without permission then people will give possession of the property without getting the sale deed executed due to the want of permission and the purpose of the transfer will become effective, thus, the whole intention of the Court's order will be defeated. This Court in its order dated 28.8.2010 directed non registration of any document without prior permission. It is

also submitted that before this order the registration of sale deed/lease deed of the properties situated in Cantonment Board area took place without any permission or no objection by the Defence Estate Officer of the Cantonment Board. Any transaction of the cantonment area depends upon the contracts between the parties and only after registration any liability of the registering authority is created because in Registration Department transactions are not chargeable only documents are chargeable to stamp duty. The parties after registration apply for Mutation to the Cantonment Board.

ANALYSIS AND CONCLUSION

5. Heard learned counsel appearing on behalf of the parties and perused the material on record.

6. In this case, the petitioner wants to register an agreement to sale in respect of a building erected on the land of Cantonment Board to a third person and the same has been refused by the Sub Registrar mentioning the decisions of this Court as well as the Circular issued by the Government of Uttar Pradesh. The Sub Registrar has relied upon the decision of this Court in Writ Petition No. 12897 of 2008 (Cantonment Board, Varanasi Vs. State of UP and Others) decided on 28.8.2010. The order is being quoted below:

“By means of this petition, the petitioner has prayed for a writ of mandamus commanding the State of U.P. through Secretary Institutional Finance, Sub Registrar (Registration) and the Collector Varanasi not to register any document pertaining to sale/lease of immovable properties situated in Cantt. Area, Varanasi without obtaining no objection certificate from the competent authority of Government of India, Ministry of Defence. The basis of the writ petition is that the land belongs to the cantonment board and the fake sale deed/lease deed are being executed and they are being registered.

From the avernments made in the writ petition, it is clear that the fake sale/ lease deeds were being executed by those persons who were not entitled to execute the lease deed or sale deed and fake sale deeds were being

registered in respect of the property belonging to the Ministry of Defence and after registration of the document, further litigation has to face to the Defence department for cancellation of the sale deed for getting it declared void in order to check such execution of fake sale deed/lease deed.

Having regard to the facts and circumstances of the case stated in the writ petition, we direct the Sub-Registrar (Registration) not to register any document and not to execute any sale deed/ lease deed of the land falling within the Cantonment Board and belonging to the Ministry of defence without there being no objection or permission by the Defence Estate Officer of the Cantonment Board Varanasi.

With the above observation, the writ petition is disposed of finally.”

7. The above order was in respect of Varanasi Cantonment Board. Later on a PIL was filed being Public Interest Litigation (PIL) No. 74227 of 2010 (**Virendra Kumar and Others Vs. State of U.P. and Others**), in which order passed by this Court in **Cantonment Board, Varanasi** (supra) was brought to the notice of the Court which was dealing with the said PIL. Thereafter, the Court issued directions to circulate the decision of Cantonment Board, Varanasi (Supra) to all the Sub Registrars. The order dated December 22, 2010 is being quoted below :

“On behalf of respondents 1 to 3, learned Standing Counsel seeks time to take instructions in the matter.

Our attention has been drawn by the writ petitioners to the order dated 28.8.2010 passed in Writ -C No.12897 of 2008, whereby the Sub-Registrar (Registration) has been directed not to execute any sale deed/lease deed of the land falling within the Cantonment Board and belonging to the Ministry of Defence without there being no objection or permission by the Defence Estate Officer of the Cantonment Board, Varanasi.

Learned Standing Counsel may seek instructions.

In the meantime, the Secretary, Institutional Finance, Govt. of U.P. is directed to circulate to all the Sub-Registrars a copy of the order dated 28.8.2010 passed by this Court in Writ-C No.12897 of 2008.

Place the matter on board on 12.01.2011.”

8. In compliance of the above order, the Government of Uttar Pradesh vide Circular dated February 2, 2011 circulated the above decision of this Court. The Circular is being quoted below :

"आवश्यक /

प्रेषक,

संख्या -523/ ग्यारह -5-20 11

मधु माथुर

उप सचिव,

उत्तर प्रदेश शासन ।

सेवा में,

महानिरीक्षक निबन्धक

उत्तर प्रदेश इलाहाबाद ।

कर एवं निबन्धक अनुभाग-5लखनऊ दिनांक 21 फरवरी 2011

विषय :- छावनी परिषद की सीमा में आने वाली सम्पत्तियों के विलेख पंजीकरण के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक रिट याचिका संख्या-12897/ 2008 केन्टोमेन्ट बोर्ड वाराणसी बनाम उ०प्र० राज्य व अन्य में पारित आदेश दिनांक 28 अगस्त 2010 (छायाप्रति संलग्न) का सन्दर्भ ग्रहण करें।

2- इस सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि मा० उच्च न्यायालय द्वारा पारित उपरोक्त आदेश पर अनुपालन सुनिश्चित कराते हुए सभी सम्बन्धित को भी उक्त आदेश के अनुपालन हेतु आवश्यक आदेश निर्गत करने का कष्ट करें।

संलग्नक : यथोपरि

भवदीया,
ह०अपठनीय
(मधु माथुर)
उप सचिव ।

संख्या / (1) / ग्यारह -5-20 11 तद दिनांक :

प्रतिलिपि उपमहानिरीक्षक निबन्धक/ वाराणसी को संलग्नक की प्रति सहित अनुपालनार्थ प्रेषित ।

संलग्नक यथोपरि।

आज्ञा से
ह०
(मधु माथुर)
(उप सचिव)

कार्यालय महानिरीक्षक निबन्धक उत्तर प्रदेश इलाहाबाद।

संख्या 860 / विधि

दिनांक 04.03.11

उक्त की प्रति समस्त उप / सहायक महानिरीक्षक निबन्धन उत्तर प्रदेश को इस अनुरोध के साथ प्रेषित कि मा० उच्च न्यायालय द्वारा पारित आदेश का अनुपालन सुनिश्चित करायें।

ह० अपठनीय

सन्दीप कुमार शर्मा

उपर महानिरीक्षक निबन्धन (प्र०).

उत्तर प्रदेश, इलाहाबाद।

सत्यप्रतिलिपि"

9. On being informed about the above circular issued by the Government of Uttar Pradesh, the Court dealing with the above PIL being Public Interest Litigation (PIL) No. 74227 of 2010 (**Virendra Kumar and Others Vs. State of U.P. and Others**) disposed of the PIL on 3.8.2017. The said order is being quoted below :

" Heard learned counsel for the parties.

We need not retain the present writ petition any further; in view of the fact of that the counsel for the Cantonment Board has informed this Court that in view of the provisions of Cantonment Land Administration Rules, 1937 specifically Rule 15 no land of the Cantonment can be sold without prior permission of the Central Government. In the said background, a Division Bench of this Court vide order dated 22.12.2010 has already issued a direction to the Secretary, Institution Finance, Govt. of U.P. to direct all Sub-Registrar within the State of Uttar Pradesh not to register any sale deed/lease deed in respect of the land falling within the Cantonment Board and belonging to the Ministry of Defence without no objection or permission of the Defence Estate Officer of the Cantonment Board, Varanasi.

We have been informed that such circular has been issued by the State of Uttar Pradesh.

In view of the aforesaid, no further directions are required to be made.

This Public Interest Litigation is disposed of.”

10. The Court dealing with the Public Interest Litigation (hereinafter referred to as ‘the PIL’) has disposed of the PIL being satisfied that the land of Cantonment Board cannot be sold without prior permission of the Central Government/Defence Estate Officer as provided under Rule 15 of the Cantonment Rules, 1937. The fact was in the knowledge of the Court dealing with the PIL that land falling in the Cantonment Board was situated in the defence area, and therefore, such land cannot be transferred to anybody without having prior permission of the authority mentioned in the Rules, 1937 as it may cause security issues to the defence establishment as well as to the Nation. Rule 15 of the Cantonment Rules, 1937 is quoted below :

“5. Sale of land Prohibited-The sale of land for any purpose without the definite orders of the Central Government is prohibited.”

11. The Sub Registrar is under obligation to abide by the order of this Court and the Circular issued by the State Government in light of the decisions of this Court and therefore, as there is no provision in the Registration Act, the Sub Registrar has rightly refused to register the deed of agreement to sale.

12. The submission of the petitioner that the agreement to sale is only with respect to the superstructure upon the land and there is no agreement to sale with respect to the land cannot sustain as the superstructure in question is on defence land and it cannot be treated as a separate entity. Rule 2(c) of the Cantonment Rules, 1937 defines ‘building site’ which includes open ground or courtyard enclosed by, or adjacent to the building erected thereupon. Therefore, the building also includes the land which belongs to the Cantonment Board. Rule 2(c) is delineated below:

“(2c) - “building site” means a portion of land held or intended to be held for building purposes, whether any building be erected thereon or not, and

includes the open ground or courtyard enclosed by, or adjacent to, any building erected thereupon;”

13. The GGO-179 dated 12.09.1836 provides that the property of the Government could not be sold by the grantee but houses or other property thereon situated could be transferred subject to certain restrictions. The relevant provisions of the General Order are being quoted below :

“6. Conditions of occupancy- *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:-*

1st. Resumption of land- *The Government to retain the power of resumption at any time on giving one month's notice and paying the value of such buildings as may have been authorised to be erected.*

2nd. Land belongs to Government. *Land cannot be sold by grantee. Transfer of houses between military officers-The ground, being in every case the property of Government, can not be sold by the grantee, but houses or other property thereon situated may be transferred by one Military or Medical Officer to another without restriction except in the case of reliefs, when, if required, the terms of sale or transfer are to be adjusted by a Committee of Arbitration.*

3rd. Arbitration in case of transfer on relief. *Transfer of house to civilian-If the ground has been built upon, the buildings are not to be disposed of to any person, of whatever description, who does not belong to the army, until the consent of the Officer Commanding the Station shall have been previously obtained under his hand.*

4th. Transfer to native- *When it is proposed, wide consent of the General Officer, to transfer possession to a native, should the value of the house, buildings or property to be so transferred exceed Rs. 5000, the sale must not be effected until the sanction of Government shall have been obtained through His Excellency the Commander-in-Chief.*

7. Power to require owner to let house to Military Officer-*The owner of any house in a military cantonment not occupied by a person belonging to the army on duty at the station, or by a person in the service of Government directed or authorised by Government to reside therein, may be required to rent the same to any military officer belonging to the station who may require it to reside in, if the Officer Commanding the Station is satisfied*

that there is no other suitable house available with due regard to the rank of the claimant and to the duties he may have to perform.

Vacation of house on sale to another military officer-In every such case, however, if the owner shall have formally intimated to the officer who has so obtained the house his desire to sell rather than let it, and the offer have not been accepted, the officer shall at any time be required to vacate it within a week of his receiving notice, through the Brigade Major or Station Staff Officer, that the house has been sold, with the consent of the Commanding Officer of the Station, to another military officer on duty at the station who requires it for his own residence.

Committee of Arbitration.- The rent to be paid in such cases, or the price to be paid for the house when the claimant accedes to the owner's Committee of Arbitration-The rent to be paid in such cases, or the agreeing as to the amount, by a Committee of Arbitration constituted as follows.]

[G.O. No. 1001, dated 3-12-1864]”

14. As already held the property for which agreement to sale is to be executed falls within the ambit of land, therefore, the above GGO-179 dated 12.09.1836 would apply to the facts of this case which does not permit the grantee to sell the land.

15. Although the petitioner has submitted that he is not executing any sale deed, but only an agreement to sale by way of a registered deed, yet under the law, the petitioner cannot transfer any land without the prior permission of the authority of the Central Government. Thus, in the present case, the petitioner has attempted to do indirectly what he cannot do directly in a colourable manner. Moreover, the petitioner has not been able to show as to how he has obtained the property of the Cantonment Board, that is, whether he has taken prior permission of the authority concerned before taking possession of that very land through any person or the Cantonment Board. The legal principle *quando aliquid prohibetur ex directo, prohibetur et per obliquum* that when the law prohibits a particular act, it equally prohibits all indirect means of achieving the same result would be applicable and the petitioner cannot be allowed to use a circuitous route to achieve what is prohibited in law.

16. In every agreement to sale, certain conditions are stipulated, and upon fulfillment of those conditions, the vendor is bound to transfer the property personally. In the event of the vendor's death, it is open to the vendee to initiate proceedings under Section 53A of the Transfer of Property Act for part performance. In such a case, the Court may either direct the legal representatives of the vendor to execute the sale deed, or it may itself direct the Sub Registrar to execute the transfer deed in favour of the vendee. Section 53A of the Transfer of Property Act is quoted below:-

“53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty:

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

17. Therefore, the petitioner by colourable methods has tried to transfer the property to the third party which he cannot do. An agreement which, in substance, transfers possession, consideration, and incidents of ownership without prior NOC, is a colourable action, void ab initio, and unenforceable under Section 23 of the Contract Act.

18. Moreover, and importantly, the petitioner has neither challenged the vires of the Government Order as well as the Rules nor the order/judgment passed by this Court in the PIL wherein it has been provided that before transferring the property, prior permission is required to be obtained from the competent authority.

19. The petitioner has simpliciter assailed the refusal order passed by the Sub Registrar refusing to register the agreement to sale which was done in light of the circular issued by the State Government in light of the decisions of this Court. Moreover, the refusal order of the Sub Registrar is appealable under Section 72 of the Registration Act.

20. As per Section 72 of the Registration Act, if any order is passed by Sub Registrar refusing registration of any document, the same is appealable before the Registrar (the ADM (F/R)). Sections 72 and 73 of the Registrar Act, are quoted below :

“72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.-(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.”

73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.-(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of

the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of complaints."

21. Furthermore, in case the Registrar (ADM F/R) refuses to order the document to be registered, a suit can be instituted in a Civil Court under Section 77 of the Registration Act, which is delineated below :

(1) Where the Registrar refuses to order the document to be registered, under section 72 or a decree section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections(2) and (3) of section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.

22. The decision relied upon by the learned counsel on behalf of the petitioner in **Nirbhay Kr. Shahabadi and another vs. State of Jharkhand and others, MANU/JH/15012013** does not apply to the facts and circumstances of the case as the same was not in respect of land within the jurisdiction of the Cantonment Board. Ergo, this judgment will not come to the aid of the petitioner.

23. If any order is passed by this Court directing that without prior permission of the authorities no sale deed would be executed, the authorities within the State are bound to follow the same as the decisions of this Court operates as the law of the land within the State in view of Articles 215 and 226 of the Constitution of India and in respect of the land belonging to the Cantonment Board, no land can be sold without prior permission of the Central Government or the authority concerned as required under the law. It

is further observed that the definition of 'building site' includes open ground or courtyard enclosed by, or adjacent to, any building erected thereupon.

24. The law mandates that any person before transferring any property is required to take prior permission from the competent authority. It is still open for the petitioner to first obtain the permission from the concerned authority and thereafter transfer the property either by way of agreement to sale which would culminate into a sale deed after fulfilling the conditions mentioned in the agreement to sale. There is no bar for moving an application for obtaining permission from the competent authority and if there is a refusal order in granting permission, it is still open for the petitioner to challenge the order passed by the authorities under Rule 15 of the Cantonment Rules, 1937 for granting permission.

25. The maxim *nemo dat quod non habet* signifies that no one can convey a better title to property than what he himself possesses; in other words, a transferor cannot pass ownership rights which he does not legally own. This principle safeguards true ownership and prevents unlawful enrichment of a transferee at the expense of the rightful owner.

26. In the present case, the petitioner has tried to transfer the property in question in a colourable method which he could not do directly. Moreover, the petitioner has failed to provide proof as to how he has obtained the property of the Cantonment Board, that is, whether he has taken prior permission of the authority concerned before taking possession of that very land through any person or the Cantonment Board as till date the name of the petitioner has not been entered into the records of the Cantonment Board.

27. The Sub Registrar has refused to register the agreement to sale deed, which is in the preceding step to a sale deed of the house as well as the land attached to the building. The above rejection is on the basis of the Government order as well as judgment and order passed by this Court directing that the property belonging to the Cantonment Board shall not be

registered by the Sub Registrar until and unless prior permission is obtained from the concerned authority. The order of the Government has obviously been passed keeping in mind national interest and the security threat to the assets of the army and to the army personnel staying in the cantonment area. Furthermore, the Sub Registrar has refused to register the agreement to sell and against the said order, there is a provision under Section 72 of the Registration Act to file an appeal and thereafter there is a provision to challenge the order of appeal under Section 77 of the Registration Act by filing a suit. Therefore, the petitioner is directed to avail the appropriate remedy, if he desires to do so.

28. In light of the reasons above mentioned, we are of the view that the writ petition filed by the petitioner is not maintainable and is accordingly dismissed. There shall be no order as to costs.

25.09.2025

DKS

(Praveen Kumar Giri, J.)

I agree

(Shekhar B. Saraf, J.)