applications the Central Government has given a decision that there is no power of stay with the Central Government as there is no such provision contained either in Section 19A of the Act or in any other provision of the Act. We are of the opinion that every superior authority, which has power to annul or modify the order of the subordinate authority, has inherent power to put that order in abeyance till the final disposal of the matter by the superior authority. This inherent power is implicit in the superior authority either by virtue of appellate power or revisional power or a representation on the sole ground that if it can set aside or modify the order of the inferior authority, why cannot it put the order of the inferior authority in abeyance for the time being. Therefore, we hold that the Central Government was in error in rejecting the stay applications on the ground that there was no power of stay with it. Accordingly, we set aside the order of the Central Government Annexure P-12 in C.W.P. No. 3429 of 1979, Annexure P-3 in C.W.P. No. 933 of 1980 and Annexure P-2 in C.W.P. No. 966 of 1980, and issue the direction that the Central Government should redecide the applications for stay filed by the petitioners within a period of two months from today and the recovery proceedings will remain stayed till the decision of the said application by the Central Government.

14. With the aforesaid observations, Civil Writ Petitions Nos. 3429 of 1979, 933 and 966 of 1980 stand disposed of with no order as to costs.

Bhopinder Singh Dhillon, J.—I agree.

S. C. K.

Before D. S. Tewatia and I. S. Tiwana, JJ.

TEK CHAND and others,—*Petitioners*

versus

UNION OF INDIA and another,—*Respondents.*

Civil Writ No. 1453 *of* 1971.

April 23, 1980.

Government Grants Act (XV of 1895)—*Sections* 2 *and* 3—*Govenor General-in-Council's Order No.* 179 *of* 1836—*Regulations* 6 *and* 7—*Constitution of India* 1950—*Articles* 14, 19 *and* 31—*Grant of land*

on 'old grant' terms under the Order of 1836—Resumption of such land under Regulation 6—Regulation 6—Whether, violative of Articles 19 and 31—Such resumption—Whether discriminatory—Opportunity of hearing before resumption—Whether necessary to be given to the grantee—Such opportunity for determining quantum of compensation—Whether necessary..

Held, that the power of resumption is a special power given by a statutory regulation. It would be presumed, therefore, that the enforcement of the power is also to be made under the same statutory regulation. For there is nothing to show that the statutory authority was required to go outside the statutory regulation to a Civil Court or to some other authority for such enforcement. The statutory regulation is self-contained. For, the power of resumption simply means that the *status quo ante* before the grant comes into being. It cannot be said, therefore, that the Government took the law into its own hands or that the Government was acting without recourse to law in resuming the land and the house. The regulation is a special law. It did not contemplate the intervention of any judicial or quasi-judicial authority between the Government and the grantee. The total absence of any interest or right in or to the land disabled the grantee from claiming that the Government should file a suit against him to resume possession of the land and the house. There was no dispute to be decided between the grantor and the grantee regarding the resumption. This explains the direct exercise of the power of resumption by the Government under the statutory regulation. No objection can therefore, be taken to it. According to Article 31(5) (a) of the Constitution the regulation is "existing law" prior to the Constitution. Cl. (2) of Article 31 of the Constitution does not, therefore, apply to it. As the regulation clearly gives the right to directly resume the land and the house, the grantee has been deprived of his house "by authority of law" within the meaning of Clause (1) of Art. 31. For the same reason, the right of the grantee to hold the house property under Article 19(1) (f) of the Constitution is subjected to the reasonable restriction under Article 19(5) thereof in the interest of the general public. (Para 7).

Held, that section 3 of the Grants Act 1895 declares unfettered discretion of the Government to impose such conditions and limitations as it thought fit, no matter what the general law of the land might be. The grantees are to be dealt with strictly in accordance with the conditions of grant that they had agreed to abide by when accepting the grant of the land for the purpose of erecting superstructure thereon which now along with the site stands resumed. No doubt, the Government in the past in regard to some persons had invoked the provisions of the Land Acquisition Act for acquiring the superstructures on the grant lands. This at best tantamounts to some concession having been shown to such persons by the Government and such a concession cannot be claimed as a matter of right

and if the grantees were not given that concession that action of the Central Government cannot be termed as discriminatory, nor when one comes to stake one's claim then one is restricted to limit one's claim to the one which one is entitled to in law. (Paras 9 and 10).

Held, that where whole of the grant is sought to be resumed and not only a part of it, the question of affording an opportunity of being heard to the grantee does not arise. (Para 11).

Held, that the operation of the order of resumption cannot wait the payment of the value of the building. The order of resumption becomes operative on the date of expiry of period of one month from the date of receipt of the notice. Thereafter, even if the grantee tries to stay in the building, he does so as a trespasser and not as a grantee or a licensee and can be dealt with as such in accordance with law. It would, however, be incumbent upon the respondents to afford an opportunity of hearing to the grantee in regard to the determination of the quantum of value of the resumed building. In the event of the grantee not accepting the quantum of compensation that may be determined after hearing him by the competent authority it would be open to the grantee to challenge the inadequacy of compensation in an ordinary civil court and seek recovery of what he considers to be just and legal compensation for the resumed building. (Para 14).

Bhagwati Devi vs. *President of India and another*, 1972, *All. L. J.* 382. DISSENTED FROM.

Case referred by Hon'ble Mr. Justice Bhopinder Singh Dhillon to a larger Bench on 10th January, 1974 for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice I. S. Tiwana, finally decided the case on 23rd April, 1980.

Petition under Articles 226 and 227 of the Constitution of India praying that by issuing a writ of certiorari, mandamus, prohibition or such other writ or direction as this Hon'ble Court may deem appropriate, the action of the respondents in issuing Annexure 'D' whereby the peaceful possession of the petitioners is being threatened may kindly be quashed.

It is further prayed that the Regulations of 1836 under which action is sought to be taken may be declared ultra-vires *of the Constitution.*

It is further prayed that the Respondents may be directed not to resume this property.

It is further prayed that during the pendency of this writ petition the Respondents may be directed not to interfere with the rights of the petitioners to enjoy the peaceful possession of this property through their tenants and they may be restrained from demolishing or otherwise interfering with the property in dispute.

It is prayed that complete status-quo may kindly be ordered to be observed during the pendency of this writ petition. The records of this case may kindly be summoned and the petitioners may be awarded the costs of this writ petition.

T. S. Doabia, Advocate, *for the Petitioner.*

C. D. Dewan, Advocate with Ramesh Puri and S. P. Jain, Advocates, *for the Respondent.*

JUDGMENT

D. S. Tewatia, J.

(1) The petitioners have impugned the resumption of the property in dispute firstly on an all-embracing ground that it was without the authority of law. Alternatively, regulation 6 of the Governor General-in-Council's Order No. 179, dated 12th September, 1836, which had been invoked is issuing the impugned notice of resumption, Annexure 'D', dated 17th March, 1971, by respondents Nos. 1 and 2, is being labelled as null and void as being violative of the fundamental rights of the petitioners, granted under Articles 31 and 19(1) (f) of the Constitution of India and, in any case, the action of resumption is said to be suffering from the vice of discrimination and thus violative of article 14 of the Constitution.

(2) Before embarking upon a consideration of contentions based on the aforesaid three grounds, it is apt to first clear a confusion in regard to the identification of the property in dispute sought to be resumed.

(3) From the pleadings of the parties including the replication filed on behalf of the petitioners, the facts, which indisputably emerge, are that the petitioners' father, Lala Duni Chand, held on "old grant" terms as contained in the Governor General-in-Council's Order No. 179, dated 12th September, 1836, an area of 2.98 acres in Ambala Cantt. On 30th of July, 1941, the petitioners' father

secured on lease from the Central Government,—*vide* Annexure 'A', an area of 0.38 acres out of the area of 2.98 acres held on "old grant" terms. The lease, which was initially for 30 years, was renewable up to 90 years. The remaining area of 2.60 acres held on "old grant" terms was allotted Survey No. 36 while the area of 0.38 acres held on lease after 30th of July, 1941 was given Survey No. 36-A. The respondents have sought to resume the site covered by Survey No. 36 covering an area of 2.60 acres and the building standing thereon, which is described as Bungalow No. 42, as would be clear from notice, dated 17th of March, 1971, Annexure 'D', which bears reproduction in full. It reads:—

"Whereas the land-comprising Survey No. 36 (Bungalow No. 42) Ambala Cantonment measuring 2.60 acres and bounded as follows:—

North by—Brind Road and Survey No. 36-A, South by—Survey No. 35 (Bungalow No. 40), East by—R.H.A. Mess Road.

West by—Survey No. 33 (Bungalow No. 43), belongs to the President of India (hereinafter called the Government) and is held on "old grant" terms as contained in Governor General's Order No 179, dated 12th September, 1836 under which Government are entitled to resume the said land.

AND WHEREAS the said property is held on hire by the Government is in the occupation of Government.

AND WHEREAS the Government have decided to resume the said property under the terms of the aforementioned Governor General's Order :

NOW, therefore, in exercise of the power hereinfore mentioned, the Government hereby inform you that all rights, easements and interest you may have in the said land as also in the buildings standing thereon shall cease on the expiry of 30 days of this notice.

TAKE NOTICE further that the Government are prepared to pay and so offer you the sum of Rs. 3,640 (Rupees three thousand six hundred and forty only) as the value of the authorized erections standing on the said land. In case the amount of compensation offered is not acceptable to

you, you are at liberty, if you so desire, to remove the structures so as to leave the land in the same condition in which it was before the erections".

That means that the area covered by Survey No. 36-A and which forms the subject-matter of lease-deed, Exhibit 'A', dated 30th July, 1941, is not being sought to be resumed. Further, as would be clear from paragraph 2 of affidavit by way of written statement to Civil Writ Petition No. 1453 of 1971, the land covered by Survey No. 36 on which stood premises of Bangalow No. 42, was admittedly under the ownership of the Central Government (hereinafter referred to as the respondent-Government).

(4) The entire site covered by Survey Nos. 36 and 36-A and the building constructed thereon was with the Central Government on rent of Rs. 500 per mensem.

(5) In the light of the above survey of admitted facts, it would be unnecessary to take notice of any argument based on the assumption in the petition that the property sought to be resumed was under lease with the petitioners,—*vide* lease-deed, Annexure 'A', dated 30th July, 1941, and the said lease stood renewed for a further period of 30 years as a result of the acceptance by the respondents of the proposal to that effect contained in petitioners' letter, Annexure 'B', dated 10th January, 1971.

(6) The question almost identical as posed above, came up for consideration before a Division Bench of the Delhi High Court in *Shri Raj Singh* v. *The Union of India and others* (1). Deshpande, J., who prepared the opinion for the Bench after an exhaustive survey of the constitutional and legislative history, with which it is unncessary to burden this judgment, held that the Governor General-in-Council's Order No. 179, dated 12th September, 1836, is a valid piece of law and any action taken thereunder thus has the authority of law.

(7) While examining the question that regulation 6 was violative of the fundamental rights of the petitioners, contained in Articles 31 and 19(1) (f) of the Constitution, Deshpande, J., observed as under:—

"The power of resumption is a special power given by a statutory regulation. It would be presumed, therefore,

(1) A.I.R. 1973, Delhi 169

that the enforcement of the power is also to be made under the same statutory regulation. For there is nothing to show that the statutory authority was required to go outside the statutory regulation to a Civil Court or to some other authority for such enforcement. The statutory regulation is self-contained. For, the power of resumption simply means that the *status quo ante* before the grant comes into being. It cannot be said, therefore, that the Government took the law into its own hands or that the Government was acting without recourse to law in resuming the land and the house. The regulation is a special law. It did not contemplate the intervention of any judicial or quasi-judicial authority between the Government and the grantee. The total absence of any interest or right in or to the land disabled the grantee from claiming that the Government should file a suit against him to resume possession of the land and the house. There was no dispute to be decided between the grantor and the grantee regarding the resumption. This explains the direct exercise of the power of resumption by the Government under the statutory regulation. No objection can, therefore, be taken to it. According to Article 31(5)(a) of the Constitution the regulation is "existing law" prior to the Constitution. Clause (2) of Article 31 of the Constitution does not, therefore, apply to it. As the regulation clearly gives the right to directly resume the land and the house, the petitioner appellant has been deprived of his house "by authority of law" within the meaning of clause (1) of Article 31. For the same reason, the right of the petitioner appellant to hold the house property under Article 19(1)(f) of the Constitution is subjected to the reasonable restriction under Article 19(5) thereof in the interest of the general public ....."

With respect, we are in entire agreement with the aforesaid formulations of Deshpande, J. (as his Lordship then was).

(8) The primary point that has been debated before us is that the action of respondent No. 1 (hereinafter referred to as the respondent-Government) in invoking regulation 6 for resuming the site covered by Survey No. 36 and the building erected thereon is discriminatory in that the property of persons who held the same under similar "old grant" terms in the past had been acquired by pressing into

service the provisions of the Land Acquisition Act, which envisage payment at market value of the building sought to be resumed along with solatium, which mode of assessment of compensation is more liberal and beneficial to the owner of the superstructure standing on the land owned by the respondent-Government than the compensation assessed and offered when such superstructure is sought to be taken over by the respondent-Government by passing a resumption-order under regulation 6. Yet another point that has been canvassed with some Vehemence on behalf of the petitioners is that principles of natural justice warranted that both before determining the quantum of compensation for the building and before issuing notice of resumption, Annexure 'D', the petitioners should have been afforded an opportunity of hearing.

The learned counsel developing his submission pertaining to unequal treatment and thus being discriminated against, stressed that where two alternative remedies were available it was the one which was less harsh in its operation that had to be resorted to and therefore, the provisions of the Land Acquisition Act, which qualify the test of liberalism, and not the provisions of regulation 6 which provide no criterion for assessment of compensation for the resumed building and thus could be operated harshly against the owner of the building in regard to payment of compensation, that should have been invoked. The respondents in their written statement admitted that in certain cases, in the past, the provisions of the Land Acquisition Act had been pressed into service for acquiring the land and the superstructure standing thereon. But that practice had been given up. In the cases of Roshan Lal Sharma and R. L. Verma referred to in paragraph 23 of the petition, it was stated that it was by an oversight that the provisions of the Land Acquisition Act had been invoked.

(9) In our opinion, the answer to the aforesaid contention is provided by section 3 of the Government Grants Act, 1895 (hereinafter referred to as the Grants Act), which is in the following terms:—

> "All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid ond take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

Their Lordships in *The State of U.P.* v. *Zahoor Ahmad and another*, (2), while interpreting section 3 of the Grants Act, held that section 3 thereof declares unfettered discretion of the Government to impose such conditions and limitations as it thought fit, no matter what the general law of the land might be. The meaning of sections 2 and 3 of the Grants Act was that the scope of that Act was not limited to affect only the provisions of the Transfer of Property Act. The Government had unfettered discretion to impose any conditions, limitations or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law.

(10) In view of the above, the contention that the Central Government was not within its right to invoke the provisions of regulation 6, cannot be countenanced. The petitioners are to be dealt with strictly in accordance with the conditions of grant that they had agreed to abide by when accepting the grant of the land for the purpose of erecting superstructure thereon which now along with the site stands resumed. No doubt, the Government in the past as also in regard to persons mentioned in paragraph 23 of the petition had invoked the provisions of the Land Acquisition Act for acquiring the superstructures on the grant lands. This at best tantamounts to some concession having been shown to such persons by the Government and such a concession cannot be claimed as a matter of right and if the petitioners were not given that concession, that action of the Central Government cannot be termed as discriminatory, for when one comes to stake one's claim, then one is restricted to limit one's claim to the one which one is entitled to in law.

(11) Now we examine the petitioners' contention that before issuing the notice and before determining the quantum of compensation, they should have been afforded an opportunity of hearing. They sought support for this contention from a Division Bench decision of this Court reported as *Union of India and another* v. *Mrs. Hardarshan Sahi*, (3), and drew our pointed attention to the following observations thereof:—

> "The argument of Mr. Kuldip Singh to the effect that in the absence of a specific provision in the grant requiring an

(2) (1973) 2 S.C.C. 547.

(3) A.I.R. 1975, Punjab Haryana 228.

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

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

"I am also in full agreement with the observations of the learned Judge in Chambers that things would have been entirely different if the entire plot forming the subject-matter of the grant was to be resumed. In that event, there would be no cause to be shown by the grantee against the resumption in view of the absolute right of the grantor to resume the grant. Things are, however, substantially different in a case where the Government wants to resume a portion of the land forming the subject-matter of the grant. It does not need any argument to demonstrate that resuming an exactly identical area of land out of a plot on which a bungalow has been built at one place or at any other place may make all the difference for the grantee with whom the remaining land is going to be left, though it may not make any difference at all for the Government insofar as its requirement for a particular area of the land abutting on the road or otherwise is concerned. In such an event it is manifest that the civil rights of the grantee to hold the remaining land after a part of the grant is resumed or seriously jeopardized by the selection of the area which may in one event practically destroy

the remaining grant also, and in another event may not either affect the same at all or effect it negligibly. In such a situation it appears to me to be axiomatic that principles of natural justice would at once come in and require the Central Government to hear the objections and/or the alternative suggestions of the respondent and then finally decide to which portion of the property they would like to take. Of course, the decision of the Government after hearing the respondent is not subject to any argument, appeal or scrutiny."

The facts in *Mrs. Hardarshan Sahi's case* (supra) were that only part of the grant land was sought to be resumed and it was for that reason that this Court held that before issuing the notice of resumption, the grantee ought to have been given an opportunity of hearing. The position in the present case is entirely different in that the whole of the grant is sought to be resumed and, therefore, the question of affording any opportunity as envisaged in *Mrs. Hardarshan Sahi's case* (supra) does not arise.

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

(13) We are also not prepared to go the whole hog with the counsel for the respondents when he, on the strength of the ratio of a judgment of the Allahabad High Court in *Bhagwati Devi* v. *President of India through the Under-Secretary to the Government of India, Ministry of Defence, New Delhi and another*, (4), canvassed that if offer of compensation was not acceptable to the grantee, he

(4) 1972 A.L.J. 382.

could remove the material within the period stipulated in the notice and give vacant possession of the site to the respondents.

(14) Regulation 6 of the Grants Act imposes two conditions on the Government for resuming the grant, i.e., (1) that it would give one month's notice and (2) that it would pay the value of the permitted building that might have been constructed on the grant-land. This regulation has to be interpreted in a manner that it neither thwarts the purpose behind the said provisions of resumption of the grant as and when considered necessary by the grantor nor does it put in jeopardy the grantee's right to receive, in accordance with law, full value of the building that he was permitted to raise on the grant land. When so construed, the extreme contention, in our view of "leave it" or "take it", advanced on behalf of the respondents in regard to the payment of value of the superstructures, cannot pass muster. With great respect, we find ourselves unable to subscribe to the view enunciated in *Bhagwati Devi's case* (supra). We are of the view, as already observed, that the operation of the order of resumption cannot wait the payment of the value of the building. The order of resumption becomes operative on the date of expiry of period of one month from the date of receipt of the notice. Thereafter, even if the grantee tries to stay in the building, he does so as a trespasser and not as a grantee or a licensee and can be dealt with as such in accordance with law. It would, however, be incumbent upon the respondents to afford an opportunity of hearing to the grantee in regard to the determination of the quantum of value of the resumed building. In the event of the grantee not accepting the quantum of compensation that may be determined after hearing him by the competent authority, it would be open to the grantee to challenge the inadequacy of compensation in an ordinary civil Court and seek recovery of what he considers to be the just and legal compensation for the resumed building.

(15) In the present case, Mr. C. D. Dewan, learned counsel for the respondents, supplied to us the document showing the mode of calculating the value of the building. The principle followed in calculating the value of the building is on the basis that the building had outlived its life on the date of resumption. What was then taken into consideration was the amount of the material, the money that would have to be spent on demolishing the building, and the cost of removal of the demolished material from the site. The value

of the building was obtained after deducting the cost of the demolition of the structure and the removal of the material from the site from the value of the material.

(16) Firstly, it would be moot point as to whether the building had outlived its life. The building was with the respondents on a rental of Rs. 500 per month on the date of resumption. Either before or on the date of resumption, it was not said that the building had become worthless for human habitation on account of its dilapidated condition or otherwise. The mode adopted by the respondents in calculating the value of the building of the petitioners is quite contrary to the one ruled by their Lordhips of the Privy Council in *Secretary of State* v. *Sri Narain Khanna*, (5), whereas the principle for calculating the value of the building laid down was in these terms:

> "The subject to be valued being a building apart from the site, the principle of fixing value by ascertaining the cost of reproducing the building at the present time, and then allowing for depreciation in consideration of the age of the building and for the cost of such repairs as might be required apart from depreciation is quite a well known and recognised method of valuing buildings for the purpose of compensation. That method was pursued here, and that method is not, as their Lordships conceive it, affected by the resumption notice, because the prices which would be taken, and were taken, in this case, for the purpose of ascertaining the cost of reproducing the building would not be affected by the resumption notice at all."

In the result, we hold—

(1) that the resumption of the building and the site underneath became operative on the date of the expiry of one month's notice (from the date of receipt) given to the petitioners under regulation 6 in question, as the resumption of the building is not dependent on the prior payment of the value of the building;

(ii) that it was incumbent upon the respondents to afford an opportunity of hearing to the petitioners at the time of

(5) A.I.R. 1942 P.C. 35.

determining the quantum of value of the building resumed; and

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

The petition stands disposed of accordingly with no order as to costs.

Before Rajendra Nath Mittal, J.

BANWARI LAL,—*Petitioner.*

versus

IQBAL SINGH,—*Respondent.*

Civil Revision No. 2274 *of* 1979.

April 23, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (ii) (b)—Landlord letting out building for use as 'general and provision stores'—Tenant using the same for hardware goods—Such tenant—Whether liable to be elected—Change of user—Whether should be such so as to change the nature of the building.

Held, that the words 'general and provision stores' show that the tenant could carry on the business of provisions and other things of daily house-hold use and by no stretch of imagination it will include the business of hardware goods. Section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act 1949 provides that if the Controller after giving the tenant a reasonable opportunity against the application of ejectment, is satisfied that the tenant has without the written consent of the landlord used the building for a purpose other than that for which it was leased, he may make an order directing the tenant to put the landlord in possession of the building. It is clear that if the building has been given by the landlord to the tenant for one purpose and it is used by the latter for another, the