

AFR
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Court No. - 34

Case :- WRIT - C No. - 32687 of 2018

Petitioner :- Hari Babu Jain And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ishwar Chandra Tyagi, Nirvikar Gupta

Counsel for Respondent :- C.S.C. Ajit Kumar Singh (Addl. A.G.),
Nimai Das & Sudhanshu Srivastava (Addl.C.S.C.)

Hon'ble Sudhir Agarwal, J.

Hon'ble Virendra Kumar Srivastava, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. Heard Sri Nirvikar Gupta, learned counsel for petitioners and Sri Ajit Kumar Singh, Additional Advocate General assisted by Sri Nimai Das and Sri Sudhanshu Srivastava, Additional Chief Standing Counsel.
2. This writ petition under Article 226 of Constitution of India has been filed by three petitioners namely Hari Babu Jain, Ajit Kumar Jain and Praveen Kumar Jain, all real brothers and sons of Late Sri Panna Lal, resident of 3-A/3, P.D. Tandon Road, Civil Lines, Allahabad. They have prayed for issue of a writ of certiorari to quash order dated 14.08.2018 (Annexure 1 to the writ petition), passed by District Magistrate, Allahabad communicating that State has exercised right of resumption in respect of Nazul land no.127, Civil Station, Allahabad area 2 acres 3947 Sq. Yards. Letter/notice of aforesaid order is addressed to 21 persons including three petitioners, who are at Serial No.5 in the aforesaid notice.
3. Petitioners have also prayed for issue of a writ of mandamus directing respondents 1 and 2 not to dispossess petitioners from area of 1204.23 Sq. Meters, in Bungalow No.3, P.D.Tandon Road, (Old Kanpur Road), Civil Lines, Allahabad, which is part of Nazul Plot No.127, Civil Station, Allahabad and also not to demolish dwelling house and constructions, superstructures, sheds, office etc., raised by petitioners on the aforesaid land.

4. Facts in brief as set out in writ petition are that Nazul Plot No.127, Civil Station, Allahabad (*hereinafter referred to as "Disputed Nazul Land"*) is a very big plot having area of 2 acres 3947 Sq. Yard i.e. total 11393.53 Sq. Meters. It was initially leased out to one 'E.J.Lazarus' by Secretary of State for India in Council through Collector, District Allahabad vide lease deed dated 02.04.1862. The period of lease was 50 years. After expiry of initial period of 50 years on 01.4.1912, another lease deed was executed on 18.06.1912 for a further period of 50 years and period of lease commenced from 02.4.1912. This lease deed was executed by Secretary of State for India in Council through Collector Allahabad in favour of 'Evelyn Constance Trisham'. The lease was executed for allowing lessee to raise a dwelling house, garden or pleasure grounds. Period of lease expired on 01.4.1962.

5. Disputed Nazul Land was let out by erstwhile lessee i.e. E.C.Trisham to Vishun Nath son of Shambhu Nath and his name was also recorded in Nazul Register. Vishun Nath died in 1958 leaving behind his widow Smt. Jamuna Devi and three sons namely Harihar Nath Dhar, Triloki Nath Dhar, and Sri Dhar. Since lease expired on 01.4.1962, Sri Dhar son of Vishun Nath submitted application dated 04.5.1962 requesting for grant of fresh lease of Disputed Nazul Land. Superintendent Municipal Estates and Nazul Properties, Nagar Mahapalika, Allahabad vide letter dated 26.5.1962 informed him that no subdivision of Disputed Nazul Land would be allowed and all co-lessees have to apply jointly for fresh lease for entire site measuring 2 acres 3947 Sq. Yards. Fresh lease could not be executed, as is evident from letter dated 13.8.1969 sent by Nazul Superintendent, Nagar Mahapalika, Allahabad requiring Smt. Jamuna Devi and Shri Dhar to file affidavit on behalf of all the legal heirs. Heirs of Vishun Nath, however, inducted in 1980, petitioners as tenant over 1204.23 Sq. Yards, allocated in Northern part of P.D.Tandon Road at the rent of Rs.250/- per month. Petitioners raised various constructions etc. over the said land and continuously paid

rent to Harihar Nath Dhar, who issued rent receipts being Karta of family. Petitioners constructed wood shop by the main P.D.Tandon Road in which they started a Furniture Showroom in the name of “Shree Digamber Traders”. In the other portion, family members of petitioners were residing. Petitioners are also paying house tax and water tax of property in their possession.

6. Special Nazul Officer, Allahabad issued a letter dated 05.01.1981 addressed to Harihar Nath Dhar requiring him to produce following documents :

“1. मैट्रिक प्रणाली पर बना हुआ साइट का नक्शा जिसमें पूरा निर्मित क्षेत्रफल पूरे नाप के साथ दिखाया गया हो। यदि भूमि का एक से अधिक उपयोग हो रहा है तो विभिन्न भू उपयोगों का नक्शे पर स्पष्ट रूप से प्रदर्शित किया जाय और यदि साइट का विभाजन हुआ है तो इसे भी नक्शे पर दिखाया जाय।

2. विभाजन की स्थिति में विभाजन स्वीकृत कराने सम्बन्धी जिलाधीश / शासन का आदेश भी प्रस्तुत करें।

3. अपने स्वत्व के समर्थन में आवश्यक दस्तावेज प्रस्तुत करें।

4. यदि समाप्त लीज के कई पट्टेदार थे और आपके अतिरिक्त अन्य लोग नया पट्टा लेने के इच्छुक नहीं हैं तो आपके पक्ष में पट्टा दिए जाने हेतु उनका लिखित संस्तुति / सहमति हेतु प्रस्तुत करें।”

“1- The site-map be made on the basis of the metric system, in which whole constructed area be shown with all dimensions. If the land is used for more than one purpose, then all different usages be specifically shown in the map, and if the site has been partitioned, then it be also shown on the map.

2- In case of partition, order of District Magistrate/ Government relating to approval of partition be also produced.

3- In support of the title, necessary documents be produced.

4- If there were many other lease-holders, and except you, no one is prepared to take new lease, then written recommendation/consent for allotting lease in your favour be produced.”

(Emphasis added)

(English Translation by Court)

7. Vishun Nath died in 1958. His wife Smt. Jamuna died in 1974. An agreement was executed on 08.11.1988 between Harihar Nath as Karta of family and petitioners Hari Babu Jain, Ajit Kumar Jain and Praveen Kumar Jain for transfer of portion of land and structure i.e. area 1204.23 Sq.meters subject to permission of Government, on payment of sale consideration of Rs.84,297.50 by petitioners to Harihar Nath. Relevant stipulations of agreement contained in paras 3, 6, 7 and 10 are as under :

3. That the 2nd party will be responsible to obtain the permission of the Government for the transfer of the portion of the land shown red in the attached plan at his own cost and expenses.

6. That the 1st party will transfer the land under the possession of the 2nd party after the permission was granted by the government after the grant of the fresh lease.

7. That in case the fresh lease was not granted in favour of the 1st party by including the land proposed to be transferred the 2nd party will have the rights to get the fresh lease granted to them direct from the government on payment of premium and fixed annual ground rent demanded by the government and in that case the 1st party will have no objection.

10. That the 1st party including his heirs, executors, administrators and assigns will have no objection in case the 2nd party got the fresh lease executed in their favour direct from the government.” (Emphasis added)

8. The entire consideration was paid by petitioners to Harihar Nath. They are transferees/assignees and co-lessees of part of Disputed Nazul Land measuring 1204.23 Sq. meters. In the light of State Government's policy of making freehold of lease rights enshrined in Government Order (hereinafter referred to as “G.O.”) dated 01.12.1998, petitioner-1 Hari Babu Jain, being Karta of family and on behalf of all other petitioners, filed application dated 28.01.1999 before Collector Allahabad for freehold and also deposited 25 percent of circle rate i.e. Rs.1,08,260/- vide Treasury Challan dated 28.01.1999. Since no decision was taken,

petitioners served notice dated 09.6.2003 on Collector, Allahabad, requesting him to decide petitioners' application for freehold. Another reminder notice was sent on 21.8.2013 by petitioners to Collector Allahabad. Petitioners also filed Original Suit No.392 of 2015, impleading Omeshwar Nath, Brijeshwar Nath, Kamleshwar Nath and Gyaneshwar Nath, all sons of late Harihar Nath, and State of Uttar Pradesh through District Magistrate, Allahabad as defendants 1 to 5 and sought following reliefs:

“11. यह कि माननीय न्यायालय द्वारा जरिये घोषणात्मक डिक्री भवन सं० 3ए/ 3 पी०डी० टण्डन रोड सिविल लाइन इलाहाबाद को वादीगण के हक में घोषणा कर दी जावे। उक्त भवन के मालिक काबिज दाखिल वादीगण हैं प्रतिवादीगण से कोई वास्ता नहीं है।

12. (अ) यह कि प्रतिवादीगण से वादीगण को मुकदमा खर्चा दिलाया जाय।

(ब) यह कि करीन हिंसा बहक वादीगण विरुद्ध प्रतिवादीगण साबित कर लिये जाये।”

“11. *That a decree of declaration for building no. 3A/3, PD Tandon Road, Civil Lines, Allahabad may kindly be passed by the Hon'ble Court in favour of the plaintiffs to the effect that he **plaintiffs are owners having possession over the said building and the defendants have no concern with it.***

12 (a) *That the cost of the case may kindly be awarded to the plaintiffs from the defendants.*

b) *That share of plaintiff against defendants be declared.*

(Emphasis added)

(English Translation by Court)

9. The aforesaid suit is still pending. In the meantime, now respondent-2 has passed impugned order dated 14.08.2018.

10. The order has been assailed on various grounds, i.e. notice contains names of some persons who are already dead; petitioners had applied for freehold but their application has not been decided; in an abrupt manner, impugned order has been passed without giving any opportunity; it is illegal and arbitrary particularly when in number of

cases freehold has been allowed; respondents could have acquired land following procedure laid down in Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (*hereinafter referred to as Act, 2013*) but the said procedure has not been followed and therefore, resumption is wholly illegal; lot of land is available for developing as 'Sports Complex' besides the fact that a 'Sport Complex' is already available in the city hence alleged requirement for development of 'Sports Complex' is not genuine and against public policy; petitioners cannot be ousted forcibly without resorting to procedure prescribed in Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (*hereinafter referred to as "U.P. Act, 1972"*); and, petitioners having been allowed to stay in land in dispute despite expiry of lease in 1962, bring in doctrine of estoppel against respondents and now they cannot take a somersault by asking petitioners to vacate land in dispute over which several developments by raising constructions have been made by petitioners.

11. Respondent -2 contesting the writ petition has filed counter affidavit sworn by Sri Gore Lal Shukla, Additional District Magistrate (Nazul), Allahabad. He has pleaded that Disputed Nazul Land was leased out to E.C.Tresham vide lease deed dated 18.6.1912 executed for a period of 50 years with effect from 02.04.1912. In terms of Government Grants Act 1895 (*hereinafter referred to as "GG Act, 1895"*) rights of parties are to be governed by the said lease deed and not by any other contrary statutory law. With respect to surrender after expiry of period of lease, relevant stipulations in lease deed reads as under :-

"...And also shall and will at the end, expiration or other sooner determination of the said term peaceably and quietly leave surrender and yield up to the said Secretary of State, his Successors or Assigns the said piece or parcel of land or ground together with all such of the said erection or building and all fixtures and fittings which at any time and during the said term shall be affixed or set up within or upon the said demised premises

as the said Secretary of State, his Successors and Assigns shall desire to take over at a valuation according to the option hereinafter reserved to them, subject however to the conditions hereinafter contained.” (Emphasis added)

12. With respect to resumption by State Government, lease deed contains a clause, which reads as under:-

“Provided always and it is hereby declared and agreed that no compensation or payment shall be claimable by the said lessee his Executors, Administrators or Assigns for any buildings, erections, or fixtures, erected affixed, or placed by him, them or any of them in or upon the said premises or any part thereof, in case these premises shall be determined by re-entry for forfeiture in which case the buildings, erections and fixtures shall vest absolutely in the said Secretary of State, his Successors and Assigns as his own property without any compensation or payment in respect thereof” (Emphasis added)

13. Land is required for public purpose of developing a 'Sports Complex' in the city of Allahabad, which has been chosen to be developed as “Smart City”. A proposal sent to State Government on 19.6.2018 for resumption/re-entry has been approved by State Government vide letter 9.8.2018 and in terms thereof order dated 14.8.2018 has been passed by District Magistrate, Allahabad. No lease deed was ever executed in favour of Vishun Nath son of Shambhu Nath and there is no renewal of lease after 1.4.1962. The alleged induction of petitioners in 1980 is wholly unauthorized as it was never approved or sanctioned by State Government. Mere application for 'freehold' does not confer any vested right in petitioners as held by the Full Bench of this Court in **Anand Kumar Sharma Vs. State of U.P. 2014 (2) ADJ 743**. In any case, petitioners have no right over land in dispute on the basis of agreement dated 8.11.1988 since, Executors at that time did not possess any transferable right at all. Power of resumption is consistent with terms of lease read with provisions of GG Act 1895. It is also said that GG Act, 1895 has been repealed by Repealing and Amending (Second)

Act, 2017 (hereinafter referred to as “Act, 2017”) but rights etc. in respect of effect and consequences etc. of act already done or suffered have been saved. Section 2 provides that enactment specified in First Schedule are hereby repealed. Reference of GG Act, 1895 is in First Schedule. Section 4 of Act, 2017 reads as under :

“4. Savings.- *The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;*

and this Act shall not affect the validity, invalidity, effect or consequences or anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or any force.”

(Emphasis added)

14. In view of GG Act, 1895 read with Section 4 of Act, 2017, respondents 1 and 2 have exercised power of resumption. The respondents, in their counter affidavit have placed reliance upon **Hajee S.V.M. Mohd. Jamaludeen Bros. & Co. vs. Govt. of T.N., (1997) 3 SCC 466; State of U.P. vs. Zahoor Ahmad (1973) 2 SCC 547; Chintamani Ghosh and another vs. State of U.P. and others, 2001 (2) UPLBEC 1003; State of Andhra Pradesh vs. Kaithala Abhishekam, AIR 1964 AP 450; Union of India and others vs. Harish Chand**

Anand, AIR 1996 SC 203; Smt. Shakira Khatoon Kazmi and others vs. State of U.P. and others, 2002 (1) AWC 226; Azim Ahmad Kazmi and others vs. State of U.P. and others (2012) 7 SCC 278; Anand Kumar Sharma vs. State of U.P. and others, 2014 (2) ADJ 742 and judgment of this Court in Writ Petition No. 62588 of 2010 (M/s Madhu Colonizers Pvt. Ltd. vs. State of U.P. and others) decided on 2.4.2013.

15. A rejoinder affidavit has been filed by petitioners denying all averments made in the counter affidavit which are contrary to pleadings of petitioners in writ petition. Basically averments in rejoinder affidavit are repetition of pleadings of writ petition, hence, we are not dealing with the same but may refer the same at a later stage whenever it is required.

16. Learned counsel for petitioners argued that petitioners are in possession of land in dispute since 1980. No step was taken by State of U.P. or Collector, Allahabad to dispossess petitioners from land in dispute, hence petitioners' possession over land in dispute cannot be said to be wholly illegal. They cannot be treated as mere trespasser. In accordance with policy of freehold, petitioners have also applied for conversion of lease rights into freehold but no decision has been taken thereon and abruptly impugned order has been passed, that too, without any show cause notice to the petitioners or giving opportunity, hence it is wholly illegal and in violation of principles of natural justice. It is also said that resumption, in effect, amounts to acquisition of land and therefore, taking land of petitioners without following procedure prescribed under Act, 2013 is patently illegal. He further submitted that respondents have discriminated petitioners by keeping petitioners' application for conversion of lease rights into freehold pending while in various other matters such conversion has been allowed. Lastly, it is said that resumption on the ground of 'public purpose' i.e. for development of

'Sports Complex' is nothing but illusory and pretext to oust petitioners from land in dispute over which petitioners' residence and commercial establishments are existing, providing shelter and source of earning livelihood, hence petitioners' ouster in such manner violate their fundamental right under Articles 14 and 21 of Constitution of India.

17. Sri Ajit Kumar Singh, learned Additional Advocate General said that petitioners are wholly unauthorised occupants over land in dispute; have no right at all whatsoever; writ petition at the instance of petitioners in respect of land in dispute is not maintainable and deserves to be dismissed for this reason alone. He further reiterated all the conditions and arguments, which have been pleaded in counter affidavit and relied on authorities, which are cited in counter affidavit, which we have noticed above.

18. From rival submissions, issues which, in our view, require to be adjudicated in these writ petitions are :

- i. What is "Nazul"?
- ii. What is/are Statute(s) governing Crown (later amended as "Government") Grant of land owned by Crown (Government) i.e. Nazul? Its status and effect.
- iii. Whether lease right governed by instrument of lease read with GG Act, 1895 is transferrable and if so, whether it is subject to any condition and any transfer made not consistent with such conditions, whether would be valid and confer an actionable right upon Transferree?
- iv. What was the status of Lessee after expiry of lease-deed and any subsequent Transferee inducted by such Lessee on the land in respect whereof Grant was executed, whether such person brought in possession before expiry of lease or subsequently, would have any legally enforceable right over such premises?

- v. Whether petitioners had right to get land in dispute freehold on mere submission of application form and such right will override right of State for resumption/re-entry on disputed Nazul land?
- vi. Whether right of resumption exercised by State in the present case is valid and in accordance with law and is it open to State Government to seek resumption by giving notice to occupant of the land in accordance with terms of lease deed or State is bound to follow procedure of filing suit for eviction or procedure laid down in U.P. Act, 1972?
- vii. Whether impugned notice and order of approval of State Government for resumption/re-entry over land in dispute is invalid on account of lack of opportunity to petitioners. In other words, whether principles of natural justice are applicable when State Government chose to exercise right of resumption/re-entry in respect of land owned by it?

19. We have framed above questions in the light of the fact that it is admitted by all the parties that land in dispute is 'Nazul' and owned by State Government.

20. Questions (i) and (ii), in our view, can be taken together hence we proceed to discuss both these questions (i) and (ii) together.

21. Every land owned by State Government is not termed as 'Nazul' and therefore it has become necessary to understand, what is 'Nazul'.

22. State Government may own land by having acquired and vested in various ways, which includes vesting of land in the capacity of a Sovereign body and having right of bona vacantia. Property may also be acquired and owned by State by way of acquisition under the Statute relating to acquisition of land or by purchase through negotiation or gift by an individual or in similar other manner. All such land, which is

owned and vested in State Government results in making the State, owner of such land, but in legal parlance, the term “Nazul” is not applicable to all such land.

23. It is only such land which is owned and vested in the State on account of its capacity of Sovereign, and application of right of bona vacantia, which is covered by the term 'Nazul', as the term is known for the last more than one and half century. In Legal Glossary 1992, fifth edition, published by Legal Department of Government of India, at page 589, meaning of the term 'Nazul' has been given as 'Rajbhoomi, i.e., Government land'.

24. Nazul is an Arabic word. It refers to a land annexed to Crown. During British Regime, immovable property of individuals, Zamindars, Nawabs and Rajas when confiscated for one or the other reason, it was termed as 'Nazul property'. The reason being that neither it was acquired nor purchased after making payment. In old record, when such land was referred in Urdu, this kind of land was shown as 'Jaidad Munzabta'.

25. For dealing with such property, under the authority of Lt. Governor of North Western Provinces, two orders were issued in October, 1846 and October, 1848. Therein, after the words “Nazul property”, its english meaning was given as 'Escheats to the Government'. Sadar Board of Revenue on May 20, 1845 issued a circular order in reference to “Nazul land” and in para 2 thereof it mentioned, “The Government is the proprietor of those land and no valid title to them can be derived but from the Government”. Nazul land was also termed as “Confiscated Estate”. Under Circular dated July 13, 1859, issued by Government of North Western Provinces, every Commissioner was obliged to keep a final confiscation statement of each District and lay it before Government for orders.

26. Right of King to take property by 'escheat' or as 'bona vacantia' was recognized by common law of England. Escheat of property was

Lord's right of re-entry on real property held by a tenant, dying intestate, without lawful heirs. It was an incident of Feudal Tenure and based on the want of a tenant to perform Feudal services. On the tenant dying intestate without leaving any lawful heir, his estate came to an end and Lord, by his own right and not by way of succession or inheritance from the tenant, re-entered real property as owner. In most cases, land escheated to Crown as the 'Lord Paramount', in view of gradual elimination of Intermediate or Mesne lords since 1290 AD. Crown takes as 'bona vacantia' goods in which no one else can claim property. In **Dyke v. Walford 5 Moore PC 434= 496-13 ER 557 (580)** it was said 'it is the right of the Crown to bona vacantia to property which has no other Owner'. Right of the Crown to take as "bona vacantia" extends to personal property of every kind. The escheat of real property of an intestate dying without heirs was abolished in 1925 and Crown thereafter could not take such property as bona vacantia. The principle of acquisition of property by escheat, i.e., right of Government to take on property by 'escheat' or 'bona vacantia' for want of a rightful owner was enforced in Indian territory during the period of East India Company by virtue of Statute 16 and 17 Victoria, C. 95, section 27.

27. We may recollect, having gone through history, that prior to 1857, several Estates were taken over by British Company i.e. East India Company by way of annexation. Doctrine of lapse applied in Jhansi was another kind of above mentioned two principles.

28. The above provision had continued by virtue of Section 54 of Government of India Act, 1858, section 20(3)(iii) of Government of India Act, 1915 and section 174 of Government of India Act, 1935. After enactment of Constitution of independent India, Article 296 now continues above provision and says:

*'Subject as hereinafter provided, **any property in the territory of India which**, if this Constitution had not come into operation,*

would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union.' (Emphasis added)

29. Article 296, therefore, has retained power of State to get ownership of such land, in respect whereof principle of 'escheat', 'lapse' or 'bona vacantia' would have been applicable prior to enforcement of Constitution of India. The above power continued to apply after enactment of Constitution with the only modification that if such land is situate within the territory of State Government, it will vest in State and in other cases, it will vest in Union of India. Vesting of land and giving ownership to State Government or Union of India under Article 296 is clearly in respect of a land, which will come to it by way of 'escheat', 'lapse' or 'bona vacantia' and not by way of acquisition of land under some statute or purchase etc.

30. In **Pierce Leslie and Co. Ltd. Vs. Miss Violet Ouchterlony Wapsnare, AIR 1969 SC 843**, Court has considered the above principles in the context of 'Sovereign India' as stands under Constitution after independence, and, has observed :

“...in this country the Government takes by escheat immovable as well as moveable property for want of an heir or successor. In this country escheat is not based on artificial rules of common law and is not an incident of feudal tenure. It is an incident of sovereignty and rests on the principle of ultimate ownership by the State of all property within its jurisdiction”.

(Emphasis added)

31. Court placed reliance on **Collector of Masulipatam v. C. Vencata Narainapah 8 MIA 500, 525; Rane Sonet Kowar v. Mirza Himmut Bahadoor (2) LR 3 IA 92, 101, Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay [1958] SCR 1122, 1146, Superintendent and, Legal Remembrancer v. Corporation of Calcutta [1967] 2 SCR**

170.

32. Judicial Committee in **Cook v. Sprigg (1899) AC 572** while discussing, 'what is an act of State', observed :

“The taking possession by Her Majesty, whether by cession or by any other means by which sovereignty can be acquired, was an act of State.” (Emphasis added)

33. This decision has been followed in **Raja Rajinder Chand v. Mst. Sukhi, AIR 1957 SC 286**.

34. In **Nayak Vajesingji Joravarsingji v. Secretary of State for India in Council AIR 1924 PC 216**, Lord Dunedin said :

“When a territory is acquired by a sovereign State for the first time, that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing.” (Emphasis added)

35. In **Dalmia Dadri Cement Co. Ltd. v. CIT [1958] 34 ITR 514 (SC) : AIR 1958 SC 816**, Court said (page 523 of 34 ITR) :

“The expression 'act of State' is, it is scarcely necessary to say, not limited to hostile action between rulers resulting in the occupation of territories. It includes all acquisitions of territory by a sovereign State for the first time, whether it be by conquest or cession.” (Emphasis added)

36. In **Promod Chandra Deb v. State of Orissa AIR 1962 SC 1288**, Court said, 'Act of State' is the taking over of sovereign powers by a State in respect of territory which was not till then a part of its territory, either by conquest, treaty or cession, or otherwise'.

37. To the same effect was the view taken by a Constitution Bench in **Amarsarjit Singh v. State of Punjab AIR 1962 SC 1305**, where in para

12, Court said:

“It is settled law that conquest is not the only mode by which one State can acquire sovereignty over the territories belonging to another State, and that the same result can be achieved in any other mode which has the effect of establishing its sovereignty.”

38. In **Thakur Amar Singhji v. State of Rajasthan AIR 1955 SC 504**, in para 40, Court said :

“The status of a person must be either that of a sovereign or a subject. There is no tedium quid. The law does not recognise an intermediate status of a person being partly a sovereign and partly a subject and when once it is admitted that the Bhomicharas had acknowledged the sovereignty of Jodhpur their status can only be that of a subject. A subject might occupy an exalted position and enjoy special privileges, but he is none the less a subject...” (Emphasis added)

39. In **State of Rajasthan vs. Sajjanlal Panjawat AIR 1975 SC 706** it was held that Rulers of the erstwhile Indian States exercised sovereign powers, legislative, executive and judicial. Their firmans were laws which could not have been challenged prior to the Constitution. Court relied on earlier decisions in **Director of Endowments, Govt. of Hyderabad vs. Akram Ali, AIR 1956 SC 60**, and **Sarwarlal vs. State of Hyderabad, AIR 1960 SC 862**.

40. In **Promod Chandra Deb vs. State of Orissa AIR 1962 SC 1288** "act of the State" was explained in the following words :

“an "act of State" may be the taking over of sovereign powers either by conquest or by treaty or by cession or otherwise. It may have happened on a particular date by a public declaration or proclamation, or it may have been the result of a historical process spread over many years, and sovereign powers including the right to legislate in that territory and to administer it may be acquired without the territory itself merging in the new State.”

(Emphasis added)

41. This decision has been followed later in **Biswambhar Singh vs. State of Orissa 1964 (1) SCJ 364** wherein Court said:

16. *Thus, a territory acquired by a sovereign State is an Act of State but the land comprising territory does not become the land owned by State. The land owned by State may come to it in various ways, like confiscation, purchase, escheat or bona vacantia, gift, etc. In such a case the ownership vests in State, like any other individual and State is free to deal with the same in a manner like any other owner may do so.*

17. *Thus 'Nazul' is a land vested in State for any reason whatsoever that is cession or escheat or bona vacantia, for want of rightful owner or for any other reasons and once land belong to State, it will be difficult to assume that State would acquire its own land. It is per se impermissible to acquire such land by forcible acquisition under Act, 1894, since there is no question of any transfer of ownership from one person to another but here State already own it, hence there is no question of any acquisition.*

(Emphasis added)

42. Thus the land in question which is admittedly 'Nazul', belonged to the category as discussed above i.e. it came to be vested and owned by State in its capacity of Sovereign and right of bona vacantia. When acquisition is made under the provisions of a Statute, purpose of acquisition is already known and State pay its price but when land is owned by State, which is Nazul, objective of use of such land is not predetermined but it can be utilized by State for larger public welfare and its benefit, as necessitated from time to time. In other words 'Nazul' land forms the asset owned by State in trust for the people in general who are entitled for its use in the most fair and beneficial manner for their benefit. State cannot be allowed to distribute such largesse by pick and choose or to some selected groups etc.

43. Historical documents, record as also authorities discussed above show that earlier Government i.e. East India Company upto 1858 and thereafter British Government used to allot "Nazul land" to various persons, who had shown their alliance to such Government in various ways, sometimes by deceiving their Indian counter parts who had raised voice against British Rule, or remained faithful to British regime and

helped them for their continuation in ruling this country and similar other reasons. Sometimes land was given on lease without any condition and sometimes restricted for certain period etc., but in every cases, lease was given to those persons who were faithful and shown complete alliance to British Rule. The reason was that in respect of Nazul, no predetermined objective was available as was the case in respect of land acquired by State by way of acquisition under Statute of Acquisition after paying compensation or purchase. Such allocation of land by English Rulers used to be called “Grant”.

44. In other words, we can say that initially land owned by State used to be allotted in the form of 'Grant' by British Government. No specific statutory provisions were available to govern it. TP Act, 1882 was enacted to govern transfer of immovable property. Sections 10 to 12 of TP Act, 1882 made provisions invalidating with certain exceptions, all conditions for forfeiture of transferred property on alienation by transferee and all limitations over consequence upon such alienation or any insolvency of or attempted alienation by him.

45. Apprehending that above provisions of TP Act, 1882, may be construed as a fetter upon discretion of Crown in creation of inalienable Jagirs in 'Grants', acting upon advice that it would not be competent for Crown to create an inalienable and impartible estate in the land comprised in the Crown Grant, unless such land has heretofore descended by custom as an impartible Raj, it was sought to make a separate statute to give supremacy to the provisions contained in Crown's Grant, notwithstanding any other law including TP Act, 1882. With this object, i.e., 'GG Act 1895' was enacted.

46. Preamble of GG Act, 1895 gives purpose of its enactment stating that doubts have arisen to the extent and operation of TP Act, 1882 and to the power of Crown (later substituted by word “Government”) to impose limitations and restrictions upon grants and other transfers of

land made by it or under its authority, hence to remove such doubts, GG Act, 1895 was enacted.

47. Section 2 of GG Act, 1895, as it was initially enacted, read as under :

“Transfer of Property Act, 1882, not to apply to Government grants.- Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of Her Majesty the Queen Empress, Her heirs or successors, or by or on behalf of the Secretary of State for India in Council to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.” (Emphasis added)

48. The above provision was amended in 1937 and 1950. The amended provision read as under :

“2. Transfer of Property Act, 1882, not to apply to Government grants.- Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.” (Emphasis added)

49. Section 3 of GG Act, 1895 read as under :

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

50. In State of Uttar Pradesh, vide Government Grants (U.P. Amendment) Act, 1960 (U.P. Act No.XIII of 1960), Sections 2 and 3 of GG Act, 1895, were substituted by Section 2, as under :

“2. (1) *Transfer of Property Act, 1882, not to apply to Government Grants.- Nothing contained in the Transfer of Property Act, 1882, shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein, heretofore made or hereafter to be made, by or on behalf of the Government to or in favour of any person whomsoever; and every such grant and transfer shall be construed and take effect as if the said Act had not been passed.*”

(2) *U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 not to affect certain leases made by or on behalf of the Government.- Nothing contained in the U.P. Tenancy Act, 1938, or the Agra Tenancy Act, 1926, shall affect, or be deemed to have ever affected any rights, created, conferred or granted, whether before or after the date of the passing of the Government Grants (U.P. Amendment) Act, 1960, by leases of land by, or on behalf of, the Government in favour of any person; and every such creation, conferment or grant shall be construed and take effect, notwithstanding anything to the contrary contained in the U.P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926.*

(3) *Certain leases made by or on behalf of the Government to take effect according to their tenor.- All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to in Section 2, shall be valid and take effect according to their tenor, any decree or direction of a court of law or any rule of law, statute or enactment of the Legislature, to the contrary notwithstanding :*

Provided that nothing in this section shall prevent, or be deemed ever to have prevented, the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural land.” (Emphasis added)

51. A perusal of Section 2 of GG Act, 1895 shows two things :
- i. A declaration is made that any grant or other transfer of land or of any interest therein, made by or on behalf of Government, in favour of any person, on and after enactment of GG Act, 1895, would not be governed by provisions of TP Act, 1882 i.e. nothing contained in TP Act, 1882 shall apply to such Grant, transfer or

interest.

ii. A clarification that a Grant or Transfer, referred to in Section 2, when is to be construed and given effect, it shall be done in such manner and by treating as if TP Act, 1882 has not been passed.

52. Thus, GG Act, 1895, in fact, was a declaratory statute. First declaration is in respect of Grant or transfer of land or creation of any interest, as the case may be, to exclude TP Act, 1882 for all purposes. Second part of Section 2 clarified that while construing and giving effect to a Grant or Transfer, referred to in Section 2, it will be presumed that TP Act, 1882 has not been passed at all.

53. In Section 2(1) of GG Act, 1895, as amended in Uttar Pradesh, we do not find any distinction vis a vis what has been said in Section 2 of GG Act, 1895. There is an addition in GG Act, 1895 in its application to Uttar Pradesh, by inserting sub-section (2) in Section 2, a provision in respect of U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 also, making a similar declaration, as made in sub section (1) in respect of TP Act, 1882.

54. Sub-section (3) of Section 2 of GG Act, 1895 protect certain leases, already made, declaring same to be valid in the light of insertion of sub-section(1) of Section 2 in the State of Uttar Pradesh and that is why, notwithstanding any decree or direction of Court of law, leases already made, were validated, which otherwise might have been affected by U.P. Tenancy Act, 1938 or Agra Tenancy Act, 1926.

55. Proviso to sub-section (3) of Section 2 of GG Act, 1895 further declare that Section 2 of GG Act, 1895 will have no effect when land is sought to be acquired under the provisions of Statute relating to acquisition or for giving effect to a Statute relating to land reforms or imposition of ceiling on agricultural land.

56. Section 3 of GG Act, 1895 is not available in State of U.P. after U.P. Amendment Act, 1960 since Sections 2 and 3 of Principal Act virtually got amalgamated in the form of Section 2, by Government Grants (U.P. Amendment) Act, 1960. However, intent, effect and declaration by legislature is almost pari materia with the only addition that in State of U.P., U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 are also excluded in the same manner as was done in respect of TP Act, 1882.

57. Sections 2 and 3 of GG Act, 1895 were considered in **State of U.P. vs. Zahoor Ahmad, 1973(2) SCC 547** and in para 16, Court said :

“Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of Sections 2 and 3 of the Government Grants is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has 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.” (Emphasis added)

58. Again in **Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. vs. Government of Tamil Nadu (1997) 3 SCC 466**, Court said that combined effect of two sections of GG Act, 1895 is that terms of any Grant or terms of any transfer of land made by a Government would stand insulated from tentacles of any statutory law. Section 3 places terms of such Grant beyond reach of any restrictive provision contained in any enacted law or even equitable principles of justice, equity and good conscience adumbrated by common law, if such principles are inconsistent with such terms. Court said :

“The two provisions are so framed as to confer unfettered discretion on the government to enforce any condition or limitation or restriction in all types of grants made by the

government to any person. In other words, the rights, privileges and obligations of any grantee of the government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law.”

(Emphasis added)

59. In **Azim Ahmad Kazmi and others vs. State of U.P. and Another (2012) 7 SCC 278** observations made in para 16 in **State of U.P. vs. Zahoor Ahmad (supra)** have been reproduced and followed.

60. In **State of U.P. and others vs. United Bank of India and others (2016) 2 SCC 757**, in para 30 of the judgment, Court said :

“Indisputably, the lease of nazul land is governed by the Government Grants Act, 1895. Sections 2 and 3 of the Government Grants Act, 1895 very specifically provide that the provisions of the Transfer of Property Act do not apply to government lands”

(Emphasis added)

61. Thus, a 'Grant' of a Nazul will be governed by terms and conditions contained in the instrument/deed of Grant, wholly unaffected by any Statute providing otherwise. It cannot be doubted that the lease granted in the case in hand is/was a 'Grant' governed by GG Act, 1895. Broadly, 'Grant' includes 'lease'.

62. The term “Grant” has not been defined in GG Act, 1895. What a 'Grant' would mean is of importance for the reason that GG Act, 1895 has used the term “Grant”. Therefore, it has to be seen “whether a lease executed by State in respect of land owned by it and covered by the term “Nazul”, through a lease deed or instrument of lease or indenture of lease, whatever the term used, will constitute a “Grant” of State or it is something else.

63. In **Black's Law Dictionary, Eighth Edition, at page 719**, the word “Grant” has been defined as under :

“Grant, n. 1. An agreement that creates a right of any description other than the one held by the grantor. Examples include leases, easements, charges, patents, franchises, powers, and licenses. 2.

The formal transfer of real property. 3. The document by which a transfer is effected; esp., DEED. 4. The property or property right so transferred.”

64. Interestingly, in **Black's Law Dictionary**, 'Grant' has been said to be of various kinds and it has enumerated seven types of 'Grant' as under:

“Community grant. *A grant of real property made by a government (or sometimes by an individual) **for communal use**, to be held in common with no right to sell. A community grant may set out specific, communal uses for the property, such as for grazing animals or a playground. Cf. Private grant.*

Escheat grant. *A government's grant of escheated land to a new owner. - Also termed escheat patent.*

imperfect grant. *1. A grant that requires the grantee to do something before the title passes to another. Cf. Perfect grant. 2. A grant that **does not convey all rights and complete title against both private persons and government, so that the granting person or political authority may later disavow the grant.** See *Paschal v. Perex*, 7 Tex. 368 (1851).*

inclusive grant. *A deed or grant that describes the boundaries of the land conveyed and excepts certain parcels within those boundaries from the conveyance, usu. Because those parcels of land are owned or claimed by others.- Also termed inclusive deed.*

office grant. *A grant made by a legal officer because the owner is either unwilling or unable to execute a deed to pass title, as in the case of a tax deed. See tax deed under DEED.*

Perfect grant. *A grant for which the grantor has done everything required to pass a complete title, and the grantee has done everything required to receive and enjoy the property in fee. Cf. Imperfect grant*

private grant. *A grant of real property made to an individual for his or her private use, including the right to sell it. Private grants made by a government are often found in the chains of title for land outside the original 13 states, esp. in former Spanish and Mexican possession.”*

65. In **Corpus Juris Secundum**, A Complete Restatement of the

Entire American Law, as developed by All Reported Cases, Volume XXXVIII, word “Grant” has been defined at page 1066-1070, as under :

“Grant – In General – A word which has a peculiar and appropriate meaning in the law, and is to be construed and understood according to such meaning; but its signification, in particular cases is to be determined from its connection and the manner of its use.

As a Noun

*In General. **The act of granting**; a bestowing or conferring; a boon, a concession, a gift; also the thing granted or bestowed. As **applied to grants by public authority**, the word “grant” implies the conferring by the sovereign power of some valuable privilege, franchise, or other right of like character on a corporation, person, or class of persons; an act evidenced by letters patent under the great seal, **granting something from the king to a subject**. In a somewhat different sense, an admission of something as true.*

***As a Contract.** A grant is said to be a contract executed, that is, one in which the object of the contract is performed. Ordinarily, the essential elements of a contract are necessary to constitute a grant, such as competent parties and a subject matter, a legal consideration, a mutuality of agreement and of obligation. As in the case of other contracts in writing, it ordinarily comprehends something more than the mere execution of the instrument; it includes a delivery of it. It is not indispensable, however, that technical words be used.*

***Transfer of Property.** As a technical term, originally used to signify a conveyance of an incorporeal hereditament whereof livery could be had, but now of far more extended application, see Deeds (1 c notes 54 – 63). While the term is commonly used to denote private conveyances, it has been characterized as a nomen generalissimum, applicable to all sorts of conveyances, and in this sense has been defined as **a transfer of property, real or personal, by deed or writing**. The following notes contain examples of what, under particular circumstances and according to the subject matter and the context, the term may be applied to, or be held to include or what the term may be held not to include.*

...

Transferring property. An operative word of transfer, technically applicable to real estate, although not necessarily so. It is made use of in deeds of conveyance of lands to import a transfer; and in this application has been defined as meaning to convey; to make conveyance of; to transfer property by an instrument in writing.

As used in a will, to devise or to bequeath.”

66. In **Words and Phrases, Permanent Edition, Volume 18A Gonyer v. Goytiller**, word “Grant” has been defined at page 379, as under :

“ ...

*To grant means to give over, to make conveyance of, to give the possession or title to, to convey-usually in answer to petitioner; to confer or bestow, with or without compensation, particularly in answer to prayer or request; to admit as true when disputed or not satisfactorily proved; to yield belief to; to allow; to yield; to concede. Grant is usually regarded as synonymous with give, confer, bestow, convey, transfer, admit, allow, concede. As a noun, the term signifies: (1) The act of granting; a bestowing or conferring; concession; admission of something as true. (2) The thing granted or bestowed; a gift; a boon. (3) **a transfer of property by deed or writing, especially an appropriation or conveyance made by the government, as a grant of land.**”*

67. In **Jowitts Dictionary of English Law, Second Edition by John Burke (Volume 1)**, word “Grant” has been defined at page 870, as under:

“Grant :a common law conveyance.

... .

The sovereign's grants are matters of record, and are either letters patent or writs close.

“Grant” is the term commonly applied to rights created or transferred by the Crown, e.g., grants of pensions, patents, charters, franchises. It is also used in reference to public money devoted to special purposes. See Exchequer Grants.”

68. In **Biswas Encyclopedic Law Dictionary (Legal & Commercial)**

Third Edition 2008, word “Grant” has been defined at page 737, as under :

“GRANT. *The act of granting; something granted, especially a gift for a particular purpose; a transfer of property by deed or writing; the instrument by which such a transfer is made; also the property so transferred.*

A grant may be defined generally as the transfer of property by an instrument in writing without the delivery of possession of any subject-matter thereof. Mozley & Whiteley's Law Dictionary, 8th edn.”

69. In **P Ramanatha Aiyar's “The Law Lexicon”, Fourth Edition 2017**, word “Grant” has been defined at page 762-763, as under :

“... ”

An operative word of conveyance, particularly appropriate to deeds of grant, properly so called, but used in other conveyances also, such as deeds of bargain and sale, and leases.

...

“This word is taken largely where any thing is granted or passed from one to another, and in this sense it doth comprehend feofments, bargains and sales, gifts, leases, charges, and the like; for he that doth give, or sell, doth grant also and thus it is sometimes in writing or by deed, and sometimes it is by word without writing. But the word being taken more strictly and properly, it is the grant, conveyance, or gift, by writing of such an Incorporeal thing as lieth in grant, and not in livery, and cannot be given or granted by word only without deed, or it is the grant by such persons as cannot pass anything from them but by deed, as the King, bodies corporate, &c. And this albeit it may be made by other most proper to this purpose”

The word “grant” in sec. 5 connotes transfer of property and mining leases are property. Biswanath Prasad v. Union of India, AIR 1965 SC 821, 825. [Mines and Minerals (Regulation and Developments) Act (67 of 1957), S. 5(1)]

The expression “grant” is wide enough to take within its sweep a grant by the government to the Girasdar and is not limited to a grant by the Girasdar to the tenant. Digvijaysingh Ji v. Manji

Savda, AIR 1969 SC 370, 372. [Saurashtra Land Reforms Act (25 of 1951), S. 18]

“GRANT, BESTOW, CONFER. Honours, distinctions, favours, privileges are conferred. Goods, gifts, endowments are bestowed. Requests, prayers, privileges, favours, gifts, allowances, opportunities are granted. A peculiar sense attaches to the word Grant as a legal term, as a piece of land granted to a noble or religious house. So Blackstone speaks of “the transfer of property by sale, grant, or conveyance.” (Smith. Syn. Dis.)”

70. Under Indian Easements Act, 1882, (hereinafter referred to as “IE Act, 1882”), definition of “licence” in Section 52 says that it is the Grant of a right made by Grantor. Sections 53 and 54 of IE Act, 1882 also refer to grant of licence. Thus, without a “Grant” in general sense, a licence cannot be created. This is how definition of “licence” under IE Act, 1882 vis a vis the term “Grant” was considered in **Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. (supra)**. Court also said that though the term “Grant” is not defined in GG Act, 1895, but it is quite evident that this word has been used in GG Act, 1895 in its ethnological sense and therefore, it should get its widest import.

71. In **Mohsin Ali vs. State of M.P. AIR 1975 SC 1518**, Court said :

“in the widest sense 'grant' may comprehend everything that is granted or passed from one to another by deed. But commonly the term is applied to rights created or transferred by the Crown e.g. grants of pensions, patents, charters, franchise.”

(Emphasis added)

72. Court in **Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. (supra)**, in para 16, said that word “Grant” used in GG Act, 1895 could envelop within it, everything granted by the government to any person. A licence obtained by a person by virtue of agreement would also fall within the ambit of “Grant” envisaged in GG Act, 1895.

73. In **Pradeep Oil Corporation vs. Municipal Corporation of Delhi and others (2011) 5 SCC 270**, Court said that GG Act, 1895 is a

special Statute and will prevail over general Statute i.e. TP Act, 1882. It says:

“In the present case grant has been made by the President of India in terms of Section 2 of the Government Grants Act, 1895 and the Transfer of Property Act, 1882 may have little bearing in the instant case. The former, i.e. the Government Grants Act, 1895 being a special statute would prevail over the general statute, i.e. the Transfer of Property Act, 1882. Accordingly, the rights and obligations of the parties would be governed by the terms of the provisions of Government Grants Act, 1895 whereunder the Government is entitled to impose limitations and restrictions upon the grants and other transfer made by it or under its authority.” (Emphasis added)

74. Therefore, where 'Nazul' is let out to a person by Government under agreement of lease i.e. Grant, it is governed by GG Act, 1895 and rights of parties therefore have to be seen in the light of stipulations contained in the document of 'Grant'. 'Grant' includes a property transferred on lease though in some cases, 'Grant' may result in wider interest i.e. transfer of title etc. Whatever may be nature of document of transfer i.e. instrument of 'Grant', the fact remains that terms and conditions of 'Grant' shall be governed by such document and it shall prevail over any other law including TP Act 1882. One cannot take resort to TP Act, 1882 to wriggle out of any condition or limitation etc. imposed in terms of document of 'Grant'.

75. In State of Uttar Pradesh, management of 'Nazul', in absence of statutory provisions, is governed by various administrative orders compiled in a Manual called “Nazul Manual”. Here Government has made provisions of management of 'Nazul' through its own authorities namely District Magistrate or Commissioner, or, in some cases, through local bodies.

76. Nature of orders compiled in “Nazul Manual” in the context of 'Nazul' has been considered in **State of U.P. vs. United Bank of India**

(supra) where Court has said that land and building in question is "Nazul" being property of Government, maintained by State authorities in accordance with 'Nazul Rules' but not administered as a 'State property'. Court has also observed that lease of "Nazul" land is governed in accordance with GG Act, 1895. Sections 2 and 3 thereto very specifically provide that provisions of TP Act, 1882 do not apply to Government land. Section 3 says that all provisions, restrictions, conditions and limitations contained in any such 'Grant' or 'Transfer', as aforesaid, shall be valid and take effect according to their tenor, any rule of law, statute or enactment of Legislature to the contrary, notwithstanding. Thus the stipulations in "lease deed" shall prevail and govern entire relation of State Government and lessee notwithstanding any statute providing otherwise.

77. Superiority of stipulations of Grant to deal with relation between Grantor and Grantee has been reinforced in **Azim Ahmad Kazmi and others (Supra)**. Therein dispute related to Plot No. 59, Civil Station, Allahabad, area 1 acre and 4272 sq. yard, i.e., 9112 sq. yard or 7618 sq. meter. Initially a lease deed was executed on 11.01.1868 by Secretary of State for India in Council in favour of one, Thomas Crowby, for a period of 50 years and it was signed by Commissioner, Allahabad Division on behalf of Secretary of State for India in Council. After expiry of lease, a fresh lease was executed for another period of 50 years on 12.04.1923 w.e.f. 01.01.1918. Lease holder with permission of Collector, Allahabad transferred lease rights to Purshottam Das in 1945. The legal heirs of Sri Purshottam Das, on 31.10.1958, transferred leasehold rights in favour of Smt. Shakira Khatoon Kazmi, Smt. Sabira Khatoon Kazmi and Smt. Maimoona Khatoon Kazmi. After the death of Smt. Maimoona Khatoon Kazmi, her legal heirs, namely, Azim Ahmad Kazmi, Omar Ahmad Kazmi, Shamim Ahmad Kazmi, Alim Ahmad Kazmi and Maaz Ahmad Kazmi also claimed lease rights by succession. Lease granted on 12.04.1923 w.e.f. 01.01.1918 expired on 31.12.1967. It was renewed on

19.03.1996 for a period of 30 years w.e.f. 01.01.1968 which period expired on 31.12.1997. Again on 17.07.1998 it was renewed for a further period of 30 years w.e.f. 01.01.1998. While lease was continuing, vide G.O. dated 15.12.2000, right of resumption was exercised by State Government. It directed resumption of possession of plot in question and lease deed was cancelled. District Magistrate, Allahabad served a notice dated 11.01.2001 to lease holders intimating them that State Government's order dated 15.12.2000 has cancelled lease and resumed possession of land in question as the same was required for public purpose. Notice also directed lease holders to remove structures standing on plot, failing which possession would be taken in accordance with Clause 3(c) of lease deed. Lease holders filed objections against notice to District Magistrate and also stated that they have sent representation/objection to Chief Minister praying for revocation of G.O. dated 15.12.2000. District Magistrate passed order on 24.08.2001 rejecting objection of lease holders and sent a cheque of Rs. 10 lacs representing compensation for the building standing over plot. State authorities claimed that they took possession of open land on 01.09.2001. Lease holders filed writ petition which was dismissed vide judgment dated 07.12.2001, **Shakira Khatoon Kazmi vs. State of U.P., AIR 2002 All 101**. Lease holders challenged judgment dated 07.12.2001 in Supreme Court to the extent they failed. State Government filed appeal against part of order of this Court, wherein an observation was made that State Government is not entitled to take forcible possession though it may take possession of demised premises in accordance with procedure established by law. After considering Clause 3(c) of lease deed which provides for resumption of land for public purpose, after giving a month's clear notice to lessee to remove any building standing at the time on demised premises and within two months of receipt of notice to take possession thereof, on expiry of that period. Court said that Clause 3(c) of lease deed confers power upon State Government that plot in

question, if required by State Government for its own purpose or for any public purpose, it shall have right to give one month's notice in writing to lessees to remove any building standing on the plot and to take possession thereof on expiry of two months from the date of service of notice. Court said that land, if required for any public purpose, State Government has absolute power to resume leased property and under the terms of Grant it is absolute, therefore, order of resumption is perfectly valid and cannot be said to be illegal. It also refers to an earlier instance where Nazul Plot No. 13, Civil Station, Allahabad situate in Civil Lines area was resumed by State Government for the purpose of construction of a 'Bus Stand' by exercising similar power, without initiating any proceeding under Land Acquisition Act, 1894 (*hereinafter referred to as "LA Act, 1894"*). Resumption in that case was also challenged in **Writ Petition No. 44517 of 1998, Sayed Shah Khursheed Ahmad Kashmi vs. State of U.P.** and said writ petition was **dismissed on 16.12.1999** by a Division Bench of this Court, whereagainst Special Leave Petition No. 4329 of 2000 was dismissed by Supreme Court on 07.09.2001. First question, therefore, was answered in negative and in favour of Government.

78. With respect to procedure for taking possession, Supreme Court, while considering Question-2, said that in absence of any specific law, State Government may take possession by filing a suit. When a land is acquired under LA Act, 1894, Government can take possession in accordance with provisions of said Act and in case of urgency, Collector can take possession after publication of notice under Section 9 and no separate procedure is required to be followed. Court said that similarly where a lease has been granted under the terms of GG Act, 1895, then what procedure has to be followed is provided by Section 3 of GG Act, 1895 which says that all provisions, restrictions, conditions and limitations contained in any such creation, conferment or Grant referred to in Section 2, shall be valid and take effect according to their tenor;

any decree or direction of a Court of Law or any rule of law, statute or enactments of the Legislature, to the contrary, notwithstanding it relied on its earlier judgment in **State of U.P. vs. Zahoor Ahmad, 1973(2) SCC 547** holding that Section 3 of GG Act, 1895 declares unfettered discretion of Government to impose such conditions and limitation as it thinks fit, no matter what the general law of land be. Then Court construing Clause 3(C) of lease deed said that it provides procedure for taking possession of demised premises when State Government re-enter or resume possession of demised land. Court in para 30 and 32 of judgment, said:

*“30. In the case of **The State of U.P. vs. Zahoor Ahmad and Another, 1973(2) SCC 547**, this Court held that the Section 3 of the Act declares the unfettered discretion of the Government to impose such conditions and limitation as it thinks fit, no matter what the general law of land be. From Clause 3(C) of the deed, it is clear that the **State of U.P. while granting lease made it clear that if the demised premises are at any time required by the lessor for his or for any public purpose, he shall have the right to give one month’s clear notice to the lessee to remove any building standing at the time of the demised property and within two months’ of the receipt of the notice to take possession thereof on the expiry of that period** subject to the condition that the lessor is willing to purchase the property on the demised premises, the lessee shall be paid for such amount as may be determined by the Secretary to the Government of U.P. in the Nagar Awas Department.”*

“32. Under Clause 3(C) of the lease deed, the respondent-State was permitted resumption of the land which required for its own use or for public purpose and after giving one month’s clear notice in writing is entitled to remove any building standing at the time on the demised premises and within two months of the receipt of the notice to take possession thereof subject to the condition that if the lessor is willing to purchase the building of the demised premises required to pay the lessee the amount for such building as may be determined by the Secretary to Government of U.P. in the Nagar Awas Department....” (Emphasis added)

79. Having said so, Court said :

*“we are of the view that there is no other procedure or law required to be followed, as a **special procedure for resumption of***

land has been laid down under the lease deed”.

80. Supreme Court then set aside direction of this Court that State will not take possession forcibly except in accordance with procedure established by any other law by holding that since special procedure for resumption is prescribed under lease deed, no direction otherwise could have been issued to State Government.

81. The above discussion makes it clear that 'Nazul' is a land owned and vested in State. It is such land which has vested in State by virtue of its 'Sovereignty' and incidence of 'Sovereignty' i.e. annexation, lapse and bona vacantia. Further, 'Grant' means transfer of property by a deed in writing and includes within its ambit, an instrument of lease/lease deed. Such 'Grant' is governed by provision of GG Act, 1895, which were applicable to 'Grants' executed on and after enforcement of GG Act, 1895 and rights and entitlement of private parties in respect of land, which was transferred to such person under such 'Grant' would be governed by terms and conditions contained in such 'Grant' and not by provisions of TP Act, 1882 or any other Statute. Moreover, in State of U.P., wherever applicable, U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 will also be inapplicable to such 'Grant'. For the purpose of resumption/ re-entry of land, State Government can follow procedure prescribed in the terms of lease as it is a special procedure for such purpose and it is not necessary to look into any other procedure prescribed in law.

82. We, therefore, answer **questions (i) and (ii)** accordingly.

83. The answer to questions (i) and (ii), in effect, gives answer to question (iii) and (iv) also, inasmuch as, Grantee cannot transfer property, which was transferred to it by way of 'Grant' except the manner in which it is permitted by such 'Grant'. Any transfer otherwise will be illegal and would not confer any right upon Transferree.

84. Here, we remind ourselves with the principle that a person can

transfer only such rights and interest which he or she possesses and not beyond that. If a person did not possess any right of transfer or such right is subject to any restriction like prior permission of owner etc., it means that such person has no right of transfer and/or his right is restricted in a particular manner and such restriction is to be observed in words and spirit to validate such transfer, else the transfer shall be illegal and will not result in bestowing any legal right upon Transferee. In other words, any otherwise transfer by such person of land subjected to Grant, will not confer any valid right or interest upon the person to whom property under 'Grant' is transferred in violation of stipulations contained in Grant.

85. In **Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd. (2016) 11 SCC 406** Court said :

“It is well settled position of law that the person having no right, title or interest in the property cannot transfer the same by way of sale deed.”

86. In **State of U.P. and others vs. United Bank of India and others (supra)** considering a similar situation, Court held that any transfer without sanction of lessor will be invalid. In paras 39 and 40 of the judgment Court said as under :

39. This "within written lease" is the original lease deed as mentioned in the Form 2 of the Nazul Manual. Form 2 of lease of Nazul land for building purposes it is one of the condition between the lessor and the lessee that " the lessee will not in any way transfer or sublet the demised premises or buildings erected thereon without the previous sanction in writing of the lessor".

*40. In the present case **there was nothing on the record to show that the lessee i.e. (ABP) has obtained any written sanction from the lessor i.e. Government before mortgaging his leasehold interest in the Nazul Land. Meaning thereby the mortgage done by the lessee in favour of the Bank itself is bad in law, which was done in clear violation of the terms of the lease deed i.e.***

mortgage of the Nazul land without previous sanction in writing of the State.” (Emphasis added)

87. Further, any such invalid transfer can also be construed as breach of terms of Grant and would empower and enable principal Grantor i.e. State, owner of property, to take such steps including resumption/re-entry to the property under Grant, to itself, besides claiming damages, compensation, as the case may be, and law permits.

88. Applying above principles to the facts of present writ petition, we find that last lease-deed was executed on 18.6.1912 with effect from 02.4.1912 for a period of 50 years, in favour of Evelyn Constance Trisham. Hence, original Lessee was Sri Trisham. He let out leased land to Sri Vishun Nath. When it was let out, is not stated in writ petition but in para 7 of writ petition, it is said that it was more than 60 years back. Whether said transfer was made after complying terms and conditions of lease-deed and procedure stated therein or not, also cannot be ascertained since nothing has been said in this regard by either of the parties. However, it has been placed on record that name of Vishun Nath was mutated in Nazul record in register No.165/169 at serial No.025 at page no. 7 (file no. 341) of Register Book No.1, maintained by Collector, Allahabad, in respect of Nazul land. Thus, we can assume that Sri Trisham may have transferred lease right to Vishun Nath after complying provisions contained in lease-deed i.e. with the permission of Collector.

89. Conditions imposing restriction upon transfer of disputed Nazul land is contained in following clauses of lease-deed :

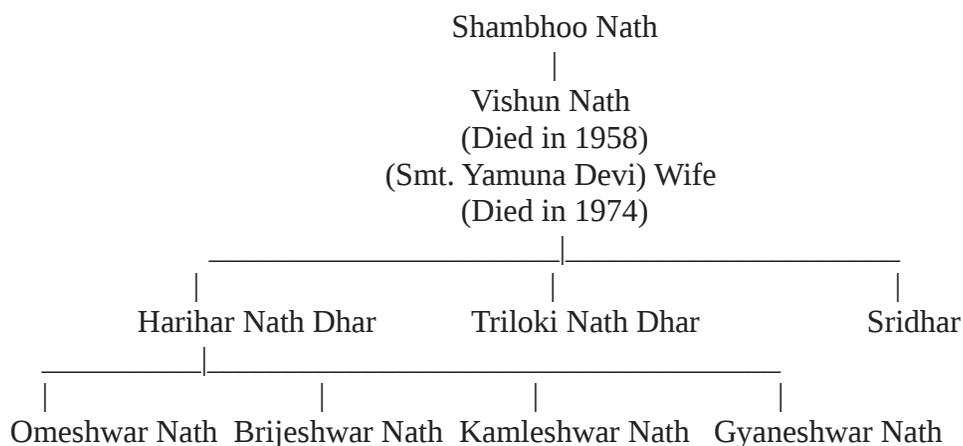
(i) *“PROVIDED FURTHER and it is hereby agreed that the said Lessee, her Executors, Administrators and Assigns, shall not assign or underlet or otherwise part with the possession of the said premises or any part thereof without the permission of the said Secretary of State his Successors or Assigns (which permission may be signified by the said Collector or by such other person as the Government of the North-Western Provinces or the*

said Secretary of State may appoint in that behalf) for that express purpose had and obtained.”

(ii) **“PROVIDED ALWAYS that if the said Lessee her Executors, Administrators or Assigns shall Assign or transfer these presents, or the lease or term hereby granted or created, or the unexpired portion of the said term, or shall underlet the said premises or any part thereof with such permission as aforesaid unto any other person or persons of whom the said Collector shall approve, and if such person or persons shall engage and bind themselves to observe all the conditions, agreements and provisions of these presents in respect of such portion of the said term or of the said premises as shall have been so assigned or underlet to him as aforesaid and shall procure such assignments or sublease to be registered in such manner as shall be appointed by the said Secretary of State for purpose of registering lease and other instruments of or relating to lands situate within the local limits of Allahabad (and for the registry of which assignments or subleases a fee of not more than Rs. 16 shall be paid by the person or persons tendering such assignment or sublease for registry) then and otherwise the liability of the said lessee her Heirs, Executors, Administrators, for the purpose or subsequent observance and performance of the covenants on the leases part herein contained, so far as relates to the portion of the said term or of the said premises so assigned or underlet as aforesaid, but not further or otherwise, shall cause and determine, but without prejudice however to the right of section of the Secretary of State his Successors or Assigns in respect or on account of any previous breach of any covenant or covenants herein contained.** (Emphasis added)

90. Without permission, therefore, no right and interest in respect of disputed Nazul land, whether entire or part thereof, could have been transferred. For the present case, however, we may assume that Sri Vishun Nath was transferred such lease rights in compliance of requirement of lease-deed for remaining period. That is how, his name was entered into Nazul Register. The fact remains that lease expired on 01.04.1962. It is also evident that Sri Vishun Nath died in 1958, therefore, whatever lease rights for balance period, he had, same would

have been succeeded by his legal heirs for remaining period only. Family tree of Vishun Nath, as evident from record is as under :



91. Legal heirs of Vishun Nath could not have succeeded any right, larger and more than what Vishun Nath himself had on transfer from original Lessee i.e. E.C.Trisham. The said lease rights were only for a period upto 1st April, 1962.

92. It is admitted position that lease has never been extended thereafter. Induction of petitioners by legal heirs of Vishun Nath i.e. Harihar Nath Dhar, even if he acted as a Karta of family after death of Vishun Nath, was wholly unauthorised and illegal, inasmuch as, neither he had any such power of transfer after 1st April, 1962 nor any transfer of right and/or interest in land in question, whether in respect of entire land or part thereof, could have been made without permission of Collector, which admittedly was not taken in the case in hand.

93. A perusal of lease deed also shows that no construction could have been raised on land in dispute unless permitted by Lessor i.e. owner of land i.e. State Government or Collector. There is neither any pleading nor any material on record to show that alleged transfer of disputed land to petitioners in 1980 was with the permission of Collector or State Government and/or construction raised by petitioners over land in dispute was after permission and/or sanction of Collector, Allahabad or State Government. Thus transfer of disputed land and construction raised by petitioners over such land all are/were wholly illegal and unauthorised. It would not confer even an iota of actionable interest or

right in petitioners to take recourse to legal action for protection of their illegal and unauthorised possession as well as structure raised on land in dispute.

94. We also find that this aspect is covered by a recent judgment of Supreme Court in **State of U.P. and others vs. United Bank of India and others (2016) 2 SCC 757** wherein Court in similar circumstances, where transfer without sanction of Lessor was made, held illegal and void. We have already referred paras 39 and 40 of this judgment above.

95. In view thereof, we have no hesitation in holding that petitioners never entered into possession of disputed land validly and transfer to them by Harihar Nath Dhar was wholly illegal, unauthorised and without having any legal consequence. It did not create any right or interest in petitioners over land in dispute. In fact, Harihar Nath Dhar himself was not having right or interest over land in dispute after lease expired on 01.04.1962. Neither land was owned by Harihar Nath Dhar nor he had legal right after 01.04.1962 therefore, he could not have transferred anything to petitioners in 1980 or 1988 when he himself did not possess any right or interest over land in dispute at that point of time.

96. **Questions (iii) and (iv) therefore are answered** accordingly against petitioners.

97. Now, we shall deal with questions (v) and (vi) together.

98. These questions again have to be considered in the light of stipulations contained in 'Grant'. If the 'Grant' itself did not contemplate any continuance of 'Grantee' over land subjected to 'Grant' and requires Grantee to hand over or surrender possession on expiry of period of 'Grant', Grantee is obliged to do so and mere fact that he/she had continued in possession over land subjected to 'Grant', will not confer any legal status upon him/her or legality to such possession after expiry of period of Grant.

99. If a person has lawfully entered a premises as a valid Lessee but continued in possession over such land after expiry of period of lease or

after determination of lease by Lessor in terms of stipulations in lease, status of Lessee becomes that of 'Tenant at sufferance'. Supreme Court said that even a quit notice under Section 106 of TP Act, 1882 is not required to be given to such occupant.

100. Relying on earlier decision in **R.V. Bhupal Prasad vs. State of A.P. (1995) 5 SCC 698** in a recent decision in **Sevoke Properties Ltd. vs. West Bengal State Electricity Distribution Company Ltd. AIR 2019 SC 2664**, Court held that once it is admitted by Lessee that term of lease has expired, lease stood determined by efflux of time and in such case, a quit notice under Section 106 is not required to be given. Court has said as under :

“Once the lease stood determined by efflux of time, there was no necessity for a notice of termination Under Section 106.”

(Emphasis added)

101. In the above authority, Court held that after expiry of period of lease, status of Lessee becomes that of 'Tenant at sufferance'. 'Tenant at sufferance' is one who comes into possession of land by lawful title, but who holds it by wrong after termination of term or expiry of lease by efflux of time. The tenant at sufferance is one who wrongfully continues in possession after extinction of a lawful title. There is little difference between him and a trespasser. Quoting from Mulla's Transfer of Property Act (7th Edn.) at page 633, Court observed that tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without consent of person entitled. A “tenancy at sufferance” does not create relationship of landlord and tenant. Court further quoted from page 769 of Mulla's transfer of Property Act (7th

Edition), that act of holding over after expiration of term does not necessarily create a tenancy of any kind. If lessee remains in possession after determination of term, the common law Rule is that he is a tenant at sufferance.

102. Lot of argument at this stage has been made that despite expiry of lease right on 30.9.1986, since Lessee(s) did not hand over possession of 'disputed Nazul land' and State Government and its authorities did not take any action for taking possession of land in dispute, therefore, petitioners' possession had implied sanction of Lessor. However, no law in support of above proposition has been placed before us. When lease deed itself contemplate sanction, it is actual and not fictional. Petitioners, however, relied on the decision in **Purushottam Dass Tandon and others vs. State of U.P. & Ors. AIR 1987 All. 56**, to claim right of renewal of lease. The decision deals with various G.Os. issued for renewal of lease.

103. With regard to renewal of lease, Government circulated its policy through various G.Os. The first G.O. was issued in March, 1958 whereby Chief Minister directed that case for renewal of leases may be taken individually and possession may be taken only if lessee surrender or lease stood terminated in absence of any request from lessee for grant of fresh lease. Thereafter, on 23.04.1959, a G.O. was issued to grant fresh lease in cases where lease has already expired but has not been renewed so far, or which is likely to expire within the next 5 or 6 years, on the terms and conditions given in the said G.O. The proposed premium in the said G.O. was objected by Lease Holders, whose leases were already expired or likely to expire. Several representations were sent to Government. Some house-owners met the then Prime Minister Late Pt. Jawahar Lal Nehru, who had visited Allahabad in November or December, 1959. It resulted in issue of G.O. dated 07.07.1960 whereby rate of premium on first three acres was reduced to Rs.2,000/- in each

slab. It also permitted payment of premium in five instalments and reduced ground rent to Rs.100/- per acre. In the earlier G.O., there was an insistence on construction of Community latrines till sewer lines were laid but this insistence was given up in G.O. dated 07.07.1960. Lessees were granted further three months' time to get leases renewed. Still lease-holders did not comply and made representations to Government. On 21.03.1963, again a G.O. was issued declaring rates of premium for commercial sites. On 3.12.1965 a G.O. was issued indicating terms and conditions for renewal of leases for commercial and residential purposes and it was said that rates of premium and annual rent shall be as fixed by G.O. dated 07.07.1960. Payment in five equal yearly instalments was continued but in special cases, Commissioner, Allahabad Division, Allahabad, was authorized to make recommendations to Government for enhancing number of instalments. This G.O. further insisted for renewal of existing leases on payment of at least one instalment, within one month of receipt of intimation by Lessee from Collector, or within three months of the date of expiry of lease, whichever is earlier. Deposit was to be deemed to be proper step on the part of Lessee to get a fresh lease executed by the Lessor. The G.O. of 1965 itself made a distinction between those whose leases had expired and others by describing them as sitting and existing lessees.

104. There was a second phase which covered period from 1966 to 1981. On 16.02.1966, U.P. Awas Vikas Parishad Adhiniyam, 1965 (*hereinafter referred to as "U.P.Act, 1965"*) was enacted for providing housing sites and construction of building. G.O. dated 03.12.1965, thus was modified by G.O. dated 04.11.1968, and it was directed that leases of joint lessees should be renewed as far as possible for one acre only. Sub-division was permitted only where sub-divided plot was not less than 800 sq. yards. Concession in payment of lease money and ground rent was allowed on same terms and conditions as it was in G.O. dated 03.12.1965 but time was extended for payment of first instalment for

those who had not received any intimation from Collector by a further period of one month from the date of intimation by Collector. Clause (c) of G.O. dated 04.11.1968 categorically said that where steps have been taken for renewal of leases, as stated in earlier G.Os., fresh leases shall be sanctioned according to terms offered by Competent Authority.

105. In March, 1970, a G.O. was issued banning grant of renewal of leases all over the State, since Government was contemplating to bring out legislation on Urban Ceiling. This ban was lifted on 12.01.1972 but leases henceforth were to be sanctioned by State Government only. Commissioner and Collector could make recommendations only. Aforesaid G.O., however, provided that in all those cases where Government had sanctioned grant of leases but it could not be executed or registered because of ban imposed in 1970, steps may be taken immediately for its execution. Clause (ii) of G.O. provided that all those cases in which Collector or Commissioner had approved renewal but it could not be executed because of 1970 order, should be sent to Government immediately for acceptance. On 09.05.1972 Urban Building Ceiling Bill was introduced and on 11.07.1972 Uttar Pradesh Ceiling of Property (Temporary Restriction on Transfer), Ordinance, 1972 was promulgated in pursuance of Article 398 of Constitution of India. The Ordinance continued till it was replaced by Urban Land (Ceiling and Regulation) Act, 1976 (*hereinafter referred to as "U.P. Act, 1976"*). The said Act was enacted to prevent concentration of Urban Property and discourage construction of luxurious houses. On 19.12.1972, provisions pertaining to Nazul were amended providing for maximum area permissible for renewal of leases of 2000 sq. yards plus land on which building was constructed. Remaining area was to be surrendered to Housing Board and Lessees were prohibited from sub-dividing or transferring any land. On 10.12.1976, Government issued an order superseding all previous orders in respect of renewal of leases of Civil Lines, Allahabad in view of Act, 1976 and laid down fresh terms and

conditions for renewal of leases.

106. Here leases were to be renewed in the light of Sections 2 and 4 of U.P. Act, 1976 and while doing so, all residents in one house were to be treated as one unit. This again resulted in representations of Lease-Holders to Government requesting for reduction in rate of premium and ground rent. A G.O. was issued on 17.09.1979 superseding all previous orders and it provided for submission of details about extent and type of construction, utilisation of vacant land etc. Again representations, which culminated in G.O. dated 19.04.1981, which superseded all previous Orders and provided for renewal of leases on fresh and new terms. It is said that Leaseholders and their heirs shall be treated as one Unit. They were supposed to file details about land, constructed area, its user, time when it was taken on lease etc. before 30.06.1981. List of residents including out-houses dwellers was to be prepared by District Magistrate. Heirs of deceased lease-holders were to be treated as one unit. Area for which renewal could be made was reduced to building with 500 sq. metre of land appurtenant and 500 sq. metre open land or 1500 sq. metre whichever was more. Area of building for commercial purpose was fixed at 2000 sq. metres. Premium was fixed at 50 paisa per sq. metre. Thus, from 1976 onwards for the purpose of renewal, area was reduced from acre to square metre and unit for premium and ground rent became square feet instead of acre. All heirs of Lessees became one unit for renewal. Land covered by outhouses were to be excluded. Lessees could not even opt for it.

107. However, here is nothing on record to show that petitioners complied the above G.Os. and sought renewal or fresh lease hence petitioners cannot claim any benefit under the above mentioned G.Os.

108. Lease Holders, whose lease had already expired or those who were sitting Lease Holders and leases were going to expire in a short period, came to this Court in various writ petitions. This entire bunch

was decided in **Purushottam Dass Tandon and others vs. State of U.P., Lucknow and others (supra)**. There were two categories of writ petitioners, before this Court, in **Purushottam Dass Tandon and others (supra)** as under :

- (i) Those, to whom notices were given by Collector and who had complied with terms and conditions as laid down in various orders issued from time to time prior to 1965; and
- (ii) Those, to whom no notice was sent and till matter filed before the Court, no steps were taken and no order was passed in their favour.

109. Court held :

(I) A Lessor may, after expiry of period for which lease is granted, renew the same or resume i.e. re-enter. But if out of the two i.e. re-entry or resumption, the two divergent courses, he chooses to grant fresh lease or at least creates that impression by his conduct spread over long time, it results in abandonment.

(II) If the land is needed or building has to be demolished in public interest for general welfare, probably no exception can be taken as the interest of individual has to be sacrificed for the society. But asking Lessee to vacate land or remove Malba for no rhyme or reason but because State is the owner, cannot be accepted to be in consonance with present day philosophy and thinking about role of State.

(III) After Act, 1976, no person can successfully or validly claim to hold land, more than the Ceiling limit.

(IV) Some part of G.O. of 1981 was not consistent with Act, 1976. The rules contained in Nazul Manual are set of Administrative Orders or collections of guidelines issued by Government for the authorities to deal with Government property.

(V) When a G.O. was issued and its conditions are complied with, mere for bureaucratic delay, performance under the said G.O. cannot be denied. Therefore, Lessee, who had deposited first instalment, as directed in G.O. of 1965, were entitled for renewal of their lease.

(VI) After enactment of ceiling law, a Lessee cannot hold land more than the provided limit.

(VII) If leases were renewed in respect of those, who had acquired social or political status, whose names are given in para 15 of judgment, which includes, Dr. K. N. Katju, ex-Central Law Minister, Chief Minister and Governor, Dr. S. K. Verma, ex-Chief Justice and Governor, Sri B.L. Gupta, ex-Judge High Court, J. D. Shukla, I.C.S., O. N. Misra, I.A.S., then there was no justification not to give same benefit to others. Similar benefit must be given since most of them were also distinguished persons namely S.N. Kacker, ex-Central Law Minister, Solicitor General of India and Advocate General of the State, Sri S. S. Dhavan, ex-Judge, High Court and Governor and High Commissioner, Sri Lal Ratnakar Singh I.A.S. Ex-Member of Board of Revenue, M.L.Chaturvedi, ex-Judge, High Court and member of Union Public Service Commission, W. Broome, I.C.S. etc.

110. Aforesaid judgment was confirmed by Supreme Court by dismissing appeals preferred by State of U.P. and others in **State of U.P. and others vs. Purshottam Das Tandon and others 1989 Supp.(2) SCC 412**. Court clarified that renewal of leases shall be subject to the provisions of U.P.Act, 1976 and High Court judgment shall apply to all the leases to whom G.O. dated 23.04.1959, 02.07.1960 and 03.12.1965 were applicable and all those claiming under them. The order of Supreme Court reads as under :

“We have heard the learned counsel for both the parties at

*length. We do not find any infirmity in the judgment and order passed by the High Court against which these special leave petitions are preferred. We, however, make it clear that the leases that are going to be granted pursuant to the writ issued by the High Court will be subject to the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. On the leases being granted, the Competent Authority under the Act shall be at liberty to apply the provisions of the Act and in particular section 15 thereof to all the leases and take away all the surplus lands in their hands after determining the surplus lands in accordance with law. **The directions issued by the High Court can be availed of by all the lessees to whom the G.O. dated 23rd April, 1959, 2nd July, 1960 and 3rd December, 1965 were applicable and all those claiming under them.***

All the Special Leave Petitions are dismissed accordingly with these observations. If any further directions are needed, the persons interested may approach the High Court.”

(Emphasis added)

111. Though, in the present case reliance has been placed on the aforesaid judgment, but, we do not find that aforesaid judgment is applicable to petitioners or that petitioners have applied for renewal of lease in terms of above G.Os., applicable at the relevant point of time. Hence, their status is of 'occupant' without any authority, inasmuch as, lease having already expired, transfer of land to petitioners was without any authority, hence possession of petitioners or anybody else under them is without any authority of law.

112. It is contended that even if lease expired on 01.04.1962, possession of petitioners since 1980 has continued on disputed Nazul land and State has not taken any step for their eviction or dispossession, it amounts to 'tacit approval' or 'sanction' by Government or Lessor recognizing petitioners' aforesaid possession to be valid and for this purpose, reference is made to Section 116 of TP Act, 1882. It is also said that even if aforesaid right under Section 116 TP Act, 1882 could not have been made applicable in 1980, since at that time, GG Act, 1895 was

operating, yet the time at which impugned notice has been issued, GG Act, 1895 had already been repealed and thereafter petitioners' right is entitled to be considered in terms of TP Act, 1882 and they are entitled to take recourse to Section 116 of Act, 1882.

113. Section 116 of TP Act, 1882 reads as under :

“116. Effect of holding over.- If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.”

114. Twin conditions to attract principle of holding over vide Section 116 of TP Act, 1882, which need be satisfied, are:

- (i) After determination of lease, lessor or his representative has accepted rent from lessee or under lessee or accorded assent to his continuing in possession; and
- (ii) Lessee or under-lessee has remained in possession.

115. In the present case, it is not the case of any of the petitioners that after expiry of lease on 01.04.1962, they were permitted to remain in possession of disputed Nazul land and rent has been accepted by respondents or they have paid rent. Even if what is said by petitioners is taken to be correct, we do not find that Section 116 is applicable in the case in hand at all.

116. Thus, in our view, Section 116 TP Act, 1882 is wholly inapplicable in the case in hand. In order to attract Section 116 of TP Act, 1882, it is necessary to obtain assent of landlord for continuation of lease after expiry of lease period. Mere acceptance of rent by Lessor, in absence of any agreement to the contrary, for subsequent months where Lessee continued to occupy lease premises cannot be treated to be a conduct

signifying 'assent' on its part. This is what has been held in **Shanti Prasad Devi and others vs. Shankar Mahto and others (2005) 5 SCC 543** and followed in **Delhi Development Authority vs. Anant Raj Agencies Pvt. Ltd. (supra)**.

117. In the present case, even this fact is missing that petitioners while continuing in possession, paid lease rent and premium etc. to Lessor. Section 116 of TP Act, 1882, therefore, has no application either immediately after expiry of lease or much thereafter.

118. At this stage, learned counsel for petitioners sought to argue that petitioners are entitled to be given opportunity in terms of provisions of Section 106 read with 116 of TP Act, 1882 since petitioners are in continued possession after expiry of period of lease and are entitled to be treated as holding over and cannot be evicted without following procedure prescribed under TP Act, 1882, particularly in view of the fact that GG Act, 1895 has already been repealed by Repeal Act, 2017. Now, TP Act, 1882 will apply. He placed reliance on Supreme Court judgment in **State of U.P. vs. Zahoor Ahmad (supra)**. He also said that even if possession is unauthorized, petitioner cannot be evicted arbitrarily but State is bound to follow procedure consistent with law and principles of natural justice and for this purpose, reliance is placed on Supreme Court's judgments in **Bishan Das and others Vs. State of Punjab and others AIR 1961 SC 1570**, **Express Newspapers Pvt. Ltd. and others Vs. Union of India (1986) 1 SCC 133**, **Yar Mohammad and another vs. Lakshmi Das and others AIR 1959 Allahabad 1** and **Lallu Yeshwant Singh (dead) by his legal representative vs. Rao Jagdish Singh and others, AIR 1968 SC 620**.

119. It is not in dispute that GG Act, 1895 has been repealed by Repeal Act, 2017. However, Section 4 thereof provides for saving of certain aspect and read as under :

“4. Savings.- *The repeal by this Act of any enactment shall not*

affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

*and this Act shall not affect the validity, invalidity, **effect or consequences or anything already done or suffered**, or **any right, title, obligation or liability** already acquired, accrued or **incurred**, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;*

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or any force.

120. Section 4 of Repeal Act, 2017 clearly protects effect or consequences or anything already done or suffered, which includes effect of expiry of lease and obligation of Lessee to surrender possession of leased land to State. Further, Lessee had already agreed that State can re-enter land at any point of time. They are bound by said clause of lease-deed. This is an obligation as also liability of petitioners and right of State incurred, acquired and accrued in view of terms of lease-deed. Mere fact that it has been exercised after repeal of GG Act, 1895 would make no difference since all earlier situations/aspects have been protected by Section 4 of Repeal Act, 2017. Therefore, it cannot be said that after repeal of GG Act, 1895 by Repeal Act, 2017, petitioners' status would stand changed vis-a-vis disputed Nazul land in respect whereof State is entitled to re-entry and resume land in terms of conditions of lease.

121. The judgment cited by learned counsel for petitioners, in our view,

are not at all applicable to the facts of this case as demonstrated hereinafter.

122. In **Bishan Das and others Vs. State of Punjab and others AIR 1961 SC 1570**, a Constitution Bench had an occasion to consider fundamental right of property vis-a-vis infringement therewith by executive orders. Therein, one Lala Ramji Das , carrying on a joint family business in the name and style of Faquir Chand Bhagwan Das, desired to construct a Dharmasala on a Nazul property of the then State of Patiala. In 1909, he sought permission of Government to construct a Dharmasala on the said land, since it situate near Barnala Railway Station, and therefore would have been convenient to Travellers who come to that place. It appears that initially for the same purpose, Patiala Government had granted permission to Choudhuris of Barnala bazar, but they could not do so for want of funds. Therefore when Ramji Das sought permission in the name of firm Faquir Chand Bhagwan Das in May, 1909, same was granted and communicated by Assistant Surgeon in-charge of Barnala Hospital, who was presumably in-charge of public health arrangements at Barnala. The sanction was subject to certain conditions, namely, no tax shall be taken for the land; shopkeepers will arrange 'Piao' for the passengers; plans of the building shall be presented before sanctioning authority; cleanliness and sanitary rules shall be followed by the persons maintaining Dharmasala and no permission to construct any shop will be granted and if any condition is violated, State shall dispossess them from the land in dispute.

123. Dharmasala was constructed in 1909 and inscription on the stone to the following effect was made:

"Dharmasala Lala Faquir Chand Bhagwan Das, mahajan, 1909."

124. Though a condition was imposed for not permitting construction of any shop, but as a matter of fact, a number of shops were later constructed, with the permission of authorities concerned, for meeting

expenses of maintenance of Temple and Dharmasala. A complaint was made in 1911 against Ramji Das that he was utilizing Dharmasala for his private purpose but it remained unheeded. On the complaint made, some inquiry was also conducted by Tehsildar wherein Ramji Das got his statement recorded in January, 1925. On 07.04.1928, Revenue Minister, Patiala State, passed an order stating that though land on which Dharmasala had been built, was originally Government land (nazul property), it would not be proper to declare it as such and Dharmasala should continue to exist for the benefit of the public. Ramji Das or any other person will not be competent to transfer land and if such transfer is made, it would be unlawful and invalid and in such event, Government will escheat. Some further inquiry were also made and it appears that Ramji Das was given permission to make a raised platform and other extensions etc. On 10.09.1954, one Gopal Das, Secretary, Congress Committee, Barnala, filed a petition to the Revenue Minister, Patiala, making various allegations against Ramji Das. Thereupon an inquiry was conducted by Tahsildar, who found that Dharmasala was constructed by Ramji Das on Government lands, that Dharmasala was for public benefit; and, that Ramji Das had been its Manager throughout. He, however, said that Ramji Das was bound to render accounts which he failed considering that property belong to him and, therefore, he should be removed and past accounts be called for. When the matter went for opinion of Legal Remembrancer of State Government, it was pointed out that Dharmasala and Temple, though built on Government land, but not Government property. It also said that though Ramji Das was repudiating the existence of a public trust, he was working as Trustee of a trust created for public purposes of a charitable or religious nature and could be removed by State only under Section 92 Civil Procedure Code. Ramji Das died on 10.12.1957. Petitioner Bishan Das and others came to manage Dharmasala, Temple and the shops etc. On 23.12.1957, Gopal Das and some others describing themselves as members of public, made

an application that since Ramji Das was dead, new arrangements should be made for proper management of Dharmasala which is used for the benefit of the public. Again a search of old papers was made and this time Sub-Divisional Officer, Barnala, recommended that in the interest of Government, Municipal Committee, Barnala, should take immediate charge of the management of Dharmasala. This recommendation was affirmed by the Deputy Commissioner, Sangrur, and pursuant to the said order, Kanungo presumably dispossessed Bishan Das and others from part of Dharmasala on 07.01.1958 and charge thereof was given to Municipal Committee, Barnala. These orders were challenged by petitioners alleging that the same were without any authority of law and violative of fundamental rights enshrined under Articles 14, 19 and 31 of the Constitution.

125. The defence taken was that property is trust property of a public and charitable character, hence Bishan Das and others were not entitled to claim any property rights in respect thereof.

126. Supreme Court observed in Para-10 that even if it is assumed that the property is trust property, no authority of law authorizing State or its Executive Officers to take action against Bishan Das and others in respect of Dharmasala was shown. Government counsel sought to argue that Bishan Das and others were trespassers and land on which Dharmasala situate belong to Government, hence Government was entitled to use minimum of force to eject trespassers. But this defence was also rejected by Supreme Court holding that it is a clear case of violation of fundamental right of Bishan Das and others. Supreme Court said that nature of sanction granted in 1909 in respect of land whether it was a lease or licence, with a Grant or an irrevocable licence are questions of fact, need not be gone into by it but admitted position is that land belonged to the Government who granted permission to Ramji Das on behalf of joint family firm to build a Dharmasala, Temple and Shops

and manage the same during his life time. After his death his family members continued with management. Thus, they were not trespassers at all in respect of Dharmasala, Temple and Shops; nor could it be held that Dharmasala, Temple and Shops belong to the State. The question whether trust created was public or private is irrelevant. Court said that a Trustee, even of a public trust, can be removed only by procedure known to law. He cannot be removed by an executive fiat. The maxim, what is annexed to the soil goes with the soil, has not been accepted as an absolute rule of law in India and in this regard, Supreme Court referred to decision in **Thakoor Chunder Parmanick Vs. Ramdhone Bhuttacharjee (1866) 6 W.R. 228; Lala Beni Ram Vs. Kundan Lall (1899) L.R. 26 I.A. 58 and Narayan Das Khettry Vs. Jatindranath (1927) L.R. 54 I.A. 218**. Court said that a person who bona fide puts up constructions on land belonging to others with their permission would not be a trespasser, nor would the buildings so constructed vest in the owner of the land by application of maxim *quicquid plantatur solo, solo credit*. It said:

“It is, therefore, impossible to hold that in respect of the dharmasala, temples and shops, the State has acquired any rights whatsoever merely by reason of their being on the land belonging to the State. If the State thought that the constructions should be removed or that the condition as to resumption of the land should be invoked, it was open to the State to take appropriate legal action for the purpose.” (Emphasis added)

127. Court said that even if State proceeded on the assumption that there was a public trust, it could have taken appropriate legal action for removal of Trustees by way of Suit under Section 92 C.P.C. and not otherwise. Constitution Bench then said:

“ .. that does not give the State or its executive officers the right to take the law into their own hands and remove the trustee by an executive order. (Emphasis added)

128. Court concluded its findings in Para-14 of the judgment as under:

“The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated.”

129. Court passed serious stricture against State authorities holding that the executive action taken by State and its Officers is destructive of the basic principle of the rule of law. Hence action of Government in taking law into their hands and dispossessing petitioners by display of force, exhibits a callous disregard of normal requirements of rule of law, apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive on peaceful possession of property. Supreme Court reiterated what was said in its earlier judgment in **Wazir Chand Vs. The State of Himachal Pradesh AIR 1954 SC 415** that State or its executive officers cannot interfere with the rights of others unless they can point out some specific rule of law which authorizes their acts. Supreme Court seriously deprecated State and said:

“We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in as trustee on an executive determination only.”

130. Aforesaid decision has no application in the case in hand, inasmuch as, here State has exercised its power following terms and conditions laid down under lease-deed, which were made to prevail over any Statute providing otherwise, including TP Act, 1882 vide Section 2 of GG Act, 1895. Further, respondents, in exercise of right of resumption/re-entry, have not straightway went to dispossess petitioners

but notice in question has been given to them giving time to vacate the premises whereafter respondents proposed to take further action for taking possession. Therefore, it cannot be said that no notice has been given to petitioners in the present case.

131. Express Newspapers Pvt. Ltd. and others Vs. Union of India (1986) 1 SCC 133 is a matter which was decided in a Writ Petition filed under Article 32 of Constitution by the aforesaid Newspaper Company having its Establishment in Express Buildings at 9-10, Bahadurshah Zafar Marg, New Delhi, which was a land on perpetual lease from Union of India, under a registered Indenture of Lease, dated 17.03.1958. Five petitioners, who filed above Writ Petition before Supreme Court included Indian Express Newspaper (Bombay) Private Limited of which Express Newspapers Private Limited was a subsidiary and petitioners-3, 4 and 5, namely, Sri Ram Nath Goenka was Chairman of the Board of Directors, Nihal Singh was the Editor-in-chief of the Indian Express and Romesh Thapar was the Editor of the Seminar published from the Express Buildings. Union of India; Lt. Governor of Delhi, Sri Jagmohan; Municipal Corporation of Delhi; Zonal Engineer (Buildings) and Land and Development Officer were impleaded as respondents-1 to 5. The validity of notice of re-entry upon forfeiture of lease issued by Engineer Officer, Land and Development Office, New Delhi on 10.03.1980 was challenged. The notice required petitioners to show cause why Union of India should not re-enter upon and take possession of the demised premises i.e. plots nos. 9 and 10, Bahadurshah Zafar Marg, together with Buildings built thereon under Clause 5 of Indenture of Lease, dated 17.03.1958, for committing breach of Clauses 2(14) and 2(5) of lease-deed. Another notice was issued earlier on 01.03.1980 by Zonal Engineer (Buildings), Municipal Corporation, City Zone, Delhi requiring Express Newspapers Pvt. Ltd., New Delhi to show cause why aforesaid buildings being unauthorized be not demolished under Sections 343 and 344 of the Delhi Municipal Corporation Act,

1957 (hereinafter referred to as “DMC Act, 1957”). A challenge was made, besides others, on the ground of personal vendetta against Express Group of Newspapers and also being violative of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution. The questions posed by Supreme Court, to be of far reaching consequence for maintenance of federal structure of Government, were:

(1) Whether the Lt. Governor of Delhi could usurp the functions of the Union of India, Ministry of Works and Housing and direct an investigation into the affairs of the Union of India i.e. question the legality and propriety of the action of the then Minister for Works and Housing in the previous Government at the center in granting permission to Express Newspapers Pvt. Ltd. to construct new Express Building with an increased FAR of 360 with a double basement for installation of a printing press for publication of a Hindi Newspaper on the western portion of the demised premises i.e. Plots No. 9 and 10, Bahadurshah Zafar Marg, New Delhi with the Express Buildings built thereon?

(2) Whether the grant of sanction by the then Minister for Works and Housing and the consequential sanction of building plans by him of the new Express Building was contrary to the Master Plan and the Zonal Development Plans framed under the Delhi Development Act, 1957 and the municipal bye-laws, 1959 made under the DMC Act, 1957 and therefore the lessor i.e. the Union of India had the power to issue a notice of re-entry upon forfeiture of lease under Clause 5 of the indenture of lease dated March 17, 1958 and take possession of the demised premises together with the Express Buildings built thereon and the Municipal Corporation had the authority to direct demolition of the said buildings as unauthorized construction under Sections 343 and 344 of the DMC Act, 1957?

(3) Whether the threatened action which the petitioners characterise as arbitrary, illegal and irrational was violative of Article 19(1)(a) read with Article 14 of the Constitution?

132. Thereafter Court analyzed the facts of case in detail and respective arguments and from Para-45 to 47 we find that Government of India and Lt. Governor of Delhi were head on to each other and even Council's

role was not appreciated by Court. In the light of arguments advanced by parties, in para-59 of judgment, Court formulated eight questions. The issue of maintainability of writ petition under Article 32 was also raised and it was considered by Supreme Court in the judgment from para-66 onwards and it was held that building in question was necessary for running press. Any statutory or executive action to pull it down or forfeit the lease, would directly impinge on the right of freedom of speech and expression under Article 19(1)(a) and therefore, writ petition was maintainable. Court said:

“... impugned notices of re-entry upon forfeiture of lease and of the threatened demolition of the Express Buildings are intended and meant to silence the voice of the Indian Express. It must logically follow that the impugned notices constitute a direct and immediate threat to the freedom of the press and are thus violative of Article 19(1)(a) read with Article 14 of the Constitution.”

133. Since, land in dispute was Government land, provisions of Government Grants Act, 1895 (hereinafter referred to as “GG Act, 1985”) were also relied on by Government and, therefore, Supreme Court examined provisions thereof also. It held that GG Act, 1895 is an explanatory or declaratory act. It said:

“Doubts having arisen as to the extent and operation of the Transfer of Property Act, 1882 and as to the power of the Government to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, the Act was passed to remove such doubts as is clear from the long title and the preamble. The Act contains two sections and provides by Section 2 for the exclusion of the Transfer of Property Act, 1882 and, by Section 3 for the exclusion of, any rule of law, statute or enactment of the Legislature to the contrary.”

(Emphasis added)

134. In **Express Newspapers Pvt. Ltd. and others Vs. Union of India (supra)** Court further said:

“It is plain upon the terms that Section 2 excludes the operation of

*the Transfer of Property Act, 1882 to Government grants. While Section 3 declares that all provisions, restrictions, conditions and limitations contained over any such grant or transfer as aforesaid shall be valid and shall take effect according to their tenor, notwithstanding any rule of law, statute or enactment of the Legislature to the contrary. A series of judicial decisions have determined the overriding effect of Section 3 making it amply clear that **a grant of property by the Government partakes of the nature of law since it overrides even legal provisions which are contrary to the tenor of the document.** ” (Emphasis added)*

135. Having said so, Supreme Court found that the stand taken on behalf of Union of India that there was non compliance of mandatory requirement of Clause-6, therefore notice of re-entry was valid, is not correct.

136. Court then noted some contradictions in Constitution Bench judgment in **Bishan Das and others Vs. State of Punjab and others (supra)** and **State of Orissa Vs. Ram Chandra Dev AIR 1964 SC 685**.

137. In **State of Orissa Vs. Ram Chandra Dev (supra)**, Constitution Bench observed:

*“Ordinarily, where property has been granted by the State on condition which make the grant resumable, after resumption it is the grantee who moves the Court for appropriate relief, and that proceeds on the basis that the **grantor State which has reserved to itself the right to resume may, after exercising its right, seek to recover possession of the property without filing a suit.** ”*

(Emphasis added)

138. It was observed that existence of a right is the foundation for a petition under Article 226 of the Constitution. In Para-84 Court said that in cases involving purely contractual issues, the settled law is, where statutory provisions of public law are involved, writs will be issued and referred to its earlier judgment in **Mohammed Hanif Vs. State of Assam (1969) 2 SCC 782**. Thereafter it also considered the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971

(hereinafter referred to as “Act, 1971”) and observed that Express building was constructed with the sanction of lessor, i.e., Union of India on plots demised on 'perpetual lease' by registered lease-deed dated 17.03.1958 hence cannot be regarded as 'public premises' belong to the Central Government under Section 2(e). That being so, Act, 1971 has no application.

139. Court then considered other provisions of power of Lt. Governor, and Central Government and factual aspects involved in the matter, and, in our view, the same are not relevant for the purpose of this Case. Court also examined applicability of doctrine of estoppel but that has also not been raised in these matters, hence it is not necessary to examine them.

140. One aspect we may notice hereat that detailed judgment has been written by Hon'ble A.P. Sen, J. Justice E.S. Venkataramiah has agreed with the judgment of Hon'ble A.P. Sen, J in relation to the aspect that Lt. Governor of Delhi, Sri Jagmohan, has taken undue interest in getting notices issued to Express Newspapers and this action is not consistent with normal standards of administration and issued under pressure of Lt. Governor of Delhi, notices were violative of Article 14, suffers with arbitrariness and non application of mind. His Lordship said that it was not necessary to express any opinion on the contention based on Article 19(1)(a) of Constitution. Hon'ble Venkataramiah further said that question relating to civil rights of the parties flowing from the lease deed cannot be disposed of in a petition under Article 32 of the Constitution since questions whether there has been breach of the covenants under the lease, whether lease can be forfeited, whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution which should be tried in a regular civil proceeding. His Lordship further said in Para-202 of judgment as under:

“One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance

with the sweet will of an Officer or a Minister or a Lt. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law.”

141. Having said so, while agreeing with ultimate order of quashing of notices, Hon'ble Venkataramiah, J. said:

“I express no opinion on the rights of the parties under the lease and all other questions argued in this case. They are left open to be decided in an appropriate proceeding.” (Emphasis added)

142. Hon'ble R.B. Misra, J. also agreed with Hon'ble A.P. Sen and E.S. Venkataramiah, JJ that the notice challenged in writ petition is invalid, having no legal consequences and must be quashed for reasons detailed in both the judgments. His Lordship, however, said that other questions involved in the case are based upon contractual obligations between the parties and can be satisfactorily and effectively dealt with in a properly instituted suit and not by way of writ petition on the basis of affidavits which are so discrepant and contradictory in this case. Hon'ble R.B. Misra, J. in para 207 of judgment said:

“207. The right to the land and to construct buildings thereon for running a business is not derived from Article 19(1)(a) or 19(1)(g) of the Constitution but springs from terms of contract between the parties regulated by other laws governing the subject, viz., the Delhi Development Act, 1957, the Master Plan, the Zonal Development Plan framed under the Delhi Municipal Corporation Act and the Delhi Municipal Bye-laws, 1959 irrespective of the purpose for which the buildings are constructed. Whether there has been a breach of the contract of lease or whether there has been a breach of the other statutes regulating the construction of buildings are the questions which can be properly decided by taking detailed evidence involving examination and cross-examination of witnesses.” (Emphasis added)

143. The above judgment also has no application to the facts of present case. On the contrary, majority view expressed in above judgment is that right to land and to construct building is not derived from Articles 19(1)

(a) or 19(1)(g) of Constitution but springs from promise of contract between the parties. Whether there has been breach of contract of lease or there has been breach of any provision regulating lease rights and construction of building etc., are such questions which can be properly decided by taking detailed evidence involving examination and cross examination of witnesses and therefore, such rights can be enforced in common law proceedings by filing suit.

144. In **Yar Mohammad and another vs. Lakshmi Das and others AIR 1959 Allahabad 1**, a Full Bench of this Court considered following question :

"Whether the jurisdiction of the Civil Court is barred by virtue of Section 242 of the U. P. Tenancy Act in respect of suit filed under Section 9 of the Specific Relief Act for obtaining possession over agricultural land from which the plaintiff alleged his illegal dispossession within six months of the date of the-suit".

145. Therein plaintiffs instituted suit on 30.11.1948 for possession under Section 9 of Specific Relief Act, 1877 (*hereinafter referred to as "Act, 1877"*) alleging that they were in actual possession of land in dispute (land was admittedly an agricultural land) but wrongfully dispossessed by defendants in November 1948. Defendants contested the suit and disputed correctness of above allegations of plaintiffs and pleaded that they were in possession of land as tenants of plaintiffs for more than 12 years, hence, plaintiffs cannot eject them. They also pleaded that suit was filed under Section 9 of Act, 1877 only to evade jurisdiction of Revenue Court. Trial Court i.e. learned Munsif rejected plea of lack of jurisdiction raised by defendants, accepted the case set up by plaintiffs and decreed the suit. Defendants then filed revision no.461 of 1952, which resulted in Reference, to a Larger Bench. The issue was with respect to applicability of Section 242 of U. P. Tenancy Act, 1939. Court said that Section 242 confers exclusive jurisdiction on Revenue Court and takes away jurisdiction of Civil Court only in respect of two

kinds of actions.

- (i) suits or application of the nature specified in the Fourth Schedule of the Act; and
- (ii) suits or applications based on a cause of action in respect of which any relief can be obtained by means of a suit or application specified in that schedule.

146. It was held that in order to attract Section 242, one has to demonstrate that action would fall under either of the above-mentioned two categories and if does not, jurisdiction of Civil Court is not ousted and Revenue Court will have no jurisdiction to entertain the action.

147. Then construing the cases, which may resort to Section 9 of Act, 1877, Court said that Section 9 gives a special privilege to persons in possession who take action promptly. In case they are dispossessed, Section 9 entitles them to succeed simply by proving:

- (1) that they were in possession,
- (2) that they have been dispossessed by the defendant,
- (3) that dispossession is not in accordance with law, and
- (4) that dispossession took place within six months of the suit.

148. No question of title either of plaintiffs or of defendants can be raised or gone into in an action brought under Section 9 of Act, 1877. Plaintiffs will be entitled to succeed without proving any title on which he can fall back upon and defendant cannot succeed even though he may be in a position to establish the best of all titles. Restoration of possession under Section 9 is however subject to a regular suit and person who has real title or even better title cannot be prejudiced in any way by a decree of a suit under Section 9. A person having real or better title always has a right to establish his title in a regular suit and get the possession back. The objective and idea behind Section 9, as the Court observed is that law does not permit any person to take law in his own

hands and to dispossess a person in actual possession without having recourse to a Court or Institution, in an illegal manner. In other words, objective of Section 9 is to discourage people from taking law in their own hands, how-ever good title they may have. In the interest of public order that self-help is not permitted so far as possession over Immovable property is concerned, Section 9 is intended to discourage and prevent proceedings which might lead to serious breaches of peace. It does not allow a person who has acted high-handedly by wrongfully dispossessing a person in possession from deriving any benefit from his own unjustified act. Section 9, infact, provides for a summary and quick remedy for a person who is in possession but illegally ousted therefrom without his consent. Court observed that 'Possession' is prima facie evidence of title and if a person who is in possession is dispossessed, he has a right to claim back possession from the person who dispossesses him. In an ordinary common law proceedings, a person who has a title, is entitled to possession and cannot be deprived of his right of possession by a person, who has no title or inferior to the former. Court said that for Section 9, claim of title is not allowed to be set up and possession wrongfully taken, has to be restored. Full Bench therefore, answered question formulated above in negative.

149. In our view, above judgment has no application to the facts of this case for the reason that title of land is not in dispute, inasmuch as, it is admitted case of all the petitioners that land in dispute is 'Nazul', hence it is owned and vested in Government. It is also not in dispute that petitioners got possession of land in dispute being legal heirs of original Lessees. Petitioners have not been evicted, so far, hence Section 9 of Act, 1877 has no application. In the present case right of re-entry is being exercised by respondent-State in terms of lease-deed, pursuant whereto possession was given to Lessees and petitioners have derived their interest from such Lessees, and now are bound to restore possession in terms of lease whereunder even original lessee were

obliged to surrender/hand over possession to State Government.

150. We may also note hereat that in the case in hand, lease was governed by provisions of GG Act, 1895 and Section 2, as amended in State of U.P., has excluded provisions of U.P. Tenancy Act, 1939 for governing rights etc. of parties. Only provisions contained in lease-deed shall apply and have to be given effect to as if U.P. Tenancy Act, 1939 was not passed. Therefore also, reliance placed on the aforesaid judgment in the case in hand is of no consequence.

151. **Lallu Yeshwant Singh (dead) by his legal representative vs. Rao Jagdish Singh and others, AIR 1968 SC 620** is a judgment which came before two Judges Bench of Supreme Court from a dispute raised under Qanoon Mal Riyasat Gwalior Samvat, 1983 (*hereinafter referred to as "Qanoon Mal"*) that is from Madhya Pradesh. Under Section 326 of Qanoon Mal, a suit was filed by Yeshwant Singh and others i.e. plaintiffs against Rao Jagdish Singh and others (defendants) in the Court of Tehsildar for possession of some agricultural land. Plaintiffs set up a case that they were in possession of land and forcibly dispossessed by defendants, therefore, should be restored their possession. Tehsildar decreed the suit and order was affirmed in appeal by Collector as well as Commissioner. Revision was also dismissed by Board of Revenue and decree passed by Tehsildar was maintained. Section 326 of Qanoon Mal broadly provided summary remedy as is provided in Section 9 of Act, 1877. In para 7 of the judgment, Supreme Court has referred to both the provisions and said that both are broadly similar. High Court took a different view holding that it was not necessary for a Lessor to resort to Court for obtaining possession and if there is default by plaintiff, it could have been dispossessed by defendants. Supreme Court said that no person can take law in its own hand and in such matter, where provisions providing summary procedure for restoration of illegal dispossession of land have been made, the same can be resorted to by the person who has

been illegally dispossessed. Supreme Court affirmed Full Bench judgment of this Court in **Yar Mohammad (supra)**. Here also we do not find applicability of this judgment to the case in hand for the reasons we have already said in respect of judgment in **Yar Mohammad (supra)**.

152. **The State of U.P. vs. Zahoor Ahmad and another (supra)** was a matter which came up before two Judges Bench of Supreme Court arising from action by State in respect of certain land falling within reserved forest in State of Uttar Pradesh. Zahoor Ahmad was granted lease of a plot of land at Chandan Chowki, Sonaripur Range in North Kheri Forest Division for an annual rent of Rs.100/-. The aforesaid land was part of reserved forest of which State of U.P. is the proprietor. Lease was granted for one year commencing from 18.03.1947 for industrial purpose. It was renewed on 10.06.1948 with effect from 18.03.1948 for further one year and again in 1949 for one year. Ultimately lease expired on 18.03.1950. State of U.P., after termination of lease, allowed Zahoor Ahmad to continue in possession of land on condition settled between the parties that Licensee i.e. Zahoor Ahmad would pay Rs.1,000/- as annual rent for occupation till 15.07.1950. Even after determination of lease on 15.7.1950, Zahoor Ahmad i.e. Licensee continued in possession and State of U.P. allowed him to remain in possession for three years beyond 15.07.1950 though for this period Zahoor Ahmad did not agree to give any undertaking of making payment of annual rent of Rs.1,000/-. A letter dated 04.12.1951 was issued to Zahoor Ahmad asking him to pay Rs.3,000/- for the year 1950-51. Letter further provided that if Zahoor Ahmad did not agree to pay Rs.3,000/- for the year 1950-51, amount of rent would be reduced to Rs.1800/- but he would not be allowed lease in future in any circumstance. The fact remains that Zahoor Ahmad was allowed to continue in occupation of land without any agreement as to the amount of rent payable for 1950-51. On 29.10.1952, Conservator of Forests sent a letter that Zahoor Ahmad can be allowed to run the mill beyond 15.07.1950 for three years if he pays

Rs.3,000/- per annum and for one year only, if he is ready to pay Rs.1,800/- but thereafter lease would not be renewed. Notice also said that he was only Licensee and should remove his plant and vacate the premises within one month and pay Rs.6,000/- as damages for use and occupation. Zahoor Ahmad did not pay the amount, hence, a suit for recovery of damages was filed by State of U.P. High Court came to the conclusion that Licensee (Zahoor Ahmad) was allowed to continue with the consent of State of U.P. though there was no written agreement about rate of rent and lease was granted for industrial purposes. Under Section 106 of TP Act, 1882, such lease is for year to year basis. The lease could have been terminated by six months notice and since no such notice was given, therefore, tenancy was not validly terminated. With respect to amount of rent, Court took the view that under Section 116, renewal would mean the same terms and conditions as made applicable in previous lease. High Court therefore decreed the suit for payment of rent of Rs.3,000/-. Possession was allowed by State with its consent. Thus, High Court took the view that 'holding over' was applicable under Section 116. State Government by-passing provision of TP Act, 1882 sought to rely on GG Act, 1895. Whether the kind of above lease, granted by State could have been brought within the purview of GG Act, 1895, Supreme Court examined this issue by referring to two judgments. In one, lease of forest land of Sunderbans was held to be a 'Grant' while, in another, Grant of Khas Mahal was not held to be as 'Grant'. In **Jnanendra Nath Nanda vs. Jadu Nath Banerji AIR 1938 Cal 211** two leases of two lots were granted by Sunderban Commissioner on behalf of Secretary of State. The land comprised in the lots were 'waste lands' of the Government. 'Waste lands' of Sunderbans were not property of any subject. Sunderbans was vast impenetrable forest. It was the property of East India Company and later on vested in Crown by virtue of an Imperial Statute. Court found that history of legislation showed that grants of Sunderbans lands were treated to be 'Crown Grants' within

meaning of 'Crown Grants Act'. In another matter i.e. **Secretary of State for India in Council vs. Lal Mohan Chaudhuri, AIR 1935 Cal 746** in respect of Khas Mahal, lease was granted by Government. It was held that lease of Khas Mahal does not come within the category of 'Grant' as contemplated in GG Act, 1935. Having said so, in para 13 of judgment, Court said that lease granted to Zahoor Ahmad was for the purpose of erecting a temporary rice mill and for no other purpose. The mere fact that State is the lessor will not by itself make above lease a 'Government Grant' within the meaning of GG Act, 1895. We may reproduce para 13 of the judgment in **State of U.P. vs. Zahoor Ahmad (supra)** as under :

“The lease in the present case was for the purpose of erecting a temporary rice mill and for no other purpose. The mere fact that the State is the lessor will not by itself make it a Government grant within the meaning of the Government Grants Act. There is no evidence in the present case in the character of the land or in the making of the lease or in the content of the lease to support the plea on behalf of the State that it was a grant within the meaning of the Government Grants Act.” (Emphasis added)

153. When a question arose whether High Court has rightly applied Section 116 of TP Act, 1882, Supreme Court, in this context, referred to a judgment of this Court in **Lala Kishun Chand vs. Sheo Dutta, AIR 1958 All. 879** wherein after expiry of lease of Nazul land, Licensee was permitted by Board of Revenue to continue in occupation as tenant and rent was also realized from him and held that in these facts, Section 116 of TP Act, 1882 was rightly applied. Then in paras 15 and 16, Court said as under:

“15. In the present case the High Court correctly found on the facts that the respondent after the determination of the lease held over. Even if the Government Grants Act applied Section 116 of the Transfer of Property Act was not rendered inapplicable. The effect of Section 2 of the Government Grants Act is that in the construction of an instrument governed by the Government Grants Act the court shall construe such grant irrespective of the

provisions of the Transfer of Property Act. It does not mean that all the provisions of the Transfer of Property Act are inapplicable. To illustrate, in the case of a grant under the Government Grants Act Section 14 of the Transfer of Property Act will not apply because Section 14 which provides what is known as the rule against perpetuity will not apply by reason of the provisions in the Government Grants Act. The grant shall be construed to take effect as if the Transfer of Property Act does not apply.

16. Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of Sections 2 and 3 of the Government Grants is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has 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. ”

154. In **Bhawanji Lakhanishi vs. Himatlal Jamnadas AIR 1972 SC 819**, Court said that basis of Section 116 is a bilateral contract between erstwhile landlord and erstwhile tenant. It has been held that assent of lessor cannot be inferred merely from his delay in taking steps to evict lessee. We may also refer to Calcutta High Court decision in **Ratan Lal vs. Farshi Bibi (1907) ILR 34 Cal 396**; Madras High in **Govindaswami vs. Ramaswami (1916) 30 Mad LJ 492**; Patna High Court in **Christian vs. Hari Prasad AIR 1955 Pat 158** and **Pritilata Devi vs. Banke Bihari Lal AIR 1962 Pat 446**; and Rajsthan High Court in **Gordhan vs. Ali Bux AIR 1981 Raj 206**, holding that to attract Section 116, therefore, it has to be shown that there was a bilateral act creating a new tenancy. There is no implication of holding over. In our view, there is neither any material nor pleading to attract Section 116 and therefore, judgment in **Zahoor Ahmad (supra)** on this aspect does not help petitioners. On the contrary, what has been said in para 16 of the judgment, quoted above, the conditions of 'Grant' would prevail over

every law including TP Act, 1882.

155. Moreover, in respect of Section 116 TP Act, 1882, we have already discussed the matter earlier to demonstrate that it is not attracted in the present case.

156. There is one more aspect which may be considered at this stage. In State of U.P., a special Statute was enacted in 1972 i.e. U.P. Act, 1972. It also deals with a situation where a person has continued in possession over Government owned land after expiry of period for which he was authorized to remain in possession of such land and thereunder he is declared as 'Unauthorized Occupant'. We find that similar provision was also made by Parliament in Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (*hereinafter referred to as "Act, 1971"*).

157. In U.P. Act, 1972, Section 2(g) and 2(e) define "unauthorised occupation" and "public premises", and the same read as under :-

*"2(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises **without authority** for such occupation, and **includes the continuance in occupation** by any person of the public premises **after the authority** (whether by way of grant or any other mode of transfer) **under which or the capacity in which he was allowed** to hold or occupy the premises **has expired** or has been determined for any reason whatsoever and also includes continuance in occupation in the circumstances specified in sub-section (1) of Section 7 and a person shall not, merely by reason of the fact that he had paid any amount as rent, be deemed to be in authorised occupation."*

*"2(e) "public premises" means **any premises belonging to or taken** on lease or requisitioned by or on behalf of **the State Government**, and **includes** any premises belonging to or taken on lease by or on behalf of-*

(i) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one per cent of the paid-up share capitals held by the State Government: or

(ii) any local authority; or

(iii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government: or

(iv) any society registered under the Societies Registration Act, 1860, the governing body whereof consists, under the rules or regulations of the society, wholly of public officers or nominees of the State Government or both:

and also includes-

(i) Nazul land or any other premises entrusted to the management of local authority (including any building built with Government funds on land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority, under any law relating to land tenures):

(ii) any premises acquired under the Land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions:" (Emphasis added)

158. Definition of "unauthorized occupation" clearly includes occupation of a public premises by a person after expiry of authority to occupy such land which includes a person whose period of lease has expired and still he or she is continuing in possession. "Public Premises" includes any premises belonging to or taken on lease including "nazul land".

159. Considering provisions of U.P. Act, 1972, in **Ashoka Marketing Ltd. And another vs. Punjab National Bank and others, (1990) 4 SCC 406**, a Constitution Bench held that U.P. Act, 1972 being a special Act will override a general statute and a person who may have entered tenancy legally may become "unauthorized occupant" subsequently, after expiry of lease period.

160. A similar issue in the context of 'Nazul', managed by Delhi

Development Authority and Government under provisions of Act, 1971 was considered in **Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd. (supra)**. In that case land belonged to Delhi Improvement Trust. It had executed a lease deed dated 6.1.1951 in favour of Balraj Virmani (*hereinafter referred to as "original lessee"*). After enactment of Delhi Development Act, 1957, Development Authority was constituted thereunder, namely, Delhi Development Authority (*hereinafter referred to as "DDA"*). Lease was initially for a period of 20 years i.e. from 11.8.1948 to 10.8.1968, liable for extension/renewal for further period of 20 years at the option of lessee. Original lessee on 23.2.1967 approached DDA for renewal of lease. DDA served notice on 16.2.1968 alleging breach of terms and conditions of lease deed. DDA vide notice dated 1.9.1972 terminated lease which was challenged by original lessee in Original Suit No. 47 of 1975 before Sub Judge, Delhi seeking restraint order against DDA. Suit was decreed by Sub Judge holding that notice dated 1.9.1972 terminating lease was illegal. DDA preferred appeal which was dismissed by Additional District Judge vide judgment dated 29.9.1982. DDA preferred Second Appeal in Delhi High Court, being RSA No. 06 of 1983. During pendency of second appeal, an application under Order 22 Rule 10 of Code of Civil Procedure (*hereinafter referred to as "CPC"*) was filed alleging that original lessee has sold disputed property through sale deed to M/s. Anant Raj Agencies Pvt. Ltd. (*hereinafter referred to as "subsequent purchaser"*). This sale deed was claimed to have been executed between original lessee and subsequent purchaser pursuant to some compromise decree dated 22.6.1988 passed by High Court in a matter between original lessee and subsequent purchaser. The application of subsequent purchaser for substituting as respondent in second appeal filed by DDA was allowed by High Court. Further subsequent purchaser also applied to DDA for conversion of lease land to freehold and deposited a sum of Rs.96,41,892/- towards conversion

charges. DDA rejected the said application of subsequent purchaser. Aggrieved thereof, subsequent purchaser preferred writ petition no. 10015 of 2005 in Delhi High which was disposed of vide order dated 19.7.2007, directing DDA to decide subsequent purchase's request for conversion of premises from lease hold to freehold. Thereafter, High Court also dismissed DDA's second appeal holding that act of demand and acceptance of rent tantamounts to renewal of lease of disputed property. It is this judgment passed in second appeal which came to be considered before Supreme Court in the aforesaid matter. One of the contentions raised on behalf of DDA was that original lessee created interest in the disputed property in favour of subsequent purchaser during the period when original lessee itself was not a lease holder since lease stood terminated by efflux of time. It was contended that original lessee had no title or interest in property which could have been transferred to subsequent purchaser and said transfer is void and not binding on DDA. Next ground was that deposit of rent by original lessee and acceptance by office of DDA is something administrative in nature and would not be construed as estoppel or waiver on the part of DDA with regard to property unless a specific intention to this effect is communicated to original lessee. Supreme Court formulated following two questions:-

*“1. Whether original lessee has acquired any right in respect of property in question **after termination of lease by efflux of time on 10.8.1968** and also by termination notice dated 1.9.1972, in the absence of renewal of lease by DDA in writing as provided under Clause iii(b) of lease deed, by virtue of payment of rent in the office of the DDA?*

2. Whether Respondent(subsequent purchaser) acquires any right in respect of property in question by getting substituted in place of original lessee by virtue of a compromise decree, between original lessee and Respondent based on a sale deed dated 14.10.1998 executed by original lessee, by invoking Order 22 Rule 10 of CPC during pendency of appeal before High Court?”

161. While answering question no.1, Court held that there was no renewal of lease by DDA in favour of original lessee. Court also held that a lease if has expired, it would not be necessary for lessor to terminate the same since original lease stands terminated by efflux of time after expiry of period of lease. Court said that Principle of "holding over" under Section 116 of Act, 1882 would not be applicable since there was no assent of landlord and mere acceptance of rent by lessor, in absence of an agreement to the contrary, would not render possession of lessee valid. In this regard, Court relied on its earlier decision in **Shanti Prasad Devi and Another vs. Shanker Mahto and others (supra)** and **Sarup Singh Gupta vs. S. Jagdish Singh and others (2006) 4 SCC 205**. There could not be an implied renewal to attract "holding over" on mere acceptance of rent offered by lessee.

162. In **Delhi Development Authority vs. Anant Raj Agencies Pvt. Ltd. (supra)** Court also held that land vested in DDA is a public premises and that being so, it is governed by Act, 1971, which shall prevail over Act, 1882, a general law governing landlord and tenant's relationship. Referring to definition of "Public Premises", Court said, "*It can be concluded that Act, 1882 is not applicable in respect of Public premises*". Court held :-

"Therefore, in the instant case, as per Clause iii(b) of the lease deed and Sections 21 and 22 of the DD Act read with Rule 43 of the Nazul Land Rules and in the light of Shanti Prasad Devi, Sarup Singh Gupta and Ashoka Marketing Ltd. Cases (supra), there cannot be an automatic renewal of lease in favour of the original lessee once it stands terminated by efflux of time and also by issuing notice terminating the lease. Merely accepting the amount towards the rent by the office of the DDA after expiry of the lease period shall not be construed as renewal of lease of the premises in question in favour of the original lessee, for another period of 20 years as contended by the Respondent."

163. In **Delhi Development Authority vs. Anant Raj Agencies Pvt. Ltd. (supra)** Court also considered that land vested in DDA was a

'Nazul land' and that being so, power has been conferred upon DDA to grant lease which includes renewal of lease but in absence of said renewal of lease of property as required in law, original lessee cannot claim an automatic renewal in his favour. Court held as under:-

*"Thus, it is abundantly clear from the aforesaid legal statutory provisions of the DD Act and terms and conditions of the lease deed and the case law referred supra that **there is no automatic renewal of lease of the property in question in favour of the original lessee**"* (Emphasis added)

164. Having said so, Court held that in absence of renewal of lease, status of original lessee in relation to disputed property was that of an "unauthorized occupant" in terms of Section 2(g) of U.P. Act, 1972.

165. It also said that any act on the part of DDA in respect of other communication would make no difference, since a "Public Premises" is to be dealt with by relevant statutory provisions including Act, 1971, Nazul Land Rules and DDA Act, 1957. Thus question-1 was answered by Court as under:-

*"30. Without examining the case in the proper perspective that the property in question being a Public Premises in terms of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and that **after expiry of lease period the original lessee has become unauthorized occupant** in terms of Section 2(g) of the said Act in the light of relevant statutory provisions and Rules referred to supra and **law laid down by the Constitution Bench of this Court in the Case of Ashoka Marketing Ltd. and Another (supra)**, the concurrent findings of the courts below on the contentious issue is not only erroneous but also suffers from error in law and therefore, liable to be set aside.*

31. The grant of perpetual injunction by the Trial Court in favour of original lessee, restraining the DDA from taking any action under the said termination notice dated 01.09.1972, on the ground that the termination notice dated 01.09.1972 being illegal, arbitrary and without jurisdiction and the affirmation of the same by both the first appellate court, i.e. by the learned ADJ and further by the High Court by its impugned judgment and order are

not only erroneous but also suffers from error in law. Thus, Point No.1 is answered in favour of the Appellant."

166. Thereafter, question-2 was considered by Court. It was held that compromise decree between original lessee and subsequent purchaser was void ab initio in law for the reason that original lessee in absence of renewal of lease in his favour himself has no right, title or interest at the time of execution of sale deed in respect of disputed property. Court said:

*"It is well settled position of law that the **person having no right, title or interest in the property cannot transfer the same by way of sale deed.**"* (Emphasis added)

167. Thus, original lessee could not transfer a valid right to subsequent purchaser since itself had no right whatsoever in respect of land in dispute. Further, fact that subsequent purchaser deposited conversion charges in the office of DDA, also would make no difference. Original lessee in absence of renewal of lease, himself having become an "unauthorized occupant" of property, a transaction between original lessee and subsequent purchaser would have no legal consequence. Thus anything done between DDA and original lessee will also have no consequence. Court therefore, answered second question as under:-

*"The instant case having peculiar facts and circumstances, namely, after 10.08.1968 the lease stands terminated by efflux of time, which is further evidently clear from the termination notice dated 01.09.1972 and thereafter, **the original lessee becomes an unauthorised occupant** in terms of Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and consequently, **not entitled to deal with the property in question in any manner. The very concept of conversion of leasehold rights to freehold rights is not applicable to the fact situation.**"*

(Emphasis added)

168. In the aforesaid backdrop, when we consider facts of present case, we find that entry of petitioners over land in dispute was wholly unauthorised. Therefore, their status is of 'rank trespassers'. It is true that

petitioners have raised certain constructions over land in dispute but even that is without any authority and in violation of stipulations of lease deed. Moreover, raising of such constructions will not validate what is illegal from very inception. Lessees under terms of lease were under an obligation to surrender leased land to State after expiry of lease but such obligation was not discharged by lessees. The mere fact that State immediately after expiry of lease or within reasonable time did not take any action for restoration of possession of leased land does not mean that State's right of resumption and re-entry or that of taking possession of land in dispute which is owned by State, in any manner would stand hampered. It is also not the case of petitioners that their right with respect to title over land in dispute would stand matured by 'Prescription' i.e. by way of 'Adverse Possession'. Neither it is pleaded, nor any material in support thereof has been placed on record, nor in the facts of this case, doctrine of 'adverse possession' is attracted.

169. State, at no point of time, validated any action of petitioners in respect of land in dispute. It is interesting to see that petitioners have pleaded that they continuously paid rent of disputed Nazul land to Sri Harihar Nath Dhar, but State, the real owner of land, stood deprived of any payment even by way of lease rent or premium or otherwise, either by earlier Lessee or petitioners. There is nothing on record to show that any amount towards premium or lease rent has been paid to State after expiry of lease on 01.04.1962. In effect, land has been enjoyed by occupants including earlier lessees and then petitioners, free of any payment to owner, not for a short period but almost half a century and more. The land owned by State constitutes a 'public asset' in which people in general have a right to ensure that custodian of public asset i.e. State Government shall utilize such asset for maximum welfare and benefit of public at large but that has not been done and private individuals stood benefited in a most illegal manner.

170. So far as resumption is concerned, admittedly, State has sought to

resume land for 'public purpose' i.e. for developing 'Sports Complex' on the land in dispute. It is not disputed by learned counsel for petitioners that Allahabad City has been chosen to be developed as "Smart City" for which land for developmental activities is required in large quantity. State Government required huge land for making construction of various establishments besides developing Green Area and places of other activities. Therefore, purpose for which land is sought to be acquired is undoubtedly a 'public purpose'. Mere fact that in case of some other persons, land has been made freehold or some other Nazul land has not been sought to be resumed, by itself, will not make resumption in question, arbitrary or discriminatory for the reason that every land situated in different location has its own identity, utility and suitability. One land in a particular location cannot claim parity with another land. Reasons may be hundred i.e. size of land, its topography and similar other aspects. It is not the case of petitioners that land in question cannot be developed as 'Sports Complex'. The mere fact that one 'Sports Complex is already existing in the city of Allahabad, does not mean that for developing Allahabad as 'Smart City', more than one Sports Complex should not or cannot be developed and constructed. This assumption on the part of petitioners is thoroughly unwarranted and misconceived.

171. Further, right of re-entry is not restricted under terms of lease, as we have already quoted. Right of re-entry also does not prejudice right of State to take appropriate steps for claiming damages for breach of covenants of lease-deed and for recovery of rent/damages or other dues in respect of actual use of land by unauthorized occupants. State has not chosen to take structure raised on land in dispute and opportunity has been given to petitioners to remove such structure from land in dispute and give vacant possession to respondent-State within fifteen days. It thus cannot be said that resumption of land in dispute by State is illegal or invalid or not in accordance with law.

172. Counsel for petitioners at this stage sought to argue that petitioners

if treated as 'unauthorized occupant' in view of definition of term 'unauthorized occupant' provided in Section 2(g) of U.P.Act, 1972, in that case, they can be evicted from premises in question only in accordance with procedure prescribed therein and not otherwise.

173. Here also we find no substance in the submission. Provisions of lease-deed, as we have already said, provide a procedure for re-entry. Besides relevant clauses of lease-deed which we have already quoted, there is another provision in lease-deed providing for re-entry by Government at any time and the said clause of lease deed reads as under :

“PROVIDED also that if the Government shall at any time require to re-enter on this site it can do so, on paying the value of all buildings that may be on this site, plus 10 per cent, as recompence for resumption of lease and that the lessee shall have no further claim of any sort against the Government.”

(Emphasis added)

174. Supreme Court has already said that terms of lease shall govern Nazul land in view of provisions of GG Act, 1895 and being a special procedure prescribed in lease deed, it shall prevail over any other law and no other procedure is required to be followed.

175. Therefore, State Government, when avail its right under terms of lease, cannot be compelled to chose another procedure. Moreover, under U.P.Act, 1972, State may proceed if it intends to recover the amount of damage, compensation etc. for unauthorized possession over public premises, which has to be ascertained by Prescribed Authority, which is not the case in hand. Therefore, it cannot be said that State Government is bound to follow procedure of U.P. Act, 1972 and cannot resort to the procedure prescribed for re-entry provided in lease-deed itself. This argument is contrary to what has been said by Supreme Court in **Azim Ahmad Kazmi and others (supra)**, hence rejected.

176. In this context and to justify possession of petitioners over land in

dispute, it is also contended that in 1992, policy of conversion of Nazul land into freehold was adopted by Government and petitioners having applied for freehold, were entitled to continue for possession till their application is decided, hence State Government could not have re-entered or resumed land in dispute, instead, petitioners are entitled for conversion of lease into freehold. Reliance is placed on G.O. dated 23.05.1992 and subsequent ones.

177. The first such G.O. is dated 23.05.1992. The aforesaid G.O. was applicable to permanent leases given for '**residential purposes**' and 'current leases', given for residential purposes. Para 1 of aforesaid G.O. reads as under :

“मुझे यह कहने का निर्देश हुआ है कि सम्यक विचारोपरान्त शासन द्वारा नजूल भूमि के प्रबन्ध एवं निस्तारण आदि की वर्तमान व्यवस्था में परिवर्तन करते हुए शाश्वत एवं चालू पट्टों के अन्तर्गत उपलब्ध नजूल भूमि का स्वैच्छिक आधार पर फ्री-होल्ड घोषित करने एवं शेष रिक्त नजूल भूमि का निस्तारण इस शासनादेश में निर्धारित प्रक्रिया के अनुसार करने का निर्णय लिया गया है। तदनुसार नजूल भूमि के प्रबन्ध एवं निस्तारण आदि के सम्बन्ध में निम्नलिखित व्यवस्था तात्कालिक रूप से लागू होगी।”

“I am directed to say that after due consideration the government has while changing the extant policy of management and disposal of the Nazul land, decided to declare **Nazul land available under the perpetual and current leases** to be freehold on voluntary basis and to dispose remaining vacant Nazul land as per procedure prescribed in this Government Order. Accordingly, in respect of the management and disposal, etc. of the Nazul land, the following policy shall come into force with immediate effect.”

(English Translation by Court)

(Emphasis added)

178. Those, who are governed by aforesaid G.O., were directed to submit their option for freehold within one year from the date of issue of G.O. and only they would be entitled for benefit under the said G.O. It also restrained any transfer of property if under lease deed, no transfer was permissible without permission. It also directed that where

unauthorized possession is found, action for eviction shall be taken in accordance with law. Paras 7 and 8 of said G.O. read as under :

“(7) जिन पट्टों में यह शर्त है कि पट्टाधिकारी बिना पट्टादाता की अनुमति के पट्टागत भूमि का हस्तान्तरण कर सकता है, वहाँ पट्टे की शर्त के विपरीत कोई हस्तक्षेप नहीं किया जाएगा, किन्तु जहाँ बिना पट्टादाता की अनुमति के पट्टेदार द्वारा भूमि हस्तान्तरण करने का निषेध है वहाँ इस शासनादेश के लागू होने की तिथि से किसी भी प्रकार के हस्तान्तरण पर एक वर्ष तक के लिए रोक लगा दी जाएगी। यह योजना शासनादेश जारी होने की तिथि से लागू होगी।

(8) इस बात का व्यापक प्रचार किया जाएगा कि उपरोक्त नीति अनधिकृत कब्जों के मामलों में लागू नहीं होगी और अनधिकृत कब्जों के मामलों में विधिक प्रक्रिया के अनुसार बेदखली आदि की कार्यवाही की जाएगी।”

“(7) ***In leases where leaseholder can transfer lease land without permission of the lessor, in such a case no interference shall be made contrary to the terms and conditions of the lease. But where transfer of land without permission of the lessor is prohibited, any transfer of land shall be stopped for a year from the date of enforcement of this Government Order. This policy shall come into force from the date of issue of the Government Order.***

(8) ***It shall be widely circulated that the aforesaid policy shall not be applicable to the cases related to unauthorized possessions and eviction proceedings, etc. in relation to the unauthorized possessions shall be held in accordance with the legal procedure.***

(English Translation by Court)

(Emphasis added)

179. The second G.O. was issued on 02.12.1992 dividing Lease-Holders in two categories. One, who had not violated conditions of lease, and, another, who had violated conditions of lease. Those, who had not violated conditions were required to pay for conversion to freehold an amount equal to 50 percent of Circle Rate for residential purpose while those who had violated conditions of lease, were to pay 100 percent. Same was in respect of Group Housing and Commercial use with the difference of amount to be paid for freehold. Para 4 thereof also provided that such current leases where 90 years period had

expired, if Lease-holder had not violated any condition of lease and wants freehold, that can be allowed as per aforesaid G.O.. However, if he wants fresh lease, that can also be allowed for 30 years on payment of 20 percent of Circle rate as premium and 1/60th part of premium towards annual rent. Clause 4 of aforesaid G.O. reads as under :

“4. ऐसे चालू पट्टे जिनके 90 वर्ष की सम्पूर्ण अवधि समाप्त हो गई है यदि कोई पूर्व पट्टाधारक जिन्होंने पट्टे की शर्तों का उल्लंघन नहीं किया है, भूमि फ्री-होल्ड कराना चाहता है तो ऐसी दशा में निर्धारित दरों के अनुसार फ्री-होल्ड कर दिया जाएगा। यदि वह फ्री-होल्ड नहीं कराना चाहते हैं बल्कि नया पट्टा लेना चाहते हैं तो ऐसी दशा में 30 वर्ष के लिए एक नया पट्टा वर्तमान शर्तों के आधार पर दिया जा सकता है जिसके लिए प्रीमियम की धनराशि प्रचलित सर्किल रेट की निर्धारित दर की 20 प्रतिशत होगी और वार्षिक किराया, प्रीमियम का 1/60वां भाग प्रतिवर्ष के हिसाब से भी लिया जाएगा।”

“4 . ***In case of those current leases whose entire lease period of 90 years has expired, if any previous leaseholder who has not violated lease conditions, wants to get the land converted into freehold, in such a circumstance it shall be converted into freehold against the payment of the prescribed rates. If he does not want to convert it into freehold and wants to get a new lease, in such a circumstance a new lease may be awarded for 30 years under the extant terms and conditions, for which premium amount @ 20 percent of the existing circle rates and annual rent @ 1/60 of the premium shall be paid.***” (English Translation by Court)

(Emphasis added)

180. The third G.O. dated 03.10.1994 again made amendment in earlier two G.Os. Relevant aspect is that vide para 2, provision made for execution of 30 years lease, where 90 years period had expired, was deleted. Para 2 of G.O. dated 03.10.1994 reads as under :

“2. शासनादेश संख्या 3632/9-आ-4-92-293-एन/90, 2-12-1992 में ऐसे चालू पट्टे जिनके 90 वर्ष की सम्पूर्ण अवधि समाप्त हो चुकी है तथा पूर्व पट्टाधारक द्वारा पट्टे की शर्तों का उल्लंघन नहीं किया गया है, के सम्बन्ध में 30 वर्षीय पट्टा स्वीकृत किये जाने की व्यवस्था की गई थी। इस व्यवस्था को तात्कालिक प्रभाव से समाप्त किया जाता है। अब ऐसे मामले में नया पट्टा स्वीकृत नहीं किया जाएगा बल्कि ऐसे मामले में जिनमें पट्टे की सम्पूर्ण अवधि समाप्त हो चुकी है उसको उपरोक्त निर्धारित दरों पर पूर्व पट्टेदार के पक्ष में फ्री-होल्ड में परिवर्तित करने की

कार्यवाही की जाएगी।”

*“2. A provision had been made in Government Order No. 3632/9-Aa-4-92-293-N/90, dated 02.12.1992 for grant of lease for 30 years for the current leases; where 90 years' tenure has expired and the terms and conditions of the lease have not been violated by the former lease holder. **This provision is annulled with immediate effect. Now in such cases, no new lease shall be granted; rather, in cases where entire period of lease has expired, proceedings shall be taken for converting such leases into freehold in favour of the former lease holders at the aforesaid prescribed rates.**”*

(English Translation

by Court)

(Emphasis added)

181. Para 8 of aforesaid G.O. further provides that policy for freehold will be effective only upto 31.03.1995.

182. Considering that some very poor persons were also in occupation of 'Nazul land' and their eviction may result in serious problem of accommodation to such persons, another G.O. dated 01.01.1996 was issued making amendments in earlier three G.Os. stating that those persons whose monthly income is Rs.1,250/- or less, unauthorized possession of such persons on vacant Nazul land upto 01.01.1992 or prior thereto for residential purposes, shall be allowed freehold on payment of 25 percent premium and Rs.60/- annual rent for the said area upto 45 Sq. Meter and for more than 45 Sq.Meter but upto 100 Sq.Meter, 40 percent and Rs.120 annual rent. It clearly says that no regularization of unauthorized possession shall be made beyond 100 Sq.Meter and amount of premium shall be allowed to be paid in 10 years' interest free 6 monthly installments. Such unauthorized possession shall be regularized by approving 30 years' lease. Clauses 1, 2, 3 and 4 of aforesaid G.O. reads as under :

“(1) किसी भी दशा में 100 वर्ग मीटर से अधिक क्षेत्रफल पर किये गये अवैध कब्जों का विनियमितीकरण नहीं किया जायेगा तथा दिनांक 30.11.1991 की सर्किल रेट पर आंकलित सम्पूर्ण मूल्य पर निर्धारित यथास्थिति 25% या

40% नजराने की धनराशि 10 वर्षीय ब्याज रहित छमाही किस्तों में लिया जायेगा, परन्तु यदि कोई व्यक्ति सम्पूर्ण धनराशि या बकाया किस्तों की धनराशि एकमुश्त जमा करना चाहता है तो वह देय धनराशि जमा कर सकता है।

(2) उपरोक्त प्रकार के मामले में विनियमितीकरण की कार्यवाही 30 वर्षीय पट्टा स्वीकृत करके की जायेगी। स्वीकृत पट्टे में 30-30 वर्षीय दो नवीनीकरण के प्राविधान सहित सम्पूर्ण पट्टे की कुल अवधि दो नवीनीकरण के प्राविधान सहित सम्पूर्ण पट्टे की कुल अवधि अधिकतम 90 वर्ष की होगी। जिसमें यह शर्त होगी कि सम्बन्धित व्यक्ति भूमि का पट्टाधिकार 30 वर्ष तक किसी व्यक्ति को हस्तान्तरित नहीं कर सकता है पट्टा शासन द्वारा निर्धारित प्रारूप पर जारी किया जायेगा।

(3) अनाधिकृत कब्जों के विनियमितीकरण की समस्त कार्यवाही जिलाधिकारी, की अध्यक्षता में गठित समिति की संस्तुति पर जिलाधिकारी द्वारा की जायेगी। लखनऊ एवं देहरादून में समस्त कार्यवाही उपाध्यक्ष, विकास प्राधिकरण की अध्यक्षता में गठित समिति की संस्तुति पर उपाध्यक्ष द्वारा की जायेगी।

(4) विनियमितीकरण हेतु परिवार को एक इकाई के रूप में माना जायेगा तथा पट्टा परिवार के मुखिया के पक्ष में स्वीकृत किया जायेगा।”

“(1) Under no circumstances, **illegal possessions over an area measuring over 100 square metres shall be regularised** and an amount of earnest money, 25% or 40% as the case may be, on the entire amount calculated as per the circle rate as on 30.11.1991 shall be taken in half yearly interest free instalments over the period of 10 years. However, if any person wishes to deposit entire money or the amount of remaining instalments in lump sum, he/she may deposit the payable amount.

(2) In the aforesaid type of cases, regularisation proceedings shall be done by granting a lease for a period of 30 years. The total period of the entire lease shall at most be 90 years with provision of two renewals, for 30 years each, in the lease so granted, subject to a restriction **that the person concerned cannot transfer the lease rights to anybody until 30 years. The lease shall be issued on a format prescribed by the government.**

(3) **All the proceedings of regularisation of unauthorised possessions shall be done by the District Magistrate on recommendation of a committee constituted under his/her chairmanship.** All the proceedings in Lucknow and Dehradun shall be done by the Vice Chairman, Development Authority, on

recommendation of a committee constituted under his/her chairmanship.

(4) For the purpose of regularisation, a family shall be deemed to be a unit and lease shall be granted in the name of the head of the family.” (English Translation by Court)

(Emphasis added)

183. Then vide G.O. dated 17.02.1996 again some amendments were made in respect of amount payable for freehold but earlier policy of categories of persons, who can claim freehold, was not changed. Vide G.O. dated 29.03.1996, period for giving benefit of freehold was extended from 01.4.1996 to 30.09.1996. G.O. dated 02.04.1996 only made some corrigendum in earlier G.O. dated 17.02.1996.

184. On 29.08.1996, G.O. was issued in furtherance of G.O. dated 17.02.1996 stating that under G.O. dated 17.02.1996, freehold rights to Nominees of Lease-Holders were allowed and in reference thereto, rates on which such Nominees shall be allowed freehold, were mentioned.

185. We find that G.O. dated 17.02.1996 nowhere permits conversion of Nazul land into freehold in favour of Nominees of Lessee. Thus, G.O. dated 29.08.1996, insofar as it refer to G.O. dated 17.02.1996, has erred in law and it is a clear misreading. If G.O. dated 17.02.1996 itself had not permitted freehold rights to Nominee(s) of Lessee, question of rights determined by G.O. dated 29.08.1996 is of no legal consequence and would remain inoperative.

186. Then vide G.O. dated 25.10.1996, implementation of freehold policy was extended upto 31.12.1996. Then G.O. dated 31.12.1996 was issued to clarify G.O. dated 17.02.1996 in respect of applicability of rate, where land use at the time of grant of lease has changed in Master plan.

187. G.O. dated 26.09.1997 made amendments in all earlier G.Os. in respect of rates for Nazul land being used for hospital and other charitable purposes. It also clarifies as to which contravention of lease

deed will be treated as violation to attract higher rate. It also provided in para 6(2) that Government has got right of re-entry due to violation of any conditions of lease and lease has already expired, and such Lease-Holder may be informed of Nazul policy and be given an opportunity to apply for freehold whereafter action for dispossession will be taken. The policy of conversion of freehold was extended upto 25.12.1997.

188. Then comes G.O. dated 01.12.1998. Thereunder only two categories were made i.e. residential and non-residential. Restriction was also imposed on certain Nazul land in respect whereto conversion of freehold shall not be allowed.

189. Vide G.O. dated 10.12.2002, it was clarified that freehold conversion shall not be allowed to nominee of Lessee or his legal heirs. G.O. dated 31.12.2002 relates to rates and clarification hence are not relevant for the purpose of present case.

190. Vide G.O. dated 04.08.2006, provision for regularization of Nazul land which was in unauthorized possession, was deleted. It is also said that in all the matters, where freehold document has not been registered, application shall be cancelled. Vide G.O. dated 15.02.2008 clarification was given in respect of G.O. dated 04.08.2006 and it was reiterated that in all those matters where freehold document has not been registered, application shall be rejected.

191. Vide G.O. dated 21.10.2008, Clause 3 of G.O. dated 10.10.2002, whereby provision for conversion of freehold to Nominee of Lessee or his legal heirs was ceased, was restored. It was also clarified that decision to convert freehold of Nazul land will apply only when such land is not found necessary for Government use.

192. G.O. dated 26.05.2009 made an amendment in para 2(6) of G.O. dated 21.10.2008 and substituted following paras therein :

“ऐसे नजूल भूमियां जो भू-धारक या पट्टाधारक या उनके विधिक उत्तराधिकारी / नामित की भूमि के साथ स्थित है तथा उनके लिए उपयोगी सिद्ध

हो सकती है तथा किसी अन्य के उपयोग की सम्भावना नहीं प्रतीत होती है। ऐसी भूमि का विनियमितीकरण भू-धारक या पट्टाधारक या उनके विधिक उत्तराधिकारी / नामित के पक्ष में वर्तमान सर्किल रेट शत प्रतिशत प्राप्त कर फ्री-होल्ड कर दिया जायेगा। ऐसे मामलों में शासन की अनुमति आवश्यक होगी।”

“Those nazul lands which are lying adjacent to the land of land holder or lease holder or his legal successor/his nominee, and which can be of utility to them and do not appear to have the potential of being used by any other person, shall be regularised and converted into freehold in favour of the land holder or lease holder or his legal successor/nominee after receiving cent percent current circle rate. In such matters, the permission of the government shall be necessary.” (English Translation by Court)

(Emphasis added)

193. Further time for conversion into freehold was extended upto 31.12.2009.

194. G.Os. dated 29.01.2010, 17.02.2011 and 01.8.2011 contain amendments of minor nature hence not discussed further.

195. Then comes G.O. dated 28.09.2011. It talks of policy of conversion of Nazul land into freehold, which was not listed at any point of time but has been occupied unauthorizedly and occupants have raised their construction using land prior to 01.12.1998. However, land of public places, park, side-lanes of road and other Government uses was excluded and maximum area for such freehold was confined to 300 Sq.Meter. The incumbent had to apply within three months whereafter they have to be evicted. With respect to 'Nominees of Lessees', para 5 of said G.O. reads as under :

“नामित व्यक्ति के पक्ष में नजूल भूमि को फ्रीहोल्ड किये जाने की व्यवस्था को समाप्त किया जाना— नजूल भूमि के पट्टेदार द्वारा नामित व्यक्ति के पक्ष में नजूल भूमि को फ्रीहोल्ड किये जाने की व्यवस्था सर्वप्रथम शासनादेश संख्या : 1300/9-आ-4-96-629एन/95, टी.सी. दिनांक 29-8-1996 के प्रस्तर-1 (3) (4) में की गयी थी और शासनादेश संख्या 2873/9-आ-4-2002-152-एन /2002, टी.सी. दिनांक 10-12-2002 के प्रस्तर 3 द्वारा उक्त व्यवस्था समाप्त कर दी गयी तथा शासनादेश संख्या : 1956/आठ-4-08-266एन/08, दिनांक

21-10-2008 के प्रस्तर- 2 (4) द्वारा उक्त व्यवस्था पुनः बहाल कर दी गयी है। इस व्यवस्था के सम्बन्ध में मा0 उच्च न्यायालय में विचाराधीन रिट याचिका (जनहित याचिका) संख्या : 35248/2010-जयसिंह बनाम उत्तर प्रदेश राज्य व अन्य में पारित अन्तरिम आदेश दिनांक 16-07-2010 में दिये गये निर्देशों के दृष्टिगत उपर्युक्त शासनादेश दिनांक 21-10-2008 का प्रस्तर 2 (4) जिसके द्वारा नामिनी के पक्ष में नजूल भूमि को फ्रीहोल्ड किये जाने की व्यवस्था बहाल की गयी है, को समाप्त करते हुए अब ऐसे व्यक्ति जिनके पक्ष में कय की जा रही सम्पत्ति (नजूल भूमि) को पट्टेदार द्वारा रजिस्टर्ड एग्रीमेंट टू सेल किया गया हो और पूर्ण स्टाम्प शुल्क अदा किया गया हो, उसी व्यक्ति के पक्ष में ही नजूल भूमि को फ्रीहोल्ड किया जायेगा।”

“Cessation of the provision of converting the nazul land into freehold in favour of the nominee:- **The provision of converting nazul land into freehold in favour of nominee by the lease holder of the land had first been provided in the para- 1 (3)(4) of the Government Order No. 1300/9-Aa-4-96-629N/95, TC dated 29-08-1996; and by para 3 of the Government Order No. 2873/9-Aa-4-2002-152-N/2002, TC dated 10.12.2002, the aforesaid provision was annulled; and through para 2(4) of Government Order No. 1956/VIII-4-08-266N/08, dated 21.10.2008, the aforesaid provision has been restored again. Pursuant to the instructions, with respect to this provision, given in the interim order dated 16.07.2010 passed by the Hon'ble High Court in Writ Petition (Public Interest Litigation) No. 35248/2010 titled as Jai Singh Vs State of Uttar Pradesh and others, which is pending, the provision of para 2(4) made in the aforesaid Government Order dated 21.10.2008 through which converting nazul land into in favour of the nominee was restored, is being annulled; and the nazul land shall be converted into freehold in favour of the person with whom the lease holder has entered in registered agreement to sale and who has paid the whole stamp duty.**”

(Emphasis added)

(English Translation by Court)

196. Aforesaid G.Os. thus clearly show that eligibility of leases of Nazul land, as initially laid down in G.O. of 1992 remained some changed but in respect of land found suitable or needed by Government, no freehold was permissible. With respect to violation of terms and conditions of lease etc., some relaxation was given.

197. Lastly there are two more G.Os. i.e. 04.03.2014 and 15.01.2015 wherein policy of freehold has been virtually given a relook and substantial amendments have been made in earlier policy.

198. It is no doubt true that Government has promulgated policy of conversion of lease land into freehold even in those cases where lease has expired, but then question is “whether mere submission of application for freehold will confer a vested right upon petitioners to get Nazul land converted into freehold, which will override even power of re-entry of Lessor.

199. A Full Bench of this Court in **Anand Kumar Sharma vs. State of U.P. and others 2014(2) ADJ 742** has considered this aspect and held in para 42 of judgment that merely by making an application for grant of freehold right, a petitioner did not acquire a vested right. Para 42 of the judgment reads as under :

*“We after considering the relevant Government Orders on the subject and pronouncements of the Apex Court as noted above, are of the view that **merely by making an application for grant of freehold right, petitioner did not acquire a vested right.**”*

(Emphasis added)

200. A Division Bench of this Court in **Writ Petition No.62588 of 2010, M/s Madhu Colonizers Pvt. Ltd. vs. State of U.P. & Ors.**, decided on 02.04.2013 has held that if Government exercises right of re-entry, question of lessees to claim freehold would not arise and where such a right cannot be claimed by Lessee, right of nominee also cannot survive over such lessee. Court has said :

*“It is also found that **as nominee of the lessee, the petitioner-Company cannot have any larger rights than the lessee and once the order of the District Magistrate for resumption the land in exercise of power under Clause 3(c) of the lease deed is held to be valid, the petitioner-Company, as a nominee, cannot have any surviving right to claim conversion of the lease hold rights into . Infact, on valid resumption order being passed, the lease hold rights cease to exist and there can be no occasion for conversion***

of lease hold rights into freehold rights in such circumstances.”

(Emphasis added)

201. The discussion made above leaves no manner of doubt that resumption of land in question is in accordance with law and petitioners have no right whatsoever to claim continued possession over land in dispute. Even scheme of freehold as governed by various Government Orders shows, wherever land is required by State Government for 'public purpose' for own use, it shall not allow freehold.

202. We, therefore, answer **questions (v) and (vi)** against petitioners and hold that petitioners had no right, legal, contractual or otherwise in respect of possession of land in dispute; they were not holding possession of land validly; once State exercises right of re-entry, question of conversion of freehold also would not arise, hence notice in question warrants no interference.

203. Before proceeding further, we find it difficult to desist from observing that freehold policy, commenced in 1992, took care of a limited category of occupants of Nazul land i.e. Lessees, who had perpetual lease or where lease was continuing and there was no violation of conditions of lease. Meaning thereby, Leaseholders, who had faithfully abided the terms and conditions of lease, were chosen as a class by themselves and provision was made to convert lease rights into freehold in such cases. One may not dispute about such policy in the light of the fact that these leases were several decades old and people holding such leases had developed some kind of possessory interest in property and recognizing such interest of Lessees, howsoever weak it was, if State Government chose to confer upon them benefit of conversion of lease right into freehold, one may not validly object to that and probably such policy may satisfy constitutional test of fairness, non-discrimination, non-arbitrariness etc. But with the passage of time, in the garb of improvement in the policy, amendments were made by numerous Government Orders issued from time to time, which we have referred

hereinabove and that opened an unrestricted area of beneficiaries, i.e. wholly strangers namely mere Nominees of Lessee, who had no prior interest in property in question, flagrant defaulters and violators of terms of lease etc. Such provisions, in our view, are difficult to be sustained as to satisfy constitutional validity of policy of freehold under aforesaid Government Orders. In our view, such G.Os. are *ex facie* arbitrary and violative of Article 14 of Constitution of India. One cannot lose sight and ignore historical backdrop of allotment of Nazul land. Persons who were sympathetic to Britishers and for services rendered by individuals in the interest of Colonial Forces, helping them in their administration; or some otherwise highly resourceful people, were given such Leases/Grants. After independence, if State wanted to distribute its largesse/assets, we can understand, if a scheme would have been evolved to distribute Nazul land, by terminating lease, to weaker and poor people or landless people or if objective was to augment revenue, then State largesse/assets, instead of distributing in a clandestine manner by confining such benefit to certain individuals, appropriate mode of auction of land to general public should have been adopted. We do not know what prevailed with State Government in making policy, which was initially not so apparently erratic, to become a boon to defaulters and also give opportunity to certain individuals in trading of land after getting land freehold on much lessor amount than what actually market value of land is. In the present case itself, petitioners have said that they paid money to Harihar Nath Dhar and therefore, Harihar Nath Dhar actually benefited himself of the property owned by State without any return to State and this had continued for decades together. Thus, *Prima facie*, we are satisfied that policy of freehold, as it stand today, helps scrupulous, resourceful land dealers, Land Mafias and similar other persons. It is neither in public interest nor satisfies test of fairness and reasonableness of public policy nor consistent with constitutional provisions, in particular, Article 14 of Constitution of India. However, we are not

expressing any final opinion on this aspect but this Court desires that it is high time and sooner is the better, that State Government must re-examine entire policy and if purpose is only to augment revenue, Government should opt for public auction so that it may get best price or policy should be confined for the benefit of have-nots i.e. poor landless and weaker sections of the Society.

204. Now, we come to question (vii).

205. Petitioners are rank-trespassers, as we have already said. Therefore, they have no right over land in dispute. Still respondent's authority has given opportunity to petitioners by means of notice in question. Even otherwise, if petitioners would have been a valid leaseholder, their rights under lease would have been contractual and in the matter of contract, it has been repeatedly held that principles of natural justice are not applicable.

206. In **State of Gujarat and Ors. vs. Meghji Pethraj Shah Charitable Trust and Ors., 1994(3) SCC 552**, Court held:

"We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (audi alteram partem) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was- as has been repeatedly urged by Sri Ramaswamy - a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract."

(Emphasis added)

207. Following aforesaid decision in **Pimpri Chinchwad Municipal Corporation and Ors. vs. Gayatri Construction Company and Anr., 2008(8) SCC 172** Court has held that in the matter of non-statutory contract, High Court should not have entertained writ petition under

Article 226 of the Constitution.

208. No provision could be shown by counsel for petitioners which requires an opportunity of hearing to petitioners before resumption of land. In any case, by means of impugned notice, petitioners have been given enough time to vacate the land and thereafter only State shall take steps for possession, if vacant possession is not given by petitioners.

209. In the circumstances, **question (vii) is answered** against petitioners.

210. In view of above discussion, we do not find any merit in the petition. It is accordingly dismissed.

211. However, considering the facts and circumstances and also the fact that petitioners already enjoyed interim order passed by this Court and continued in possession over land in dispute for last almost more than a year, we direct petitioners to vacate disputed land within one month from the date of delivery of judgment.

212. No costs.

Order Date: 31.10.2019

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