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Reserved on 30.05.2019

Delivered on 31.10.2019

Court No. - 34
Case :- WRIT - C No. - 32096 of 2018
Petitioner :- Indian Press Pvt. Limited Through Manager
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Komal Mehrotra,Maya Shankar Srivastava, Pramod Kumar Jain (Sr. Advocate)
Counsel for Respondent :- C.S.C. Ajit Kumar Singh (Addl. Advocate General), Nimai Das, Addl. C.S.C.

Hon'ble Sudhir Agarwal,J.
Hon'ble Virendra Kumar Srivastava, J.

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

1. 'Prayagraj' has an old historicity tracing back to Vedic period. Lord Rama while in exile, rested in Rishi Bharadwaj Ashrama, on the bank of river Ganga. It is also known for King Harshvardhana, who used to come every twelve years to donate his entire wealth to needy and poor people. From the time of Lord Buddha, it is also a well known centre of education which continued when Allahabad University was founded on 23rd September, 1887 and reached its glory called “Oxford of East”. A large number of social Reformers, Literary Scholars and Political personalities have their birth place at Allahabad. In 1575, when Akbar came to Allahabad and built a big fort, he was so fascinated by cultural, spiritual and also strategic location that he named it as “Abode of God” i.e. “Alhabas”, which later changed to Allahabad under Shah Jahan and now again as 'Prayagraj'. City lies close to “three-river confluence” i.e. Triveni Sangam, Originally known as “Prayag” i.e. place of sacrifice or offering. It plays a central role in Hindu Scriptures. The city was also called Kaushambi (now a separate district) by Kuru rulers of Hastinapur, who developed it as their capital. In 17th century under the reign of Jahangir, it was a Provincial capital. In 1580, Akbar created “Subah of Ilahabas” with Allahabad as its capital. In mid 1600, Salim had made an abortive attempt to seize Agra's treasury and came to Allahabad, seizing

its treasury and setting himself up as a virtually independent Ruler. He however, reconciled with Akbar and returned to Allahabad where he stayed before returning to Royal Court in 1604. In 1833, it became the seat of ceded and conquered Provinces region before its capital was moved to Agra in 1835. Allahabad became the capital of North-Western Provinces in 1858 and was capital of India for a day. It was capital of United Provinces from 1902 to 1920. It had remained at the forefront of national importance during struggle for Indian independence and even thereafter till date. It has given three strong and most popular Prime Minister to the country namely Pt. Jawahar Lal Nehru, Smt. Indira Gandhi and Sri Vishwanath Pratap Singh.

2. Geographically, it lies at peninsula of Island having on three sides, two major rivers of India namely Ganga and Yamuna. During British period, they developed it as a strong military centre and what we called today “Civil Lines Area”, was developed as Civil Station for civilians having huge land which was owned by Government in the form of Nazul. At that time, the then Government allotted land on long lease to its well wishers and others to oblige and otherwise pamper. The terms of lease though given enough control to Government towards its title but premium and rent was almost negligible. With the passage of time, population influx from nearby rural area increased number of local inhabitant multifold causing huge scarcity of land availability in the city.

3. Recently newly elected Central Government evolved a policy of developing various cities as 'Smart City' and for this purpose Allahabad, (now named as 'Prayagraj'), is also chosen to be developed as 'Smart City'. This has resulted in demand of huge land by various Government departments for own establishments necessary to develop the city as 'Smart City'. Since most of the State's land is in the hands of individuals, it has given rise to a virtual clash of interest and this High Court is witnessing a lot of litigations on this account.

4. The present writ petition is outcome of such dispute where State has sought to resume/re-enter its own land i.e. Nazul for public purpose and that is being opposed by petitioner. Land in dispute is sought to be resumed/re-entered by State, is required for developing as “Nurseries for Horticulture Department, Homeopathic/Ayurvedic/Unani Hospital, Office of Information Department and Office of Central Ground Water Board”.

5. Indian Press Private Limited, sole petitioner has filed this writ petition under Article 226 of the Constitution of India with a prayer for issue of writ of certiorari to quash order dated 18.08.2018 passed by District Magistrate, Allahabad (respondent 2) (Annexure-1 to the writ petition) whereby petitioner has been informed that land in dispute has been approved by State Government for resumption/re-entry of property and, therefore, petitioner must vacate the same. Further a writ of mandamus has been prayed directing respondents to consider petitioner's application dated 31.08.2016 for renewal of lease in the light of this Court's judgment in **Purushottam Dass Tandon and others vs. State of U.P., Lucknow and others AIR 1987 All 56,** affirmed by Supreme Court, and also not to evict petitioner from disputed land.

6. Land in dispute in present writ petition is Nazul, area 3609 square yard (i.e. 3017.48 square meter) situate in Intra Municipal Land at Bhardwaj Fatehpur Bichuwa (Hospital and Garden) (hereinafter referred to as “Disputed Nazul Land”).

7. Facts in brief as stated in the petition are that petitioner-Indian Press Private Limited was established in 1884 by Sri Chintamani Ghosh, resident of Bengal who made his own home at Allahabad and the premises is now occupied by Art faculty of Allahabad University. Petitioner-Press was transferred to 36 Panna Lal Road, Allahabad on 17.05.1922 since earlier premises was taken over by State to establish Allahabad University. Land on which Petitioner-Press was transferred to

function on 17.05.1922 became insufficient for expanding its work of printing and publication of books and journals. There was an adjoining plot, area 3017.48 square meters, which was on north east side of Petitioner-Press. This land was ,Nazul,. Therefore, Secretary of State for India in Council executed a lease deed dated 20.09.1926 in favour of Manager, Indian Press Private Limited, leasing out disputed land for a period of 30 years commencing from 15.09.1926 for construction of building, garden and hospital. Lease was renewed by lease deed dated 06.03.1961 and 29.01.1996. Latest renewal of lease deed dated 29.01.1996 was given effect from 15.09.1986. Since Lease was going to expire on 14.09.2016, hence, petitioner applied for fresh lease on 31.08.2016. When the matter was in process, respondent 2 passed impugned order dated 18.08.2018 stating that State Government has exercised right of resumption under provisions of Government Grants Act, 1895 *(hereinafter referred to as "GG Act, 1895").*

8. This order has been challenged on the ground that GG Act, 1895 has been repealed by Repealing and Amending (Second) Act, 2017 *(hereinafter referred to as "Repeal Act, 2017")*, hence reference to GG Act, 1895, is illegal; it has been passed in violation of principles of natural justice; no opportunity was given to petitioner; Commissioner was only competent authority to consider question of renewal of lease and District Magistrate had no such power; the alleged public purpose is superficial and eye wash; petitioner's Homeopathic Hospital is running on land in dispute; petitioner has right to renewal in view of judgment in **Purushottam Dass Tandon and others vs. State of U.P., Lucknow and others (supra);** procedure prescribed in Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 *(hereinafter referred to as "U.P. Act, 1972")* has not been followed; petitioner has been discriminated, inasmuch as, in other matters lease has been renewed.

9. In para 43 of petition it is however stated that certain area of the building in which earlier Allopathic dispensary was running upto the year 2000, was given to Mitra Prakashan, which is now under custody of Official Liquidator.

10. On behalf of respondents-2 and 3, a counter affidavit has been filed sworn by Sri Gore Lal Shukla, Additional District Magistrate (Nazul), Allahabad. It is said that Nazul Plot, Intra Municipal Land, at Bhardwaj Fatehpur Bichuwa, area 3609 square yard (i.e. 3017.48 square meter) was demised by an Indenture of lease dated 20.09.1926 executed by Collector, Allahabad on behalf of Secretary of State in favour of Management of Indian Press Private Limited. Lease was for a period of 30 years. It was granted for the purpose of Hospital and Garden and no other purpose. Lastly, lease was renewed in 1996 for a period of 30 years commencing from 15.09.1986 which ended on 14.09.2016. Renewal of lease was in same terms in which initial lease was granted. Lease was governed by GG Act, 1895 and there was specific condition in lease, permitting lessor i.e. State Government for re-entry on the land in dispute. Petitioner's application for renewal of lease has been rejected since land is required for public purpose by State namely for development of Nurseries for Horticulture Department, Homeopathic/Ayurvedic/Unani Hospital, Office of Information Department and Office of Central Ground Water Board. District Magistrate is competent to pass impugned order which simply communicates decision of Government for resumption and re-entry. Respondents have placed reliance on judgments in **Hajee S. V. M. Mohd. Jamaludden Bros. And Co. vs. Government 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 and Azim Ahmad Kazmi and others vs. State of U. P. and others, 2012 (7) SCC 278.

11. We have heard Sri Pramod Kumar Jain, Senior Advocate, assisted by Sri Komal Mehrotra, learned counsel for petitioner and Sri Ajeet Kumar Singh, Additional Advocate General, assisted by Sri Nimai Das and Sri Sudhanshu Srivastava, learned Additional Chief Standing Counsel for State of U.P. and its authorities.

12. The facts, as noticed above, show that this is an admitted position that land in dispute is 'Nazul'. Further terms and conditions of lease, as contained in initial lease deed, have continued broadly in all subsequent renewed lease deeds and two relevant terms contained in lease deeds are as under :

> *"PROVIDED ALWAYS and these presents are executed on this express condition that if and whenever the said rent or any part thereof shall be in arrear and unpaid* ***for the space of one calendar month whether the same shall have been lawfully demanded or not*** *or if there shall be a breach or non-observance of any of the covenants by the Lessees hereinbefore contained then and in* ***any such case the Secretary of State notwithstanding the waiver of any cause or right of re-entry may re-enter upon the said premises*** *and* ***expel the lessee*** *and all occupiers of the same therefrom* ***and this demise shall absolutely determine*** *and the l****essees shall forfeit all rights to remove or recover any compensation for any buildings erected by him*** *on the said premises AND the Secretary of State hereby covenants with the lessee that he will at the request and cost of the lessee at the end of the said term of years and so on fresh time to time hereafter at the end of each successive term of years that may be granted execute to the lesseee a new lease of the said premises by way of renewal for the term of thirty years PROVIDED ALWAYS that such renewed terms of years as may be granted shall not with the original term of years exceeding the aggregate the period of ninety years and that the Secretary of State shall not be bound to grant any renewal except at the rate of rent then*

> *being paid for the said premises or as he may elect at such enhanced rate not exceeding 50 per cent, of the rent payable during the period immediately granting the renewal as may be assessed by such Collector regard being had to the circumstances of the demised plot and to the market value of similar plots in the neighbourhood which assessment shall be final save that where the estimated value of the plot shall exceed Rs. 300 the lessee shall have a right of appeal to the Commissioner of the Allahabad division."* (Emphasis added)

13. Initial lease deed was granted on 20.09.1926 commencing from 15.09.1926. It was twice renewable for 30 years each. 90 years period expired admittedly on 14.09.2016. Therefore, maximum period for which lease could have been granted and renewed has already expired. It is now in these circumstances, we have to examine claim of petitioner for renewal of lease or to retain possession of land in dispute, opposing resumption/re-entry of State, is how far legal, valid and justified. In this aspect, the **first question**, which we propose to consider is, "what is Nazul"? Every land owned by State Government is not termed as 'Nazul' and therefore it has become necessary to understand, what is 'Nazul'.

14. 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 manners. 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.

15. 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'.

16. Nazul is an Arabic word. It refers to a land annexed to Crown. During British Regime, immoveable 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'.

17. 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.

18. 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 of the 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.

19. 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.

20. The above provisions 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 continue above provision and say :

> *'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)

21. 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.

22. 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 immoveable 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)

23. Court also placed reliance on **Collector of Masulipatam v. C. Vencata Narainapah 8 MIA 500, 525; Ranee 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**.

24. 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)

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

26. 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 a 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**."*

27. 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)

28. 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.

29. 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."*

30. 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)

31. 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**.

32. 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.'*

33. 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)

34. 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 form assets owned by State in trust for the people in general who are entitled for its user 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.

35. **First question**, therefore, is answered accordingly.

36. The **second question** up for consideration is "lease in question whether governed by provision of Transfer of Property Act, 1882 *(hereinafter referred to as "TP Act, 1882")* or GG Act, 1895 and what is inter-relationship of the two?"

37. 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 otherwise remained faithful to British regime and helped them for their continuation in ruling this country. 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 had 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 British Government used to be called “Grant”.

38. In other words, we can say that initially land owned by State used to be allotted in the form of 'Grant' by the then British Government. No specific statutory provisions were available to govern it. TP Act, 1882 was enacted to govern transfer of immovable property. Sections 10 - 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 consequent upon any such alienation or any insolvency of or attempted alienation by him.

39. 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 objective, 'GG Act 1895' was enacted.

40. 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.

41. Section 2 of GG Act, 1895, as it was initially enacted, 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 heretoforce 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)

42. The above provision was amended in 1937 and 1950 and 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*** *heretoforce 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)

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

> *"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.****"*

44. In the 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, heretoforce 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)

45. 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.

46. Thus, GG Act, 1895 basically 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.

47. 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, inasmuch as, by inserting sub-section (2), a provision, as made in sub-section (1) of Section 2 with regard to TP Act, 1885, was also made in respect of U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926. A similar declaration has been made in respect of TP Act, 1882.

48. Sub-section (3) of Section 2 of GG Act, 1895 protects certain leases, already made, declaring the 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.

49. Proviso to sub-section (3) of Section 2 of GG Act, 1895 further declare that all provisions of 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.

50. 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 done in respect of TP Act, 1882.

51. 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)

52. 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)

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

54. 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)

55. Thus, a 'Grant' of 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.

56. In other words, 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 by terms and conditions set out in the document of 'Grant'.

57. 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, and, in some cases, through local bodies.

58. Nature of orders compiled in “Nazul Manual” in the context of 'Nazul' have 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 the Legislature to the contrary, notwithstanding. Thus the stipulations in "lease deed" shall prevail and govern the entire relations of State Government and lessee.

59. 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)

60. Superiority of the stipulations of Grant to deal with relations 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 Government Order *(hereinafter referred to as "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 also 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 that time on demised premises and within two months of receipt of notice to take possession thereof, on expiry of that period, and Sections 2 and 3 of GG Act, 1895, 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.

61. 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. Court relied on 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)

62. 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***".

63. 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.

64. 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'.

65. Above discussion, therefore, leaves no manner of doubt that Grant/Lease of Nazul land shall be exclusively governed by stipulations/conditions/terms contained in Grant/Indenture of Lease and no Statute will be resorted to govern rights of parties over Nazul land, which will be governed by aforesaid Grant/Indenture of Lease.

66. We accordingly answer **second question** holding that Grant of Nazul Land would be governed by terms and conditions therein, which shall prevail over any otherwise law including TP Act, 1882 and as provided by GG Act, 1894, it will be treated as TP Act, 1882 has not been enacted for construing and giving effect to terms and conditions contained in the Grant.

67. The **third question** is, “whether petitioner was entitled to renewal of lease in view of judgment in **Purshottam Dass Tandon and others vs, State of U.P. And others, AIR 1987 All 56,** whereupon heavy reliance has been placed”.

68. Submission is that possession has continued with petitioner and petitioner itself applied for renewal of lease on 31.08.2016, therefore, it was entitled for renewal in view of judgment rendered in **Purshottam**

Dass Tandon and others vs, State of U.P. And others (supra). This requires us to examine aforesaid judgment in detail.

69. In **Purshottam Dass Tandon and others vs, State of U.P. And others, (supra)** question of renewal of lease came up for consideration in the light of Government Orders dated 23.4.1959, 07.07.1960 and 03.12.1965. Therein historical backdrop of various Government Orders dealing with policy of renewal of lease has been given in detail. 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 as proper step on the part of Lessee to get a fresh lease executed by 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.

70. 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.

71. 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 execution. Clause (ii) of G.O. provided that all those cases in which Collector or Commissioner had approved renewal but 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 such leases.

72. 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, superseded all previous Orders, provided for renewal of leases on fresh and new terms. It 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.

73. 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.

74. 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., when 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.

75. Aforesaid judgment was confirmed by Supreme Court by dismissing appeals preferred by State of U.P. and others i.e. **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)

76. Aforesaid judgment has no application to the case of petitioner at all since neither petitioner come within the category of eligible person to apply renewal of lease under Government Orders which were considered in **Purushottam Dass Tandon and others vs. State of U.P., Lucknow and others (supra)** nor even otherwise petitioner has shown any provision, whether statutory or executive, including G.O., which may confer entitlement of petitioner to seek renewal of lease at all, once the maximum period of lease i.e. 90 years has lapsed.

77. **Third question**, therefore, is answered against petitioner.

78. Once it is clear that right and obligation etc. are to be governed by terms and conditions of lease, the **fourth question** is "whether petitioner can claim renewal of lease after expiry of maximum period of lease of 90 years, for which lease or renewal can be granted in its entirety, as provided in initial lease-deed?"

79. In our view, this question is squarely covered and answered by Supreme Court in **Azim Ahmad Kazmi and others vs. State of U. P. and others (supra)** wherein Court has categorically held that in terms of provisions of GG Act, 1895 read with conditions of lease-deed, parties are bound by terms of lease and rights of respective parties are governed by terms and conditions of lease-deed. Therefore, once maximum period, for which lease and its renewal could have been granted, has expired, petitioner is not entitled to claim renewal of lease. Thus, merely for the reason that petitioner's application for further renewal of lease beyond 90 years, has not been considered and decided by authorities, will not confer any benefit upon petitioner.

80. The **fourth question**, is answered accordingly.

81. The **fifth question** is, “whether State Government can exercise right of resumption/re-entry by impugned order dated 18.08.2018?”

82. Since lease has already expired on 14.09.2016 it was obligatory upon petitioner to hand over vacant possession of land to State, which it has not done. Therefore, in our view, in terms of discussion made above and also considering law laid down in **Azim Ahmad Kazmi and others vs. State of U. P. and others (supra),** State Government is within its right to re-enter/resume land in question. Therefore, notice given by State to vacate Nazul land in dispute cannot be faulted. In this regard we do not find that principles of natural justice are applicable and contention raised otherwise has no substance in law.

83. One more argument, which has been raised is about the effect of repeal of GG Act, 1895 by Repeal Act, 2017. Therefore **sixth question** is “whether Repeal Act, 2017 has effect of denying the State of right of resumption/re-entry due to repeal of GG Act, 1895.”

84. It is contended that Section 4 of Repeal Act, 2017 only protects right, title, obligation or liability already acquired, accrued or incurred by State of U.P. under GG Act, 1895 to resume Nazul land according to resumption clause of lease-deed prior to repeal of GG Act, 1895 and nothing more than that. Since no right, title, obligation or liability was acquired or incurred or accrued to State Government by resorting to resumption under resumption clause before repeal of GG Act, 1895, resumption sought with reference to GG Act, 1895 after its repeal is wholly illegal.

85. Meaning of words 'accrued', 'acquired' and 'incurred' have been given in various paragraphs of writ petitions but we find that basic aspect has been ignored and missed by petitioner. Terms of lease, as soon as lease was executed, created rights, obligations, duties and interest of both the parties i.e. Lessor and Lessee so as to be governed in accordance with terms and conditions of lease. Relevant clause says that

it shall be lawful for Secretary of State, notwithstanding waiver of any previous cause or right of re-entry, to enter into and upon said demised premises, whereupon the same shall remain to the use of and vested in Secretary of State and said demise shall absolutely determine out. The Lessee, who agreed with said term, 'incurred' duty to allow re-entry to State whenever Government do exercise its right of re-entry. Here lies the right of State to re-enter, which was acquired by State by virtue of execution of lease deed and accepted by Lessee and he (Lessee) 'incurred' liability not to obstruct the said right of State i.e. Lessor.

86. Petitioner, in our view, has misconstrued provisions of Section 4 vis-a-vis terms of lease and therefore, entire argument in this respect is devoid of merit. Sixth question is hence answered against petitioner.

87. The next three question, in our view, are incidental one, i.e., **(vii)** “whether continued possession of petitioner after expiry of lease on 14.09.2016 would confer any benefit upon it”; **(viii)** “whether petitioner can be said to have status of 'holding over' governed by Section 116 of TP Act, 1882”, and, **(ix)** “whether petitioner is entitled for quit notice under Section 106/107 TP Act, 1882 since after expiry of lease, as it claims, tenancy should be treated to be on month to month basis?”

88. In this respect, it is contended that even if petitioner is a rank Trespassor, the fact is that it is in possession of land in dispute and therefore by application of force, petitioner cannot be evicted. Petitioner, at the best, is an unauthorized occupant in terms of U.P. Act, 1972 and therefore, atleast procedure prescribed in the said Act has to be followed. Further continued possession of petitioner over land in dispute entitles petitioner a notice under Section 106 read with Section 116 TP Act, 1882, since principle of 'holding over' will apply, or in any case, State can evict petitioner by filing a suit for eviction, which is a remedy available in common law. In this regard, reliance is placed on **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.**

89. With regard to applicability of TP Act, 1882 we have already discussed in the light of TP Act, 1882 and law laid down in **Azim Ahmad Kazmi and others vs. State of U.P. and Another (2012) 7 SCC 278**. At the pain of repetition, we may observe that Supreme Court has held that in the matter of Government Grant, the relations of Lessor and Lessee are governed by lease deed and no other Statute including TP Act, 1882 will have any application. Court has also said that procedure prescribed under lease deed for re-entry / resumption of land is a special procedure and that can be followed for re-entry and no other Statute or procedure is to be observed.

90. So far as application of Section 116 of TP Act, 1882 is concerned, we find nothing on record to show that it has any application in the case in hand. Section 116 of TP Act, 1882 is attracted only when an assent of landlord has been obtained for continuation of lease after expiry of lease period, which is not the case in hand. These aspects have been dealt with in **Shanti Prasad Devi and others vs. Shankar Mahto and others (2005) 5 SCC 543**, which has been following in **Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd. (supra).**

91. In the present case, it is not the case of the petitioner that after expiry of lease in 2016, they have been 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 petitioner is taken to be correct, we do not find that Section 116 is applicable in the case in hand at all. 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."

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

(i) After determination of lease, lessor or his representative has accepted rent from lessee or under lessee or assented to his continuing in possession; and

(ii) Lessee or under-lessee has remained in possession.

93. None of the above conditions are attracted/satisfied in this case. Hence Section 116, TP Act, 1882 is not attracted.

94. Now, we come to the question of applicability of UP Act, 1972.

95. As we have already said that in view of declaration made under Section 2 of GG Act, 1895, as amended in Uttar Pradesh, no Statute will govern conditions of Government Grant and instead it will specifically be governed only by terms of Government Grant. Therefore, it is not necessary for State to follow procedure of U.P. Act, 1972 though it is also available and under the provisions thereof admittedly petitioner is 'unauthorized occupant'.

96. Above contentions can be examined from another angle. Petitioner's possession after expiry of tenure of lease, at the best, can be juridical possession though it is admittedly unlawful and illegal. Property is a legal concept that grants and protects a person's exclusive right to own, possess, use and dispose of a thing. The term property does not suggest a physical item but describes a legal relationship of a person to a thing. Real property consists of lands, tenements and hereditaments. Land refers to ground, the air above, the area below the Earth's surface

and everything that is erected on it. Tenements include land and certain intangible rights recognized by municipal laws related to lands. A hereditaments embraces every tangible or intangible interest in real property that can be inherited. An interest describes any right, claim or privilege that an individual has towards real property. Law recognizes various types of interests in real property which may justify possession over property of person concerned. A non-possessory interest in land is right of one person to use or restrict use of land that belongs to other persons such as easementary rights. Non-possessory interest do not constitute ownership of land itself. Holders of a non-possessory interest in real property do not have title and owner of land continues to enjoy full rights of ownership, subject to any encumbrances. An encumbrance is a burden, claim or charge on real property that can affect the quality of title and value and/or use of property. Encumbrances can represent non-possessory interests in real property.

97. Possession is also of two kinds namely, (a) *de facto* possession, and (b) *de jure possession.* De facto possession is when a person being in actual physical possession and *de jure* possession is a possession in law. Constructive possession would be a possession through a representative, agent, tenant or a trustee. A person in de facto possession could be in adverse possession. In a civilized society some protection of possession is essential. The methods of protection recognized are :

(i) Possessor can be given certain legal rights, such as a right to continue in possession free from interference by others; and

(ii) Protective possession by prescribing criminal penalties for wrongful interference and wrongful dispossession.

98. When certain legal right are given to a person, one of the mode is that possessory right in rem are supported by various rights in personam against those who violate possessor's right; he can be given a right to recover compensation for interference and for dispossession, and a right

to have his possession restored to him. But, whenever such a person invoke such remedies, one of the question which has to be examined would be, whether a person invoking them actually has any possession to be protected. In other words, it has to be examined “whether a person is in possession of an object?” However, legal concept of possession is not restricted to commonsense concept of possession, namely physical control. Possession in fact is not a simple notion. Whether a person is in possession of an article depends on various factors namely nature of article itself, attitudes and activities of other persons.

99. Possession may be 'lawful' or 'unlawful' or even 'legal' or 'illegal'. Acquisition of legal possession would obviously be lawful and of necessity involve occurrence of some event recognized by law whereby subject matter falls under the control of the possessor. Problem, however, arises where duration for which possession recognized is limited by Grantor or law. Continuance of possession beyond prescribed period is not treated as a 'lawful possession'. If a landlord does not consent to lease being continued, possession of tenant would not be a lawful unless there is some Statute providing otherwise. Nature of possession being not lawful would entitle landlord to regain possession.

100. Thus, a lawful possession is state of being a possessor in the eyes of law. Possession must be warranted or authorized by the law; having qualifications prescribed by law neither contrary to nor forbidden by law. However, law recognizes possession as a substantive right or an interest. Continued possession of a person is recognized by law as a sufficient interest capable of being protected by possessor, right being founded on mere fact of possession. Possession is a good title of right against anyone who cannot show a better title. However, when a person in possession, may not be lawful, recovery of possession by owner must have sanction of law. It cannot proceed to dispossess the other in a forcible manner not recognized in law.

101. In some authorities, possession of a person, who has entered therein initially validly but subsequently become unlawful has been given a different meaning i.e. 'juridical possession'. A tenant's holding over without consent of landlord would be a juridical possession though his possession is not lawful. It is said that possession of tenant, post efflux of lease period would not be treated as lawful possession still he would not be treated as a rank trespasser. Here comes the concept of juridical possession.

102. It also cannot be doubted that any person having juridical possession though illegal and unlawful, by a sheer executive fiat cannot be thrown out of possession of the land. But where terms of lease, which is the genesis of claim of such person provides manner in which Lessor can re-enter land and such procedure has been recognized by Statute, as also upheld in **Azim Ahmad Kazmi and others vs. State of U.P. and Another (supra),** when Lessor follows such procedure, it cannot be said that eviction is being resorted to illegally or without following lawful method.

103. Further, once lease period expired, whether a quit notice is necessary or not, in our view, is an issue, which need not detain us since this aspect is already covered by a recent authority in **Sevoke Properties Ltd. vs. West Bengal State Electricity Distribution Company Ltd. AIR 2019 SC 2664.** Therein, Court held that once it is admitted by Lessee that term of lease has expired, lease stood determined by efflux of time. Then Court said :

> *"**Once the lease stood determined by efflux of time,** there **was no necessity for a notice of termination Under Section 106**."*
>
> (Emphasis added)

104. For taking above view, Court relied on its earlier decision in **R.V. Bhupal Prasad v. State of A.P. (1995) 5 SCC 698.**

105. In the above authority, Court held that after expiry of period of

lease, status of Lessee becomes that of 'Tenant at sufferance'. 'Tenant at sufference' 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.

106. The expression "holding over" is used in the sense of retaining possession. However, in the present case, as we have already said that even Section 116 of TP Act, 1882 is not applicable to the case of petitioner.

107. It is in this backdrop we find that authorities relied by petitioner are inapplicable to the facts of this case and do not help petitioner at all.

108. The first authority cited is **Bishan Das and others Vs. State of Punjab and others (supra)** in which 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; no permission to construct any shop will be granted and if any condition is violated, State shall dispossess them from the land in dispute.

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

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

110. 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 for 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 was 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 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 land; Dharmasala was for public benefit; and, that Ramji Das had been its Manager throughout; 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 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 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 management of Dharmasala. This recommendation was affirmed by 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 Constitution.

111. 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.

112. 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 rejected by Court holding that it is a clear case of violation of fundamental right of Bishan Das and others. 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 Government who granted permission to Ramji Das on behalf of Joint Family Firm to build 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 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, Court referred to earlier decisions 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 held:

> *"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)

113. 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)

114. Court concluded its findings in Para-14 of 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."*

115. 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 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. Court reiterated what was said 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."*

116. Aforesaid decision has no application to the present case, 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 petitioner but notice in question has been given to it giving time to vacate the premises whereafter respondents proposes to take further action for taking possession after approval from State Government. Therefore, it cannot be said that no notice has been given to petitioner in the present case.

117. **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 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, as Chairman of the Board of Directors, Nihal Singh, Editor-in-chief of Indian Express and Romesh Thapar, Editor of Paper 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 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 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?

118. Thereafter Court analyzed facts 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 Counsel'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 in the judgment from para-66 onwards. Court 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."*

119. 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, 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)

120. Court in **Express Newspapers Pvt. Ltd. and others Vs. Union of India (supra)** 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)

121. Having said so, 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.

122. 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**.

123. 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)

124. It was observed that existence of a right is the foundation for a petition under Article 226 of 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' belonging to the Central Government under Section 2(e). That being so, Act, 1971 has no application.

125. Court then considered other provisions relating to power of Lt. Governor, and Central Government and factual aspects involved in the

matter. 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 it.

126. 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, J, further said that question relating to civil rights of the parties flowing from lease deed cannot be disposed of in a petition under Article 32 of Constitution since questions whether there has been breach of 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 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."*

127. 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)

128. Hon'ble R.B. Misra, J. also agreed with Hon'ble A.P. Sen and E.S. Venkataramiah, JJ that the notices challenged in writ petition are 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)

129. 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.

130. 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".*

131. 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 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.

132. 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.

133. 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.

134. 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, 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 breach 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.

135. 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 petitioner that land in dispute is 'Nazul', hence it is owned and vested in Government. It is also not in dispute that petitioner got possession of land in dispute being original Lessees. Petitioner has not been evicted illegally, 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 now it (petitioner) is bound to restore possession in terms of lease whereunder lessee was obliged to surrender/hand over possession to State Government.

136. 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 upon the aforesaid

judgment, in the case in hand, is of no consequence.

137. **Lallu Yeshwant Singh (dead) by his legal representative vs. Rao Jagdish Singh and others, AIR 1968 SC 620** is a judgment which came up 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 judgment, 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)**.

138. Decision in **State of U.P. Vs. Zahoor Ahmad and another (supra)**, we find, instead of helping petitioner, supports the view which

we have taken hereinabove. **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 which fell 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 industrial purposes for one year commencing from 18.03.1947. It was renewed on 10.06.1948 with effect from 18.03.1948 for one year and again in 1949 for further 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 the conditions 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 do 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 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 no such notice was given, therefore, tenancy was not validly terminated. With respect of 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 bye-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 the 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)

139. 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 TP Act, 1882 was rightly applied.

140. Thus, the above judgment insofar as interpretation of GG Act, 1895 and giving terms of lease overriding effect, does not help petitioner and in other aspect it is decided on its own facts.

141. We, therefore, answer **questions (vii), (viii) and (ix)** against petitioner.

142. The **last and tenth question** is "whether re-entry/resumption of land by Lessor i.e. State Government is valid?"

143. So far as validity of resumption of land for 'public purpose' is concerned, it could not be disputed that land has been sought to be

required by State for 'public purpose'. Allahabad City has been selected for development as a Smart City and respondents have pleaded that demand of huge land has been made by various Government departments since various Offices, Workshops, Parks, Parking places etc. have to be constructed. The land in dispute has been found suitable for "Nurseries for Horticulture Department, Homeopathic/Ayurvedic/Unani Hospital, Office of Information Department and Office of Central Ground Water Board" which are public purpose. In fact, on this aspect, no substantial argument has been made and in our view, resumption of land by State is for 'public purpose'.

144. Now, we may also observe that litigation initiated by petitioner on the one hand has given enough time to it to continue to hold and enjoy land in dispute and simultaneously denied opportunity to respondent authorities to take possession of land in question for the purpose of carrying out developmental activities where time is a matter of essence. The impugned notice was issued on 18.08.2018 and for more than twelve months have already been availed by petitioner to enjoy benefit of possession of land in dispute. It has enjoyed the same without spending even a single penny towards rent, damages, compensation for such enjoyment. Land in question is required for developmental activities in furtherance of developing Prayagraj City as "Smart City". Developmental activities require an early action, but, by indulging in litigation, petitioner has already delayed it sufficiently, therefore, even if what petitioner claims that it should have been given notice or sufficient time to vacate, the same has already been achieved as petitioner had already enough time. It is, thus, a fit case where we do not find that any other technicality should be allowed to intervene and, earliest is the better that possession of land is transferred to respondents so that developmental activities may proceed without any further delay. Considering the facts and circumstances and also the fact that petitioner

has already enjoyed continued possession over land in dispute for the last almost more than a year after issue of impugned notice, we direct petitioner to vacate disputed land within one month from the date of delivery of judgment.

145. In view of above discussion, we do not find any merit in the petition. Subject to above direction with respect to period of vacating land in dispute, writ petition is dismissed.

146. No costs.

Order date :- 31.10.2019
MH/PS/KA