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Reserved on 29.05.2019

Delivered on 31.10.2019

Court No. - 34

Case :- WRIT - C No. - 39769 of 2018
Petitioner :- M/S Amrit Bazar Patrika Pvt. Ltd. Allahabad
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Amit Kumar Upadhyay
Counsel for Respondent :- Ajit Kumar Singh (Addl. A.G.), Devi Prasad Mishra,Suresh C. Dwivedi,Amit Verma, Nimai Das & Sudhanshu Srivastava (Addl.C.S.C.), M.D.Singh 'Shekhar' (Sr. Advocate)

With

Case :- WRIT - C No. - 40129 of 2018
Petitioner :- Girdhar Gopal Gulati And 3 Others
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Ajay Kumar Singh,Ashish Kumar Singh
Counsel for Respondent :- C.S.C.,Ajeet Kumar Singh (Addl. A.G.),Devi Prasad Mishra, Sunil Dutt Kautilya,Amit Verma, Nimai Das & Sudhanshu Srivastava (Addl.C.S.C.), M.D.Singh 'Shekhar' (Sr. Advocate)

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

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

1. Both these writ petitions relate to Nazul Land i.e. Plot No.120-1/2 Civil Station, Allahabad. Total area of aforesaid plot is 12219.60 Sq.Meters and in both the matters, petitioners are claiming their rights over half of said plot. Since they relate to same plot, therefore, have been heard together and are being decided by this common judgment.

2. Writ Petition No. 39769 of 2018 *(hereinafter referred to as "WP-1")* has been filed by M/s Amrit Bazar Patrika Pvt. Ltd. Allahabad having its registered office at 9, India Exchange Place, 7th Floor, Room No.1A, Kolkata through its authorized Secretary, Ranen Chaterjee (General Manager). State of Uttar Pradesh through Principal Secretary, Housing and Urban Planning Development; District Magistrate, Allahabad and Additional District Magistrate, Finance & Revenue (Nazul) are impleaded as respondents 1, 2 and 3; Allahabad Development Authority (Now Prayagraj Development Authority) *(hereinafter referred to as "PDA")* is respondent no.4 and Nagar Nigam

Allahabad (Now Nagar Nigam, Prayagraj), through Nagar Ayukt *(hereinafter referred to as "NNP")* is impleaded as respondent-5.

3. Petitioner in WP-1 has prayed for issue of a writ of certiorari for quashing notice dated 18.08.2018 (Annexure 1 to writ petition) passed by District Magistrate, Allahabad (respondent-2) informing petitioner and others that land in dispute has been resumed by State Government and therefore, the same be vacated within 15 days. Petitioners have also prayed for issue of a writ of certiorari for quashing letter/order dated 13.11.2018 issued in respect of land in dispute. A writ petition No.36210 of 2018 was filed by Lal Ji Pandey and others and the same was dismissed by this Court vide judgment dated 31.10.2018, therefore, PDA, NNA and respondent-3 were directed by respondent-2, vide letter dated 13.11.2018, to ensure take over possession of land in dispute and hand over to respondent-5.

4. Facts in brief in respect of WP-1 are that a registered lease deed dated 01.3.1862 was executed by Commissioner of Allahabad Division in favour of "William Rowe" on yearly rent of Rs.30/- for the purpose of building a dwelling house. Term of lease was 50 years with the condition that lessee, if desirous of taking a new lease, should at lease six calendar months before expiration, signify his intention or desire of a new lease by a notice in writing to Secretary to the Government of North Western Provinces, or to such person as shall be appointed in that behalf by Government. The disputed land bear plot no.120 -1/2, had an area of 3 acres 45 sq.yards. A new lease deed subsequently was executed on 12.5.1915 in respect of disputed land i.e. Plot No.120-1/2, area 3 acres 45 Sq. Yards by Collector, Allahabad District on behalf of Secretary of State in favour of Anandi Prasad Dube, son of Bal Mukund, resident of 10, Edmonstone Road, Allahabad, for a period of 50 years, commencing from 15.3.1912, on yearly rent of Rs.40/-. Broadly, stipulations/terms of lease, relevant for our purpose are as under :

> *"(i) that he will during the term hereby granted pay unto the*

Secretary of State the yearly rent hereby reserved on the days and in manner herein before appointed

(ii) AND ALSO will from time to time and at all times during the said term pay and discharge all rates, taxes, charges and assessment of every description which are now or may at any time hereafter during said term be assessed charged or imposed upon the said premise hereby demised or the building erected thereupon or the landlord or tenant in respect thereof

(iii) AND ALSO will not ***without the previous consent*** *in writing of the said Collector* ***erect or setup or suffer to be erected or setup on any part of the said premises*** *hereby demised any messuage or building other than and except the messuage and building already erected and delincated upon the map here to annexed.*

(iv) AND THAT if ***breach of the said proceeding covenant*** *any messuage or building is erected or setup or suffered to be erected or setup without such permission as aforesaid* ***it shall be lawful for the Collector or for any person or persons duly deputed by him to cause such messuage or building to be pulled down after the expiration of fourteen days of his giving or causing to be given notice to the said lessee his Executors,*** *Administrators and Assigns,* ***to remove the same which notice*** *may be given either verbally or in writing upon the said premises. AND will not* ***without the previous consent in writing of the said Collector make any alteration in the plan or elevation of the said dwelling house and out*** *building or carry or permit to be carried on the said premises any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a dwelling house*

(v) AND ALSO ***will not without the previous consent in writing of the said Collector grow any crops or keep any horse, cattle or other animals for hire or profit allow*** *the same to be done in or upon the said demised premises but shall use the same for the purposes of a garden or pleasure grounds attached to the said dwelling house*

(vi) AND ALSO ***upon the breach of any of the aforesaid covenant*** *the said lessee has Executors, Administrator or Assigns shall and* ***will on demand pay or cause to be paid to the Secretary of State the sum of Rs. 500 by way of liquidated damages*** *and not*

penalty and that on ***a second breach of the same it shall be lawful for the said Secretary of State his Successors or Assigns into and upon the same demised premises or any part thereof in the name of the Whole to re-enter and the same to have again repossess and enjoy as in their former estate anything herein contained to the contrary notwithstanding.***

(vii) AND ALSO that the said lessee his Executors, Administrators and Assigns ***will not without the permission in writing of the said Collector*** *or of some person authorized by him in that behalf* ***construct, thatch or cover or cause or permit to be instructed thatched or covered, with grass reeds or other*** *inflammable materials any building which shall or may be erected or constructed upon the said piece or parcel of land or ground, unless such thatch or roof or inflammable material shall be protected by a covering of titles. And that* ***if in breach of the said lastly*** *preceding covenant* ***any building which shall or may be erected or constructed upon the said piece or parcel of land or ground be thatched or covered with grass reeds or other inflammable materials without such permission as aforesaid*** *and aforesaid and without being protected by a covering of tiles, it shall be lawful for the said Collector or for any person duly deputed by him to cause such building, shed, roof, covering or other inflammable material to be pulled down after the expiration of twelve hours from the time of his giving or causing to be given notice to the said lessee his Executors, Administrators or Assigns to remove the same, which notice may be given either verbally or in writing upon the said premises*

(viii) AND ALSO shall and ***will at the end, expiration or other sooner determination of the said term peaceably and quietly leave surrender and yield up to the said Secretary of State his Successor or Assign the said piece or parcel of land*** *or ground* ***together with all such of the said erection or building and all fixtures and things which at any time and during the said term shall be affixed or setup within or upon the said demised premises as the said*** *Secretary of State, his Successor and Assigns shall desire to takeover at a valuation according to the option hereinafter reserved to them, subject however to the conditions hereinafter contained,*

(ix) PROVIDED ALWAYS and it is hereby understand and

agreed, that ***in case the said Secretary of State shall not at the expiration of the said term desire to take over the said buildings, erection or fixtures or thing which shall have been at any time during the said term granted under the lease dated 1st day of March 1862 or during the said term hereby granted affixed to or set up within*** *or upon the said premises* ***it shall be lawful for the said lessee his Executors****, Administrators or Assigns to* ***remove and take away the same as and for his and their absolute property****, but in case the said Collector shall at the expiration of the said term hereby granted give notice to the said lessee his Executors, Administrators or Assigns of his intention to take over the buildings,erections, fixtures or things which shall have been at any time during the said term granted under the lease dated 1st day of March 1862 or during the said term hereby granted set up within or upon the said premises or any part thereof, it shall be lawful for the said Secretary of State, his Successors and Assigns to take over the said buildings, erection, fixtures and things or any part thereof with the land, and in that case the said Secretary of State, his Successor and Assigns shall pay unto the said lessee his Executors, Administrators or Assigns the value of such buildings, erections, fixtures or other things or of such part thereof as they shall so take over as aforesaid, such value to be ascertained in case the parties themselves cannot agree, by the arbitration of two arbitration, the one to be named by the Secretary of State, his Successor and Assigns, and the other by said Lessee his Executor, Administrators or Assigns and in case they shall differ by an umpire to be appointed by the said two arbitrators, or in case either of the parties hereto shall neglect to appoint an arbitrator for more than one fortnight after notice has been served upon them or him by the other party to appoint such arbitrator, then by the sole arbitration of the arbitrator appoint by such other of the parties hereto which arbitration shall be final.*

(x) Provided ALWAYS and it is hereby declared and agreed that no compensation or payment shall be claimable by the said Lessee his Executors, Administrators or Assigns for any buildings, erections or fixtures erected, affixed, or placed by him them or any of them in or upon the said premises or any part thereof. In case these presents ***shall be determined by re-entry for forfeiture in which case the buildings, erections and fixtures shall rest absolutely in the said Security of State his Successors and***

Assigns as his own property without any compensation or payment in respect thereof

(xi) PROVIDED FUTURES as it is hereby agreed that the ***said Lessee*** *his Executors, Administrators or Assigns or underlet of otherwise* ***part with the possession of the said premises or any part thereof without the permission of the said secretary of State his Successors or Assign*** *(which permission* ***may be signified by the said Collector or by such other person as the Government of the North Western Provinces or the said Secretary of State may appoint in that behalf) for that express purpose had any obtained***

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

(xiii) PROVIDED ALWAYS and it is hereby desired that if the said yearly rents hereby reserved or any part thereof shall at any time be in arrears and ***unpaid for the space of 21 days*** *next after any of*

the said days whereon the same shall have become due whether the same shall have been lawfully demanded or not or if their shall be any breach or non observance by the lessee of any of the covenants hereinbefore contained on his part to be observed and performed then and in any such case ***it shall be lawful for the Secretary of State notwithstanding the waiver of any previous cause or right of the re-entry to enter into and upon the said demised premises and the Willam Rome and out building erected as aforesaid*** *or any part thereof* ***in the name of the whole and thereupon the same shall remain to the use of and*** *be vested in the* ***Secretary of State*** *and this demise* ***shall absolutely determine out which entry if made shall not prejudice the right of the said Secretary of state his Successors or Assigns to damage*** *for the previous breach of any covenant on the part of the said Lessee his Executors, Administrators, or Assigns herein contained.*

(xiv) AND the said Secretary of State doth hereby for himself his Successors and Assigns covenant with the said lessee his Executors, Administrators and Assigns that the said lessee his Executors, Administrators and Assigns paying the rent hereinbefore reserved at the times and in manner hereinbefore appointed, and observing and performing all and singular the covenants, conditions and agreements herein contained, and on and their parts to be observed and performed according to the true intent and meaning of these presents, shall and may peaceably and quietly hold, use occupy, possess and enjoy the said piece and parcel of land and ground and premises hereby demised during the said term of fifty years hereby granted without any let, suit, denial, eviction or disturbance of or by the said Secretary of State his Successors or Assigns, or of or by any person or persons claiming or to claim through or under them."

5. Lessee transferred disputed land to Krishna Chandra Mukarjee and subsequently, vide registered sale deed dated 23.03.1945 disputed land was transferred to petitioner of WP-1, M/s Amrit Bazar Patrika Pvt. Ltd.. Vide letter dated 02.5.1951, Collector, Allahabad permitted use of disputed land for press/business purpose. In terms of lease deed, lease expired on 28.2.1962. After 18 years, petitioner applied for renewal of lease vide application dated 14.10.1980. On the ground that petitioner has violated terms and conditions of lease in a major way, a show cause

notice was issued to petitioner on 14.5.1999 which was replied on 28.5.1999. Thereafter Collector Allahabad, vide order dated 09.05.2005, rejected application for renewal of lease and resumed disputed land in favour of Government. Order dated 09.5.2005 was challenged in Writ Petition No. 44629 of 2005 wherein an interim order was passed on 07.6.2005 staying aforesaid order of Collector/ District Magistrate, Allahabad. Thereafter Collector, Allahabad has passed order dated 18.08.2018 resuming/ reentering upon disputed land for "public purpose" i.e., for development of "Sports Field".

6. Lease deed dated 12.5.1915 was to be construed as per the provisions of Government Grants Act, 1895 *(hereinafter referred to as "GG Act, 1895").* Petitioner of W.P.-1 claimed that it did not have any clause permitting resumption of land for public purpose by lessor. Moreover, GG Act, 1895 was repealed by Repealing and Amending (Second) Act, 2017 *(hereinafter referred to as "Repeal Act, 2017")* notified on 05.01.2018.

7. Order dated 18.8.2018 has been challenged on the ground that there is no provision for re-entry/resumption in lease deed hence question of resumption does not arise, particularly when GG Act, 1895 has been repealed; State Government cannot forcibly evict a person from immovable property which is leased out to him, without following due procedure of law and reliance is placed on a Constitution Bench Judgment in **Express Newspaper Pvt. Ltd. and others vs. Union of India and others, (1986) 1 SCC 133;** Judgment and provisions relied by District Magistrate/ Collector, Allahabad in the impugned order are in respect of different land, which are not applicable to the land in dispute; Petitioner sent a letter dated 30.8.2018 after receiving resumption notice dated 18.8.2018 but no decision has been taken thereon; Impugned notice has been given after approval of resumption granted vide order dated 16.8.2018 by State Government which is in utter violation of Principles of Natural Justice i.e. without giving opportunity to petitioner;

Writ petition filed by Lalji Pandey and five others i.e. Writ Petition No. 36210 of 2018, dismissed on 31.10.2018, would not affect rights of petitioner, inasmuch as, they were employees of Northern India Patrika Press, residing in the premises of petitioner i.e. disputed land and writ petition was dismissed on the ground that they could not establish any legal right in respect of land in dispute; Impugned notice has been issued to frustrate interim order passed by this Court in Writ Petition No. 44629 of 2005 and, therefore, is a gross abuse of process of law; impugned order has been passed without application of mind and on incorrect facts; the property in dispute is said to be required for public purpose i.e. to develop as a play ground; the area of land is only 3 acres and 45 sq. yards i.e. 12219 sq. meters, which is a very small area for developing as “Playground”; there already exists a big garden namely 'Alfred Park' within a radius of 300 meter, which is a huge vacant area for development as 'Playground' and there also exists a Cricket Stadium, which can be used for the said purpose; the grounds taken in the impugned notice with regard to alleged violation of condition of lease are same on which earlier order dated 09.5.2005 was passed and which is subject matter of challenge in Writ Petition No. 44629 of 2005, wherein an interim order has been passed but the same has been ignored while passing the impugned order; after repeal of GG Act, 1895, power of resumption under terms of lease, if any, read with provisions of GG Act, 1895 cannot be exercised by Government; Resumption clause, if any, is violative of Article 14 of Constitution of India; there are various other leases, period whereof has already expired but respondents have not chosen to resume such land and, therefore, notice in question is illegal having been passed by adopting pick and choose policy; when an objection is raised that land required for 'public purpose' is not suitable for particular purpose and no suitable areas are available, Executive Authorities are under an obligation to examine this aspect and thereafter take decision by a reasoned order; State may not execute freehold sale

deed/ lease deed in respect of Nazul land under GG Act, 1895 but can execute freehold sale deed/ lease deed in respect of Nazul land under Article 299 of Constitution of India read with Transfer of Property Act, 1882 *(hereinafter referred to as "Act, 1882")* and Indian Contract Act, 1872 *(hereinafter referred to as "Act, 1872");* petitioner has invested a huge amount in raising constructions etc. and cannot be deprived of benefit thereof by such illegal resumption; respondents cannot, merely by giving notice, forcibly re-enter the property in dispute and throw out petitioner from possession of land in dispute forcibly; and notice has been issued in a hurried manner without any force of law, hence, liable to be set aside.

8. On behalf of respondents 2 and 3, a counter affidavit has been filed which is sworn by Sri Gore Lal Shukla, Additional District Magistrate (Nazul), Allahabad wherein basic facts of execution of lease deed in respect of land in dispute initially on 01.3.1862 and thereafter on 12.5.1915 with effect from 15.3.1912 are not in dispute. It is said that after expiry of lease, State is entitled to re-enter upon property in dispute in terms of conditions of lease and provisions of GG Act, 1895.

9. Writ Petition No.40129 of 2018 *(hereinafter referred to as "WP-2")* has been filed by four petitioners namely Girdhar Gopal Gulati; his son Vinkesh Gulati; M/s United Automobiles through its Partner Vinkesh Gulati and Rishi Gulati; impleaded as petitioners 1 to 4. Dispute relates to Nazul Plot No.120-1/2, Civil Station, Allahabad, area 3 Acres 45 Sq. Yards, which also subject matter of WP-1.

10. Facts in brief, as stated in WP-2 is that Secretary of State of India in Council executed a lease-deed in favour of Sri William Rome on 01.03.1862 for a period of 100 years (i.e. 50 + 50) i.e. till 28.02.1962 for valuable consideration. The aforesaid lease was transferred in favour of "Anandi Prasad Dube" vide registered extension of lease, dated 12.05.2015, copy whereof has been filed as Annexure 2 to WP-2. Lessee

transferred aforesaid lease to Sri Krishna Chandra Mukherjee and subsequently vide registered sale deed dated 23.03.1945, it was transferred in favour of M/s Amrita Bazar Patrika Pvt. Ltd. Vide letter dated 02.05.1951, Collector, Allahabad granted permission to M/s Amrit Bazar Patrika Pvt. Ltd. to use Nazul Site 120-1/2, Civil Station, Allahabad for press/business purpose. M/s Amrit Bazar Patrika Pvt. Ltd. established another associate Company namely M/s Allahabad Patrika Pvt. Ltd. having its registered office at Kolkata and it functioned as subsidiary and associate Company. An agreement dated 23.06.1995 was executed in favour of petitioner Girdhar Gopal Gulati in respect of a portion of building, situated over Nazul Site No.120-1/2, Civil Station, Allahabad. He got possession thereof in the capacity of tenant at the rate of Rs.7,500/- per month. A partnership firm M/s United Automobiles commenced its business thereon operating its showroom of Mahindra and Bajaj. In the meantime, as per best knowledge of petitioner of W.P. 2, M/s Amrit Bazar Patrika Pvt. Ltd. applied for renewal of lease vide application dated 14.10.1980, which was rejected by District Magistrate, Allahabad vide order dated 09.05.2005. This order was challenged in Writ Petition No.44629 of 2005 and this Court granted an interim order dated 07.06.2005. Now, District Magistrate has issued impugned order dated 18.08.2018 for resumption of land. Rest of the facts stated in writ petition challenging order dated 18.08.2018 raise similar grounds, as are taken in WP-1, therefore, we are not repeating the same. Respondents have also taken similar defence as has been taken in WP-1, therefore, the same is also not repeated.

11. We have heard Sri Aditya Bhushan, Advocate, holding brief of Sri Amit Kumar Upadhyay, Advocate, for petitioners in WP-1 and Sri Ashish Kumar Singh, Advocate, for petitioners in WP-2. Sri Ajit Kumar Singh, Additional Advocate General assisted by Sri Nimai Das and Sri Sudhanshu Srivastava, Additional Chief Standing Counsels for State of U.P. and its Authorities and Sri M.D.Singh 'Shekhar', Senior Advocate,

assisted by Sri Amit Verma appeared for Prayagraj Development Authority *(hereinafter referred to as "PDA")* have advanced their submissions in the both WP-1 as well as WP-2.

12. In the light of submissions advanced by learned counsel for petitioners, grounds mainly pressed, may be summerized as under:

i. There is no provision for resumption of land in lease-deed dated 12.05.2015.

ii. After repeal of GG Act, 1895, respondents could not have resorted to provision of said Act and therefore, impugned order is patently illegal.

iii. No opportunity was granted to petitioners before passing impugned order.

iv. Petitioners cannot be ousted forcibly and either respondents must file suit for recovery of possession, ejectment of petitioners, and recovery of compensation or should avail procedure prescribed under Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 *(hereinafter referred to as "U.P. Act, 1972").*

v. There is no 'public purpose' involved justifying resumption of land in question.

vi. Order rejecting renewal of lease has been stayed by this Court and to frustrate the above writ petition, impugned order has been passed.

vii. Impugned order has been passed arbitrarily, without application of mind.

viii. Petitioners have invested huge amount in raising constructions and therefore, in the garb of resumption, they cannot be deprived of benefit of the same.

13. On behalf of respondents arguments are that land in question is

Nazul, owned by State, terms and conditions of Grant, are governed by provisions of GG Act, 1895; rights/obligations etc. thereunder have been saved by Section 4 of Repeal Act, 2017, hence State Government has power to resume/re-enter land in dispute for public purpose whenever it is so required and that is what has been done; principles of natural justice are not at all attracted; impugned order is nothing but a notice to petitioners and in any case, petitioners not only have violated provisions of conditions of lease-deed but petitioners in WP-2 are wholly unauthorised occupants, hence have no right over land in dispute and therefore, writ petitions are liable to be dismissed.

14. From the facts stated above and before proceeding further, we find it appropriate to place certain dates and events borne out from record, in a chronological manner for better understanding of dispute.

Date	Events
01.03.1862	Lease-deed for fifty years was executed in favour of William Rome for the purpose of building dwelling house.
12.05.1915	Another lease-deed was executed in respect of land in dispute by Secretary of State of India in Council in favour of Anandi Prasad Dube in view of desire expressed by William Rome to execute renewal of lease in favour of Sri Dube and this time also lease was for dwelling house and for a period of fifty years with effect from 15.03.1912.
------	Lease was transferred by lessee, Anandi Prasad Dube to Sri Krishna Chandra Mukherjee son of Shyama Charan Mukherjee.
23.03.1945	Sri Krishna Chandra Mukherjee vide sale deed transferred entire lease land to M/s Amrit Bazar Patrika Pvt. Ltd. and the name of M/s Amrit Bazar Patrika Pvt. Ltd. was recorded in Nazul register.
02.05.1951	Collector granted permission to M/s Amrit Bazar Patrika (P) Ltd. to run Printing Press on disputed land.
1959	M/s Amrit Bazar Patrika Pvt. Ltd. closed its

	Allahabad Branch and disputed land was given in possession of "**M/s Allahabad Patrika Pvt. Ltd."** for publication of English Newspaper 'Northern India Patrika' and Hindi Newspaper 'Amrit Prabhat'.
28.02.1962	Lease expired
14.03.1962	M/s Amrit Bazar Patrika Pvt. Ltd. through its Secretary Sri Tulsi Kanti Dey Vishwas submitted application requesting for renewal of lease.
------	Collector sought report from Mukhya Nagar Adhikari, Nagar Nigam, Allahabad.
11.11.1990	Mukhya Nagar Adhikari informed that several unauthorised constructions have been raised on disputed land on an area of 3990 Sq.Yards.
30.06.1994	Superintendent (Nazul), Nagar Mahapalika, Allahabad informed Collector that on 100 ft. x 40 ft., part of disputed land, an unauthorised commercial establishment, i.e. Service Center and Workshop ofL.M.L.Vespa Scooter is being run in which Sri V.K.Ghosh has 51% share and Girdhar Gopal Gulati, petitioner-1 of WP-2 has 49% share.
23.06.1995	An agreement was executed by Tamal Kanti Ghosh, K.B.Mathur, Directors, **Allahabad Patrika Pvt. Ltd.** and Om Prakash Mall, all on behalf of **Allahabad Patrika Pvt. Ltd.** and Sri Girdhar Gopal Gulati, petitoner 1 of WP-2 stating that they have 51% and 49% share-holding respectively in M/s Allahabad Patrika Pvt. Ltd. and Sri Gulati shall hand over possession of all movable and immovable assets except building mentioned in later part of said agreement and thereon Sri Gulati was allowed to remain in possession and enjoy premises 6-1, Patrika Marg, where Show Room and Workshop is/ was existing, on payment of rent of Rs.7,500/- per month till advances/loans received by Sri Gulati are fully paid. (This agreement is Annexure 4 to WP-2 and shows a settlement of assets of M/s **Allahabad Patrika Pvt. Ltd.** between the shareholders, which included petitioner-1 of WP-2.
14.05.1999	Show Case Notice was issued by Collector to M/s

	Amrit Bazar Patrika Pvt. Ltd. .
28.05.1999	Sri B.P.Twari, Secretary, M/s Amrit Bazar Patrika Pvt. Ltd. submitted reply admitting that said Company has closed publication of its newspaper at Allahabad in 1959. He further said that M/s **Allahabad Patrika Pvt. Ltd.** is Associate Company of M/s Amrit Bazar Patrika Pvt. Ltd., who is publishing two newspapers Northern India Patrika and Amrit Prabhat.
09.05.2005	District Magistrate rejected application for renewal of lease.
07.06.2005	Petitioner-1 of WP-1 filed Writ Petition No.44629 of 2005 wherein order dated 09.05.2005 was stayed till next date of listing.
19.06.2018	Proposal sent by Collector, Allahabad to State Government for resumption of land so as to develop it as “Sports Field”.
16.08.2018	State Government granted approval for resumption.
18.08.2018	Order of re-entry /resumption was passed by Collector, Allahabad.

15. In the backdrop of aforesaid facts, we proceed to consider merits of writ petition and relief claimed by petitioners.

16. It is not in dispute that land in question is 'Nazul' but interestingly lease holder has sold out land by sale deed to third party and also it has been subjected to Will for its user ignoring Lessor and its authority altogether, hence, some serious questions have arisen in these matter.

17. The **first question** would be, *"what is Nazul?”*

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

19. 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.

20. 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.

21. 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'.

22. 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'.

23. 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.

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

25. 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.

26. 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 says:

> *"Subject as hereinafter provided,* ***any property in the territory of India which****, if this Constitution had not come into operation,* ***would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall if it is property situate in a State, vest in such State****, and shall, in* ***any other case, vest in the Union****."*
>
> (Emphasis added)

27. 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.

28. In **Pierce Leslie and Co. Ltd. Vs. Miss Violet Ouchterlony Wapsnare, AIR 1969 SC 843,** Court has considered the above principle 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)

29. 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, 204.

30. 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)

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

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

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

33. 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)

34. 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.

35. 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****."*
>
> (Emphasis added)

36. 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)

37. 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**.

38. 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.'*

39. 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)

40. 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 vacancia. When acquisition is made under the provisions of a Statute, purpose of acquisition is already known and State pay its price but when land is owned by State, which is Nazul, objective of use of such land is not predetermined but it can be utilized by State for larger public welfare and its benefit, as necessitated from time to time. In other words 'Nazul' land forms the 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 manner or to some selected groups, or in a whimsical manner etc. The **first question** is answered accordingly.

41. 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?"

42. 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 those who remained faithful to Foreign regime and helped them for their continuation in ruling this country and similar other reasons. Sometimes land was given on lease without any condition and sometimes restricted for certain period etc., but in every case, 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. Further allocation of Nazul land by English Rulers used to be called “Grant”.

43. In other words, we can say that initially land owned by State used to be allotted in the form of 'Grant' by British Government. No specific statutory provisions were available to govern it. TP Act, 1882 was enacted to govern transfer of immovable property. Sections 10 - 12 of TP Act, 1882 made provisions invalidating, with certain exceptions, all conditions for forfeiture of transferred property on alienation by transferee and all limitations over consequence upon such alienation or any insolvency of or attempted alienation by him. Apprehending that above provisions of TP Act, 1882, may be construed as a fetter upon discretion of Crown in creation of inalienable Jagirs in 'Grants', acting upon advice that it would not be competent for Crown to create an inalienable and impartible Estate in the land comprised in the Crown Grant, unless such land has heretofore descended by custom as an impartible Raj, it was sought to make a separate Statute to give supremacy to the provisions contained in Crown's Grant, notwithstanding any other law including TP Act, 1882. With this object, i.e., 'GG Act 1895' was enacted.

44. 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.

45. 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)

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

> *"2. Transfer of Property Act, 1882, not to apply to Government grants.-* ***Nothing in the Transfer of Property Act, 1882,*** *contained* ***shall apply or be deemed ever to have applied to any grant or*** *other* ***transfer of land or of any interest therein*** *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)

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

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

48. 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)

49. 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.

50. Thus GG Act, 1895 in fact was a declaratory statute. The 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.

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

52. 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.

53. Proviso to sub-section (3) of Section 2 of GG Act, 1895 further declares 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.

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

55. 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)

56. 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 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)

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

58. 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)

59. Thus, a 'Grant' of a Nazul will be governed by terms and conditions contained in the instrument/deed of Grant, wholly unaffected by any Statute providing otherwise.

60. It neither can be doubted nor actually so urged by petitioners that the lease granted in the case in hand is/was a 'Grant' governed by GG Act, 1895.

61. Broadly, 'Grant' includes 'lease'. 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 in terms of document of 'Grant'.

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

63. Nature of orders compiled in “Nazul Manual” in the context of 'Nazul' have been considered recently 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 stipulations in "lease deed" shall prevail and govern the entire relation of State Government and lessee.

64. 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)

65. Superiority of the stipulations of Grant to deal the 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 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 Government Order dated 15.12.2000. District Magistrate passed order on 24.08.2001 rejecting objection of lease holders and sent a cheque of Rs. 10 lacs representing compensation for the building standing over plot. State authorities claimed that they took possession of open land on 01.09.2001. Lease holders filed writ petition which was dismissed vide judgment dated 07.12.2001, **Shakira Khatoon Kazmi vs. State of U.P., AIR 2002 All 101**. Lease holders challenged judgment dated 07.12.2001 in Supreme Court to the extent they failed. State Government filed appeal against part of order of this Court wherein an observation was made that State Government is not entitled to take forcible possession though it may take possession of demised premises in accordance with procedure established by law. After considering Clause 3(c) of lease deed which provides for resumption of land for public purpose after giving a month's clear notice to lessee to remove any building standing at the time on demised premises and within two months of receipt of notice, to take possession thereof on expiry of that period, 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 Government for its own purpose or for any public purpose, it shall have the 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. 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 "L.A. Act, 1894")*. Resumption in that case was 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.

66. 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 L.A. 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 its earlier judgment in **State of U.P. vs. Zahoor Ahmad, 1973(2) SCC 547** holding that Section 3 of GG Act, 1895 declares unfettered discretion of Government to impose such conditions and limitation as it thinks fit, no matter what the general law of land be. Then Court construing Clause 3(C) of lease deed said that it provides procedure for taking possession of demised premises when State

Government re-enter or resume possession of demised land. Court in para 30 and 32 of judgment said:

> *"30. In the case of* ***The State of U.P. vs. Zahoor Ahmad and Another, 1973(2) SCC 547****, this Court held that the Section 3 of the Act declares the unfettered discretion of the Government to impose such conditions and limitation as it thinks fit, no matter what the general law of land be. From Clause 3(C) of the deed, it is clear that the* ***State of U.P. while granting lease made it clear that if the demised premises are at any time required by the lessor for his or for any public purpose, he shall have the right to give one month's clear notice to the lessee to remove any building standing at the time of the demised property and within two months' of the receipt of the notice to take possession thereof on the expiry of that period*** *subject to the condition that the lessor is willing to purchase the property on the demised premises, the lessee shall be paid for such amount as may be determined by the Secretary to the Government of U.P. in the Nagar Awas Department."*
>
> *"32. Under Clause 3(C) of the lease deed, the respondent-State was permitted resumption of the land which required for its own use or for public purpose and after giving one month's clear notice in writing is entitled to remove any building standing at the time on the demised premises and within two months of the receipt of the notice to take possession thereof subject to the condition that if the lessor is willing to purchase the building of the demised premises required to pay the lessee the amount for such building as may be determined by the Secretary to Government of U.P. in the Nagar Awas Department...."* (Emphasis added)

67. 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***".(Emphasis added)

68. 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, holding that since special procedure for resumption is prescribed under lease deed, no direction otherwise could have been issued to State Government.

69. 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 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. The terms and conditions of 'Grant' shall override any statute providing otherwise. 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'.

70. 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 can be resorted to govern rights of parties over Nazul land, which will be governed by aforesaid Grant/Indenture of Lease. **Second question** is answered accordingly.

71. The **third question** is, "Whether Lessee can transfer Nazul land itself to anyone or transfer, if any, made will result only transfer of lease rights or land itself; and, if transfer is not made in accordance with conditions of Indenture of Lease/Grant, what will be its effect and whether it will confer any valid right or interest on Nazul land, subjected to transfer, upon such Transferree?"

72. We have reproduced contents of lease deed constituting terms and conditions to govern land in dispute. In almost every aspect, some restrictions on exercise of lease rights over Nazul land were imposed by Grantor/Lessor i.e. State. Some such instances are :

(i) Without permission, no erection etc. of building etc., except what was already existing and raised in accordance with map,

made part of lease deed dated 01.03.1862 and 12.05.1915, was permissible.

(ii) Without permission, no growing of any crop or keeping of horses, cattle or other animals for hire or profit is permissible.

(iii) Without permission, no construction of any thatched or covered with grass reeds or other inflammable material etc was permissible.

(iv) At the end of tenure of lease or termination at will or determination, Lessee would peacefully and quietly leave, surrender and yield to the Lessor, the land together with all such erection etc., as were existing, if so desired by Lessor for taking over such erection etc. for valuation but if it is not desired of taking such erection etc., then the same shall be removed by Lessee within such time, as directed by Lessor.

(v) No compensation was claimable by Lessee or his assign etc. for any building etc. in case lease is determined by re-entry for forfeiture and building etc. shall absolutely rest in Lessor as his own property.

(vi) Lessee or his agents shall not assign or underlet or otherwise part with the possession of the premises or any part thereof without permission of Secretary of State or his authorized person.

(vii) Any transfer without prior permission will cause lease-deed, ceased and determined, but without prejudice however to the right or action of Lessor in respect or on account of any previous breach of any covenant or covenants.

(viii) If Government, at any time require to re-enter on site, it can do so on, on paying value of all buildings that may be on the site, plus 10 per cent for recompense for resumption of lease and Lessee shall have no further claim of any sort against the Lessor. If building etc. is not taken by Lessor, it has to be removed by

Lessee.

73. Above conditions show that any transfer by Lessee in any manner without prior permission of Lessor i.e. Government or its Authorized Agent will result in determination of lease without any further notice. Meaning thereby, transfer of lease was clearly prohibited under terms of lease unless permission of Government has been obtained.

74. In the present case, lease was executed on 12.05.1915 w.e.f 15.03.1915 in favour of Anandi Prasad Dube wherefrom it was transferred to Krishna Chandra Mukherjee and then to M/s Amrit Bazar Patrika Pvt. Ltd. through sale deed dated 23.03.1945. The land, obviously was not owned either by Anandi Prasad Dube or his transferree Krishna Chandra Mukherjee. Therefore, sale deed could not have resulted in conferment or transfer of ownership or title over land in dispute, upon transferee. At the best, aforesaid transfer by sale deed would have confined to transfer of lease rights on land and title over constructions/buildings, if any, existing at that point over land in dispute. Transfer of land however has to abide by terms and conditions of lease deed dated 12.05.1915.

75. M/s Amrit Bazar Patrika Pvt. Ltd., Allahabad closed its business, as admitted by its representative in reply dated 28.05.1999 in 1959. It also admitted that thereafter land in dispute was given in possession of M/s Allahabad Patrika Pvt. Ltd. Though it is said that M/s Allahabad Patrika Pvt. Ltd. is an Associate Company of M/s Amrit Bazar Patrika Pvt. Ltd. but no material in this regard has been shown or placed on record in both these writ petitions. Even otherwise, the two are independent Companies. Both the Companies were incorporated and registered separately. Both are independent legal person. Lease was transferred by M/s Amrit Bazar Patrika Pvt. Ltd., which is an independent legal person and incorporated under the Provision of Indian Companies Act, 1913 *(hereinafter referred to as "Act, 1913").* M/s

Allahabad Patrika Pvt. Ltd. is also a Company registered and incorporated under Act, 1913 and a separate legal personality. Therefore, transfer and possession of land by M/s Amrit Bazar Patrika Pvt. Ltd. to M/s Allahabad Patrika Pvt. Ltd. amounts to transfer from one legal person to another. However before such transfer, no permission of Lessor i.e. State Government or its authorized agent i.e. Collector was obtained. There was clear bar in lease-deed and relevant clause we have already quoted and at the pain of repetition, we reproduce herein also:

> *"...the said Lessee his Executors, Administrators or Assigns or underlet of otherwise* ***part with the possession of the said premises or any part thereof without the permission of the said secretary of State his Successors or Assign"*** (Emphasis added)

76. There is nothing on record and no claim has been made that such transfer was made with permission of State or its authorities. Therefore, transfer of disputed land by M/s Amrit Bazar Patrika Pvt. Ltd. to M/s Allahabad Patrika Pvt. Ltd. was wholly illegal and in the teeth of the terms of Grant. Effect of such transfer has been considered in **State of U.P. and others vs. United Bank of India and others (supra).** Court has held that any transfer without sanction of Lessor will be invalid and would not confer any valid right upon Transferee. In paras 39 and 40 of judgment, Court said :

> *"39. This "within written lease" is the original lease deed as mentioned in the Form 2 of the Nazul Manual. Form 2 of lease of Nazul land for building purposes it is one of the condition between the lessor and the lessee that " the* ***lessee will not in any way transfer or sublet the demised premises or buildings erected thereon without the previous sanction in writing of the lessor****".*
>
> *40. In the present case* ***there was nothing on the record to show that the lessee i.e. (ABP) has obtained any written sanction from the lessor i.e. Government before mortgaging his leasehold interest in the Nazul Land. Meaning thereby the mortgage done by the lessee in favour of the Bank itself is bad in law, which was done in clear violation of the terms of the lease deed i.e. mortgage of the Nazul land without previous sanction in writing of the State****."*
>
> (Emphasis added)

77. Further transfer of any part of disputed land to petitioner-1 of WP-2 founded on agreement dated 23.06.1995 executed between Directors of Allahabad Patrika Pvt. Ltd. and petitioner-1 of WP-2 is also of no consequence and legal sanction since none of the parties to the said agreement had any right or interest in law, over land in dispute. Lease having expired on 14.03.1962, all lease rights possessed by erstwhile Lessee came to an end, and thereafter when Lessee itself did not have any legal right or interest over property in dispute, others or so called transferrees also cannot claim anything more than that.

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

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

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

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

compensation, as the case may be, as law permits.

81. We need not go into question whether order passed by District Magistrate on 09.05.2005 is correct or not since it is subject matter of dispute in another writ petition but for our purpose, suffice it to mention that State Government, owner of land has a right vested in lease deed to re-enter and resume land after cessation, determination or expiry of lease. Such right is not deterred, diluted or stand deprived at any point of time, in any manner, particularly due to any illegal act of Grantee.

82. Here we may again refer to judgment in **State of U.P. vs. United Bank of India (supra),** which was a case in which petitioner-1 of WP-1 was also a party in relation of Bungalow no.19, Clive Road, Allahabad, lease whereof was transferred by original Lessee to petitioner-1 of WP-1 on 22.10.1945 by registered sale deed. Petitioner-1 of WP-1 in respect of some business transaction (loan/advances) mortgaged aforesaid leasehold property by deposit of title deeds to United Bank of India. Castigating the same, Supreme Court held it patently illegal and conferring no right upon Bank. In para 35 of judgment, Court said that petitioner-1 of WP-1 mortgaged Nazul land in favour of Bank and since it had no leasehold interest in the property, nothing more could have been mortgaged to Bank. Moreover, since under lease-deed, no transfer without permission of Lessor was permissible, hence, transfer in favour of Bank was in violation of terms of lease deed and mortgage was bad in law. In Para 40 of judgment, Court said as under :

> *"In the present case* ***there was nothing on the record to show that the lessee i.e. (ABP) has obtained any written sanction from the lessor i.e. Government before mortgaging his leasehold interest in the Nazul Land. Meaning thereby the mortgage done by the lessee in favour of the Bank itself is bad in law, which was done in clear violation of the terms of the lease deed i.e. mortgage of the Nazul land without previous sanction in writing of the State****."* (Emphasis added)

83. Similar observations are reiterated in para 41. In operative part of

judgment, in para 48.5, Court has said:

> *"The **mortgage so created by the Company in favour of the Bank in respect of nazul land without the sanction of the State of Uttar Pradesh** in terms of the lease, **is ab initio void**, hence **no right was created in favour of the Bank** by reason of the said mortgage."*
>
> *(Emphasis added)*

84. Therefore, aforesaid transfer by petitioner-1 of W.P. 1 was patently illegal and confers no right upon Transferree i.e. Allahabad Patrika (P) Ltd. Since petitioners of W.P. 2 are deriving their claim from Allahabad Patrika (P) Ltd., they also had no right over land in dispute. **Third question**, therefore is answered against petitioners.

85. The **forth question** is, "whether petitioners of W.P. 1 were entitled for 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.

86. Submission is that possession has continued with petitioners and petitioner-1 of WP-1 itself applied for renewal of lease on 14.10.1980, therefore, it was entitled for renewal of lease in view of judgment rendered in **Purshottam Dass Tandon and others vs, State of U.P. And others (supra).** This requires us to examine aforesiad judgment in detail.

87. 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, 02.07.1960 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 to be proper step on the part of Lessee to get a fresh lease executed by the Lessor. The G.O. of 1965 itself made a distinction between those whose leases had expired and others by describing them as sitting and existing lessees.

88. 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, 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.

89. 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 it could not be executed because of 1970 order, should be sent to Government immediately for acceptance. On 09.05.1972 Urban Building Ceiling Bill was introduced and on 11.07.1972 Uttar Pradesh Ceiling of Property (Temporary Restriction on Transfer), Ordinance, 1972 was promulgated in pursuance of Article 398 of Constitution of India. The Ordinance continued till it was replaced by Urban Land (Ceiling and Regulation) Act, 1976 *(hereinafter referred to as "U.P. Act, 1976")*. The

said Act was enacted to prevent concentration of Urban Property and discourage construction of luxurious houses. On 19.12.1972, provisions pertaining to Nazul were amended providing for maximum area permissible for renewal of leases of 2000 sq. yards plus land on which building was constructed. Remaining area was to be surrendered to Housing Board and Lessees were prohibited from sub-dividing or transferring any land. On 10.12.1976, Government issued an order superseding all previous orders in respect of renewal of leases of Civil Lines, Allahabad in view of Act, 1976 and laid down fresh terms and conditions for renewal of leases.

90. 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 were made which culminated in G.O. dated 19.04.1981, which superseded all previous Orders and provided for renewal of leases on fresh and new terms. It is said that Leaseholders and their heirs shall be treated as one Unit. They were supposed to file details about land, constructed area, its user, time when it was taken on lease etc. before 30.06.1981. List of residents including out-houses dwellers was to be prepared by District Magistrate. Heirs of deceased lease-holders were to be treated as one unit. Area for which renewal could be made was reduced to building with 500 sq. metre of land appurtenant and 500 sq. metre open land or 1500 sq. metre whichever was more. Area of building for commercial purpose was fixed at 2000 sq. metres. Premium was fixed at 50 paisa per sq. metre. Thus, from 1976 onwards for the purpose of renewal, area was reduced from acre to square metre and unit for premium and ground rent became square feet instead of acre. All heirs of Lessees became one unit

for renewal. Land covered by outhouses were to be excluded. Lessees could not even opt for it.

91. When we considered the claim of petitioners in reference to above G.Os., nothing is on record to show that petitioner ever applied and sought renewal or fresh lease, either before actual expiry of lease term or immediately thereafter, in terms of above G.Os., hence petitioners cannot claim any benefit under the above mentioned G.Os.

92. 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).** In this case, there were two categories of writ petitioners, 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.

93. 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 benefits 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.

94. 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**. Supreme 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)

95. Aforesaid judgment has no application to the case of petitioners at all since neither petitioners come within the category of eligible persons to apply for 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 petitioners have shown any provision, whether statutory or executive, including G.O., which may confer entitlement upon petitioner to seek renewal of lease at

all.

96. Aforesaid **fourth question,** therefore, is answered against petitioners.

97. The **fifth question** is, “whether Repeal Act, 2017 has effect of denying to State, right of resumption/re-entry due to repeal of GG Act, 1895.”

98. 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 already acquired or incurred or accrued by/to State Government for the purpose of resumption under resumption clause before repeal of GG Act, 1895, therefore resumption with reference to GG Act, 1895 is wholly illegal.

99. Meaning of words 'accrued', 'acquired' and 'incurred' has been given in various paragraphs of writ petitions but we find that basic aspect has been ignored and missed by petitioners. Terms of lease as soon as lease was executed caused in creating rights, obligations, duties and interest of both the parties i.e. Lessor and Lessee. Their relations are to be governed in accordance with terms and conditions of lease. Relevant clause says that it shall be lawful for the 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 the said term incurred duty to allow such re-entry to State whenever Government exercises 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 i.e. it incurred liability not to obstruct the said right

of State i.e. Lessor.

100. Petitioners, in our view, have misconstrued Section 4 vis-a-vis terms of lease and therefore, entire argument in this respect is devoid of merit, hence rejected. This question is also returned against petitioners.

101. **Sixth question is** “whether resumption clause is arbitrary?”

102. The argument is clearly misconceived. In fact, it is an attempt to extend the argument advanced on question five. Once benefits and rights of parties are in terms of lease, it is not open to a party to challenge one of the conditions of whole document whereupon some right or interest in some property has been transferred. In other words, an act is subject to certain conditions as a whole, and parties to the transaction have accepted all the conditions together, then subsequently it is not open to retain some or leave another. It cannot chose some and leave other. This principle is based on doctrine of election, which postulates that no party can accept and reject the same instrument. A person cannot say at one time that a transaction is valid and thereby obtain some advantage to which he could only be entitled on the condition that it is valid and then turn round and say that it is void for the purpose of securing some other advantage.

103. As per **Halsbury's Laws of England (4th Edition) Vol. 16 (Paragraph 1508)**, after taking an advantage under an order a party may be precluded from saying that it is invalid and asking to set it aside.

104. Section 116 of Indian Evidence Act, 1872 *(hereinafter referred to as “Act, 1872”)*, provides for 'estoppel' of tenant to deny title of landlord to immovable property. It reads under :

> *“**116. Estoppel of tenant; and of licensee of person in possession-***
>
> *"No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the*

> *beginning of the tenancy, a title to such immovable property, and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given."*

105. In **Mt. Bilas Kunwar v. Desraj Ranjit Singh and others, A.I.R. 1915 P.C. 96**, Privy Council explained provisions of Section 116 of Act, 1872 and held as under:

> *"Section 116 is perfectly clear on the point, and rests on the principle well established by many English cases, that a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord."*

106. In **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others v. Director General of Civil Aviation and others, (2001) 5 SCC 435 (Paragraph-12)**, Court referred to its earlier judgments in **Babu Ram alias Durga Prasad v. Indra Pal Singh, 1998(6) SCC 358, P.R. Deshpande v. Maruti Balaram Haibatti, 1998(6) SCC 507** and **Mumbai International Airport Private Limited v. Golden Chariot Airport and another, 2010 (10) SCC 422** and held that doctrine of election is based on the rule of estoppel. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his action or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. However, taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, parties should not blow hot and cold by taking inconsistent stands and prolong proceedings.

107. In **Cauvery Coffee Traders, Mangalore v. Hornor Resources (International Company Limited), (2011) 10 SCC 420 (Paragraph 34),** Court referred to its decision in **Nagubai Ammal v. B. Shama Rao, AIR 1956 SC 593, CIT v. V. MR.P. Firm Muar AIR 1965 SC 1216,**

NTPC Ltd. v. Reshmi constructions, Builders & Contractors, (2004) 2 SCC 663, Ramesh Chandra Sankla v. Vikram Cement (2008)14 SCC 58 and **Pradeep Oil Corpn. v. MCD (2011) 5 SCC 270,** and held, that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts benefits of a contract or conveyance or an order, he is estopped to deny validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity. However, it must not be applied in a manner as to violate the principles of right and good conscience.

108. In **V. Chandrasekaran and another v. Administrative Officer and others, (2012) 12 SCC 133**, Court followed the law laid down in **Cauvery Coffee Traders, Mangalore (supra)**.

109. In **Rajasthan State Industrial Development and Investment Corporation and another v. Diamond & Gem Development Corporation Limited and another (2013) 5 SCC 470**, Court again reiterated the law laid down in **Cauvery Coffee Traders, Mangalore (supra)** and held, in paragraph 23, as under :

> *"**A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract.** Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and **it is not permissible for the court to make a new contract,** however reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely".* (Emphasis added)

110. In **State of Punjab and others v. Dhanjit Singh Sandhu (2014) 15 SCC 144 (Paragraph Nos. 21, 22, 23, 24, 25 and 26)** Court

reiterated the law laid down in **CIT v. MR. P. Firm Muar (supra), Maharashtra SRTC v. Balwant Regular Motor Service, AIR 1969 SC 329; R.N. Gosain v. Yashpal Dhir, (1992) 4 SCC 683 (Paragraph 10);** and **P.R. Deshpande v. Maruti Balaram Haibatti, (1998) 6 SCC 507** and held that defaulting allottees cannot be allowed to approbate and reprobate by first agreeing to abide by the terms and conditions of allotment and later seeking to deny their liability as per agreed terms. The doctrine of "approbate and reprobate" is only a species of estoppel. It is settled proposition of law that once an order has been passed, it is complied with, accepted by other party and he derived benefit out of it, he cannot challenge it on any ground.

111. In **Bansraj Lalta Prasad Mishra v. Stanley Parker Jones, (2006) 3 SCC 91 (Paragraph Nos. 13,14, 15 and 16)**, Court considered Section 116 of Act, 1872 and held:

> ***"13.The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.***
>
> ***14.The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.***
>
> ***15.Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time.***

> *16.As laid down by the Privy Council in Kumar Krishna Prasad Lal Singha Deo v. Baraboni Coal Concern Ltd. : (IA p.318)-*
>
> > *It [Section 116] deals with one cardinal and simple estoppel, and states it first as applicable between landlord and tenant and then as between licensor and lincensee, a distinction which corresponds to that between the parties to an action for rent and the parties to an action for use and occupation."*
> >
> > (Emphasis supplied)

112. Even otherwise, we find nothing arbitrary or illegal in resumption clause. State is the owner of land. If for public purpose, it wants to take back its land by way of resumption, there is nothing per se arbitrary. Secondly, condition of resumption is a part of contract between the parties and having accepted the same and contract has been carried out and completed its term, it order to wriggle out the rights, obligations and liabilities incurred and acquired thereunder, one of the parties cannot wriggle out by contending that one of the conditions of such agreement is bad.

113. Aforesaid argument therefore, has no merit and we also did not find that repeal of GG Act, 1895 by Repeal Act, 2017 takes away right of State of resumption, which has already acquired long back under the terms of lease and is attracted by Section 4 thereof. **Sixth question** is thus answered holding that neither Clause 3(c) of lease deed is arbitirary nor can be assailed by petitioners-lessees after enjoying other conditions of lease-deed.

114. **Seventh question is** “whether mere possession of petitioners over land in dispute confers any right upon them to resist entry of owner of land and can it insist upon owner to follow any particular procedure before compelling petitioner to vacate land in dispute.”

115. In this respect, it is contended that even if petitioners are rank trespassor, the fact is that petitioners are in possession of land in dispute and therefore by application of force, petitioners cannot be evicted.

Petitioners, at the best, are unauthorized occupants in terms of U.P. Act, 1972 and therefore, atleast procedure prescribed in the said Act has to be followed. Further continued possession of petitioners over land in dispute entitles petitioners 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 petitioners by filing a suit for eviction, which is a remedy available in common law. In this regard, reliance is placed on certain authorities namely **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.**

116. It is also contended that terms of lease read with GG Act, 1895 cannot be resorted to by respondents since GG Act, 1895 has already been repealed by Repealing and Amending (Second) Act, 2017 *(hereinafter referred to as "Repeal Act, 2017)* and therefore, provisions of GG Act, 1895 are not available to respondents to dispossess petitioners and cannot be resorted to.

117. With regard to applicability of TP Act, 1882 we have already discussed the matter in the light of GG Act, 1895. Law laid down in **Azim Ahmad Kazmi and others vs. State of U.P. and Another (2012) 7 SCC 278** is very clear and holds the field. At the pain of repetition, we may observe that Supreme Court has clearly held that in the matter of Government Grant, it is governed by provisions of GG Act, 1895 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 and no other procedure is to be observed.

118. So far as application of Section 116 of TP Act, 1882 is concerned

we find nothing to show that Section 116 of TP Act, 1882 has any application in the case in hand. It 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 followed in **Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd. (supra).**

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

120. 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'.

121. Above contention can be examined from another angle. Petitioner's possession 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 restricted use of land that belongs to other person such as easementary rights. Non-possessory interest does 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 right 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.

122. 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 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.

123. 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 invoked such remedies, one of the question 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 and attitudes and activities of other persons.

124. Possession may be 'lawful' or 'unlawful' or even 'legal' or 'illegal'. Acquisition of legal possession would obviously be lawful and would, 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 lawful unless there is some Statute providing otherwise. Nature of possession being not lawful, would entitle landlord to regain possession. Thus, a lawful possession is state of being a possessor in the eyes of law. Possession must be warranted or authorized by law; having qualifications prescribed by law and neither contrary to nor forbidden by the 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 and it cannot proceed to dispossess the other in a forcible manner not recognized in law. 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 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. Thus, here concept of possession as juridical possession has been introduced.

125. A person having juridical possession though illegal and unlawful,

by a sheer executive fiat may not 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 and also upheld by Supreme Court in **Azim Ahmad Kazmi and others vs. State of U.P. and Another (supra),** and Lessor follow such procedure, it cannot be said that eviction is being resorted to illegally or without following lawful method.

126. Now, coming to question of applicability of Section 106 TP Act, 1882, we find that there is no necessity of any quit notice in this case. It is an admitted case that lease stood expired on 14.03.1962 and thereafter it has not been renewed. In such circumstances, status of even valid lessee would be that of "Tenant at sufference" while petitioners position is even worst to that.

127. In case of a lessee, who has entered into possession of a land validly in terms of lease deed, after expiry of period of lease or determination thereof, status of such lessee, if possession continued, would be that of "Tenant at sufference", therefore, even a quit notice is not necessary to be given and Section 106 TP Act, 1882 is not at all attracted. Relying on earlier decision in **R.V. Bhupal Prasad vs. State of A.P. (1995) 5 SCC 698** in a recent decision in **Sevoke Properties Ltd. vs. West Bengal State Electricity Distribution Company Ltd. AIR 2019 SC 2664,** Court held that once it is admitted by lessee that term of lease has expired, lease stood determined by efflux of time and in such case, a quit notice under Section 106 is not required to be given. Court has said as under :

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

128. 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.

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

130. 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 passengers; plans of building shall be presented before sanctioning authority; cleanliness and sanitary rules shall be followed by the persons maintaining Dharmasala and no permission to construct any shop will be granted and if any condition is violated, State shall dispossess them from the land in dispute.

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

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

132. Though a condition was imposed for not permitting construction of any shop, but as a matter of fact, a number of shops were later constructed, with the permission of authorities concerned, for meeting expenses of maintenance of Temple and Dharmasala. A complaint was made in 1911 against Ramji Das that he was utilizing Dharmasala for his private purpose but it remained unheeded. On the complaint made, some inquiry was also conducted by Tehsildar wherein Ramji Das got his statement recorded in January, 1925. On 07.04.1928, Revenue Minister, Patiala State, passed an order stating that though land on which Dharmasala had been built, was originally Government land (nazul property), it would not be proper to declare it as such and Dharmasala should continue to exist for the benefit of the public. Ramji Das or any other person will not be competent to transfer land and if such transfer is made, it would be unlawful and invalid and in such event, Government

will escheat. 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, that Dharmasala was for public benefit; and, that Ramji Das had been its Manager throughout. He, however, said that Ramji Das was bound to render accounts which he failed considering that property belong to him and, therefore, he should be removed and past accounts be called for. When the matter went for opinion of Legal Remembrancer of State Government, it was pointed out that Dharmasala and Temple, though built on Government land, but not Government property. It also said that though Ramji Das was repudiating the existence of a Public Trust, he was working as Trustee of a Trust created for public purposes of a charitable or religious nature and could be removed by State only under Section 92 Civil Procedure Code. Ramji Das died on 10.12.1957. Petitioner Bishan Das and others came to manage Dharmasala, Temple and the shops etc. On 23.12.1957, Gopal Das and some others, describing themselves as members of public, made an application that since Ramji Das was dead, new arrangements should be made for proper management of Dharmasala which is used for the benefit of the public. Again a search of old papers was made and this time Sub-Divisional Officer, Barnala, recommended that in the interest of Government, Municipal Committee, Barnala, should take immediate charge of 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 alleging that the same were without any authority of law and violative of

fundamental rights enshrined under Articles 14, 19 and 31 of the Constitution.

133. 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.

134. Supreme Court observed in Para-10 that even if it is assumed that the property is Trust property, no authority of law authorized State or its Executive Officers to take action against Bishan Das and others in respect of Dharmasala. 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 holding that it is a clear case of violation of fundamental right of Bishan Das and others. Supreme Court said that nature of sanction granted in 1909 in respect of land whether it was a lease or licence, with a Grant or an irrevocable licence are questions of fact, need not be gone into by it, but admitted position is that land belonged to Government who granted permission to Ramji Das on behalf of joint family firm to build a Dharmasala, Temple and Shops and manage the same during his life time. After his death his family members continued with management. Thus, they were not trespassers at all in respect of Dharmasala, Temple and Shops; nor could it be held that Dharmasala, Temple and Shops belong to State. The question whether Trust created was public or private is irrelevant. Court said that a Trustee, even of a Public Trust, can be removed only by procedure known to law. He cannot be removed by an executive fiat. The maxim, what is annexed to the soil goes with the soil, has not been accepted as an absolute rule of law in India and in this regard, Supreme Court referred to the 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 said:

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

135. 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)

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

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

137. 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 sheer display of force, exhibits a callous disregard of normal requirements of rule of law, apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which

guarantees to its citizens against arbitrary invasion by the executive on peaceful possession of property. Supreme Court reiterated what was said in its earlier judgment in **Wazir Chand Vs. The State of Himachal Pradesh AIR 1954 SC 415** that State or its executive officers cannot interfere with the rights of others unless they can point out some specific rule of law which authorizes their acts. Supreme Court seriously deprecated State and said:

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

138. Aforesaid decision has no application in the case in hand, inasmuch as, here State has exercised its power following terms and conditions laid down under lease-deed, which were made to prevail over any Statute providing otherwise, including TP Act, 1882 vide Section 2 of GG Act, 1895. Further, respondents, in exercise of right of resumption/re-entry, have not straightway went to dispossess petitioners but notice in question has been given to them, giving time to vacate the premises whereafter respondents proposed to take further action for taking possession. Therefore, it cannot be said that no notice has been given to petitioners in the present case.

139. **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 was Chairman of the Board of Directors, Nihal Singh was the Editor-in-chief of the Indian Express and Romesh Thapar was the Editor of the Paper published from 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?

140. Thereafter Court analyzed the facts of case in detail and respective arguments and from Para-45 to 47 we find that Government of India and Lt. Governor of Delhi were Head-on to each other and even 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 by Supreme Court in the judgment from para-66 onwards. It 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."*

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

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

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

> *"****It is plain upon the terms that Section 2 excludes the operation of the Transfer of Property Act, 1882 to Government grants****. While Section 3 declares that all provisions, restrictions, conditions and limitations contained over any such grant or transfer as aforesaid shall be valid and shall take effect according to their tenor, notwithstanding any rule of law, statute or enactment of the Legislature to the contrary. A series of judicial decisions have determined the overriding effect of Section 3 making it amply clear that* ***a grant of property by the Government partakes of the nature of law since it overrides even legal provisions which are contrary to the tenor of the document****."* (Emphasis added)

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

144. 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**.

145. 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)

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

147. Court then considered other provisions relating to power of Lt. Governor, and Central Government and factual aspects involved in the matter, which, in our view, 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.

148. 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. Notices were issued under pressure of Lt. Governor of Delhi, hence violative of Article 14, suffers with arbitrariness and non application of mind. His Lordship said that it was not necessary to express any opinion on the contention based on Article 19(1)(a) of Constitution. Hon'ble Venkataramiah further said that question relating to civil rights of the parties flowing from lease deed cannot be disposed of in a petition under Article 32 of Constitution since questions whether there has been breach of the covenants under the lease, whether lease can be forfeited, whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of 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."*

149. 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)

150. 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 that 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)

151. Thus 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. In the present case, the right of re-entry is being enforced as per terms of Grant which prevailed over any other law.

152. 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".

153. 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 upon Revenue Court and takes away jurisdiction of Civil Court only in respect of two kinds of actions.

(i) suits or application of the nature specified in the Fourth Schedule of the Act; and

(ii) suits or applications based on a cause of action in respect of which any relief can be obtained by means of a suit or application specified in that schedule.

154. 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.

155. 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.

156. 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 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 breaches of peace. It does not allow a person who has acted high-handedly by wrongfully dispossessing a person in possession from deriving any benefit from his own unjustified act. Section 9, infact, provides for a summary and quick remedy for a person who is in possession but illegally ousted therefrom without his consent. Court observed that 'Possession' is prima facie evidence of title and if a person who is in possession is dispossessed, he

has a right to claim back possession from the person who dispossesses him. In an ordinary common law proceedings, a person who has a title, is entitled to possession and cannot be deprived of his right of possession by a person, who has no title or inferior to the former. Court said that for Section 9, claim of title is not allowed to be set up and possession wrongfully taken, has to be restored. Full Bench therefore, answered question formulated above in negative.

157. In our view, above judgment has no application to the facts of this case for the reason that title of land is not in dispute, inasmuch as, it is admitted case of all the petitioners that land in dispute is 'Nazul', hence it is owned and vested in Government. It is also not in dispute that petitioner-1 of W.P. 1 got possession of land in dispute on transfer with permission of Lessor. However petitioner-1 further transferred land without such permission. This is illegal. Hence petitioner-1 of W.P.-1 has no actual possession over land in dispute and possession of others is illegal.

158. In the present case right of re-entry is being exercised by respondent-State in terms of lease-deed whereunder even original lessee was obliged to surrender/hand over possession to State Government.

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

160. **Lallu Yeshwant Singh (dead) by his legal representative vs. Rao Jagdish Singh and others, AIR 1968 SC 620** is a judgment which came before two Judges Bench of Supreme Court from a dispute raised under Qanoon Mal Riyasat Gwalior Samvat, 1983 *(hereinafter referred*

to as "Qanoon Mal") that is from Madhya Pradesh. Under Section 326 of Qanoon Mal, a suit was filed by Yeshwant Singh and others i.e. plaintiffs against Rao Jagdish Singh and others (defendants) in the Court of Tehsildar for possession of some agricultural land. Plaintiffs set up a case that they were in possession of land and forcibly dispossessed by defendants, therefore, should be restored their possession. Tehsildar decreed the suit and order was affirmed in appeal by Collector as well as Commissioner. Revision was also dismissed by Board of Revenue and decree passed by Tehsildar was maintained. Section 326 of Qanoon Mal broadly provided summary remedy as is provided in Section 9 of Act, 1877. In para 7 of the judgment, Supreme Court has referred to both the provisions and said that both are broadly similar. High Court took a different view holding that it was not necessary for a Lessor to resort to Court for obtaining possession and if there is default by plaintiff, it could have been dispossessed by defendants. Supreme Court said that no person can take law in its own hand and in such matter, where provisions providing summary procedure for restoration of illegal dispossession of land have been made, the same can be resorted to by the person who has been illegally dispossessed. Supreme Court affirmed Full Bench judgment of this Court in **Yar Mohammad (supra).** Here also we do not find applicability of this judgment to the case in hand for the reasons we have already said in respect of judgment in **Yar Mohammad (supra)**.

161. The decision in **State of U.P. Vs. Zahoor Ahmad and another (supra)**, we find, instead of helping petitioners, supports the view which we have taken hereinabove. **The State of U.P. vs. Zahoor Ahmad and another (supra)** was a matter which came up before two Judges Bench of Supreme Court arising from action by State in respect of certain land 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 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 condition settled between the parties that Licensee i.e. Zahoor Ahmad would pay Rs.1,000/- as annual rent for occupation till 15.07.1950. Even after determination of lease on 15.7.1950, Zahoor Ahmad i.e. Licensee continued in possession and State of U.P. allowed him to remain in possession for three years beyond 15.07.1950 though for this period Zahoor Ahmad did not agree to give any undertaking of making payment of annual rent of Rs.1,000/-. A letter dated 04.12.1951 was issued to Zahoor Ahmad asking him to pay Rs.3,000/- for the year 1950-51. Letter further provided that if Zahoor Ahmad 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 the mill beyond 15.07.1950 for three years if he pays Rs.3,000/- per annum, and for one year only, if he is ready to pay Rs.1,800/- but thereafter lease would not be renewed. Notice also said that he was only Licensee and should remove his plant and vacate the premises within one month and pay Rs.6,000/- as damages for use and occupation. Zahoor Ahmad did not pay the amount, hence a suit for recovery of damages was filed by State of U.P. High Court came to the conclusion that Licensee (Zahoor Ahmad) was allowed to continue with the consent of State of U.P. though there was no written agreement about rate of rent and lease was granted for industrial purposes. Under Section 106 of TP Act, 1882, such lease is for year to year basis. The lease could have been terminated by six months notice and since no such notice was

given, therefore, tenancy was not validly terminated. With respect to amount of rent, Court took the view that under Section 116, renewal would mean the same terms and conditions as made applicable in previous lease. High Court therefore decreed the suit for payment of rent of Rs.3,000/-. Possession was allowed by State with its consent. Thus, High Court took the view that 'holding over' was applicable under Section 116. State Government 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 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)

162. 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.

163. In the present case, it is not the case of any of the petitioners that after expiry of lease on 14.03.1962, they have been permitted to remain in possession of disputed Nazul land and rent has been accepted by respondents or they have paid rent.

164. Even if what is said by petitioners is taken to be correct, we do not find that Section 116 is applicable in the case in hand at all. 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.”*

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

> (i) After determination of lease, lessor or his representative has accepted rent from lessee or under lessee or assent to his

continuing in possession; and

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

166. Both the above conditions are absent in this case. Hence Section 116 of T.P. Act, 1882 has no application at all.

167. The **last question** up for consideration is “whether re-entry/resumption of land by Lessor i.e. State Government is valid?”

168. 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 in 'public purpose'. Allahabad City has been selected for development as a Smart City and respondents have pleaded that demand of lot of 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 'Sports Field'. Development of 'Sports Field' is a 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'.

169. Having answered all the above issues, we may also observe that litigation initiated by petitioners on the one hand has given enough time 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. Impugned notice was issued on 18.08.2018 and for more than fifteen months petitioners have already availed benefit of possession of land in dispute and enjoyed the same without spending even a single penny towards rent, damages, compensation etc. for such enjoyment. Land in question is required for developmental activities, in furtherance of developing Prayagraj City as “Smart City”. Developmental activities required an early action, but, by indulging in litigation, petitioners have already delayed it sufficiently, therefore, even if what petitioners' claim that they should have been given notice or

sufficient time to vacate, the same has already been achieved as petitioners had already enough time with them. 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.

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

171. In view of above discussion, we do not find any merit in both the petitions. Subject to above direction about vacation of land in dispute, the writ petitions are dismissed.

172. No costs.

Order Date :- 31.10.2019
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