

**AFR**  
**Reserved on 29.05.2019**  
**Delivered on 31.10.2019**

**Court No. - 34**

**Case :-** WRIT - C No. - 33740 of 2018

**Petitioner :-** Parsi Panchayat, Surat through its General Attorney & Executor

**Respondent :-** State of U.P. And Another

**Counsel for Petitioner :-** Umesh Kumar Gupta, Sunil Dutt Kautilya

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

**Hon'ble Sudhir Agarwal, J.**

**Hon'ble Virendra Kumar Srivastava, J.**

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

1. This writ petition has been filed under Article 226 of Constitution by Parsi Panchayat, Surat, through its General Attorney and Executor, Sri V.S. Pandey being aggrieved by order dated 18.08.2018 passed by District Magistrate, Allahabad (i.e. respondent-2) whereby he (respondent-2) has informed petitioner and two others that State Government has approved resumption/re-entry over land in dispute and therefore, it should be vacated by petitioners within fifteen days, whereafter possession shall be taken forcibly by respondents at the cost of petitioners.

2. Impugned order states that land in dispute is required by State for development of 'Parking place' in view of fact that Allahabad has been declared as 'Smart City' and has to be development accordingly and therefore, right of re-entry/resumption has been exercised by State.

3. Dispute relates to Nazul land, Plot H-1, Civil Station, area 1 Acre 2576 Square Yards whereupon a house is also constructed numbered as House No.24, Elgin Road, Allahabad.

4. A lease was executed by the Secretary of State for India in Council in favour of 'Roberston Karr' on 01.04.1862 in respect of Nazul Plot-H-1, Civil Station, area 3 acres, for a period of 50 years. After expiry of initial period of lease, it was renewed in favour of 'Marry Augustus Woolston' on

01.04.1912 for a period of 50 years which expired on 31.03.1962. Woolston transferred by sale, above plot in two parts, inasmuch as, vide sale deed dated 11.12.1945, House No.24 constructed on Nazul Plot H-1, Civil Station, area one acre and 2576 square yard, was transferred in favour of Sri K. S. Gandhi and his wife Smt. Tahmenna. Sri K. S. Gandhi applied for renewal of lease but no order was passed thereon. He died on 31.01.1978. Thereafter his legal heirs filed Writ Petition No.17616 of 1993 which came to be decided vide judgment dated 29.05.1998. As the case was covered by judgment of this Court in **Purshottam Dass Tandon and others vs, State of U.P. And others, AIR 1987 All 56**, a direction was issued by this Court to renew lease of disputed land. However, application for renewal was rejected by District Magistrate, Allahabad by order dated 11.07.1998. Petitioner filed Writ Petition No.34324 of 1998 challenging order dated 11.07.1998 but the same was dismissed on 29.11.2010 on the statement made by counsel for petitioner-Parsi Panchayat that writ petition has become infructuous.

5. State Government, in the meantime, brought in policy of allowing free hold of Nazul Land. Pursuant to Government Order (*hereinafter referred to as "G.O."*) dated 01.12.1998, petitioner deposited Rs.6,19,980/- as requisite amount for claiming property in dispute to be converted into free hold.

6. Petitioner's application for free hold was rejected by Additional District Magistrate (Nazul), Allahabad by order dated 01.09.2003 observing that Nazul plot in dispute was given on lease on 24.07.1912 to Marry Augustus Woolston for a period of 50 years and, therefore, sale deed dated 11.12.1945 could have resulted in transferring only lease rights and not title or ownership of property in dispute which belong to State Government. Further lease expired on 31.03.1962 and erstwhile lessee thereafter had no right to make "Will" of Nazul land in dispute, vide Will Deed dated 09.10.1972, and that too by imposing conditions

upon State Government. No rights, therefore, could have flown from 'Will' dated 09.10.1972 in respect of Nazul plot in question to anyone. Hence petitioner's claim for renewal of lease on the basis of above "Will" was already rejected and for the same reason petitioner's claim for making disputed land free hold, was also found not sustainable. This order dated 01.09.2003 was challenged by petitioner in Writ Petition No.4716 of 2004. It was disposed of vide judgment dated 29.11.2010 directing Collector, Allahabad to re-consider petitioner's application and pass fresh order ignoring earlier order of rejection. Judgment dated 29.11.2010 reads as under :

*“The grievance of the petitioners are that the petitioner have applied for grant of free hold right of the land in dispute, though the State has given no objection to declare it free hold. It has further been submitted that similarly situated persons have been granted free hold right.*

*Considering the facts and circumstances of the case we **direct the Collector, Allahabad to re-consider and decide the application of the petitioner ignoring the earlier order of rejection**, within a period of three months in the light of observations made above.*

*With the aforesaid observations the writ petition is disposed of finally.”* (Emphasis added)

7. Petitioner then made representation dated 16.12.2010. District Magistrate, Allahabad vide letter dated 28.07.2011 made certain queries, i.e. :

(1) Whether Nazul land in dispute is being used as desired in Will Deed dated 09.10.1972 as Nariman Home or is being used by anyone else and in what manner it is being used, should be informed?

(2) Whether D. F. Gandhi who has submitted various applications on behalf of Parsi Panchayat claiming himself to be General Attorney has got the said power of attorney registered, and if yes, its copy should be made available?

(3) Whether Sri D. F. Gandhi son of F. S. Gandhi resident of Gulista 18/30 Elgin Road, Lal Bahadur Shastri Marg, Allahabad is alive and if not, his death certificate be produced?

8. Petitioner submitted reply dated 18.08.2011 through his counsel wherein it was stated that building in question had several tenants and income from rent is used by Parsi Panchayat for running 'Nariman Home'; in the "Will" dated 09.10.1972 it is not mentioned anywhere that building on the disputed Nazul land shall be run as 'Nariman Home'; Power of attorney of D. F. Gandhi was not registered and D. F. Gandhi has died, whose death certificate was not available with petitioner but must be available with legal heirs of D. F. Gandhi.

9. Since no further action was taken by respondent 2 with respect to claim of petitioner for freehold of disputed Nazul land, Writ Petition No.1305 of 2012 was filed wherein an interim order was passed directing parties to maintain status quo on 10.01.2012. During pendency of above writ petition, respondent 2 passed order dated 18.08.2018 which has been challenged on the ground that respondents have allowed free hold in respect of several other properties and petitioners have been discriminated; resumption of land is violative of petitioner's constitutional right under Article 300 A of Constitution; without acquiring land under the provisions of "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" (*hereinafter referred to as "Act, 2013"*), it could not have been taken by respondent 2; resumption cannot be made forcibly; procedure of Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (*hereinafter referred to as "U.P. Act, 1972"*) has not been followed; petitioner's right of free hold cannot be defeated by exercising right of resumption and re-entry by respondents in a colourable manner; petitioner was allowed to deposit requisite amount for freehold, now respondents cannot turn otherwise; petitioner is entitled to freehold of

land in dispute in the light of various Government Orders issued from time to time and the order impugned amounts to eviction of petitioner from house, standing on land in dispute and demolition thereof where they are residing for the last 30 years, it is arbitrary and illegal; similar orders were passed earlier in case of M/s Madhu Colonisers Pvt. Ltd Vs State of U. P. and others; and, Chintamani Ghose Trust and another Vs. State of U.P. and others, which were challenged in Writ Petitions No.31153 of 2009 and 35269 of 2009, and Division Bench of this Court vide judgment dated 27.05.2010 allowed writ petitions and set aside orders of District Magistrate and he was directed to pass fresh order with respect to claim of petitioners in those cases for conversion of lease right into free hold in accordance with law.

10. The writ petition has been contested by respondents and counter affidavit has been filed on behalf of respondent 2, sworn by Sri Gore Lal Shukla, Additional District Magistrate (Nazul), Prayagraj. It is said that Nazul Plot H-1, Civil Station initially demised by an Indenture of Lease dated 01.04.1862 to one Mr. Robert Carr. Disputed Nazul land, area 3 acres, was leased out for a period of 50 years for purpose of constructing a dwelling house. Thereafter lease was renewed by lease deed dated 24.07.1912 for a period of 50 years commencing from 01.04.1912. Lease was splitted into two parts comprising of Bungalow No.24, Elgin Road and Bungalow No.3, Strachey Road. In respect of site H-1, Bungalow No.24, Elgin Road, as desired by erstwhile lessee, in terms of earlier lease, another lease was executed on 18.06.1937 by Secretary of State for India in Council in favour of Mr. K.P. Modwell; period of lease remained the same and lease deed dated 18.06.1937 was only to recognize split of lease land; lease came to an end on 31.03.1962; aforesaid lease was governed by provisions of Government Grants Act, 1895 (*hereinafter referred to as "GG Act, 1895"*); Lease deed contained provision of re-entry and also obligation of surrender by lessee after

expiry of period of lease; land in question was required for development as Parking Place and, therefore, a proposal was made to the Government for its resumption which was approved vide order dated 16.08.2018 and pursuant thereto, impugned order dated 18.08.2018 has been passed. It is further said that over land in dispute, illegally, a banquet hall namely 'Gangotri Garden' is being run; Government has right of resumption, and mere filing of application for free hold does not confer any right and in any case, the same has already been rejected. It is also pointed out that in respect of Nazul Plot 33 Civil Station, Allahabad land was resumed which was challenged by "M/S Madhu Colonisers Private Limited" in Writ Petition No.62588 of 2010 and reliance was placed on this Court's judgment dated 27.05.2010 in Writ Petitions 35269 of 2009 and 31153 of 2009 but Division Bench of this Court held that policy decision taken by Government for conversion of lease rights into free hold, will not have any adverse effect on the power of government to resumption of land under Clause 3 (c) of lease deed; this Court upheld the order of resumption by order dated 02.04.2013 and operative part of judgment reads as under :

*“On a consideration of all the relevant materials, this Court finds that the State Government through the District Magistrate has committed no illegality in issuing the impugned notice and passing the impugned order. It is not possible to hold that the decision that the Multi Layer Parking facility is required to be constructed for public purpose suffers from any error or that the requirement is not for public purpose. It is also found that **as nominee of the lessee, the petitioner-Company cannot have any larger rights than the lessee and once the order of the District Magistrate for resumption of the land in exercise of power under Clause 3 (c) of the lease deed is held to be valid, the petitioner-Company, as a nominee, cannot have any surviving right to claim conversion of the lease hold rights into free hold. Infact, on valid resumption order being passed, the lease hold rights cease to exist and there can be no occasion for conversion of lease hold rights into freehold rights in such circumstances.**”*

*As a result, we find no merit in this petition. It is, accordingly, dismissed, Interim order of stay shall stand vacated. There shall be no order as to costs.”*

(Emphasis added)

11. Respondents have also placed reliance on **Chintamani Ghosh and another vs. State of U. P. and others, 2001 (2) UPLBEC 1003, Anand Kumar Sharam vs. State of U. P. and others, 2014 (2) ADJ 742, State of Andhra Pradesh vs. Kaithala Abhishekam, AIR 1964 AP 450, Union of India and others vs. Harish Chand Anand, AIR 1996 SC 203, Smt. Shakira Khatoon Kazmi and others vs. State of U. P. and others, 202 (1) AWC 226 and Azim Ahmad Kazmi and others vs. State of U. P. and others, 2012 (7) SCC 278.**

12. In the rejoinder affidavit, petitioners have not stated anything new but reiterated what they have already said in the writ petition, therefore, we are not repeating the same.

13. We have heard Sri Satya Vrat Sahai, Advocate, holding brief of Sri Sunil Dutt Kautilya, learned counsel for petitioner, and Sri Ajit Kumar Singh, Additional Advocate General assisted by Sri Nimai Das, Additional Chief Standing Counsel and Sri Sudhanshu Srivastava, Additional Chief Standing Counsel for State Authorities.

14. Learned counsel for petitioner broadly advanced his submissions as under :

- i. It is true that lease expired on 31.03.1962 but before that disputed premises was already transferred to Sri K.S. Gandhi and his wife Smt. Tahmenna, therefore it has been succeeded by Sri D.F.Gandhi and in terms of Will of K.S.Gandhi, petitioner got possession and has applied for conversion of freehold. Petitioner has right of conversion of land in dispute as freehold, therefore, without taking any decision on said aspect, respondents cannot re-enter/resume

land in dispute by means of impugned order.

- ii. Petitioners' possession over property in dispute after expiry of lease was never obstructed and no action was taken for eviction or ejection of petitioners from land in dispute. Meaning thereby respondents by conduct admitted lease rights of petitioners and valid possession over land in dispute. That being so, land in dispute could not have been resumed by exercising power with reference to GG Act, 1895 which was already repealed before impugned order was passed.
- iii. State Government framed policy of conversion of lease into freehold and pursuant thereto petitioners submitted application for freehold of lease land but the said application was not decided for long. Petitioners are entitled to have lease rights converted into freehold as per relevant Government Orders.
- iv. In any case, if petitioner's continued possession after expiry of lease on 31.03.1962 was unauthorized in view of provisions of Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (*hereinafter referred to as "U.P. Act, 1972"*), he cannot be evicted or ejected from disputed land without following procedure prescribed in the said Act.
- v. Right of resumption exercised by respondents under lease-deed, which has expired long back is illegal since in 2018 no deed was operating and resumption by State vide impugned order cannot be read in continuation with lease deed which had already expired 31.03.1962.
- vi. Impugned order has been passed without any show cause

notice or opportunity to petitioner, therefore, it is illegal.

15. Per contra, learned Additional Advocate General appearing for State of U.P. and Senior Counsel appearing on behalf of A.D.A. advanced argument virtually in the light of pleadings and objections raised in the counter affidavit, which we have already given in detail hereinabove and will further elaborate while discussing issues raised in this writ petition.

16. Before going into merits of rival submissions, some glaring important facts, we find necessary to recapitulate at this stage. Except lease deed dated 18.06.1937, copy of other lease-deeds have not been placed on record. Lease deed dated 18.6.1937 was executed to recognize splitting of land in two parts, but, for remaining lease term, it is not disputed that terms and conditions of said lease was same as contained in lease deed dated 01.4.1862. Subsequent renewal was in continuation of same terms and conditions. Some of the relevant terms and conditions of lease deed, therefore, which govern relationship of Lessor and Lessee in this case, are reproduced as under :

*AND ALSO will not **without the previous consent in writing of the said Collector** erect or set up or suffer to be **erected or set up on any part of the said premises** hereby demised any messuage or building other than and except the messuage and buildings already erected and delineated upon the map hereto annexed.*

*AND THAT if in breach of the said preceding covenant any messuage or building is erected or set up or suffered to be erected or set up 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 buildings*

*and out buildings 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*

*AND ALSO will not without the previous consent in writing of the said Collector grow any crops/ or keep any horses, cattle or other animals for hire or profit or 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*

*AND ALSO upon the breach of any of the aforesaid covenant the said lessee his Executors, Administrators 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 contain to the contrary notwithstanding*

*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 constructed 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 tiles. 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 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*

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

*PROVIDED ALWAYS and it is hereby understood 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, erections or fixtures or things which shall have at any time during the said term granted under the lease dated 24<sup>th</sup> day of July, 1912 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 24<sup>th</sup> day of July, 1912 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, erections, fixtures and things or any part thereof with the land, and in that case the said Secretary of State, his Successors 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 arbitrators, the one to be named by the*

*Secretary of State, his Successors and Assigns and the other by the said lessee his Executors, 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 appointed by such other of the parties hereto which arbitration shall be final.*

*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 building, erections and fixtures shall rest absolutely in the said Secretary of State, his Successors and Assigns as his own property without any compensation or payment in respect thereof.***

*PROVIDED FURTHER and it is hereby agreed that the said lessee his Executors, Administrators or Assigns **shall not assign or underlet or otherwise part with the possession of the said premises or any part thereof without the permission of the said Secretary of State his Successors or Assigns** (which permission may be signified by the said Collector or by such other person as the Government of the North-Western Provinces or the said Secretary of State may appoint in that behalf) for that express purpose had and obtained*

*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 the purpose of registering leases and other instruments of or relating to lands situate within the local limits of Allahabad (and for the registry of which assignments or subleases a fee of not more than Rs. 16 shall be paid by the person or persons tendering such assignments or sublease for registry) then and not otherwise the liability of the said lessee his Heirs, Executors and Administrators for the purpose or subsequent observance and performance of the covenants on the lessee's part therein 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 cease and determine, but without prejudice however to the right of action of the said Secretary of State his Successors or Assigns in respect or on account of any previous breach of any covenant or covenants herein contained,*

*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 there 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 dwelling house and out buildings 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 but which entry if made shall not prejudice** the right of the said Secretary of State his Successors or Assigns to damages for the previous breach of any covenant on the part of the said lessee his Executors, Administrators or Assigns herein contained.*

*AND the said Secretary of State doth hereby for himself his Successors and Assigns covenant with the said lessee his Executors, Administrators or Assigns that he the said lessee his Executors, Administrators or 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 his 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.*

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

(Emphasis added)

17. Some dates, which are relevant for adjudication of this case may be stated in chronological manner, and, in brief, as under :

<b>Date</b>	<b>Events</b>
01.04.1962	Fifty years' lease was executed in favour of Roberston Karr.
01.04.1912	Fifty years lease was executed (renewed) in favour of Marry Augustus Woolston.
18.06.1937	Lease Deed for balance period was executed in recognition of splitting of Nazul Plot No.H-1, Civil Station, Area 1 acre 2576 square yards into two i.e. Bungalow No.24, Elgin Road, and Bangalow No.3 Stretchy Road.
11.12.1945	Sale deed executed by Marry Augustum Woolston in respect of Bangalow No.24, in favour of K.S.Gandhi and his wife Smt. Tahmenna
31.03.1962	Lease expired in respect of entire plot H-1, Civil Station i.e. Bungalow No.24, Elgin Road, and Bangalow No.3 Stretchy Road.
09.10.1972	Sri K.S.Gandhi authored 'Will' stating that his

wife Smt. Tahmenna K.Gandhi has died therefore Bungalow No.24 Elgin Road (New No.38, Lal Bahadur Shastri Road) be given for running a Montassory School at the expense of U.P.Government in the name of his wife and if Government is not willing to run the School, Bungalow will go to Parsi Panchayat, Surat i.e. petitioner for running Nariman Home

- 31.01.1978 Sri K.S.Gandhi died
- 14.02.1978 Will dated 09.10.1972 was got registered in the office of Sub-Registrar, Chail, Allahabad
- 29.06.1981 D.F.Gandhi resident of 18, A, Elgin Road claiming himself to be Executor of Will and representative of Parsi Panchayat, applied for renewal of lease of Nazul Plot H-1, area 1 acre 2576 sq.yard.
- 27.8.1987 Power of Attorney was executed by Parsi Panchayat, Surat in favour of D.F.Gandhi.
- 13.7.1998 Application for renewal of lease was rejected by District Magistrate, Allahabad.
- 29.10.1998 District Magistrate's order dated 13.7.1998 was challenged in WP 34324 of 1998. Court stayed.
- ..... D.F. Gandhi applied for conversion of disputed land into freehold in view of Government Order dated 01.12.1998 and deposited himself Rs.6,19,980/-
- 01.9.2003 Application for freehold was rejected by Additional District Magistrate (Nazul) Allahabad.
- ..... Writ Petition No. **4716 of 2004** was filed challenging order dated 01.09.2003
- 29.11.2010 Writ Petition **34324 of 1998** was dismissed.
- 29.11.2010 Writ Petition 4716 of 2004 was **disposed** of directing Collector, Allahabad to reconsider application for freehold and pass fresh order ignoring earlier order.

No order was passed on freehold hence writ petition No. **1305 of 2012** was filed for seeking direction for conversion of disputed land into freehold.

10.01.2012	Interim order passed by District Magistrate directing parties to maintain status quo.
19.6.2018	Proposal sent to State Government for resumption of disputed land for development as 'Parking place'.
16.8.2018	State Government approved aforesaid proposal.
18.8.2018	Impugned order by District Magistrate, Allahabad for resumption of land and directing petitioners to vacate disputed land.

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

19. It is not in dispute that land in question is 'Nazul' but interestingly lease holder had sold out land by sale deed to third party and also subjected it to 'Will' ignoring Lessor and its authority, altogether. The entire transfer was made illegally i.e. sale without permission of lessor, and 'Will', not only without permission but after 10 years of expiry of lease. In these circumstances, some questions relating to 'Nazul Land' and also the terms and conditions of Lease, having importance, have arisen.

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

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

22. State Government may own land by having acquired and vested in various ways, which includes vesting of land in the capacity of a Sovereign body and having right of bona vacantia. Property may also be acquired and owned by State by way of acquisition under the Statute

relating to acquisition of land or by purchase through negotiation or gift by an individual or in similar other 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.

23. It is only such land which is owned and vested in the State on account of its capacity of Sovereign, and application of right of bona vacantia, which is covered by the term 'Nazul', as the term is known for the last more than one and half century.

24. 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'.

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

26. 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.

27. 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.

28. 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.

29. 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 continues above provision and says :

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

30. 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.

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

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

(Emphasis added)

32. Court also placed reliance on **Collector of Masulipatam v. C. Vencata Narainapah 8 MIA 500, 525; Ranee Sonet Kowar v. Mirza Himmud 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.**

33. 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)

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

35. 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.”*

36. 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)

37. 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.

38. 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)

39. 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)

40. 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**.

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

*“an "act of State" may be the taking over of sovereign powers either by conquest or by treaty or by cession or otherwise. It may have happened on a particular date by a public declaration or proclamation, or it may have been the result of a historical process spread over many years, and sovereign powers including the right to legislate in that territory and to administer it may be*

*acquired without the territory itself merging in the new State.”*

(Emphasis added)

42. 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)

43. Thus the land in question which is admittedly 'Nazul', belonged to the category as discussed above i.e. it came to be vested and owned by State in its capacity of Sovereign and right of bona vacantia. When acquisition is made under the provisions of a Statute, purpose of acquisition is already known and State pay its price but when land is owned by State, which is Nazul, objective of use of such land is not predetermined but it can be utilized by State for larger public welfare and its benefit, as necessitated from time to time. In other words 'Nazul' land forms the 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.

44. 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?"

45. 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 Ruler, or those who remained faithful to British regime and helped them for their continuation in ruling this country, and similar other reasons. Sometimes land was given on lease without any condition and sometimes restricted for certain period etc., but in every 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".

46. In other words, we can say that initially land owned by State was 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 consequent 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 objective, 'GG Act 1895' was enacted.

47. 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.

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

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

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

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

***not been passed.***”

(Emphasis added)

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

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

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

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

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

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

***Legislature, to the contrary notwithstanding :***

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

(Emphasis added)

52. 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.
53. 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. The 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.
54. 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.
55. Sub-section (3) of Section 2 of GG Act, 1895 protect 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.

56. 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.

57. 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.

58. 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)

59. 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)

60. 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.

61. 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)

62. 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.

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

64. 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.

65. 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.

66. 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)

67. 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.

68. 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 Awaz 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 Awaz Department....”* (Emphasis added)

69. 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***". 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.

70. 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. 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'.

71. 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.

72. 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 in respect of Nazul land, subjected to transfer, upon such Transferree?”

73. 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 and some of 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 18.06.1937.
- (ii) Without permission, no growing of any crop or keeping of horses, cattle or other animals for hire or profit was allowed.
- (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 cease and determine but without prejudice however to the right of 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 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 is not required by Lessor, it has to be removed by Lessor

74. 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 already been obtained.

75. Herein, it is not stated anywhere that on 11.12.1945, when sale deed was executed by Marry Augustum Woolston in favour of Sri K.S.Gandhi and his wife Smt. Tahmenna, any such permission was obtained from Government or his Authorized Authority namely Collector, Allahabad.

76. What is effect of such transfer has been considered in **State of U.P. and others vs. United Bank of India and others (2016) 2 SCC 757**. 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, Lessee i.e. Marry Augustum Woolston did not have any title or ownership over land in dispute. She had only lease rights over disputed land, therefore, she could have transferred only lease rights to Sri K.S.Gandhi and his wife Smt. Tahmenna and nothing more than that. 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 Grantee 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 such 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 Grantor had transferred property under 'Grant' in violation of stipulations contained in Grant.

78. 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.”*

79. Further, 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 upon the property under Grant, to itself, besides claiming damages, compensation, as the case may be, as law permits.

80. Therefore, firstly transfer of land in dispute to Sri K.S.Gandhi and Smt. Tahmenna vide sale deed dated 11.12.1945 had no legal consequence of transferring any title or other right or interest to said Transferree since aforesaid sale deed was clearly in breach of terms and conditions of lease deed. Secondly, it could have resulted in transfer of only lease rights, and that too, for remaining period of lease and not beyond that. Thus, whatever right, even if, could have been transferred by Marry Augustum Woolston to K.S.Gandhi and Smt. Tahmenna, that ceased on 31.03.1962 when term of lease expired. Thereafter transferrees had no valid right or interest over property in dispute.

81. When Sri Gandhi and his wife themselves had no valid right, question of transferring any right or interest through Will dated 09.10.1972 to petitioner also does not arise. It was not open to Sri K.S.Gandhi to execute 'Will' in respect of disputed land, which was owned by State Government as Sri K.S.Gandhi had no right or interest over property in dispute in 1972 to bequeath to anyone. Will dated 09.10.1972, insofar as disputed land is concerned, is nothing but a sheer waste paper and a nullity in the eyes of law resulting in transfer of no legal right or interest to petitioner Parsi Panchayat, Surat in respect of land in dispute.

82. Though, it is said that Sri K.S.Gandhi applied for renewal of lease before his death on 31.01.1978, but, no copy of such application has been placed on record. There is nothing on record to show that any such application was submitted by Sri K.S.Gandhi. On the contrary, impugned order shows that an application for renewal of lease was submitted by Sri D.F.Gandhi on 29.6.1981 claiming himself to be Executor of 'Will' and representative of petitioner, Parsi Panchyat, Surat. Sri D.F.Gandhi

has no right or interest in respect of land in dispute in any manner. He was a stranger, a rank trespasser. His application therefore, was rightly rejected by Collector, Allahabad vide order dated 13.7.1998.

83. It is also on record that aforesaid order was challenged in Writ Petition No.34324 of 1998 which ultimately stood dismissed as infructuous on a statement made by counsel for petitioner. The fact remains that order dated 13.7.1998 remained intact and has not been set aside, nullified or made inoperative by any competent authority or Court till date. It therefore maintain all its legal consequences rendering petitioner a stranger having no right or interest, whatsoever in disputed land.

84. It is then contended that renewal was wrongly denied though in the light of law laid down in **Purshottam Dass Tandon and others vs, State of U.P. And others (supra)** renewal of lease ought to have been granted.

85. We have already said that neither petitioner nor Sri D.F.Gandhi had any right whatsoever, legal or otherwise, to seek renewal of lease in respect of land in dispute. We have also examined judgment in detail rendered by this Court in **Purshottam Dass Tandon and others vs, State of U.P. And others (supra)** which has become final after dismissal of appeal by Supreme Court and find that the same has no application in respect of land in dispute as also qua petitioner and Sri D.F.Gandhi.

86. 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.

87. 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.

88. 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 "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.

89. 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 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 paise 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.

90. When we consider the claim of petitioner 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 G.Os. hence petitioner cannot claim any benefit under the above mentioned G.Os. In fact, neither K.S. Gandhi nor D.F. Gandhi nor petitioner was eligible or entitled to seek renewal of lease since they were neither valid lessee nor legal heirs of valid lessee. They were unauthorized trespassers having no valid claim over disputed Land and above G.Os. were inapplicable to them.

91. 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)**.

92. 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 23<sup>rd</sup> April, 1959, 2<sup>nd</sup> July, 1960 and 3<sup>rd</sup> 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 petitioner at all since neither petitioner comes within the category of eligible person 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 petitioner has shown any provision, whether statutory or executive, including G.Os., which may confer entitlement upon petitioner to seek renewal of lease at all.

96. We therefore, find that transfer made by original Lessee Marry Augustum Woolston was wholly illegal, contrary to terms of lease deed and therefore, it did not confer any right or interest in property in dispute upon transferee Sri K.S.Gandhi and his wife Smt. Tahmenna and further transfer through Will by Sri K.S.Gandhi is also equally bad, illegal and, in fact, a nullity in the eyes of law so far as land in dispute is concerned. This denies any valid status to D.F. Gandhi and petitioner. We, therefore, answer Question-3 against petitioner.

97. The **forth question** is “whether petitioner or anyone else is/was entitled to ask for conversion to freehold of land in dispute in terms of policy of State Government for conversion of lease land into freehold and obstruct right of re-entry exercised by Lessor.?”

98. Though in the light of our answer to third question, we can straight-away hold that petitioner has no such right whatsoever but to further satisfy ourselves, we proceed to examine relevant G.Os. dealing with issue of conversion of lease land into freehold to find out whether there is any justification or legality in the claim of petitioner.

99. The first G.O. issued by State Government in order to execute its policy of conversion of lease land into freehold was issued on 23.5.1992. The aforesaid G.O. was applicable to permanent leases given for

'residential purposes' and 'current leases', given for **residential purposes**. Para 1 of aforesaid G.O. reads as under :

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

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

(English Translation by Court)

(Emphasis added)

100. Those, who are governed by aforesaid G.O., were directed to submit their option for freehold within one year from the date of issue of G.O. and only they would be entitled for benefit under the said G.O. It also restrained any transfer of property if under lease deed, no transfer was permissible without permission. It also directed that where unauthorized possession is found, action for eviction shall be taken in accordance with law. Paras 7 and 8 of said G.O. read as under :

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

(8) इस बात का व्यापक प्रचार किया जाएगा कि उपरोक्त नीति अनधिकृत कब्जों के मामलों में लागू नहीं होगी और अनधिकृत कब्जों के मामलों में विधिक प्रक्रिया

के अनुसार बेदखली आदि की कार्यवाही की जाएगी।”

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

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

(English Transaction by Court)

(Emphasis added)

101. The second G.O. was issued on 02.12.1992 dividing Lease-Holders in two categories. One, who had not violated conditions of lease, and, another, who had violated conditions of lease. Those, who had not violated conditions, were required to pay for conversion to freehold an amount equal to 50 percent of Circle Rate for residential purpose while those who had violated conditions of lease, were to pay 100 percent. Same was in respect of Group Housing and Commercial use with the difference of amount to be paid for freehold. Para 4 thereof also provided that such current leases where 90 years period had expired, if Lease-holder had not violated any conditions of lease and wants freehold, that can be allowed as per aforesaid G.O.. However, if he wants fresh lease, that can also be allowed for 30 years on payment of 20 percent of Circle rate as premium and 1/60<sup>th</sup> part of premium towards annual rent. Clause 4 of aforesaid G.O. reads as under :

**“4. ऐसे चालू पट्टे जिनके 90 वर्ष की सम्पूर्ण अवधि समाप्त हो गई है यदि कोई पूर्व पट्टाधारक जिन्होंने पट्टे की शर्तों का उल्लंघन नहीं किया है, भूमि फ्री-होल्ड कराना चाहता है तो ऐसी दशा में निर्धारित दरों के अनुसार फ्री-होल्ड कर दिया जाएगा। यदि वह फ्री-होल्ड नहीं कराना चाहते हैं बल्कि नया पट्टा लेना चाहते हैं तो ऐसी दशा में 30 वर्ष के लिए एक नया पट्टा**

वर्तमान शर्तों के आधार पर दिया जा सकता है जिसके लिए प्रीमियम की धनराशि प्रचलित सर्किल रेट की निर्धारित दर की 20 प्रतिशत होगी और वार्षिक किराया, प्रीमियम का 1/60वां भाग प्रतिवर्ष के हिसाब से भी लिया जाएगा।”

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

(Emphasis added)

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

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

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

(Emphasis added)

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

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

*“(1) किसी भी दशा में 100 वर्ग मीटर से अधिक क्षेत्रफल पर किये गये अवैध कब्जों का विनियमितीकरण नहीं किया जायेगा तथा दिनांक 30.11.1991 की सर्किल रेट पर आंकलित सम्पूर्ण मूल्य पर निर्धारित यथास्थिति 25% या 40% नजराने की धनराशि 10 वर्षीय ब्याज रहित छमाही किस्तों में लिया जायेगा, परन्तु यदि कोई व्यक्ति सम्पूर्ण धनराशि या बकाया किस्तों की धनराशि एकमुश्त जमा करना चाहता है तो वह देय धनराशि जमा कर सकता है।*

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

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

उपाध्यक्ष, विकास प्राधिकरण की अध्यक्षता में गठित समिति की संस्तुति पर उपाध्यक्ष द्वारा की जायेगी।

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

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

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

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

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

(Emphasis added)

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

made some corrigendum in earlier G.O. dated 17.02.1996.

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

107. We find that G.O. dated 17.02.1996 nowhere permits conversion of Nazul land into freehold in favour of Nominees of Lessee. Thus we have no manner of doubt that G.O. dated 29.08.1996, insofar as it refers to G.O. dated 17.02.1996, above Nominees had erred in law and it is a clear misreading. If G.O. dated 17.02.1996 itself had not permitted freehold rights to Nominee(s) of Lessee, question of such rights to be determined by G.O. dated 29.08.1996 is non est of no legal consequence and inoperative.

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

109. G.O. dated 26.09.1997 made amendments in all earlier G.Os. in respect of rates for Nazul land being used for hospital and other charitable purposes. It also clarifies as to which contravention of lease deed will be treated as violation to attract higher rate. It also provides in para 6(2) that Government has got right of re-entry due to violation of any conditions of lease and lease had already expired, and such Lease-Holder may be informed of Nazul policy and be given an opportunity to apply for freehold whereafter action for dispossession will be taken. The policy of conversion of freehold was extended upto 25.12.1997.

110. Then comes G.O. dated 01.12.1998. Thereunder only two categories were made i.e. residential and non-residential. Restriction was also imposed on certain Nazul land in respect whereto conversion of

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

111. The application of petitioner for free hold was rejected vide order dated 01.09.2003 when above G.Os. including G.O. dated 10.12.2002 was holding the field. Petitioner is neither lessee nor legal heir of lessees. Petitioner is an unauthorised transferee of the land in dispute. It could not have been considered even nominee of lessee. Hence petitioner was not entitled for free hold and its application was rightly rejected.

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

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

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

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

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

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

116. G.Os. dated 29.01.2010, 17.02.2011 and 01.8.2011 were issued with amendments of minor nature hence not discussed further.

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

“5. नामित व्यक्ति के पक्ष में नजूल भूमि को फ्रीहोल्ड किये जाने की व्यवस्था को समाप्त किया जाना— नजूल भूमि के पट्टेदार द्वारा नामित व्यक्ति के पक्ष में नजूल भूमि को फ्रीहोल्ड किये जाने की व्यवस्था सर्वप्रथम शासनादेश संख्या : 1300/9-आ-4-96-629एन/95, टी.सी. दिनांक 29-8-1996 के प्रस्तर-1 (3) (4) में की गयी थी और शासनादेश संख्या 2873/9-आ-4-2002-1 52-एन/2002, टी.सी. दिनांक 10-12-2002 के प्रस्तर 3 द्वारा उक्त व्यवस्था समाप्त कर दी गयी तथा शासनादेश संख्या : 1956/आठ-4-08-266एन/08, दिनांक 21-10-2008 के प्रस्तर- 2 (4) द्वारा उक्त व्यवस्था पुनः बहाल कर दी गयी है। इस व्यवस्था के सम्बन्ध में मा0 उच्च न्यायालय में विचाराधीन रिट याचिका (जनहित याचिका) संख्या : 35248/2010-जयसिंह बनाम उत्तर प्रदेश राज्य व अन्य में पारित अन्तरिम आदेश दिनांक 16-07-2010 में दिये गये निर्देशों के दृष्टिगत उपर्युक्त शासनादेश दिनांक 21-10-2008 का प्रस्तर 2 (4)

जिसके द्वारा नामिनी के पक्ष में नजूल भूमि को फ्रीहोल्ड किये जाने की व्यवस्था बहाल की गयी है, को समाप्त करते हुए अब ऐसे व्यक्ति जिनके पक्ष में कय की जा रही सम्पत्ति (नजूल भूमि) को पट्टेदार द्वारा रजिस्टर्ड एग्रीमेंट टू सेल किया गया हो और पूर्ण स्टाम्प शुल्क अदा किया गया हो, उसी व्यक्ति के पक्ष में ही नजूल भूमि को फ्रीहोल्ड किया जायेगा।”

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

(English Translation by Court)

(Emphasis added)

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

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

120. We repeatedly inquired from learned counsel for petitioner as to which G.O. applies to the present case so as to entitle petitioner to claim conversion of lease rights of land in dispute into freehold, particularly when petitioner is virtually a rank-trespassor and is not covered by any of aforesaid G.Os., none could be shown to us.

121. Moreover, as we have already said, petitioner's application was rejected on 1.9.2003 as per G.Os. applicable till then and subsequent G.Os. have no application in this case.

122. It is then contended that in view of judgment dated 29.11.2010 passed in W.P. 4716 of 2004, Collector is bound to reconsider petitioner's application and hence it should be treated that his application for free hold is still pending.

123. Even this submission that application for freehold, if submitted and pending, whether would confer a vested right upon applicant, has already been settled by a Full Bench of this Court in **Anand Kumar Sharma vs. State of U.P. and others 2014(2) ADJ 742** wherein this Court has held that merely by making an application for grant of freehold right, applicant did not acquire a vested right. Para 42 of judgment reads as under :

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

(Emphasis added)

124. Therefore, above question is also answered against petitioner holding that petitioner had no right to resist claim of owner of land for re-entry/resumption of land asking petitioner to vacate the same.

125. The **fifth question** is, “whether mere possession of petitioner over land in dispute confers any right upon him 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.”

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

127. 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 petitioner and cannot be resorted to.

128. 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.

129. 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 following in **Delhi Development Authority Vs. Anant Raj Agencies Pvt. Ltd. (supra)**.

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

131. 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'.

132. 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 describe 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 do not constitute ownership of land itself. Holders of a non-possessory interest in real property does 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.

133. 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.

134. 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.

135. 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.

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

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

138. 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.

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

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

140. 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.

141. 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.

142. Supreme Court observed in Para-10 that even if it is assumed that the property is trust property, no authority of law authorised 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 Bhattacharjee (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)

143. 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)

144. 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)

145. 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 of 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.”*

146. 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.

147. **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?*

148. 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.”*

149. 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)

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

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

(Emphasis added)

151. 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.

152. 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**.

153. 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)

154. It was observed that existence of a right is the foundation for a petition under Article 226 of the Constitution. In Para-84 Court said that in cases involving purely contractual issues, the settled law is, where statutory provisions of public law are involved, writs will be issued and referred to its earlier judgment in **Mohammed Hanif Vs. State of Assam (1969) 2 SCC 782**. Thereafter it also considered the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (*hereinafter referred to as “Act, 1971”*) and observed that Express building was constructed with the sanction of lessor, i.e., Union of India on plots demised on 'perpetual lease' by registered lease-deed dated 17.03.1958 hence cannot be regarded as 'public premises' belonging to the Central Government under Section 2(e). That being so, Act, 1971 has no application.

155. 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.

156. 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, notices were violative of Article 14, suffers with arbitrariness and non application of mind. His Lordship said that it was not necessary to express any opinion on the contention based on Article 19(1)(a) of Constitution. Hon'ble Venkataramiah further said that question relating to civil rights of the parties flowing from 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.”*

157. 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)

158. 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)

159. 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.

160. 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".*

161. 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.

162. 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.

163. 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.

164. 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, in fact, 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.

165. In our view, above judgment has no application to the facts of this case for the reason that title of land is not in dispute, inasmuch as, it is admitted case of petitioner that land in dispute is 'Nazul', hence it is owned and vested in Government. It is also not in dispute that petitioner got possession of land in dispute vide a 'Will' executed by a person who had no valid claim over disputed land.

166. 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.

167. 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.

168. **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)**.

169. The decision in **State of U.P. Vs. Zahoor Ahmad and another (supra)**, we find, instead of helping petitioner, supports the view which we have taken hereinabove. **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 for industrial purpose. It was renewed on 10.06.1948 with effect from 18.03.1948 for further one year and again in 1949 for one year. Ultimately lease expired on 18.03.1950. State of U.P., after termination of lease, allowed Zahoor Ahmad to continue in possession of land on condition settled between the parties that Licensee i.e. Zahoor Ahmad would pay Rs.1,000/- as annual rent for occupation till 15.07.1950. Even after determination of lease on 15.7.1950, Zahoor Ahmad i.e. Licensee continued in possession and State of U.P. allowed him to remain in possession for three years beyond 15.07.1950 though for this period Zahoor Ahmad did not agree to give any undertaking of making payment of annual rent of Rs.1,000/-. A letter dated 04.12.1951 was issued to Zahoor Ahmad asking him to pay Rs.3,000/- for the year 1950-51. Letter further provided that if Zahoor Ahmad 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 by-passing provision of TP Act, 1882 sought to rely on GG Act, 1895. Whether the kind of above lease, granted by State could have been brought within the purview of GG Act, 1895, Supreme Court examined this issue by referring to two judgments. In one, lease of forest land of Sunderbans was held to be a 'Grant' while, in another, Grant of Khas Mahal was not held to be as 'Grant'. In **Jnanendra Nath Nanda vs. Jadu Nath Banerji AIR 1938 Cal 211** two leases of two lots were granted by Sunderban Commissioner on behalf of Secretary of State. The land comprised in the lots were 'waste lands' of the Government. 'Waste lands' of Sunderbans were not property of any subject. Sunderbans was vast impenetrable forest. It was the property of East India Company and later on vested in Crown by virtue of an Imperial Statute. Court found that history of legislation showed that grants of Sunderbans lands were treated to be 'Crown Grants' within meaning of 'Crown Grants Act'. In another matter i.e. **Secretary of State for India in Council vs. Lal Mohan Chaudhuri, AIR 1935 Cal 746** in respect of Khas Mahal, lease was granted by Government. It was held that lease of Khas Mahal does not come within the category of 'Grant' as contemplated in GG Act, 1895. 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)

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

171. In the present case, it is not the case of petitioner that after expiry of lease on 31.3.1962, it has been permitted to remain in possession of disputed Nazul land and rent has been accepted by respondents or petitioner has paid rent. Even if what is said by petitioner is taken to be correct, we do not find that Section 116 is applicable in the case in hand at all. Section 116 of TP Act, 1882 reads as under :

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

172. 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 assented to his continuing in possession; and
- (ii) Lessee or under-lessee has remained in possession.

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

174. In **Bhawanji Lakhanishi vs. Himatlal Jamnadas AIR 1972 SC 819**, Court said that basis of Section 116 is a bilateral contract between erstwhile landlord and erstwhile tenant. It has been held that assent of lessor cannot be inferred merely from his delay in taking steps to evict lessee. We may also refer to Calcutta High Court decision in **Ratan Lal vs. Farshi Bibi (1907) ILR 34 Cal 396**; Madras High in **Govindaswami vs. Ramaswami (1916) 30 Mad LJ 492**; Patna High Court in **Christian vs. Hari Prasad AIR 1955 Pat 158** and **Pritilata Devi vs. Banke Bihari Lal AIR 1962 Pat 446**; and Rajasthan High Court in **Gordhan vs. Ali Bux AIR 1981 Raj 206**, holding that to attract Section 116, therefore, it has to be shown that there was a bilateral act creating a new tenancy. There is no implication of holding over. In our view, there is neither any material nor pleading to attract Section 116 and therefore, judgment in **Zahoor Ahmad (supra)** on this aspect does not help petitioners. On the contrary, what has been said in para 16 of the judgment, quoted above, the conditions of 'Grant' would prevail over every law including TP Act, 1882.

175. An argument was also advanced that resumption/re-entry amounts to acquisition of land without paying any compensation and in violation of Act, 2013.

176. This argument we have to reject for the simple reason that the State own the land in question, hence there is no occasion for its

acquisition. At the time when re-entry/resumption is being made by State, petitioners neither had any title or ownership over land in dispute nor any existing lease rights, therefore, nothing has been acquisitioned by State. It is settled law that land, which is owned by State, cannot be acquired by it.

177. In **Secretary of State Vs. Narain Khanna AIR 1942 Privy Council 35**, it was held:

*"where Government acquires any property consisting of land and buildings, and where land was the subject matter of Government grant, subject to power of resumption by Government at any time on giving one month's notice, then **compensation was payable only in respect of such buildings as may have been authorized to be erected and not in respect of land.**"*

(Emphasis added)

178. A Division Bench of Judicial Commissioner in **Md. Wajeih Mirza vs. Secretary of State for India in Council, AIR 1921 Oudh 31**, said as under:

*"when Government itself claims to be owner of the land, there can be no question of its acquisition and the provisions of the Land Acquisition Act cannot be applicable. This opinion expressed by Judicial Commissioner has been approved in **Sharda Devi vs. State of Bihar and another (supra)**. Court reiterate in **Sharda Devi vs. State of Bihar and another (supra)** that land or an interest in land pre-owned by State cannot be subject-matter of acquisition by State. **If the land in question is Government land, there is no question of initiating proceedings of acquisition at all. Government would not acquire the land, which already vests in it.**"*

(Emphasis added)

179. In **Sharda Devi Vs. State of Bihar and another, 2003 (3) SCC 128**, Court has said as under:

*"the State does not acquire its own land for it is futile to exercise the power of eminent domain for acquiring rights in the land, which had*

*already vests in the State. It would be absurdity to comprehend the provisions of Land Acquisition Act being applicable to such land wherein ownership or the entirety of rights already vests in State. In other words, **land owned by State on which there are no private rights or encumbrances is beyond the preview of provisions of Land Acquisition Act.*** (Emphasis added)

180. In **Collector of Bombay Vs. Nusserwanji Rattanji Mistri (1996) 10 SCC 150**, it was held:

*"under the provision of Land Acquisition Act, Government acquires the sum total of all private interests subsisting in them. **If Government has itself an interest in land, it has only to acquire other interest outstanding thereof so that it might be in a position to pass it on absolutely for public user.**"*

(Emphasis added)

181. In **State of U.P. and another Vs. Lalji Tandon (dead) through Legal Representatives (2004) 1 SCC 1** referring to the decision in **Sharda Devi vs. State of Bihar (supra)**, court said as under:

*"the notification and declaration under Sections 4 and 6 of the Land Acquisition Act for acquisition of the land i.e. the site below the bungalow are meaningless. It would have been different if the State would have proposed the acquisition of lease hold rights and/or the superstructure standing thereon, as the case may. But that has not been done."*

182. In view thereof, this submission is also rejected.

183. One more aspect was pressed that even if lease expired, petitioners being in possession of land in dispute, their tenancy will be governed by provisions of Section 106 of TP Act, 1882 and without quit notice, petitioner cannot be evicted.

184. This submission is also misconceived. Once period of lease has expired or determined and this is admitted fact, status of Lessee becomes that of "Tenant at Sufferance", 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)

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

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

187. So far as validity of resumption of land for 'public purpose', it could not be disputed that land has been sought to be required by State in 'public interest'. 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 by A.D.A. for 'Parking Place' and development of 'Parking Place' 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'. Hence resumption/re-entry by respondents is valid and legal.

188. Having answered 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.

189. However, considering the facts and circumstances and also the fact that petitioner has 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 the petitioner to vacate disputed land within one month from the date of delivery of judgment.

190. In view of above discussion, we do not find any merit in the petition. Subject to observations about vacation of land in dispute, the writ petition is dismissed.

191. No costs.

**Order date :-31.10.2019**

PS/KA