AFR

Reserved on 29.05.2019

Delivered on 31.10.2019

Court No. - 34

Case :- WRIT - C No. - 33630 of 2018
Petitioner :- The Allahabad Anglo Indian Association Branch Allahabad
Respondent :- State of U.P. and 2 Others
Counsel for Petitioner :- Subedar Mishra
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. Allahabad Anglo Indian Association through its Secretary Mr. Larry Adrian Michael French has filed this petition under Article 226 of Constitution of India challenging order dated 31.08.2018 passed by Collector, Allahabad (respondent 2) informing petitioner that State Government has exercised right of resumption/re-entry over disputed Nazul land, therefore, it should be vacated by petitioner within two months failing which possession shall be taken forcibly at the cost of petitioner.

2. Dispute relates to Plot no.131, Civil Station Allahabad, area 11 acres 1730 square yards, situate at 9th Thornhill Road.

3. Secretary of State for India in Council executed a lease deed dated 07.05.1921 in favour of Anglo Indian Association granting lease of aforesaid Nazul Plot No.131 for a period of 50 years commencing from 12.06.1917. It was said in the lease deed that earlier lease was executed on 12.06.1867 in favour of one Robert Andrew Farhe for a period of 50 years and after expiry of said period a new lease was to be executed, hence, said lease was executed. Several bungalows were constructed over leased land for residence of Anglo Indian persons. Last extension of lease was vide renewal dated 07.03.1984 which commenced from 1967 and expired in 1997. Petitioner then made an application for renewal of lease but the

same remained pending and ultimately vide order dated 12.03.2012 respondent-2 cancelled lease granted to petitioner and matter was referred to State Government. A meeting was held in the Office of Secretary, Housing and Urban Planning on 26.11.2015 in which Representatives of Petitioner-Association as also Additional District Magistrate (Nazul) Allahabad and Special Officer on Duty, Allahabad Development Authority *(hereinafter referred to as "ADA")* participated. Following decision was taken in the said meeting :

> *''(1) दि आल इण्डिया एग्लो इण्डियन एसोसिएशन, शाखा इलाहाबाद का पट्टा निरस्त किए जाने से सम्बन्धित जिलाधिकारी, इलाहाबाद के आदेश दिनांक 12.03.2012, जो तकनीकी दृष्टि से सही नहीं पाया गया है को शासन के आदेश के माध्यम से निरस्त करने की कार्यवाही की जाय।*
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> *(2) दि आल इण्डिया एग्लो इण्डियन एसोसिएशन, शाखा इलाहाबाद (पट्टेदार) द्वारा पट्टे के नवीनकरण हेतु जिलाधिकारी, इलाहाबाद को नियमानुसार आवेदन पत्र प्रस्तुत करेंगे।*
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> *(3) जिलाधिकारी, इलाहाबाद इस प्रकरण का परीक्षण कर तथ्यात्मक रिपोर्ट अपनी संस्तुति सहित राज्य सरकार को उपलब्ध करायेंगे। राज्य सरकार द्वारा इस संबंध में मेरिट के आधार पर सुसंगत नियमों के अन्तर्गत सक्षम स्तर से निर्णय लेकर अग्रिम कार्यवाही की जायेगी।*
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> *"(1) Proceeding to be conducted through order of the Government for cancellation of order dated 12.03.2012 of District Magistrate, Allahabad pertaining to cancellation of lease granted to All Indian Anglo Indian Association, Branch Allahabad, which order has been found not to be technically correct.*
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> *(2) An application shall be presented as per Rules to the District Magistrate, Allahabad by All India Anglo Indian Association, Allahabad Branch (Lease Holder) for renewal of lease.*
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> *(3) District Magistrate, Allahabad after examining this matter shall make available the factual report along with his recommendation to State Government. Further action shall be taken by State Government after ensuring decision at the level of Competent Authority, on merits under the relevant Rules."* (English translation by Court)

4. Thereafter respondent 2 has passed order dated 31.08.2018 pointing out that lease expired on 11.06.1997 and now land in dispute is required for “public purpose” in view of the fact that Allahabad has been selected to be developed as “Smart City” and disputed land which has total area of 11 acres and 203 square yards i.e. 44683.69 square meter is required for development of a 'Park', therefore, State Government has resumed/re-entered upon the land in dispute. Aforesaid order has been challenged on the ground that large number of families are residing in disputed land and they cannot be evicted in such arbitrary manner; Collector has passed order without giving any opportunity to show cause and in violation of principles of natural justice; petitioner has right of free hold in view of policy of State Government which cannot be defeated by exercising right of re-entry/resumption and petitioner cannot be evicted without following the procedure prescribed in law.

5. Respondents 2 and 3 have filed counter affidavit wherein it is admitted that Nazul Plot-131 Civil Station, Allahbad was demised to Petitioner-Association vide Indentures of lease dated 07.05.1921. The term of lease was lastly renewed for the period upto 11.06.1997 vide lease deed dated 07.03.1984 which commenced from 12.06.1967. Lease was governed by the provisions of Government Grants Act, 1895 (hereinafter referred to as “G. G. Act, 1895”) and exercising its right as per terms and condition of lease read with G. G. Act, 1895, State Government has resumed/re-entered disputed land of which lease has already expired. The right of re-entry in the light of similar circumstances, has been upheld by this Court in **Chintamani Ghosh and another vs. State of U. P. and others, 2001 (2) UPLBEC 1003**. Respondents have also relied upon **Hajee S.V.M., Mohd. Jamaludeen Bros and Co. vs. Govt. of T. N., 1997 (3) SCC 456, State of U. P. Vs. Zahoor Ahmad, (1973) 2 SCC 457, State of Andhra Pradesh vs. Kaithala Abhishekam, AIR 1964 AP 450, Union of India and others vs. Harish Chand Anand, AIR 1996 SC 203, Express Newspapers Private Limited vs. Union of India, 1986**

(1) SCC 133, Smt. Shakira Khatoon Kazmi and others vs. State of U. P. and others, 202 (1) AWC 226, Azim Ahmad Kazmi and others vs. State of U. P. and others, 2012 (7) SCC 278 and **Anand Kumar Sharam vs. State of U. P. and others, 2014 (2) ADJ 742.**

6. Heard Sri Subedar Mishra, 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.

7. Before proceeding to discuss rival issues raised in the matter, we find it appropriate to reproduce some relevant stipulations from last lease deed dated 07.3.1984, copy whereof has been filed as Annexure 5 to the writ petition, which read as under :

> *''1. वह उक्त अवधि में एतद्द्वारा निर्णीत वार्षिक किराये का ऊपर नियत दिनों पर एवं रीति से भुगतान करेगा।*
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> *2. वह ऐसे प्रत्येक प्रकार की दरों, करो, परिव्ययों और निर्धारित किये जाने वाले भवन पर अथवा उसके स्वामी या किरायेदार पर, इस समय अथवा इसके पश्चात्, किसी समय अवधारित, भारित अथवा आरोपित किये जाय।*
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> *3. वह उक्त भूखण्ड का भू विभाजन अथवा स्थानांतरण नहीं करेगा तथा उक्त भूखण्ड तथा उस पर निर्मित भवनों का प्रयोग ऐग्लो इन्डियन ऐसोसियेशन, इलाहाबाद द्वारा केवल दातव्य कार्य के लिए किया जायेगा।*
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> *4. उक्त भूखण्ड पर अवस्थित भवनों तथा बाह्य भवनों के बाह्य* ***उद्धिक्षेप*** *या रेखा–चित्र के किसी भाग में किसी भी समय उक्त जिलाधीश / नगर महापालिका की लिखित अनुमति के बिना उसके मूल रेखा–चित्र तथा उद्धिक्षेप से भिन्न कोई परिवर्तन अथवा परिवर्धन न किया जायेगा और न उसकी इस प्रकार की अनुमति बिना किसी अन्य भवन का ही उक्त भूखण्ड पर निर्माण किया जायेगा।*
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> .....
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> *7. वह पट्टादाता की पूर्व लिखित स्वीकृति प्राप्त किये बिना उक्त भू–गृहादि को कभी भी न तो स्वयं किसी प्रकार का वाणिज्य व्यापार करेगा न किसी दूसरे को करने देगा और न उसको दातव्य कार्य के अतिरिक्त किसी अन्य प्रयोजन के लिए कार्य में लायेगा।*
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> .....
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> *9.* ***इस विलेख की अवधि समाप्त होने पर अथवा उसके पहले ही समाप्त कर दिये जाने पर वह उक्त भूखण्ड तथा उस पर निर्मित***

भवनों तथा वाह्य भवनों का अधिपत्य पट्टादाता को बिल्कुल अच्छी अवस्था में देगा।

किन्तु सदा प्रतिबन्ध यह है कि यह विलेख इस स्पष्ट शर्त पर निष्पादित किया जाता है कि अगर और जब कभी उपर्युक्त किरोय या लगान अथवा उसके किसी भाग का निश्चित तिथि के पश्चात एक माह तक भुगतान न होगा, चाहे वह विधितः मांगा गया हो या न मांगा गया हो, अथवा ***यदि उस पट्टे में वर्णित समनुबन्धों में से किसी एक को अथवा अधिक को पट्टेदार भंग करेगा अथवा उनका पालन न करेगा तब और ऐसी किसी भी दशा में पट्टादाता भले ही उसने पुनः प्रवेश करने के किसी वाद हेतु या अधिकार को छोड़ दिया जो, उक्त भू–गृहादि में पुनः प्रवेश कर सकता है और पट्टेदार तथा उसके समस्त अध्यासियों को वहाँ से निकाल सकता है*** *और वह हस्तान्तरण बिल्कुल निरस्त हो जायेगा तथा उक्त भूखण्ड पर निर्मित भवन को हटाने अथवा उसके संबंध में प्रतिकर पाने के पट्टेदार के समस्त अधिकार अपहृत हो जायेंगे।*

यह भी प्रतिबन्ध है कि इसमें ऊपर जो कुछ अंकित है उसके अतिरिक्त पट्टादाता को यह अधिकार होगा कि वह इस विलेख के अधीन देय समस्त धनराशि को सचिव आवास एवं नगर विकास विभाग, उ0प्र0 के प्रमाण पत्र पर जो अन्तिम निश्चायक तथा पट्टेदार पर बाध्यकारी होगा, मालगुजारी की बकाया के रूप में वसूल कर लें।

यह भी प्रतिबन्ध है कि ***यदि हस्तान्तरित भूखण्ड की पट्टादाता को किसी भी समय अपने या किसी सार्वजनिक कार्य के लिए आवश्यकता होगी तो उसको यह अधिकार हो गया कि पट्टेदार को हस्तान्तरित भूखण्ड पर उस समय बने किसी भवन को हटाने की एक मास की लिखित नोटिस दे और यह भी उक्त नोटिस के पट्टेदार द्वारा प्राप्त होने के दिनांक के पश्चात उक्त अवधि के समाप्ति होने पर दो मास के भीतर उस भूखण्ड पर अपना अधिपत्य प्राप्त कर ले****, किन्तु शर्त यह है कि यदि पट्टेदाता हस्तान्तरित भूखण्ड पर खड़े भवनों का क्रय करना चाहे तो पट्टेदार को उन भवनों के बदले में ऐसी धनराशि का भुगतान कर दिया जायेगा जो राज्य सरकार के आवास एवं नगर विकास के सचिव द्वारा अवधारित की जाये।*

.....

और इस विलेख के दोनों पक्ष यह अनुबन्ध करते हैं किः–

(क) इस विलेख के निष्पादन एवं पंजीयन के सम्बन्ध में जो कुछ भी व्यय होगा वह पट्टेदार सहन करेगा।

(ख) ***पट्टेदार हस्तान्तरित भूखण्ड अथवा उस पर निर्मित भवन को पट्टादाता की पूर्व अनुमति प्राप्त किये बिना किसी भी प्रकार न तो हस्तान्तरित करेगा और न शिकमी पट्टे या किराये पर उठायेगा।***'

"1. He shall, in the said period, pay annual rent hereby determined, on the days and in the manner as above.

2. He shall pay all rates, taxes, expenditures that may be determined, charged or levied on building or its owner or its tenants, at present or hereafter or at any time.

3. He shall not go for partition or transfer of the land; and the aforesaid plot or the buildings constructed thereon, shall be used only by Anglo Indian Association, Allahabad only for the charitable purposes.

4. There shall be no change or alteration in the layout plan or site map of the buildings and appended constructions situated on the said plot of land at any time without written approval of the aforesaid District Magistrate/City Municipality (Nagar Mahapalika); nor shall any construction be made on the aforesaid plot shall be undertaken without such approval.

….

7. Without obtaining the approval of lessor, he himself shall never trade on the land and buildings etc.; nor shall he allow others to do the same; and nor shall he allow the land to be used for any purpose other than charitable one.

….

9. ***On the expiration of the period mentioned in the deed or termination thereof even prior thereto, he shall hand over the possession of the said plot and other buildings and appended buildings constructed thereon to the lessor****.*

But it is a standing condition that this deed is being executed on this clear terms that if and whenever the aforesaid rent or revenue or any part thereof is not paid in a month after the fixed date, whether demanded legally or otherwise, or if ***the lease holder violates any or more terms or does not comply therewith, then in such a condition, the lessor, even if he has given up the right of re-entry for any purpose, can re-enter the aforesaid land and buildings etc. and may expel the lease holder or its all occupants there-from*** *and then the transfer shall be terminated completely, and all rights of the lease holder to remove the buildings constructed on the aforesaid plot or to receive the compensation in relation to it shall be forfeited.*

It is also stipulated that in addition to the facts mentioned above, the lessor shall have a right to realize as revenue dues all the amount payable under this deed upon a certificate of the Secretary, Housing and Urban Planning Department, U.P. that shall be final, conclusive and binding on lease-holder.

It is also stipulated that ***if the lessor is in need of the transferred plot for personal or public use, he shall be entitled to give a written notice for demolishing within a month any such building constructed at the time and for taking possession of the said plot within two months from the expiry of the aforesaid period after the date of receipt of the said notice*** *; subject to the condition that if the lessor wants to purchase the constructions made on the transferred plot, the lease-holder shall be paid such an amount that is determined by the Secretary, Housing and Urban Development of the state government.*

...

Both the parties to this deed enter into an agreement:

a) That the lessee shall bear all the expenses related to the execution and registration of this deed.

b) ***That the lessee shall, without prior permission of the lessor, neither transfer in any way the transferred plot or the building constructed thereon nor subject the same to sub-lease or rent****."*

(Emphasis added)

(English Translation by Court)

8. The terms and conditions thus clearly show that whenever land in dispute is required by Lessor for 'public purpose', it can require Lessee to remove constructions existing on disputed land by giving a month's notice and after expiry of one month, can take possession of disputed land within two months. If Lessor intends to purchase constructions existing on disputed land, it shall make payment of such amount, as determined by Secretary of U.P. Government, Department of Housing and Urban Development.

9. It is in terms of aforesaid stipulation of lease-deed that notice in question has been given for resumption/re-entry over land in dispute.

10. Counsel for petitioner has challenged impugned notice broadly on the ground that :

i. Issue of renewal of lease was already in progress and a meeting in this regard had already been held on 26.11.2015 wherein it was decided that petitioner shall submit

application for renewal of lease in accordance with relevant provisions and thereafter District Magistrate shall examine the matter and submit report but without proceeding in the light of aforesaid decision, in an arbitrary and abrupt manner, impugned order has been passed.

ii. Petitioners' possession over property in dispute after expiry of lease was never obstructed and no action was taken for eviction or ejectment 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. In any case, if petitioner's continuation in possession after expiry of lease in 1986 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")*, petitioners cannot be evicted or ejected from disputed land without following procedure prescribed in the said Act.

iv. 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 has already expired in 1997.

v. State Government has granted approval for resumption of land in dispute on proposal made by Collector without giving any opportunity to petitioners, therefore, impugned order including approval order granted by State Government is in violation of principles of natural justice.

11. 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 further elaborate while discussing issues raised in these writ petitions.

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

i. What is “Nazul”?

ii. What is/are Statute(s) governing Crown (late, “Government”) Grant of land owned by Crown (Government) i.e. Nazul? Its status and effect.

iii. Whether right of resumption exercised by State is in accordance with law?

iv. Whether petitioners can be evicted by State Government by giving a notice and following the condition prescribing procedure in the lease deed or State has to follow procedure laid down under U.P. Act, 1972?

v. Whether impugned notice and order of approval of State Government for resumption/re-entry over land in dispute is invalid on account of lack of opportunity granted to petitioners. In other words, “whether principles of natural justice are applicable when State Government chose to exercise right of resumption/re-entry in respect of land owned by it”?

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

14. Questions (i) and (ii), in our view, can be taken together.

15. Every land owned by State Government is not termed as 'Nazul' and

therefore it has become necessary to understand, what is 'Nazul'. 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.

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

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

18. 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.

19. 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.

20. 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.

21. The above provisions had continued by virtue of section 54 of

Government of India Act, 1858, section 20(3)(iii) of Government of India Act, 1915 and section 174 of Government of India Act, 1935. After enactment of Constitution of independent India, Article 296 now continue above provision and says:

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

22. 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.

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

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

Himmut Bahadoor (2) LR 3 IA 92, 101, Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay [1958] SCR 1122, 1146, Superintendent and, Legal Remembrancer v. Corporation of Calcutta [1967] 2 SCR 170, 204.

25. 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)

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

27. 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**."*

28. 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)

29. 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.

30. 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."*

31. 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)

32. 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 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**.

33. 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.'*

34. 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)

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

36. Historical documents, record as also authorities discussed above show that earlier Government i.e. East India Company upto 1858 and thereafter British Government used to allot “Nazul land” to various persons, who had shown their alliance to such Government in various

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

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

38. 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 Crown Grant, unless such land has heretofore descended by custom as an impartible Raj, it 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.

39. 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.

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

> *"2. Transfer of Property Act, 1882, not to apply to Government grants.-* ***Nothing in the Transfer of Property Act, 1882****, contained* ***shall apply or be deemed ever to have applied to any grant or other transfer of land*** *or of any interest therein heretoforce made or hereafter to be made by or on behalf of Her Majesty the Queen Empress, Her heirs or successors, or by or on behalf of the Secretary of State for India in Council to, or in favour of, any person whomsoever; but* ***every such grant and transfer shall be construed and take effect as if the said Act had not been passed****."*
>
> (Emphasis added)

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

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

42. 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.****"*
>
> (Emphasis added)

43. In the State of Uttar Pradesh, vide Government Grants (U.P.

Amendment) Act, 1960 (U.P. Act No.XIII of 1960), Sections 2 and 3 of GG Act, 1895, were substituted by Section 2, as under :

> *"2. (1) Transfer of Property Act, 1882, not to apply to Government Grants.-* ***Nothing contained in the Transfer of Property Act, 1882, shall apply*** *or* ***be deemed ever to have applied to any grant*** *or other transfer of land or of any interest therein, heretoforce made or hereafter to be made, by or on behalf of the Government to or in favour of any person whomsoever; and* ***every such grant and transfer shall be construed and take effect as if the said Act had not been passed****."*
>
> *(2) U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 not to affect certain leases made by or on behalf of the Government.-* ***Nothing contained in the U.P. Tenancy Act, 1938, or the Agra Tenancy Act, 1926****,* ***shall affect,*** *or be* ***deemed to have ever affected any rights, created, conferred or granted****, whether before or after the date of the passing of the Government Grants (U.P. Amendment) Act, 1960,* ***by leases of land by,*** *or on behalf of, the Government in favour of any person; and* ***every such creation, conferment or grant shall be construed and take effect, notwithstanding anything to the contrary contained in the U.P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926****.*
>
> *(3) Certain leases made by or on behalf of the Government to take effect according to their tenor.-* ***All provisions, restrictions, conditions and limitations*** *contained in any such creation, conferment or grant referred to in Section 2,* ***shall be valid*** *and* ***take effect according to their tenor****, any decree or direction of* ***a court of law or any rule of law, statute or enactment of the Legislature, to the contrary notwithstanding :***
>
> *Provided that nothing in this section shall prevent, or be deemed ever to have prevented,* ***the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural land****."* (Emphasis added)

44. 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.

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

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.

47. Sub-section (3) of Section 2 of GG Act, 1895 protected 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 the provisions of U.P. Tenancy Act, 1938 or Agra Tenancy Act, 1926.

48. 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.

49. 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.

50. 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)

51. 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 Government would stand insulated from tentacles of any statutory law. Section 3 places terms of such Grant beyond reach of any restrictive provision contained in any enacted law or even equitable principles of justice, equity and good conscience adumbrated by common law, if such principles are inconsistent with such terms. Court said :

> *"The two provisions are so framed as to **confer unfettered discretion on the government to enforce any condition or limitation or restriction in all types of grants made by the government to any person**. In other words, the rights, privileges and obligations of any grantee of the government would be **completely regulated by the terms of the grant, even if such terms***

are inconsistent with the provisions of any other law.”

(Emphasis added)

52 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.

53. 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)

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

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

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

> *“**Grant**, n. 1. An agreement that creates a right of any description other than the one held by the grantor.* ***Examples include leases,*** *easements, charges, patents, franchises, powers,and licenses. 2. The formal transfer of real property. 3. The document by which a transfer is effectd; esp., DEED. 4. The property or property right so transferred.”*

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

> ***"Community grant****. A grant of real property made by a government (or sometimes by an individual)* ***for communal use****, to be held in common with no right to sell. A community grant may set out specific, communal uses for the p roperty, such as for grazing animals or a playground. Cf. Private grant.*
>
> ***Escheat grant****. A* ***government's grant of escheated land to a new owner****. - Also termed escheat patent.*
>
> ***imperfect grant****. 1. A grant that requires the grantee to do something before the title passes to another. Cf. Perfect grant. 2. A grant that* ***does not convey all rights and complete title against both private persons and government, so that the granting person or political authority may later disavow the grant.*** *See Paschal v. Perex, 7 Tex. 368 (1851).*
>
> ***inclusive grant.*** *A deed or grant that describes the boundaries of the land conveyed and excepts certain parcels within those boundaries from the conveyance, usu. Because those parcels of land are owned or claimed by others.- Also termed inclusive deed.*
>
> ***office grant****. A grant made by a legal officer because the owner is either unwilling or unable to execute a deed to pass title, as in the case of a tax deed. See tax deed under DEED.*
>
> ***Perfect grant****. A grant for which the grantor has done everything required to pass a complete title, and the grantee has done everything required to receive and enjoy the property in fee. Cf. Imperfect grant*
>
> ***private grant****. A grant of real property made to an individual for his or her private use, including the right to sell it. Private grants made by a government are often found in the chains of title for land outside the original 13 states, esp. in former Spanish and Maxican possession."*

58. In **Corpus Juris Secundum,** A Complete Restatement of the Entire American Law, as developed by All Reported Cases, Volume XXXVIII, word "Grant" has been defined at page 1066-1070, as under :

> "***Grant*** *– In General – A word which has a peculiar and appropriate meaning in the law, and is to be construed and*

understood according to such meaning; but its signification, in particular cases is to be determined from its connection and the manner of its use.

As a Noun

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

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

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

...

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

writing.

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

59. In **Words and Phrases, Permanent Edition, Volume 18A Gone-Gyrotiller**, word "Grant" has been defined at page 379, as under :

" ...

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

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

*"****Grant :a common law conveyance****.*

… .

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

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

61. In **Biswas Encyclopedic Law Dictionary (Legal & Commercial) Third Edition 2008**, word "Grant" has been defined at page 737, as under:

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

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

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

"...

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

...

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

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

The expression "grant" is wide enough to take within its sweep a grant by the government to the Girasdar and is not limited to a grant by the Girasdar to the tenant. Digvijaysingh Ji v. Manji Savda, AIR 1969 SC 370, 372. [Saurashtra Land Reforms Act (25 of 1951), S. 18]

"GRANT, BESTOW, CONFER. Honours, distinctions, favours, privileges are conferred. Goods, gifts, endowments are bestowed. Requests, prayers, privileges, favours, gifts, allowances, opportunities are granted. ***A peculiar sense attaches to the word Grant as a legal term, as a piece of land granted to a noble or***

> ***religious house.*** *So Blackstone speaks of "the transfer of property by sale, grant, or conveyance." (Smith. Syn. Dis.)"*

63. Under Indian Easements Act, 1882, *(hereinafter referred to as "IE Act, 1882"),* definition of "licence" in Section 52 says that it is the Grant of a right made by the Grantor. Sections 53 and 54 of IE Act, 1882 also refer to grant of licence. Thus, without a "Grant" in general sense, licence cannot be created. This is how definition of "licence" under IE Act, 1882 vis a vis the term "Grant" was considered in **Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. (supra).**

64. Court also said that though the term "Grant" is not defined in GG Act, 1895, but it is quite evident that this word has been used in GG Act, 1895 in its ethnological sense and therefore, it should get its widest import.

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

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

(Emphasis added)

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

67. 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)

68. Therefore, where 'Nazul' land 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'.

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

70. Nature of orders compiled in "Nazul Manual" in the context of 'Nazul' have been considered in **State of U.P. vs. United Bank of India (supra)** where Court has said that land and building in question is "Nazul" being property of Government maintained by State authorities in accordance with 'Nazul Rules' but not administered as a 'State property'. Court has also observed that lease of "Nazul" land is governed in accordance with GG Act, 1895. Sections 2 and 3 thereto very specifically provide that provisions of TP Act, 1882 do not apply to Government land.

Section 3 says that all provisions, restrictions, conditions and limitations contained in any such 'Grant' or 'Transfer', as aforesaid, shall be valid and take effect according to their tenor, any rule of law statute or enactment of the Legislature to the contrary notwithstanding. Thus the stipulations in "lease deed" shall prevail and govern the entire relations of State Government and lessee.

71. Superiority of the stipulations of Grant to deal with the relation between Grantor and Grantee has been reinforced in **Azim Ahmad Kazmi and others (Supra).** Therein dispute related to Plot No. 59, Civil Station, Allahabad, area 1 acre and 4272 sq. yard, i.e., 9112 sq. yard or 7618 sq. meter. Initially a lease deed was executed on 11.01.1868 by Secretary of State for India in Council in favour of one, Thomas Crowby, for a period of 50 years and it was signed by Commissioner, Allahabad Division on behalf of Secretary of State for India in Council. After expiry of lease, a fresh lease was executed for another period of 50 years on 12.04.1923 w.e.f. 01.01.1918. Lease holder with permission of Collector, Allahabad transferred lease rights to Purshottam Das in 1945. The legal heirs of Sri Purshottam Das, on 31.10.1958, transferred leasehold rights in favour of Smt. Shakira Khatoon Kazmi, Smt. Sabira Khatoon Kazmi and Smt. Maimoona Khatoon Kazmi. After the death of Smt. Maimoona Khatoon Kazmi, her legal heirs, namely, Azim Ahmad Kazmi, Omar Ahmad Kazmi, Shamim Ahmad Kazmi, Alim Ahmad Kazmi and Maaz Ahmad Kazmi also claimed lease rights by succession. Lease granted on 12.04.1923 w.e.f. 01.01.1918 expired on 31.12.1967. It was renewed on 19.03.1996 for a period of 30 years w.e.f. 01.01.1968 which period expired on 31.12.1997. Again on 17.07.1998 it was renewed for a further period of 30 years w.e.f. 01.01.1998. While lease was continuing, vide 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 that 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 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 State 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 and under the terms of Grant it is absolute, therefore, order of resumption

is perfectly valid and cannot be said to be illegal. It also refers to an earlier instance where Nazul Plot No. 13, Civil Station, Allahabad situate in Civil Lines area was resumed by State Government for the purpose of construction of a 'Bus Stand' by exercising similar power, without initiating any proceeding under Land Acquisition Act, 1894. Resumption in that case was also challenged in **Writ Petition No. 44517 of 1998, Sayed Shah Khursheed Ahmad Kashmi vs. State of U.P.** and said writ petition was **dismissed on 16.12.1999** by a Division Bench of this Court, whereagainst Special Leave Petition No. 4329 of 2000 was dismissed by Supreme Court on 07.09.2001. First question, therefore, in **Azim Ahmad Kaxmi and others (supra),** was answered in negative and in favour of Government.

72. 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 Land Acquisition Act, 1894 *(hereinafter referred to as "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. It relied on earlier judgment in **State of U.P. vs. Zahoor Ahmad, 1973(2) SCC 547** holding that Section 3 of GG Act, 1895 declares unfettered discretion of Government to impose such conditions and limitation as it thinks fit, no matter what the general law of land be. Then Court construing Clause 3(C) of lease

deed said that it provides procedure for taking possession of demised premises when State Government re-enter or resume possession of demised land. Court in para 30 and 32 of judgment said:

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

73. 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***".

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

75. The above discussion makes it clear that 'Nazul' is a land owned and vested in State. It is such land which has vested in State by virtue of

its 'Sovereignty' and incidence of 'Sovereignty' i.e. annexation, lapse and bona vacantia. Further, 'Grant' means transfer of property by a deed in writing and includes within its ambit, an instrument of lease/lease deed. Such 'Grant' is governed by provision of GG Act, 1895, which were applicable to 'Grants' executed on and after enforcement of GG Act, 1895 and rights and entitlement of private parties in respect of land, which was transferred to such person under such 'Grant' would be governed by terms and conditions contained in such 'Grant' and not by provisions of TP Act, 1882 or any other Statute. Moreover, in State of U.P., wherever applicable, U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 will also be inapplicable to such 'Grant'.

76. Thus, for the purpose of resumption/ re-entry of land, State Government can follow procedure prescribed in the terms of lease as it is a special procedure for such purpose and it is not necessary to look into any other procedure prescribed in law.

77. We, therefore, answer **questions (i) and (ii)** and hold that Nazul is land owned by Government having vested by escheat, bona vacantia or lapse. Further the terms and conditions of 'Grant' a Nazul would govern relation of lessor and lessee and any other statute providing otherwise has no application.

78. Now we deal with questions (iii), (iv) and (v) together.

79. Learned Senior Counsel has founded his submissions on the basis of Section 106 read with 116 TP Act, 1882 that petitioners having continued in possession after expiry of period of lease, are entitled to be treated as 'holding over' and could not have been evicted without following procedure prescribed under TP Act, 1882. When impugned order was passed, GG Act, 1895 stood already repealed as a result whereof TP Act, 1882 would apply and for this purpose he placed reliance on **The State of U.P. vs. Zahoor Ahmad and another (supra).** He also said that even if possession is unauthorized, petitioner cannot be evicted

arbitrarily but State is bound to follow procedure consistent with law and principles of natural justice and for this purpose, reliance is placed on Supreme Court's judgments in **Bishan Das and others Vs. State of Punjab and others AIR 1961 SC 1570, Express Newspapers Pvt. Ltd. and others Vs. Union of India (1986) 1 SCC 133, Yar Mohammad and another vs. Lakshmi Das and others AIR 1959 Allahabad 1** and **Lallu Yeshwant Singh (dead) by his legal representative vs. Rao Jagdish Singh and others, AIR 1968 SC 620.**

80. First we propose to consider argument advanced in the light of Repealing and Amending (Second) Act, 2017 *(hereinafter referred to as "Repeal Act, 2017)* and thereafter shall proceed to consider other aspects.

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

> ***"4. Savings.-*** *The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;*
>
> *and this Act shall not affect the validity, invalidity,* ***effect or consequences or anything already done or suffered****, or* ***any right****, title,* ***obligation*** *or* ***liability*** *already acquired, accrued or* ***incurred****, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;*
>
> *nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognized or derived by, in or from any enactment hereby repealed;*
>
> *nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, tittle, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or any force.*

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

83. Therefore, Repeal Act, 2017 does not have any effect upon the relationship of petitioner and respondents in respect of disputed land and all rights, obligations etc. shall continue to be governed under the said lease-deed.

84. So far as the application of principle of natural justice is concerned, lease is a matter of contract where principles of natural justice are not applicable. In **State of Gujarat and Ors. vs. Meghji Pethraj Shah Charitable Trust and Ors., 1994(3) SCC 552**, it has been held:

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

85. Following aforesaid decision in **Pimpri Chinchwad Municipal Corporation and Ors. vs. Gayatri Construction Company and Anr., 2008(8) SCC 172** Court has held that in the matter of non-statutory contract, High Court should not have entertained writ petition under Article 226 of the Constitution.

86. The contention further is that despite expiry of lease, petitioner had continued in possession over land in dispute, therefore, tacit approval/validity of possession and status of petitioner as Lessee can be assumed. He also said that once State has accepted in its meeting that petitioner must apply renewal of lease, it was under an obligation to stick to the said stand and could not take any otherwise view in the matter. In this regard, reliance is placed on this Court's judgment in **Purushottam Dass Tandon and others vs. State of U.P., Lucknow and others AIR 1987 All. 56.**

87. We propose to examine the aforesaid judgment in the backdrop of various Government Orders, which were up for consideration therein and facts of that case. We are informed that with regard to renewal of lease, Government circulated its policy through various G.Os. The first being G.O. 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 surrenders 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 had already expired or likely to expire. Several representations were sent to the 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 another G.O. dated 07.07.1960 whereby rate of premium on first three acres was

reduced to Rs.2,000/- in each slab. It also permitted payment of premium in five instalments and reduced ground rent to Rs.100/- per acre. In the earlier G.O., there was an insistence on construction of Community latrines till sewer lines were laid but this insistence was given up in G.O. dated 07.07.1960. Lessees were granted further three months' time to get leases renewed. Still lease-holders did not comply and made representations to Government. On 21.03.1963, again a G.O. was issued declaring rates of premium for commercial sites. On 3.12.1965 a G.O. was issued indicating terms and conditions for renewal of leases for commercial and residential purposes and it was said that rates of premium and annual rent shall be as fixed by G.O. dated 07.07.1960. Payment in five equal yearly instalments was continued but in special cases, Commissioner, Allahabad Division, Allahabad, was authorized to make recommendations to Government for enhancing number of instalments. This G.O. further insisted for renewal of existing leases on payment of at least one instalment, within one month of receipt of intimation by Lessee from Collector, or within three months of the date of expiry of lease, whichever is earlier. Deposit was to be deemed to be proper step on the part of Lessee to get a fresh lease executed by the Lessor. The G.O. of 1965 itself made a distinction between those whose leases had expired and others by describing them as sitting and existing lessees.

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

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

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

Lines, Allahabad in view of Act, 1976 and laid down fresh terms and conditions for renewal of leases.

90. 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 AIR 1987 All 56.** In this bunch of writ petitions, facts, we have noted above with respect to various Government Orders, have been given in detail.

91. There were two categories of writ petitioners, before this Court, in **Purushottam Dass Tandon and others (supra)** as under :

(i) Those, to whom notices were given by Collector and who had complied with terms and conditions as laid down in various G.Os. 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.

92. 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. is issued and its conditions are complied with, mere for bureaucratic delay, performance under the said G.O. cannot be denied. Therefore, Lessees, who had deposited first instalment, as directed in G.O. of 1965, were entitled to renewal of their lease.

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

(VII) If leases were renewed in respect of those, who had acquired social or political status, whose names are given in para 15 of judgment, which includes, Dr. K. N. Katju, ex-Central Law Minister, Chief Minister and Governor, Dr. S. K. Verma, ex-Chief Justice and Governor, Sri B.L. Gupta, ex-Judge High Court, J. D. Shukla, I.C.S., O. N. Misra, I.A.S., when there was no justification not to give same benefit to others, similar benefit must have been 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.

93. 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's judgment shall apply to all the leases to whom G.O. dated 23.04.1959, 02.07.1960 and 03.12.1965 were applicable and all those claiming under them. The order of Supreme Court reads as under :

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

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

95. We may also notice at this stage that as per own showing of petitioner, it is said that in the meeting held on 26.11.2015, Government

directed Collector to consider issue of renewal of lease but there is no pleading and material on record that pursuant to aforesaid decision, petitioner submitted any application for renewal of lease in accordance with provision available and applicable in this regard. On the contrary, matter has been examined by State in the light of fact that Allahabad has been selected for development as "Smart City" and now huge land is required for development of various kinds of constructions and other establishments and various departments have made demand of huge land. Land in question has been found suitable for development of 'Park' and cannot be doubted that it is a 'Public Purpose', hence State Government has exercised its right in terms of lease deed for re-entry over land in dispute. The procedure for resumption/re-entry and eviction of petitioners is provided specifically in terms of lease deed and relevant clause we have already quoted hereinabove. The said procedure will override upon any other law.

96. After expiry of lease, status of lessee, who has continued in possession, is 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)

97. In the above authority, Court held that after expiry of period of lease, status of Lessee becomes that of 'Tenant at sufferance'. 'Tenant at sufference' is one who comes into possession of land by lawful title, but

who holds it by wrong after termination of term or expiry of lease by efflux of time. The tenant at sufferance is one who wrongfully continues in possession after extinction of a lawful title. There is little difference between him and a trespasser. Quoting from Mulla's Transfer of Property Act (7th Edn.) at page 633, Court observed that tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without consent of person entitled. A “tenancy at sufferance” does not create relationship of landlord and tenant. Court further quoted from page 769 of Mulla's transfer of Property Act (7th Edition), that act of holding over after expiration of term does not necessarily create a tenancy of any kind. If lessee remains in possession after determination of term, the common law Rule is that he is a tenant at sufferance.

98. Further, so far as applicability of UP Act, 1972 is concerned, when a procedure for re-entry/resumption is provided under lease-deed itself, State is justified in following the said procedure and if any other procedure is also provided, it is not necessary to resort thereto since State has right of election and follow procedure, which is a part of agreement, which has been given overriding effect over any other law by GG Act, 1895.

99. In fact, we find that issues in this regard raised in writ petition are squarely covered by judgment in **Azim Ahmad Kazmi and others vs. State of U.P. and Another (2012) 7 SCC 278**. The matter is also covered by a Division Bench judgment of this Court in **Writ Petition No.62588 of 2010, M/s Madhu Colonizers Pvt. Ltd. vs. State of U.P. & Ors.,** decided on 02.04.2013.

100. The **questions (iii), (iv) and (v)** therefore, are answered against petitioner.

101. We, therefore, find no merit in the writ petition and it is accordingly dismissed.

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

103. No costs.

Order date :-31.10.2019
PS/KA