2019 SCC OnLine All 5987

In the High Court of Allahabad

(BEFORE SUDHIR AGARWAL AND VIRENDRA KUMAR SRIVASTAVA, JJ.)

Usha Rani Gupta and Others ... Petitioners;

Versus

State of U.P. through the Chief Secretary and Others ... Respondents.

Writ - C No. 38597 of 2018

Decided on November 4, 2019, [Reserved On : 31.05.2019]

Advocates who appeared in this case :

Ashish Kumar Singh, Manu Srivastava, Counsel for the Petitioner;

C.S.C., Bhanu Deo Pandey, Devi Prasad Mishra, Ajit Kumar Singh (Addl. Advocate General), Nimai Das (Addl. C.S.C.), Amit Verma, Brijendra Kumar, B.D. Pandey, Counsel for the Respondent.

The Order of the Court was delivered by

SUDHIR AGARWAL, J.:— Five petitioners, namely, Smt. Usha Rani Gupta, wife of Sri. R.P. Gupta, resident of 21/19, Mayo Road, Allahabad; Sri. Mirza Amir Ullah Beg; Sri. Mirza Tariq Ullah Beg; Sri. Mirza Rashid Ullah Beg, all sons of (Late) Mirza Hamid Ullah Beg and Smt. Amina Razia Rafat Naz Begum, daughter of (Late) Mirza Hamid Ullah Beg, have filed this writ petition under Article 226 of Constitution of India, praying for issue of a writ of certiorari quashing order dated 14.08.2018 issued by District Magistrate, Allahabad informing petitioners that State Government has resumed land in question and, therefore, petitioners should vacate the same, failing which possession shall be taken forcibly at the cost of petitioners. A writ of mandamus has also been prayed, directing District Magistrate, Allahabad to consider and dispose of application dated 29.01.1999, in respect of conversion of lease into free-hold of disputed land, in accordance with Government Orders dated 14.03.2014 and 15.01.2015. By way of an amendment, allowed vide order dated 30.05.2019, a further prayer has been added for issue of a writ of mandamus, commanding respondent-State of U.P. to restore and hand over physical possession of Nazul Site No. GG-1, Civil Station, Allahabad to petitioners.

2. Land in question, in the present writ petition, is a Nazul land bearing No. GG/1, Civil Station, Allahabad, area 7929.8 square metre, (hereinafter referred to as “disputed Nazul land”).

3. Facts in brief, giving rise to present writ petition, are as under.

4. Lease of disputed Nazul land was executed on 12.12.1912 with

effect from 01.01.1909 by Secretary of State for India in Council for a period of 50 years. Lease expired on 31.12.1958. It also appears that in the meantime, land was divided and numbered as GG-1 and GG-2. Lessees applied for renewal. In the light of relevant Government orders and Supreme Court's judgment in *State of U.P.* v. *Purshottam Das Tandon*, 1989 Supp (2) SCC 412, lease was renewed and a deed was executed on 26.09.1991/28.01.1992 between Governor of Uttar Pradesh through Collector, Allahabad and Smt. Kaniz Fatima Beg wife of (Late) Mirza Hamid Ullah Beg; Mirza Amir Ullah Beg; Mirza Tariq Ullah Beg and Mirza Rashid Ullah Beg, all sons of (Late) Mirza Hamid Ullah Beg, and Smt. Amina Razia Rafat Naz Begum daughter of (Late) Mirza Hamid Ullah Beg, all are residents of 24, New Barry Road, Lucknow, for a period of 30 years with effect from 01.01.1959, for which lease rent was paid. Clause-4 of lease deed provided that after expiry of term of 30 years, at the request of lessee, lessor may renew lease for another 30 years but maximum period of renewal shall be 90 years, including initial period of lease. Lease term expired on 31.12.1988. Some of the relevant conditions of lease deed are reproduced as under:—

> "The lessees hereby covenant with the lessor as follows:
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> (4) That they shall not at any time without the written consent of such Collector, Allahabad alter or vary any part of the external elevation or plan of such dwelling house and out buildings from the original elevation or plan thereof.
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> (5) That, they shall not at any time without the written consent of such Collector, Allahabad erect any building or out buildings on the demised premises.
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> (7) That, they will not at any time carry on or permit to be carried on upon the said premises any trade or business whatsoever or use the same for any other purpose than as a private dwelling without the consent in writing of such Collector first had and obtained."
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> (Emphasis added)

5. Further conditions, agreed by parties, stated in para-3 of lease deed, relevant for our purpose are:—

> "(a) That, if the said rent or any part thereof shall be in arrear and unpaid for the space of one calendar month whether the same shall have been lawfully demanded or not if there shall be a breach or non-observance of any of the covenants by the Lessees herein contained then and in any such case the Lessor, may, notwithstanding the waiver of any cause or right of re-entry, re-enter upon the said premises and expel the Lessees and all occupiers of the same therefrom and this demise shall absolutely determine and the Lessees shall forfeit all rights to remove or recover any compensation for any buildings erected by them on

the said premises AND ALSO the installments of the said premium already paid shall become forfeited to the LESSOR.

(b) That, notwithstanding anything contained in this deed, the Lessor shall be entitled to recover the arrears of rent reserved by this deed in the manner provided in the Land Revenue Act (U.P. Act III of 1901) for realising arrears of revenue.

(c) 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 in writing to the lessees to remove any buildings standing at the time on the demised premises and within two months of the receipt of the notice to take possession thereof on the expiry of that period subject however to the condition that if the Lessor is willing to purchase the buildings on the demised premises, the Lessees shall be paid for such buildings such amount as may be determined by the Secretary to Government, U.P. in Nagar Awas Department.

(e) That, the Lessees will not in any way sub-divide or transfer the demised land or buildings thereon (tenancy of buildings excluded) without the previous sanction in writing of the U.P. Government who may while according such sanction laid down and impose such further conditions as he may deem fit. Any transfer or alienation made in contravention of the conditions contained in this clause shall be void.

(h) That, on each transfer by succession, sale assignment or other wise, the Lessees and the person to whom the lease rights are to be transferred shall within two months of the same, deliver a notice in this behalf to the Collector setting forth the names and other particulars of the persons from whom and to whom the transfer takes place and the nature and description of the transfer."

(Emphasis added)

6. Renewed lease deed was executed again on 25.03.1996 for a period of 30 years with effect from 01.01.1990 for Nazul Plot No. GG/1, Civil Station, Allahabad (Area 1 acre and 4613 square yard) (residential). This document on behalf of lessees was signed by Dinesh Kumar, Power of Attorney Holder, on the same terms and conditions, (except change in lease rent) contained in earlier registered lease deed.

7. Smt. Kaniz Fatima Beg died and petitioners-2 to 5 became lessees of aforesaid land. They executed a nomination letter dated 18.01.1999 in favour of petitioner-1, Smt. Usha Rani Gupta giving consent and nominating her assigning right to get Nazul land GG/1, Civil Station, Allahabad, Area 1 acre and 4613 square yard i.e. 7584.26 square metre, freehold. Petitioner-1 moved an application dated

29.01.1999 for conversion of aforesaid land into freehold, in accordance with Government Order dated 01.12.1998. The said application was not decided for almost 20 years though Additional District Magistrate (Nazul), Allahabad granted approval to said conversion. Lease granted to petitioners-2 to 5 was governed by Government Grants Act, 1895 (hereinafter referred to as "GG Act, 1895"). Exercising right of re-entry under Clause-3 (c) of lease deed, District Magistrate issued letter dated 14.08.2018 for re-entry/resumption of land by State. It is stated in the aforesaid order that proposal for resumption of land was sent to State Government vide District Magistrate, Allahabad's letter dated 19.06.2018 and approval has been granted by Principal Secretary, Housing and Urban Planning Development vide letter dated 09.08.2018.

8. Resumption notice dated 14.08.2018 has been challenged on the ground that GG Act, 1895 has already been repealed by Repealing and Amending (Second) Act, 2017 (Act No. 4 of 2018) (hereinafter referred to as "Repeal Act, 2017"); resumption has been made by State of U.P. and not by District Magistrate, Allahabad; Clause-3(c) of lease deed is violative of Article 14 of Constitution, inasmuch as, lease rights of petitioners could not have been acquired or resumed without payment of compensation at market value; respondents have adopted pick and choose policy for resumption; alleged requirement is artificial and not genuine and there is no public purpose involved in resumption.

9. Subsequently, by way of an amendment, para-88A has been added stating that actual physical possession of disputed Nazul land has been taken by respondents on 20.11.2018 from occupants i.e. Women's Polytechnic, behind back, and without knowledge of petitioners. Consequently a prayer for restoration of possession has also been added by way of amendment in writ petition. On behalf of petitioners, reliance has placed on *State of Maharashtra* v. *Vithalrao Ganpatrao Warhade*, (1998) 8 SCC 284; *Binani Properties Private Ltd.* v. *M. Gulamali Abdul Hossain and Co.*, AIR 1967 Cal 390; *The State of U.P.* v. *Zahoor Ahmad*, (1973) 2 SCC 547; *Central Inland Water Transport Corporation Limited* v. *Brojo Nath Ganguly*, (1986) 3 SCC 156; *Hindustan Times* v. *State of U.P.*, (2003) 1 SCC 591; *Delhi Development Authority* v. *Durga Chand Kaushish*, (1973) 2 SCC 825; *K.T. Plantation Private Limited* v. *State of Karnataka*, (2011) 9 SCC 1; *Tukaram Kana Joshi* v. *Maharashtra Industrial Development Corporation*, (2013) 1 SCC 353, *Raja Rajinder Chand* v. *Mst. Sukhi*, AIR 1957 SC 286; *Smt. Bina Das Gupta* v. *Sachindra Mohan Das Gupta*, AIR 1968 SC 39; *Mohan Agarwal* v. *Union of India*, AIR 1979 All 170 (FB); *Women Education Trust* v. *State of Haryana*, (2013) 8 SCC 99 and *Uddar Gagan Properties Ltd.* v. *Sant Singh*, (2016) 11 SCC 378.

10. Respondent-4 has filed a counter affidavit stating that Nazul Plot

No. GG/1, Civil Station, Allahabad was demised for a period of 30 years with effect from 01.01.1959 by an indenture of lease dated 26.09.1991 for an area measuring 1 acre and 4613 square yards (7929.8 square metre). The lease was executed on 26.09.1991 by District Magistrate, Allahabad on behalf of Governor of Uttar Pradesh in favour of Smt. Kaniz Fatima Beg, Sri. Amir Ullah Beg, Sri. Mirza Tariq Ullah Beg and Sri. Mirza Rashid Ullah Beg. It was for a period of 30 years commencing from 01.01.1959 but renewable twice, each time for 30 years, but not exceeding 90 years and total period include initial period. After expiry of first 30 years, it was renewed on 25.03.1996. Lease was a 'Grant' under GG Act, 1895. In terms of Clause-3(c) of lease deed dated 26.09.1991 read 25.3.1996, State Government has exercised right of re-entry since land is required for Planned Development of Allahabad City which has been declared "Smart City" and disputed Nazul land has to be developed as 'Parking Place, Multi Purpose Open Space, Night Market and Amphitheater'. Further, disputed Nazul land was not in possession of petitioners or lessees or alleged nominee. It was occupied by Institute of Engineering and Rural Technology (IERT) as tenants and a Women's Polytechnic was being run on the said land. From the occupants, possession of land was taken on 20.11.2018 i.e. after expiry of notice period. Repeal of GG Act, 1895 by Repeal Act, 2017 has not affected rights and obligations of parties under lease deed in view of Saving provision contained in Section 4 of Repeal Act, 2017. On behalf of respondent-4, reliance is placed on *The State of Andhra Pradesh* v. *Gathala Abhishekam*, AIR 1964 AP 450; *Union of India* v. *Harish Chand Anand*, 1995 Supp (4) SCC 113 : AIR 1996 SC 203; *Anand Kumar Sharma* v. *State of U.P.*, 2014 (2) ADJ 742 (FB); *Smt. Shakira Khatoon Kazmi* v. *State of U.P.*, (2002) 1 AWC 226 and *Azim Ahmad Kazmi* v. *State of U.P.*, (2012) 7 SCC 278.

11. A supplementary affidavit has been filed by petitioners. It is stated that Rules for disposal of land in New Civil Station, Allahabad were notified by the then Officiating Commissioner, Allahabad namely, Sri. C.B. Thornhill vide notification dated 05.05.1858. Copy of the same has been filed as Annexure-1 to supplementary affidavit. Subsequently, Rules were framed by Municipality of Allahabad for the purpose of Act VL, 1868 published in Government Gazette of North Western Provinces, Allahabad, dated 21.12.1870, called Municipal Bye-Laws, General Department Notification dated 13.12.1870. Aforesaid Municipal Bye-Laws were revised vide Notification dated 19.12.1877, published in Government Gazette, North Western Provinces and Oudh, Allahabad dated 22.12.1877 wherein it was mentioned that Municipal Committee is authorized to dispose of land, property of Government, in New Civil Station for building sites. Boundary of New Civil Station was given in para-I as under:—

> "On the West, the new Cantonment; on the North, Muir Road and Mayo Road; on the South, South road; and on the East, City Road and Phaphamau Road."

12. Para-II mentioned that aforesaid Bye-Laws shall not apply to land already reserved or to be hereinafter reserved by Government within the limits of Station. Petitioner has also given two Standardized Proforma of lease of 'Nazul' for building purpose contained in Nazul Manual published by Government Order dated 27.11.1940 and amended by Government Order dated 25.06.1952. The land use of Nazul site GG/1, Civil Station, Allahabad has been marked as "Multi-Level Parking" in Zonal Plan of Zone B-4, applicable with effect from 18.03.2011 in the Master Plan, 2021 of Allahabad under the land use category of "Traffic and Transportation". It is suggested that land being sought to be resumed for the purposes which is other than that provided in Master Plan, will result in change of use which is not legally permissible. Earlier lease deed, in respect of disputed Nazul land, was executed on 21.12.1912 by Secretary of State for India in Council in favour of Ram Charan Das. Area of land mentioned in the said lease deed was 2 Acres and 4723 Sq. Yards and purpose of 'Grant' was building a 'dwelling house'. Tenure of lease was 50 years. Period of lease commenced with effect from 01.01.1909. The stipulation giving right of 're-entry', contained in aforesaid lease deed, read as under:—

> "Provided always and it is hereby declared and agreed that no compensation or payment shall be claimable by the said Lessees, their Executors, Administrators or Assigns for any buildings, erections, or fixtures erected, affixed, or placed by him, them or any of them in or upon the said premises or any part thereof, in case these presents shall be determined by re-entry for forfeiture in which case the buildings, erections and fixtures shall rest absolutely in the said 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 Lessees, their Executors, Administrators and Assigns, shall not assign or underlet or otherwise part with the possession of the said premises or any part thereof without the permission of the said Secretary of State, his Successors or Assigns (which permission may be signified by the said Collector or by such other person as the Government of the North Western Provinces or the said Secretary of State may appoint in that behalf) for that express purpose had and obtained."
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> (Emphasis added)

13. Since in the supplementary affidavit only some documents have been filed, therefore, respondents have not chosen to reply the same.

14. Sri. Ashish Kumar Singh, learned counsel for petitioners has filed written submission and pressed the same in support of writ petition.

Firstly, it is said that right of resumption under lease deed read with GG Act, 1895 ceased to be available to respondents after repeal of GG Act, 1895 by Repeal Act, 2017. Advancing submissions on the effect of repeal, it is said:—

A. The Effect of Repeal of GG Act, 1895 by Repeal Act, 2017 w.e.f. 05.01.2018 is to deliberate ALL rights, title, interests, etc. created in exercise of powers under GG Act, 1895, except those expressly saved by Section 4 of Repeal Act, 2017.

B. The Government Grants (U.P. Amendment) Act, 1960 (amending Sections 2 and 3 of GG Act, 1895) immediately after promulgation of Repeal Act, 2017, render GG Act, 1895 ineffective and infructuous.

C. Through execution of Lease Deed in respect of Nazul Site No. GG/1, Civil Station, Allahabad, Rights(s) were Created and came into existence in favour of Lessees. At the same time, pre-existing right(s) possessed/reserved by Lessor/State of U.P. were acknowledged.

D. The pre-existing contingent right of State of U.P./Lessor to resume land was acknowledged in Clause 3(c) of Lease Deed.

E. The date of land being "Required by Lessor" as envisaged in Clause 3(c) of the Lease Deed, is the date of order of State of U.P./Lessor stipulating need of the land in question as necessary to be provided for State Government, itself, or for public purpose and directing District Magistrate to resume land in question.

F. Right of Resumption in accordance with Clause 3(c) of Lease Deed was not 'Anything Already Done' saved by Section 4 of Repeal Act, 2017.

G. The Right of Resumption in accordance with Clause 3(c) of Lease Deed was Neither a Right 'Already Accrued' nor a Right 'Already Acquired' in favour of State of U.P. which was saved by Section 4 of Repeal Act, 2017.

H. Right of Resumption in accordance with Clause 3 (c) of the Lease Deed does not stand saved by other proviso(s) of Section 4 of Repeal Act, 2017 and as such, Right of Resumption cannot be enforced by State of U.P. after repeal of GG Act, 1895 w.e.f. 05.1.2018.

I. The remaining rights and liabilities of Lessor and/or Lessee, besides rights and liabilities already accrued or acquired or incurred in favour of Lessor/Lessees, prior to repeal of GG Act, 1895 w.e.f. 5.1.2018, shall be governed under common law including Transfer of Property Act, 1882 (hereinafter referred to as "TP Act, 1882").

15. Secondly, it is submitted that Clause-3(c) of lease deed is ultra

vires of Constitution and cannot be enforced even if it is saved by Act, 2017 and on this aspect submissions are:—

A. Lease of Nazul Site No. GG/1, Civil Station, Allahabad was/is given by the State of U.P. in favour of the Lessees for "Valuable Consideration".

B. The Clause 3(c) of lease deed is ultra-vires to Article 14 of Constitution of India.

C. The Clause 3(c) of the lease deed is ultra-vires to Article 300-A of Constitution of India.

D. The Clause 3(c) of lease deed may be struck down as being unconstitutional and ultra-vires to Articles 14 and 300-A, without effecting remaining lease deed.

16. Thirdly, it is submitted by Sri. A.K. Singh, Advocate, that resumption notice issued by District Magistrate is defective, illegal, void and without jurisdiction. On this aspect, Sri. Singh submitted:—

A. The alleged Public Purpose stated in the Resumption Notice dated 14.8.2018 is illegal, made up and not genuine. In fact has been concocted by concerned officials of State Government.

B. The concerned officials of State of U.P. have applied a pick-and-choose policy and decided to resume land in question in an arbitrary and malafide manner.

C. The Resumption Notice dated 14.8.2018 issued by District Magistrate, Allahabad is even otherwise defective, illegal, void and without jurisdiction.

17. On the contrary, learned counsel appearing for respondents submitted that rights and obligations of Lessees vis a vis disputed Nazul Land are governed by terms and conditions contained in lease deed; it specifically contains a condition conferring right upon Lessor to re-enter land at any point of time whenever it is required for 'public purpose' and Lessee is under an obligation to vacate the land on such exercise of right of re-entry exercised by Lessor; terms and conditions of lease deed shall prevail over any other statute and Repeal Act, 2017 does not affect aforesaid right of re-entry acquired by Lessor in terms of lease deed; and, it is not a contingent right, as contended by petitioners. He also submitted that terms and conditions of lease are strictly governed by lease-deed and it is not open to Lessee, having entered into agreement accepting all the terms and conditions, subsequently to choose some conditions and challenge other conditions. He further submitted that right exercised by Lessor in case in hand is strictly in accordance with conditions of lease and similar exercise of power has already been affirmed by this Court as well as Supreme Court in *Azim Ahmad Kazmi* v. *State of U.P.* (supra). He lastly contended that purpose for which lease has been acquired i.e. Parking

place, Multi Purpose Open Space, Night Market and Amphitheater, is a 'public purpose' since land in question is situted in midst of Civil Lines area of Allahabad City where there is a huge problem of parking place. Therefore, Lessor has found it necessary to re-enter land exercising its right, which it had acquired in terms of lease-deed which was accepted and agreed by Lessees, who have enjoyed lease in terms of lease-deed for sufficiently long period.

18. We have heard Sri. Ashish Kumar Singh, learned counsel for petitioners; Sri. Ajit Kumar Singh, learned Additional Advocate General assisted by Sri. Nimai Das, learned Additional Chief Standing Counsel for State of U.P. and its authorities; Sri. Amit Verma and Sri. Brijendra Kumar, Advocates for Prayagraj Development Authority; and Sri. B.D. Pandey, Advocate, for respondent no. 7.

19. Before entering upon adjudication of rival submissions and issues raised by parties, we find it appropriate to place certain dates and events in a chronological manner, which are admitted to parties and evident from record:

Sl. No.	Date	Events
1.	12.12.1912/21.12.1912	With effect from 01.01.1909 a lease deed was executed by Secretary of State for India in Council in favour of Ram Charan Das for Nazul Plot No. GG/1, Civil Station, Allahabad area 2 Acres and 4723 Sq. Yards (14,403 Sq. Yards).
2.	—	Period of lease was 50 years.
3.	—	It appears that area of land was divided and numbered as GG-1 (area 1 acre 4613 Sq. Yards) and GG-2.
4.	31.12.1958	Lease expired.
5.	26.09.1991	Lease deed was executed with effect from 01.01.1959 for a period of 30 years by Governor through Collector, Allahabad in favour of Smt. Kaneez Fatima Beg, Mirza Amir Ullah Beg, Mirza Tariq Ullah Beg, Mirza Rashid

		Ullah Beg, Smt. Amina Razia Rafat Naz Begum, all resident on 23, New Benry Road, Lucknow, in respect of Nazul Plot No. GG/1, Civil Station, Allahabad area 1 Acre 4613 Sq. Yards. (9453 Sq. Yards).
6.	31.12.1988	Above lease expired. In effect lease deed dated 26.09.1991 was executed in respect of period of 30 years commencing from 01.01.1959 and ended on 31.12.1988. This period had already expired on the date when the lease deed was executed.
7.	25.03.1996	Renewed lease deed was executed for a period of 30 years in respect of Nazul Land GG/1 Civil Station, Allahabad area 1 Acre 4613 Sq. Yard (Residential) (9553 Sq. Yards) with effect from 01.01.1990.
8.	.....	This deed was signed on behalf of Lessees by one Dinesh Kumar, holder of Power of Attorney of earlier Lessees.
9.	18.01.1999	Lessees issued nomination letter in favour of Smt. Usha Rani Gupta (petitioner -1) wife of R.P. Gupta, Partner Jagdish Housing Company, which says that Nominee may get lease land, freehold, in its own name and Lessees have no objection therein.
10.	29.01.1999	Petitioner-1 submitted application to Collector for freehold of land in dispute.

11.	14.08.2018	Impugned order of re-entry/resumption.

20. In the light of rival submissions, issues, which in our view required adjudication in this petition, are:

(i) What is Nazul?

(ii) Whether lease of Nazul Land is governed by provisions of GG Act, 1895 or TP Act, 1882 or any other Statute and what is inter-relationship thereof?

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

(iv) Whether Repeal Act, 2017, whereby GG Act, 1895 has been repealed, has the effect of denying Lessor's right of re-entry provided in para 3(c) of lease deed?

(v) Whether Clause 3(c) is arbitrary, unreasonable and violative of Article 14 of Constitution?

(vi) Whether after repeal of GG Act, 1895 by Repeal Act, 2017, status of petitioners would be governed by TP Act, 1882?

(vii) Whether petitioner-1 on the basis of nomination by petitioners 2 to 5 is entitled for freehold of land in dispute and whether such right will override Lessor's i.e. State Government's right of resumption?

(viii) Whether resumption of land in dispute is arbitrary and discriminatory on the ground that in many other cases, respondents have allowed conversion of lease rights into freehold but petitioners have been discriminated?

(ix) Whether resumption/re-entry in question is valid and genuine?

(x) Whether re-entry over land in question will require compliance of procedure prescribed in U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as "U.P. Act, 1972")

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

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

23. 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.

24. 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.

25. 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'.

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

27. 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.

28. 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 Moo 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.

29. 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.

30. 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."
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> (Emphasis added)

31. 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.

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

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

property within its jurisdiction".

(Emphasis added)

33. Court also placed reliance on *Collector of Masulipatam* v. *C. Vencata Narainapah*, (1859-61) 8 Moo IA 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.

34. Judicial Committee in *Cook* v. *Sprigg*, [1899] A.C. 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)

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

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

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

(Emphasis added)

37. 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)

38. 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.

39. 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)

40. 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)

41. In *State of Rajasthan* v. *Sajjanlal Panjawat*, (1974) 1 SCC 500 : 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* v. *Akram Ali*, AIR 1956 SC 60, and *Sarwarlal* v. *State of Hyderabad*, AIR 1960 SC 862.

42. In *Promod Chandra Deb* v. *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."

43. This decision has been followed later in *Biswambhar Singh* v. *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)

44. 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.

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

47. Apprehending that above provisions of TP Act, 1882, may be construed as a fetter upon discretion of Crown in creation of inalienable Jagirs in 'Grants', acting upon advice that it would not be competent for

Crown to create an inalienable and impartible Estate in the land comprised in the Crown Grant, unless such land has heretofore descended by custom as an impartible Raj, it was sought to make a separate Statute to give supremacy to the provisions contained in Crown's Grant, notwithstanding any other law including TP Act, 1882. With this object, i.e., 'GG Act 1895' was enacted.

48. 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.

49. 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 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)

50. The above provision was amended in 1937 and 1950. The amended provision 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 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)

51. 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)

52. 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, 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)

53. 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.

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

55. 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.

56. 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.

57. 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.

58. 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.

59. Sections 2 and 3 of GG Act, 1895 were considered in *State of U.P.* v. *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)

60. Again in *Hajee S.V.M. Mohamed Jamaludeen Bros. & Co.* v. *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)

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

62. In *State of U.P.* v. *United Bank of India*, (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)

63. 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.

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

65. 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'.

66. 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.

67. Nature of orders compiled in "Nazul Manual" in the context of 'Nazul' have been considered recently in *State of U.P.* v. *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.

68. In *Pradeep Oil Corporation* v. *Municipal Corporation of Delhi*, (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)

69. 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* v. *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* v. *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.

70. 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.* v. *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.* v. *Zahoor Ahmad*, (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)

71. Having said so, Court said:

"we are of the view that there is no other procedure or law required to be followed, as a special procedure for resumption of land has been laid down under the lease deed."

(Emphasis added).

72. 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.

73. The above discussion makes it clear that 'Nazul' is a land owned and vested in State. It is such land which has vested in State by virtue of its 'Sovereignty' and incidence of 'Sovereignty' i.e. annexation, lapse and bona vacantia. Further, 'Grant' means transfer of property by a deed in writing and includes within its ambit, an instrument of lease/lease deed. Such 'Grant' is governed by provision of GG Act, 1895, which were applicable to 'Grants' executed on and after enforcement of GG Act, 1895 and rights and entitlement of private parties in respect of land, which was transferred under such 'Grant' would be governed by terms and conditions contained in such 'Grant' and not by provisions of TP Act, 1882 or any other Statute. The terms

and conditions of 'Grant' shall override any statute providing otherwise. Moreover, in State of U.P., wherever applicable, U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 will also be inapplicable to such 'Grant'.

74. 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.

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

76. Now coming to question (iii), we have already reproduced contents of lease deed construing terms and conditions to govern land in dispute. In every aspect, some restrictions had been imposed upon Lessee, which relate to any change or transfer etc. with regard to Nazul Land in question. Some of such instances are:

(I) Without written consent of Collector, Lessee shall not alter or vary any part of external elevation or plan of dwelling house and out buildings from the original elevation or plan thereof.

(II) Without consent of Collector, Allahabad, Lessee shall not erect any building or out-buildings on the demised premises.

(III) Without consent in writing of Collector, Lessee neither shall carry on nor permit to be carried on upon the said premises any trade or business whatsoever or use the land in dispute for purpose other than private dwelling.

(IV) If lease rent fell due for the space of one calender month whether demanded or not, it shall be treated breach or non-observance of any of the covenants by Lessees then Lessor may notwithstanding the waiver of any cause or right of re-entry, re-enter upon the said premises and expel the Lessees and all occupiers of the same therefrom and this demise shall absolutely determine and Lessees shall forfeit all rights to remove or recover any compensation for any buildings erected. Lessee shall also forfeit instalments of premium already paid to the Lessor.

(V) If Lessor required demised premises at any time for public purposes, shall have right to give one month's clear notice in writing to Lessee to remove any buildings standing on the lease land and within tow months of receipt of such notice, Lessor shall be entitled to take possession. If Lessor is willing to purchase buildings on the demised land in case of re-entry, Lessee shall be paid such amount for the building, as may be determined by

Secretary to Government, in Nagar Awas Department.

(VI) Lessee will not in any way sub-divide or transfer the demised land or building without previous sanction in writing of U.P. Government.

(VII) Any transfer or alienation made in contravention of conditions contained in para 3(e) shall be void.

77. Above stipulations makes it very clear that no transfer of land in any manner without sanction of Lessor is permissible and any such transaction is void. A similar aspect has been considered in *State of U.P.* v. *United Bank of India* (supra). Court has held that any transfer without sanction of Lessor will be void 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)

78. It shows that Lessee has no right to transfer leased Nazul Land without prior permission. Meaning thereby, unless conditions are satisfied, Lesses had no right of transfer of interest at all. Therefore, any transfer in violation thereof will not result in creating any right or interest to the Transferee since Transferor himself has nothing which he can transfer at his own.

79. Here, we remind ourselves with the principle that a person can transfer only such rights and interest which he or she possesses and not beyond that. If a Sub-Grantor did not possess any right of transfer or such right is subject to any restriction like prior permission of owner etc., it means that Sub-Grantor himself has no right of transfer and/or his right is restricted in a particular manner and such restriction is to be observed in words and spirit to validate 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 Grantee had transferred property under 'Grant' in

violation of stipulations contained in Grant.

80. In *Delhi Development Authority* v. *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."

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

82. In this case also there is a transfer made by respondents 2 to 5 (Lessees) in favour of petitioner-1 in the form of 'nomination'. Here nomination is not like giving Power of Attorney but here lease rights and interest possessed by petitioners 2 to 5 have been surrendered and assigned to petitioner-1 authorizing and entitling him to get land itself transferred in his name by conversion of leasehold rights into freehold. This nomination has the result of transfer of rights in immovable property possessed by petitioners 2 to 5 as lease-holders and therefore, it amounts to transfer of lease rights in land in dispute, in favour of petitioner-1 by petitioners 2 to 5 but without any permission of Lessor, which is one of the conditions of lease-deed. Therefore, this transfer by way of nomination is illegal.

83. As we have already said that in the case of *State of U.P.* v. *United Bank of India* (supra), Supreme Court has clearly held that if transfer is made without permission, as required in lease-deed, such transfer would be illegal, void and would not confer any right or interest upon Transferree in respect of land concerned. We, therefore, hold aforesaid nomination creating any right in favour of petitioner-1 patently illegal.

84. Here we may also stress that alleged nomination in fact is an assignment and transfer of right and interest in immovable property from one person to another, but, document is unregistered and whether it is valid document and admissible in evidence, is another question, which for the time being we are leaving it open as it is unnecessary to go into this question in the present case and this aspect may be examined whenever any occasion arise.

85. Question (iii), is therefore answered accordingly and against petitioners.

86. Now coming to question (iv); at the pain of repetition, para 3(c) of lease deed dated 26.09.1991 is again reproduced:

> "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 in writing to the lessees to remove any buildings standing at the time on the demised premises and within two months of the receipt of the notice to take possession thereof on the expiry of that period subject however to the condition that if the Lessor is willing to purchase the buildings on the demised premises, the Lessees shall be paid for such buildings such amount as may be determined by the Secretary to Government, U.P. in Nagar Awas Department."

(Emphasis added)

87. The renewal lease-deed dated 25.03.1996 in para 1 clearly mentions that earlier terms and conditions of lease shall continue to apply. Paras 1 and 2 of lease deed dated 25.03.1996 read as under:

"१- पट्टादाता उस सब भूखण्ड को तथा उस पर निर्मित समस्त दाय योग्य सम्पत्ति को जो पूर्व लिखित पट्टे में सम्मिलित तथा उसके द्वारा हस्तान्तरित थी, उन्हीं अपवादों तथा सरक्षणों सहित जिसके अन्तर्गत पट्टेदार भूखण्ड का अधिकारी था, दिनाक १.१.१९९० से ३० वर्ष के लिए एतद्द्वारा हस्तान्तरित करते हैं, किन्तु शर्त यह है कि वह उन्हीं दिनों पर और उसी ७- इस पट्टे द्वारा उत्पन्न दायित्व को एतद्द्वारा स्वीकृत अवधि में वहन करने के लिए और इस सम्पत्ति से सम्बन्धित अपने-अपने उत्तराधिकारियों को उसके बन्धन जारी करने के लिए पट्टादाता और पट्टेदार परस्पर यह प्रतिज्ञा करते हैं तथा यह निश्चित करते हैं कि प्रथम लिखित पट्टे में अभिव्यक्त सन्नुबन्धों उपबन्धों और शर्तों का उसी प्रकार पूर्णतया निष्पादन एवं पालन करेंगे, जैसे कि उन्हीं अनुबन्धों, उपबन्धों और शर्तों की इस विलेख में ऐसे परिष्करों सहित पुनरावृत्ति की गयी हो जो कि उन्हें इस हस्तान्तरण पर लागू करने के लिए आवश्यक है, और जैसे कि इस पट्टे के दोनों पक्षों के नाम उपर्युक्त लिखित पट्टे के पक्षों के नामों के स्थान में लिख दिये गये हैं।"

"1-The lessor hereby transfers all the plots and all the inheritable property constructed thereon, which were mentioned in the previous written lease and were thereby transferable, to the lessee on 01.01.1990 for 30 years with the same exceptions and protections, under which the lease holder had entitlement to the plot; but the condition is that he would keep paying the annual rent of Rs. 492.78 in the same manner on the same days. (The payment has been made under this transfer and it is also a condition that he shall be bound by the terms and such other provisions and conditions (which includes re-entry provision) that are mentioned in the written lease, and shall also have all the benefits there-from.)

2-The lessor and the lease-holder, for the purpose of bearing the liability arisen out of the lease during the approved period, and also for ensuring their respective successors to this property to be bound therefore, hereby pledge and settle together that they shall comply with the terms, conditions and provisions expressed in the first written lease as though such terms, conditions and provisions have been reiterated with such modifications as are necessary for the execution of this transfer deed, and as though the names of both the parties are written in place of the parties mentioned in the aforesaid written lease."

(Emphasis added)

(English Translation by Court)

88. Now, we may examine whether State could have exercised right

of re-entry under Clause 3(c) or not.

89. On this aspect it is not in dispute that GG Act, 1895 has been repealed by Repeal Act, 2017 with effect from 05.01.2018, when the aforesaid Act was enforced. However, Section 4 thereof provide certain Savings and it reads as under:

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

90. Counsel for petitioners placed reliance on *Mohamadhusen Abdulrahim Kalota Shaikh* v. *Union of India*, (2009) 2 SCC 1 (Paras 36, 37) wherein Court has held that Parliament in its plenary power, can make an outright repeal which will not only destroy effectiveness of Repealed Act in future but also operate to destroy all existing inchoate rights and pending proceedings. This is because effect of repealing a Statute is to obliterate it completely from the record, except to the extent of savings.

91. Aforesaid law is well established and we are bound by aforesaid precedent. It also cannot be disputed that while competent legislature possesses power to repeal an enactment, it also possesses power to save certain transactions, proceedings etc. and this power of saving is also recognized in *Mohamadhusen Abdulrahim Kalota Shaikh* v. *Union of India* (supra).

92. We also do not dispute to the proposition that Saving provision to the extent deeming fiction is provided, while saving would strictly provide such saving and nothing more than that. However, contention of counsel for petitioner that in view of repeal of GG Act, 1895, entire

lease deed executed stands obliterated is wholly incorrect. It shows lack of appreciation of GG Act, 1895.

93. GG Act, 1895, as we have already discussed above, shows that it was a declaratory statute and enacted so as to declare that terms and conditions of Grant shall prevail and override any other Statute providing to the contrary. 'Lease' itself was not executed under the said Act nor the said Act itself contemplate and provided for execution of any lease or Grant in common law rights exercised by lessor and lessee. GG Act, 1895 only declares that provisions of such lease i.e. Grant by Government would govern by terms of such lease and prevail over other statute and TP Act, 1882 will be treated as if not enacted. Contention, therefore, that entire lease stand obliterated amounts to cutting the tree over which Lessee is sitting and enjoying benefit of lease.

94. It is next submitted that the only thing saved is 'vested right of Lessor and Lessee', specifically, by Section 4 of Repeal Act, 2017. We find that no specific right, obligation etc. has been saved by Section 4 of Repeal Act, 2017 but saving is in respect of incidence of certain actions namely effect and consequence of anything done or suffered or any right, title, obligation or liability already acquired, accrued or incurred.

95. Much labour has been done by learned counsel for petitioner on explaining meaning of words 'accrued', 'acquired' and 'incurred'. He has read word 'accrued' with the term 'right' and has laboured to read 'right of re-entry' as 'contingent right' but we find above submission thoroughly misconceived and an attempt to misread terms and consequences of document of lease.

96. In *Black's Law Dictionary*, Eighth Edition, words 'accrue', 'acquire' and 'incur' have been defined, as under:

> "accrue. 1. To come into existence as an enforceable claim or right."
>
> "acquired-rights doctrine. The principle that once a right has vested, it may not be reduced by later legislation." "incur. To suffer or bring on oneself (a liability or expense)."

97. In Words and Phrases legally defined, Volume-2 D-J, at page 418, word 'incur' has been defined, as under:

> "Incur-Canada [Paragraphs 35(d) and (e) of the Interpretation Act, RSC 1970, c 1-3 state that where an enactment is repealed the repeal does not 'affect . . . any penalty, forfeiture or punishment incurred under the enactment so repealed' or 'affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment' and the investigation, legal proceeding or remedy may be instituted, continued or enforced and the penalty, forfeiture or

punishment may be imposed as if the enactment had not been so repealed.] '*The Shorter Oxford English Dictionary* includes the following:

"become liable or subject to; bring upon oneself" I rely upon these definitions and treat the word "incur" in s 35 of the Interpretation Act as being synonymous with "liable to" or "subject to". *R* v. *Allan*, (1979) 45 CCC (2d) 524 at 529, 530, Ont CA, per Lacourciere JA New Zealand [Expenditure 'incurred' is deducible from assessable income in terms of s 121 of the Land and Income Tax Act 1954.] 'A deduction may be allowed under that section in respect of "expenditure incurred" although there has been no actual disbursement if, in the relevant income year, the taxpayer is definitely committed to that expenditure.' *King* v. *Inland Revenue Comr*, [1974] 2 NZLR 190, per Wild CJ"

98. In *P. Ramanatha Aiyar's The Law Lexicon*, 2nd Edition, Reprint 2007, meaning of words 'accrued', 'acquired', and 'incurred' has been defined as under:

"Accrue means to arise (as) cause of action accruing; to grow; or to be added to (as) accruing rent, accruing debt, accruing dividend. In the past tense the word "accrued" is used in the sense of due and payable; vested; and existed (as, rights accrued).

...

In past tense, in sense of due and payable; vested. It means to increase; to augment; to come to by way of increase; to be added as an increase, profit, or damage. Acquired; falling due; made or executed; matured; occurred; received; vested; was created; was incurred."

"Acquire. 'A Person who acquires a thing or property gets the right of ownership for the first time from some one else." "incur. To become subject to or liable for by act or operation of law.

...

Incur. The word 'incur' is an inappropriate one, in connection with the word 'obligation,' if the latter word is limited to a case of contract. Men contract debts. They incur liabilities. In the one case they act affirmatively. In the other the liability is incurred or cast upon them by act or operation of law.

...

Incur. To entail; to become liable or subject to."

99. In *Cambridge International Dictionary of English*, words 'accrue', 'acquire' and 'incur' have been defined, as under:"accrue-to increase in number or amount over a period of time..."

"acquire-to obtain (something). He acquired the firm in 1978. I was wearing a newly/recently acquired jacket. I seem to have

acquired (=obtained by unknown means) two copies of this book. I acquired (=learnt) a little Spanish while I was in Peru. During this period he acquired a reputation for being a womanizer. She's acquired some very unpleasant habits recently. This wine is rather an acquired taste. (-Many people dislike it at first, but they gradually start to like it after they have tried it a few times.)

"incur. (of a person, group, etc.) to experience (esp. something unpleasant) as a result of actions they have taken. It's a long term investment, so you might expect to incur light losses in the early years. This production of the play has incurred the wrath/anger of both audiences and critics. Please detail any costs/expenses incurred by you in attending the interview."

100. In *Oxford English-English-Hindi Dictionary*, words 'accrue', 'acquire' and 'incur' have been defined, as under:

"accrue-accrue (to sb) (from sth) to increase over a period of time; interest accruing to savers from their bank accounts; to allow a sum of money to debts to grow over a period of time."

"acquire-to obtain or buy; The company has acquired shares in a rival business.

"incur. To suffer the unpleasant results of a situation that you have caused."

(Emphasis added)

101. In *Collins Cobuild Advanced Learner's English Dictionary*, words 'accrue', 'acquire' and 'incur' as defined, as under:

"accrue-If money or interest accrues or if you accrue it, it gradually increases in amount over a period of time."

"acquire-If you acquire something, you buy or obtain it for yourself, or someone gives it to you.

"incur. If you incur something unpleasant, it happens to you because of something you have done."

(Emphasis added)

102. He has also laboured on the aspect that terms of lease and rights and obligations of parties, particularly with regard to re-entry, are not something which are already done or suffered.

103. In our view, Section 4 of Repeal Act, 2017 is very clear and need not much discussion for the reason that lease deed has been executed between the parties and being a Grant, admittedly, it was governed by provisions of GG Act, 1895. Lessor had widest power to impose such conditions in lease deed as it thinks fit and they have to override any other Statute and that is an act done when deed was executed between the parties. Therefore, all the terms and conditions of lease deed creating any obligation, right, duty, liberty etc. of parties are such, which have already been suffered or incurred. Lessor acquired

right of re-entry and Lessee incurred duty to comply it whenever he is required to do so. Meaning thereby, parties have agreed to abide by those terms and conditions; and to regulate their relationship with respect to demised land with those terms and conditions. Lessee has suffered a condition of lease that Lessor shall have right of re-entry whenever land is required for 'public purpose', it can resume the land. This is a consequence, which has already incurred due to execution of lease-deed. Right of re-entry whenever land is required for 'public purpose' stand acquired by Lessor when lease deed was executed and those has been saved by Section 4 of Repeal Act, 2017. 104 Various authorities relied by learned counsel for petitioners to show what is 'act done' or what is a 'contingent right' etc., are not applicable in the case in hand. In our view, Section 4 of Repeal Act, 2017 very categorically and exclusively has saved all the rights, obligations, duties etc. of the parties including Lessor's right of re-entry under Clause 3(c) over the demised land.

104. We, therefore, answer question (iv) accordingly and against petitioners.

105. Question (v), relates to submission of learned counsel for petitioner that Clause 3(c) is arbitrary and unreasonable, hence violative of Article 14 of Constitution.

106. An act of entering into an agreement for lease of land is within the realm of contract between the parties in respect of an immovable property. Parties with open eyes have entered into terms and conditions of lease and, therefore, they are bound by it. It is not the case of petitioners that while entering into agreement for lease of Nazul land in question, there was any advertisement published by Lessor for distribution of largesse in the form of enjoyment of lease so as to give an opportunity to all intending parties and there has any compliance of Article 14 of Constitution. Petitioners entered into lease with private negotiation with Government and hence Article 14 of Constitution, in the case in hand, in our view, does not come into picture. A contract entered privately will remain a mere contract and parties are governed by the agreed stipulations. Here Article 14 of Constitution is not attracted.

107. Even otherwise, once petitioners have already enjoyed all the terms and conditions of lease for several decades, it is not open to challenge validity of Clause 3(c), which is one of the several conditions on which lease has been granted. In other words, an act is subject to certain conditions as a whole, and parties to the transaction once, have accepted all the conditions together, then subsequently, it is not open to retain some and leave another. It cannot choose some and leave other. This principle is based on doctrine of election, which postulates that no party can accept and reject the same instrument. A person

cannot say at one time that a transaction is valid and thereby obtain some advantage to which he could only be entitled on the condition that it is valid in entirety and then turn round and say that it is void for the purpose of securing some other advantage.

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

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

> "116. Estoppel of tenant; and of licensee of person in possession—
>
> "No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property, and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given."

110. In *Mt. Bilas Kunwar* v. *Desraj Ranjit Singh*, AIR 1915 PC 96, Privy Council explained Section 116 of Act, 1872 and said:

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

111. In *Joint Action Committee of Air Line Pilots' Association of India (ALPAI)* v. *Director General of Civil Aviation*, (2011) 5 SCC 435 (Paragraph-12), Court referred to its earlier judgments in *Babu Ram alias Durga Prasad* v. *Indra Pal Singh*, (1998) 6 SCC 358, *P.R. Deshpande* v. *Maruti Balaram Haibatti*, (1998) 6 SCC 507 and *Mumbai International Airport Private Limited* v. *Golden Chariot Airport*, (2010) 10 SCC 422 and held that doctrine of election is based on the rule of estoppel. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his action or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. However, taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, parties should not blow hot and cold by taking inconsistent stand and prolong proceedings.

112. In *Cauvery Coffee Traders, Mangalore* v. *Hornor Resources (International Company Limited)*, (2011) 10 SCC 420 (Paragraph 34),

Court referred to its decisions in *Nagubai Ammal* v. *B. Shama Rao*, AIR 1956 SC 593, *CIT* v. *V. MR.P. Firm Muar*, AIR 1965 SC 1216, *NTPC Ltd.* v. *Reshmi constructions, Builders & Contractors*, (2004) 2 SCC 663, *Ramesh Chandra Sankla* v. *Vikram Cement*, (2008) 14 SCC 58 and *Pradeep Oil Corpn.* v. *MCD*, (2011) 5 SCC 270, and held, that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts benefits of a contract or conveyance or an order, he is estopped to deny validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity. However, it must not be applied in a manner as to violate the principles of right and good conscience.

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

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

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

115. In *State of Punjab* v. *Dhanjit Singh Sandhu*, (2014) 15 SCC 144 (Paragraph Nos. 21, 22, 23, 24, 25 and 26) Court reiterated the law laid down in *CIT* v. *MR.P. Firm Muar* (supra), *Maharashtra SRTC* v. *Balwant Regular Motor Service*, AIR 1969 SC 329; *R.N. Gosain* v. *Yashpal Dhir*, (1992) 4 SCC 683 (Paragraph 10); and *P.R. Deshpande* v. *Maruti Balaram Haibatti*, (1998) 6 SCC 507 and held that defaulting allottees cannot be allowed to approbate and reprobate by first agreeing to abide by the terms and conditions of allotment and later seeking to deny their liability as per agreed terms. The doctrine of "approbate and reprobate" is only a species of estoppel. It is settled proposition of law that once an order has been passed, it is complied

with, accepted by other party and he derived benefit out of it, he cannot challenge it on any ground.

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

> "13.The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.
>
> 14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.
>
> 15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time.
>
> 16. As laid down by the Privy Council in *Kumar Krishna Prasad Lal Singha Deo* v. *Baraboni Coal Concern Ltd.* : (IA p.318)-It [Section 116] deals with one cardinal and simple estoppel, and states it first as applicable between landlord and tenant and then as between licensor and lincensee, a distinction which corresponds to that between the parties to an action for rent and the parties to an action for use and occupation."
>
> (Emphasis supplied)

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

118. Aforesaid argument therefore, has no merit. We also do not

find that repeal of GG Act, 1895 by Repeal Act, 2017 takes away right of State of resumption, which is already acquired long back under the terms of lease and is saved by Section 4 thereof.

119. Question (v) therefore, is answered against petitioners.

120. Question (vi), in our view, is squarely covered by answer to question (iv) whereby we have held that by virtue of Section 4 of Repeal Act, 2017, all the rights, obligations etc., of Lessor and Lessee were saved and therefore, overriding effect of terms of lease will continue so long as parties are governed by aforesaid lease deed.

121. Question (vi) therefore is answered against petitioners.

122. Now, coming to question (vii), whether petitioner-1 on the basis of nomination by petitioners 2 to 5 is entitled to freehold of land in dispute and whether such right will override Lessor's i.e. State Government's right of resumption, on this aspect counsel for petitioners submitted that in past also this Court held that Lessee is entitled for renewal of lease. Similarly when policy of Government for freehold was initiated, Government would be bound to give effect the said policy and such Lessee, who has applied for freehold, would be entitled for conversion of lease rights into freehold. Hence, by exercising power of re-entry/resumption vide impugned order, Government cannot deprive/deny right of freehold, which has accrued to petitioners. On the issue of renewal of lease, reliance was placed on judgment in *Purushottam Dass Tandon* v. *State of U.P., Lucknow*, AIR 1987 All 56 and with regard to freehold, various G.Os. Issued from time to time since 1992 have been placed before us.

123. In the present case, lease was renewed in 1996 with effect from 01.01.1990. Therefore, in our view, argument advanced founded on judgment of *Purushottam Dass Tandon* v. *State of U.P., Lucknow* (supra) has no substance and reliance placed thereon, in our view, is superfluous and unnecessary. But, still not only to satisfy us but also to demonstrate hollowness of argument of petitioners, we proceed to discuss aforesaid judgment to demonstrate that said judgment has nothing to do with the facts of this Case.

124. Starting from March, 1958, on the issue of renewal of leases, State Government considered the matter and issued various G.Os. and principal G.Os., which came up for consideration in *Purushottam Dass Tandon* v. *State of U.P., Lucknow* (supra) are dated 23.04.1959, 07.07.1960 and 03.12.1965. There are some other G.Os. Also, which alongwith above G.O.s would refer hereat.

125. The first G.O. considered in *Purushottam Dass Tandon* v. *State of U.P., Lucknow* (supra) 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 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 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.

126. 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.

127. 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 "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.

128. Here leases were to be renewed in the light of Sections 2 and 4 of U.P. Act, 1976 and while doing so, all residents in one house were to be treated as one unit. This again resulted in representations of Lease-Holders to Government requesting for reduction in rate of premium and ground rent. A G.O. was issued on 17.09.1979 superseding all previous orders and it provided for submission of details about extent and type of construction, utilisation of vacant land etc. Again representations, which culminated in G.O. dated 19.04.1981, which superseded all previous Orders and provided for renewal of leases on fresh and new terms. It said that Leaseholders and their heirs shall be treated as one Unit. They were supposed to file details about land, constructed area, its user, time when it was taken on lease etc. before 30.06.1981. List of residents including out-houses dwellers was to be prepared by District Magistrate. Heirs of deceased lease-holders were to be treated as one

unit. Area for which renewal could be made was reduced to building with 500 sq. metre of land appurtenant and 500 sq. metre open land or 1500 sq. metre whichever was more. Area of building for commercial purpose was fixed at 2000 sq. metres. Premium was fixed at 50 paisa per sq. metre. Thus, from 1976 onwards for the purpose of renewal, area was reduced from acre to square metre and unit for premium and ground rent became square feet instead of acre. All heirs of Lessees became one unit for renewal. Land covered by outhouses were to be excluded. Lessees could not even opt for it.

129. 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* v. *State of U.P., Lucknow* (supra). In this bunch of writ petitions, facts, we have noted above with respect to various Government Orders, have been given in detail.

130. 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.

131. Court held:

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

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

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

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

(V) When a G.O. was issued and its conditions are complied with,

mere for bureaucratic delay, performance under the said G.O. cannot be denied. Therefore, Lessee, who had deposited first instalment, as directed in G.O. of 1965, were entitled for renewal of their lease.

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

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

132. Aforesaid judgment was confirmed by Supreme Court by dismissing appeals preferred by State of U.P. and others i.e. *State of U.P.* v. *Purshottam Das Tandon*, 1989 Supp (2) SCC 412. Supreme Court clarified that renewal of leases shall be subject to the provisions of 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)

133. We have discussed above judgment since it was heavily referred and relied by petitioners but find no reason to apply the same in the present case since lease in question was already renewed on 25.03.1996 for a period of 30 years w.e.f. 01.01.1990 and this period would expire on 31.12.2019. Right of re-entry/resumption has been exercised by State by terminating lease and resuming land for public purpose in exercise of its right under Clause 3(c) of lease deed.

134. Now we come to the aspect of freehold, which has also been strongly argued and relied on behalf of petitioners.

135. The first G.O. in furtherance of State Government's policy of conversion of lease rights into freehold was issued on 23.03.1992. 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)

136. 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:

"(७) 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।
(८) 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)

137. 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, are 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 1/60th part of premium towards annual rent. Clause 4 of aforesaid G.O. reads as under:

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

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

(English Translation by Court)

(Emphasis added)

138. The third is G.O. dated 03.10.1994 again 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:

"२. शासनादेश संख्या ३६३२/९-आ-४-९२-२९३-एन/९०, २-१२-१९९२ में ऐसे चालू पट्टे जिनके ९० वर्ष की सम्पूर्ण अवधि समाप्त हो चुकी है तथा पूर्व पट्टाधारक द्वारा पट्टे की शर्तों का उल्लंघन नहीं किया गया है, के सम्बन्ध में ३० 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 उनको 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 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)

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

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

"(१) किसी भी दशा में १०० वर्ग मीटर से अधिक क्षेत्रफल पर किये गये अवैध कब्जों का विनियमितीकरण नहीं किया जायेगा तथा दिनांक ३०.११.१९९१ की सर्किल रेट पर आंकलित सम्पूर्ण मूल्य पर निर्धारित यथास्थिति २५% या ४०% नजराने की धनराशि १० वर्षीय ब्याज रहित छमाही किस्तों में लिया जायेगा, परन्तु यदि कोई व्यक्ति सम्पूर्ण धनराशि या सकाया किस्तों की धनराशि एकमुश्त जमा करना चाहता है तो वह देय धनराशि जमा कर सकता है।

(२) उपरोक्त प्रकार के मामले में विनियमितीकरण की कार्यवाही ३० वर्षीय पट्टा स्वीकृत करके की जायेगी। स्वीकृत पट्टे में ३०-३० वर्षीय दो नवीनीकरण के प्राविधान सहित सम्पूर्ण पट्टे की कुल अवधि दो नवीनीकरण के प्राविधान सहित सम्पूर्ण पट्टे की कुल अवधि अधिकतम ९० वर्ष की होगी। जिसमें यह शर्त होगी कि सम्बन्धित व्यक्ति भूमि का पट्टाधिकार ३० वर्ष तक किसी व्यक्ति को हस्तान्तरित नहीं कर सकता है पट्टा शासन द्वारा निर्धारित प्रारूप पर जारी किया जायेगा।

(३) 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।

(४) 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)

141. 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.

142. 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.

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

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

145. 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.

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

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

148. 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.

149. Vide G.O. dated 21.10.2008, Clause 3 of G.O. dated 10.10.2002, whereby provision for conversion of freehold to Nominee of Lessee or his legal heirs was ceased, was restored. It was also clarified that decision to convert freehold of Nazul land will apply only when such land is not found necessary for Government use. Thus no provision existed from 10.10.2002 to 20.10.2008 permitting freehold to a nominee.

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

> *"ऐसे नजूल भूमियां जो भू-धारक या पट्टाधारक या उनके विधिक उत्तराधिकारी / नामित की भूमि के साथ स्थित है तथा उनके लिए उपयोगी सिद्ध हो सकती है तथा किसी अन्य के उपयोग की सम्भावना नहीं प्रतीत होती है। ऐसी भूमि का विनियमितीकरण भू-धारक या पट्टाधारक या उनके विधिक उत्तराधिकारी / नामित के पक्ष में वर्तमान सर्किल रेट धत 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)

151. Further time for conversion into freehold was extended upto 31.12.2009. G.Os. dated 29.01.2010, 17.02.2011 and 01.8.2011 were issued making minor amendments hence not discussed further. 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 and using land prior to 01.12.1998. However, land of public places, park, side-lanes of road and other Government uses was excluded and maximum area for such freehold was confined to 300 Sq. Meter. The incumbent had to apply within three months whereafter they have to be evicted. With respect to 'Nominees of Lessees', para 5 of said G.O. reads as under:

"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 संख्याः1300/9-आ-4-96-629एन/95, टी.सी. दिनांक 29-8-1996 के प्रस्तर-1 (3) (4) में की गयी थी और शासनादेश संख्या 2873/9-आ-4-2002-152-एन/2002, टी.सी. दिनांक 10-12-2002 के प्रस्तर 3 द्वारा उक्त व्यवस्था समाप्त कर दी गयी तथा शासनादेश संख्याः 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 मा० उच्च न्यायालय में विचाराधीन रिट याचिका (जनहित याचिका) संख्याः35248/2010-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 कब्जे की जा रही सम्पत्ति (नजूल भूमि) को पट्टेदार द्वारा रजिस्टर्ड एग्रीमेन्ट 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* v. *State of Uttar Pradesh*, 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 in 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."
>
> (Emphasis added)
>
> (English Translation by Court)

152. Aforesaid G.Os. thus clearly show that eligibility of leases 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 has been given. G.O. dated 28.09.2011 finally annul the provision of allowing freehold to Nominee.

153. 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.

154. Thus, petitioner-1, as a Nominee is not entitled, as a matter of right to claim freehold of Nazul land in his favour. So far petitioners 2 to 5 are concerned they have never claimed freehold rights.

155. Moreover, it is no doubt true that Government has promulgated policy of conversion of lease land into freehold, but then question is "whether mere submission of application for freehold will confer a vested right upon petitioners to get Nazul land converted into freehold, which will override even power of re-entry of Lessor. A Full Bench of this Court in *Anand Kumar Sharma* v. *State of U.P.*, 2014 (2) ADJ 742 has considered this aspect and held in para 42 of judgment that merely by making an application for grant of freehold right, one will not acquire a vested right. Para 42 of the judgment reads as under:

> "We after considering the relevant Government Orders on the subject and pronouncements of the Apex Court as noted above, are of the view that merely by making an application for grant of right, petitioner did not acquire a vested right."
>
> (Emphasis added)

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

> "It is also found that as nominee of the lessee, the petitioner-Company cannot have any larger rights than the lessee and once the order of the District Magistrate for resumption the land in exercise of power under Clause 3(c) of the lease deed is held to be valid, the petitioner-Company, as a nominee, cannot have any surviving right to claim conversion of the lease hold rights into freehold. Infact, on

valid resumption order being passed, the lease hold rights cease to exist and there can be no occasion for conversion of lease hold rights into freehold rights in such circumstances."

(Emphasis added)

157. The above discussion makes it clear that Nazul Land, if required by State for public purpose and it exercises right of re-entry/resumption, the same cannot be defeated by any person on the ground that his individual right must prevail over such public purpose.

158. One more aspect we propose to point out at this stage. As we have already stated in earlier part of judgment that petitioners 2 to 5, who were Lessees to renewed lease-deed, are not residing on the land in dispute and they are all residing elsewhere i.e. at Lucknow, which is the address they have given in writ petition also, it is evident that they do not require land in question for their own purpose. It appears that they have indulged in trading of land and earn profit at the cost of public exchequer, inasmuch as, conversion into freehold is on a very smaller amount comparing to market value at which property is being transacted in the area concerned. The disputed land is situated in most centrally located, posh, commercial area of Prayagraj City i.e. Civil Lines. Lessees i.e. petitioners 2 to 5 have issued a nomination letter in favour of petitioner-1, in respect of land in dispute, who is a partner of a Builder's Company. Petitioner-1 has no concern otherwise with land in dispute. She was not a person, who had any interest in property in dispute except that now looking to location and topography of land in dispute, she finds the land capable of development to a much more profitable venture and that is how she has indulged in trading of land with lessees i.e. petitioners 2 to 5 by getting a nomination in her favour and it is petitioner-1 only who has applied for freehold.

159. In this regard, this Court in the judgment dated 31.10.2019 passed in Civil Misc. Writ Petition No. 29495 of 2018 (*Prakati Rai* v. *State of U.P.*) connected with other petitions, has already commented upon policy of lease as under:

"181. Before proceeding further, we find it difficult to desist from observing that freehold policy, commenced in 1992, took care of a limited category of occupants of Nazul land i.e. Lessees, who had perpetual lease or where lease was continuing and there was no violation of conditions of lease. Meaning thereby, Leaseholders, who had faithfully abided to the terms and conditions of lease, were chosen as a class by themselves and provision was made to convert lease rights into freehold in such cases. One may not dispute about such policy in the light of fact that these leases are several decades old and people holding such leases had developed some kind of possessory right in property and recognizing such interest of Lessees, howsoever weak it was, if State Government chose to confer

upon them benefit of conversion of lease right into freehold, one may not validly object to that and probably such policy may satisfy constitutional test of fairness, non-discrimination, non-arbitrariness etc.

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

183. However, we are not expressing any final opinion on this aspect but this Court desires that it is high time and sooner is the better, that State Government must re-examine entire policy and if purpose is only to augment revenue, Government should sell public land by auction so that it may get best price or policy should be

confined for the benefit of have-nots i.e. poor landless and weaker sections of the Society.

160. We are in entire agreement with aforesaid observations and reiterate that policy of freehold, prevailing presently, is ex facie arbitrary and discriminatory. It is not for benefit of poor, weaker and needy sections of Society. Instead it permits profiteering by rich and resourceable people at the cost of public assets of which Government is custodian. Distribution of public largesse must be in a fair, reasonable and transparent manner and not by giving selective benefit to certain individuals, who had extra ordinary resources to enjoy the same and others are deprived of because of financial or other inequality. However, as already said in our view judgment in *Prakati Rai* v. *State of U.P.* (supra), noted above, on the question of validity of policy, our observations are not expression of final opinion but we recommend to Government to immediately relook and reconsider freehold policy and take appropriate decision, since it is high time that public assets must be dealt with in an apparent transparent manner, which is most beneficial to public at large.

161. In view of above discussion, Question (vii) is also answered against petitioners.

162. Now coming to question (viii), respondents have said that every land and its requirement, suitability etc. is different. It cannot be said that other lands, which have been made freehold are identically situated with petitioners' land. For the purpose petitioners' land has been re-entered/resumed, authorities have found it, to be, most suitable and that is how it has been selected. There is no question of any discrimination. Nothing otherwise has been placed before us to show that in all other aspects, land in question is identical with other land which have been made freehold. Therefore, in absence of any factual material and pleading, we do not find any substance in the plea of discrimination and it is accordingly rejected. Question (viii), as formulated above, is answered against petitioners.

163. Next question (ix), is whether resumption/re-entry is valid and genuine. Here, it is not in dispute that Allahabad City has been selected to be developed as ‘Smart City’. For this purpose, large scale development is required. However, contention of counsel for petitioner is that purpose mentioned in impugned order passed by Collector is neither genuine nor bona fide, therefore, resumption is bad. He has relied for the purpose of explaining ‘public purpose’ on the definition contained in Section 3(za) read with Section 2(1)(e) of “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” (hereinafter referred to as “Act, 2013”). Section 2(1)(e) and 3(za) of Act, 2013 are reproduced as under:—

“2(1) The provisions of this Act relating to land acquisition,

> compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:—
>
> ....
>
> (e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;"
>
> "3(za) "public purpose" means the activities specified under sub-section (1) of Section 2;"

164. Definition Clause of Act, 2013 we do not find, relevant for the purpose of present case, inasmuch as, here it is Government land which was given on lease to private individuals for residential purpose with a condition that whenever Government will require it for itself or public purpose, it can be resumed/re-entered.

165. Here 'public purpose' means that land is required not for benefit of any individual or set of individuals but for public at large. The reason may be numerous but here word 'public purpose' has to be understood in the context of individual interest vis-a-vis general public. We do not find that definition of Act, 2013, which is in the context of acquisition of individual's land can apply where Government's own land is being resumed by Government i.e. Owner. Re-entry and resumption of own land for 'own purpose' or for 'public purpose' i.e. public at large is per se valid and will override the individual right of Lessees. Therefore, entire submission based on Act, 2013 is misconceived.

166. It has not been disputed that land in question is situated in a very prime, busy and important commercial area i.e. Civil Lines of Allahabad. There is huge scarcity of parking place causing regular jams etc. Further, in order to develop the city as 'Smart City', various developmental activities have to be undertaken and the purpose mentioned in impugned order, in our view, does satisfy requirement as 'public purpose'.

167. We, therefore, answer question (ix) against petitioners.

168. Now last question i.e. question (x), is, whether re-entry over land in question will require compliance of procedure prescribed in U.P. Act, 1972.

169. It cannot be doubted that aforesaid Act also provides a procedure for resumption of public land where a person is occupying the same 'unauthorizedly' by eviction/ejectment through a summary procedure. In the present case, petitioners 2 to 5 being Lessee and lease has been continuing when impugned order was passed, it cannot be said that they were in possession 'unauthorizedly'. Therefore, aforesaid Act has no application.

170. However, respondents have pleaded and shown that land in dispute is not in actual possession of petitioners 2 to 5 but it is occupied by IERT and Women's Polytechnic was running thereon. Before creating such tenancy rights, whether petitioners 2 to 5 obtained any permission from Lessor, on this aspect, no material has been placed before us though such transfer is not permissible under the provisions of lease-deed without permission of Lessor, and it amounts to serious breach of conditions of lease. Such Transferee, therefore is covered by definition of "unauthorized occupation" as defined in Section 2(g) of U.P. Act, 1972. Aforesaid Statute provides an additional mode and method of eviction of such 'unauthorised' occupants besides procedure prescribed in lease deed, therefore exercising right of election, Lessor can follow and proceed in accordance with procedure prescribed in lease deed. It cannot be said that such exercise of power by Lessor would be illegal.

171. In similar circumstances, where by giving one month's notice, lease land during period of subsistence of lease was resumed/re-entered by U.P. Government, matter came up for consideration in *Azim Ahmad Kazmi* v. *State of U.P.* (supra) and Supreme Court upheld such re-entry. We have already discussed above judgment in detail above, and it is not necessary to repeat the same. Therefore question (x) is also answered against petitioners.

172. It is admitted case of petitioners that land in question has already been taken in possession by respondents. Since, we have not found resumption, contrary to law, hence nothing further is required to be done.

173. In view of above discussion, writ petition lacks merit. Dismissed. No costs.

174. Let a copy of this judgment be forwarded to Chief Secretary, U.P. Lucknow and Principal Secretary, Urban Development, U.P. Lucknow, for reconsidering policy of freehold in the light of observations made in paras 160 to 161 of judgment and take appropriate decision.

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