RESERVED

Court No.1

Case :- MISC. BENCH No. - 8870 of 2020

Petitioner :- Prayas Buildcon Pvt.Ltd.
Respondent :- State Of U.P.Thru.Prin.Secy.Housing & Urban Planning & Ors.
Counsel for Petitioner :- Ritwick Rai,Alok Kumar Singh, Dhruv Kumar Singh, Palash Banerjee
Counsel for Respondent :- C.S.C.,Ratnesh Chandra

Hon'ble Pankaj Kumar Jaiswal,J.
Hon'ble Dinesh Kumar Singh,J.

(1) When the matter was taken up through Video Conferencing, Sri Dhruv Mathur, Sri Ritwick Rai and Ms.Devanshi Singh, learned counsel for the petitioner, Sri H.P. Srivastava, learned counsel for the respondent no.1-State and Sri Ratnesh Chandra, learned counsel for the respondent nos. 2 and 3 appeared.

(2) By this writ petition under Article 226 of the Constitution of India, the petitioner is praying for issuance of writ of mandamus directing the respondents to proceed with the conversion of the leasehold rights to freehold rights in respect of the property situated at Purwa Imam Baksh Mohalla Hasanganj Par, Lucknow (now Ward Nishatganj, Mohalla Baba Ka Purwa) admeasuring 75,000 sq. mts. in favour of the petitioner in accordance with the directions/order dated 17.05.2019 passed in writ petition no. 12081 of 2009 (M/B) and also direct the respondent nos. 2 and 3 to issue a Demand Letter to the petitioner forthwith, in furtherance of such conversion process, seeking deposit of the remaining 75% amount as per the valuation rates as applicable on the date of passing of order i.e. dated 20.05.2009, after duly adjusting the amount of INR 6,46,87,500/- (*which already stands deposited by the petitioner with the respondents on 22.03.2007).*

(3) Brief facts of the case are that on 27.01.2007, original lessee, M/s Upper India Couper Paper Mills Co. Ltd. through its Managing Director, executed a registered Deed of Assignment of leasehold rights and sale of construction in respect of the property comprising 1,11,482.72 sq. mtrs. for valuable consideration being a part of the aforesaid Nazul Land which was the subject matter of the registered Lease Deed dated 2.5.1944 executed in favour of Upper India Couper Paper Mills Company Ltd. situated in Purwa Imam Baksh Mohalla Hasanganj Par, Lucknow and delivered possession to the petitioner. The name of the petitioner was duly mutated in the records maintained by the Nazul Department as conveyed by the Lucknow Development Authority vide letter dated 19.2.2007 by accepting the division. Thereafter, the petitioner submitted building plans for constructing the buildings in the aforesaid property acquired by them on 22.02.2007 and on 22.03.2007 applied for conversion of its leasehold rights into freehold in respect of 75,000 st. mtrs. of leasehold land under self-assessment scheme and deposited a sum of Rs.6,46,87,500/- in the shape of demand draft dated 22.03.2007 with the Nazul Officer, Lucknow Development Authority, Lucknow with an undertaking that within a period of 90 days from the date of issuance of demand letter by the Nazul Department, the petitioner shall deposit the balance amount. On 29.03.2007, Technical Committee of Lucknow Development Authority approved the petitioner's Building Plan.

(4) On 08.06.2007, the Nazul Officer/Secretary of the Lucknow Development Authority gave its 'No Objection' for the aforesaid proposed construction by the petitioner subject to the condition that the petitioner shall deposit balance amount needed for conversion of leasehold into freehold within 90 days from issuance of a demand letter. The prayer for construction of leasehold rights into freehold rights has been made on the basis

of the judgment and order dated 23.05.2008 passed in writ petition no. 9360 (M/B) of 2007 : *M/s The Upper India Couper Paper Mills Company Pvt. Ltd., Lucknow and another Vs. State of Uttar Pradesh and others,* wherein the Co-ordinate Bench has held that the lease deed in respect of the property in question subsists and valid till 2032. It was also held that building plans submitted by M/s the Upper India Couper Paper Mills Company Ltd., Lucknow had wrongly rejected and directed parties including respondents herein to proceed with conversion of leasehold rights to freehold rights pertaining to leasehold of original lessee.

(5) The aforesaid order dated 23.05.2008 (Supra) has been upheld by the Hon'ble Supreme Court vide judgment and order dated 11.09.2013 passed in Special Appeal Leave Petition(s) Nos. 18734 of 2008 and 10291 of 2010, which have been filed by the Lucknow Development Authority and State of Uttar Pradesh, respectively.

(6) After taking 'No Objection Certificate' from various department with respect to building plan, the petitioner prayed for conversion of proposed construction land from leasehold rights to freehold rights because no letter of demand indicating the amount to be deposited by the petitioner towards conversion of leasehold rights to freehold rights of the construction land were issued. However, in utter surprise, after a period of two years, the application of the petitioner was rejected vide order dated 20.05.2009 on the ground that land in question is subject matter of dispute of Special Leave Petition No(s). 18734 of 2008 : *Lucknow Development Authority Vs. Upper India Couper Paper Mills Ltd.* before the Hon'ble Supreme Court against the order dated 23.05.2008 passed by the Division Bench of this Court and the land in question is most suitable for the purposes of development of affordable housing in respect of

Economically Weaker Sections, Low Income Group and Medium Income Group into their paying capacity.

(7) The petitioner challenged the order dated 20.05.2009 by filing writ petition no. 12081 (M/B) of 2009 : *Prayas Buildcon Pvt. Ltd. Vs. State of U.P. and others.*

(8) In the counter affidavit filed by the Lucknow Development Authority in the aforesaid petition, they have very categorically admitted that as per master plan, the land in question has been earmarked for the commercial purpose and special leave petitions filed by the State of U.P. and Lucknow Development Authority were dismissed on 11.09.2013.

(9) Considering the aforesaid, the Division Bench, vide its judgment and order dated 20.05.2019 has held that while rejecting the application of the petitioner for conversion of the land in question from leasehold rights to freehold rights on 20.05.2009, there was no occasion for raising objection that land in question was required for residential purposes for the alleged non-existence scheme. The Division Bench after considering the decision of **Anand Kumar Sharma Vs. State of U.P. and others :** AIR 2014 Allahabad 106 by passing the detailed order dated 17.05.2019 has also observed that the petitioner is entitled to pay the amount of building charges for conversion from leasehold rights to freehold rights at the rate, which was applicable on the date of passing of the order. Accordingly, the Division Bench allowed the writ petition with a direction to the respondents no. 2 and 3 to proceed for conversion of property to freehold expeditiously in accordance with law in terms of the order dated 23.05.2018 passed in Writ Petition No. 9360 (M/B) of 2007 and the ratio land down by Full Bench in the case of ***Anand Kumar Sharma Vs. State of U.P. and others*** (Supra). Para 34 to 39 are relevant, which reads as under :-

"34. The two grounds mentioned in the order dated 20.05.2009 and 01.10.2009 for rejection of the application of the petitioner seeking conversion of lease hold rights into free hold have been rendered non-existent, infructuous and redundant. Firstly, because the respective SLPs filed by the respondents no. 1, 2 and 3 before the Supreme Court stand dismissed on 11.09.2013 and secondly, the respondents no. 2 and 3, in their supplementary counter affidavit dated 13.07.2015, have categorically admitted that no proposal or map for development of affordable housing scheme in respect of the said land is available in Planning Department as per report of the Chief Town Planner, copy of which has been annexed as Annexure No. A-1. This report of Chief Town Planner further establishes the fact that the use of the land in question is shown as commercial in the Master Plan of Lucknow, 2021. Thus, the basis for rejection of the application of the petitioner seeking conversion of lease hold rights into free hold did not exist at all.

35. It is also not in dispute that that a sum of Rs. 6,46,87,500/- stands deposited by the petitioner being 25% of the amount towards the conversion of the land from leasehold into freehold as per the Self Assessment Policy in vogue at that time. The land in question has already been duly mutated in the records of Nazul Department/LDA as well as the Nagar Nigam, Lucknow. The lease rent of the land stood deposited till 2032 by the predecessor in title, i.e., M/s UIC with the Nazaul Department and even the total stamp duty on the lease deed stands duly paid. The land in question was sold by the original lessor to the petitioner and the rights therein were assigned to the petitioner. Though the building plans of the petitioner were sanctioned in principle vide letter dated 26.04.2002, the Technical Committee, LDA raised a formal objection of converting the land from leasehold to freehold and for submission of the freehold deed.

36. The lease in question is governed by the terms and conditions as contained in the lease deed. The terms of the lease deed specifically provided that the Assignee/transferee of the lease from the lessee shall also be bound by its terms. When the renewal clause read, "lease is renewable upto aggregate period of 90 (ninety) years subject to the enhancement of rent by 50% after each 30 years," the enhanced amount of lease rent (by 50%) was deposited in time, the

division Bench rightly held that the lease stands renewed upto 2032.

37. The entire controversy stands settled by the judgment dated 23.05.2008 passed by this Court and the Special Leave Petitions of the State of U.P. and LDA and others challenging the said judgment were dismissed. The plea above on which the case was decided on 23.05.2008 is binding upon the respondents as a precedent, thus, what has been stated therein has precedential value under Article 141 of the Constitution of India.

38. The land of the petitioner has been lawfully assigned to it and the same has been recognized by the Nazul department as they effected the mutation of the subject land in the name of the petitioner on 19.02.2007 by granting number of NOCs from various State departments. Further, on 08.06.2007, the Nazul Officer, Lucknow Development Authority issued a letter conveying its no objection to the proposed construction of the petitioner, subject to the petitioner depositing balance charges for conversion from leasehold rights to freehold pertaining to the said land in question. Even otherwise the grounds mentioned in the rejection letter dated 20.05.2009 make no mention of a deficiency in lawful assignment of leasehold rights in favour of the petitioner. Thus, the criteria and assignment has already stand satisfied. Now it is too late to raise all these objections when admittedly the application for conversion of leasehold rights into freehold was rejected only on two grounds, which stand satisfied.

39. For the above-mentioned reasons the orders dated 20.05.2009 and 01.10.2009 are quashed. The respondents no. 2 and 3 shall proceed for conversion of property to freehold expeditiously in accordance with law in terms of the order dated 23.05.2018 passed in Writ Petition No. 9360 (MB) of 2007 and the ratio laid down by Full Bench in the case of Anand Kumar Sharma Vs. State of U.P. and others (Supra)."

(10) Respondents-Lucknow Development Authority has challenged the aforesaid judgment and order dated 17.5.2019 by filing Special Leave Petition (Civil)...Diary No(s). 34417 of 2019 :*Lucknow Development Authority and another Vs. Prayas Buildcon (P) Ltd. & another,* before the Hon'ble Supreme

Court, which was dismissed vide judgment and order dated 25.10.2019. The same is reproduced as under :

> *"Delay condoned.*
>
> *We find no reason to interfere in the matter. The special leave petition is dismissed.*
>
> *All pending applications shall stand disposed of."*

(11) As nothing has happened, therefore, the petitioner has filed an application, bearing no. 87559 of 2019, in writ petition no. 12081 (M/B) of 2009. On 9.8.2019, when the aforesaid application was taken up, a plea has been made on behalf of the petitioner that he is not seeking any review/modification /clarification of the order dated 17.5.2019 passed by this Court but his anxiety is that in spite of specific direction given in para - 39 of the order, till date the matter has not been decided nor any demand has been issued by the respondents-Lucknow Development Authority. However, on the basis of the oral objection raised by the Lucknow Development Authority, time was granted to him for taking appropriate action in the matter either by filing a fresh writ petition or draw contempt proceedings against the erring officers for not complying the order dated 17.05.2019, the present writ petition has been filed by the writ petitioner.

(12) From the aforesaid facts, it is clear that the controversy raised by the respondents has been decided long back on 23.05.2008 by the Division Bench and when again on the same ground, the prayer of the petitioner was rejected, the writ petition has been filed by the petitioner, which was allowed on 17.05.2019 and the same has been upheld by the Hon'ble Supreme Court. The respondents knowing well that the controversy is no longer *res integra* but the same controversy has been raised repeatedly just to harass the petitioner. In all fairness, they have to allow the prayer for conversion of leasehold rights to freehold rights. This is a clear case of abuse of the process of Court. They

compelled the petitioner to come to the Court again and prayed for specific relief so that matter may be decided within the time bound period.

(13) The Lucknow Development Authority has filed an affidavit duly sworn by Vice-Chairman, Lucknow Development Authority, Lucknow, in which preliminary objection regarding maintainability of the writ petition has been made on the ground that the petitioner has concealed the material fact i.e. C.M.Application No. 87559 of 2019 filed in writ petition no.12081 of 2009 (M/B) is pending and the petitioner has abused the process of Court. On merit, the stand of the Lucknow Development Authority is that the petitioner is bound to deposit the amount in terms of the ratio laid down by the Full Bench in **Anand Kumar Sharma Vs. State of U.P. (supra)** and prays for dismissal of the writ petition.

(14) The objection regarding concealment of facts is not correct. The petitioner in the list of dates and events at page No. 4 and para 3.8 of the writ petition has given the details of Civil Misc. Application No. 87559 of 2019 and thus at the outset we reject the aforesaid objection.

(15) In the earlier round of litigation, during the course of hearing, it was not disputed by the Lucknow Development Authority that the order dated 23.05.2008 passed in respect of the adjacent land, which belongs to the original lessee will be fully applicable to the land of the petitioner because the land in question is the part of the land registered vide Deed of Assignment executed on 27.01.2007 in its favour by Upper India Couper Paper Mills Co. Ltd. (original lessee). It is also very categorically admitted that the aforesaid judgment has been upheld by the Hon'ble Supreme Court in the year 2013 and thereafter, the order of rejection, which was contrary to the dictum of the Division Bench dated 23.05.2008 (supra) has

already been quashed by this Court on 17.05.2019 (supra). The petitioner has also deposited 25% of the total conversion fee as per the policy prevalent, on the date on which an order on application for conversion of the part of the land from leasehold rights to freehold rights has been passed. The amount of 25% i.e. Rs.6,46,87,500/- is lying with the Lucknow Development Authority, which was deposited by the petitioner by way of bank draft on 22.03.2007. Thereafter, all the formalities as required were completed by the petitioner by submitting 'No Objection Certificate' from various departments.

(16) As per law laid down by the Full Bench in **Anand Kumar Sharma (supra)**, the application of the petitioner submitted for grant of free hold right on the basis of the Government Orders was entitled to be considered in accordance with the government's policy as was in existence at the time of passing of the order dated 20.05.2009.

(17) In the matter of **Anand Kumar Sharma (supra)**, the petitioner has submitted application on 25.07.2005. His application was decided on 18.12.2006. The prayer for grant of free hold rights on the basis of the Government Orders dated 01.12.1998 and 10.12.2002 was rejected on the ground that Government Policy as was in existence at the time of the order dated 18.12.2006, was to be taken into consideration while deciding the application.

(18) In the present case, while passing of the order dated 20.5.2009, the Government Order which was prevailing is required to be taken into consideration. Application of the petitioner for grant of freehold rights was considered by the Lucknow Development Authority by passing an order on 20.5.2009, by which application of the petitioner dated 22.03.2007 was rejected only on technical ground whereas they have to grant permission for conversion of leasehold rights to freehold as a

matter of right in terms of order dated 23.05.2008 passed in writ petition No. 9360 (M/B) of 2007.

(19) This Court, while deciding writ petition no. 12081 (MB) of 2009 has very categorically observed that respondent nos. 2 and 3 shall proceed for conversion of property to freehold expeditiously in accordance with law in terms of the order dated 23.05.2008 passed in Writ Petition No. 9360 (M/B) of 2007 but till today no demand to deposit the balance of the amount i.e. 75% has been made by the Lucknow Development Authority. The order passed in the first and second round of litigation has already been upheld by the Hon'ble Supreme Court in the year 2013 and 2019 respectively but the Lucknow Development Authority has not considered the matter on merit and further they are raising baseless technical objection even though they are bound to comply the dictum of the order passed by this Court as well as by the Hon'ble Supreme Court in earlier round of litigation.

(20) Now, the first thing that strikes one on perusing the course of proceedings in the case is the extremely unsatisfactory and impractical procedure followed in regard to grant of freehold rights in accordance with the Division Bench judgment dated 23.05.2008 which has been upheld by the Hon'ble Supreme Court on 11.09.2013, by the Lucknow Development Authority for not considering the petitioner's request for conversion of the land in question from leasehold rights to freehold rights. Having regard to the wide powers that has been conferred to the Lucknow Development Authority, one would expect the Lucknow Development Authority to dispose of the application on merits within reasonable time by passing an order for conversion in favour of the petitioner. In this matter, inspite of granting all the NOCs' and clear dictum by the Division Bench of this Court in respect of the similar set of the land which is part of the land of the petitioner, the application of the

petitioner submitted in the year 2007 was wrongly rejected in the year 2009. The Lucknow Development Authority knowing well that there was no interim relief, rejected the application of the petitioner on technical ground.

(21) In the affidavit filed by the Lucknow Development Authority, it has been admitted that order impugned by which application of the petitioner was rejected, has been quashed by the Division Bench. The special leave petition filed by the Lucknow Development Authority has been dismissed in the year 2019 but till today nothing has been done except raising technical objection in the matter. No order for conversion of leasehold right has been passed within the reasonable period after passing of the order by this Court dated 17.05.2019 and after dismissal of the special leave petition on 25.10.2019 by the Hon'ble Supreme Court, the Lucknow Development Authority does not seem to take care to the direction issued by this Court dated 17.5.2019.

(22) The instant writ petition is the third round of litigation on almost identical issue. Thirteen (13) years have been passed from the date of the application for conversion from leasehold rights to freehold rights. This is an extremely cumbrous and ineffective procedure in which several years passed but the application stands still. It puzzles us why the Lucknow Development Authority even in the first instance, could not dispose of the conversion application on merits in terms of the order passed by the Division Bench on 23.5.2008 in writ petition No. 9360 (M/B) of 2009, which has been upheld by Hon'ble Supreme Court on 11.9.2013 in Special Leave Petition(s) Nos. 18734 of 2008 and 10291 of 2010.

(23) The petitioner is a *bona fide* law abiding person, whose hefty amount of Rs.6,46,87,500/- i.e. 25% of the total conversion fee at the relevant time, is lying with the Lucknow Development

Authority since 2007 but till today, inspite of judicial dictum in his favour, no formal approval has been granted on the land in question from leasehold rights to freehold rights when the order was passed on merits on 20.05.2009. It is not a case of fault/lapse from the side of petitioner for which they are to be penalised.

(24) On due consideration of the totality of the facts and circumstances of the case, we ***allow*** the writ petition and direct the respondents to proceed forthwith with the conversion application of the petitioner, which is pending since 22.03.2007, and grant approval by passing an appropriate order of conversion of leasehold rights to freehold rights in favour of the petitioner in respect of property situated at Purwa Imam Baksh Mohalla Hasanganj Par, Lucknow (now Ward Nishatganj, Mohalla Baba Ka Purwa) admeasuring 75,000 sq. mts., within a period of thirty days and issue a demand of 75% amount as per the rate as applicable at the time of passing of the order i.e. on 20.5.2009. Thereafter, if the petitioner deposits the aforesaid balance 75% amount within next 30 days, all the formalities for conversion of the property in question from leasehold rights to freehold rights in favour of the petitioner shall be completed by the respondents in accordance with law within next thirty days from the date of completion of necessary formalities by the petitioner.

(25) No costs.

(Dinesh Kumar Singh, J.) (Pankaj Kumar Jaiswal, J.)

Order Date :- 26.08.2020

Ajit/-

NOTE :

It is to be noted that the instant judgment has been dictated and signed by Hon'ble Mr. Justice Pankaj Kumar Jaiswal. In this matter, a separate judgment of the same date has been dictated and signed by Hon'ble Mr. Justice Dinesh Kumar Singh.

Reserved

Court No. - 1

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Respondent :- State Of U.P.Thru.Prin.Secy. Housing & Urban Planning & Ors.
Counsel for Petitioner :- Ritwick Rai,Alok Kumar Singh,Dhruv Kumar Singh,Palash Banerjee
Counsel for Respondent :- C.S.C.,Ratnesh Chandra

Hon'ble Pankaj Kumar Jaiswal, J.
Hon'ble Dinesh Kumar Singh,J.

[Delivered by Hon'ble D.K. Singh, J.]

1. I have gone through the judgment of my esteemed learned brother Hon'ble Pankaj Kumar Jaiswal, J. I have failed to persuade and convince myself to agree with the conclusions and the relief granted to the petitioner by my brother in his judgment. Therefore, I am penning down my own judgment/opinion in the case.

2. There is a checkered history of this case and, therefore, bare minimum facts are required to be stated.

3. The case relates to a very large chunk of nazul land situated in the heart of Lucknow City, at the bank of river Gomti. The nazul land, inter alia, means "Land or buildings in or near towns or villages, which have escheated to the Government; property escheated or lapsed to the State: commonly applied to any land or house property belonging to Government either as an escheat or as having belonged to a former Government." *(Narain Prasad Aggarwal Vs. State of M.P. (2007) 11SCC 736)*. It is 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. The nazul properties form the assets owned by State in trust for the people in general who are entitled for its use in the most fair and beneficial manner for their benefit.

4. A division bench of this Court in its erudite exposition has traced the legal history in respect of the Nazul lands in the case of ***Amrit Bazar Patrika Pvt. Ltd. Allahabad Vs. State of U.P. and Others, 2019 SCC OnLine All 4164*****.** A few paragraphs from the said judgement are extracted here under:-

> ***"21.*** *In Legal Glossary 1992, fifth edition, published by Legal Department of Government of India, at page 589, meaning of the term* 'Nazul' *has been given as 'Rajbhoomi, i.e., Government* land'.
>
> ***22.*** Nazul *is an Arabic word. It refers to a* land *annexed to Crown. During British Regime, immoveable property of individuals, Zamindars, Nawabs and Rajas when confiscated for one or the other reason, it was termed as* 'Nazul *property'. The reason being that neither it was acquired nor purchased after making payment. In old record, when such* land *was referred in Urdu, this kind of* land *was shown as 'Jaidad Munzabta'.*
>
> ***23.*** *For dealing with such property, under the authority of Lt. Governor of North Western Provinces, two orders were issued in October, 1846 and October, 1848. Therein, after the words "*Nazul *property", its english meaning was given as 'Escheats to the Government'. Sadar Board of Revenue on May 20, 1845 issued a circular order in reference to "*Nazul land*" and in para 2 thereof it mentioned, "The Government is the proprietor of those* land *and no valid title to them can be derived but from the Government".* Nazul land *was also termed as "Confiscated Estate". Under Circular dated July 13, 1859, issued by Government of North Western Provinces, every Commissioner was obliged to keep a final confiscation statement of each District and lay it before Government for orders.*
>
> ***24.*** *Right of King to take property by* 'escheat' *or as 'bona vacantia' was recognized by common law of England.* Escheat *of property was Lord's right of re-entry on real property held by a tenant, dying intestate, without lawful heirs. It was an incident of Feudal Tenure and based on the want of a tenant to perform Feudal services. On the tenant dying intestate without leaving any lawful heir, his estate came to an end, and Lord, by his own right and not by way of succession or inheritance from the tenant, re-entered real property as Owner. In most cases,* land *escheated to Crown as the 'Lord Paramount', in view of gradual elimination of Intermediate or Mesne lords since 1290 AD. Crown takes as 'bona vacantia' goods in which no one else can claim property. In Dyke v. Walford 5 Moore PC 434 : 496-13 ER 557 (580) it was*

said 'it is the right of the Crown to bona vacantia to property which has no other owner'. Right of the Crown to take as "bona vacantia" extends to personal property of every kind. The escheat *of real property of an intestate dying without heirs was abolished in 1925 and Crown thereafter could not take such property as bona vacantia. The principle of acquisition of property by* escheat*, i.e., right of Government to take on property by '*escheat*' or 'bona vacantia' for want of a rightful owner was enforced in Indian territory during the period of East India Company by virtue of Statute 16 and 17 Victoria, C. 95, section 27.*

***25.** We may recollect, having gone through history, that prior to 1857, several Estates were taken over by British Company i.e. East India Company by way of annexation. Doctrine of lapse applied in Jhansi was another kind of above mentioned two principles.*

***26.** The above provisions had continued by virtue of section 54 of Government of India Act, 1858, section 20(3)(iii) of Government of India Act, 1915 and section 174 of Government of India Act, 1935. After enactment of Constitution of independent India, Article 296 now continue above provision and says:*

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

(Emphasis added)

***27.** Article 296, therefore, has retained power of State to get ownership of such* land*, in respect whereof principle of '*escheat*', 'lapse' or 'bona vacantia' would have been applicable prior to enforcement of Constitution of India. The above power continued to apply after enactment of Constitution with the only modification that if such* land *is situate within the territory of State Government, it will vest in State and in other cases, it will vest in Union of India. Vesting of* land *and giving ownership to State Government or Union of India under Article 296 is clearly in respect of a* land*, which will come to it by way of '*escheat*', 'lapse' or 'bona vacantia' and not by way of acquisition of* land *under some Statute or purchase etc".*

5. In the State of Uttar Pradesh, management of 'Nazul properties', 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. In relation to nazul properties situated in Lucknow, the role of Lucknow Development Authority, Lucknow (for short 'LDA') is only to the extent of management and preservation thereof. The LDA is not owner of the nazul land/property, which vests only in the State Government. The Governments have given Nazul properties on lease to private persons/entities under the Government Grants Act, 1895.

6. The extent of land involved in the present case is 72 Bighas, 16 Biswas, 11 Biswansies and 18 Kachhwansies, Mohalla Hasanganj Par, Police Station Hasanganj Par, City Lucknow. This land was given on lease to M/s Upper India Couper Paper Mills Company Private Limited, Lucknow (for short 'Company') vide lease deed dated 01.04.1942 for the purposes of a paper mill and buildings in relation thereto. The terms and conditions of the lease deed, inter alia, provided that without consent of the lessor i.e. the State Government, lessee (Company) could not make sub-divisions of the said demised premises or without express permission of the lessor, the lessee would not transfer its lease-hold-rights under the said demised premises. One of the conditions of the lease-deed was that any breach or non-observation of any condition of the lease-deed by the lessee would give lessor right of re-entry upon the said demised premises.

7. The lease of the said land was initially executed in favour of lessee for 30 years with modification of two further renewals on 30 years each. The factory, which came up, was popularly known as 'Paper Mills' remained in operation for several decades and, thereafter, it was closed down and, then to earn huge profit from the land by the lessee and others, efforts were started by them to get converted the lease-hold rights on the land into free-hold. However, upon expiry of the initial period of 30 years in the year 1972, and again upon expiry of second 30 years period in 2002, no renewal of the lease was sought by the lessee, as required under the terms of the lease deed.

8. The petitioner was not the lessee of the land in question. It appears that the original lessee had divided/bifurcated the aforesaid property into two parts; one of which had been transferred to the petitioner. Vide registered deed of assignment-dated 27.01.2007; the original lessee had transferred the lease-hold-rights in respect of portion of the aforesaid land (44.077 Bighas, equivalent to 12 Lakhs Sq. Ft. equivalent to 1,11,482.72 Sq. Mtr.) in favour of the petitioner. It is relevant to mention here that the original lessee did not take any prior permission from the lessor for division and transfer of lease-hold-rights in favour of the petitioner on the land. The division and transfer, thus, was in violation of express provisions of the lease-deed dated 01.04.1942 entered into between the lessor (Government) and the lessee (Company).

9. In respect of the other half, which was kept by the lessee (Company), an application for conversion of lease-hold-rights into free-hold-rights was preferred by the lessee in respect of the said portion. However, before the application was considered, the buildings consisting of several blocks known as ‘Metro City (Builder Apartment)’ had come up. It appears that one SIT Inquiry was also set up in respect of the same as without the land having been converted into free hold, the apartments were allowed to be constructed in a most illegal manner.

10. It appears that the building plans, initially sanctioned on 05.05.2005 in favour of the Company, the original lessee by the LDA, were cancelled on 07.12.2007. Another order-dated 07.12.2007 was also passed by means of which premises of the Company were directed to be sealed. The order of cancellation was passed in exercise of powers conferred under Section 15 of the U.P. Urban Planning and Development Act, 1973 (for short 'Act, 1973') and sealing order was passed under Section 28-A of the Act, 1973. The Company filed Writ Petition No.9360 (M/B) of 2007 before this Court, impugning the two orders dated 07.12.2007 passed by the LDA, cancelling the sanctioned building plans of the Company, which were initially issued on 05.05.2005 and sealing of the properties. It would be

important to note here that the petitioner was not a party in the aforesaid writ petition.

11. A Division Bench of this Court vide judgment and order dated 23.05.2008 allowed the Writ Petition No.9360 (M/B) of 2007, and quashed two orders dated 07.12.2007. It was further directed that the respondents should indicate the amount, which was required for proceeding with the conversion of the property into free-hold, requiring the Company to make deposit within a reasonable time for the initial amount, if any such amount was still found to be paid for processing free-hold application and, thereafter, allow the petitioner to deposit the balance amount within a statutory period, as per rules. The State Government was directed to proceed for conversion of the property into freehold expeditiously, in accordance with law.

12. From the aforesaid facts, it is clear that the petitioner was neither a party before the writ-Court nor the land, on which lease-hold-rights had been transferred in its favour by the original lessee vide deed of assignment dated 27.01.2007, was the subject matter of the said writ petition. It is further relevant to take note of the fact that the question/validity of transfer of lease-hold-rights in favour of the petitioner in violation of the terms and conditions of the lease dated 01.04.1942 by the lessee was not the subject matter or an issue in Writ Petition No.9360 (M/B) of 2007.

13. Petition for Special Leave to Appeal (Civil) No. 18734 of 2008 and SLP(C) No. 10291 of 2010 came to be filed by the LDA and the State Government against the judgment and order dated 23.05.2008 passed by the Division Bench of this Court in Writ Petition No.9360 (M/B) of 2007. The aforesaid SLPs came to be dismissed *in limine* on 11.09.2013 by following order:-

> *"11/09/2013 These petitions were called on for hearing today.*
> *Coram:*
> *HON'BLE MRS. GYAN SUDHA MISRA*
> *HON'BLE MR. PINAKI CHANDRA GHOSE*
> *For Petitioner(s) Mr. M.C. Dhingra, Adv.*

For Respondent (s) Ms. Azlka Sinha, Adv.
Mr. Anuvrat Sharma, Adv.
R.1 &2 Mr. R.F. Nariman, Sr. Adv.
Mr. Aarori Bhalla, Adv.
Mr. Subodh S. Patil, Adv.
Ms. Sujata Kurdukar, Adv.

Upon hearing counsel the Court made the following

ORDER

The Special leave petitions are dismissed."

14. *In limine* dismissal of two SLPs by the Supreme Court would not amount to affirmation of the judgment and order dated 23.05.2008 passed by the Division Bench of this Court in Writ Petition No.9360 (M/B) of 2007 by the Supreme Court. This aspect has been dealt with in a little detail in subsequent paragrahs.

15. It appears that after the original lessee executed the deed of transfer of right on 27.01.2007 in respect of the land in question, the petitioner's name got mutated in the revenue record. However, it is well settled proposition of law that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. Mutation entries do not confer any right, title or ownership and, therefore, mere on the ground of mutation/entry of petitioner's name in the revenue record, the petitioner would not get clothed with ownership or title over the land in question ***(H.Lakhsmiah Vs. L. Venketesh Reddy (2015) 14 SCC 784, Balwant Singh Vs. Daulat Singh(1997) 7 SCC 137*** and several other decisions). It would also not be correct to say that since the petitioner’s name got mutated in the revenue record, the competent Authority/Government accepted the division and transfer of the property in favour of the petitioner which is in violation of the express provisions of the lease deed dated 01.04.1942.

16. Further, it appears that the petitioner submitted building plans for construction of multiplex, hotel and hospital on 22.02.2007 before the LDA and deposited the fee to the tune of Rs.20,96,000/-. The petitioner also applied for conversion of lease-hold into free-hold in respect of 75000 Sq Mtrs land, and on its own deposited a sum of Rs.6,46,87,500/-

on 22.03.2007 with the LDA. However, the petitioner's application for conversion of lease-hold into free-hold came to be rejected by the Vice-Chairman, LDA and the said decision was communicated to the petitioner a little later. It was stated in the rejection letter that against the judgment and order dated 23.05.2008, Petition for Special Leave to Appeal (Civil) No. 18734 of 2008 was pending before the Supreme Court, and the land in question would be required for housing of the weaker sections, low income group and middle income group persons keeping in view the ever growing demand for affordable housing by growing population of the city.

17. The petitioner filed Writ Petition No.12081 (M/B) of 2009 before this Court, impugning the aforesaid order, rejecting the application for conversion of lease-hold into free-hold by the LDA over 75000 Sq Mtrs of land for which the petitioner had been assigned the lease-hold-rights by the original lessee by the deed of assignment dated 27.01.2007 in violation of the express terms and conditions of the lease deed dated 1.04,1942 . On notice, the State as well as the LDA filed their counter affidavits/response to the petition. Some of the pleadings in the counter affidavit filed on behalf of the State would be appropriate to extract hereunder:-

> *"8. That initial period of lease was 30 years with provision for two further renewal of 30 years each. However, upon expiry of the initial period of 30 years in the year 1972 and again upon expiry of second 30 years period in 2002, no renewal of lease was sought by the lessee, as required under the terms of the lease deed. It is note worthy to mention here that this lease deed was renewed as the necessary requirement of the lease deed had not been fulfilled.*
>
> *9.That as far as the petitioner before this Hon'ble Court is concerned, the same can at best be deemed as a stranger to the State Government since the Nazul land was never leased out to the petitioner by the State Government.*
>
> *10. That as per lease deed executed w.e.f. 01.04.1942, a total area of 72 bigha 16 biswa 11 biswansi and 18 kachhwansi of Nazul land situated in Mohalla Hassanganj Paar, P.S. Hassanganj Paar, city Lucknow was given on lease to the Director of Upper India Cooper Paper Mill Co. Ltd. Lucknow on the terms and conditions as find mention in the lease deed*

which has been filed by the petitioner as Annexure No.1 to the writ petition. The terms and conditions of the lease deed inter-alia provided that without consent of the lessor viz. the answering respondents, the lease viz. Director of Upper India Cooper Paper Mill Company Ltd., Lucknow would not make any sub division of the said demised premises.

11. That condition of lease deed further provided that without permission of the lessor, the lessee viz. Upper India Cooper Paper Mill Company Ltd. Lucknow shall not transfer its lease hold rights under the demised premises.

12. That condition of lease further provides that any breach of non-observation of condition of the lease by the lessee viz. Upper India Cooper Paper Mill Company Ltd. Lucknow would give lessor right of re-entry upon the said demised permises.

13. That while examination of the matter for the purpose of filing of the instant Counter Affidavit before this Hon'ble Court, it has surfaced that the lessee viz. Upper India Cooper Paper Mill Co. Ltd. Lucknow has bifurcated/divided the properties into two parts, one of which part has been transferred to the present petitioner viz. Prayers Buidcon (P) Ltd.

14. That it is categorically stated that the lessee Upper India Cooper Paper Mill Co. Ltd. Lucknow did not seek any prior approval for dividing the land.

15. That it is further categorically stated that the lessee Upper India Cooper Paper Mill Co. Ltd. Lucknow did not take prior permission from the lessor, as was stipulated in the terms and conditions of the lease, for transfer of lease hold rights in favour of the petitioner before this Hon'ble Court. Such act on the part of the lessee, who has not even been impleaded in the array of parties by the petitioners, renders the division as well as transfer of lease hold rights in favour of the petitioner as illegal being violative of condition of lease with consequence to follow in due course after consideration of the matter at appropriate level.

16. That it is further relevant to state here that with respect to the other half which has not been transferred by the original lessee viz. Upper India Cooper Paper Mill Co. Ltd. Lucknow, the building consisting of several blocks had come up and a SIT enquiry was also set up.

.....

.....

27. That the contents of paragraph 8 of the Writ Petition being the matter of record and as such need no comments. However, it is submitted that permission for partition was never accorded by the State Government, mere deposit of fee cannot be taken as grant of permission for partition of land since it was the

condition of original lease that without permission, partition cannot be done."

18. The LDA in its supplementary counter affidavit dated 13.07.2015 placed on record report of the Chief Town Planner, in which, inter alia, it was stated that "however, it may be stated that at present the land is situated on 45 Mtrs road and the road in front of Metro City breadth of which is 30 Mtrs in Mohalla Purwa Imambux, Hasanganjpar, Lucknow. Under the Master Plan, 2021, the area of land covered by the said road is 6907 Sq Mtrs. Apart from this, an area of 12759 Sqs Mtrs towards the river and last corner of eastern side of the land admeasuring 6057 Sq Mtrs being total 18816 Sq Mtrs land is shown as park and open space/green belt in the Master Plan. Remaining 85766 Sq Mtrs land is shown as Up Nagar Kendra Land Use". This writ petition, after exchange of pleadings, remained pending and no steps were taken or urgency was shown to get the matter listed for hearing by the petitioner. The phrase ‘bench hunting’ is no longer unknown in legal fraternity.

19. A second supplementary affidavit dated 09.04.2018 was filed by the LDA and in the said supplementary affidavit, it was specifically stated that the State Government had right under the terms of the lease deed itself of re-entry over the land in case of violation of any terms and conditions of the lease deed. It was also said that the deed of assignment-dated 27.01.2007 was illegal and void as it was executed in violation of the express terms and conditions of the lease deed dated 1.04.1942. It was also pointed out that in Master Plans of 2021 and 2031, which were annexed to the said supplementary affidavit, 18816 Sq Mtrs was shown as park and open space/green belt and remaining 18766 Sq Mtrs was shown as 'Up Nagar Kendra'.

20. The aforesaid writ petition came to be dismissed for non-prosecution on 26.03.2012. However, the same was restored vide order dated 02.05.2012 passed on the application filed by the petitioner for

recalling the order dated 26.03.2012. It was only in the month of May, 2018, an application was filed by the petitioner, seeking early disposal of the writ petition. Vide order dated 25.05.2018 this Court fixed 17.07.2018 as the date in the writ petition for final disposal. However, on 17.07.2018, learned counsel for the petitioner sought adjournment. On 03.05.2019, this Court directed the case to be listed on 17.05.2019 with connected writ petition i.e. PIL (Civil) No.10697 of 2009. On 17.05.2019, this Court vide its final judgment decided Writ Petition No.12081 (M/B) of 2009 filed by the petitioner and PIL (Civil) No.10697 of 2019. The petitioner's writ petition had been allowed, whereas the PIL had been dismissed with costs of Rs.25,000/-.

21. In Writ Petition No.12081 (M/B) of 2009, the following prayers were made:-

> *"(i) Issue an appropriate Writ, direction or order in the nature of certiorari quashing the impugned order dated 20.05.2009 passed by the Vice-Chairman, Lucknow Development Authority, the Opposite Party No.3 as conveyed through the letter dated 01.10.2009 after summoning the original in this Hon'ble Court.*
> *(ii) Issue appropriate Writ, Order or direction in the nature of mandamus directing the Opposite Parties more particularly, the State of Uttar Pradesh, the opposite party No.1, the Vice-Chairman, Lucknow Development Authority, the opposite party No.3 and the Nazul Officer, Lucknow Development Authority, Lucknow the opposite party No.2 to perform their statutory obligations so as to proceed and complete the process of conversion of leasehold rights in respect of the land in question into freehold in favour of the petitioner by requiring the petitioner to deposit the balance amount within such day and time to be fixed after indicating it through demand letter and complete it by the execution and registration of freehold Deed in respect of the same in favour of the petitioner according to law and as per policy within a time framed to be fixed by this Hon'ble Court.*
> *(iii) Issue appropriate Writ, order or direction including in the nature of mandamus commanding the opposite parties for not to interfere in the peaceful possession and enjoyment of the land in question as mentioned in Paragraphs No.1 to 3 above of the petition or dispossessing the petitioner therefrom by acting illegally or pursuant to the impugned action as contained in Paragraph Nos. 15 to 18 of the Writ Petition.*

(iv) Issue such other appropriate Writ Order or direction as this Hon'ble Court may kindly deem just and proper in the circumstances of the case in favour of the Petitioner against the Opposite Parties.
(v) Costs of the Petition may kindly be awarded to the Petitioner against the Opposite Parties."

22. The operative portion of the judgment dated 17.05.2019 reads as under:-

"39. For the above-mentioned reasons the orders dated 20.05.2009 and 01.10.2009 are quashed. The respondents no. 2 and 3 shall proceed for conversion of property to freehold expeditiously in accordance with law in terms of the order dated 23.05.2018 passed in Writ Petition No. 9360 (MB) of 2007 and the ratio laid down by Full Bench in the case of Anand Kumar Sharma Vs. State of U.P. and others (Supra).
40. Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. In the present case, it appears that the PIL has been filed to reconsider the judgment and order passed by the Division Bench on 23.05.2008. A PIL filed by the petitioner is involving no public interest. An individual dispute should not be allowed to be converted into a PIL. The petitioner in the present case, has not done proper exercise. Such petitions deserve to be discarded and discouraged so that in future no one can file such petitions.
41. For the aforementioned reasons, Writ Petition No.12081 (MB) of 2009 is allowed, but without any order as to costs. PIL Civil No. 10697 of 2019 is dismissed with cost of Rs. 25,000/-. The amount of cost of Rs.15,000/- shall be deposited with High Court Legal Services Sub-Committee, Lucknow and an amount of cost of Rs.10,000/- shall be deposited with the Library of Oudh Bar Association within eight weeks."

23. Thus, while quashing the orders dated 20.05.2009 and communication dated 01.10.2009, this Court directed the respondents to proceed for conversion of the property to free-hold expeditiously in accordance with law and in terms of the law down by the Full Bench of this Court in ***Anand Kumar Sharma Vs. State of U.P. and others, AIR 2014 All 106.*** Thus, the relevant date for calculating the conversion

charges was very much an issue involved in the writ petition and in fact, this Court while allowing the writ petition has decided the said issue inasmuch as it has directed the authorities to proceed with the conversion of lease hold rights into freehold in accordance with the law laid down in *Anand Kumar case (supra)*.

24. The LDA had approached the Supreme Court, impugning the judgment and order dated 17.05.2019 passed by this Court in Writ Petition No.12081 (M/B) of 2009 by filing Special Leave Petition (Civil) Diary No.34417 of 2019. However, the aforesaid special leave petition had been dismissed *in limine* by the Supreme Court vide order dated 25.10.2019 and the aforesaid order reads as under:-

> *"25/10/2019 This petition was called on for hearing today.*
>
> *Coram:*
>
> *HON'BLE MR. NAVIN SINHA*
> *HON'BLE MR. B.R. GAVAI*
> *For Petitioner(s) Mr. R.B. Singhal Sr. Adv.*
> *Mr. Abhishek Chaudhary, AOR*
> *For Respondent (s)*
> *Upon hearing the counsel the Court made the following*
> *ORDER*
> *Delay condoned.*
> *We find no reason to interfere in the matter. The Special leave petition is dismissed.*
> *All pending applications shall stand disposed of."*

25. After the aforesaid judgment and order passed by this Court on 17.05.2019, Civil Misc. Application No.87559 of 2019 came to be filed by the petitioner with following prayers:-

> *"(A) Direct the Respondent No.2/3 to issue Demand Letter specifying therein the balance amount payable towards conversion after adjusting the deposit of sum of Rs.6,46,87,500/- as per the valuation as of 20.05.2009 for the land falling in Purwa Imam Baksh Mohalla Hasanganj Par, Lucknow (now ward Nishatganj, Mohalla Baba ka Purwa) within such time as this Hon'ble Court may deem just and necessary.*
> *(B) Issue a certificate under Article 134A of the Constitution read with Article 133(1) of the Constitution by invoking power and jurisdiction conferred by the Constitution granting leave to*

> *appeal before the Hon'ble Supreme Court on the aforesaid substantial question of law of general importance stated in Para 5 of the accompanying affidavit."*

26. Thus, the petitioner knew fully well that there was no direction in the final judgment and order dated 17.05.2019 for calculating the conversion charges as per valuation on 20.05.2019 and, in fact, such direction could not have been given in view of the Full Bench judgment of this Court in *Anand Kumar Sharma's case* (supra). Therefore, the petitioner prayed for a certificate under Article 134-A read with Article 133 (1) of the Constitution for granting leave to appeal on the said issue. The question of law, on which the certificate for leave to appeal, has been sought, is mentioned in para-6 of the affidavit filed in support of the application, which reads as under:-

> "*By applying the test of reasonableness in light of Article 14 of the Constitution of India, in this case what shall be the relevant date for computing the amount of conversion of lease land into freehold land-*
>
> *(i) the date of application which is backed by deposit of 25% of the amount payable for the conversion as per the Self-Assessment Policy in vogue at that time, or*
> *(ii) the date of the Order rejecting such application, in a case where such Order is held ab-initio void for having been based on non-existent, infructuous and redundant grounds?"*

27. This application, vide order dated 02.08.2019, was directed to be listed with previous papers. The LDA filed its objection to the said application and, on 22.08.2019, when the matter was taken up, the counsel for the petitioner chose not to appear in the case and the matter got adjourned and, the case was directed to be listed again. In its objection, the LDA has taken specific plea and stated that under the guise of seeking further direction in furtherance of the judgment and order dated 17.05.2019, in fact, the petitioner is seeking review of the judgment and order dated 17.05.2019, which is not permissible under the law. It has also been said that in view of the law laid down by the Full Bench in *Anand Kumar Sharma's case* (supra), the valuation of the land cannot be as on

20.05.2009, and as per law laid down by the Full Bench in *Anand Kumar Sharma's case* (supra), Government Order was issued on 15.01.2015, amending the Nazul Land Policy, copy of which has been placed on record as Annexure-1 to the objection. It has been further said that no substantial question of law is involved for granting certificate under Article 134-A(B) of the Constitution and the application, being devoid of merit, was liable to be rejected. No rejoinder has been filed by the petitioner to the said objection of LDA. It appears that the petitioner has avoided the hearing of the said application for reason of 'inconvenient bench'.

28. It is important to note that while this application has remain pending, the present writ petition has been been filed by the petitioner with following prayers:-

> *"A. Issue a Writ, order or direction in the nature of Mandamus, directing the Respondents to proceed forthwith, with the conversion of the concerned property situated at Purwa Imam Baksh Mohalla Hasanganj Par, Lucknow (now Ward Nishatganj, Mohalla Baba Ka Purwa) ad-measuring 75,000 sq mtrs from lease hold to free hold in favour of the Petitioner in a time bound manner in accordance with the spirit and directions as enumerated by this Hon'ble court in its Final Order and Judgment dated 17.05.2009 passed in W.P. No.12081(MB) of 2009;*
> *B. Issue a Writ, order or direction in the nature of Mandamus, directing the Respondents to issue a Demand Letter to the Petitioner forthwith, in furtherance of such conversion process, seeking deposit of the remaining 75% amount as per the valuation rates as applicable on 20.05.2009, after: (i) duly adjusting/deducing the amount of INR 6,46,87,500/-(which already stands deposited by the Petitioner with the Respondents) and also (ii) duly adjusting/deducting interest on the amount of INR 6,46,87,500/- (to be calculated from the date of deposit until the date of raising the Demand Letter.*
> *C. Any other....."*

29. Thus, in sum and substance, the prayer in the present writ petition is one and the same which is in Civil Misc. Application No. 87559 of 2019. On notice, the LDA has filed its response/counter affidavit and submitted that the writ petition was nothing, but an abuse of process of the Court,

which is highly misconceived, and the petitioner is in effect seeking review of the judgment and order dated 17.05.2019. Further, prayers in the writ petition are against the dictum of the Full Bench in *Anand Kumar Sharma's* case (supra). However, no rejoinder has been filed by the petitioner.

30. Heard Mr. Dhruv Mathur, Mr. Ritwick Rai and Ms.Devanshi Singh, representing the petitioner, Mr. H.P. Srivastava, learned Additional Chief Standing Counsel for respondent no. 1-State and Mr. Ratnesh Chandra, learned counsel representing respondent nos. 2 and 3.

31. Neither the counsel for the petitioner nor the counsel for the respondents rendered requisite assistance for disposal of the present petition. The Court has to take upon itself the burden of going through the voluminous rerecord and relevant law to decide the matter in accordance with law in order to do complete justice. The Ld counsel for the petitioner has not been able to demonstrate or cite any law regarding maintainability of the writ petition and for pursuing multiple proceedings.

32. Dismissal of the SLPs against the judgment and order dated 23.05.2008 and against the judgment and order dated 17.05.2019 would not amount to affirmation of the aforesaid judgment and orders by the Supreme Court. The Supreme Court in ***Kunhayammed v. State of Kerala*, (2000) 6 SCC 359** has held that the dismissal of the special leave petition, at the stage of special leave, by a non-speaking order does not constitute *res judicata* and neither it culminates any merger of the impugned decision in the order passed in special leave petition. It has bee held that mere dismissal of the SLP by a non-speaking order itself would not preclude the aggrieved party from seeking relief in the writ-jurisdiction or review-jurisdiction of the High Court and doctrine of merger is not applicable if the SLP is dismissed by a non-speaking order, at the stage of grant of leave. It has been further held that the dismissal order of the Supreme Court would not mean that law has been declared and it would not attract applicability of Article 141 of the Constitution. Paras-27 and

44 of Kunhayammed's case (supra), which are relevant, are extracted hereunder:-

> *"**27.** A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.*
>
> .....
>
> ***44.** To sum up, our conclusions are:*
>
> *(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the*

subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

33. Aforesaid judgment has been followed in several subsequent decisions including in:-

***(i) S. Shanmugavel Nadar v. State of T.N.*, (2002) 8 SCC 361 (paras 10 and 11 emphasized)**

***(ii) P. Venugopal v. Union of India*, (2003) 7 SCC 726 para (paras 24 and 25 emphasized)**

***(iii) National Housing Coop. Society Ltd. v. State of Rajasthan*, (2005) 12 SCC 149 (para 4 emphasized)**

***(iv) K.S. Krishnaswamy v. Union of India*, (2006) 13 SCC 215 (paras 25 and 26 emphasized)**

***(v) Palani Roman Catholic Mission v. S. Bagirathi Ammal*, (2009) 16 SCC 657 (paras 4, 5 and 6 emphasized)**

***(vi) Fuljit Kaur v. State of Punjab*, (2010) 11 SCC 455 (paras 7, 8 and 9 emphasized)**

***(vii) Khoday Distilleries Ltd. v. Mahadeswara S.S.K. Ltd.*, (2012) 12 SCC 291 (paras 12 and 13 emphasized)**

***(viii)Dineshan K.K. v. R.K. Singh*, (2014) 16 SCC 88 (paras 8 and 9 emphasized)**

(ix) Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., (2019) 4 SCC 376 : 2019 (17, 18, 19 and 20 emphasized)

34. Para 20 of the Khoday Distilleries Ltd. case (supra) sums up the law as a consequence of the dismissal of the special leave petition against a judgment and order of the High Court which would be apt to quote hereunder:-

> ***"20.*** *The Court thereafter analysed number of cases where orders of different nature were passed and dealt with these judgments by classifying them in the following categories:*
>
> (*i*) Dismissal at the stage of special leave petition — without reasons —no res judicata, no merger [Proposition based on judgments in *Workmen* v. *Cochin Port Trust*, (1978) 3 SCC 119 : 1978 SCC (L&S) 438; *Western India Match Co. Ltd.* v. *Industrial Tribunal*, 1958 SCC OnLine Mad 77 : AIR 1958 Mad 398; *Indian Oil Corpn. Ltd.* v. *State of Bihar*, (1986) 4 SCC 146 : 1986 SCC (L&S) 740; *Rup Diamonds* v. *Union of India*, (1989) 2 SCC 356; *Wilson, In re*, 1985 AC 750 : (1985) 2 WLR 694 : (1985) 2 All ER 97 (HL); *Supreme Court Employees' Welfare Assn.* v. *Union of India*, (1989) 4 SCC 187 : 1989 SCC (L&S) 569; *Yogendra Narayan Chowdhury* v. *Union of India*, (1996) 7 SCC 1 : 1996 SCC (L&S) 362; *V.M. Salgaocar & Bros. (P) Ltd.* v. *CIT*, (2000) 5 SCC 373; *Sree Narayana Dharmasanghom Trust* v. *Swami Prakasananda*, (1997) 6 SCC 78 and *State of Maharashtra* v. *Prabhakar Bhikaji Ingle*, (1996) 3 SCC 463 : 1996 SCC (L&S) 749.] .
>
> (*ii*) Dismissal of the special leave petition by speaking or reasoned order — no merger, but rule of discipline and Article 141 attracted [*Penu Balakrishna Iyer* v. *Ariya M. Ramaswami Iyer*, AIR 1965 SC 195; *Abbai Maligai Partnership Firm* v. *K. Santhakumaran*, (1998) 7 SCC 386; *Shankar Ramchandra Abhyankar* v. *Krishnaji Dattatreya Bapat*, (1969) 2 SCC 74; *Sushil Kumar Sen* v. *State of Bihar*, (1975) 1 SCC 774; *Gopabandhu Biswal* v. *Krishna Chandra Mohanty*, (1998) 4 SCC 447 : 1998 SCC (L&S) 1147; *Junior Telecom Officers Forum* v. *Union of India*, 1993 Supp (4) SCC 693 : 1994 SCC (L&S) 366 and *Supreme Court Employees' Welfare Assn. case*, (1989) 4 SCC 187 : 1989 SCC (L&S) 569.] .
>
> (*iii*) Leave granted — dismissal without reasons — merger results [*Thungabhadra Industries Ltd.* v. *State of A.P.*, AIR 1964 SC 1372] ."

35. Thus, in view of the aforesaid law laid down by the Supreme Court in *Kunhayammed's* case (supra), and several other judgments some of which, have been cited in the preceding paragraph, it cannot be said that the two judgments of this Court passed in Writ Petition Nos. 9360 (M/B)

of 2007 and 12081 (M/B) of 2009 have been confirmed by the Supreme Court, while dismissing the SLPs in limine, without any speaking order. Even if the SLP is dismissed by a speaking order. The doctrine of merger would not apply. In view of the dismissal of the SLP against the judgment and order dated 17.05.2019 passed by this Court in Writ Petition No.12081(MB) of 2009 filed by the petitioner, the respondents are not estopped from invoking the review jurisdiction of this Court seeking review of the judgment and order dated 17.05.2019, despite dismissal of the SLP by the Supreme Court *in limine* vide order dated 25.10.2019. However, it is for the respondents to take recourse to the appropriate proceedings.

36. The question, what is the relevant date for calculating the conversion charges had come up for consideration before the full Bench of this Court in the case of *Anand Kumar Sharma's* case (supra). The two questions, which were referred to the full Bench in the said case, read as under:-

> *"1. Whether the application of the petitioner dated 25.7.2005 submitted for grant of freehold right on the basis of the Government Order dated 1.12.1998 (Paragraph 7) and the Government Order dated 10.12.2002 (paragraph 5) was entitled to be considered in accordance with the Government policy as was in existence on the date of application or the Government policy as amended by Government Order dated 4.8.2006, was to be taken into consideration while deciding the application on 18.12.2006?*
>
> *2. Whether the Division Bench judgment in Dr. O.P. Gupta Vs. State of U.P. 2009 (4) AWC 4038 lays down the correct law?"*

37. Paras 46 and 47 of *Anand Kumar Sharma's* case (supra), which are relevant, are extracted hereunder:-

> *"46.Three cases of this Court may now be seen. In State of H.P. v. Kailash Chand Mahajan, 1992 Supp. (2) SCC 351 in a judgment to which one of us was a party it was stated thus: (SCC pp. 386-88, paras 86-87)*

"It might be urged by the tenure of appointment there is a right to continue; the legitimate expectation has come to be interfered with. In a matter of this kind, as to whether legitimate expectation could be pleaded is a moot point. However, we will now refer to Wade's Administrative Law (6th edn.) wherein it is stated at pages 520-21, as under:

'Legitimate expectation: positive effect.-The classic situation in which the principles of natural justice apply is where some legal right, liberty or interest is affected, for instance where a building is demolished or an office-holder is dismissed or a trader's licence is revoked. But good administration demands their observance in other situations also, where the citizen may legitimately expect to be treated fairly. As Lord Bridge has explained: Westminister CC, (1986) AC 668 at 692.

The Courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation.'

In a recent case, in dealing with legitimate expectation in R v. Ministry of Agriculture, Fisheries and Food, ex p Jaderow Ltd., (1991) 1 All ER 41, it has been observed at page 68:

"Question II: Legitimate expectation:- It should be pointed out in this regard that, under the powers reserved to the member states by Article 5(2) of Regulation 170 of 1983, fishing activities could be made subject to the grant of licences which, by their nature, are subject to temporal limits and to various conditions. Further-more, the introduction of the quota system was only one event amongst others in the evolution of the fishing industry, which is characterised by instability and continuous changes in the situation due to a series of events such as the extensions, in 1976, of fishing areas to 200 miles from certain coasts of the Community, the necessity to adopt measures for the conservation of fishery resources, which was dealt with at the international level by the introduction of total allowable catches, the arguments about the distribution amongst the member states of the total allowable catches available to the Community, which were finally distributed on

the basis of a reference period which ran from 1973 to 1978 but Which is reconsidered every year.

In those circumstances, operators in the fishing industry were not justified in taking the view that the Community rules precluded the making of any changes to the conditions laid down by national legislation or practice for the grant of licences to fish against national quotas as the adoption of new conditions compatible with Community law.

Consequently, the answer to this question must be that community law as it now does not preclude legislation or a practice of a member-State whereby a new condition not previously stipulated is laid down for the grant of licences to fish against national quotas."

Thus, it will be clear even legitimate expectation cannot preclude legislation."

47.In Food Corpn. of India v. Kamdhenu Cattle Feed Industries,(1993) 1 SCC 71 this Court observed thus (SCC p.76, para 8)

"The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this matter would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of

law and operates in our legal system in this manner and to this extent."

38. Thus, the relevant date for calculating charges on an application for grant of conversion of lease-hold into free-hold, is the a date of decision of granting the application for conversion by the competent authority as held by the full bench. Even the petitioner considered it so and, therefore, the petitioner filed an application, seeking further direction and certificate for grant of leave to appeal before the Supreme Court in respect of the relevant date which should be applicable, while calculating the conversion charges. The Division Bench, while allowing Writ Petition No.12081 (MB) of 2009 vide judgment and order dated 17.5.2019, as mentioned above, has directed the respondents to consider the application of the petitioner for conversion of lease-hold to free-hold as per the ratio laid down by the Full Bench in *Anand Kumar Sharma's* case (supra). The issue has therefore, been finally decided and it is no longer *res integra*.

39. It is relevant to mention here that in Writ Petition No.9360 (MB) of 2007 filed by the original lessee (Company), the question of division of nazul land held by the original lessee and its transfer of lease-hold-rights vide deed of assignment dated 27.1.2007 in favour of the petitioner was not in issue. Therefore, the aforesaid judgment would not operate as res judicata on the aforesaid issue. Further, the petitioner was not a party in the aforesaid writ petition and, therefore, the aforesaid judgment would not have the binding effect on the respondents while taking decision on the petitioner’s application for conversion into freehold.

40. This Court in its judgment and order dated 17.5.2019 has not dealt with the issue of legality of division and transfer of the land by the original lessee in favour of the petitioner though, a specific plea was raised by the respondents, as mentioned above, that division and transfer of the lease-hold-rights in favour of the petitioner by the original lessee vide deed of assignment dated 27.01.2007 was illegal and non-est.

Further, it cannot be held that since the mutation has been effected in the revenue record in favour of the petitioner, the respondents have accepted the division and transfer of the property in favour of the petitioner. The respondents may seek review of the judgment and order dated 17.5.2019 passed in Writ Petition No.12081 (MB) of 2009 filed by the petitioner. The Court has no say in it and its for the respondents to decide their course of action based on legal advice. It would be suffice to say that *in limine* dismissal of the SLP vide order dated 25.10.2019 will not operate as affirmation by the Supreme Court or merger of the judgment and order dated 17.5.2019 with the order of dismissal of SLP *in limine* by the Supreme Court.

41. The question, which falls for consideration, is the maintainability of this writ petition, which in effect, is nothing, but an attempt on the part of the petitioner to seek a Mandamus for implementing the judgment and order dated 17.5.2019, and, further direction to calculate the conversion charges as applicable on 20.05.2009 against the mandate of law as laid down in *Anand Kumar Sharma's case (supra)*. The second question, which arises for consideration, is whether there has been a fresh cause of action for the petitioner to initiate second round of litigation by filing the present writ petition and, the third is whether the relief claimed in the second writ petition is barred by the principle of res judicata/ constructive res judicata.

42. Power of judicial review is a basic structure of the Constitution of India. Power of the High Court to review or recall its own order is inherent under Article 226 of the Constitution of India. The Supreme Court, as early as in 1963 in ***Shivdev Singh and others Vs. State of Punjab and others,*** AIR 1963 SC 1909, has held that Article 226 of the Constitution of India does not preclude a High Court from exercising power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors

committed by it. Paragraph 10 of *Shivdev Singh's* case (supra) is relevant and extracted hereunder: -

> *"**10.** The other contention of Mr Gopal Singh pertains to the second order of Khosla, J., which, in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."*

43. It is also well settled that a Mandamus cannot be issued upon an authority to act contrary to law as held by the Supreme Court in the case of ***Vice Chancellor, University of Allahabad and others Vs. Dr. Anand Prakash Mishra and others***, (1997) 10 SCC 264. Paragraph 13 of *Vice Chancellor, University of Allahabad and others* case (supra) reads as under :-

> *"13. It is the settled legal position that a mandamus cannot be issued to violate the law or to act in violation of the law. In this case, the direction issued by the High Court tantamount to a direction to the appellant to appoint the respondents as per the order issued by the Chancellor, in violation of the Act. The mandamus was, therefore, clearly illegal. The incumbent Vice-Chancellor cannot be found fault with as regards the implementation of the Act as per directions contained in it and the comments and the strictures made against the appellants by the High Court are unwarranted and uncalled for."*

44. Further, in the case of ***State of Uttar Pradesh and another v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti and others*****,** (2008) 12 SCC 675, it has been held that there is no estopple against a statute and, the High Court is bound to consider the applicable rules while considering the prayer of the retrenched employees. The statement/assurance or even an undertaking of an officer or the counsel is of no consequence and is irrelevant if the statutory rule/law does not support such undertaking. The High Court cannot issue a mandamus to the State or its instrumentality to act in violation of the statutory prescription. Paragraph 46 of *State of Uttar Pradesh and another's* case (supra) is extracted hereunder :-

> *"**46.** It is well settled that a court of law can direct the Government or an instrumentality of State by mandamus to act in consonance with law and not in violation of statutory provisions. Unless a court records a finding that act of absorption of all employees of the Corporation either in government department or in any other public sector undertaking is in accordance with law, no writ can be issued. Therefore, even on that ground, the directions of the High Court deserve to be set aside."*

45. Two situations may arise in case of non-implementation of a judgment and order passed in favour of the petitioner, who had approached the Court:

(i) an act by the respondents which is not in conformity with the order passed by the Court which would amount to be an act in violation of the Court's order and;

(ii) total inaction on the part of the respondents to comply with the order, a complete disobedience to the order of the Court.

The Supreme Court in the case of ***J.S. Parihar Vs. Ganpat Duggar and others, (***1996) 6 SCC 291 has held that when an order is passed on the basis of the direction issued by the Court but according to the petitioner it is not as per the direction issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum, but in such a situation, contempt would not lie. Paragraph 6 of *J.S. Parihar's* case (supra) would be relevant to extract hereunder :-

> *"**6.** The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench."*

46. The Supreme Court thus, has clearly held that an act or the order, as the case may be, although may not be in strict conformity with the order alleged to have been violated will afford the aggrieved person, a fresh cause of action to move the Court for judicial review. In the case of ***State of Haryana and others Vs. M.P. Mohla,*** (2007) 1 SCC 457, it has been

held that if a subsequent cause of action arises in the matter of implementation of a judgment, a fresh writ petition may be filed, as a fresh cause of action has arisen. It is in such cases only where an act/order is challenged on the ground that it is not in conformity with the earlier order, a second writ petition would be maintainable for effectively securing the same relief that had been claimed in the first round of litigation. Paragraph 32 of *State of Haryana and others* case (supra) is relevant for the said proposition, which is extracted herein under :-

> *"32. In this case the purported subsequent event is the filing of the contempt petition. The appellants' specific stand in the contempt petition is that the order of the Court stood complied with. If the order of the Court stood complied with, there was no subsequent event, which was necessary to be taken into consideration. Filing of an application under the provisions of the Contempt of Courts Act, 1971 itself cannot be a ground to deny the benefit under a judgment. It is one thing to state that the judgment of the court has been implemented, but it is another thing that the effect of the judgment is not that what was being contended by the respondent. It is in that sense, this Court times without number has laid down the law that such subsequent events may give rise to a fresh cause of action."*

In the aforesaid judgment, after relying on the judgment rendered in the case of J.S. Parihar (supra), it has been held that the subsequent cause of action may arise in the matter of implementation of a judgment for filing a fresh petition.

47. In ***Ram Chandra Singh Vs. Savitri Devi and others,*** (2004) 12 SCC 713, it has been observed that an application for clarification against the judgment cannot be taken recourse to achieve the result of a review application. What cannot be done directly cannot be done indirectly. It is not open to a party to the lis to ask for a clarification contrary to or inconsistent with its stand taken by it in the writ proceedings.

48. The Supreme Court in case of ***Board of Control for Cricket in India v. Netaji Cricket Club,*** (2005) 4 SCC 741,while dealing with scope and ambit of power of review of the High Court has held as under :-

> "***87.*** *Indisputably, an undertaking had been given by a learned Senior Counsel appearing on behalf of the Board. In the*

impugned order, the Division Bench before whom such undertaking had been given was of the opinion that it was misled. This Court having regard to the understanding of such undertaking by the Division Bench does not intend to deal with the effect and purport thereof as we are of the opinion that the Division Bench of the Madras High Court itself is competent therefor. If para 14 of the order of the learned Single Judge is to be taken into consideration, it is possible to contend that the learned Judges of the High Court were correct.

88. *We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.*

89. *Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.*

90. *Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".*

49. Learned Single Judge of the Calcutta High Court vide judgment and order dated 14.8.2015 passed in ***Writ Petition No.31291 (W) of 2014, Kazi Omar Ali Vs. State of West Bengal and others*** and, other connected writ petitions, has referred the following questions to the Larger Bench for determination in respect of the maintainability of the second writ petition

for implementation of an order passed in earlier round of litigation. The questions referred are as under :-

> *"1) If the order passed on the first writ petition, implementation whereof is sought in the second round of litigation, is found by the subsequent Bench to be contrary to law, would the Bench be justified in refusing relief pointing out the infirmities in the first order or should the Bench issue Mandamus thereby granting relief, on the principle that the Bench cannot go behind what is provided for and/or laid down and/or declared in the earlier order?*
>
> *2) Would a second writ petition be maintainable for implementation of an order passed on a previous writ petition, although such order is not shown to have been served on the respondents?*
>
> *3) Would a second writ petition be maintainable for implementation of an order after recourse taken by the petitioner to contempt proceedings for execution thereof ultimately turns out to be unsuccessful primarily on the ground that limitation has set in and, therefore, the concerned Bench is devoid of jurisdiction to proceed further with the contempt proceedings?*
>
> *4) Although this fact situation is not involved in any of the 4 (four) writ petitions being considered by me, it could well happen that while hearing a writ appeal an order dismissing a writ petition is reversed by the Division Bench and it proceeds to grant the relief claimed in such petition by issuing Mandamus; if the order of the Division Bench is not complied with by the respondents and a proceeding for contempt for execution of the order initiated before the Division Bench is found to be barred by limitation or no contempt is alleged within the period prescribed in section 20 of the Contempt of Court's Act, would a writ petition seeking implementation of such order be maintainable before the single Judge or such petition ought to be placed before the Division Bench for decision?"*
>
> I could not lay my hands on the decision of the Larger Bench of Calcutta High Court on the aforesaid issue. However, it would not detain me any further in deciding the present writ petition.

50. Here, the present writ petition has been filed alleging total inaction on the part of the respondents in implementing the judgment-dated 17.05.2019 and for further direction to calculate the conversion charges

with reference to a particular date i.e. 20.05.2009. The question is whether this writ petition is maintainable at all. A Division Bench of this Court in its judgment and order dated 7.5.2003 passed in ***Civil Misc. Writ Petition No.19692 of 2003, Ved Prakash Katiyar Vs. Member Secretary and another***, has held that the second and successive writ petition is not an appropriate and effective remedy for implementation of the order passed in earlier round of litigation. The special forum has been created under the Contempt of Courts Act read with Article 215 of the Constitution of India for implementing the judgment and, therefore, the party seeking implementation of the judgment in earlier round of litigation is required to approach the Contempt Court. The relevant excerpts of the aforesaid judgment is extracted hereunder :-

> *"As is evident from the facts of this case that the petitioner had already filed two successive writ petitions for the same relief and in second petition, certain direction was issued. Petitioner's grievance is that the said direction has not been complied with. In the instant case, even if this Court issues the direction in exercise of its power under writ jurisdiction, what is the guarantee that the respondents would ensure the compliance of it and in that case, also, the petitioner would have no option but either to file another writ petition or to file a contempt petition. Thus, we are of the considered opinion that the writ petition cannot be the appropriate and effective remedy in this case. The Legislature, in its wisdom, has created a special forum for it and the petitioner ought to have resorted to it within limitation under the provisions of the Contempt of Courts Act and if it had expired under the provisions of Article 215 of the Constitution of India within reasonable period thereafter."*

51. Considering the ratio of the aforesaid judgment, it is clear that successive writ petition is not maintainable for enforcement of an order passed by the Writ Court on an earlier occasion and such result can be achieved only by initiating the proceedings under the Contempt of Courts Act by filing an application for execution of the order. From perusal of the prayers of the earlier writ petition, i.e. Writ Petition No.12081(MB)/2009 and the prayers made in the present writ petition, it is clear that the relief

claimed by the petitioner is substantially the same. Therefore, the present writ petition is also hit by the principle of constructive res judicata, which is applicable to writ proceedings as well.

52. The Supreme Court in various decisions which have been considered in the decision reported in ***Om Prakash Verma and others Vs. State of Andhra Pradesh and others,*** (2010) 13 SCC 158 has held that adjudication is conclusive and binding not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided. The principle of res judicata and constructive res judicata is applicable to the writ jurisdiction as well. Paragraphs 75 to 78 of *Om Prakash Verma and others* case (supra), which are relevant, are extracted hereunder :-

> *"**75.** As pointed out by the learned Attorney General, the matter can be looked at from another angle. The proceedings in the instant case are barred by the principle of constructive res judicata. The validity of the ULC Act was squarely in issue. The effect of allowing the State appeals in Audikesava Reddy case [(2002) 1 SCC 227] is that all contentions which parties might and ought to have litigated in the previous litigation cannot be permitted to be raised in subsequent litigations.*
>
> ***76.** In Forward Construction Co. v. Prabhat Mandal [(1986) 1 SCC 100] this Court held that an adjudication is conclusive and binding not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided. The following portion of the judgment is relevant which reads as under: (SCC p. 112, para 20)*
>
> *"20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action*

both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided."

***77.** In Hoystead v. Taxation Commr. [1926 AC 155 : 1925 All ER Rep 56 (PC)] the Privy Council observed: (AC pp. 165-66)*

"... Parties are not permitted to begin fresh litigations because of new views that they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle."

***78.** As rightly observed by the High Court, what is of utmost relevance is the final judgment of the superior court and not the reasons in support of that decision. Apart from the legal position and the effect of allowing of the appeals and dismissing the writ petitions by this Court, the contention with regard to the land being agricultural land was raised in the writ petitions which were the subject-matter of the appeals filed in this Court. In these proceedings, the State categorically took the stand that the lands are not agricultural. It was brought to our notice that the present appellants as respondents in the earlier round did not urge this plea before this Court and no such arguments were advanced before this Court. In view of the same, the appellants are not entitled to raise any such contention now. The effect of allowing the said appeals is that WPs Nos. 18385 of 1993 and 238 of 1994 stood dismissed."*

53. This Court in the ***Ved Prakash Katiyar*** has categorically held that second and successive writ petition is not maintainable in case of non-compliance/inaction for implementation of the order passed in the earlier writ petition and the remedy would be Contempt of Courts Act, which is a special forum created by the statute read with Article 215 of the Constitution of India.

54. In view of the aforesaid discussions, I am of the view that the petitioner has misused the process of the Court; firstly by filing an application for further direction and to issue certificate for leave to appeal under Article 134 of the Constitution of India before the Supreme Court and, after exchange of pleadings, the petitioner has filed this writ petition in gross abuse of the process of the Court without pursuing the application to its logical end. The relief claimed by the petitioner in this writ petition is barred by principles of res judicata/constructive res judicata and, therefore, this writ petition is otherwise not maintainable. The petitioner has tried to pollute the stream of justice by resorting to tactical approach contrary to law by filing an application and finding the Bench inconvenient, during the pendency of the said application, the present writ petition has been filed. The relief claimed in this writ petition is over and above the relief claimed in the earlier Writ Petition No.12081 (MB) of 2009 and contrary to the decision of the Full Bench in *Anand Kumar Sharma's* case (supra).

55. In view thereof, I ***dismiss*** this writ petition with an exemplary cost of Rs.10,00,000/- (Ten Lakhs) to be deposited in the Chief Minister's Distress Relief Fund-COVID Care Fund, U.P. within a period of one month.

56. In view of conflicting views in two judgments, one by myself and the other by my learned esteemed brother Hon'ble Pankaj Kumar Jaiswal, J., the following questions need to be decided by a Larger Bench:-

i). whether the subsequent Writ Petition No.8870 (MB) of 2020 filed by the petitioner after final judgment dated 17.05.2019 passed in Writ Petition No.12081 (MB) of 2009 is an abuse of process of the Court, as before filing the Writ Petition No.8870 (MB) of 2019, the petitioner has filed Civil Misc. Application No. 87559 of 2019 for further direction and issuance of certificate for leave to appeal before the Supreme Court under Article 134 of the Constitution and during the pendency of the said application, the present writ petition has been filed?

ii). whether the second Writ Petition No.8870 (MB) of 2020 filed by the petitioner is maintainable in view of the fact that the petitioner is seeking implementation of the judgment and order dated 17.05.2019 passed in Writ Petition No.12081 (MB) of 2009? and,

iii). whether the second Writ Petition No.8870 (MB) of 2020 is barred by the principle of res judicata/constructive res judicata in view of the fact that while allowing Writ Petition No.12081 (MB) of 2009 vide judgment and order dated 17.05.2019, the respondents have been directed to process the application of the petitioner for conversion of lease-hold-rights into free-hold, in accordance with law laid down by the Full Bench in *Anand Kumar Sharma's* case (supra) and, thus, the issue regarding the relevant date for conversion charges was very much involved in Writ Petition No.12081 (MB) of 2009.

57. The Registry is directed to place the complete file before Hon'ble the Chief Justice for constituting a Larger Bench for deciding the questions, referred to herein above.

[D.K. Singh, J.]

Order Date:- 26th August, 2020

MRP/-

NOTE :

It is to be noted that the instant judgment has been dictated and signed by Hon'ble Mr. Justice Dinesh Kumar Singh. In this matter, a separate judgment of the same date has been dictated and signed by Hon'ble Mr. Justice Pankaj Kumar Jaiswal.