State Of U.P. & Ors vs United Bank Of India on 26 November, 2015

Equivalent citations: 2015 AIR SCW 6510, 2016 (2) SCC 757, 2016 (1) ALJ 293, AIR 2016 SC (CIVIL) 52, (2016) 131 REVDEC 250, (2016) 1 CLR 120 (SC), (2016) 1 MAD LJ 181, (2015) 12 SCALE 704, (2016) 1 WLC(SC)CVL 313, (2016) 158 ALLINDCAS 165 (SC), (2016) 2 ADJ 32 (SC), (2016) 115 ALL LR 1, (2015) 6 ALL WC 6209, (2015) 4 CALLT 58

Bench: C. Nagappan, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5254 OF 2010

State of Uttar Pradesh and others Appellant(s)
versus
|United Bank of India and others Respondent(s) |

WITH

CIVIL APPEAL NO. 4688 OF 2010

M/s. Amrita Bazar Patrika Pvt. Ltd. Appellant(s)
versus
M/s. Jvine Development Pvt. Ltd.
and others Respondent(s)

CIVIL APPEAL NO. 2462 OF 2010

United Bank of India Appellant(s)
versus
M/s. Jvine Development Pvt. Ltd.
and others Respondent(s)

CIVIL APPEAL NOs. 1969-1970 OF 2010

Northern India Patrika A.P.K.S. Morcha Appellant(s)
versus
United Bank of India and others Respondent(s)

J U D G M E N T

| |

|M.Y. Eqbal, J.: |

Since all these appeals arise out of a common judgment and order dated 3.11.2009, they have been heard together and disposed of by this common judgment.

2. By the impugned judgment dated 3.11.2009 passed by a Division Bench of the Allahabad High Court, the writ petition filed by the writ petitioner United Bank of India was allowed and necessary directions were issued. Aggrieved by those directions, the appellants have come to this Court.

3. In the writ petition No.775 of 1999, the writ petitioner namely United Bank of India sought the following reliefs:

> "a) issue a writ, order or direction in the nature of certiorari quashing the impugned show cause notice dated 19.12.1998 contained in Annexure '6' to this writ petition.
>
> b) issue a writ, order or direction in the nature of prohibition restraining the respondents from canceling the lease with regard to property no.19, Clive Road, Allahabad.
>
> c) issue a writ, order or direction in the nature of prohibition restraining the respondents from converting the lease of property no.19, Clive Road, Allahabad, into free hold in favour of any other person.
>
> d) issue a writ, order or direction in the nature of mandamus directing the respondents nos.1 to 4 to accept the application and money for conversion of lease hold rights with regard to property no.19, Clive Road, Allahabad, into free hold, as per Government order dated 4.12.1998, contained in Annexure '7' to this writ petition in favour of the petitioner bank.
>
> e) issue a writ, order or direction in the nature of mandamus directing respondents nos.1 to 4 to renew the lease in respect of the premises No.19, Clive Road, Allahabad, and to execute the necessary lease deed with reference to the decretal rights of the petitioner bank.
>
> f) Issue any other suitable writ, order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case."

4. The facts of the case in brief as narrated in the writ petition are that the property in question i.e. Bungalow no.19, Clive Road, Allahabad was initially leased out to one Ms. Mortha Anthony on 11.8.1887 for 50 years and the said period expired on 11.8.1937. On 7.4.1945, the lease was renewed in favour of Miss Verna Anthony and Miss Leena Anthony for another 50 years by the Collector Allahabad, for the Governor of United Provinces, which was made effective from 1.9.1937, and as such, the said lease was valid up to 31.8.1987. Subsequently, on 22.10.1945, the lease was

transferred in favour of M/s. Amrita Bazar Patrika Pvt. Ltd. (in short, "the ABP Company") by means of a registered deed. On the basis of the said transfer deed, a lease deed was executed on 25.07.1949 by the State of Uttar Pradesh in favour of the ABP Company for 50 years from the first day of September 1937 in pursuance of G.O. No.1286/XI-780/45 dated 22.03.1947. Consequent thereupon, the name of the Company was mutated as lessee in respect of the property situated at 19, Clive Road, Allahabad in the Nazul property register. The ABP Company, having its registered office in Calcutta, its Managing Director has been carrying on two businesses of publishing newspapers from Calcutta as well as from Allahabad and other regional offices all over the country. The Company owns two properties at Allahabad being premises no.19, Clive Road, Allahabad and premises no.10, Edmonston Road, Allahabad.

5. Further the case of the appellant is that the United Bank of India (in short, "the Bank") had advanced credit facilities to the Company M/s ABP Pvt. Ltd. and the said Company had taken loan for the purposes of giving salaries to their staff as well as to modernize its printing technology for which the company alleged to have mortgaged their immovable properties at Calcutta and Allahabad, including leasehold property situated at 19, Clive Road, Allahabad by means of deposit of title deeds. Since the Company became irregular in paying the loan instalments, the Bank issued a demand notice calling upon the Company and others to pay the outstanding dues. Thereafter, for recovery of its dues, the Bank had filed a Suit No. 510 of 1990 at Calcutta High Court in the capacity of mortgagee of the various properties of the said Company including 19, Clive Road, (25 and 25- A Chikatpur Nasibpur Bakhtiyara), Allahabad, which was held by the said Company as lessee. The said suit was decreed on 09.10.1991 and a mortgage decree was passed in favour of Bank. It would be relevant to mention here that the paramount title holder namely the State of Uttar Pradesh was not made party in the suit and the mortgage decree was passed on the basis of settlement arrived at between the parties.

6. Some of the important terms of the settlement upon which the Bank's suit was decreed, inter alia, are as follows:-

> "(a) There will be a decree for Rs.10,84,34,870.37 in favour of the plaintiff and against the defendant nos. 1, 2, 3 and 7.
>
> (b) There will be a decree for interest on the decretal due of Rs.10,84,34,870.37 at 6% per annum simple from August 21, 1991 till realisation of the decretal dues and in terms of clause 17 herein below.
>
> (c) There will be a decree for costs assessed at Rs.2,31,442.08. Such costs shall be paid on or before December 31, 1991.
>
> (d) There will be a decree for Rs.33,30,000/- of the plaintiff against defendant no.8 with interest at 6% per annum simple from August 21, 1991, till realisation of the decretal dues and in terms of Clause 17 herein.

This amount, however, is included in the amount stated in paragraph (a) hereinabove.

(e) There will be a declaration that the suit properties mentioned in Annexure K to the plaint, a copy whereof is annexed hereto, remain hypothecated and the immovable properties mentioned in Annexure L to the plaint, a copy whereof is annexed hereto, remain mortgaged to the plaintiff as securities for the payment of the decretal dues with interest and costs, as provided hereinabove.

(f) There will be a decree for sale of the hypothecated assets mentioned in Annexure K to the plaint for payment of the decretal dues. Such sale, however, shall not be effected except as provided hereinafter or unless and until there is a default in payment of the decretal dues in the manner, as provided hereinafter.

(g) There will be a preliminary-cum-final decree for sale of the mortgaged properties mentioned in Annexure L for payment of the decretal amount with interest and costs, as provided hereinafter, but such sale shall not be effected except as provided hereinafter or in the event of default in payment of the decretal dues in the manner, as provided hereinafter.

(h) The Joint Receivers will take symbolical possession of the suit properties and they will not disturb the possession of the said defendants with the carrying on the business of the said defendants-judgment debtors unless requested by the plaintiff."

7. The Bank alleged that it had further granted credit facilities to the ABP Company on the request made by it along with four other banks in order to rehabilitate the Company. In the meanwhile, the Additional District Magistrate (F & R) Allahabad issued a show cause notice dated 19.12.1998 to the Company M/s. ABP Pvt. Ltd. as to why their lease right over 19, Clive Road, may not be terminated. The lessee namely M/s ABP Pvt. Ltd. did not challenge the notice. The appellant on the basis of the mortgage decree challenged the notice by filing Writ Petition No. 775 of 1999 for quashing the above show cause notice. The Bank further requested that as per the G.O. dated 01.12.1998 issued by the State Government, which lays down a detailed policy along with various provisions about entitlement for getting conversion of lease land into free hold status, the property situated at 19, Clive Road may be converted into free hold. The Bank as a mortgagee decree holder and as a nominee of the lessee Company subsequently submitted an application along with relevant challans in respect of part-payment of free hold charges depositing a sum of Rs.21,85,200.00 on 15.06.1999 in the State Bank of India, Allahabad Main Branch. Moreover, in paragraphs 14, 16 and 22 of the counter affidavit filed by the Company in Writ Petition No.775/99, it has been admitted that the appellant Bank is their nominee.

8. Curiously enough, when the terms of the mortgage decree was not complied with inasmuch as the decretal amount was not paid to the Bank by the mortgagor-ABP Company, the Bank filed an application in the Calcutta High Court for transfer of execution applications to the Debt Recovery Tribunal for issuance of recovery certificates. Upon such transfer the cases were registered before the Debt Recovery Tribunal, Calcutta.

9. Surprisingly enough, before the DRT, Calcutta, a settlement was entered into between the parties. Before the DRT, five banks viz., United Bank of India, Allahabad Bank, Bank of Baroda, Canara Bank, Punjab National Bank, were the applicants and ABP Company (mortgagor) and guarantors

were the respondents. Here also, the State of U.P. was not a party to the debt recovery proceeding. On the basis of consent of the parties the Debt Recovery Tribunal passed an order on 11.02.2004. The relevant portion of the order dated 11.02.2004 passed by the DRT is quoted hereinbelow :-

> "Heard the parties and examined the contents of the joint petition and the records filed. The aforesaid cases are disposed of on the basis of the settlement in the following way:-
>
> By consent of the parties application being O.A. No.192 of 1997 is disposed of by the issuing certificate and directing the defendants jointly and severally, to pay:
>
> Rs.6,54,221.00 to applicant no.1 Rs.2,13,62,183.04 to applicant no.2 Rs.2,02,31,071.21 to applicant no.3 Rs.2,07,70,640.81 to applicant no.4 Rs.1,98,25,365.55 to applicant no.5 The defendants are directed to pay to each of the applicants interest at the agreed rate from August 27, 1997 till realization. In default of payment Recovery officer is directed to sell by public auction or private treaty the hypothecated assets, mortgaged properties and charged assets of the respondents including those mentioned in Annexure 'G' and 'H' by public auction or by private treaty. Defendants are also directed to pay the cost of the proceedings jointly and severally to each of the applicants.
>
> 2) By consent of the parties application being OA No.193 is disposed of by issuing certificate and directed the defendants jointly and severally pay Rs.13,58,804.27 to applicant no.1 Rs.1,42,52,371.48 to applicant no.2 Rs.1,71,03,802.70 to applicant no.3 Rs.1,64,10,410.96 to applicant no.4 Rs.1,61,79,866.01 to applicant no.5 Interest at the agreed rate from 27.8.1997 till realization In default of payment the Recovery officer is directed to take proceedings for recovery of the certificate debt including the sale of the mortgaged and charged assets described in scheduled 'G' and 'H' by public auction for private treaty.

Defendants are also directed to pay the cost of the proceedings jointly and severally to each of the applicants.

3) By consent of the parties application being 275 of 1997 is disposed of by issuing certificate directing the defendants jointly and severally to pay :-

> Certified sum Rs.2,57,61,088.94 against the defendants. Defendants are directed to pay to the applicant interest at the agreed rate from 11.12.1997 till the amount is repaid.
>
> In default of payment, the Recovery Officer is directed to sell by public auction or private treaty the hypothecated assets of the respondents including in those mentioned in Annexure X by public auction or private treaty.

Defendants are directed to pay the cost of the proceedings jointly and severally to the applicant.

4) In TA/18/97 and TA/19/97 this Tribunal has already issued the certificate for recovery in favour of the applicant bank. The defendants have admitted these certified claims.

5) The parties have agreed to settle the decretal amounts of United Bank of India (T.A.No.18 of 1997, T.A. No.19 of 1997), and the claims of the applicant banks in OA No.192 of 1997, OA No.193 of 1997 and OA No.275 of 1997 in the following manner:

The consortium banks have agreed to settle their respective claims against the defendants by accepting the following amounts by 30th June, 2004.

Rs. 2439.65 lakhs by United Bank of India

ii) Rs.304.35 lakhs by Canara Bank.

(iii) Rs.303.13 lakhs by Bank of Baroda

(iv) Rs.228.16 by Allahabad Bank

(v) Rs.230.67 lakhs by Punjab National Bank

vi) Rs.57 lakhs towards legal expenses incurred by the consortium banks."

10. Not only that, by the said order a committee consisting of receiver was appointed with a direction to take possession of all hypothecated assets and mortgaged properties and dispose of the same in the following manner:-

"xxxxxx

(c) Out of the sale proceeds of hypothecated assests and mortgaged properties as contained in Annexure I & II of today's joint petition the committee pay:

i) 40% to the Applicant banks (consortium banks)

(ii) 40% of the sale proceeds of the assets will be paid to the workers/employees towards their dues to the maximum extent of Rs.15 crore.

(iii) 20% of the sale proceeds will be utilized by the said three companies for meeting various dues of other creditor."

11. It appears that pursuant to the order dated 11.02.2004 an auction sale notice was published on 17/18.5.2004 in respect of the immovable property situated at Clive Road, Allahabad, inviting prospective purchasers to participate in the auction sale of the property allegedly mortgaged to the appellant United Bank of India.

12. In pursuance to the aforesaid sale notice, one M/s. Jvine Development Pvt. Ltd. and several other persons deposited the earnest money and the offer of Jvine Development Pvt. Ltd. was finally accepted and they were asked to deposit 25 % of the bid amount within 15 days and remaining 75% within 3 months. Although the said Jvine Development Pvt. Ltd. deposited the 25 % amount, it did not deposit the remaining amount. The Jvine Co. then asked the Bank to first get the said property converted into freehold or have a transferable right in respect of the said property. Thereafter, a show cause notice was issued by the Bank upon the Jvine Development Pvt. Ltd. on 30.09.2004. In this connection, a writ petition was filed by the Company before the High Court and the High Court stayed the show cause notice.

13. The District Magistrate, Allahabad rejected the application of the Bank for grant of free hold right in respect of the land in question i.e. 19, Clive Road, Allahabad on the ground that Bank does not come within the eligibility criteria under G.O. dated 01.12.1998. Pursuant to the order passed by the District Magistrate, Allahabad, the Bank made a representation to the State Government on 30.08.2005 under Paragraph 7 of G.O. dated 17.02.1996 merged in G.O. dated 01.12.1998 for passing orders for grant of free hold rights. It was argued by the writ-petitioner before the High Court that the legal opinion sought by the State Government from its Law Department in the aforesaid matter has also recommended that the said property may be converted into freehold but the District Magistrate, Allahabad did not pay any heed to the aforesaid opinion as well as on the recommendation given by the State Government. Before the High Court, it was pleaded by learned counsel for prospective auction purchaser Jvine Development Ltd. that after the decree of Calcutta High Court and subsequent order of Debt Recovery Tribunal, Kolkata all the rights, title and interest of M/s. Amrit Bazar Patrika Pvt. Ltd. ceased and it vested with the Bank and the Bank had acquired first charge over the aforesaid property. As per the order of Debt Recovery Tribunal, Kolkata, a sale committee was formed, which started its function by calling bids for the aforesaid property. Accordingly, a sale notice was published on 18.5.2004 in 'The Times of India' in respect of the immovable properties situated at 19, Clive Road, Allahabad. In reply to this auction sale notice, the writ- petitioner deposited the earnest money by way of bank draft and also submitted the tender.

14. The State of U.P. for the first time after having come to know about all the aforementioned developments when it was made party in the writ petition, filed a detailed counter affidavit. According to the State of U.P. the suit property is a Nazul Land No. 25 and 25A which was given on lease to ABP and the period of lease expired on 31.08.1987 and on account of expiry of the lease and for violation of the terms of lease a show cause notice was issued on 14.05.1999 for resumption of the property. The case of the State of U.P. is that the proposed decision for renewal of lease was not given effect to and the same was finally rejected by order dated 09.05.2005.

15. The Division Bench of the High Court allowed the writ petitions preferred by the Bank and M/s. Jvine Development Pvt. Ltd. The operative portion of the order passed by the High Court is quoted

hereinbelow :-

> "....An important aspect of the case is that the judgements of Hon'ble Calcutta High Court and Debt Recovery Tribunal, Kolkata also deal with welfare of the workers of the Company and 40% of the auction amount is directed to be released in favour of workers. The abovementioned judgements of Hon'ble Calcutta High Court and the Debt Recovery Tribunal, Calcutta were never challenged by the State Govt., though it was well within the knowledge of its authorities.
>
> In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit - an act of court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases.
>
> xxxxxxx xxxxxxx From the ongoing discussion and submission advanced before us and also taking into account the equity, the legal opinion of the law Secretary and undue delay in disposal of the free hold application by the State, we are of the view that writ of mandamus be issued to the respondents to convert the land in question as free hold in favour of the Petitioner- Bank. In the result, the writ petition is hereby allowed and the show cause notice dated 19.12.1998 is hereby quashed. The respondents are hereby directed by the writ of mandamus to issue a demand notice forthwith and convert the land in question into free hold after taking the necessary 75 % balance amount from the petitioner-bank as per the G.O. dated 1.12.1998. Furthermore, the connected writ petition No.46115 of 2004 is allowed and the impugned notice dated 30.9.2004 is hereby quashed and the respondents are directed to transfer the land to the petitioner company after receipt of remaining balance amount of 75 % as per the terms of the auction. The Land is transferred in the name of the Bank, it is made clear that respondents shall raise the demand of remaining 75 % as soon as the land is transferred in the name of the bank."

16. Before we proceed to decide the issue involved, it would be appropriate to narrate the following facts which are not in dispute:-

> "i) The property in question i.e., Bungalow No.19, Clive Road, Allahabad in the State of U.P. was initially given on lease dated 11.08.1887 to Ms. Mortha Anthony for a period of 50 years commencing from 11.08.1887 ending on 11.08.1937. The said lease was renewed for another term of 50 years on 7.4.1945 by the Government of United Province of Allahabad. The said lease was scheduled to expire on 31.8.1987;

ii) Before the expiry of lease the lessee viz., Ms. Mortha Anthony, transferred the leasehold property on 22.10.1945 in favour of appellant- Amrit Bazar Patrika Private Limited (for short ABP).

Consequent upon the transfer the lease deed was executed by the Secretary, Government of U.P. in favour of ABP on 25.7.1943 for the remaining period of lease;

iii) Although the lease granted to the ABP expired on 11.8.1987, the lessee ABP moved an application in the year 1996 before the State Government for renewal of the lease in their favour. The said application was considered and an order of proposed sanction for renewal of lease was take subject to proof of payment of dues and execution of a renewed lease deed on fulfillment of conditions. However, no such renewed lease deed was executed by the State of U.P. after the expiry of period of lease i.e., 11.8.1987;

iv) A show cause notice dated 19.12.1998 was issued by the State government calling upon the lessee namely ABP to show cause as to why possession of the leased property be not taken by the Government as per the Government Grants Act, 1895."

17. Curiously enough, lease was granted by the State of U.P. in respect of the said property situated in Allahabad in the State of U.P. but the appellant-ABP moved an application before the Special Secretary, Land Reforms Department, Urban Land Ceiling Branch, Government of West Bengal, in the year 1997 seeking exemption under Section 20 and 21 of the Land Ceiling Act, 1976 and submitted a proposal for construction of residential unit on the portion of the land for the use of financially backward class and also sought permission for using the land. The concerned Land Reforms Department without appreciating the fact that the land and building was owned by the State of U.P., issued a conditional order granting exemption from Urban Land Ceiling Act and also granted permission for construction of the building. This fact was never brought to the notice of the government of U.P. either by the lessee ABP or by the concerned Land Reforms Department of State of West Bengal.

18. Mr. Irshad Ahmad, learned AAG for the State of U.P., Mr. Rajesh Kumar, learned counsel for the Bank, Mr. Rakesh Dwivedi, learned senior counsel, Mr. V. Shekhar, learned senior counsel, Mr. Awanish Sinha, Mr. Rishi Kesh, learned counsel appearing for the appellants and the respondents, advanced their arguments.

19. We have gone through the facts of the case and the documents which reveal that in Case No.510 of 1990 filed by the appellant-Bank before the Calcutta High Court, the State of U.P. and the Collector were not made parties although the property in question being the Nazul property under the ownership of the State of U.P. Hence, the appellant had filed a case before the High Court of Calcutta by concealing the facts and as such the order dated 09.10.1991 is not binding upon respondent nos. 1, 2 and 3. It has been specifically mentioned in the mortgage decree that the decree will not be binding to persons who are not parties. Extract of the order dated 09.10.91 passed by the Calcutta High Court by which the suit was decreed in terms of the settlement is reproduced hereinbelow :-

> "xxxx The court: the defendants Nos. 1,2,3,7 and 8 have entered into an agreement with the United 'Bank of India in terms of the settlement which have been signed by the defendants as also on behalf of the plaintiff and their respective advocates on

record.

These defendants submitted to a decree in favour of the plaintiff.

Under those circumstances this Court as per the terms of settlement agreed upon by and between the parties passes a decree in terms of the settlement filed. However, this decree will not affect the interest of any of the parties other than the parties to the settlement.

This court appoints as per suggestion of the plaintiff Bank Mr. Abhijit Roy, Deputy General Manager, Reconstruction (Counselling), United Bank of India, 16, Old Court House Street, Calcutta together with a senior member of the bar, Dr. Debi Prasad Pal as joint Receivers.

In view of the order passed by this Court in the suit there will be no order on this application taken out by Mr. B.K. Chatterji's client for being added as a party defendant to the suit.

All parties including the Joint Receivers are to in a signed copy of the minutes of this order on undertaking.

xxxxx"

20. It is submitted by the State that respondent-ABP has mortgaged the property in question in favour of the appellant, by way of equitable mortgage but in support of its case, the appellant-Bank has not filed any document. It is also important to mention here that the Nazul Land No.25 and 25A, Chikatpur Nasibpur Bakhtiara (situated at 19, Clive Road), and the Nazul Land No.120-1/2 Civil Station which is situated at 10, Edmoston Road, being the Nazul properties, are the properties of the Government of Uttar Pradesh. Hence, the respondent-ABP was not having any authority to mortgage the same in favour of appellant without prior sanction of the Government of U.P. or the lessor. It is important to note here that the appellant has intentionally did not make respondent nos. 1,2,3 as party in Case No.510/1990, hence orders passed in that case are not binding upon the said respondents.

21. It is pertinent to mention here that the land in dispute being a Government property, the appellant-Bank cannot get any right over it.

Moreover, neither the appellant-Bank is a lessee of the land in question nor any lease has ever been sanctioned by the Govt, of U.P. in its favour. Hence, the appellant is not entitled to get any right or to keep possession of the properties in question situated at 19, Clive Road and 10, Edmoston Road.

22. The contention of the appellant-Bank is that only on the basis of the notice issued on 9.12.1998, the appellant cannot be deprived of its rights. It is pertinent to mention here that the above notice

was not issued to the appellant Bank, but was issued to the Secretary/Director of M/s ABP Pvt. Ltd. vide letter No. 56/Nazul-(CL)-XXI-8/11(96-97) dated 19th December, 1998 in relation to the Nazul land No.25 and 25A, Chikatpur, Nasibpur Bakhtiara. Hence, the appellant is not competent to file any petition and challenge the above notice. It is worthwhile to mention that the above show cause notice was issued on the ground of violation of the terms of lease for which a reply was filed by Shri B.P. Tiwari, Secretary of M/s ABP Co. Ltd. dated 13.01.1999. This Court vide order dated 8.1.1999 in the writ petition has stayed further proceedings of the above show cause notice issued on 19.12.1998. It is also worthwhile to mention here that in the case of Nazul Land No.120-1/2 Civil Station (which is situated at 10, Edmoston Road), on violating the terms of lease by raising illegal construction without prior sanction and for other irregularities, a show cause notice vide letter No.448/Nazul-(CL)-XXI-8/51(80-81) dated 14th May, 1999 was sent to the Director/Secretary of M/s ABP Pvt.Ltd through registered post and its reply was given by Shri B.P. Tiwari, Secretary, ABP Pvt. Ltd. on 27.5.1999 and in that reply no justified reasons have been given by the Secretary of the above Company for the violation of the terms of the lease by unauthorisedly raising construction and for unauthorisedly running a workshop for repairing LML Vespa Scooter. Hence, after thorough consideration when it was found that the issuance of new lease in favour of M/s ABP was not in accordance with rules, the name of M/s ABP was cancelled from the above land vide order No. 47/Nazul-CL-XXI-8/51(80-81), dated 9th May, 2005 and the entire area of Nazul Land No.120-1/2 Civil Station has been vested with the Government of Uttar Pradesh. Admittedly, no notice was issued to the appellant Bank by the State. Hence, the appellant was not aggrieved by these notices in any manner. Neither the appellant-Bank is having any relation with both the lands in question nor any lease of the above land has ever been sanctioned in its favour.

23. In Civil Appeal Nos.1969-1970 of 2010, filed by Northern India Patrika Amrit Prabhat Karamchari Sanyukt Morcha against the same impugned order of the High Court mainly on the ground that they were employees of M/s. Amrit Bazar Patrika Ltd. and have their legitimate dues against the ABP Company, the appellants have raised objection with regard to the order passed by the High Court giving direction to the State Government to convert the Nazul land as free hold land in favour of the Bank. According to this appellant, the Bank is not entitled to get the land converted into free hold land.

24. In Civil Appeal No. 4688 of 2010, the lessee, namely ABP, is also aggrieved by the impugned judgment passed by the High Court mainly on the ground inter alia that the auction of the property in question is absolutely on a very less price and is erroneous. According to the appellant, the High Court erred in law in not permitting respondent nos.2 & 3 to forfeit the earnest money of respondent no.1 Company on the ground that the said Company has breached terms of the auction without any valid justification.

25. In Civil Appeal No.2462 of 2010, the appellant Bank is aggrieved by that part of the judgment of the High Court whereby the High Court failed to appreciate that after conversion of the properties from the leasehold to freehold, the land in question will fetch more price which will benefit the interest of the Bank and the workers. So many other grounds have also been taken by the appellant.

26. There is no dispute that the land and building in question is Nazul property being the property of Government maintained by the State authorities in accordance with the Nazul Rules. Chapter 1 of the Nazul Rules lays down the provision for maintenance of Nazul register, procedure for entering names of persons in possession of Nazul land and building.

27. Rule 13 provides the procedure for sale or lease of Nazul land, whereas Rule 16 makes it mandatory for obtaining prior approval of the State Government before sale or lease or renewal of leases of nazul lands. Rule 13, 14 and 16 are quoted herein below:-

> "13. Sale or lease of nazul lands- The sale lease of nazul shall in all cases be carried out under the Collector's orders and when it is proposed to lease or sale nazul, in the occupation of any department, other than the Revenue Department, the nazul shall be transferred to the Collector for the purpose of lease or sale:
>
> Provided that before the nazul in the occupation of a department is transferred to the Collector for disposal it shall be the duty of the department concerned to ascertain whether the nazul in question is required by any other department of Government.
>
> 14. Sale or lease of a plot for building purposes shall, subject to provisions of Rule 16, be sanctioned by-

(1) the Collector, if the estimated value does not exceed Rs. 2,500; (2) the Commissioner, if the estimated value exceeds Rs. 2,500 but does not exceed Rs. 10,00.;

(3) the State Government in other cases.

In such cases, the terms of sale or lease as finally arranged, shall be subject also to confirmation by the Commissioner or the State Government as the case may be, unless the terms have already been set forth in the proposal for sale or lease and have been approved. Copies of orders sanctioning sale of nazul property shall be forwarded to the Accountant General, Uttar Pradesh.

16. In all cases, whether of sale or of new leases or of renewal of leases which have expired without option of renewal, which involve a concession in favour of the vendee or the lessee e.g. in which it is proposed to fix the sale price or the rent at a rate lower than the prevailing market rate or in which it is propsed to sell or lease the land without holding a public auction or inviting public tenders, prior approval of the State Government shall be obtained before sanction even though such cases, owing to the value of the land being within the limits laid down in the rules, could otherwise be sanctioned without reference to the State Government."

28. Indisputably the lease of Nazul land is governed by the Government Grants Act, 1895. Sections 2 and 3 of the Government Grants Act, 1895 very specifically provide that the provisions of the Transfer of Property Act do not apply to Government lands. Sections 2 and 3 read as under:

> "2. Transfer of Property Act 1882, not to apply to Government grants

> - Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favor of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.
>
> 3. Government Grants to take effect according to their tenor - All provisions, restrictions conditions and limitations ever contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law stature or enactment of the Legislature to the contrary notwithstanding. "

29. The aforesaid legal position was known to the ABP Company and also the Bank. In reply to the application filed by the Bank with the authorities of the State of Uttar Pradesh for conversion of the land into free hold land in favour of the Bank, the Authority made it clear that conversion of land cannot be allowed in favour of the Bank. The relevant portion of the Collector's order is extracted hereinbelow:

> "It is also pertinent to mention here that the lease of Nazul land is sanctioned under the provisions of Government Grants Act, 1895 on which the provisions of Transfer of Property Act, 1882 are not made applicable, as such the act of mortgaging the above property by the management of the M/s. Amrit Bazar Patrika is without any authority and is illegal. Nazul land is a government property, which is fully vested in the Government of Uttar Pradesh. Hence even on mortgaging the said property in question by M/s Amrit Bazar Patrika without getting prior sanction of its Lessor/Collector, Allahabad, the United Bank of India has no authority to get it converted into free hold in their favour."

30. The lease of Nazul land for building purposes was sanctioned under G.O. No. 2035/IX-150 dated 27th November, 1940 as amended by G.O. No. 1119- IX/54-1952 dated 25th June, 1952. The form of lease is provided in Form 2 in the Appendix to the said rule according to the terms and conditions of the lease. The lessee will not in any way transfer or sublet the demised premises or building erected thereon without the previous sanction in writing of the lessor.

31. In the instant case, the renewal of lease dated 25th July, 1940 was prepared as per Form 4 of the Nazul rule. The said lease was renewed in accordance with the terms, conditions and covenants contained in the prescribed forms appended to the said rules.

32. The primary question which needs consideration is as to whether there is a valid mortgage created by the ABP Pvt. Ltd in favour of the Union Bank of India?

33. As stated above the disputed property, which is a Nazul Land and governed by the Government grant, was given by way of Renewal of Lease to the ABP Co. for 50 years w.e.f. 1st September 1937, which expired on 31st August 1987. Admittedly, ABP Co. mortgaged the said Nazul land in favour of the Bank, in which the ABP Co. had only a leasehold interest in the property. There is nothing on

record which shows as to when the alleged mortgage was created by the ABP Co. in favour of the Bank. If we assume that the mortgage was created before the expiry of the lease i.e. before 31st August 1987 then as per the Form 2 read with Form 3 which governs conditions for renewal of lease of the Nazul Rules any transfer or sub- lease by the ABP Co. had to be done with the previous sanction of the State, but in the present case not a single document is produced to show that any such sanction was obtained by the ABP from the State.

34. It is admitted fact that the suit property is the Nazul Land, and as per the definition of Nazul, as provided in the Rule 1 of the Nazul Rules, it means any land or building which, being the property of Government is not administered as a State Property.

35. Admittedly, lease was renewed in favour of M/s. ABP Co. as per the Government order in accordance with the rules mentioned in the Rules 13 to 16 of the Nazul Rules read with Form 3 of the Nazul Manual which talks about Renewal of a Lease.

36. In Form 3 of the Nazul Manual it is mentioned in the renewal lease deed that "In pursuance of the premises the lessor hereby demises upto the Lessee all and singular the hereditaments and premises comprised in and demised by the within the written lease, now standing thereon with the same exceptions and reservations as are therein expressed to hold unto the Lease..... and subject to and with the benefit of such and the like lessee's and Lessor's convenants respectively and the like provisions and conditions in all respects (including the proviso for re-entry) as are contained in the within written lease.

37. This "within written lease" is the original lease deed as mentioned in the Form 2 of the Nazul Manual. Form 2 of lease of Nazul land for building purposes it is one of the condition between the lessor and the lessee that " the lessee will not in any way transfer or sublet the demised premises or buildings erected thereon without the previous sanction in writing of the lessor".

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

39. In the present case the appellant-Bank, which is a nationalized bank before lending public money by way of loan as against the security of disputed property by way of depositing title deed, was supposed to verify the title of the mortgagor in respect of the disputed property. But neither any evidence nor a single sheet of paper has been produced by the Bank to show that the title of the mortgagor was verified and non-encumbrance certificate in respect of disputed property was obtained or no objection from the State Government was taken by the Bank. Further, even if we hold that the mortgage was valid, in the cases of government grant, the government is very much a necessary party and the Calcutta High Court should not have passed the so called compromise mortgage decree without issuing notice to the Government. This is an infirmity done by the High Court and accordingly the mortgage decree is bad in law. Moreover, the High Court should have

taken into account the fact that the ABP Co. is only have the leasehold interest and the Bank could not have been given right to auction the property as the ABP had only limited right which had expired in the year 1987.

40. The High Court of Allahabad also erred in giving the direction to convert leasehold interest as freehold interest in favour of the Bank by applying the doctrine of legitimate expectation for issuing the writ of mandamus against the State, which in our view is not the correct approach of the High Court. The High Court relied on two decisions of this Court, one of which is the case of Ram Parvesh Singh vs. State of Bihar, (2006) 8 SCC 381, wherein the Court held that:-

> "15. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term 'established practice' refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a 'legitimate expectation' of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above 'fairness in action' but far below 'promissory estoppel'. It may only entitle an expectant : (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, courts may grant a direction requiring the Authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bonafide reason given by the decision-maker, may be sufficient to negative the 'legitimate expectation'.
>
> The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly."

41. The aforesaid decision makes it clear that this doctrine cannot be applied in cases of invalid expectation, and as in the present case, the mortgage done by the ABP itself is bad in law. We are of the clear view that this expectation is not valid at all in the eye of law. Moreover, this Court in number of decisions has held clearly that doctrine of legitimate expectation cannot be invoked by someone who has no dealing or transaction or negotiations with an authority or by someone who has a recognized legal relationship with the authority. Therefore, as the Bank is not having any recognized legal relationship with the State in view of the fact that the mortgage by the ABP in favour of the Bank itself is bad in law, there is no question of invoking doctrine of legitimate expectation in the present case as it applies to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid, cannot be a legitimate expectation.

42. The doctrine of legitimate expectation ordinarily would not have any application when the legislature has enacted a statute. The legitimate expectation should be legitimate, reasonable and valid. For the application of doctrine of legitimate expectation, any representation or promise should be made by an authority. A person unconnected with the authority, who had no previous dealing and who has not entered into any transaction or negotiations with the authority cannot invoke the doctrine of legitimate expectation. A person, who bases his claim on the doctrine of legitimate expectation has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. This Court in the case of Sethi Auto Service Station and another vs. Delhi Development Authority and others, (2009) 1 SCC 180, while considering the doctrine observed:-

> "33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. (Vide Hindustan Development Corpn. (1993) 3 SCC 499."

43. The High Court after having recorded a finding that the Bank being the nominee of the mortgagee has a right to make an application for conversion of Nazul land into a freehold land, without appreciating the fact that the Bank has not having any subsistence interest in the leasehold property obtained a mortgage decree behind the back of the State being the paramount title holder applied the doctrine of legitimate expectation.

44. In the instant case, admittedly, the State never recognized the appellant Bank as a mortgagee. Further the State was not aware about the alleged mortgage said to have been created by the lessee ABP Co. by deposit of Lease document. Moreover, the State never represented or promised either to the lessee or to the Bank to give any benefit under the lease. In such circumstances, we are of the definite opinion that the High Court has committed grave error in applying the doctrine of legitimate expectation in favour of the bank.

45. After considering the entire facts of the case and the submissions made by learned counsel appearing for the parties, we come to the following conclusion:-

> Indisputably, the property in question i.e. Premises No.19, Clive Road, Allahabad is a Nazul land governed by the Government Grants Act, 1895 and Nazul Rules.
>
> The property was given on lease by the State of U.P.to Mrs. Mortha Anthony and second time the lease was renewed in favour of Ms. Verna Anthony and Ms. Leena Anthony for a further period of 50 years which was valid up to 31.8.1987.
>
> During the subsistence of lease, the leasehold interest was transferred in 1945 in favour of ABP Co. and on the basis of the said transfer a lease was executed in 1949 by the State of U.P. in favour of ABP Co. for the remaining period of lease which expired in 1987.
>
> As against the loan taken by the Company from the Bank, a mortgage was created in respect of the property by the Company in favour of Bank. The lease in respect of the leasehold interest in the property admittedly expired in 1987.
>
> The mortgage so created by the Company in favour of the Bank in respect of Nazul land without the sanction of the State of Uttar Pradesh in terms of the lease, is ab initio void, hence no right was created in favour of the Bank by reason of the said mortgage.
>
> Consequently, a mortgage decree obtained by the Bank on the basis of settlement, in absence of and behind the back of the State of U.P. could not have been enforced against the State. The subsequent proceedings of transferring the decree to the Debt Recovery Tribunal and again passing an order for auction sale of the property on the basis of settlement is wholly illegal and without jurisdiction.
>
> The appellant Bank has no right, title or interest in the property so as to claim a right of conversion of the property into a freehold property.
>
> The impugned notice issued by the State of U.P. directing resumption of the property is legal and valid and cannot be quashed at the instance of the Bank.

46. For the reasons aforesaid, Civil Appeal No. 5254 of 2010 is bound to be allowed and the judgment and order passed by the High Court is liable to be set aside.

47. In the result, other appeals filed by the appellants i.e. Civil Appeal Nos. 1969-1970 of 2010, Civil Appeal No. 4688 of 2010 and Civil Appeal No.2462 of 2010 are dismissed.

.....J. (M.Y. Eqbal) .....J. (C. Nagappan) New Delhi November 26, 2015