

(2016) 04 AHC CK 0248
In the Allahabad High Court
Case No : C.M.W.P. No. 7176 of 1981.

**Mrs G.S.J. Shapoorjee - Petitioner @HASH Allahabad Development
Authority, Allahabad And Others**

Date of Decision : 18-04-2016

Acts Referred:

Uttar Pradesh Public Premises (Eviction of unauthorised occupants) Act, 1972 —
Section 2(e), Section 2(g)
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 16, Section 26

Citation : (2016) 11 ADJ 524 : (2016) 119 ALR 162 : (2017) 1 ARC 304

Hon'ble Judges : Sudhir Agarwal and Rakesh Srivastava, JJ.

Bench : Division Bench

Advocate : Kuldip Amist, A.K. Misra and G.K. Singh, Jagdish Swarup, V.K. Singh, Advocates, for the Petitioner; S.C. Brij Mohhan and Ashok Mohiley, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal and Rakesh Srivastava, JJ. - Heard Sri G.K. Singh, Senior Advocate assisted by Sri V.K. Singh, learned counsel for petitioners. None appeared for respondent Allahabad Development Authority(hereinafter referred to as "ADA") though it has been called in revised. Hence we proceed to decide it after hearing counsel for petitioner only.

2. The writ petition is directed against order dated 2.3.1981 sent by opposite party no.2 along with Secretary, ADA revoking order dated 27.2.1979 whereby proposed construction at 21 B, Civil Station/25-A, Mahatma Gandhi Marg, Allahabad was sanctioned. The reason for revoking permission is that it was obtained by fraud.

3. Brief facts giving rise to the present writ petition are as under:-

4. The disputed premises being site no. 21 Civil Station, Allahabad was a Nazul land. By an indenture of lease dated 7.2.1861, Secretary of the State for India and Council granted lease in favour of J.B. Smelt for a period of 50 years which expired on 6.2.1911. The lease was renewed for a further period of 50 years vide

an indenture of lease dated 22.8.1912 with effect from 6.2.1911 in favour of F.M. Adelaide Sarkies. During subsistence of lease, Collector, Allahabad allowed lessee to carry on business in the disputed premises vide letter dated 31.1.1940. The partition of lease land was sanctioned by Collector vide letter dated 20.11.1948. One portion was described as residential and another commercial. Site No. 21 Civil Station was declared Commercial area and 21-A was declared residential area. Mr.S.J. Shapoorji claiming successor in title to M/s. Adelaide Sarkies, requested Collector, Allahabad to approve partition of disputed premises into two. Collector agreed and permitted such partition subject to enhanced payment of rent by 50%. Two separate lease deeds were executed on 2.5.1949 in joint names of Mr. S.J. Shapoorji and M/s. Shapoorji for the residue period of existing lease.

5. Mr. Shapoorji and Mrs. Shapoorji let out building on site No. 21 as well as building Municipal No. 21-A, M.G. Marg (51-A M.G. Marg in 1946) to one Dharamvir Goswamy who became tenant in the said building since then.

6. Mr. and Mrs. Shapoorji executed some agreement in favour of M/s.Ganesh Das Ram Gopal of Lucknow permitting them to make constructions of shops on a portion of site no. 21 which was not in the tenancy of Dharamvir Goswamy. This lease agreement was expired in 1952. Pursuant thereto M/s. Ganesh Das Ram Gopal of Lucknow raised certain constructions on site no. 21 and transferred constructed shops to Smt. Indra Mohini and Sri Satyendra Singh.

7. Lease granted in favour of Mr. and Mrs. Shapoorji expired on 6.2.1961. Mrs. Shapoorji submitted an application requesting for renewal of lease. State Government vide letter dated 4.7.1967 communicated its decision to Collector, Allahabad that fresh lease for commercial purpose into two parts of Site No. 21 Civil Station, Allahabad may be executed for a period of 30 years with effect from 7.2.1961 with further provision of two further renewals of 30 years each subject to enhancement of yearly rent not exceeding 50% of the rent paid preceding renewal. It recommended fresh lease in favour of Smt. G.S.J. Shapoorji to the extent of 1 Acre (3000 sq. yards) at site No.21 for an amount of premium of Rs. 88,200/- and annual rent of Rs. 647.93 and in respect to Sri Satyendra Singh and Smt. Indra Mohini Government recommended new lease for commercial purpose for an area of 4839 sq. yards at premium amount of Rs. 54,438.75 and annual rent of Rs. 399.91.

8. Collector required aforesaid beneficiaries to deposit amount of premium and annual rent vide letter dated 24.7.1967 and also to execute fresh new lease deeds.

9. Smt. Shapoorji filed suit No.4 of 1968 in Civil Court in so far as State Government proposed to grant lease at site no. 21 Civil Station in favour of Smt. Indra Mohini and Sri Satyendra Singh. It is said that said suit ended in compromise between Mrs. G.S.J. Shapoorji and other two incumbents.

10. Further, Smt. Shapoorji on her own, parted-away commercial area 21 in

favour of Smt. Kamlesh Goswamy, Smt. Kamla Singh, M/s. Law Book Company (Publications) and Smt. Urmila Kumari. Smt. Shapoorji on 6.3.1971 executed a registered agreement to sell plots no.1 and 1-A in favour of Kamlesh Goswamy by dividing site no. 21 into five plots numbering 1,1-A, 2,3 and 4. Smt. Shapoorji also executed sale deed in respect to plots 2,3 and 4 in favour of Kamla Singh, M/s. Law Book Company and Smt. Urmila Kumari. Plot Nos. 1 and 1-A were already in possession of Sri Dharamvir Goswamy, husband of Smt. Kamlesh Goswamy.

11. Vide letter dated 6.3.1971 Smt. Shapoorji requested Collector for transfer of separate portion (sub Division) of disputed site to respective persons with whom agreements for sale were executed by her. Administrator, Nagar Mahapalika made a recommendation for such transfer vide letter dated 16.3.1971. Smt. Shapoorji claimed that she had paid ground floor rent and last premium to Municipal Corporation on various dates as under:-

Serial No.

Receipt No.

Book No.

Date

Cheque No.

Amount

Details

1

52

5306

25.10.67

378890/- 29.08.67

9,468/-

8820 plus 648

2

6

6631

27.8.68

235230/- 16.8.68

9,468/-

"

3

6

7795

27.10.69

182081/14.10.69

9,563/-

8820 plus 648 plus 95

4

37

1335

09/09/70

288433/11.8.70

9,468/-

8820 plus 648

5

32

1952

30.10.71 (01/07/71 to 30.6.72)

012855/24.8.71

9,468/-

" "

6

12

3866

24.11.72

304909/28.8.72

9,468/-

8820 plus 648

7

92

3866

06/11/73

606274/18.8.73

9,468/-

" "

8

27

5634

10/09/74

9,468/-

" "

9

46

5237

03/10/75

9,468/-

" "

10

51

5237

22.12.75

562988

8,820/-

12. Another agreement was executed on 7.8.1975 between Smt. Shapoorji and Kamlesh Goswamy and as a part performance thereof possession was given by petitioner-1 to petitioner-2.

13. Petitioner-2 claimed that it had purchased disputed land by paying entire sale consideration to petitioner-1 but no sale deed has been executed since there was no lease deed executed in favour of petitioner-1 by State Government. Mrs. Shapoorji then wrote letter dated 7.8.1975 to Mukhya Nagar Adhikari, Nagar Mahapalika, Allahabad stating that Smt. Kamlesh Goswamy is authorised to

manage premises bearing Municipal No. 4 and 51-A(old 25-A and 25).

14. A proposal to construct a building on the disputed land was submitted under signature of petitioner-1 with formal letter of petitioner-2 to Nagar Aabhiyanta, Nagar Mahapalika, Allahabad. Petitioner-1 was communicated by respondent-1 that the plan was not approved and a compounding plan be submitted to regularise constructions already made on disputed land on the basis of unapproved plan. The plan for compounding was submitted to respondent-1 and requisite demand of compounding charges was also deposited. It is claimed that construction on the ground floor in view thereof was regularised and petitioner-2, as owner of property was having valid and legal constructions thereon.

15. Petitioner -2 then proposed to raise further constructions on the part of ground floor and upper floor and submitted further plan for approval to ADA. It was submitted that though earlier plan was not agreed, under signature of petitioner-2 being lessee of Smt. Shapoorji, another set of plan was submitted on 2.9.1978. ADA required petitioners to deposit revised estimate which was deposited on 20.2.1979. Thereafter reports were obtained from Nazul Department, Tax Department, Land Ceiling, Town Planning Department etc. Thereafter on 27.2.1979 Prescribed Authority sanctioned map which was duly countersigned by Collector on 30.3.1979 and communicated to petitioners vide letter 6.4.1979(Annexure 11 to the writ petition).

16. Administrator also wrote a letter on 17.11.1979 recommending Collector for grant of lease in favour of Smt. Shapoorji on the ground of premium already paid. Petitioner-2 then started constructions over land in question and completed in the year 1980. Mutation of building has been made in favour of petitioner-2 and her son. The building was assessed for house tax and water tax.

17. However, petitioner-1 received notice dated 12.9.1980 alleging that sanction of map has been obtained by misrepresentation and fraud. A reply denying allegations was given on 27.9.1980. Thereafter Prescribed Authority-Opposite party-2 has withdrawn permission/sanction granted to the plan for construction of building vide order dated 2.12.1980 which was communicated to petitioners vide letter dated 2.3.1981.

18. It is submitted that aforesaid letter is patently illegal. There is no provision for withdrawal of sanction already granted. Impugned order is without jurisdiction. Once sanction is granted, it cannot be withdrawn. There is no fraud or misrepresentation played by petitioners.

19. Counter affidavit has been filed by ADA stating that original lease of site 21 measuring 2 acres: 2999 sq. yards of Civil Station, Allahabad was executed on 7.2.1861 in favour of Mr. James Bearnard Smelt for 100 years renewable at the expiry of 50 years and again for another 50 years. The initial period expired on 6.2.1911 and thereafter lease was renewed for a period of 50 years vide indenture dated 22.8.1912 in favour of Mrs. Francis Margaret Adlaide Sarkes.

On the request of S.J. Shapoorji, successor in title of Mrs. Sarkies, partition of site was sanctioned by Collector, Allahabad in two parts subject to enhancement of rent by 50%. Consequently, two separate leases were executed in joint names of S.J. Shapoorji and Mr. G.S.J. Shapoorji for the residue period of existing terms of lease of 1912 with permission to carry on business in the premises. These leases were executed on 20.5.1949 registered on 30.5.1949 and expired on 6.2.1961 without any right of further renewal.

20. A fresh lease was permitted for a portion of Nazul site no. 21 measuring one acre and 3000 sq. yards in favour of Mrs. G.S.J. Shapoorji on payment of premium of Rs.88,200/- and annual rent of Rs.647.93. However, premium and lease rent was not paid in time either by Mrs. G.S.J. Shapoorji or Smt. Indra Mohini and Sri Satyendra Singh. In fact Indra Mohini paid instalments of ground floor on her behalf while Sri Satyendra Singh committed default. Indra Mohini was allowed lease only for half portion of the remaining site. It was mentioned in Collector's letter dated 24.7.1967 that terms and conditions regarding premium and lease if not complied with, their right to get lease would stand lost. Satyendra Singh did not acquire any right or title or interest over property in dispute since he did not comply with terms and conditions contained in Collector's letter dated 24.7.1967. The entire disputed property is Nazul. Division made by Smt. Shapoorji in disputed land is illegal. All these facts were not disclosed when map was submitted for sanction and on account of fraud and misrepresentation, sanction order was obtained which has been revoked after giving opportunity of hearing to petitioners.

21. Though dispute basically relates to action of ADA in sanctioning map/plan of constructions over disputed land and thereafter its recall but facts disclosed some more important issues of rights of petitioners over disputed land either as owner or lessee or in any other capacity.

22. It is evident and admitted to all that lease of disputed land expired on 6.2.1961. Renewal was requested by erstwhile lessees but it did not materialise. In the meantime, erstwhile lessees dealt with disputed property in the manner they liked without realising the fact that they had no right over the land which is Nazul and vested in State.

23. Status of lessees after expiry of period of lease is that of "unauthorised occupants". Lease stands terminated by efflux of time after expiry of original period of lease. There is no automatic or temporary renewal. It has been held by Supreme Court that even Principle of holding over under Section 116 of Transfer of Property Act, 1882 (herein after referred to as Act, 1882) would have no application in such lease over land owned by State.

24. A question arose, when a lessee, after expiry of period of lease still continues to occupy lease land and even if rent is accepted by lessor, will it satisfy requirement of "Holding Over" within the meaning of Section 116 of Act, 1882, in Shanti Prasad Devi and another v. Shanker Mahto and others, (2005) 5 SCC 543.

Therein Trial Court decided issue in favour of lessee and held that without terminating lease under Section 116 of Act, 1882 suit for ejectment could not have been filed but first Appellate Court reversed this judgment. The lessee also lost second appeal before High Court and thereafter matter came before Supreme Court where it held that mere acceptance of rent would not signify assent of continuance of lease even after expiry of lease period.

25. In the present case, it is stated that after expiry of lease, a request was made for renewal but since lease had expired, lessor i.e. State Government did not convey its consent for renewal but subsequently a letter was issued permitting a fresh lease on certain conditions. Thus, in the present case there was no question of exercise of option of renewal, hence question of otherwise assent on the part of lessor, permitting petitioners or lessees to continue in possession of land does not arise.

26. The aforesaid decision in Shanti Prasad (supra) was followed in Sarup Singh Gupta v. S. Jagish Singh and others, (2006) 4 SCC 205. Therein Court said "mere acceptance of rent for the subsequent amount in which lessee continued to occupy premises even after expiry of period of lease, cannot be said to be a conduct signifying his assent for continuance of lease even after expiry of lease period." A positive act of acceptance of rent was not held sufficient to signify assent to continue lease. In the present case even this has not been done. Instead, after expiry of lease, when request was made, Government did not agree for renewal but permitted a fresh lease or a new lease deed on certain conditions which could not be materilised at all.

27. In these circumstances, question is what status lessee, or sub-lessee of expired lease, who were in possession of land during subsistence of lease, or even subsequently enjoyed.

28. Here we find answer in Uttar Pradesh Public Premises(Eviction of unauthorised Occupants)Act, 1972(hereinafter referred to as "Act, 1972"). Section 2(g) defines the term "unauthorised occupation" and "Public Premises" is under Section 2(e) and read as under:-

"2(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority(whether by way of grant or any other mode of transfer) under which or the capacity in which he was allowed to hold or occupy the premises has expired or has been determined for any reason whatsoever and also includes continuance in occupation in the circumstances specified in sub-section (1) of Section 7 and a person shall not, merely by reason of the fact that he had paid any amount as rent, be deemed to be in authorised occupation."

"2(e) "public premises" means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any

premises belonging to or taken on lease by or on behalf of-

(i) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one per cent of the paid-up share capitals held by the State Government: or

(ii) any local authority; or

(iii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government: or

(iv) any society registered under the Societies Registration Act, 1860, the governing body whereof consists, under the rules or regulations of the society, wholly of public officers or nominees of the State Government. or both: and also includes-

(i) Nazul land or any other premises entrusted to the management of local authority (including any building built with Government funds on land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority, under any law relating to land tenures):

(ii) any premises acquired under the Land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions:"

(emphasis added)

29. Definition of "unauthorized occupation" clearly includes occupation of a public premises by a person after expiry of authority to occupy such land which includes a person whose period of lease has expired and still he or she is continuing in possession. "Public Premises" includes any premises belonging to or taken on lease including "nazul land".

30. Thus, after expiry of lease, lessee became "unauthorised occupant" of "Nazul land" and could have been evicted from public premises under provisions of aforesaid Act, 1972.

31. Considering similar provision in the context of Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1972, in *Ashoka Marketing Ltd. And another v. Punjab National Bank and others*, (1990) 4 SCC 406, a Constitution Bench held that Act, 1972 being a special Act will override a general statute and a person who may have entered tenancy legally may become "unauthorized occupant" subsequently after expiry of lease period.

32. Very recently, we find that almost a similar issue has been considered in judgment dated 12.4.2016 in Civil Appeal No. 3783 of 2016 (Arising out of S.L.P. (C) No. 6978 of 2012) *Delhi Development Authority v. Anant Raj Agencies Pvt.*

Ltd. In that case land belonged to Delhi Improvement Trust and had executed a lease deed dated 6.1.1951 in favour of Balraj Virmani(hereinafter referred to a "original lessee"). After enactment of Delhi Development Act, 1957, Development Authority was constituted thereunder, namely, Delhi Development Authority(hereinafter referred to as "DDA"). Lease was initially for a period of 20 years i.e. from 11.8.48 to 10.8.68 which was liable for extension/renewal for further period of 20 years at the option of lessee. Original lessee on 23.2.1967 approached DDA for renewal of lease. DDA served notice on 16.2.1968 alleging breach of terms and conditions of lease deed. DDA vide notice dated 1.9.1972 terminated lease which was challenged by original lessee in Original Suit No. 47 of 1975 before Sub Judge, Delhi seeking restraint order against DDA. Suit was decreed by Sub Judge holding that notice dated 1.9.1972 terminating lease was illegal. DDA preferred appeal which was dismissed by Additional District Judge vide judgment dated 29.9.1982. DDA preferred Second Appeal in Delhi High Court, being RSA No. 06 of 1983. During pendency of second appeal, an application under Order 22, Rule 10 of Code of Civil Procedure (hereinafter referred to as "CPC") alleging that original lessee has sold disputed property through sale deed to M/s. Anant Raj Agencies Pvt. Ltd.(hereinafter referred to as "subsequent purchaser"). This sale deed was claimed to have been executed between original lessee and subsequent purchaser pursuant to some compromise decree dated 22.6.1988 passed by High Court in a matter between original lessee and subsequent purchaser. The application of subsequent purchaser for substituting as respondent in second appeal filed by DDA was allowed by High Court. Further subsequent purchaser also applied to DDA for conversion of lease land to free hold and deposited a sum of Rs.96,41,892/- towards conversion charges. DDA rejected the said application of subsequent purchaser. Aggrieved thereof, subsequent purchaser preferred writ petition no. 10015 of 2005 in Delhi High which was disposed of vide order dated 19.7.2007, directing DDA to decide subsequent purchase's request for conversion of premises from lease hold to freehold. Thereafter, High Court also dismissed DDA's second appeal holding that act of demand and acceptance of rent tantamounts to renewal of lease of disputed property. It is this judgment passed in second appeal which came to be considered before Supreme Court in the aforesaid matter. One of contentions raised on behalf of DDA was that original lessee created interest in the disputed property in favour of subsequent purchaser during the period when original lessee itself was not a lease holder since lease stood terminated by efflux of time. It was contended that original lessee had no title or interest in property which could have been transferred to subsequent purchaser and said transfer is void and not binding on DDA. Next ground was that deposit of rent by original lessee and acceptance by office of DDA is something administrative in nature and would not be construed as estoppel or waiver on the part of DDA with regard to property unless a specific intention to this effect is communicated to original lessee. Supreme Court formulated following two questions:-

1. Whether original lessee has acquired any right in respect of property in

question after termination of lease by efflux of time on 10.8.1968 and also by termination notice dated 1.9.1972, in the absence of renewal of lease by DDA in writing as provided under Clause iii(b) of lease deed, by virtue of payment of rent in the office of the DDA?

2. Whether Respondent(subsequent purchaser) acquires any right in respect of property in question by getting substituted in place of original lessee by virtue of a compromise decree, between original lessee and Respondent based on a sale deed dated 14.10.1998 executed by original lessee, by invoking Order 22, Rule 10 of CPC during pendency of appeal before High Court?"

33. While answering question no.1, Court held that there was no renewal of lease by DDA in favour of original lessee. Court also held that a lease if has expired, it would not be necessary for lessor to terminate the same since original lease stands terminated by efflux of time after expiry of period of lease. Court said that Principle of "holding over" under Section 116 of Act, 1882 would not be applicable since there was no assent of landlord and mere acceptance of rent by lessor, in absence of an agreement to the contrary, would not render possession of lessee valid. In this regard, Court relied on its earlier decision in Shanti Prasad Devi and Another v. Shanker Mahto and others (supra) and Sarup Singh Gupta v. S. Jagdish Singh and others (supra). There could be an implied renewal to attract "holding over" on mere acceptance of rent offered by lessee.

34. In Delhi Development Authority v. Anant Raj Agencies Pvt. Ltd. (supra) Court also held that land vested in DDA is a public premises and that being so, it is governed by Act, 1972, which shall prevail over Act, 1882, a general law governing landlord and tenant's relationship. Referring to definition of "Public Premises", Court said, "It can be concluded that Act, 1882 is not applicable in respect of Public premises". Court held as under:-

"Therefore, in the instant case, as per Clause iii (b) of the lease deed and Sections 21 and 22 of the DD Act read with Rule 43 of the Nazul Land Rules and in the light of Shanti Prasad Devi, Sarup Singh Gupta and Ashoka Marketing Ltd. Cases (supra), there cannot be an automatic renewal of lease in favour of the original lessee once it stands terminated by efflux of time and also by issuing notice terminating the lease. Merely accepting the amount towards the rent by the office of the DDA after expiry of the lease period shall not be construed as renewal of lease of the premises in question in favour of the original lessee, for another period of 20 years as contended by the Respondent."

35. In Delhi Development Authority v. Anant Raj Agencies Pvt. Ltd. (supra) Court considered that land vested in DDA was a "Nazul land" and that being so, power has been conferred upon DDA to grant lease which includes renewal of lease but in absence of said renewal of lease of property as required in law, original lessee cannot claim an automatic renewal in his favour. Court held as under:-

"Thus, it is abundantly clear from the aforesaid legal statutory provisions of the DD Act and terms and conditions of the lease deed and the case law referred

supra that there is no automatic renewal of lease of the property in question in favour of the original lessee"

36. Having said so, Court held that in absence of renewal of lease, status of original lessee in relation to disputed property was an "unauthorized occupant" in terms of Section 2(g) of Act, 1972.

37. It also said that any act on the part of DDA in respect of other communication would make no difference, since a "Public Premises" is to be dealt with by relevant statutory provisions including Act, 1971, Nazul Land Rules and DDA Act, 1957. Thus question-1 was answered by Court as under:-

"30. Without examining the case in the proper perspective that the property in question being a Public Premises in terms of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and that after expiry of lease period the original lessee has become unauthorized occupant in terms of Section 2(g) of the said Act in the light of relevant statutory provisions and Rules referred to supra and law laid down by the Constitution Bench of this Court in the Case of Ashoka Marketing Ltd. and Another (supra), the concurrent findings of the courts below on the contentious issue is not only erroneous but also suffers from error in law and therefore, liable to be set aside.

"31. The grant of perpetual injunction by the Trial Court in favour of original lessee, restraining the DDA from taking any action under the said termination notice dated 01.09.1972, on the ground that the termination notice dated 01.09.1972 being illegal, arbitrary and without jurisdiction and the affirmation of the same by both the first appellate court, i.e. by the learned ADJ and further by the High Court by its impugned judgment and order are not only erroneous but also suffers from error in law. Thus, Point No.1 is answered in favour of the Appellant."

38. Thereafter, question-2 was considered by Court. It was held that compromise decree between original lessee and subsequent purchaser was void ab initio in law for the reason that original lessee in absence of renewal of lease in his favour himself has no right, title or interest at the time of execution of sale deed in respect of disputed property. Court said "It is well settled position of law that the person having no right, title or interest in the property cannot transfer the same by way of sale deed." Thus original lessee could not transfer a valid right to subsequent purchaser. Further, fact that subsequent purchaser deposited conversion charges in the office of DDA, also would make no difference. Original lessee in absence of renewal of lease, himself having become an "unauthorized occupant" of property and a transaction between original lessee and subsequent purchaser would have no legal consequence. Thus anything done between DDA and original lessee will also have no consequence. Court therefore, answered second question as under:-

"The instant case having peculiar facts and circumstances, namely, after 10.08.1968 the lease stands terminated by efflux of time, which is further

evidently clear from the termination notice dated 01.09.1972 and thereafter, the original lessee becomes an unauthorised occupant in terms of Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and consequently, not entitled to deal with the property in question in any manner. The very concept of conversion of leasehold rights to freehold rights is not applicable to the fact situation."

39. In the light of above exposition of law, facts in this case disclose that lease deed dated 7.2.1861 admittedly expired on 6.2.1961. It was neither permissible for further renewal under terms of lease deed nor State Government at any point of time conveyed its assent/consent for further renewal. Though petitioner-1 claims to have submitted an application for renewal of lease but admittedly, it was not so accepted by the Government.

40. On the contrary, State Government vide letter 4.7.1967 recommended fresh lease for commercial purpose of disputed land in two parts, for a period of 30 years with further provision of two renewals of 30 years subject to enhancement of yearly rent not exceeding 50% of the rent paid in preceding year. One part was recommended for fresh lease in favour of Mrs. GSJ Shapoorji (petitioner-1) and another part was recommended in favour of Sri Satyendra Singh and Smt Indra Mohini. Neither Petitioner-1 complied with terms and got a fresh lease executed nor other two parties namely, Sri Satyendra Singh and Smt. Indra Mohini complied with the terms and got fresh lease executed.

41. Transfer of possession by petitioner-1 to petitioner-2 and subsequent execution of agreements and sale- deeds all in our view, are patently illegal and void. These documents do not confer any right upon the transferee for the reason that Transferor himself or herself having no such right, could not have conferred a better right upon Transferee(s). Transferor also did not had any right whatsoever either to continue in possession over land in question nor to transfer the same to anyone. In fact, an attempt has been made to transfer even title which itself was not vested with transferor. All these transactions are patently illegal.

42. Further, the lease expired on 6.2.1961, had no further chance for renewal. Hence there was no right of renewal. There was no question of invoking option of renewal of lease and for that reason, further original lessee did not get any renewal. State Government's letter dated 4.7.1961 to execute fresh lease in two parts, was neither complied with in terms stated therein nor any fresh lease deed was executed in favour of persons to whom State Government agreed to execute fresh lease. Instead petitioner-1 and other individuals have dealt with property in dispute in the manner, they liked, assuming various rights and interest in the property though none had any right whatsoever, either to transfer or to acquire.

43. In the State of U.P., Nazul Manual contains Rules with regard to "Nazul land" and it is not the case of petitioners before this Court that any lease deed in accordance with provisions of Nazul Manual has been executed between

petitioner-1 or State Government through Collector on or after 7.2.1961.

44. The concept of public premises and removal of unauthorized occupants in the State of U.P. is also governed by U.P. Act, 1972 Unauthorized Occupants and whatsoever has been held in Delhi Development Authority v. Anant Raj Agencies Pvt. Ltd. (supra) with reference to Act, 1972, is equally applicable to "Public Premises" in the State of U.P. also since provisions are paerimateria.

45. Thus, disclosure of all these facts to ADA was a condition precedent for petitioner-1 and petitioner-2. Mere fact that map was sanctioned and thereafter constructions were raised, would make no difference for the reason that all transactions were void ab initio. The petitioners had no right over land, they were unauthorised occupants, hence question of making construction by getting a map sanctioned by ADA does not arise at all. Any act of ADA would not create any legal right in favour of petitioners which otherwise they also do not possess.

46. We do not find any error on the part of ADA in revoking sanction granted to petitioner-2 for construction on the ground that correct and full facts were not disclosed to ADA before seeking sanction of map of premises. A trespasser is not entitled to get sanction and raise constructions on a land over which it has no right,so as to create right over land. The entire things are illegal and void ab initio.

47. Learned counsel for respondents filed counter affidavit, wherein it has been said that order sanctioning map has been obtained fraudulently, in collusion with officers and officials of Development Authority and petitioners are also beneficiary, therefore, order sanctioning map is void and illegal. Paragraph 37 of the counter affidavit reads as under:-

"That contents of paragraphs 36, 37, 38 and 39 of the writ petition are absolutely incorrect. It is stated that the proposed construction plans submitted on 2nd September, 1978 only contained proposed construction of first floor; it was then scrutinised by the Engineering Department of the Allahabad Development and requisite charges were calculated and subsequently it was sanctioned by the then Secretary of the Allahabad Development Authority and the District Magistrate, Allahabad. It is further stated that after the sanction order was prepared and before the signatures of the Secretary and the District Magistrate were made, the petitioners hatched a conspiracy with the help of a few employees and fraudulently got removed the original copies of the first floor plans and filed five sets of maps showing second and third floor plans. Smt. Shapoorji, petitioner No.1, put the date as 11th January, 1979, below her signatures on all the copies of the map. The persons involved in the conspiracy then realised the mistake that the original maps were submitted by petitioner No.1 on 2.9.1978. Thereafter through over-writing and interpolation the date 11.1.1979 was changed to 11.9.1978 which is evident to naked eye on the scrutiny of the maps. Since the numerical "1" could not be changed clearly to numerical "2" the conspirators put down numerals "11". The aforesaid fact

finds sufficient truth on perusal of the entries in the receipt register maintained in the office of the Allahabad Development Authority, Allahabad. The number and date of the receipt register has been put on the back of the map as Serial No. 796 dated 21st September, 1978, whereas the actual date of the serial No. 796 is 2nd of September, 1978. It is further stated that Smt. Shapoorji put down the correct date below her signature on the plan as 11.1.1979 but later on the conspirators changed the date so that their conspiracy may not be detected."

48. Learned counsel for the petitioners, however, submitted that petitioners earlier submitted map which was returned and thereafter they submitted another map dated 11.9.1978. Our attention has been drawn to paragraph 36 but no material has been placed before this Court to show that earlier map was returned and another map was submitted.

49. It is further stated in paragraph 38 of the counter affidavit that petitioner-2 has set up a false story regarding submission of map and return and these facts are totally false. Petitioners have not placed anything on record to substantiate the plea they have taken. It is true that on administrative side, judicial order once passed is not to be reviewed unless power is provided in the administration but there is an exception and it is well established proposition that if an order has been obtained by fraud or misrepresentation, authority concerned is duly empowered to recall or review its earlier order obtained by fraud or misrepresentation.

50. Fraud vitiates everything. If orders obtained by petitioners are result of a fraud or misrepresentation and this Court finds so, it is bound to set at nought the effect of such orders which are result of a fraud and misrepresentation of a party, otherwise this Court shall be failing in its duty of judicial review giving substantial justice to the parties.

51. In *S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. & Ors.* (1994) 1 SCC 1, the Apex Court had an occasion to consider the doctrine of fraud and the effect thereof on the order obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of lease deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached the Apex Court. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as "wholly perverse", the Apex Court observed as under:

"The courts of law are meant for imparting justice between the parties. One who

comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".

52. In *United India Insurance Co. Ltd. v. Rajendra Singh & others* (2000) 3 SCC 581 the Apex Court observed as under:

"3. Fraud and justice never dwell together. (*Frans et jus nunquam cohabitant*) is a pristine maxim which has never lost its temper over al these centuries. Lord Denning observed in a language without equivocation that "no Judgment of a Court, no order of Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" (*Lazarus Estate Ltd. v. Beasley*) 1956 (1)QB.702."

53. This is what has been referred to and followed by this Court in Civil Misc. Writ Petition No. No. 14824 of 1990 (*Shamsuddin and others v. Addl. District Judge, Azamgarh*) decided on 31.10.2011.

54. The Full Bench judgement relied on by petitioner in *Gopal Dass & others v. Ist Additional District Judge, Varanasi*, 1987(1) ARC 281 in the above facts and circumstances has no application at all and reliance placed is wholly misplaced. The issue up for consideration before Full Bench in that case was whether the application filed under Section 15 (2) for release of a premises should be signed by all co-owners or even a single co-owner is competent to maintain an action for eviction of the tenant of entire premises considering him to be the landlord under the meaning of Section 3 (j) of *Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1992*(hereinafter referred to as "Act, 1972"). The Court held that one of the co-owners alone would be competent to sign such an application. The question as to whether revision by a co-owner against whom an order obtained by another co-owner under Section 16 Act, 1972 is sought to be enforced is maintainable under Section 18 Act, 1972 or not was not up for consideration therein particularly in the circumstances when co-owner filing application under Section 16 of Act, 1972 is guilty of playing fraud and misrepresentation.

55. In the present case, the order regarding sanction of map was obtained by fraud or misrepresentation. In other words, the competent authority was well within its right and power to recall/review such order since the order if obtained by committing fraud or misrepresentation vitiates everything and can be reviewed or recalled at any time.

56. There is another contention that since compounding charges have been paid and therefore, construction whatsoever raised by petitioners must be taken to be valid construction, also has no force for the same reason that petitioners have no

right over the land at all. Even otherwise, we are of the view that unauthorized construction would not stand regularised on payment of compounding charges, since concept of compounding charges is not to regularise unauthorized construction but to compound an offence so that otherwise punishment in the Court of law in a trial may not be inflicted.

57. We may also admit to consider another limb of argument that during pendency of writ petition in continuation of interim order, petitioners have further completed constructions and ADA be directed to regularise same by accepting payment of compounding fee. In our view, neither any such direction can be issued nor such relief can be granted and the entire argument in respect of alleged compounding and regularisation is thoroughly misconceived.

58. We find from the Statute that compounding a building is permissible in the Statute under Uttar Pradesh Urban Planning & Development Act, 1973(hereinafter referred to as "Act, 1973") but if an illegal or unauthorized construction has been raised, Development Authority is not empowered to continue such illegal unauthorized constructions by realising some amount.

59. No such Statutory provision has been brought to our notice or placed before us for consideration. We have examined various provisions of the Statute and like to place on record our findings and observations thereof. First of all, it would be appropriate to reproduce the interim order initially passed by a vacation Judge on 26.6.1981 when the writ petition was filed during vacation.

"Issue notice.

Until further order of this Court, the implementation of the order dated 2.12.1980, communicated on 2/3/1981(contained in Annexure 18 to the writ petition) shall remain stayed for a period of six weeks."

60. Thereafter, matter came up before the Division Bench on 7.8.1981 and the Court passed following order:-

"Until further orders of this Court, the implementation of the impugned order dated 2-3-1981 contained in Annexure 18 shall remain stayed. However under the cover of this stay order and otherwise, petitioners would not be entitled to make further construction of the building. It, will, however, be open to the petitioner to move the application for permission to make construction whenever they are advised to do so."

61. It is evident from order dated 7.8.1981 that this Court clearly specified that an interim order passed by this Court would not entitle petitioners to raise further construction of the building. However, Court has left it open to petitioners to move an application before the authority concerned for seeking permission to raise construction but it is not the case of petitioners that any such application was filed and the competent authority in ADA allowed petitioners to raise such construction. Therefore, basic contention that construction has been completed by petitioners pursuant to interim order passed by this Court, is clearly

erroneous; and on the contrary, it is found that if petitioners have actually completed construction despite the order passed on 7.8.1981, it was clearly in the teeth of the order passed by this Court and petitioners have in fact flouted interim order passed by this Court and entire construction raised by petitioners on the disputed site during pendency of writ petition is clearly illegal and amounts to disobedience of interim order passed by this Court, irrespective of power under Act, 1973.

62. It would be appropriate to consider certain provisions of Act, 1973 which talks of master plan and development plan and the sanction of map for the purpose of construction on a particular land as a part and parcel thereof.

63. The Act, 1973 gives due importance to Master Plan and Zonal Development Plan. What shall be contained in Master Plan is provided in Section 8 of Act, 1973 which reads as under:

"8. Civil survey of, and master plan for the development area:- (1) The Authority shall, as soon as may be, prepare a master plan for the development area.

(2) The master plan shall -

(a) define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

(b) serve as a basic pattern of framework within which the zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which may be necessary for the proper development of the development area."

64. The procedure of preparation and approval of Master Plan is provided in Sections 10, 11 and 12 which need not be discussed at this stage since sanction of Master Plan and its enforcement on various dates with respect to different periods under the relevant statute is not disputed.

65. Section 13 talks of amendment of plan. Section 16 prohibits use of land and building in contravention of plans.

66. Section 10 (1) clarifies that the word "Plan" in Sections 11, 12, 14 and 16 would mean Master Plan as well as the Zonal Development Plan for a Zone.

67. Section 13 permits an "Authority" to make such amendment in the Plan which do not effect important alterations in the character of the plan and do not relate to the extent of land uses or standards of population density. Sub-section (2) of Section 13, however, confers full power upon State Government to make amendment in the plan. Sub-sections (3), (4) and (5) however provide procedure of such amendments whether proposed to be made by "Authority" or

by the "State Government". It read as under:

"(3) Before making any amendments in the plan, the Authority, or, as the case may be, the State Government shall publish a notice in at least one newspaper having circulation in the development area inviting objections and suggestions from any person with respect to the proposed amendments before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the State Government.

(4) Every amendment made under this section shall be published in such manner as the Authority or the State Government, as the case may be, may specify, and the amendments shall come into operation either on the date of the first publication or on such other date as the Authority or the State Government, as the case may be, may fix.

(5) When the Authority makes any amendment in the plan under sub-section (1) it shall report to the State Government the full particulars of such amendments within thirty days of the date on which such amendments come into operation."

(emphasis added)

68. Whenever a dispute would arise about the amendment sought to be made by Authority that it effects important alternations in the character of plan etc., the dispute has to be settled by State Government.

69. A perusal of above provision shows that compliance of procedure is mandatory.

70. Section 16 puts an embargo on use or permission to be used of any building or land in a planned area otherwise than in conformity with such plan. However, if on the date of enforcement of plan, the land or building was used in any other manner, the same would continue subject to terms and conditions as may be prescribed by bye-laws. Use of land or building in violation of plan and where development of land has been allowed to any person or body, in violation of the conditions of such development, such infraction is an offence punishable under Section 26 of Act, 1973.

71. Section 27 provides for demolition of a construction made in violation of the plan and procedure to be observed before passing such order of demolition.

72. The offences under Act, 1973 are compoundable under Section 32 which reads as under:

"32. Composition of offences.- (1) Any offence made punishable by or under this Act may either before or after the institution of proceedings, be compounded by, the Vice-Chairman or any officer authorised by him in that behalf by general or special order, on such terms, including any term as regards payment of a composition fee, as the Vice-Chairman or such officer may think fit.

(2) Where an offence has been compounded, the offender, if in custody, shall be

discharged and no further proceedings shall be taken against him in respect of the offence compounded."

73. Section 53 confers power upon State Government to exempt, by issuing a Notification in the Gazette, any land or building or classes of land or buildings from all or any of the provisions of the Act or Rules or Regulations framed thereunder. It is not the case of the petitioners that any such exemption is applicable in this case.

74. Further, power to make Rules has been conferred upon State Government vide Section 55 for carrying out the purposes of Act. The Authorities have been given power to make Regulations under Section 56 which must be consistent with the Act, 1973 and the Rules framed thereunder. Such Regulations can be made for the administration of affairs of Authority.

75. It may also be pointed out at this stage that where development is allowed to any person or body, such development shall also be consistent with the plan.

76. This Court finds no provision under the Act, 1973 which entitles the Authority to go for profiteering on an illegal act of encroachment or unauthorized construction in the name of compounding. The compounding contemplated in Section 32 is in respect of offences punishable under the Act. It nowhere provides that once an offence is compounded, an act, which is in violation of Plan, shall also stand regularised or become valid. The effect of compounding is provided in Sub-section (2) of Section 32 that an offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect to the "offence" compounded. This is with regard to the criminal liability fastened upon the person for committing an offence under the Act, 1973. But the prohibition contained in the Act and statutory obligation upon Authorities to set right a person who has faulted/breached such provision by taking appropriate action, e.g. demolition of building by exercising power under Section 27 has not been made inoperated when an offence is compounded. The proceeding prevented as a result of compounding an "offence" relates to offence and illegality/irregularity so prohibited/controlled is under another provision. It may also be noticed that by Uttar Pradesh Urban Planning and Development (Amendment) Act, 1997 {Act No.3 of 1997} (hereinafter referred to as "Act, 1997"), certain other offences have been provided vide Sections 26-D and 28-A. However, removal of any raised construction in contravention of Plan and removal of encroachment etc. are governed by a different procedure and steps which would remain unaffected by such compounding. In other words, the compounding under the Act, 1973 is to avoid the criminal liability and punishment on conviction but not to regularise a construction prohibited under the Act for which no relaxation is permissible except when the plan is amended in accordance with Section 13 of the Act.

77. We are informed that ADA has passed a resolution to allow unauthorized construction to continue after payment of some amount called as "compounding

fee" and the same has been decided by some resolution passed by the said Authority.

78. We are of the view that in the garb of compounding, a resolution of authority or Development Authority itself will not cure the patent defect going to the root of the matter and an illegality will not stand cured and legal with the consent of ADA, since, the statute provides a particular procedure and nothing can be done in a manner other than the procedure prescribed in the statute.

79. When law requires something to be done in a particular manner, things done otherwise are prohibited. This principle was recognised in *Nazir Ahmad v. King-Emperor* AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgements, which I do not propose to refer all but would like to refer a few recent one.

80. In *Dhananjaya Reddy v. State of Karnataka* 2001 (4) SCC 9 in para 23 of the judgment the Court held :

"It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all."

81. In *Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala* 2002 (1) SCC 633, it was held:

"It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself."

82. The judgments in *Anjum M.H. Ghaswala* (supra) and *Dhananjaya Reddy* (supra) laying down the aforesaid principle have been followed in *Captain Sube Singh & others v. Lt. Governor of Delhi & others* 2004 (6) SCC 440.

83. In *Competent Authority v. Barangore Jute Factory & others* 2005 (13) SCC 477, it was held :

"It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning."

84. In *State of Jharkhand & others v. Ambay Cements & another* 2005 (1) SCC 368 in para 26 of the judgment, the Court held :

"It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way."

85. The cumulative effect of various provisions of Statute shows that before finalising a Master Plan, the competent authority shall take all such steps which would include an opportunity to the residents of area concerned and others to submit their suggestions, objections, claims etc. and thereafter it shall be finalized. Once the "Master Plan" is finalised and submitted to Government and

notified, thereafter its sanctity cannot be whittled down in a routine, casual and whimsical manner. The statute imposes an embargo against any action which is not consistent with the plan. However in a changing Society, a status quo for all times to come may not be countenanced. An elbow space thus has to be provided which may authorise the competent Authority/body concerned, in a very very limited manner, to make minor deviations to suit the changes. This has been done vide Section 13(1) of Act, 1973. Then the State Government has been empowered to alter the plan. However before doing so, again a well considered but a bit cumbersome procedure has been provided which entitles the residents and others also to have their say if they so desire. All these checks and measures are part of the statute to show that an approved plan has to be adhered as a rule and its deviation as a rarity. The authorities on their own, as and when they like, in a sheer administrative indiscreet manner, cannot clothe upon themselves such power. They, on their own, cannot authoritatively say that a particular change will not substantially alter the Plan or that such alternation can be or should be made.

86. Violation of Plan not only attracts a criminal liability but there are civil consequences also. The Authority has been empowered and is also under an obligation to make the things right by removing such violation/deviation and restoring the Plan in its notified state. The basic object of Authority is development and not destruction or devastation or diminution of an otherwise development, already made.

87. A deviation or violation of a Scheme or Plan cannot be made a means of profiteering by collecting huge amount from offenders/violators and permitting them to continue to enjoy such deviation. If this stand is sustained, it would mean that the Statute is being read in a manner so as to confer an immunity upon the resourceful people to violate law and permit them to continue to enjoy such violation for all times to come by paying some amount to the authority. These violators basically come from elite class. They find it easier vis-a-vis their status to part away any amount of money so as to retain resultant deviation of plan. It adds to their status also. Most of the builders have made it a part of their business. Simultaneously the development authority also stand financially (officially and privately) benefited in allowing contravention of plan and violation of a statutory embargo without exercising its power of restoration by taking action of demolition etc. If such an interpretation is upheld, it would not only encourage corruption and element of extraneous consideration but would also create two classes; one those who are bound to suffer in their efforts of making any deviation from Master Plan since they lack financial resources to pay the so called compounding fees for continuing to enjoy the illegal and unlawful deviation; and, those who are rich, resourceful and capable to do so. While making certain observations in respect to corruption prevailing in the Society, this Court in *Smt. Mithilesh Kumari v. State of U.P. And others*, 2011(1) ADJ 40 has observed that such creation and classification which encourages corruption, is discriminatory and also against human rights. The Court observes as under:

"39. In the last 60 years of independence, if there is one field we can boast of a national allround development and that too multifold, it is the field of corruption. It has various shades. It is not confined to only one field of bribery, cash and kind, but has different colours and nuances.

53. Though in a civilised society, corruption has always been viewed with particular distaste to be condemned and criticised by everybody but still one loves to engage himself in it if finds opportunity, ordinarily, since it is difficult to resist temptation. It is often, a kind, parallel to the word "bribery", meaning whereof in the context of the politicians or bureaucrats, induced to become corrupt. The Greek Philosopher Plato, in 4th Century BC said, "in the Republic that only politicians who gain no personal advantage from the policies they pursued would be fit to govern. This is recognised also in the aphorism that those who want to hold power are most likely those least fit to do so." While giving speech before the House of Lords William Pitt in the later half of 18th Century said, "Unlimited power is apt to corrupt the minds of those who possess it." Lord Acton in his letter addressed to Bishop Creighton is now one of the famous quotation, "Power tends to corrupt and absolute power corrupts absolutely."

54. Corruption is a term known to all of us. Precise meaning is illegal, immoral or unauthorized act done in due course of employment but literally it means "inducement (as of a public official) by improper means (as bribery) to violate duty (as by committing a felony)." It is an specially pernicious form of discrimination. Apparently its purpose is to seek favourable, privileged treatment from those who are in authority. No one would indulge in corruption at all if those who are in authority, discharge their service by treating all equally.

55. We can look into it from another angle. Corruption also violates human rights. It discriminates against the poor by denying them access to public services and preventing from exercising their political rights on account of their incapability of indulging in corruption, of course on account of poverty and other similar related factors. Corruption is, therefore, divisive and makes a significant contribution to social inequality and conflict. It undermines respect for authority and increases cynicism. It discourages participation of individuals in civilised society and elevates self interest as a guide to conduct. In social terms we can say that corruption develops a range bound field of behaviour, attitude and beliefs. Corruption is antithesis of good governance and democratic politics. It is said, that when corruption is pervasive, it permeates every aspect of people's lives. It can affect the air they breathe, the water they drink and the food they eat. If we go further, we can give some terminology also to different shades of corruption like, financial corruption, cultural corruption, moral corruption, ideological corruption etc. The fact remains that from whatever angle we look into it, the ultimate result borne out is that, and the real impact of corruption is, the poor suffers most, the poverty groves darker, and rich become richer."

88. This Court is of the view that a perusal of Act, 1973 shows that except those

cases which are covered by proviso to Section 16, there is a complete embargo against deviation from a plan. The use of land or building which is not in conformity with such plan is totally prohibited. It is also a criminal offence under Section 26 of Act, 1973. In fact when there is a case of unlawful encroachment or obstruction, even those who are responsible for preventing such encroachment or obstruction, if failed to do so, are also liable for criminal prosecution and punishment under Section 26-D of Act, 1973. Section 32 providing composition of offences is only in respect to criminal liability but not to retain contravention of plan which is prohibited by Section 16. That contravention if continues will have to face legal consequences. The only saving clause one can read is Section 13 whereby a change in plan can be approved by State Government and if that has been done the situation may be different, otherwise the embargo is complete.

89. The reason for making an approved plan sacrosanct and not to be touched easily is very evident. In the developed countries, a lot of emphasis is on the planned development of cities and urban areas. In fact, there the dividing line in urban and rural areas is getting obliterated and one can say that every kind of local body is supposed to proceed with an objective of planned development. The object of planned development can be achieved by rigorous enforcement of plans prepared after careful study of intricate issues of city management, scientific research, rationalisation of loss and other issues. The people of developed countries have successfully achieved the objective of planned development contributing largely by strictly adhering to plans, local laws and other directions including restrictions necessary for effective implementation of such plans. They respect the laws enacted by legislature for regulating planned development of cities. One finds seldom complaint of violation of master plan etc. in construction of building; residential, institutional or commercial.

90. Unfortunately, the developing countries are example of depicting a scenario substantially different. This includes India and in particular certain northern States like State of Uttar Pradesh. These are example of blatant and scant respect to master plans and the laws relating thereto. The competent legislature though has enacted laws with pious objective of planned development in the cities and area governed by local bodies but the enforcing machinery is extremely negligent and casual. They work hand in gloves with violators. The violators, i.e., the beneficiaries of direct violation of plans and the authorities responsible for restricting such violation both work with a sense of immunity from any consequential act.

91. Reflecting similar ethos, the Apex Court in *Shanti Sports Club and Anr. v. Union of India and others*, 2009(15) SCC 705 has said in paragraphs no. 74 and 75 as under:

"74. In last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been

paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme etc. on the ground that he has spent substantial amount on construction of the buildings etc."

"75. Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/ unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the

concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

92. These very observations have been reiterated and approved in a subsequent decision in *Sanjay Adlakha v. State of Haryana*, 2011(6) SCALE 419.

93. Time and again the Courts have observed that contravention of statute, violation of statutory plans and schemes, illegal and unauthorised encroachment, obstruction and illegal construction would never pay and this is also against the interest of Society at large but unfortunately the violators and the officials of local bodies and development authorities responsible for implementation of statute and statutory plans have enjoyed pleasure in more violation than its observance. This has filled rather the coffer of individual officials substantially instead of benefiting the State exchequer. A source of parallel economy commonly known as "black money" has developed which is running unabatedly under the shield provided by the beneficiaries of both the sides, i.e., the public as well as the State. Today, it is an open secret that Real Estate Sector is thriving basically on underhand economy. The apparent finances are like an iceberg comparing the real quantum of money involved. Moreover, the concerted unholy nexus between Reality Sector and Officials cause real loss and detriment to innocent individual who abide law honestly.

94. In *Priyanka Estates International Pvt. Ltd. and Ors. v. State of Assam and others*, JT 2009 (14) SC 654 the Court observed:

"It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the Builder."

95. In *M.C. Mehta v. Union of India and others*, JT 2006(2) SC 448 the Court expressed its anguish against mass violation of master plans and total inaction on the part of authorities responsible to execute it and said:

". . . . this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire

misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misuses and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens."

96. The Courts have appreciated that a lot of technical, scientific and other concepts put forth in preparing a master plan for a coordinated systematic development of an area considering multifold aspects including the past, present and future requirement/objective/purpose etc. They also take care of environment including flora and fauna. The maintenance of greenery is an integral necessity of a planned development for the purpose of maintaining healthy environment. Its importance cannot be undermined. It is for this reason, in every plan, special attention is paid for open land, greenery, that is called green belt, parks, gardens etc. But, then, after approval of plan, when actual execution comes, the first casualty is the area contemplated as open space, green belt, parks etc. Everybody want to curtail such area by encroaching it, obstructing it, making unauthorised construction etc. It appears that a competition is going on and there is struggle of victory to the more resourceful one. It goes without saying that this competition is equally participated by officials for reasons other than bona fide. In other words, this Court has no hesitation in observing that an over all continuous increasing corruption one can see in development authorities where the development authorities have changed the meaning of "development authority" and read the words as if it amounts to development of officials of authorities. That being so, here come the authority of Courts to check, stop and put the things right.

97. In D.D. Vyas v. Ghaziabad Development Authority, AIR 1993 All. 57 this Court considered Section 13 and power of authority to make changes in plan and in paras 19 and 22 said as under:

"19. . . From Section 13(1), it is manifest that the authority may make only those amendments which do not affect material alterations in the character of the plan. It means the respondents do not have an absolute right of amending the master plan or the zonal development plan. The basic characteristic of such a plan cannot be altered by the authority. Only that amendment is permissible under Section 13(1) which does not affect the basic character of the plan. ..."

22. ... the Authority cannot amend the plan under Section 13(1) so as to deprive the public of a public park. Not only the G.D.A. even the State Government cannot alter the plan under section 13(1) carries several limitations, Section 13(2) gives the State Government unlimited powers to make amendments in the plan of the nature specified in sub-section (1) or otherwise. ..."

(emphasis added)

98. Striking heavily against unauthorised constructions, in *M.I. Builders Pvt. Ltd. v. Radhey Shyam Shahu and others*, AIR 1999 SC 2468 it was said that the Courts while implementing rule of law show no consideration to the builders or any other person responsible for unauthorised construction etc. Being illegal it cannot be compounded and has to be demolished. The judicial discretion which includes equitable extraordinary exercise of power would not include a discretion to be exercised to encourage illegality or something which would perpetuate illegality. Justice must be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar discretion. The Court clearly said:

"Judicial discretion whenever it is required to be exercised has to be in accordance with law and set legal principle."

99. Where the authorities are not performing their statutory functions, indulging more in violation than maintenance of rule of law, overlooking, ignoring or omitting illegal activities of individuals, private or governmental, as the case may be by doing acts in violation of statutory plans, the Court finds its duty, constitutional and legal both, to cause such authorities to come to task and execute rule of law strictly by issuing a writ of mandamus.

100. In *Mansukh Lal v. State of Gujarat* 1997 (7) SCC 622, the Court said:

"Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature."

101. In the present case, as pleaded by petitioners, and, that too, with impunity, that he started construction without getting his map sanctioned and completed the same, shows that no Officer of ADA inspected and intervened unauthorized and illegal construction at any point of time when the construction was going on. It must have taken sufficient long time. It cannot be doubted that the officials of ADA had completely failed to discharge their duties and, therefore, breached public confidence, reposed in them, about developing the area under jurisdiction of ADA, in the most beneficial, systematic and co-ordinated manner, as contemplated in the statute. This is not only a complete dereliction of duty but also a serious misconduct on the part of officials concerned and a total failure on the part of ADA also, as an institution, to check these illegal activities, well in time. The notice appears to have been issued only when construction had completed so that some kind of subsequent sympathy or compassion on the pretext of loss of public wealth may be inducted. It appears that a mutual back scratching and coordinated effort is going on amongst the officials of ADA so as to carry on these kinds of activities continuously, frequently and regularly, and, that too, unabated and unchecked. No attempt appears to have been made by ADA as to who is the person(s) responsible for such lapses, as a result whereof,

such illegal construction could undergo unabated and unchecked well in time. There is no attempt to fix accountability and take appropriate action.

102. All these demonstrate a patent illegal act on the part of a statutory body and its officials. Nothing serious has been done though violators have also committed an offence under Act, 1973. No attempt has been made to lodge any report for initiating criminal proceeding(s) against anybody. A system of mutual protection developed amongst the bureaucracy has shown its reflection in its true colour.

103. The Development Authorities were constituted with an objective of coordinated development but the experience is that largely it has failed to achieve its objectives. The open areas in cities have been converted into jungles of concrete. The roads have turned into parking. One finds it very difficult to move conveniently even in the main commercial areas of cities. This kind of destruction and defacement is going on rampant even in the areas shown as residential. Commercial activities like coaching centres, nursing homes, banks, banquet halls etc. are being run in residential areas without any hindrance causing a different kind of harassment to local residents. It is a common feature in all cities in State of U.P. wherever a development authority has been created. In different media reports these bottlenecks have been reported time and again but the authorities do not find time or occasion to wake up and come in action to rescue the citizens by restoring conditions in conformity with master plans. Violations are causing personal impact on the officials of Development Authorities, confined to their individual development but contributing to under development of area concerned. One of the reasons this Court would conceive of this situation is lack of transparency of actual individual development plan(s) submitted by individual contractors/builders etc. Those who want to raise construction, when their plans/maps etc. are approved by Development Authority if disclose such approved plan/map to the people at large, the construction if made in violation of approved plan, then the people at large would not find it difficult to raise their voice for want of appropriate information. Though under the Right to Information Act, people may go to seek information but here also all possible obstructions are created by authorities in providing these information's. The construction in deviation to approved plan is considered to be a matter of right. Those making illegal construction/encroachment are confident of no complaint since common man has neither appropriate information nor resources in general to fight with such kind of persons and when detected, the violators find it their right to continue with it by asking for compounding. What kind of violation has been made and what is the stage of compounding is also not made known to public at large. This lack of information has also contributed a mushroom growth of illegal, unauthorised obstruction, construction, encroachment etc. all through, changing ultimately the entire plan to such an extent that one finds it very difficult as to what was the actual plan approved and what one has actually got executed, after passage of time.

104. The information regarding development to be undertaken by individuals, whether Government or private, does not lead to opening a window permitting a peep into the privacy of anyone. In a civilised society everybody is entitled to make development on the land or accommodation possessed by him in accordance with law exercising rights available to him but such development cannot be made so as to disturb the general plan conceived by a statutory authority in accordance with statute as that would cause and bound to cause prejudice/detriment, in various ways to other residents in that area. It is bound to affect the amenities, benefits, facilities, natural and otherwise of the residents. A deviation for the benefit of an individual or a section cannot be allowed as that is essentially bound to cause some detrimental effect on the society at large even if the degree of detriment may be very small and sometimes microscopic. The reason being that even microscopic detriment, if caused by a substantial number of individuals/group of individuals, collectively may become a bigger one.

105. In order to find out whether a person in the neighbourhood has violated law, one should not be made to depend on the vagaries and indiscreet whims of development authorities and other local bodies. There should be a system where this information must be available maintaining a total transparency so that whenever there is a deviation causing detriment to residents and/or the society in general, appropriate steps be taken to check it, without first getting harassed in collecting information and exhausting entire energy disheartening the person(s) concerned in pursuing the matter further and before the appropriate Forum. Time has come when concerted effort must be shown by authorities as well as the individuals and society in general to ensure execution and implementation of a plan in strictest manner, deterring the violators from such deviation, if any, with a fear of serious consequences.

106. This Court finds its constitutional obligation and duty to make these observations having come across the flagrant violation of statute on the part of both the parties in the case in hand, and, that too, without resorting to accountability and responsibility of the Officers of the statutory body. The attempt of violator is to retain benefit from persistent and frequent violation of the statute. Time has come when State Government and ADA should look into the matter and take appropriate steps in the following manner:

(i) ADA is directed to ensure implementation of master plan and zonal development plan etc. strictly in accordance with one as approved under the statute and no change, alternation, amendment be allowed therein except in accordance with procedure prescribed in Act, 1973 and in particular Section 13 thereof.

(ii) The ADA shall put on its website every sanctioned plan(s)/map(s) etc. of any development/construction in the area under its operation, submitted by any individual, Corporate body, Government or its instrumentalities etc., approved on and after 01.01.2001 till date and henceforth. In respect to sanctioned plan of city etc., the same shall also be placed on website. In respect to individual

plan(s)/map(s), as above, which shall include colonies, townships etc., the sanctioned plan(s)/map(s) etc. shall be placed on website wherever the area of land is 200 square meters and above; or the building constructed and owned by an individual for his own use, but is three storied and above. In case there is any data problem in a single website, the ADA may open more sites locality wise etc., as advised technically.

(iii) If any developer, builder, contractor, individual or corporate or Government etc., as the case may be, has violated sanctioned plan/map and has applied for compounding, the kind of violation and the order passed by ADA compounding the said violation, if any, the reasons for the same and the procedure followed therein shall also be made known to the public at large by giving details on the website, as directed above.

(iv) The ADA shall also give details of officers responsible for sanction, inspection, enforcement and approval of plan/map, the actual execution thereof and implementation of plan in respect to respective areas and the officers who remained posted since 01.01.2000 and onwards in respect to above work and their period of function shall also be let known to public at large.

(v) A High Powered Committee shall also be constituted in ADA headed by a retired judicial officer, not below the rank of District Judge, to find out year wise deviation in the implementation of plan who shall submit its periodical report every fortnight to ADA and it shall then be the responsibility of ADA through its Vice Chairman and Secretary to seek remedial steps in the light of report received and remove illegal encroachment, obstruction, construction etc. without any further delay.

(vi) The ADA will also specify and shall make it known to public at large by placing relevant information on website as to which particular area is reserved and for what purpose and the activities which are not permissible to be carried out therein.

(vii) In addition to what has been said above, in the next six months, the ADA shall find out the activities which are/were not permissible in a particular area but are/have being carried out; and shall immediately take steps for stopping/removing those activities. All subsequent requisite steps necessary to check unauthorised use or enjoyment etc. by anyone shall also be taken forthwith.

(viii) The Principal Secretary/Secretary, Urban Development, U.P. is directed to look into this matter and appropriate instructions, if necessary, by issuing a Government Order, be given to all other Development Authorities in the State of U.P. to follow steps as directed above. The Principal Secretary shall issue necessary instructions within two months and shall also lay down a time table for all Development Authorities to take appropriate steps, as directed above herein.

(ix) A High Powered Committee at the level of the Government shall also be constituted to find out as to how many violations in different Development

Authorities which constitute an offence under Section 26 and 26-D have been committed and whether any criminal prosecution has been initiated against the guilty in the past decade, i.e., from 01.01.2000 and onwards. If not, who are the persons responsible for such lapses. The Committee, as directed above, shall be constituted within 15 days and it shall submit its first report in six months after its constitution to the Court.

107. In the ultimate conclusion, we find no reason or justification, legal or otherwise, to interfere with the impugned order.

108. Subject to aforesaid directions/observations, this writ petition is dismissed.

109. Registrar General is directed to communicate this order to all concerned authorities including Chief Secretary, Govt. of U.P., Lucknow and Principal Secretary, Urban Development, U.P., Lucknow for information and compliance.