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**(1999) 03 AHC CK 0021**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No's. 5065, 5709, 7618 and 7884 of 1999

Neelabh Prakashan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 17-03-1999

**Acts Referred:**

Constitution of India, 1950 — Article 141

**Citation :** AIR 1999 All 208

**Hon'ble Judges :** V.P. Goel, J; Ravi S. Dhavan, J

**Bench :** Division Bench

**Advocate :** Sunil Ambwani, Tarun Agarwal, Madhur Prasad and Ravi Kant, for the Appellant; Adv.-General and Chief Standing Counsel, for the Respondent

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## **Judgement**

Ravi S. Dhavan, J.—This Court has heard these matters at length since 24 February, 1999 on different dates. Various counsel of the petitioners have been heard. Those who addressed the Court are Messrs. Sunil Ambwani, Tarun Agarwal, Madhur Prasad and Ravi Kant; on behalf of the State respondents, learned Advocate General and the Chief Standing Counsel.

2. The petitioners vehemently prayed that the Court grant a stay order on the Government Order dated 1-12-1998 which has been issued pendente lite the matters pending at the Supreme Court. It is contended that the State of Uttar Pradesh itself was the appellant at the Supreme Court and these Government Orders should not have been issued. It has been brought to the notice of the Court by these petitioners that in similar cases another Hon'ble Division Bench has from time to time passed ad interim orders in writ petitions as and when filed, staying the Government Orders by rendering them inapplicable against a petitioner. It is contended that if this Court may not be persuaded to pass a general order staying the Government Orders, then, it may follow the ad interim order of another Division Bench on each petition, separately, as an ad interim measure, while the matters are pending at the Supreme Court.

3. These matters relate to Government grants which have been made on Nazul

properties. The State of Uttar Pradesh declared by Government Orders that Government grants on Nazul estates could be converted as freehold rights. This Court in a decision in *re. Satya Narain Kapoor v. State of U. P. and Ors.*, Writ Petition No. 32605 of 1991 : Decided on 15 October, 1997 held that Nazul estates on which Government grants were given could not be made free hold and that the State holds these estates in trust. The Court had declared that grants may continue to be made to progenies and if the lineage comes to an end, then, fresh grants may be made to any person whom the State so desires. This judgment of the High Court was challenged by the State of Uttar Pradesh at the Supreme Court. On the Special Leave Petitions of the State of U. P., the Supreme Court passed ad interim orders on different dates. In effect, the orders of the Supreme Court desire that status quo be maintained.

4. It is in these circumstances that the petitioners contend that the State of Uttar Pradesh ought to have due regard to the fact that the State was a litigant before the Supreme Court, and even if there is no stay order the State of U. P. itself should not have disturbed the status quo, while matters are pending at the Supreme Court. It is contended that it is on record that the Supreme Court had passed more than one order directing parties to maintain status quo and in the face of a status quo order the State of U. P. has done exactly what it had intended by pushing a programme of alienation of Government grants and converting them into freehold, and this violates the injunction of the Supreme Court to maintain status quo.

5. The petitioners have, in no uncertain terms, firmly yet affirmatively contended that if the Court is not inclined to grant an order, individually, on each of the petitions that the Government Orders would not be applicable to the respective petitioners, as has been done by another Division Bench, and if the Court is also not so inclined to grant a general stay order at all, then the Court be pleased to give sufficient reasons why a stay order may not be granted and their submissions be noticed.

6. Since arguments on these matters began, the Court had indicated to learned Standing Counsel, appearing on behalf of State of U. P., that the fact that these matters are being considered on whether to grant or deny a stay order, it may not be misunderstood that an opportunity to file a counter-affidavit has not been granted. The Court mentions this because, as of date, no counter-affidavit has been filed in any case. The petitioners assert this by submitting that even in the petitions which were filed before another Division Bench, in which stay orders were granted, despite time having been granted, the State respondents have not replied to the writ petitions. On this aspect there is no issue between the parties. Learned Standing Counsel has accepted that in no writ petition, whether those which are engaging the attention of this Court and others which received stay orders, previously from another Court, counter-affidavits have not been filed. Learned Standing Counsel has submitted that counter-affidavits have not been filed simply because no instructions have been received to file a counter-affidavit.

7. The main thrust of the argument of the petitioners is that when matters are pending before the Supreme Court, then, the State respondents should have been bidding their peace and not disturbing the balance of the litigation. It is contended that, while matters have been pending before the Supreme Court, and in those proceedings it had been directed that parties maintain status quo, then, the record of the litigation should have rested with confidence to all, and parties alike, that nothing would be done as an overt activity until the issues are determined at the Supreme Court. It is contended that requiring the parties in a litigation to maintain status quo, is an injunction on both parties. This injunction of status quo has been disturbed by the State respondents; it is contended, with impunity. On this, the Court indicated to learned Counsel for the petitioners that it would be best, if the complaint be that the orders of the Supreme Court are being violated, then this address ought to be before the Supreme Court and not the High Court. On this, the petitioners submit that every petitioner who is before the High Court cannot afford to go to the Supreme Court as it is a very expensive proposition. It is explained that the petitioners before the Court are not affluent persons to afford a litigation at the highest Court and they cannot match the means and resources of the State. In the circumstances, it is pleaded that the High Court ought to stay the operation of the Government Orders which have been passed after the Supreme Court had ordered status quo.

8. Thus, before further arguments are noticed, it would be best that the orders of the Supreme Court be reproduced. Both parties have filed copies of the same orders. The orders which have been passed by the Supreme Court are :

"SLP (Civil). 1925-1927, (CC) SLP (Civil) 1944-1946/90(CC)

Date : 23-2-98. These petitions were called on for hearing today.

CORAM :

A.S. Anand

S. Rajendra Babu

Upon hearing counsel the Court made the following

ORDER

"Special Leave Granted.

Issue notice in the matter of interim relief.

in the meantime, the operation of the impugned judgment shall stay. It is, however, clarified that the stay order shall not imply that eviction of the lessees can take place on that account. Status-quo, as regards possession, shall be maintained till further orders."

Civil Appeal No. 1273-1275/98

State of U. P. 7 another, Petitioner(s) v. Satya. Narain Kapoor and Orders,

Respondent(s)

SLP (CIVIL).....4298/98

(With player for interim relief)

Date : (04/05/98) .... .These petitions were called on for hearing today.

CORAM :

A.S. Anand

S. Rajendra Babu

Upon hearing counsel the Court made the following

ORDER

In CA Nos. 1273-1275, 1728, 1886/98.

Printing is dispensed with. Additional documents, if any, shall be filed within eight weeks. Interim directions shall continue during the pendency of the appeals. Liberty to mention.

In CA Nos. 1276-81/98

Printing is dispensed with. Additional documents, if any shall be filed within eight weeks. Tag with CA Nos. 1273-75/98, etc.

In CC 4081/98.

Leave granted.

Status-quo in the meanwhile. Tag with CA Nos. 1203-1275/98 etc."

9. All the petitioners have not come with the same prayers. Some of the petitioners are apprehensive that the last date for making applications to receive freehold rights ought to be extended. These petitioners pray that the Court direct the State respondents to further extend the time for taking in applications from such of those petitioners who have not been able to apply so far. The Court notices that, while these matters are being filed and have been pending, the State respondents appear to be extending the last date for receiving the applications for converting Government grants on lease into freehold rights. These writ petitions are not being considered. These are those petitioners who want to take advantage of the Government Orders, notwithstanding that matters are pending at the Supreme Court. Thus, these petitions have been left out and are not the subject-matter of these orders. As from time to time, while the State respondents extend the dates, such writ petitions are also getting infructuous.

10. The petitioners before the Court contend that the persons who are getting affected by these Government Orders, framed, announced and published, in the face of the status quo orders of the Supreme Court, is detrimental, adverse, harassing and belligerent to those whose grants have expired, those who have

applied for grants by way of lease, but are not receiving lease hold rights, though the matter was contested by the State respondents right up to the Supreme Court 1989 Supp ( 2) SCC 412 and the judgment of the High Court Purshottam Dass Tandon and Others Vs. State of U.P. Lucknow and Others, was affirmed. This shows that the State respondents had never intended to honour the judgment of the High Court and, thereafter, of the Supreme Court affirming the High Court's judgment. It is contended by these petitioners that they are not interested in freehold rights as they feel that grants by way of lease would be sufficient and within their means, as otherwise they cannot afford freehold rights. These are retired persons, pensioners, teachers, lawyers who are too old to practice, old families who financially have fallen on bad times, but have nowhere else to go, and cannot purchase freehold rights. It is contended that these are those who may be middle class or upper class who can maintain a standard of living on lease rights, but cannot take freehold rights. There are tenants among these classes; long term sitting tenants on properties, where the original owners are not available and they desire to be considered for grants of fresh leases and these are not being considered. It is brought to the notice of the Court that, while tenants are in properties for several years, even prior to the old Rent Control Act which was passed after the Second World War, land owners are selling Nazul grants to strangers and these grants are being converted into freehold rights. It is contended that strangers are being permitted to walk into lease lands with freehold rights, when tenants are being denied lease rights. This is resulting in eviction of tenants through muscle power by third parties who have nothing to do with the properties and are not progenies of the land owners. It is contended that if lease rights are being converted into freehold and the owners have no intention in staying on the properties, then, tenants at least should be considered for lease rights. It is contended that the Government Orders, issued during the pendency of the matters at the Supreme Court, has made provisions for nominees who may be strangers and even third parties.

11. The third parties, as property speculators, have become nominees of leaseholders and are receiving freehold rights on even expired leases. Half century old tenants are being threatened out of possession. It is contended that sitting lawful tenants by allotment under the law where original lessees or their progenies are not available and the grants have expired are entitled to be considered for grants in their favour so that their occupation is secured; such persons are not interested in freehold rights. It is submitted that even leaseholders are under threat that their grants will not be considered for further renewal and when they apply for renewal they are told to apply for freehold.

12. Further, it is contended, that the entire city planning is being destroyed in utter disregard of respect for environment and ecology as the Constitution ordains it so. Greenery is disappearing from the towns and cities. It is pointed out that the Civil Station of Allahabad is a planned quarter of the city. It is planned with a symmetry in geometry, but this planning of open spaces is giving way to pigeon hole plots. Centuries old trees are being cut. The zonal plans are

being violated. The master plan is being compromised. Streets are becoming narrow as buildings on these pigeon hole plots are coming nearer the road-side and sidewalks or, for that matter, nearer the centre of the road. The building alignment in a planned city is changing. This is effecting the street alignment. The city was laid down with broad roads. It is contended that Allahabad, even today, can meet the traffic of the next century, but this hurriedly, drawn up programme violating the status quo order of the Supreme Court is disturbing provisions of the U. P. Urban Planning Regulation Act, 1973 and every conceivable discipline of urbanisation. The master plans are meant to protect the city to conceptualise a habitat with wider areas for public use whether they are roads or parks or open spaces. The Government Orders issued in the face of the Supreme Court's status quo orders are violating this discipline.

13. The petitioners have filed before the Court photographs from various quarters of the city to show how the new Government Orders during the pendency of cases, at the Supreme Court, is playing-up havoc with the planning of the city. It is contended that this part of the city was not meant to cater to the pressures which will be faced by the city with pigeon hole plotting undertaken by freehold no-holes-barred plotters otherwise strangers who have sold, recently held lease-lands on grants, yet further to another set of third parties. This will put pressure on an inadequate sewage facility, the drainage system, and increased traffic on constricting roads, depressurise water supply system otherwise inadequate. It is contended that an entirely new socio-economic order and a congested habitat which defiles planned areas will give way to planned degradation. The Supreme Court, it is contended, had not permitted this.

14. In the affidavit which has been filed by the State respondents, the only answer to these contentions is that all these irregularities and illegalities will be taken care of by the department or the authorities concerned. This is virtually an admission that a planned habitat is being destroyed and conforming uses of planned urban areas are being compromised and violated. The affidavit of the State respondents itself concedes that the status quo as on the date of the filing of the Special Leave Petitions by the State of U. P. is not being maintained. The petitioners contend that even if the status quo order of the Supreme Court was not there, at least, it was not expected that the State of U. P. which exercises sovereign powers will disturb the status quo of a pending litigation. The petitioners refer to the principle of *pendente lite nihil innoventur* (pending a litigation nothing new should be introduced) as in Section 52 of the Transfer of Property Act, 1882. The petitioners contend that this much respect for law, the rule of law, or law Courts should have been shown by the State respondents, and the State at least cannot be unconscious of the fact that a litigation is pending at the Supreme Court and at its initiative. It is contended that there may be nothing left to decide if this brazen violation of the status quo order happens at the hands of the State.

15. One set of petitioners are an identity and entity which calls itself as the

Avasheen Sagarpesha Kirayedar Jan Kalyan Samiti, the homeless citizens. Their counsel reiterates the argument of violating the sanctity of the status quo pendente lite proceedings before the Supreme Court. But, in addition it is contended that a section of society is adversely affected by the action of the State Government in disturbing the status quo. The Government Orders, issued while matters have been pending at the Supreme Court, it is contended, is meant for the moneyed class, who have walked into lease hold lands to procure freehold rights and edge but poor people who have no roof above them. These poor people are neither squatters nor illegal occupiers. These people, it is contended by their counsel, are by necessity, the true weaker sections of society, a phrase which is much abused than used in its genuine sense. These weaker sections have a distinct identity. They are not the necessary evil from the hang-over of the Raj. It is contended that their forefathers were the servants of the Sahibs; the cooks, the dhobis, the bearers, the masalchis, the ayaas, the malis, the sweepers, the barbers, the tailors, the bhist is who live in the out houses of the bungalows. It is contended that if the demographic density of Civil Station, Allahabad, is to be studied by the last census, it will show a density of population far exceeding the ratepayers who have been arranging Nazul estates to be transferred to strangers as freehold properties. The petitioners in Avasheen Sagarpesha Kirayedar Jan Kalyan Samiti contend that the vote bank is in their favour and the property owners, if the status quo is not disturbed are in a negligible minority. The violation of the Supreme Court's orders is also disturbing the status quo in real politics. It is contended that these people have a right to participate in future urban planning. This argument was made after a Standing Counsel made the mistake to challenge the locus standi of the Avasheen Sagarpesha Kirayedar Jan Kalyan Samiti to maintain its writ petition.

16. There is a constant threat to these dwellers in the servant quarters to see eviction from the moneyed class, it is submitted. A society which is violating Court orders in league with the State is edging out those "little Indians." Their conditions are pitiable. For they dwell on kuchcha mud floors with common lavatories, if available without normal municipal facilities and live in little hovels which the Sahibs had made for their servants. Where will all this population and people go to? By the judgment in re. Purshottam Dass v. State of U. P. and others (supra) ibid it is pointed out to the Court that in paragraph 33 what was meant to be planned for this class within five years of the judgment given on 25 March, 1986 by their Lordships Hon"ble R.M. Sahai and the Hon"ble A.K. Srivastava, JJ., this direction of the High Court was thrown to the winds despite the fact that the judgment was affirmed by the Supreme Court. It is contended, within these large areas which house bungalows and Nazul estates there is an obligation on the State to provide planned development. It is submitted that these weaker sections have a vote right but are being treated as social outcasts by the property owners, by making benami sale to the economically affluent. This grabbing of lease lands on money power is changing the class and order, whether social or economic. This is no planned development, it is submitted. On

behalf of these petitioners, repeatedly a question has been asked why has the State of U. P. abdicated planning for this large population which by far exceeds the majority and has voting rights which can dislodge any property owner if a count down were to ascertain their wishes for housing within these areas. Even, these people are entitled to a better standard of living for themselves and their children as a basic human right. It is contended on behalf of these petitioners under the banner of Avasheen Sagarpesha Kirayedar Jan Kalyan Samiti that the Government Orders which have been passed during the pendency of the litigation at the Supreme Court is only a ruse to cater for a capital starved bankrupt State of Uttar Pradesh which does not even have money to pay salary to its teachers nor permit withdrawal of provident funds. It is contended that the coffers of the State are empty. For a bankrupt State, it has been contended, this was the compelling reason to issue Government Orders in the face of status quo orders. In fact, the moneyed class was favoured when in the face of inflation the purchase price of properties is being offered at yet concessional rates of 1991.

17. The Court has noticed the various arguments which have been addressed before the Court. As the petitioners have come from all walks of life, the arguments as made have been addressed are on behalf of those petitioners who do not have the capacity to purchase freehold rights.

18. This Court is not considering the writ petitions of those persons who are seeking freehold rights and would like the date of making applications to be extended further. The persons who are addressing the Court have in union submitted that they cannot afford to go to the Supreme Court because if they could they would not have filed their writ petitions before the High Court. At best their capacity is to come to the High Court. This argument was repeated when the Court also repeated its question that it would be best if these arguments are addressed before the Supreme Court where the matters are pending.

19. Counsel for the petitioners have cited some cases to explain as to what a status quo order means. The petitioners further explain that when a judgment of a High Court is assailed and the matter is pending at the Supreme Court and the judgment may be stayed for operation, it does not imply that the judgment against which an appeal has been filed has been wiped out from existence. That eventuality will happen when the judgment is set aside. It is contended that the State respondents should have, at least, had this much regard for the law as it is the appeal of the State respondents which is pending at the Supreme Court. Counsel for the petitioners contend that even if there is no stay order, the State should have waited in patience for the matter to be decided before issuing the offending Government Orders. But, in the face of status quo orders the entire physical structure of the towns and the cities will be defaced and the situation cannot be remedied in law except by drastic means.

To further explain their contention, counsel for the petitioners have relied on a decision of the Supreme Court *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*, . It is contended that the

Supreme Court itself made a distinction, while considering the effect of an interim order staying the operation of a judgment or order under challenge. A distinction has to be made between quashing of an order and stay of operation of an order. In this regard, the Court's attention is drawn to the observation of the Supreme Court that "quashing of an order results in the restoration of position as it stood on the date of the passing of the order which has to be quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence." Thus, it is contended, the order of the High Court which has been impugned continues to exist in law and so long it exists it cannot be said that the judgment impugned has been effaced from the record.

20. Continuing this submission, it is submitted that no one can say with certainty on what the decision of a Court will be. While pressing for a stay, the petitioners place before the Court a decision of the Supreme Court in *re. Mool Chand Yadav v. R.B. Sujar Co. Ltd.* 1983 AWC 121. In this regard, the petitioners contend that the Supreme Court had laid down the law on the conduct of parties, while a matter is under challenge and an appeal may be pending before a Court. In this case, the Court's attention is drawn to the observation of the Supreme Court that judicial approach requires that during the pendency of an appeal, the operation of an order having serious civil consequences must be suspended. The operation of the order which the petitioners desire to be suspended are the Government Orders passed by the State respondents during the pendency of the Special Leave Petitions filed by the State of U. P. at the Supreme Court. While citing this case it is contended that in such situations where ultimately by these overt acts of the State respondents the situation may become irreversible, then, "if orders are challenged and appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal, *Ibid*."

21. On behalf of the petitioners, it is contended that the State respondents had no business to frame public policies, by Government Orders, with the State's appeal pending and upon it a status quo order. It is contended that the Government Orders which have been issued in the face of a pending litigation is itself void. These Government Orders are neither for public good nor the public interest and it will injure the weaker sections who votes with majority but do not know where to have their say. The State is violating the rule of law when it is the cardinal principle in matters under litigation that *lis pendentes* the state of affairs are not to be disturbed and in matters of property transactions, transfers are prohibited, except under authority and leave of the Court and on such terms as it may impose. The State respondents are encouraging transfer of properties to third parties and strangers. The petitioners relied on a decision of the Supreme Court on this aspect in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, to submit that affecting property rights and converting grants into freehold rights will affect a section of society adversely, but give unfair advantage to those who are economically sound. The

poor will remain poor and even be edged out from their habitats by the rich. One class has paid rateable taxes and are rate payers for generations, while strangers will squat and edge out the poor and the rate payers. This policy by these new Government Orders in the face of Supreme Court's status quo orders is inequitable and opposite to public policy and law. The petitioners relied on a passage from the aforesaid judgment of the Supreme Court, which reads at page 1612 (of AIR):

"It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the Court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the Court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution."

22. This is one aspect of the matter, it is contended. The issue are yet to be debated before the Supreme Court and the State respondents cannot escape from this position. It is contended that now the main issue is what is the status of a grant made under the Government Grants Act, 1895. It is asserted that it is right by law. Such grants, that is to say, made under the Government grants Act, 1895 is the making of a lease by law. Such grants partakes the nature of law since it overrides even legal provisions which are contrary to the tenor of the document. For this purpose, the petitioners have relied on a decision of the Supreme Court *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, . The petitioners contend that the fact that a grant had been made under the Act, aforesaid, is law and such grants cannot be defaced by Government Orders, and, in these circumstances, the State respondents should have, at least, had respect for the law that the grants upon which they were attempting to change the status quo in the face of a status quo order of the Supreme Court, could not be made by general circulars, even if no litigation is pending any where in any Court.

23. The petitioners contend that the situation can never be restituted. There was no necessity for the State respondents to be in a rush to implement their Government Orders. No plausible person would disturb the status quo of a litigation, at least, no educated person would. It is submitted, third party money are being deposited in the treasuries. Nominees who are strangers are purchasing properties. The transactions are being done in secrecy. The persons who are depositing the money for freehold rights, the petitioners contend, by the large, are not the persons who hold lease rights on the Nazul estates. These large sums of moneys, are being deposited by strangers on dubious benami

arrangements with the leaseholders. If the leaseholders are depositing the money, the petitioners repeat, they are asking the four questions mentioned in an affidavit. The petitioners submit that "The real picture would emerge, if the State respondents take the trouble of finding out the answer to the following questions :--

- i. The amount of deposits made under the Government Order and who paid the money?
- ii. Whether the person depositing the money for freehold conversion has the means/capacity to do so?
- iii. Whether clearance has been obtained from the Income Tax Department?
- iv. The agreements, if any, from the office of the Sub-Registrar between the original lessee and the third party depositing the money ?"

24. It is argued on behalf of the petitioners that the physical features and characteristics of towns and cities are changing. Properties are changing hands and the original owners are disappearing. Long term sitting tenants or legal occupants are being threatened. The petitioners submit before doing all this, at least, the State respondents should have had respect for the Supreme Court and the law, to take permission or permit a fair open debate at the Supreme Court. This debate has been denied to the petitioners. The petitioners, again repeat, that they cannot afford to go to the Supreme Court. The Court has carefully considered the arguments of the petitioners. The Court can make no comment on the merits of the matter, except to record the submissions. But the Court feels that this entire controversy in these writ petitions beyond the issues pending at the Supreme Court has only arisen because the State respondents have issued Government Orders as a policy, on general land transfers of lease lands, published in a booklet inviting applications for conversion into freehold. In the booklet, the petitioners contend, the State respondents have made the following clause.

"In this connection, I have been directed to say that the steps be taken under the aforesaid amendment and modification being made applicable with immediate effect, and the policy should be given wide circulation and publication so that the concerned parties may understand its implied provisions and receive its benefits.

All proceedings for freehold will be subject to the orders being passed by the Hon''ble Supreme Court in SLP No. 1557-59/98 filed by the State of U.P. against the decision of the Hon''ble High Court, dated 15-10-1997 in Writ Petition No. 32605/91, Satya Narain Kapoor v. State Government and Ors.

This order is being issued with the concurrence of the Finance Department under its D.O. No. E-6-2286/Ten-98 Dated 28-11-1998."

25. The petitioners counsel assert that this means that at every given time, the

State respondents were conscious of the fact that a matter was pending at the Supreme Court. The State respondents are also aware that issues related to property rights, with stay in the nature of status quo order, and pending litigation, transfer of property is being encouraged. Law, rule of law and Court orders, all three are being violated. Should this be done ?

26. On this, the Court is constrained to hear that if ordinary people were to do what the State respondents have done, then, they would be questioned by the Court for violating an injunction; even a status quo order is an injunction. It operates on both sides. The issues which the State respondents have taken to the Supreme Court, are matters of public law for more than one reason. No one should be disrespecting the orders of the Supreme Court. If the State respondents were in such a hurry and the only presumption can be to receive large sums of money, otherwise no reasonable and prudent person would show so much rush and activity to disturb the balance and tranquility pendente lite a litigation, and that also before the highest Court of the land.

27. In this regard, the High Court is reminded of a decision of the Privy Council in a matter which came from the Supreme Court of Canada in *re -E. Trust Company v. Kenzie Mann & Co.* AIR 1915 PC 106. The quorum at the Privy Council was Viscount Haldane, Lord Shaw, Sir George Farwell, Sir John Edge and Mr. Ameer AH. In this case of matters pending issues in Courts, the Privy Council reflected upon what the duty of the sovereign ought to be. The Privy Council observed that "It is the duty of the Crown and of every branch of the Executive to abide by and obey the law. If there is any difficulty in ascertaining it the Courts are open to the Crown to sue, and it is the duty of the Executive in case of doubt to ascertain the law, in order to obey it not to disregard it." In this matter before the Privy Council, there was a question on the construction of a contract. Thus, on this the Privy Council observed "The proper course in the present case would have been either to apply to the Court to determine the question of construction of the contract, and to pay accordingly .....". The Privy Council was relying on a case *Deare v. Attorney General* (1835) 1 Y & C 197 : 41 RR 237 to reflect at page 110:

"It has been the practice, which I hope never will be discontinued, for the officers of the Crown to throw no difficulty in the way of any proceeding for the purpose of bringing matters before a Court of Justice where any real point of difficulty that requires judicial decision has occurred."

28. Again the matter of *E Trust Company v. Kenzie Mann & Co.* AIR 1915 PC 106 (supra), the Privy Council observed ;

Further their Lordships are unable to agree with the Supreme Court of Canada in their opinion of the injunction. Apart from the Crown, the Court had clear jurisdiction over all the parties to the action to restrain them from doing any of the acts complained of; its order and injunction operates in personam, and compels the party forbidden to do any act whether the receipt of money or the

like to refrain from doing it, whoever the other party may be, and whatever his rights may ultimately prove to be. The existence of such a jurisdiction has been part of the equitable jurisdiction of our Courts for centuries, and is necessary in a case like the present for the safe preservation of the subject-matter of the action until the rights of the parties can be finally determined. It is misconception to speak of the order and injunction of the Court in such a case as this was only permissive, it was, of course, interlocutory, not final, but it is binding on all parties to the order so long as it remains undischarged, and although it could not bind the Government not to pay or make the Government reasonable for that obedience to the law which the Court was entitled to expect, the man who received in breach of the order was guilty of a contempt in no way cured by the payment by the Government. Their Lordships are unable to agree with the decision of the Supreme Court which gives the Executive to override the judgment of the Court."

29. In this regard about ascertaining on what a status quo order of a Court may imply, the Supreme Court has also reflected on the situation *Bharat Coking Coal Limited Vs. State of Bihar and Ors*, . The Supreme Court observed that the proper course for a party would be in case any party was in doubt, to approach the Court (as the matter was pending before the Supreme Court) to seek clarification, if the party had any doubt on the meaning and effect of the status quo.

30. Having given our careful consideration to the submissions of the petitioners, the record before the Court and that some of these petitions have been filed some time ago and the petitions remained unreplied, the matter itself is undoubtedly one of concern. When the Court enquired from learned Chief Standing Counsel whether the State of U.P. had ever sought clarification from the Supreme Court before issuing the Government Orders, in the presence of learned Advocate General, the answer was in negative.

31. The question is not whether the Court ought to grant a stay order or deny a stay order. The basic question before the Court is that there is a matter pending at the Supreme Court. There is no issue between the parties that on two occasions, the Supreme Court had passed orders requiring the parties, in effect, to maintain status quo. The orders of the Supreme Court are on record. It would be advisable for the petitioners to go to the Supreme Court and make their submissions on whatever aggrieves them. But on this it has been submitted that they cannot afford to approach the Supreme Court. There is no issue that during the pendency of the cases before the Supreme Court and in the face of two orders of the Supreme Court requiring that status quo be maintained, the Government orders were issued.

32. The only issue before the Court is should the Court grant a stay order ? The petitioners seem to forget that the orders partaking the nature of status quo passed by the Supreme Court from time to time bind the High Court, also. For all authorities, civil or judicial, shall act in accordance with the orders of the

Supreme Court. The status quo order clearly sends a message to the High Court, also, to avoid granting an order, when the Supreme Court has required status quo. At present the state of the record before the Supreme Court lies on the thesis that there is status quo on the litigations: If the High Court were to grant a stay order to the petitioners, it would be an antithesis to the orders of the Supreme Court which requires parties to maintain status quo.

33. In the circumstances, as the petitioners desire that their arguments be noticed, thus, the submissions have been placed on record. The petitioners desire that if the Court does not agree that similar orders passed by another Division Bench granting stay on like and similar matters be followed, then, reasons be given. Thus, in this order as the petitioners desire it so, the Court has noticed the submissions and given its reasons. Appropriately the State respondents before issuing the Government Orders ought to have applied for clarification from the Supreme Court. In so far as the petitioners are concerned, it will not be appropriate for the High Court to grant stay orders in the face of status quo orders by the Supreme Court. This Court repeats that this will be an antithesis to the orders of the Supreme Court. The orders of the Supreme Court are to be respected in letter and spirit. In the circumstances, the stay orders sought are denied. The stay applications are rejected.

34. The petitions are admitted and appropriately ought to be listed after the decision of the Supreme Court in the relevant Special Leave Petitions.

35. In so far as those petitioners, who have expressed that they cannot afford to go to the Supreme Court for reasons that they are in straightened circumstances or are the weaker sections of society, the only answer which this Court can give is that they may apply to the Supreme Court Legal Services Committee constituted under the Legal Services Authorities Act, 1987 and seek legal aid to approach the Supreme Court, as petitioners or interveners, as the case may be.