
(1999) 09 AHC CK 0208
In the Allahabad High Court
Case No : C.M.W.P. No. 20708 of 1999

Raj Kumar Soni and another	Vs	APPELLANT
State of U.P. and another		RESPONDENT

Date of Decision : 01-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Government Grants (Uttar Pradesh Amendment) Act, 1960 — Section 2, 3
Government Grants Act, 1895 — Section 2, 3
United Provinces Panchayat Raj Act, 1947 — Section 15, 16, 28B, 34, 4
Uttar Pradesh General Clauses Act, 1904 — Section 3(29)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117(1), 122(6), 122A, 122C, 122C(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115L, 115M, 115N, 115O, 115P

Citation : AIR 2000 All 1 : (1999) 4 AWC 3029 : (1999) AWC 3029 : (1999) RD 674

Hon'ble Judges : D.R. Chaudhary, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Appellant; Smt. Sunita Agarwal, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy and D.R. Chaudhary, JJ.—Whether any person who had purchased only "malwa" of a building can validly assert that by his purchase, he had also purchased the remaining constructions, if any. of which the purchased malwa is not its part and even the land on which the "malwa" was kept and secure an order of transfer of that land on that basis which belong to the Government?; (ii) Whether despite the express bar created by G.O. No. 150/1/85(24)-Z 6010 dated 9.10.1987 issued under the Government Grants (U. P. Amendment) Act authorising the Collector of a district to make grant of the Govt. land upto an area only, the Sub-Divisional Officer, Kotdwar was correct in ordering transfer in favour of the petitioners of the land in question, after

penalising their transferor in whose favour he had made the grant earlier and after nullifying that grant, on the request of the petitioners who had claimed to have purchased only the "malwa", yet had prayed to transfer the land in dispute itself without making any grant in their favour ? (iii) Whether in the facts and circumstances, the District Magistrate/Collector, Pauri Garhwal, was correct in law in nullifying the order of transfer aforementioned passed by the Sub- Divisional Officer in favour of the petitioners? (iv) Whether the transfer order passed by the Sub-Divisional Officer can be held to be a Govt. Grant?; and (v) Whether in the peculiar facts and circumstances the order of the District Magistrate/Collector, Garhwal, requires interference by this Court under Article 226 of the Constitution of India ? are the five questions which require our adjudication in this writ petition.

The Prayers :

2. The first prayer of the petitioners is to quash the order dated 10.5.1999 passed by District Magistrate/Collector, Pauri (Respondent No. 2), as contained in Annexure-1. in Grant Case No. 65/98-99. State v. Umesh Kumar and another, setting aside the order dated 15.6.1995 passed by the Sub-Divisional Officer, Kotdwar transferring 0.053 hectare of land in Khasra No. 1003, village Jhonk, district Pauri Garhwal (hereinafter referred to as the land in dispute) in Case No. 9/94-95, by grant of a writ of certiorari. Their further prayer is to command the respondents not to give effect to the impugned order.

The Facts :

3. According to the petitioners, the land in question was allotted to their co-villager Mahanth Govind Das deciple of Mahanth Mani Ram Das by the Sub-Divisional Officer, Kotdwar vide his order dated 31.3.1993 (as contained in Annexure-2). A 30 years lease (as contained in Annexure-3) was also executed on 2.5.1995 in his favour. Mahanth Govind Das got a map sanctioned by the Development Authority, Haridwar, for raising constructions on the lands in dispute. On 21.7.1994 sanction (as contained in Annexure-4) was granted and he started rising construction. Meanwhile they (the petitioners) purchased the constructions raised (Malwa) by means of transfer deeds dated 26.4.1995 (as contained in Annexures-5 and 5A). Thereafter the Revenue Inspector submitted a report that stamp duty paid on the deeds was insufficient. A case was started. Vide order dated 27.11.1995 (appended as Annexure-6) the Collector. Stamps imposed an additional stamp duty amounting to Rs. 2,090, which was paid by them vide Challan dated 29.11.1995 (the receipt appended as Annexure-7). Thereafter they moved an application on 15.5.1995 (copy appended as Annexure-8) before the Deputy Collector, Kotdwar, District Pauri Garhwal seeking permission for transfer of the land in dispute in their favour. The Deputy Collector, Kotdwar, vide his order dated 15.6.1995 (appended as Annexure-9) cancelled the Patta executed in favour of Mahanth Govind Das and granted the same in their favour. On the basis of the Patta their names were mutated vide order dated 12.7.1995 (copy appended as Annexure-10) and an entry was also

made in the revenue records (copy of Khatauni Shreni 10(2) appended as Annexure-11). While granting patta the Deputy Collector fixed rent at the rate of Rs. 157.50 Paise per annum. They paid that lease rent for the years 1995 to 1998, appending the first and last receipts as Annexures 12 and 12A. As they had purchased incomplete constructions (Malwa) from Mahanth Govind Das they completed the constructions according to the map sanctioned to Mahanth Govind Das by the Development Authority, Haridwar. They also paid Circumstances and Property Tax to the Zila Parishad at the rate of Rs. 1050 per annum, (the latest receipt of which appended as Annexure-13). Thereafter notices were issued by Respondent No. 2 to them on 5.4.1999 (copy of the notice appended as Annexure-14) in Misc. Case No. 65 of 1999 to show cause as to why the order granting lease be not cancelled on the ground that the authority concerned lacked powers to do so which was vested in respondent No. 2 alone. They submitted their explanation on 26.4.1999 (copy appended as Annexure-15) stating. inter alia, that the patta was validly executed in their favour, that they had also complied with the terms of the lease and, therefore, it is not liable to be cancelled ; that their lease being valid, action could be taken only under the provisions of the U.P.Z.A. and L.R. Act ; that permanent constructions having been raised worth more than Rs. 5 lacs after due sanction by the Development Authority the lease/licence is irrevocable ; that they had inherited the rights of Mahanth Govind Das in whose favour the patta still stands ; that after the cancellation of the lease the respondents are threatening to demolish the constructions and have also directed that their names from the revenue records be expunged. As they have got no other efficacious alternative remedy except to invoke the extraordinary Jurisdiction of this Court and thus, this writ petition.

The Submissions :

4. Sri B.D. Mandhyan, learned counsel appearing on behalf of the petitioners, contended as follows : The lease being in regard to non-agricultural land, under Rules 115 L to Z framed under the U.P.Z.A. and L.R. Act. the power to grant lease is vested in the Assistant Collector, previously known as Sub-Divisional Officer, who had granted the lease and, accordingly. It cannot be said that it was granted without jurisdiction. Even assuming, without admitting, that respondent No. 2 could have exercised his powers, he could have done it under U.P.Z.A. and L.R. Act and the Rules framed thereunder, whereas in the instant case the impugned order has been passed under Government Grants (U. P, Amendment) Act. By purchase of the "Malwa", the petitioners had purchased not only constructions but also the land standing thereon. On account of applicability of the principles of estoppel, as laid down in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., ; Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and Bhagwati Devi v. President of India 1974 ALJ 43, respondent No. 2 lacked authority to pass the impugned order.

5. On behalf of the respondents Smt. Sunita Agrawal, the learned brief bolder of the State, contended that valid reasons have been given by respondent No. 2 ;

that on their own case and documents the petitioners had really purchased only "malwa" and not the land or the alleged construction standing thereon from the Mahanth ; the Sub-Divisional Officer lacked authority to settle the land in dispute in favour of the Mahanth, who was found to have violated the terms of the grant, yet he illegally proceeded to pass an order directing transfer in favour of the petitioners who have not produced their alleged lease deed before this Court and that is why they have set up a claim on the basis of their purchase from the Mahanth and the transfer order besides inheritance from Mahanth and accordingly, this writ petition is devoid of any substance and be dismissed.

6. After we had heard both learned counsel and were about to proceed to dictate our order dismissing this writ petition in Court itself. Sri B.D. Mandhyan, learned counsel for the petitioners, came up With a prayer to reserve our orders on the ground that he will file his arguments in writing showing that the word "malwa" means "building" itself "and the land standing thereon" and not debris or rubbles of a building, and will also refer to some decisions holding that the purchase of "Malwa" was held to be purchase of the building and the land both by this Court and thus necessary relief be granted by us. We had acceded to his request. Sri Mandhyan later on filed his arguments in writing. Along with the written arguments appended are X-rox copies of three judgments (i) Aladuddin v. Hamid Khan 1971 RD 160 (it) Magnu Ahir and others v. Mahabir. 1981 RD 30) and (iii) Bhagwati Devi v. President of Indl 1974 ALJ 43.

Our Findings :

7. Meaning of the word "Malwa/Malba As per dictionary meaning of this word first in the absence of reference to any official meaning of this word. According to Oxford Hindi-English dictionary, Edited by R.S. McGregor. Third impression, 1997 Edition the word "madwa" means rubble (as of a fallen building, wall), rubbish, refuse. According to Lok Bharti Pramanik Hindi Kosh, Edited by Acharya Ram Chandra Verma and Revised by Dr. Badri Nath Kapoor. Third Edition 1996, the word "malwa" means (in Roman transliteration) "(i) Kurakarkat, (ii) Gire hui Imarat Ki" int. patthar aadi ya unka dher". The word "malba" as per Student's Practical Dictionary containing Hindustani (Urdu) words with English meaning in Persian Character, 17th Edition (1986), published by Ram Narain Lal Arun Kumar, Allahabad, means "rubbish, dirt, materials of a fallen house". According to Loguhath-e-Firozi (which in English translation means Complete Up-to-date Urdu Dictionary) compiled by Maulvi Firozuddin Saheb, Firoz Discoyee, published by J.S. Sant Singh and Sons, Delhi, the word "malwa" means "fallen rnasala, bricks, mud of an old house". The word "malwa" according to Bhargava's Hindi-English Dictionary means rubbish, debris. As per Vrihat Hindi Kosh, published by Gyan Mandal Limited, Varanasi, 1984 Edition, the word "malba" means (in Roman transliteration) Kura Karkat ; Girey huye makan ke int patthar, mitti aadi. According to Hindi Sabd Sagar, Volume VIII, 1971 Edition, published by Kashi Nagri Pracharani Sabha, the word "malba" means (in Roman transliteration) (i) Kura-karkat, katwar (ii) Tooti ya girayi hui imarat ki inte, patthar aur choona

aadi. According to Manak Hindi Kosh, 4th Volume, published by Hindi Sahitya Sanunelan, Prayag, the word "malba" means (in Roman transliteration) (i) Gire huye makan ki tooti-phooti inten, mitti, masala aadi jo fekwaya jata hal (ii) Bhugol Vigyan mein-chattanon ki satah se toot-phoot kar gire huye kankaron ka samooch ! vlkhand rashi (Detrits), (iii) Kura-karkat. Thus, the word "malwa" as per the dictionaries mean "rubble", "refuse of any fallen building", waste, debris.

8. In his written submission he accepts that our observation that the word "Malwa" means debris or rubbish of a building is correct but having regard to the fact that in the transfer deeds of the petitioners there is mention of "Char Kamaron ka Malwa" (refuse of 4 rooms) which were constructed by the Mahanth after obtaining sanction on 21.7.1994, which could not be dilapidated construction or had fallen or had become refuse and "malwa" being is a colloquial word it made "building standing on a Government land".

9. Mr. Mandhyan had failed to show us any colloquial meaning of the word malwa suggesting that it means the standing/existing building. A perusal of the two sale deeds dated 26.4.1995 executed by the Mahanth in favour of the petitioners (Annexures-5 and 5A) unequivocally show that the Mahanth had transferred "malwa" only for Rs. 99,000 and Rs. 65,000 respectively. Annexure-8 is the copy of the application filed by the petitioners before the Deputy Collector, Kotdwar, seeking permission for transferring the land in question in their favour on the strength of their purchase of the "malwa". A perusal of the objections filed by the petitioners (Annexure-15) also show their categorical statement in paragraph 3 that they had purchased "malwa" existed on the disputed land. No stamp duty has been even paid by the Petitioners on the alleged standing building. The question as to whether any remaining part of the building was in fact standing is a question of fact and cannot be entertained by us for the first time. The word "malwa" according to us also meant, and means rubbles or debris of a fallen building and could not and cannot mean existing constructions and the land on which the "malwa" are kept. In none of the decisions, referred to by Sri Mandhyan, it was held by this Court that if a person has purchased merely Malwa, it will be deemed that the said person had also purchased the building and/or the land on which the "malwa" stands. It has also not been held in these decisions that the word "Malwa" does not mean debris or rubbish rather the building and the land on which the building stands. No tangible material has been brought by the Petitioners to show that the word "Malwa" means standing construction including the land on which it stands.

10. Accordingly, we hold that since the petitioners had only purchased malwa alone from the Mahanth, they derived no right, title and any interest either in the constructions, if any raised by the Mahanth and standing thereon or the land on which the malwa stood or kept.

11. The Sub-Divisional Officer has committed an apparent error in not perusing the sale deed of the petitioners as well as report of the Tahsildar, Kotdwar submitted before him that what was purchased was Malwa of the Residential

Building and the shops. The application seeking transfer of the lands in dispute ought to have been rejected by the Sub-Divisional Officer as the lands in dispute was not claimed to have been purchased. From the order dated 15.5.1995 (Annexure-9) it is clear that even though the Deputy Collector had held that the condition of the grant given has been violated by the Mahanth, he had merely contended by imposing a fine of Rs. 2,000 on him and after expunging his name peculiarly passed an order transferring the land in dispute in favour of the petitioners. A perusal of the order dated 31.3.1993 passed by Sub-Divisional Officer Kotdwar (Annexure-2) shows that the Mahanth while making the request for settlement had claimed that his possession of the lands in dispute is very old. We do not find in the order that the Mahanth had asserted that he had made any constructions on the land in dispute. Mere old possession cannot be held to be adverse possession nor was such a case set up anywhere. Annexure-6 contains the order passed under the provisions of Stamp Act by the authority concerned. This has nothing to do with the jurisdiction of the authority to cancel the lease or confer any right, title or interest in the petitioners of the lands in dispute in view of the apparent fact that the deficit stamps were realised in respect of the valuation of the Malwa alone.

12. The notice (Annexure-14) recited that as per G.O. No. 150-1/185 (24)-Z-6010 dated 9.10.1987 the Sub-Divisional Of flier/Deputy Collector had no authority to accord approval of grant of land rather the authority was vested only with the Collector of the District to accord approval upto a certain limit of the lands for residential purpose under the Government Grant Act.

13. The imposition of fine of Rs. 2,000 only for the breach of the terms of the lease by the Mahanth on him cannot create any advantage to the petitioners. In fact the Sub-Divisional Officer should have stopped himself at that very stage and seriously erred in passing an order transferring the land in question in favour of the petitioners.

14. The submission of Mr. Mandhyan, made in writing," after close of arguments that under Rule 115L to N of the U.P.Z.A. and L.R. power was vested with the Sub-Divisional Officer to grant lease was not raised earlier before us or before the Collector. Be that as it may, we proceed to consider it.

15. Rules 115L to N reads as follows :

115L.--A Abadi sites for preferential categories.--(1) The Assistant Collector-in-charge of the sub-division may, wherever land earmarked for the extension of abadi for Harijans under the provisions of the Uttar Pradesh Consolidation of Holdings Act. 1953 and any other land of abadi site vested in Gaon Sabha is insufficient to meet the housing requirements of persons referred to in sub-section (3) of Section 122C, proceed to earmarked land for abadi sites in accordance with sub-section (1) of the said Section.

(2) Deleted by Notification No. 2-1 (9)-74 dated January 17. 1975.

(3) Before allotting housing sites to persons referred to in subsection (3) of Section 122C, the Assistant Collector in-charge of the sub-division shall, in respect of each village, cause to be prepared the following lists and extracts :

(i) a list in Z.A. Form 49D showing separately particulars of persons of the three categories mentioned in sub-section (3) of Section 122C.

(ii) a list in Z.A. Form 49E of lands enumerated in subsection (2) of Section 122C : and

(iii) an extract of village map showing the plots given in the above list.

(4) In making allotment of housing sites under this rule, the order of preference mentioned in sub-section (3) of Section 122C shall be observed.

(5) No premium shall be charged for allotment of housing sites under this rule.

115M. B-Other abadi sites. (1) Abadi sites other than those referred to in Rule 115L and vested in a Gaon Sabha may be allotted for construction of buildings for residential or charitable purposes or for purposes of cottage industry in the following order of preference :

(a) a landless agricultural labourer or a village artisan residing in the village ;

(b) a bhumidhar, sirdar or asami residing in the village and holding land less than 1.26 hectares (3.125 acres) ;

(c) any other person residing in the village.

(2) Every allottee under this rule shall be required to deposit an amount unequal to 40 times of the rent of the land calculated at hereditary rates which shall be credited to the Gaon Fund ;

Provided that no premium shall be charged in respect of site allotted for charitable purpose.

115N . C-General.--(1) Whenever the Land Management Committee proceeds to allot housing sites under Rule 115L, or 115M, it shall announce by beat of drum in the village the exact location of the sites to be allotted, the time, the date and venue of allotment.

(2) All allotment shall be made by the Land Management Committee in a meeting held for the purpose on the date announced under sub-rule (1). Where more than one person belonging to the same order of preference express their desire to be allotted a particular site, the said Committee shall draw lots to determine the person to whom the site should be allotted :

Provided that the prior approval of the Assistant Collector-in-charge of the Sub-Division shall be obtained for every allotment under Rule 115L or 115M.

(3) The allottee of the housing site shall be given a receipt for the premium, if any, paid by him to the Land Management Committee and a certificate of

allotment. The certificate shall be in Z.A. Form 49F which shall be prepared in two parts, the main certificate being given to the allottee and its counterpart remaining with the Land Management Committee for record."

16. Section 122C of the U.P.Z.A. and L.R. Act reads thus :

"122C. Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc.--(1) The Assistant Collector in-charge of the subdivision of his own motion or on the resolution of the Land Management Committee, may earmark any of the following classes of land for the provision of abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans :

(a) lands referred to in clause (i) of sub-section (1) of Section 117 and vested in the Gaon Sabha under that section ;

(b) lands coming into possession of the Land Management Committee u/s 194 or under any other provisions of this Act ;

(c) any other land which is deemed to be or becomes vacant u/s 13, Section 14. Section 163, Section 186, or Section 211;

(d) where the land earmarked for the extension of abadi and reserved as abadi site for Harijans under the U. P. Consolidation of Holdings Act. 1953, is considered by him to be insufficient, and land earmarked for other public purposes under that Act is available, then any part of the land so available.

(2) Notwithstanding anything in Sections 122A, 195, 196, 197 and 198 of this Act, or in Sections 4, 15, 16, 28B and 34 of the United Provinces Panchyat Raj Act, 1947, the Land Management Committee may with the previous approval of the Assistant Collector in-charge of the sub-division allot for purposes of building of houses, to persons referred to in sub-section (3) :

(a) any land earmarked under sub-section (1) ;

(b) any land earmarked for the extension of abadi sites for Harijans under the provisions of the U. P. Consolidation of Holdings Act, 1953 ;

(c) any abadi site referred to in clause (iv) of sub-section (1) of Section 117 and vested in the Gaon Sabha ;

(d) any land acquired for the said purposes under the Land Acquisition Act, 1894.

(3) The following order of preference shall be observed in making allotments under subsection (2) :

(i) an agricultural labourer or village artisan residing in the village and belonging to a Scheduled Caste or Scheduled Tribe ;

(ii) any other agricultural labourer or village artisan residing in the village ;

(iii) any other person residing in the village and belonging to a Scheduled Caste

or Scheduled Tribe.

Explanation 1.--The expression "agricultural labourer" shall have the same meaning as in Section 198.

Explanation II.--The expression "village artisan" means a person who does not hold any agricultural land and whose main source of livelihood is manufacture or repair of traditional tools, implements and other articles or things used for agriculture or purposes ancillary thereto and includes a carpenter, weaver, potter, blacksmith, silversmith, goldsmith, barber, washerman, cobbler or any other person who normally earns his livelihood by practising a craft either by his own labour or by the labour of any member of his family in any rural area :

Provided that no person shall be deemed to be a village artisan whose total income (including income of his or her spouse and minor children) exceeds two thousand four hundred rupees in a year).

Explanation III.--Preference shall be given to a person who either holds no house or has insufficient housing accommodation considering the requirements of his family.

(4) If the Assistant Collector in-charge of the sub-division is satisfied that the Land Management Committee has failed to discharge its duties or to perform its functions under sub-section (2) or it is otherwise necessary or expedient so to do. he may himself allot such land in accordance with the provisions of sub-section (3).

(5) Any land allotted under this section shall be held by the allottee on such terms and conditions as may be prescribed.

(6) The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land under this section inquire in the manner -prescribed into such allotment, and if he is satisfied that the allotment is irregular, he may cancel the allotment, and thereupon the right, title and interest of the allottee and of every other person claiming through him in the land allotted shall cease.

(7) Every order passed by the Assistant Collector under subsection (4) shall, subject to the provisions of sub-section (6) and every order passed by the Collector under sub-section (6) shall be final, and the provisions of Section 333 and Section 333A shall not apply in relation thereto.

(8) (Omitted).

(9) In Rule 115L of the U. P. Zamindari Abolition and Land Reforms Rules, 1952. sub-rule (2) shall be deemed always to have been omitted."

17. Apparently no foundational facts have been pleaded by the petitioners that the conditions existed as enumerated In the aforesaid provisions, it is not their case that either the Mahanth or they had requested for allotment of the lands in

dispute under the aforesaid provisions asserting fulfillment of the requirements of the Statute. Their application for transfer as contained in Annexure-8 does not show that it was made under the aforesaid provisions justifying invoking of those provision nor does the order dated 15.5.1995 or even the alleged Mutation order dated 12.7.1995 show that any of the said provision was invoked. Such a claim was also not set up in their objection Annexure-15. Even the lease of their transferor Mahanth does not show that it was allotted under the provisions aforesaid or cancelled under the U.P.Z.A. and L.R. Act. In any view of the matter u/s 122 (6) of the Act the Collector has been vested with jurisdiction to cancel any irregular allotment made by the Assistant Collector in-charge of the Sub-Division. Accordingly, we reject this submission of Mr. Mandhyan.

18. It is interesting to note that the petitioners have also set up a contradictory claim. At times they assert that they had inherited the land in question from the Mahanth aforementioned and at times they have set forth a claim that the land in question was settled with them.

19. Question Nos. (i) and (ii) are. thus. answered against the Petitioners.

20. In fact the present proceedings was initiated after receipt of lot of complaints in regard to the illegal settlements of lands situated at Swargashram/Laxman Jhoola and after preliminary enquiry by the Deputy Collector, Kotdwar,. Notices were issued to the petitioners to show cause why the illegal approval of the grant of the land be not cancelled. At this stage it is necessary to look into the provisions of the Government Grants (U. P. Amendment) Act, 1960. The whole Act consists of only three sections which read as follows :

"1. Short title.--This Act may be called the Government Grants (U. P. Amendment) Act, 1960.

2. Amendment of Sections 2 and 3 of the Act XV of 1895.--For Sections 2 and 3 of the Government Grants Act, 1895 (hereinafter called the "Principal Act") the following shall be substituted, and be deemed always to have been substituted :

"2. (1) Transfer of Property Act, 1882, not to apply to Government Grants.--Nothing contained in the Transfer of Property Act, 1882. shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein, heretofore made or hereafter to be made, by or on behalf of the Government to or in favour of any person whomsoever, and every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

(2) U. P. Tenancy Act. 1939, and Agra Tenancy Act, 1926 not to affect certain leases made by or on behalf of the Government.--Nothing contained in the U. P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926, shall affect, or be deemed to have ever affected any rights, created, conferred or granted, whether before or after the date of the passing of the Government Grants (U. P. Amendment) Act. 1960, by leases of land by. or on behalf of, the Government in favour of any person ; and every such creation, conferment or grant shall be construed and

take effect, notwithstanding anything to the contrary contained in the U. P. Tenancy Act, 1939, or the Agra Tenancy Act. 1926.

(3) Certain (eases made by or on behalf of the Government to take effect according to their tenor.--All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to in Section 2. shall be valid and take effect according to their tenor ; any decree or direction of a Court of law or any rule of law, statute or enactment of the Legislature, to the contrary notwithstanding :

Provided that nothing in this section shall prevent, or be deemed ever to have prevented, the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural land."

(3) Repeal of U. P. Act IX of 1959.--The Government Grants (U. P. Amendment) Act. 1959, is hereby repealed with effect from the date of its enforcement and shall always be deemed to have been so repealed as if it had no force and effect at any time whatsoever, anything to the contrary in the U. P. General Clauses Act, 1904. or any other law for the time being in force notwithstanding."

In their objection the petitioners had not claimed that the Govt. or on its behalf any competent authority has executed any lease of the lands in question in their favour. In their objection the petitioners had also not disputed about the existence of the G. O. in question. In the impugned order it has been correctly held that the Sub-Divisional Officer lacked jurisdiction to pass an order for transfer. The Collector has rightly nullified the order of the Sub-Divisional Officer. In fact it was not the submission of Mr. Mandhyan before us that the G.O. referred to in the show cause notice was illegal and not operative though in his written submissions he has asserted that a G.O. cannot have the same force of a Notification. It is true that an executive order cannot be equal to that of a legislative order within the meaning of the word "Indian Law" as envisaged u/s 3(29) of the General Clauses Act but having gone through the Government Grants (U. P. Amendment) Act. 1960, under which the Govt. has powers to make grant, we are of the view that the Govt. has full powers to issue G.Os. to be followed by its official while performing their duties. The Act does not clothe any jurisdiction in the Sub-Divisional Officer to make grant of Govt. lands on behalf of the State. By the G.O. in question the Govt. has empowered the Collector of the district to make grant in respect to lands upto certain area only. The order of the Sub-Divisional Officer being without jurisdiction the Collector of the District being the highest executive of the District could have even ignored it collaterally or declared it null and void.

21. The act of mutation authorities were not binding on the Collector of the District or on the State. Mutation does not create any title.

22. Grant of sanction by the Hardwar Development Authority to the petitioners was/is not binding either on the State or on the Collector of the District Pauri Garhwal.

23. There is a world of difference between passing of an order granting a lease and execution of a lease in fact. A mere grant confers no title.

24. Thus, no illegality has been committed by the Collector nullifying the order of transfer in favour of the petitioners.

25. Question No. (iii) is thus also answered against the petitioners.

26. For the reasons best known to them they have not produced any lease deed executed by the Govt. or on its behalf transferring the lands in dispute. What thus remained was merely an order of transfer which the Collector of the District, being the highest authority, rightly nullified it taking into the fact of misrepresentation etc. made by the petitioners. It was/is not even their case that mutation was allowed on the basis of any valid lease executed in their favour by a competent authority or even the State. It is necessary for us to peruse the document appended as Annexure-10 referred to in paragraph 9 of the writ petition and which is at Serial No. 10 of its Index described as an order dated 12.7.1995. This document is definitely not a lease deed at all. This document as per their own case set up by the petitioners is an order of mutation, though it states "Rajkiya Grant" means Government Grant. Unless a grant is made by the Govt. or validly on its behalf by a competent authority it cannot be called that there was/is a Government Grant. Since there is no Govt. grant or lease deed the question of its illegal revocation is misconceived. Question No. (iv) is also answered against the petitioners.

27. Now we revert to the remaining decisions cited by Sri B. D. Mandhyan before us during arguments and in his written arguments. We have gone through these decisions. We do not find that the ratio decidendi laid therein. In the facts and circumstances of the instant case, at all support his contentions.

28. We do not accept the submission of Mr. Mandhyan that in the facts and circumstances the doctrine of promissory estoppel comes to the aid of the petitioners.

29. No one derive advantage of his own fraud or misrepresentation of facts. The petitioners must blame themselves for misrepresenting apparent facts to the Sub-Divisional Magistrate in securing an order of transfer of the lands in question. They cannot derive advantage by allegedly making constructions over this land. The well known doctrine is that one who seeks equity must do equity.

30. Even otherwise also no writ can be issued quashing an order the effect of which will be to restore such an order which was apparently without jurisdiction.

31. In the backdrop aforementioned the remaining question formulated by us is also answered against the petitioners. They are thus held not to be entitled to grant of the reliefs prayed for.

The Result :

32. For the reasons aforementioned this writ petition is dismissed, but in the

peculiar facts and circumstances without any order as to cost.

33. The office is directed to hand over a X-rox copy of this order within one week to Smt. Agrawal for its intimation to respondent No. 2.