

(1997) 10 AHC CK 0048

In the Allahabad High Court

Case No : Writ Petition No. 32605 of 1991 with other 2 Petitions

Satya Narain Kapoor

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Constitution of India, 1950 — Article 294, 295, 296, 39, 51A

Government Grants Act, 1895 — Section 2, 3

Nazul Shops Rules, 1940 — Rule 11, 13, 14, 15, 17

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 19

Citation : (1998) 1 AWC 1(2) : (1998) 1 AWC 1 : (1998) 1 UPLBEC 114

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

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ravi S. Dhavan, J.—These cases will be discussed individually. But. they raise an important question of a long forgotten phenomenon of control by Government on an estate known by the expression nazul. Settlements record nazul as an estate, land and property, but there is less modern law available to explain what is the concept of nazul estates. Whatever material is available is virtually lying in the archives of administration and out of use. The administration has forgotten to take guidance from prescribed administrative instructions on how to deal with nazul an estate held by the Government, in public trust not as a private preserve. These cases are not about private rights, but public law of public property and the trust in Government to hold it, be it a small nazul shop in a municipal market, a commercial complex or residential. The principles which govern nazul estates are the same.

2. These three writ petitions are in the matter relating to shops, all of them small shops, in the Chowk area of the city (south) of Allahabad behind the famous Clock Tower. These shops, referred to by the petitioners or the respondents, are in a demarcated area where existed a municipal market and the hackney carriage stand ; the two adjoining each other. The allotment, lease and the

subsequent control of letting, rent and eviction is controlled by a set of rules, known as the Rules for the Grant of Leases of Subzimandi Shops in the Allahabad District (Nazul shops). [Government Order No. 2547/XI, dated 16th July, 1940, as amended by Government Order No. 789-A/X1-77-78, dated 17th February, 1942]. These rules were framed in 1940, and will hereinafter be referred to as the Nazul Shop Rules.

3. All such shops within the district of Allahabad are governed by these rules. Thus, any interpretation of the situation will affect a large number of shops, within the district of Allahabad and wherever similar rules operate in other districts of the State. Further, an understanding of what is "nazul" is basic before the issues are decided. Suffice it to say that there is no issue between the petitioners or the State respondents that whoever may occupy, all these shops are small shops in use by petty shop keepers of modest means. The shops are on nazul land and the property, the shops and the land are nazul in character ; the rules describe it so.

4. The resume of short facts of each writ petition are as below :

Satya Narain Kapoor v. State of U. P. and three others, [Writ Petition No. 32605 of 1991].

5. This writ petition was brought to the court after the petitioner, Satya Narain Kapoor, received a copy of the notice from the Collector. Allahabad through the Special Nazul Officer. The notice is addressed to the Administrator, Nagar Mahapalika, Allahabad. This notice is dated 3 June, 1986. On an enquiry in reference to Shops No. 195 and 196 in the Municipal Market, Chowk, in connection with the mutation of the name of the occupier, the Collector indicated his views to the Municipal Corporation. The Collector indicated that the shop was originally allotted to the husband of Mst. Wahidan Bibi. The induction of the petitioner into the premises of the shop was not accepted by the Collector. Drawing the attention of the Nagar Mahapalika. Allahabad that the person who had been inducted not being the legal heir, the mutation sought by the occupier under the Nazul Shop Rules was not possible. It was desired by the Collector that suggestions recommending allotment be made strictly in accordance with the Nazul Shops Rules, aforesaid. The situation, it appears, did not suit Satya Narain Kapoor the occupier, who calls himself a Sikmi Kirayedar, and thus, he filed the present writ petition.

6. It is on record of the writ petition that an attempt was sought by one Riaz Ahmad for having the shop mutated in his name on the plea that his father Nisar Ahmad, also deceased, had been "adopted" by Mst. Wahidan Bibi. Thus, Riaz Ahmad contended that he ought to be allotted and given possession of the shops as grandson. In effect, of Mst. Wahidan Bibi. He claimed that he would be entitled to allotment of the shop. On this, Nazul Department wrote its comments for the Collector by a letter dated 13 June, 1986 (Annexure "2") that in the matter of nazul shops and under the Nazul Shop Rules, by which the leases are

regulated. Inheritance of progenies is provided but recognising adoption in the context of Riaz Ahmad, which if done would be against the rules. Thus, the application of Riaz Ahmad was rejected.

7. However, all that this meant was that no progeny or original allottee had been left after Mst. Wahidan Bibi had died. It could be said that there was a vacancy on this property and in respect of this shop there was no heir to succeed. But the petitioner Satya Narain Kapoor states that he obtained an order from the Joint Municipal Officer, Nagar Mahapalika that should he agree to pay fifty per cent increase in the rent, then, the matter could be forwarded with a recommendation of an allotment in his favour to the Collector, Allahabad. This communication from the Joint Municipal Officer dated 17th September, 1986 (Annexure "3") does not indicate how the petitioner came into the premises. But, petitioner mentions, or at least claims, that he was inducted into the premises in 1973 by Mst. Wahidan Bibi who was an old and childless lady. The petitioner also acknowledges that the shop in question is nazul. This petitioner asserts that he is in possession of a letter that he could be considered as a lessee provided he pays a fifty per cent increase on the rent. The petitioner contends that he was depositing the rent but the Nazul Department, at the relevant time under the charge of the Nagar Mahapalika, was issuing receipts but in the name of Mst. Wahidan Bibi. In effect, the shop continued as if it were leased to Mst. Wahidan Bibi, though dead. It is on record that the shop was never leased to the petitioner. The receipts in the name of Mst. Wahidan Bibi against the rent for the use and occupation of the shop continued until the year 1991 as the last receipt, the receipt appended to the petition of 9th October, 1991 reveals such a position. The petition was filed in the year 1991 when another communication from the Collector, Allahabad was received by the Mukhya Nagar Adhikari, Nagar Mahapalika that Shops No. 195 and 196 (the present writ petition relates to Shop No. 196) are vacant, after the death of the original lessee and that in accordance with the rules the occupier be evicted and the shops be put up for allotment under the Nazul Shop Rules by public auction. In fact, it is this communication of the Collector, dated 31st October, 1991, which occasioned the filing of the present writ petition. The state of record in this case is that an official of the Nagar Mahapalika may have recommended a lease to the petitioner, but the Collector, Allahabad, as a representative of the State treated the petitioner as a trespasser on these Nazul properties.

Mst. Rafiqunnisa v. District Magistrate/Additional District Magistrate (Nazul). Allahabad and another, [Writ Petition No. 2430 of 1992].

8. The case of Rafiqunnisa v. District Magistrate/Additional District Magistrate (Nazul), Allahabad and another, is in respect of Shop Nos. 195 and 196. These two shops were originally allotted to one Abdul Aziz. Abdul Aziz died. The widow of Abdul Aziz Mst. Wahidan Bibi, applied and had her name mutated to become the lessee of the shops. Mst. Wahidan Bibi also died in 1984. It is contended by Rafiqunnisa, the petitioner, that Abdul Aziz left a registered will, to the effect,

that after the death of his wife, Mst. Wahidan Bibi, his "adopted" son, Nisar Ahmad will inherit the shops. Nisar Ahmad, predeceased, Mst. Wahidan Bibi. He died in 1983. The petitioner (Rafiqunnisa) contends that a son of Nisar Ahmad, one Riaz Ahmad applied for having his name recorded, in effect, mutated. In lieu of Mst. Wahidan Bibi. At about the same time, the petitioner Rafiqunnisa was also moving an application that after Mst. Wahidan Bibi died, her husband had a brother Abdul Majid, and as Mst. Wahidan Bibi had no children in marriage, thus, being the brother's wife, she was entitled to receive the shops in allotment. The petitioner contends that neither the Collector, Allahabad, nor the Mukhya Nagar Adhikari. Allahabad pass orders on her application seeking mutation of her name, though her application is pending. She also complains that one Satya Narain Kapoor (of Writ Petition No. 32605 of 1991) claims himself to be a tenant in Shop No. 196 and further claims ownership with the connivance of the employees of the Nazul department, as well as, some employees of the Nagar Mahapalika. Allahabad. She also contends that instead of passing an order of allotment of a lease in her favour, the Collector. Allahabad, has given approval for the auction of Shops No. 195 and 196 on 26th October, 1991 and on that basis, the Additional District Magistrate (Nazul), Allahabad, has sent a letter to the Mukhya Nagar Adhikari that the aforesaid shops be put to public auction under the rules and the occupiers be ejected. This submission is made in paragraph 4 of the writ petition. The petitioner desires that the Commissioner. Allahabad Division, make an enquiry into the matter as she is a Pardanashin lady and that she is the only legal heir of Mst. Wahidan Bibi, deceased, the latter being the owner of the shops, after the death of her husband. Abdul Aziz, the original allottee. The petitioner contends that the Commissioner. Allahabad Division, directed the Additional District Magistrate (Nazul), Allahabad, to make an enquiry. She also contends that instead of making an enquiry, the opposite party No. 2, that is the Mukhya Nagar Adhikari, proceeded to auction the shops under the Nazul Shop Rules. The present writ petition was filed, in the circumstances, that the shops were being put to auction. The petitioner contends that she had filed a writ petition earlier, but on the faith and understanding that the petitioner was permitted to approach the Additional District Magistrate (Nazul). Allahabad, as well as the Commissioner, Allahabad Division, the petition was not pressed. The petitioner has a grievance that the present occupier in Shop No. 196, one Satya Narain Kapoor, has no status and the fact that her case is not being considered is discriminatory and any step to put the shops to public auction is without authority of law and against the Nazul Shop Rules. She contends that according to Rule 13 of the rules she is the only legal heir and entitled to have her name mutated in place of Mst. Wahidan Bibi on the ground that her case has been wrongly rejected and the shops are being put to auction irregularly. The petitioner contends that the action of the Collector. Allahabad, is grossly illegal. She contends that this is a fit case for enquiry which the Commissioner. Allahabad, had ordered on the basis of which, in fact, she had instructed her counsel not to press the earlier writ petition. She seeks a certiorari to quash the orders by which the shops are being put to public auction. She seeks a writ of

mandamus that her name be recorded as legal heir for the allotment of Shops No. 195 and 196 under the Nazul Shops Rules.

Mohammed Ali v. State of U. P. and three others, [Writ Petition No. 16325 of 1994].

9. It is not necessary to recapitulate the facts of this case. The facts already narrated, in the matter of Rafiqunnisa are common to the present writ petition. The petitioner, Mohd. Ali, discloses his relationship with Mst. Wahidan Bibi by submitting that he had entered into a partnership in July, 1984 and, thus, was carrying on the business in Shop No. 195 as a consequence of a partnership between him and Mst. Wahidan Bibi, Mohd. Ali, also, contends that he had another partnership going with the son of the "adopted" son. The reference "adopted" son is in the context of the one who is claimed to have been adopted by Mst. Wahidan Bibi, being Nisar Ahmad. The latter's son is referred to as Riyaz Ahmad. The same order aggrieves the petitioner Mohd. Ali by which Mst. Rafiqunnisa is aggrieved. This is the order of 31st October, 1991 by which Shop No. 195 (along with Shop No. 196) is being put to public auction as required under the Nazul Shop Rules. According to the respondents the shop is vacant and needs to be put to public auction for an assignment of the lease, afresh. The contention of the petitioner, Mohd. Ali, is that he has been paying rent with effect from September, 1986 and that also fifty per cent enhanced rent since November, 1987, but the respondents continue to issue receipts in the name of Mst. Wahidan Bibi.

10. These are the facts which have been brought by the petitioners in their writ petitions.

11. While these writ petitions were pending and the matters were under submissions the case of the petitioners and the respondents was on issues relating to claim a lease on Nazul properties. The petitioners lay claim to a lease. The respondents assert that the petitioners are not the right persons to be granted lease which can be granted only to eligible persons as are required by the Nazul Shop Rules.

12. One of the petitioners, Mst. Rafiqunnisa, (Writ Petition No. 20430 of 1992), while these matters were under hearing, applied that her petition be dismissed as infructuous. This request was opposed by the other two petitioners, namely, Satya Narain Kapoor (Writ Petition No. 32605 of 1991) and Mohd. Ali (Writ Petition No. 16325 of 1994). There was an issue before the Court that the petitioner who seeks the dismissal of the petition ought not to receive that order. The objection of the others was, to the effect, that the entire matter must be seen as a whole by the court as the petitioner who seeks to have her petition dismissed is seeking an irregular advantage from the respondents.

13. The situation was explained to the Court, thus, by the objectors. On behalf of Satya Narain Kapoor and Mohd. Ali, their counsel explained that while this matter was pending what has happened is that Mst. Rafiqunnisa has applied and

managed to get an order from the Joint Secretary. State of U. P. by a communication dated 19th September, 1996 recommending to the District Magistrate, Allahabad, that Shop Nos. 195 and 196, instead of being treated as nazul shops for allotment on lease be declared as "freehold" and sold to Mst. Rafiqunnisa. This communication of the Joint Secretary, dated 19th October. 1996, is appended as Annexure-3 to the application/affidavit filed on 26th November. 1996. Counsel for Rafiqunnisa replied to the objectors and the respondents alike to say that the State of Uttar Pradesh had concealed essential documents from the Court and while they object to the shop being allotted to Mst. Rafiqunnisa under the Nazul Shop Rules, which matter is being vehemently argued by the Chief Standing Counsel. U. P., to unsuit all the petitioners and have all the three writ petitions dismissed, the correct position is not being given to the court. On behalf of State of U. P. a counter-affidavit has been filed submitting before the Court that in accordance with the Nazul Shop Rules applicable to the district of Allahabad, none of the applicants are entitled to receive an allotment for the grant of a lease for the aforesaid shops. On the basis of the counter affidavit, affirmed by the District Magistrate, Allahabad the chief standing counsel submits that, in reference to the context, that is, of municipal shops which are nazul properties within the Sabji Mandi, allotment to shopkeepers is to be made strictly in accordance with Rule 13. Learned chief standing counsel submits that between the three petitioners, none of them has the status to be an eligible persons so prescribed by the Nazul Shop Rules in Rule 13. He lays stress to Rule 13, which reads :

"13. For the purposes of these rules a near relative will be the following only :

1. A son or grandson in the male line.
2. A widow till her death or re-marriage.
3. A mother if a widow.
4. Real brother, and
5. Real brother's son.

Note.--The rule of prima geniture will apply when there is more than one son, brother, or brother's son desirous of taking the shop. Precedence of claims will be as shown in the list of near relative above. No shop shall be leased in the name of more than one person."

14. Then, learned chief sanding counsel contended that in so far as one petitioner is concerned, Satya Narain Kapoor, he declares himself to be a Sikmi Kirayedar explained as a shadow tenant. Induction into the premises by such methods is prohibited, under the Nazul Shop Rules. He points out to Rule 15, which prescribes that subletting or transfer can only be allowed provided permission has been sought and to a person who falls within the meaning of Rule 13. Otherwise, he contends that a person who obtains possession in an unauthorised manner would be deemed to be a trespasser and would be liable to

be ejected immediately and the shop would be put to public auction again. He reiterates the prescription of Rule 15.

15. Mohd. Ali (Writ Petition No. 16325 of 1994), learned chief standing counsel contended, was only inducted into the premises on the basis of a partnership. His case was no better than that of the "Sikmi Kirayedar". Whether it is induction by a partnership or as a shadow tenant, both were mischiefs which the Nazul Shop Rules do not suffer.

16. In reference to Mst. Rafiqunnisa (Writ Petition No. 20430 of 1992), he contended that the entire case has been built up, as if Mst. Rafiqunnisa has some right of allotment, merely because she happens to be a widow of a brother of the original owner, but Rule 13 makes no provision for her. He further contended that whether it is the case of Mst. Rafiqunnisa or Riaz Ahmad, the son of an "adopted" son by law none of them are entitled to a lease of nazul shops under the Nazul Shop Rules. He submitted that under Muslim law there is no concept of adoption. In either case, he contends, as far as the Nazul Shop Rules are concerned unless by or in any other law an adopted son can have the status of a natural heir, which in the present case he cannot, it is against the rules to recognise such an heir. Further, he submits the widow of a brother is not within the Rules either.

17. The contention of learned chief standing counsel was that any allotment which is to be made of these nazul shops have to be strictly in accordance with the Nazul Shop Rules. The shops as had been originally allotted, in the event of a vacancy obliges the administration to put the right to a lease to a public auction and the person who has so been selected on the bid being accepted is obliged to pay a nazrana as a premium and ground rent for use and occupation as a consequence of a nazul shop being given on a grant as lease. The lease can be inherited which is provided under Rule 13. Subletting of the shop or transferring of it to others is prohibited by Rule 15. All the three writ petitions are liable to be dismissed and none of the three petitioners whether Satya Narain Kapoor or Mst. Rafiqunnisa or Mohd. Ali are entitled to a lease under the Nazul Shop Rules. These shops, its allotment, vacancy, reallocation and inheritable lease rights, the chief standing counsel submitted are governed strictly according to management of nazul properties and particularly the Nazul Shop Rules.

18. In between hearings learned counsel appearing on behalf of Satya Narain Kapoor and Mohd. Ali desired that the respondents should produce the record, regard being had to the situation that while this matter has been pending, a "freehold" right to sell the nazul shop to Mst. Rafiqunnisa has been considered. If this be the case, they contended, they are also entitled in similar circumstances to be considered for the grant of "freehold" rights. In the alternate, they contended, that if Mst. Rafiqunnisa has no locus standi under the Nazul Shop Rules, but can receive "freehold" status they are at least entitled to a lease status in generality on these Nazul properties.

19. On this, as a writ of certiorari had already been issued, learned chief standing counsel, again obtained instructions on the true state of the record. The record confirmed that Mst. Rafiqunnisa had applied during the pendency of this writ petition to receive "freehold" rights, but learned chief standing counsel refuted the allegations of any suppression of record by him for the simple reason that, firstly, the matter had been processed, as Mst. Rafiqunnisa had obtained orders of a "freehold" right direct from the Joint Secretary at Lucknow, and, secondly, he had been instructed to argue the brief as if the properties in issue are nazul in character and governed by the Nazul Shop Rules.

20. In the meantime, counsel for one of the petitioners, Satya Narain Kapoor (Writ Petition No. 32605 of 1991) submitted that he had also applied for a "freehold" right, but pressed to submit on the alternate case. It was contended that he is entitled to allotment of a shop on lease, notwithstanding that he may have applied for being considered for "freehold" rights. He also relies on Rule 69 of the Nazul Rules. In fact, on his behalf, the argument has gone to the extent that notwithstanding that the petitioner may have been inducted unauthorisedly or may have occupied the shop without authority. Rule 69 contemplates that there will not be an inquisitorial proceedings and this ought to be avoided. The submission on behalf of this petitioner is that the purpose of this Rule is to require an incumbent who may have occupied a shop unauthorisedly to pay a higher rent and not to go into detailed enquiries on how he came to be possessed of the premises. In effect, this petitioner is now raising an inequitable argument accepting that he may have entered the shop in question irregularly, but irregularities are not to be inquired as what has to be considered is that the shop is available for allotment of a lease to him. Satya Narain Kapoor fortifies his contention that only a summary enquiry can be made and he is entitled to be considered for grant of lease of the nazul shop which he occupies, regardless of the manner in which he occupied it, admittedly, through the back-door and irregularly.

21. Mohd. Ali (Writ Petition No. 16325 of 1994) only applied to receive an allotment in his favour. He still presses his petition to contend that he is entitled to an allotment for the grant of a lease under the Nazul Shop Rules. His case is that even an unauthorised incumbent is entitled to be considered for a grant of lease on paying double the premium of rent.

22. By the record which was produced by the chief standing counsel and later the information was given to the Court on an affidavit of one Mr. Rakesh, Additional District Magistrate. Finance and Revenue and incharge of Nazul. Allahabad, dated 12th September. 1997, it bears out that fifty two persons had applied for being granted "freehold" rights on these nazul shops. Thirty two were granted, one was granted by transfer of shop, four are under process and fifteen applicants are under consideration. The objection of the other two petitioners, namely, Satya Narain Kapoor (Petitioner in Writ Petition No. 32605 of 1991) and Mohd. Ali (Petitioner in Writ Petition No. 16325 of 1994) was that while strangers were

being considered for grant of "freehold" rights, their names are conspicuously absent from the list of allottees. Counsel for Satya Narain Kapoor contended that the petitioner had also applied and at least his name ought to be amongst the list of those who have been granted "freehold" rights and that the record shows that his name is not in the affidavit. Of the thirty two persons disclosed, it appears that this may be the reason why Satya Narain Kapoor (in Writ Petition No. 32605 of 1991) and Mohd. Ali (in Writ Petition No. 16325 of 1994) had opposed the prayer of Mst. Rafiqunnisa that her writ petition ought not to be dismissed as infructuous, but considered taking into account the over all circumstances.

23. Learned chief standing counsel now was at a loss on which brief to argue as the case of the State respondents was that all the three petitioners have no right to the shops on which they claim allotment because none of them qualify for allotment under the Nazul Shop Rules, and that on these nazul estates only the Nazul Shop Rules apply. With the disclosure that thirty two persons, initially, had been granted freehold rights, while these matters were pending gave a valid grievance to some of the petitioners that they are entitled to the same advantage as Mst. Rafiqunnisa. In so far as these petitioners were concerned looking at the situation from their vested interest. The contention was not incorrect as anybody who has an occasion and has been encouraged to irregularly hold on a property will do so by whatever means it is available.

24. Between the petitioners, there is rivalry ; for two shops there were three claimants. One petitioner, Mst. Rafiqunnisa, when she tried to have her petition dismissed as not pressed on the plea that she has obtained "freehold" rights from the State respondents, the other petitioners opposed the prayer on the ground that this petitioner could not receive allotment by law, but has managed to get it through the back door short circuiting the Nazul Shop Rules. Mst. Rafiqunnisa in turn accused the State respondents of concealing material facts that she had applied for receiving "freehold" rights and that her application was not part of the State record and yet neither of the State respondents disclosed to the court, in the counter-affidavit that her application for "freehold" rights was considered and granted. On this, learned chief standing counsel replied that he took instructions from the Commissioner, Allahabad Division, otherwise head of the administration, and had instructions to state that nothing had passed through his hands which it necessarily must in accordance with the Nazul Manual. He referred to the Nazul Manual. As the matter was now being subjected to parallel but contradictory stands on behalf of petitioners and respondents alike, the Court permitted the chief standing counsel at his request to take fresh instructions. This he did. When the Court permitted the chief standing counsel to take fresh instructions, one petitioner (Satya Narain Kapoor) caused a statement to be made in court that he had also applied for "freehold" rights. This statement was made on behalf of the petitioner because the chief standing counsel filed an affidavit acknowledging before the court that Mst. Rafiqunnisa had applied for "freehold" rights. Now Mst. Rafiqunnisa simultaneously, claimed an allotment of the shops on lease and outside Court "freehold" rights. The affidavit filed by the

chief standing counsel placed before the Court a list of fifty two persons who had applied for "freehold" rights. The names of persons indicated in the affidavit, affirmed by the Collector, Allahabad, were without parentage and address. The Court permitted the Collector, Allahabad, to file a supplementary affidavit to give the parentage and the address of the persons who were seeking or were granted "freehold" rights on the nazul shops. Finding that his name was not in the list, Satya Narain Kapoor now objected to the list that he had also applied and that the State was concealing from the court his application and, further, was not including his name in the list disclosed to the Court. On behalf of Mohd. Ali it was submitted that he is simply seeking an allotment of a shop on lease under the Nazul Shops Rules. But, it is not denied that he had access to the shop irregularly, by inducting himself as a partner of business, a factor which would occasion his eviction under the rent control laws. He is an outsider, as the Chief Standing Counsel pointed out, because he is not a heir and trespass under the Nazul Shop Rules is prohibited.

25. The original case of the petitioners is thus :

Satya Narain Kapoor had himself inducted into the nazul shop, managed to deposit enhanced rent, but received receipts of payment in the name of the dead original allottee, Mst. Wahidan Bibi. She died in 1984, but Satya Narain Kapoor paid rent and got receipts in the name of a dead lessee. He calls himself a "Sikmi Kirayedar". He seeks an allotment of nazul grant on a municipal shop.

26. Mst. Rafiqunnisa contended that she is not a stranger to the shop because if Mst. Wahidan Bibi could hold it as a widow of Mohd. Aziz, she is no other person than the widow of the brother of Mohd. Aziz, a kinship by marriage. She contends that she is entitled to a lease and allotment of the nazul shop.

27. Mohd. Ali submits that he is already within the shop having been inducted so in the business as a silent partner.

28. This is the original case of the petitioners on which the objection on behalf of State respondents in reply to the petition was that none of them are entitled for allotment of nazul shop as neither are heirs within the meaning of Rule 13 and those who have been inducted are mere trespassers and are liable to ejection any way.

29. The chief standing counsel pointedly referred to the sanction of the Collector and the Commissioner before entry into these Nazul Shops. He referred to the "Note" to Rule 11 of the Nazul Shop Rules. Then he referred to the generality of the Nazul Manual, which he contended cannot be ignored in dealing with nazul properties. He stated that settling of nazul properties for grants by lease is a fiscal matter and subject to audit and beyond a certain valuation, the price anticipated in consideration of making the grant, the proposal itself has to be referred to the Commissioner (Rules 13 and 14) and every case of lease, if it exceeds the valuation prescribed, is subject to confirmation by the Commissioner (Rule 32).

30. The narration of the facts as above show that the case on both sides have seen changes during the pendency of these petitions. The cases originally raised issues on who is the rightful person to receive an allotment of the nazul shops under the Nazul Shop Rules. The cases have closed at the close of arguments with the note that some have been granted "freehold" rights and some have been left out including two of the petitioners, who now contend that they are also entitled to "freehold" rights like the others. Those who have not received the "freehold" rights on nazul properties in the present set of cases are Satya Narain Kapoor (Writ Petition No. 32605 of 1991) and Mohd. Ali (Writ Petition No. 16325 of 1994). The person who has received a freehold right is Mst. Rafiqunnisa: There is a rivalry between them on who should be granted "freehold" rights. Three petitioners. In their respective three petitions would like to possess two nazul Shops No. 195 and 196. Between two shops there are three contenders. This situation cannot be unravelled by the High Court on who will be the rightful contender or who may be a better person to receive an allotment amongst three persons with only two shops available.

31. The crucial issues now are on how the issues changed from seeking allotments of nazul shops on lease, under the Nazul Shops Rules but subsequently "freehold" rights being granted on nazul estates? Can this be done?

32. Now the perspective of the cases are changing. The issues initially were : Are the petitioners entitled to receive a grant as a lease of shops which are nazul properties and governed under the Nazul Shop Rules? The answer of the State administration is : No. as the petitioners do not qualify for allotment under the Nazul Shop Rules and have occupied the shops irregularly and illegally and are liable for eviction.

33. Then, the petitioners, some of them, complained of discrimination and double standards. They contended that within the same Municipal Market, and governed by the same Nazul Shop Rules, more than thirty seven persons have received "freehold" rights. They also applied for "freehold" rights on these nazul shops, but their names are not included in the list disclosed to the Court. One of the petitioners (Mst. Rafiqunnissa) was unsuited for allotment by the State administration to receive a grant of nazul shops under the Nazul Shop Rules. She should be evicted, the State respondents submitted. But, she has managed to procure "freehold" rights as absolute owner of a nazul property, otherwise, not available to her under the Nazul Shop Rules.

34. Clearly, the crucial and fundamental issue now is what is the concept of nazul properties or estates?

35. On one aspect there is no issue that these shops are on nazul land and nazul property originally managed by the then Municipal Board as managers to the State of U. P. Specifically sight of the rules ought not to be forgotten. The rules are known as "Rules for the Grant of Leases of Sabji Mandi Shops in the Allahabad District (Nazul Shops)." How to deal with nazul shops. In context, was

not in issue when the matters were argued between the petitioners and the State. It was a straight case of the rival contentions being examined on the interpretation of the Nazul Shop Rules. The applicability of these rules was accepted. In the second innings of the arguments and the emerging record no one could explain how nazul properties, the nazul shops, were being shown of its characteristic as nazul and were being treated as (a) not being nazul and (b) freehold. Even upon instructions, learned chief standing counsel fairly contended that besides pleading the original case that Nazul Shop Rules apply he has not received instruction on how the rules, now, may not apply. Clearly there is confusion amongst the administration on how to deal with nazul property. There does not appear to be any clear concept on the characteristics of nazul properties.

36. For this purpose the meaning of nazul needs to be understood. What does nazul means as a concept? The making of grants on lands which are possessed by the State, whether the Union or the Provincial Government or even the Railway administration is guided by a legislation originally known as the Crown Grants Act, 1895, subsequently, the nomenclature was changed to be known as Government Grants Act, 1895. This is originally a central legislation. It has been applicable to this State when it was known as North Western Provinces, later United Provinces and today as Uttar Pradesh. It is also applicable with the amendments so made by the State Legislature from time to time.

37. The issues before the Court now are not who is to be evicted or who is unauthorised or who is entitled to allotment or the grant of a lease : but, clearly, one of alienation of nazul property. The question to be answered before the Court is what is the concept of the estates called "nazul". No party, either on behalf of the petitioners or the State respondents has aided the Court by submitting on this aspect, though initially both sides referred to the Nazul Shop Rules and the Nazul Manual in great detail. All had agreed that in law, the grant of lease under the Nazul Manual of nozul properties is the subject matter of a grant under the Government Grants Act, 1895 (Act 15 of 1895). This enactment is very short in its content, thus, the entire enactment is being reproduced :

"1. Title and extent.--(1) This Act may be called the (Government) Grants Act, 1895.

(2) It extends to the whole of India except, (the territories, which immediately before the 1st November, 1956, were comprised in Part B States).

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

3. Government grants to take effect according to their tenor.--All provisions, restrictions, conditions and limitations over contained in any such grant or

transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

38. In so far as Uttar Pradesh is concerned, in reference to this very Act, that is, Government Grants Act, 1895, an amendment Act was passed by the U. P. Legislature known as the Government Grants (U. P. Amendment) Act, 1960 (U. P. Act No. 13 of 1960). The Legislature for the applicability of the Government Grants Act, 1895, provided, thus :

"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 here to before 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 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 leases 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 selling 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."

39. The significance of the amendments incorporated by the Uttar Pradesh Legislature to the Government Grants Act. 1895 were that the Transfer of Property Act, 1882 is not to apply to government grants. Before the abolition of Zamindari, there was the U. P. Tenancy Act. 1939 and the Agra Tenancy Act, 1926 and, thus, the amendment incorporated to the Government Grants Act, 1895, declared, in effect, that grants under the Government Grants Act, 1895 will override any grant made under the U. P. Tenancy Act, 1939 or the Agra Tenancy Act. 1926. The last change in its applicability to U. P. was that certain grants made by or on behalf of the Government would take effect according to their tenor.

40. What are the laws which relate to Government grants? How did the State come to possess lands which it could make available as a grant on certain terms and conditions? Who possesses lands for which there is no owner and lands which are heirless? Then, real estates of people were attached when the holders were declared as absconders, rebels and mutineers under criminal law. Somewhere between these circumstances, estates were classified as nazul in character. These were nazul lands. No law has described nazul lands. What is nazul? Its meaning in different connotations. In the context of the matters before the Court, is hereinafter noticed from different sources.

41. The court had asked the petitioners and the respondents alike that they must at least address the court on what the origins of their rights may be in either seeking a claim or for that matter defeating a claim on a nazul estate. The Court also required the parties to address the court on how the State has the sanction to deal with nazul properties and under what law. The Court is disappointed to note but is obliged to record that no assistance came from any quarter. Thus, no party, whether the petitioner or the respondents can have a grievance that they did not have an opportunity to address the Court and on this aspect. Beyond the Nazul Shop Rules and the Nazul Manual to which the Court has referred, nothing has been made available to the court to throw light on what is nazul or a grant which is made of nazul estates.

42. The settlement of a property in the State must necessarily be recorded, if the solitary purpose of a settlement is to monitor encroachers and trespassers. Such records are maintained under the enactment which was earlier known as the United Provinces Land Revenue Act, 1901. The record of the settlements as were made from time to time by the British administration are part of official records kept as settlements of the district concerned. The expression "nazul" has not been defined in any rule framed under an Act which the Court can rely upon. A Nazul Manual may have been placed before the Court but neither the petitioner nor on behalf of the State, was the Court addressed to explain under which law the Nazul Shop Rules or the Nazul Manual have been framed. The compilation of Government Orders in a Manual may be a good guide for the administration but

when it comes to the sanction of law, more so if there is a dispute, then, the legislative intent must be indicated to the Court. While the Court will examine the Nazul Manual and the Nazul Shop Rules in its contents and meaning, the origin of putting the land in the slot or category of nazul have been reflected by R. H. Baden-Powell in his book. By far the earliest treatise which is available on land tenure system in practice is this commentary by B. H. Baden-Powell of the Bengal Civil Service and one of the Judges of the Chief Court of the Punjab. The book is in three volumes. It was first published in 1892.

43. Nazul was that category of land which was forfeited in rebellion, for crime under the criminal law. The book reflects on land being seized and forfeited for rebellion after 1857 and the reference to forfeiture for crime under the criminal law, would be legislations which preceded the present Code of Criminal Procedure, 1973, Rather than interpreting what is contained in the commentary, it would be best to reproduce it:--

"Right to lapsed Lands. & c.-Head IV.

It has happened that estates were forfeited for rebellion after 1857, or may be forfeited for crime under the Criminal Law. Such lands then became State Property. The law of escheat of lands that had no heirs, was known to the old Hindus under the name of "gavari". The Muhammadan law term "nazul" is also applied to escheated lands. But it is very commonly applied to lands or houses that were owned by the former Government, and therefore became the direct property of the succeeding Government." [A Manual of the Land-Tenures of Land-Revenue Administration prevalent in the Several Provinces, by B.H. Baden Powell. F. R. S. E., F. R. S. F. Late of the Bengal Civil Services, and one of Judges of the Chief Court of the Punjab. Volume I. Page 239].

From the above, it is clear that the concept of nazul, a term under the Muhammadan law, is not alien to Hindu law under the name and category "gavari". This aspect is important as it is commonly misunderstood that every grant made by the Government is of nazul estate. This may not be so. The Court will deal with this matter later. At present, the Court is not concerned on what is the assessment of revenue on Government Grants which are nazul or otherwise.

44. Grants made of nazul land were also made under the Crown Grants Act, 1895 but every grant made under this Act was not of nazul land. What escheated to the State by annexation of estates being rendered heirless, passes into the realm of eminent domain of sovereignty and the continuance of possession of such properties by the State is guaranteed under Chapter III of the Constitution, under Articles 294, 295 and particularly, 296. Within these provisions also, is the theory of bona vacantia where for want of rightful owner of property in an estate it shall vest in that State and in any other case in the Union. But this is not the subject matter of these cases, either.

45. Apart from what has been referred to by B.H. Baden-Powell on what may be nazul estate, the possession of such properties by the Government as a source is

limited but never diminished. Whenever an appropriate authority having the sanction attaches the property of an absconder, as recent times have not seen a rebellion, the property will go into the common pool of management, by the Government, as a nazul property, it is other peoples property but held in trust as nazul.

46. When the Government delivers grants of estates under its control the sanction to make grants comes as a generality under the Government Grants Act, 1895, with the exception that all grants may not be of nazul estate. On one class of property there is sovereignty of the State or the Union, acquisition by law also falls under this category. In the other, of lands held by the State (Central, State or Railways, as the case may be) on having been confiscated from rebels, mutineers, absconders and forfeited under criminal law, such lands, were invariably shown in the settlement records as "nazul". Such lands the State holds in trust and in perpetuity will always hold it so. Administrative instructions and "rules", so called have always guided the Government that nazul estates are not to be alienated in perpetuity.

47. Such properties, that is, of which grants could be made, the Government Grants Act, 1895, has five attributes on the basis or which dispositions were made or can be made for transferring the possession of land whether by lease or licence, as the case may be. But one cardinal principle was always understood that the sanction to possess these estates and their reversion to the State should not be lost. Law prescribed this.

48. B.H. Baden-Powell has reflected on this aspect. The court will not edit his comments on the aspect of making a grant and how much control would be retrained by the State. B.H. Baden-Powell says :

"Claims how far adopted by the British Government.

I think, on the whole, what was meant by the various declarations in the Regulations and elsewhere, was this : that the Government claimed to succeed to the de facto position of the preceding ruler, only so far as to use the position (not to its full logical extent but) as a locus standi, for redistributing, conferring, and recognizing rights on a new basis.

And the outcome of the action taken by the Government was this--that it at once recognized certain rights in private individuals, and only retained such rights for itself as were necessary.

The power to make this distribution was no doubt based on the de facto power of the Government to dispose of all land.

I may exhibit the main features of the disposition of landed rights made by Government under five heads :

(1) Government used its own eminent claim as a starting point from which to recognize or confer definite titles in the land, in favour of persons or communities

that it deemed entitled.

(2) It retained the unquestionable right of the State to all waste lands : exhibiting however the greatest tenderness to all possible rights either of property or of user, that might exist in such lands when proposed to be sold or granted away. This right it exercised for the public benefit, either leasing or selling land to cultivators or to capitalists for special treatment ; thus encouraging the introduction of tea, coffee, cinchona, and other valuable staples. Or it used the right as the basis for constituting State Forests for the public benefits, or for establishing Government buildings, farms, grazing-grounds, and the like.

(3) It retained useful subsidiary rights--such as minerals, or the right to water in lakes and streams. In some cases it has granted these away, but all later laws reserve such rights.

(4) It retained the right of escheat; and of course to dispose of estates forfeited for crime, rebellion, &c.

(5) It reserved the right necessary for the security of its income (a right which was never theoretically doubtful from the earliest times), of regarding all land as in a manner hypothecated as security for the land-revenue. This hypothecation necessarily implies or includes a right of sale in case the revenue is in arrears." (Ibid Pages 234-235).

Laws have dealt with nazul land. Two legislations similar to each other have dealt with the subject "Nazul Lands". These legislations are relevant, as they deal with urban planning and urban lands, where most nazul lands are to be found. The first legislation is the Delhi Development Act, 1957. It refers to nazul lands in Section 22. It is reproduced :

"22. Nazul lands.--(1) The Central Government may by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as "Nazul Lands") for the purpose of development in accordance with the provisions of this Act.

(2) No development of any nazul land shall be undertaken or carried out except; by, or under the control and supervision of, the Authority after such land has been placed at the disposal of the Authority under sub-section (1).

(3) After any such nazul land has been developed by or under the control and supervision of, the Authority, it shall be dealt with the Authority in accordance with rules made and directions given by the Central Government in this behalf.

(4) If any nazul land placed at the disposal of the authority under sub section (1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that

Government upon such terms and conditions as may be agreed upon between the Government and the Authority. (emphasis)

Almost completely based on the Delhi Development Act, 1957, is the enactment which deals with urban planning and development in Uttar Pradesh. This Act is known as the U. P. Urban Planning and Development Act, 1973. In the context, under discussion, the expression "Nazul Lands" is also mentioned in the Uttar Pradesh enactment in Section 19.

It is reproduced below:

"19. Nazul lands---(1) The State Government may, by notification in the Gazette and upon such terms and conditions may be agreed upon between that Government and the Authority placed at the disposal of the Authority all or any developed and the undeveloped lands in the development area vested in the State (known and hereinafter referred to as "nazul land") for the purpose of development in accordance with the provisions of this Act.

(2) After any nazul land has been placed at the disposal of the Authority under sub-clause (1), no development of any such land shall be undertaken or carried out except by or under the control and supervision of the Authority.

(3) After any such nazul land has been developed by or under the control, and supervision of the Authority it shall be dealt with by Authority in accordance with directions given by the State Government in that behalf.

(4) If any nazul land placed at the disposal of the Authority under subsection (1) is required at any time thereafter by the State Government, the Authority shall by notification in the Gazette, replace it at the disposal of that Government upon such terms and conditions as may be agreed upon between that Government and the Authority, (emphasis)

A plain reading of nazul lands in both the enactments clearly mentions that (a) the Government, concerned, may place nazul lands at the disposal of an authority dealing with planning and development in a urban area, (b) the authority concerned may continue the development in accordance with the provisions of the legislation, (c) the development will be under the control and the supervision of the authority, (d) such nazul lands developed by or under the control and supervision of the authority, concerned, may be dealt with by the authority, in accordance with the directions given by the State Government in that behalf, and most important of all (e) nazul lands placed to the disposal of the authority, concerned, must be in a State that if it is required by the State Government, the authority, concerned, will be obliged to reconvey it and replace it at the disposal of that Government.

49. The two legislations, aforesaid, whether of Delhi or of Uttar Pradesh in themselves sufficiently reflect on the character of nazul land, implying at every stage that the ultimate control on such nazul lands will remain with the Government, and all such land must be in a state so as to revert to the

Government. It needs to be mentioned here that during the last century, the territories which are now constituted as Delhi (old Delhi particularly) and Uttar Pradesh (previously United Provinces and before that North Western Provinces) saw confiscation and attachment of estates of persons declared as absconders, rebels and mutineers.

50. One of the earliest references to nazul land is contained in the Directions to the Collector of Land Revenue, which directions were promulgated under the authority of the Lieutenant Governor of North Western Provinces. These directions are in two parts having been given in October, 1846 as Part 1 and October, 1848 as Part II. The compilation of the directions were published in 1848. The preface to the directions mentions that "The directions are not at variance with those contained in the printed Circular Orders of the Sudder Board of Revenue Nos. II, III & IV published in 1840 and 1841. Section 7 of the directions is under the Chapter Miscellaneous. This Section, as a Chapter, as a whole is important, as it deals with nazul property and nazul lands. In this regard, reference to paragraphs 330, 331, 333, 334 and 335, needs to be noticed. They are reproduced:

"330. It remains to notice some of the duties incidentally devolved on the Collector, which cannot be brought under any of the preceding heads.

331. The Local Agency. By Section 9. Regulation XIX, 1810, the Collector is constituted ex-officio one of the local agents, on whom is devolved the care of public endowments for religious or other purposes, and also a nazul property, or escheats to the Government. With him are generally associated the Civil Surgeon, the Executive Officer of the division in the Department of Public Works, and any others who may be specially nominated by the Government.

333. The Local Agents are also charged with the duty of vindicating the right of the Government to all nazul property, or escheats, and also of managing the property, when the title of the Government to it is clear. In this capacity their powers are large, and as the Collector is the person, who is best informed on the state of property in the district, the responsibility rests upon him of providing that false or frivolous claims to property as escheats are not put forward. In most large cities or towns, there are little patches of land, or public buildings, which are commonly considered Government property and are perhaps entered as such on the Canoongoe's records. Wherever any list of such claims exists, or can be made out, the earliest opportunity should be seized for deciding on the validity of the claim on the part of the Government. If there is no owner, the right of the Government is clear, if individuals not in possession advance frivolous or long dormant claims, they should be investigated, and a decision passed upon them. If the claim be rejected, the claimant can seek his remedy in the civil court. If a person be in apparent proprietary possession of the land, the claim of the Government should not be advanced except on the strongest ground, and it can only be made good by a suit in the civil court.

334. Property which belongs to Government, should not be sold without the previous sanction of the Government. The Land will be sold rent-free, or subject to the demand for Land Revenue, according as it may be excluded from the rent-roll, or may have been brought on the rent-roll at the time of the last settlement. Sale by public auction to the highest bidder will not be sanctioned whenever the acquisition of the ground may be made the means of personal annoyance. In such cases the land should be sold at an equitable price to the person apprehending the annoyance. Thus, land near a Mahomedan mosque or a Hindu temple, should not be sold so as to subject the religious feelings of the people to offence, and thus also the lessee of Government land, or the owner of land immediately adjoining it, should be allowed to purchase the proprietary right for a fair sum, without requiring the land to be put up to public competition. The title to land thus sold will not be valid till the sale has been confirmed by the Government, and it is always required that the extent and description of the land be specified as minutely as possible, both by a map and by written statement. When there is much nazul land belonging to the Government in the neighbourhood of large cities, it is much sought after for building purposes. The rules laid down by the Government, for the adjustment of claims regarding such land in the neighbourhood of Agra on April 25th 1845, were published by the Sudder Board of Revenue as a Circular Order, and will be found in the Appendix No. XXIX.

335. The sums realized by the sale of nazul land are often devoted by the Government to purposes of local improvement, and the Local Agents become then entrusted with the care of public works of greater or less extent." [Directions for Collectors of Land Revenue, Promulgated Under the Authority of the Honourable the Lieutenant Governor, of the Worth Western Provinces, Part I. 1846, Part II, October, 1848, Agra : W. H. Haycock, Secundra Orphan Press, 1848 Reprinted Centre For Developed Studies, U. P. Academy of Administration (U. P., India 1996) Chief Editor Dr. R. S. Tolia, I.A.S., Director, Pages 132, 133 and 134].

51. What is referred to in Appendix XXIX is itself important. Appendix XXIX is a Circular Order of the Sudder Board of Revenue, dated May 20, 1845. It refers to "appropriation of nazul lands". In the very first paragraph in so far as disposal is to be made, the reference is to deed of lease.....in which the lands are to be held as leasehold. Thus, any reference to sale is the sale of a lease right or a right to a lessee, after which, the lands will be held as leasehold. Paragraph 2 of this Circular Order of May 20, 1845 enjoins that The Government is the proprietor of those lands, and no valid title to them can be derived but from the Government."

52. Paragraphs 4, 5, 8, 9, 10, 11 and 15 deal with "Cultivators" on the land. Paragraph 14 mentions future applications for lands and even the Board (implying thereby the Sudder Board of Revenue) has been required to be careful so that principles, that is to say, of nazul land, are understood and acted up to.

Local agents to whom such lands were assigned for management as representatives of the Government, received the following caution "There is no reason why the local agents, as the representatives of the Government, should not get the highest price they can for the land." But the highest price referred to is also explained. The Circular of May 20, 1845. In paragraph 14, has expressions as "a fair rent, "rent fixed as settlement", "lease", "public auction", "leasehold", or "rent free, permanently." In the totality of the circumstances, leases for the term of settlement are to be confirmed by the Board and assignments of rent free land are to be reported to the Government for confirmation. In either case, the Board will charge themselves with providing that the course above determined be carefully followed out. This is provided in paragraph 16. (Appendix No. XXIX (Vide Paragraph 334) Circular Order of the Sudder Board of Revenue dated May 20, 1845).

53. Further, there lies two publications. The first is Nazul Rules, 1935 (Nazul Rules February 28, 1935). [Nazul Rules, Corrected upto February 28, 1935, Allahabad, Superintendent, Printing and Stationery, United Provinces. 1935]. The second publication is known as the United Provinces Nazul Manual, 1949. (Government of United Provinces Nazul Manual. 1949, Lucknow). [United Provinces Nazul Manual, 1949, Lucknow, Deputy Superintendent In-Charge, Government Branch Press, 1949].

54. The 1935 publication refers to paragraphs 1803 and 1814 of the Manual of Government Orders, Volume II, which, apparently, were classified as "Nazul Rules". This order, despite demand by the Court was not placed at the Bar. The publication referred to by the court as Nazul Rules, 1935, refer to "Instructions regarding Nazul Entrusted to Management of the Municipal Board and Notified Town Areas." The legend shows that these instructions have been issued under certain Government Orders. [Nazul Rules, Corrected Upto February 28, 1935, G.O. No. 883/IX-235, dated October 21, 1926, as amended by G. O. Nos. 115/IX-235, dated December 23, 1926, 451/IX-235, dated June 21, 1927, 1758/IX-235, dated November 25, 1930, 1904/IX, dated December 23, 1930, 240/IX-513, dated February 13, 1931, 1591/IX-219, dated October 16, 1931, 1618/IX-333-1932, dated June 22, 1932, 2459/IX-333, dated September 23, 1932, 3184-III/IX-333, dated February 1, 1933, 2289/IX-235, dated September 9, 1933, 298/X-235, dated February 2, 1934, 2046/IX-235, dated August 4, 1934, 2402-IV/IX-235, dated December 7, 1934].

55. These Government Orders are referred to at page 7 of the Nazul "Rules" 1935, by reference to numbers and date only. But, what is relevant in the fifteen instructions contained for the Municipal Boards and Town Areas, is a clear stipulation that the obligation to a Local Authority or a Municipal Board for the management of nazul lands, is that the delegation is "upon the strict observance of these instructions". Instruction No. 2 clearly mentions that the "Intra-municipal nazul, including the area demarcated for a civil station, has in general been entrusted to the management of Boards, and this management Board will

be allowed, as a rule, to retain so long as they continue to control the property with reasonable care and efficiency. This transfer of management confers no proprietary right in the property, and nazul is at all times liable to resumption by the Government." Nazul land may be sold, but/or a specific purpose only, say the Nazul "Rules", 1935. Thus first, it must be seen what can be sold. In this regard is sub-clause (c) of Section 5 of the instructions, which says "No land shall ordinarily be sold, except for the purpose mentioned in Clause (b) of the list except by public auction by inviting public tenders. Clause (b) refers to what will be sold :

"(b) Land shall not be leased for the purpose of erecting thereon or for the endowment of any religious building. If it is intended to utilize nazul land for this purpose, the sanction of Government to its sale should always be obtained. Nazul on which it is intended to build a charitable dharamshala or musafir khana, where no payment shall be taken, vide G. O. No. 1863/IX-451--44 dated 4.9.44 should ordinarily be sold. If nazul is leased for such a purpose, a nominal rent should be fixed, a stipulation being made that should the Dharamshala cease to exist or to be used for the purpose it was intended to serve the lease will at once terminate." [Ibid Page 8.]

56. This clearly implies that nazul land cannot be sold ordinarily. The exception is that the nazul land may be assigned as a lease, in effect, in perpetuity to trusts, appropriately public trusts, which follow the rule of perpetuity, notwithstanding that these trusts may be religious or even for the purposes of establishing buildings for a public purpose like a Dharamshala. But if the purpose of the trust is over, whatever be the reason, the nazul land reverts to the Government. It is thus that the Nazul Manual makes a pointed reference to not making permanent settlements out of nazul. The Nazul Manual says : "The granting of a lease in perpetuity in respect of any nazul land on any terms is prohibited." [Rule 22 Government of the United Provinces. Nazul Manual, 1949, Lucknow : Deputy Superintendent in-charge, Government Branch Press, 1949].

57. The grants conferred under the Government Grants Act, 1895, should the occasion arise to interpret them, it has been consistently held that such grants do not pass prerogative rights by implication. If two interpretations are possible, then such grants are to be construed in favour of the grantee. But. if the honour of the sovereign and if there be a dual meaning to the grant, one which renders it valid and other void, then it is accepted that one which is valid ought to be preferred, for the honour of the sovereign ought to be more regarded than the sovereign's profit. It has further been held that where two interpretations may be given to the grant, both of which are good, that which is most favourable to the Crown ought to be preferred. *Raja Rajinder Chand Vs. Sukhi, ; Mohsin Ali and Others Vs. State of Madhya Pradesh, .*

58. The grant which has been made under the Government Grants Act. 1895 the Supreme Court expressed its concern that where perpetuity is sought to be created of Government grants then that this phenomena would paralyse the

Government in not meeting the needs of the people. The Supreme Court stated that if every policy or direction of the Government regarding disposal of property were construed as irreversibly creating a right to property in a prospective beneficiary, strange consequences would follow. An administrative decision of the last century would hold the Government of India prisoner perpetually and deny it the power to alter its policies and programmes according to its understanding of the needs of the people. The Supreme Court posed a question--"Moreover, how can an interest in an immovable property and that in perpetuity be created by a mere Government proceeding?" The Supreme Court declined to accept an interpretation that a right in perpetuity could be created in the claimant who was seeking it. It permitted the State Government to continue to treat the lease as lease of land according to any public policy it may evolve in that behalf. *Chairman, Ramappa Gundappa Sahakari Samyakta Besava Sangha Ltd. Vs. State of Mysore and Others*, .

59. In a matter which was before the Allahabad High Court, a Division Bench ruled that characteristic of nazul is that nazul is at all times liable to resumption by the Government. Accepting this assertion, as was contained in the Municipal Manual, the Division Bench held that no matter what action is taken by the Municipal Board, the power of the Government to resume the nazul remains and that no limit of time applies to Government in its resumption of a grant. *Gaya Prasad Vs. Secy. of State*, .

60. The origins of nazul lands, history shows, by record, were the subject of confiscated estates. These confiscated estates or confiscated landed properties became the subject matter of grants to certain selected persons, made by the British Government for "eminent service". This consideration of making grants for eminent service came as a reward from the empire. These were properties which were assigned as grants. To ensure that the British administration may not be embarrassed, a Circular Order was issued by the British administration to all the Commissioners that such a State of Affairs may not be rendered that there is no finality attached on such estates and that it must be doubly ensured that forfeiture has become final and that it will be the responsibility of the Commissioners concerned, that the authorities were dealing with finally adjudicated forfeited landed properties. The whole purpose was that while a grant may be made as a reward to one subject, such an occasion may not arise that the claimant may turn up to petition the Government with an assertion that the forfeiture was irregular and the property be returned. Thus, this long circular to all the Commissioners was issued as circular No. 5, dated 13th July, 1859 by the Government of the North Western Provinces. Every Commissioner was obliged to keep a final confiscation statement of each district and lay it before the Government for orders. [Circular No. 5 to All Commissioners, dated Allahabad, the 13th July, 1859, six pages with appendix, issued by the G. Couper, Secretary to Government, North Western Provinces].

61. Nazul lands were guarded by the Government of this State as a very special

property on which a very strict check was to be kept. The caution on what could become the subject matter of sale out of nazul properties has already been dealt with in the Nazul Manual, an official publication. Even the propriety of giving a lease was to be scrutinised by the Commissioner and a distinguished civil servant, Mr. Panna Lal, I.C.S., in 1935, wrote a book entitled Handbook For the Guidance of Junior Collectors. The book was published by the authority of the Government of United Provinces. A special chapter was devoted to nazul. In reference to nazul properties regarding its concepts and making grants of such properties :

CHAPTER XVII NAZUL

The local Boards keep on paying into Government treasury various amounts to this account. Rarely does the Collector's office exercise any check : I have found on inspection that even such of the Collector's offices as do exercise a check do not do it properly. They generally get from the Board a list of the plots leased out, total up the quarter said to have been credited to Government and verify from the treasury that amount has been so paid. This is no check at all. Here you take for granted that the statement of the income is complete and merely verify that a quarter of it has been credited into the treasury. What Government want is the quarter of the real income and steps must be taken to check that the total income has been correctly stated. Laterly, Government has issued orders that it attaches a great deal of importance to the proper check of its share of the nazul income.

Now proposals by the local Boards to lease or sell nazul plots need the sanction of the Collector and, in some cases, of the Commissioner. Very often they are disposed of after an inquiry from the Tahsildar as to the adequacy of the price offered. The result is that nazul plots abutting on public streets are continually being built upon to the inconvenience of the general public. The Board should not be allowed to lease or sell such plots, especially in big congested towns. Remember that when you send a lease for the Commissioner's sanction, he will want your opinion on the propriety of giving the lease no less than the adequacy of the proposed rent. The endorsement, "forwarded", is the sign of slack Collector. [Chapter XVII, Nazul from Handbook for the Guidance of Junior Collectors by Panna Lal I.C.S., Published by the authority of the Government of United Provinces, Allahabad, Superintendent, Printing & Stationery, U. P., 1935, Centre for Development Studies U. P. Academy of Administration, Nainital (U. P.), India, Page 64].

62. In so far as the Nazul Manual or the Rules is concerned, the court cannot overlook an observation of a Division Bench of the court, while deciding matters of grant or renewal of leases, in the context of nazul lands. In the matter of Purshottam Dass Tandon and Others Vs. State of U.P. Lucknow and Others, , the Court observed that what has been understood as rules in the Nazul Manual are in fact, otherwise. The observation of the Court was : "These rules are set of administrative orders or collection of guidelines issued by Government for the

authorities to deal with Government property." It is also the impression of this Court, as nothing has been shown that these administrative orders could be mistaken as rules under a particular enactment. In so far as the administrative orders deal with monitoring, regulating and preserving nazul property as a standardised measure, there is no occasion to criticise the administrative orders. In the matter of *Purshottam Das v. State* (supra), the essence of the decision was that those entitled to leases, whether by a grant or by renewal of it in accordance with earlier orders, particularly, the 1959 order and the 1969 order, these were policy decisions taken to facilitate the grant or renewal of leases. The decision of *Purshottam Das v. State* (supra) also took notice of the fact that there were others on lease lands who could not be ignored. These were the poor people, genuinely below the poverty line who resided in the servant quarters. The court held that they were entitled to rehabilitation as it was not the intention that the outhouse dwellers, the truthful and genuine ones, were not to be part of a welfare State programme. The decision, in effect, was on the theme that the State is obliged to cater for the poorman's housing.

63. Those who can afford, for their bona fide personal needs, can take care of their housing (business not excluded) to receive grants on lease or the renewal of it and there ought to be no discrimination in making such grants as long the grants are in accordance with the equity clause, exceptions not excluded, prescribed under the Constitution of India. The nazul character of the land is to be protected and preserved which the State Government is supposed to guard with strictness. Making freehold out of nazul lands would be breach of trust. It would be subterfuge to the principles of the decision in *Purshottam Das v. State* (supra) case and an excuse of how not to implement the principles of the decision when the decision of the aforesaid case has even been affirmed by the Supreme Court. [1989 Suppl. (2) SCC 412]. Once a decision has been affirmed by the Supreme Court, the effort should be to set policies in accordance with the decision upheld by the highest court of the land. All subsequent orders issued in the matter relating to nazul lands respect nazul lands and ignoring the aspect of grant or renewal of leases whether residential or commercial or of nazul shops and not facilitating this aspect, and instead proceeding to make freehold, the corpus of property which are nazul in character, virtually amounts to defeating the principles which have been settled by the highest Court of land. Further, it amounts to changing the character of nazul properties, which, the Government holds in trust, and nazul property's essential attribute is that it must always be in a state to revert to the Government.

64. Freehold may be made by the State, but of lands which are other than nazul land. Of grants which are made under the Government Grants Act, 1895 all are not of lands which are nazul lands. Nazul had its origin as other people's land and no one has a better title to it, except the true owner. The State holds nazul land in trust and manages it with the aid of the local bodies and, thus, noticing the past record which the Court has referred to including references and guidelines for administrators, nazul land is to be strictly guarded as such. It can

only be the subject matter of a grant as a lease. The grant can be inherited as prescribed. If there be no inheritors to inherit the grant, nazul land can be subjected to fresh lease as the Government may please, as the Supreme Court said in the matter of *R.G.S.S.B. Sangh v. State of Mysore* (supra).

65. But to make nazul land freehold is an illegality. It is an anti trust measure. It is for this reason that one of the circulars had cautioned that even the declaration of a property being classified as nazul land must be taken very very carefully with complete scrutiny that the confiscation is final. The State may acquire, within its sovereign power, any land and make a grant of, it or may, set apart land as a class for being given as freehold, but this cannot be done to nazul land. It is nazul land which constitutes the character of a town or a city. It is a nazul land which requires the administration of a town or a city and the Government to take upon the obligation of establishing schools, police stations, administration block for municipalities, town halls, institutions for the preservation of the culture and heritage of the people, institutions for the advancement of performing arts, old age homes, vocational and rehabilitation centres, court houses, libraries, Municipal Markets and shopping areas. The list is not exhaustive, but in short the obligation of the city administration to build functional institutions as part of the fabric of city and civic life. Further, trusts in the nature of public charitable trusts, public educational trusts, public religious trusts, are meant to function in perpetuity. Thus, grant of teases on nazul land to working institutions, like schools, educational foundations, religious foundations can be given as long as the institutions use the grant for purpose it was given. Grants on nazul lands as leases may be given to individuals and such a grant as a lease can be inherited. If there are no heirs left, nazul land reverts into the common pool of nazul for being granted, if the occasion arises, as a fresh lease to whomsoever the State may desire to make the grant under the norms laid out.

66. But, red-tape, clerical blocks, bureaucratic wrangles were created in not renewing leases (shop leases not excluded) when heirs were entitled to inherit the grant. Lease, as a grant may be transferred, if the contract provides, failing which with the permission of the State Government. But, if applications for grants of leases or renewals, of shops or residential nazul properties will be kept pending tied With red tapes and strangers will walk away with "freehold" rights on nazul land, then this is mismanagement of Government estates and properties. But, files for grants afresh and renewals were and have been kept pending. Long tenure tenants of the "gora sahib" were held entitled to be considered for receiving grants as leases and they are still awaiting for the true implementation of the decision in *Purshottam Das v. State* (supra) affirmed by the Supreme Court. While bona fide tenants on nazul properties from the days of the Raj are anxiously awaiting their request to receive nazul lease or grant, strangers are walking away with nazul land having arranged to change its character as "freehold". This cannot be done by administrative or Government Orders. It is without sanction. A transparent system has to exist for the grant of leases or the renewal of it, of nazul lands, whether these grants are of shops or

for residence.

67. In reference to the shops in the Municipal Market, they are on nazul land. This will remain as nazul land. It cannot be changed into a "freehold" property. A Municipal Market is an essential attribute of a city. Freehold would be a negation of the concept of nazul and it cannot be made of such lands. "Freehold" of nazul estates will mean syndicalism and there will be a conglomeration of large combines, multinationals not excluded, who will buy lots and combine small shops to make large ones. It will eliminate the petty shopkeepers. It will destroy an age old bazar. It will be an end of a poorman's vocation. It will destroy a petty shopkeeper as an institution. What the State Government can do is to plan and build a new market in place of the present century old space-wasting-market. On the same ground floor space a multi-floor shopping arcade can be made and each shop can be leased out within the Nazul Shop Rules and become the subject matter of an allotment or a grant as a lease as the State may please, but it cannot be sold as "freehold". It is for this reason that even the U. P. Urban Planning and Development Act. 1973, does not permit the destruction of the nazul character of the land.

68. The Court reminds the State Government that the Constitution stood amended in 1977 and in the Preamble was added the phrase "SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC." The rest of the preamble remains. In this regard, in reference to JUSTICE, the Preamble reads : "JUSTICE, social, economic and political;"

69. In this context, Article 39 of Directive Principles of State Policy refers to the State directing itself to securing "the right to an adequate means of livelihood"; and further "the ownership and control of material resources of the community are so distributed as best to subserve the common good": and then the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment". The Constitution of India is very clear in its concept, though at times those in-charge of administration are loath to forget the principle of socialism in the all pervading and approaching liberalisation of the economy. As long as the concept of socialism remains in the Constitution of India and the Directive Principles of State Policy affirmatively guide that the production and distribution must be so organised that it is for the common good, these principles cannot be forgotten when dealing with nazul estates. These were properties which were confiscated, whatever be the reasons, from persons of the past generation. These are held in trust. On these properties, a programme of socialism is the obligation of the State. Making "freehold" out of nazul estates is the abdication of principle of socialism, otherwise against the law. In the context of the present case the State is obliged to create a market so that the petty businessmen can take up the vocation of their business on grants as lease of shops which they will hold as also their heirs, unless there are no progenies left in which event the grant comes to an end and the estate reverts to the Government for assignment afresh as a lease to another

deserving incumbent. Rich man's business can be taken care of from other lands, not from nazul estates.

70. In these circumstances, all the Government Orders which have been issued for alienation of nazul estates and permitting such estates to become "freehold" are against the concept of nazul, are against the law and are illegal. Clearly, the law stipulates and the concept of nazul, is clear that, at every given time, nazul estates must remain in a State so as to be reconveyed to the Government. Making nazul estates "freehold" is an ultra vires act. When the Government was given the latitude that it could make a grant out of nazul estates under the Government Grants Act, 1895, and the Transfer of Property Act, 1882 was not to apply, such grants ran with a basic attribute under the law that should those to whom the grant had been made are not available or the terms are violated, the grant would either revert to the Government, or be resumed.

71. While the court is rendering this opinion on the interpretation of the concept of nazul estates, the Court is neither declaring nor confirming any benefit relied upon by the petitioners, as the petitioners cases for allotment of nazul shops under the Nazul Shop Rules in the Municipal Market will have to be seen strictly on their eligibility to receive an allotment. The State respondents have already contended that the petitioners, all three of them are ineligible and are unauthorised occupants. Between three contenders, the three petitioners, claiming two shops, the High Court will not do the screening, the selection and the election amongst them, or others, as to who is the fittest person to qualify for allotment of a shop on lease under the Nazul Shop Rules. The High Court is only interpreting a situation in public law on what is the correct conception of nazul estates, and that nazul properties cannot lose their identity and the distinguishing characteristic of their origin, as opposed to other Government properties where the State may be absolute owner.

72. Amongst those who have received "freehold" rights on nazul estates, such of those who are eligible to receive a lease of the shops under the Nazul Shop Rules, valid allottees or their inheritors as the Rules provide, may be considered for the grant of continued allotment. Of shops which are available on being vacant under the law where a lessee may have died without a heir or has violated the terms of the lease to occasion resumption of the lease, the shop will be settled for allotment strictly according to the Nazul Shop Rules.

73. To undertake the aforesaid exercise, is the function of local administration, not the High Court. The court reminds the local administration and the State respondents that in dealing with nazul estates such contradictions must not occur, so in the present cases, that while the Collector, Allahabad, was holding that the petitioners had unauthorisedly occupied nazul shops against the Rules, the local municipal body (the Nagar Mahapalika) was recommending cases contradicting the Collector and in violation of the Nazul Shop Rules. Dealing with nazul estates is managing estates which vest with the Government. Assignment of allotments as nazul grants under the Nazul Shop Rules, contemplates due

inquiry. These rules do not contemplate deviation. Defaulters are not permitted to be considered. Rents can be increased "every 5 years according to the market condition". [Rule 17]. The nazrana or the premium realised from the auction of shops is to be credited to Government account. All these are fiscal matters to ensure Government income as revenue from these special category properties, the nazul.

74. The nazul instructions, compiled as a Manual are writ large with reporting matters of transfers exceeding certain valuations to the "Accountant General, United Provinces", today Accountant General, Uttar Pradesh. Let all these matters of transfers as "freehold" or otherwise of nazul shops in the Municipal Market be brought to the notice of the Principal Accountant General, Uttar Pradesh. "Instructions regarding nazul entrusted to the Management of Municipal Boards and Notified Town Areas", [Instruction 5, Nazul Rules, Allahabad : Superintendent, Printing and Stationary, United Provinces, 1935]. In any case require it so. A certified copy of this judgment will be sent by the Registrar, High Court, to the Principal Accountant General, Uttar Pradesh, Allahabad, immediately.

75. Incompliance of the court's order learned chief standing counsel, U. P., placed the original file containing various Government Orders relating to Nazul properties. The chief standing counsel also placed before the Court the photo copies of the Government Orders. No. S.R. 559/11-97, dated 19.2.1997, No. 1562(i)/9-Aa-4-92 dated 23.5. 1992, No. 3632(i)/9-Aa-4-92, dated 2.12.1992, No. 2093(i)/9-Aa-4-94-293 N/90, dated 3.10.1994, No. 1576/9-Aa-4-95-547 N/94, dated 23.9.1995, No. 201/9-Aa-4-96-547 N/94, dated 19.4.1996, No. 1396/9-Aa-4-96-547 N/94, dated 19.9.1996 and No. 9471(1)/9-Aa-4-97-16/ N/97, dated 1.5. 1997. These Government Orders were utilised to convert nazul estates into "freehold". After noticing the law, Government instructions since more than a hundred years ago, the Nazul Manual, the Nazul Shop Rules, all in the nature of administrative instructions, it is clear even leases in perpetuity cannot be granted and the question of changing the character of nazul estates to "freehold" does not arise. Having held that no "freehold" rights can be granted on nazul estates, and these estates were, are and will continue to vest with the Government in trust, the court is left with no option but to quash all the Government Orders mentioned above as this would be permitting nazul estates to be converted into "freehold"; and would amount to an anti trust measure (Amanat men Khayanat) , against the larger public interest which the law and the concept of nazul, in any case, does not permit.

76. The decision of the Government, if it be of the Government, giving freehold rights to a person (Writ Petition No. 20430 of 1992) who, the Government submitted, is liable to eviction under the Nazul Shop Rules, has the makings of a land scant. This Order, No 1537/9-Aa-4-96-547N/94, dated 19 September, 1996, Annexure "3" to the application and affidavit of 26, November, 1996, is quashed. It is such orders which show that the concept of nazul has either been lost or

conveniently forgotten. The Joint Secretary is referring to Nazul Manual, Paragraph 5-A, by which the mutation cannot be had by this petitioner. The Collector, Allahabad, does not treat this petitioner as heir under Rule 13 of the Nazul Shop Rules. The Collector by his Order of 31 October, 1991 impugned in the writ petition directed that the shops desired by the petitioner be put to public auction. But this petitioner has been recommended to receive "freehold" when otherwise she is meant to be evicted as an unauthorised occupant.

77. Selling nazul estates is illegal. The law required nazul estates to be in a state to revert to the Government when required. Selling nazul estates is callousness. It is mediocrity and negation in urban planning, not the excellence of it. If more shops have to be made on nazul Municipal Market estates, should the existing complex be out of date, let a modern bazar of small shopkeepers be planned to give the Government or the local administration recurring income and revenue. But, the characteristic and the personality of cities, must not be destroyed as towns in Uttar Pradesh, and most neighbouring States, and the local administration concerned is oriented to urban administration of nazul areas. No common man or middle class or poor can afford the exercise of a "freehold" conversion. Poor, common and middle class may, and do hold, nazul estates. Rigidness in administration or favouring the favoured. In renewals, fresh grants or transfer or mutation of bona fide heirs, has encouraged surreptitious nocturnal transfers of nazul estates, whether of shops in Municipal Markets, commercial sectors or residential areas of nazul estates. That unprincipled holders of nazul estates, with the connivance of local administration, permit unauthorised occupation or transfer of nazul estates with receipts of ground rent being cut in the name of dead persons, like in the present cases, is no reason for the Government to comprise so that the institution of nazul disappears, which the law otherwise prohibits. With the Government and the local administration turning a blind eye, to such irregular and illegal transfers of nazul estates to unscrupulous occupiers, whom even the Collector declares as unauthorised occupiers, lays the foundations of land scams. Making freehold out of nazul encourages it. It is giving rise to large combines of capital with muscle, taking the cloak of juristic personalities veiled as incorporated building societies and companies, paying "freehold" charges "benami" on behalf of holders of nazul estates, or by syndicates of fragmented nazul estates in property deals, thereby destroying the character and planning of towns and cities. Planned areas of nazul estates are being replanned privately instead of being replanned by the local administration as part of public planning, in the public and larger interests of the civic community, be it a shop in a municipal market, commercial area or residential area.

78. What has been completely overlooked by the local administration, is an important aspect about the Municipal Market being governed by the Nazul Shop Rules. The last instruction of the rule says :

"18..... However, Municipal Board will submit detailed proposals for the

improvement of the shops and the Government in the recommendation of the Collector, will allot suitable grant put of the nazrana so realised for the aforesaid purpose."

79. A municipal market on a nazul estate cannot disappear in thin air as a "freehold". Law prohibits it and the concept of nazul does not permit it. The so called Nazul Shop Rules or instructions, clearly envisage an exercise of excellence in improving the Municipal Markets. This is an exercise to be undertaken by the city planners of the local administration. A municipal market is a common man's shopping area. It functions with small shops and small businessmen or petty shopkeepers. It generates the economy of the local area or the town. It provides employment in self-employment to a small shop keeper. If Government instructions require that "improvement" to the Municipal Markets are to be contemplated, then this should have been suggested, not selling the market. The Nazul Shop Rules contemplate preserving the municipal market, increasing the income and revision of income from rents every five years for further improvement of the market. A self generating economy will only set in for the local administration and the Government to carry out modernisation and improvement of the Municipal Markets, by settling the shops by public auction and revising the rents every five years and bettering the shopping complex. This would have been in consonance with the preservation of this nazul estate, which the Municipal Market is.

80. What should have been suggested and discussed between the local administration, that is, the Nagar Mahapalika, Allahabad, or the Allahabad Development Authority, with the Collector and District Magistrate, Allahabad. is of a replanned market in excellence by rebuilding the Municipal Market at the same site within the same area. The Municipal Market, at present, is a handover of the Raj which suited the local needs and the administration of the times at the turn of the century. In today's context, a multi storey shopping complex should come with shops of the same area as at present or slightly larger, and more in number at different floors available for being given on lease, by allotment in accordance with the Nazul Shop Rules. This would be an excellence of planning. Not only the shopkeepers who occupy the Municipal Market today will be accommodated entirely, but others who are running around to purchase shops in the Municipal Market as their private property, will also be considered for assignment of shops on lease in this newly constructed Municipal Market, which will continue to retain its Municipal character as a nazul estate. No one need apprehend of being ousted out of his vocation, but in the larger interest more will be benefited beyond the petitioners including the thirty two who have received so called "freehold" rights, which cannot be had on nazul estates.

81. The administration may be given one word of caution that there is guidance in the Nazul Shop Rules requiring improvements being suggested by the local administration. In today's context, instead of "Municipal Board", the expression Nagar Mahapalika should be read. The Rules speak of submission of proposals for

the improvement of the shops. In this context, the local administration must orient itself to the stipulation of the Constitution. The spirit of suggesting improvements in the Nazul Shop Rules framed in 1940 does not appear to be different from the spirit of the Constitution which requires as a fundamental duty to be kept in mind by every citizen (the local administration is not an exception to it) that in planning there must be a "scientific temper, humanism and the spirit of inquiry and reform." (Constitution of India, Article 51A(h)). Not only this, the Constitution of India also requires that in matters of planning one must "strive towards excellence in all spheres of individual and collective activity" to procure the result of "higher levels of endeavour and achievement." [Constitution of India, Article 51A(j)].

82. The best of municipal and civic planning for the larger public interest takes place on nazul estates : planning for the community which is part of local self Government. Planning which creates functional institutions, to which the Court has referred to, for the community of which planned Municipal Markets and municipal bazars are part. Thus, there is an obligation on the local administration and the State Government, the State respondents not excluded, whether under the Nazul Shop Rules or the Constitution of India, firstly, not to destroy the municipal character of nazul shops. Secondly, the Municipal Market is not meant to disappear by sale, but it is to be retained for preservation in so far as the concept is concerned, but in the excellence of it in keeping with modern times a new market is to be constructed so that there is no claimant in possession of nazul shops as "freehold" property. Instead as many as can be catered for ought to be provided these nazul shops under Nazul Shop Rules.

83. On what has been held above and the reasons given the court summarises that:

A Character of nazul estates cannot be changed.

B. Perpetual leases on nazul estates cannot be granted except to educational and charitable institution, recognised by law and in accordance with accepted nazul concepts that if the institutions cease to exist or the lease is misused for a purpose other than the grant, it would be resumed.

C. Freehold cannot be created out of nazul estates. It may be created from other Government properties which are not nazul, provided the law permits.

D. Every transfer, whether under Nazul Shop Rules, or the Nazul Manual, where "freehold" was granted out of nazul estates will be the subject matter of visitation by the Principal Accountant General, Uttar Pradesh. The Principal Accountant General will be entitled to audit by visitation and the State Government will be obliged to deliver information to the Accountant General on demand.

E. The status of all "freeholds" made out of nazul estates, repeat nazul estates only, shall continue as grants under Government Grants Act, 1895.

F. Wherever outdated Municipal Markets exist, the Government is obliged to revise the rent every five years at market rates and fresh settlement of shops are to be made by public auction and the matter reported to the Accountant General, Uttar Pradesh.

G. Whenever the original allottee or the sitting allottee dies and heirs seek substitution as their entitlement under the Nazul Shop Rules, the applicants must get reception on their request for substitution, by the administration within one month, as far as possible, provided due proof is submitted to the local administration in-charge of nazul whether by succession certificate or letters of administration or a probate from a court of competent jurisdiction certifying the right to hold the lease, in the present case under the Nazul Shop Rules or the Nazul Manual, as the case may be.

H. Where the local administration does not accept the petitioners as heirs within the meaning of Nazul Shop Rules as they are not in the line of succession under the rules nor within the rule of prima geniture (Rule 13), their prayer for receiving an allotment under the aforesaid rules does not arise.

I. In so far as fresh grants are concerned, within the meaning of the Nazul Shop Rules, any eligible person may apply and the applicant will be considered on the basis of criteria laid down, that is to say, allotment by public auction. The right to participate in a- public auction for seeking an allotment remains.

J. As land settlements are recorded, Nazul as an estate finds mention in the Settlements (Bandobast) of each district. The Government, which includes the local administration, is obliged to keep track and monitor nazul estates and keep the nazul records upto date. Nazul estates are to be preserved and their conforming uses retained, for example, commercial for commerce, market for bazars and shops, residential for residences, institutional usages for schools, colleges, universities, hospitals, administrative blocks, town halls, greens for gardens and parks, etc., as the list is not exhaustive.

84. In the light of the observations and directions, as given above, these writ petitions are decided accordingly.

85. There will be no order on costs.