

(2006) 03 AHC CK 0134
In the Allahabad High Court
Case No : Writ Petition No.1580 (M/S) os 1997

State of U.P.(Nazul)

APPELLANT

Vs

7Th Additional District Judge, Lucknow and Others

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3(2), 4, 5, 6, 7

Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 — Rule 3, 5, 8
Transfer of Property Act, 1882 — Section 52

Citation : (2006) 03 AHC CK 0134

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—The controversy under the present writ petition raised by the parties is of Public importance and relates to interpretation of provisions contained in Section 2(e), 2(f), 2(f and b) and 2(g) read with Sections 4, 5, 7 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act 1971 (in short hereinafter referred as "the Act") as well as various Forms appended with the Act and U.P. Public Premises (Eviction of Unauthorized Occupants) Rules 1971 (in short hereinafter referred as "the Rules"). The other question of public importance relates to the ground raised by opposite party as to whether complicated disputed question of fact as well as question of title can be adjudicated in a summary proceedings under the Act?

2. The brief fact of the case is that late Smt. Parvati Devi, w/o late Justice Bisheshwar Nath had purchased the premises in question from one Guru Prasad by registered sale deed dated 2.2.1943. The premises contains not only a constructed building alongwith its boundary wall but also godown and other infrastructure alongwith open space. According to admitted fact on record the premises in question exists at Khasra No.1056, 1057 which is the part of 1862 situated in Tehsil Sadar, City and District Lucknow. According to narration of fact in sale deed, the land in question was an Abadi land and Nazul Property. The

vendor Shri Guru Prasad had acquired the possession of the on lease land from Nazul in his favour w.e.f. 1.4.1917 for the period of 30 years, which was extendable for 90 years after enhancement of annual rent. Accordingly, the lease could have continued up to 21st March 2007. In the record of Nagar Nigam the land was recorded in the name of Guru Prasad and after the execution of sale deed dated 2.2.1943 in favour of Smt. Parvati Devi w/o Late Justice (Sir) Bisheshwar Nath the name of Parvati Devi was recorded. After the death of Smt. Parvati Devi, in the record of Nagar Nigam the name of heirs of Late Justice (Sir) Bisheshwar Nath was recorded. The private respondent Nos.2 to 6 are the heirs of Late Smt. Parvati Devi w/o Late Justice (Sir) Bisheshwar Nath.

3. A notice dated 22.4.2003, copy of which has been filed as Annexure No.9 to the writ petition, was served on the private respondents to explain their right and title over the property in question. According to petitioner's counsel, no reply was given by the respondents to the said notice. Thereafter, a case in pursuance to provisions contained in Section 4, 5 and 7 of the U.P. Public Premises (Eviction of Unauthorized Occupant) Act, 1972, in short hereinafter referred as the Act, was filed before the Prescribed Authority on 5th January, 1984. A copy of petition has been filed as Annexure No.2 to the writ petition. The averment contained in para 3 of the petition shows that it was filed by the Petitioner against the private respondents with the allegation that they are in unauthorised occupation of premises in question from 1.4.1979. Accordingly, they are liable to pay damages on account of unauthorised occupation of premises in question w.e.f. 1979 till the private respondents restore back the premises to the Nagar Nigam. Notice dated 23.5.1984 alongwith complaint, a copy of which has been filed as Annexure 3 to the writ petition under Section 4(1) and Section 7(3) was served on the private respondents during the course of proceedings. Private respondents have filed their written statement, the copy of which has been filed as Annexure6 to the writ petition. The private respondents claimed their possession, right and title over the premises in question on the basis of registered sale deed executed in the name of their Mother Smt. Parvati Devi w/o Late Justice (Sir) Bisheshwar Nath in the manner discussed hereinabove. Before the prescribed authority the statement of amin was recorded. The copy of statement dated 24.10.1989 has been filed as Annexure4 to the writ petition.

4. After hearing the counsel for the parties and recording of evidence, the prescribed authority by judgment and order dated 5.1.1994, a copy of which has been filed as Annexure10 to the writ petition had declared the private respondents as unauthorized occupant of the premises in question. The prescribed authority held that the opposite parties are in unauthorized occupation of premises in question since 1.4.1979 and accordingly, directed them to vacate the premises in question and pay damages in pursuance to provision contained in Section 5(1) read with Section 7(2) of the Act. A perusal of the judgment and order of prescribed authority shows that he had given a finding to the effect that the private respondents are in unauthorized occupation of premises since 1st April 1979. Accordin to the prescribed authority the land in

question is a Nazul land and accordingly on account of its unauthorized occupation the private respondents are liable to pay damages at the rate of Rs.63144/ per year w.e.f. 19th April 1979. While holding that the land in question is Nazul land, the private respondents have no right or title over the land to occupy the same. It has been further held that there is no material on record which may show that the Nazul department had ever granted or renewed the lease for the property in question in favour of Smt. Parvati Devi. No lease deed was filed by the private respondents. Only receipt for payment of rent to the Nazul of the year 1957 and in other years were filed by the private respondents to show that the name of private respondents are recorded, and rent was accepted by the petitioner.

5. Feeling aggrieved with the finding recorded by the Prescribed Authority, the private respondents had preferred an appeal under Section 9 of the Act. Memo of appeal has been filed as Annexure11 to writ petition. The Appellate Authority after hearing the counsel for the parties had allowed the appeal and set aside the order passed by Prescribed Authority. Copy of impugned judgment and order dated 1.3.1995 passed by the Appellate Authority has been filed as Annexure13 to the writ petition.

6. Initially Shri S.C. Mishra assisted by Shri S.S. Chauhan had argued at length representing the petitioner and Shri V.B. Upadhyaya, learned Senior Advocate assisted by Shri V.R. Singh had appeared and argued the case on behalf of private respondents. However, at later stage Shri N.K. Seth, learned counsel for the petitioner appeared and shown his willingness to argue the case afresh. Sri N.K. Seth, learned counsel had again argued afresh. Shri B.K. Saxena had argued as intervening on behalf of M/s Gomti Constructions.

7. Shri N.K. Seth, learned Special Counsel, had proceeded to submit that sale deed dated 2.2.1943 executed by the vendor in the name of Parvati Devi, w/o late Justice (Sir Bisheshwar Nath) was executed without any authority. Further submission is that by the said sale deed only rights relating to the constructed portion has been transferred and not the land in question. The further submission of the learned counsel for the petitioner is that the rent receipts filed as Annexure8 to the writ petition does not extend any right for two reasons namely first; payment of rent shall not create a right or title in favour of respondents. Secondly; the rent receipt were not proved in accordance to law hence it shall not be admissible evidence. The further submission is that once it has been admitted that the land in question is Nazul land then burden lies on the respondents to prove their right and title over the land in question.

8. A perusal of sale deed which has been placed on record verified by notary shows that the following property was transferred by sale deed dated 2.2.1943. The relevant extract of sale deed containing the description of property which was transferred is reproduced as under:

9. Petitioner's counsel had invited attention towards the averment contained in

"Para 15 to 28" to the writ petition and proceeded to submit that it was incumbent upon the private respondents to provide a copy of lease deed to the Special Nazul Officer in response to eviction notice dated 22.4.1983. The further submission is that in pursuance to partition deed through arbitration, entered between the members of family of the late (Sir) Bisheshwar Nath only Shri Bhupendra Nath Srivastava (opposite party No.2) and after his death his heirs opposite party No.2/1 to opposite party No.2/5 (added through amendment) have claimed right and title over the property in question. The further submission is that since the original lease deed was not filed before the Prescribed Authority and there is no evidence relating to the renewal of lease deed in view of statutory provision contained in Act, the private respondents have no right to retain the possession of premises in question. It has been further submitted that the portion of land in question was put for public auction and on account of highest bid the same has been transferred in favour of M/s Gomti Construcitons. Against the transfer of land in favour of land M/s Gomti Constructions, respondent No.2 had filed a writ petition No.1031 (MB) of 1995, which is pending. The further submission of learned counsel for the petitioner is that under the facts and circumstance of the case private respondents may be treated as persons in ?unauthorized occupation? of premises in question. Merely because they have paid rent in the successive years shall not create any right or title in their favour. They are liable to be evicted and pay damages for the period during which they have used the land as unauthorized occupant. The judgment and order passed by the Prescribed Authority does not suffer from any impropriety or illegality hence it was not justified on the part of Appellate Authority to interfere and set aside the order of Prescribed Authority.

10. The further submission of Shri N.K. Seth is that mere execution of sale deed by the vendor in the absence of any lease deed executed by Nazul in favour of Late Guru Prasad will not create a right. Shri N.K. Seth had drawn attention towards Section 2(g) of Public Premises (Eviction of Unauthorized Occupants) Act, 1972.

According to petitioner's counsel, sufficient opportunity was given by the Prescribed Authority while passing the order dated 5.1.1994, a copy of which has been filed as Annexure10 to the writ petition. The Prescribed Authority had observed that respondents had failed to establish the fact that they are in lawful occupation of premises in question. Accordingly, the Prescribed Authority had rightly directed to pay damages w.e.f. 1.4.1979 and to vacate the premises in question.

11. On the other hand, the submission of respondents' counsel is that the notice issued by Special Nazul Officer was a composite notice which is not contemplated under the Act. Long standing continuous possession of the private respondents in pursuance to registered sale deed can not be thrown out by summary proceedings under the Act. The rent receipts filed as Annexure CA7, CA8 and other document shows that private respondents has been making payment of

rent in accordance to rules either in cash or through cheque. Accordingly, submission of Shri V.B. Upadhayaya, learned Senior Counsel assisted by Shri V.R. Singh is that the private respondents can not be treated as a person in unauthorized occupation of premises in question. According to respondents' counsel, forming of opinion relating to encroachment or unauthorized occupation from 1st April 1979 is itself against the material on record. Admittedly, private respondents have been in continuous possession of the premises in question in pursuance to registered sale deed dated 2.2.1943. The order passed by the Nazul Officer dated 5.1.2005 as well as Prescribed Authority does not show how they have formed opinion against private respondents relating to unauthorized occupation. Satisfaction recorded by Nazul Officer as well as Prescribed Authority are based on no evidence. The finding recorded by Prescribed Authority that private respondents are in unauthorized occupation since 1st April 1979 or the private respondents interfered and encroached with the land in question w.e.f. 1st April 1979, at the face of record seems to be perverse and based on unfounded facts. Since the petitioner had accepted the rent deposit in cash or through cheque even prior to 1st April 1979 the very basis of the allegation or charge or charges raised by the petitioner against the private respondents is not sustainable under law. Accordingly submission in that the notice issued by Special Nazul Officer as well as the order passed by Prescribed Authority are the outcome of nonapplication of mind. The petitioner had acted to give undue advantage to M/s Gomti Constructions (which) belongs to rich and elite class of the society. Repsondents' counsel had further proceeded to submit that sice the period of encroachment in notice is not correct at the face of record, the entire subsequent proceeding relying upon said notice is not sustainable under law and become substantially illegal. Shri V.B. Upadhayaya further submits that where the question of title is involved a person can not be evicted in pursuance to summary proceedings under the Act. Learned counsel for the respondents had also proceeded to submit that in the year 1961 acquisition proceedings had taken place against private respondents, a notice was issued for eviction, which was dropped/withdrawn after submission of reply. Copy of notice has been filed as Annexure CA5 to the counter affidavit.

12. The notice provided by Shri N.K. Seth, learned counsel for the petitioner while assailing the impugned order raised the following questions;

(i) Since, admittedly, land belongs to Nazul, opposite parties may be held in unauthorized in view of law laid down by Hon''ble Supreme Court in a case reported in AIR 1960 SC 1000, Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi.

(ii) The procedure for grant of lease as provided in the Nazul Manual has been not followed, hence, petitioner had no right to claim possession of land in question.

(iii) Private respondent had committed fraud with the Court, as they have not produced the original lease deed before the appellate Court. Before purchasing

the land it was the duty of purchaser to verify the correctness of lease deed in favour of Guru Prasad. Learned counsel for the petitioner had relied upon the judgments reported in; 1992 (1) SCC 534, Shrisht Dhawan v. Shaw Brothers; 1994 (1) SCC 1, S.P. Chengalvaraya Naidu v. Jagan Nath; (1995) 3 SCC 420, Jhumman Singh and others v. Central Board of Investigation.

(iv) Lease for the period of one year can only be granted by registered deed in view of provision contained in Section 107 of the T.P. Act, Section 17(d) of the Registration Act and Section 35 (1)(b) of the Stamp Act. Learned counsel for the petitioner had relied upon the judgments reported in; 1983 (1) ARC 776, Zarif Admad and another v. Satish Kumar and another; 1983 (2) ARC 152, Gyan Chandra v. Smt. Ramo Devi and another and (1984) 1 SCC 369, Satish Chand Makhan and others v. Govardhan Das Byas and others.

(v) Burden of proof was on the private respondents in view of provision contained in Section 101, 102 and 103 of the Evidence Act. Learned counsel for the petitioner had relied upon a judgment reported in 1998 (32) ALR 21.

(vi) In view of provision contained in Section 104 of the Evidence Act, the evidence led by the parties were not admissible.

(vii) The sale deed on 1943 in favour of private respondents is not binding on the Nazul. Since, there is no lease on record hence question relating to waiver of notice shall not be applied. Otherwise also payment of lease rent amount to the waiver of notice. Learned counsel for the petitioner had relied upon the judgments reported in; 1997 (2) ARC 32, Anis Ahmad v. Special/Additional District Judge, and others; AIR 1948 Oudh 127, Kamlapat Sahai v. Smt. Manho Bibi and AIR 1977 Madras 122, C.Sundram v. N.T. Abdul Ghani.

(viii) Alternatively, petitioners' counsel submitted that since waiver has been not pleaded such ground can not be raised. Learned counsel for the petitioner had relied upon the judgments reported in: AIR 1973 Delhi 124, Ram Pratap v. M/s Birla Collon Spinning and Weaving Mills; AIR 1976 Allahabad 434, Balbir Singh v. Smt. Kalawati; 1971 RCJ 482, Baldev Raj and another v. Jagdish Raj; AIR 1971 Delhi 98, Batoo Mal v. Rameshwar Nath and others and AIR 1968 SC 471, Calcutta Credit Corporation Ltd. and another v. Happy Momes (Pvt.)(Ltd).

(ix) Mere payment of rent shall not create tenancy. Learned counsel for the petitioner had relied upon the judgment reported in 1978 ARC 220, M/s Technicians Studio P. Ltd. v. Smt, Lila Ghose and another.

13. While defending the impugned order Shri V.B. Upahayaya, learned Senior advocate assisted by Shri V.R. Singh in support of his submission that disputed question of fact can not be adjudicated in a summary proceeding under the Act and the impugned notice issued under the Act on the respondents being composite in nature and on account of the fact that it does not disclose the actual period of the occupation of premises relied upon the judgments reported in: AIR 1992 Bombay 375, Minoo Framroze Balsara v. Union of India; ARC 1984

(2) 241, Bikarama v. IV ADJ, Varanasi and others; ARC 1981 349, Kamlesh Kumar Gupta v. 1st Additional Distt. and Sessions Judge, Saharanpur and others; AIR 1980 J & K 16, Dr. Yash Paul Gupta v. Dr. S.S. Anand and others; 1989 (7) LCD 544, Kirpal Singh v. District Judge Nanital and others; 1970 (1) SCC 753, Joint Registrar of Cooperative Societies, Madras and others v. P.S. Rajgopal Naidu and others; AIR 1959 SC 914, Dolgobinda Paricha v. Nirmal Charan Misra and others; AIR 1982 SC 1081, Govt. of Andhra Pradesh v. Thummala Krishna Rao and another; ALJ 1985 438, Hindoo Pat and another v. District Judge, Hamirpur and others; ALJ 1985 769, Yasin Khan v. 1st Additional District Judge, Rampur and others and 2004 SCC 1, State of U.P. and Others v. Lalji Tandon (Dead) through LRS.

14. It has been not disputed by parties' counsel that the land in question is a Nazul land. Disputed question of fact is that as to whether Shri Guru Prasad who claimed to be in possession of land pursuant to lease executed by Nazul was actual lessee or not? According to sale deed executed by Shri Guru Prasad in favour of late Smt. Parvati Devi w/o late Justice Bisheshwar Nath Shri Guru Prasad the vendor had obtained lease for the period of 30 years on 1.4.1917 which was renewable after expiry of 30 years up to 2007 (total period of 90 years). Accordingly, in pursuance to perpetual lease Shri Guru Prasad had executed sale deed on 2.2.1943 in favour of late Smt. Parvati Devi and on the same day possession was delivered to her. Though right and title of Shri Guru Prasad has been denied by petitioner, but it has been not disputed that Shri Guru Prasad was in possession of the land in question and thereafter from him in pursuance to sale deed dated 2.2.1943 late Smt. Parvati Devi had acquired the possession of premises in question.

15. In the case of Narayan Bhagwantrao Gosavi Balajiwale (supra) Hon'ble Supreme Court held that admission is the best evidence and opposing party can rely upon though the same may not be conclusive and decisive of the matter, unless successfully withdrawn or proved erroneous. In the present case, so far as admission of evidence on the part of respondents is concerned, is only to the extent that the land in question belongs to Nazul and late Smt. Parvati Devi had purchased the same by registered sale deed. It has been not admitted by the respondents that they are in unauthorized occupation of the land in question. Accordingly, merely because the property in question is Nazul land does not mean that they have become unauthorized occupant under the Act.

16. In a nut shell, while defending the impugned appellate order Shri V.B. Upadhyaya, learned Senior Counsel, for the private respondent as discussed hereinabove, had raised following substantial illegalities said to be committed by Prescribed Authority viz:

(1) A composite notice was served by the competent authority under the Act which is not permissible under law. According to Shri V.B. Upadhyaya a separate notice should have been served in pursuance to provision contained in Section 4, 5 and 7 of the Act.

(2) Notice indicate the date of encroachment as 1st April, 1979. Though from the material on record Shri Guru Prasad was in possession of premises since 1970 (sic 1917) and from 1943 Smt. Parvati Devi and thereafter her heirs have been in possession of premises in question. Accordingly, the notice issued by the competent authority is substantial illegality and no consequential action could have been taken in pursuance to said notice.

(3) The notice does not contain the actual ground of eviction which is mandatory requirement under the law.

(4) For eviction it was incumbent upon the Prescribed Authority to record satisfaction relating to unauthorized occupation but the same has not been done, hence, entire proceeding vitiates.

(5) The controversy involved disputed question of fact coupled with title dispute which can not be adjudicated in pursuance to summary proceedings provided under the Act, only Civil Court is competent to adjudicate the dispute.

FACTUAL DISCUSSION AND FINDING

17. Though it has been disputed by petitioner that no lease was granted to Shri Guru Prasad from whom Smt. Parvati Devi had purchased the premises in question in the year 1943 by registered sale deed dated 2.2.1943 but it has been neither submitted nor pleaded that Guru Prasad had not acquired the possession of premises in question in the year 1917. So far as the question of renewal of lease is concerned that it is not in controversy. Admittedly, in case it is found that Guru Prasad was lessee who had transferred the land in question to respondents Smt. Parvati devi then the period of lease shall continue up to the year 2007, subject to renewal in accordance to law. There is no specific pleading on record against the respondents relating to failure on their part for the renewal of lease. Once the very existence of lease has been denied by the petitioner while filing the present writ petition, the question relating to the irregularity in the alleged renewal of lease is not in issue.

18. It has been submitted by petitioner's counsel that the recital in sale deed is based on unfounded facts. Shri Guru Prasad who had executed the sale deed in the year 1943 had committed fraud. It has been further submitted that it was the duty of purchaser to verify the existence of lease in favour of Shri Guru Prasad. Accordingly, the submission is, entire transaction is the part of fraud, hence respondents can be very well treated as in unauthorised occupation of premises in question. In the case of Shrisht Dhawan (supra) the Apex Court held that the limited period of tenancy can be assailed by tenant at the stage of execution by prima facie establishing fraud or collusion in respect of jurisdictional facts. It has been also held that error in the jurisdictional fact vitiates an order being ultra vires and bad. It has been further held by Apex Court that no statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends, the Court or tribunal exercise a jurisdiction

then the order vitiates.

In the same judgment the Apex Court had decided the fraud and collusion in the following words:

¶ Para 20: Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, "wing me into the easyhearted man and trap him into shares". It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omissions to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date falls in substance and in fact. Section 17 of the Contract Act defined fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representation about a fact arises out of deliberate active role of representatory about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case what constitutes fraud was describes thus: (All ER p. 22 BC).

¶ [F]raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in this truth, or (iii) recklessly, careless whether be true or false.?

However, in the same judgment of Shrisht Dhawan (supra) Apex Court held that in case something is done honestly believing it to be true but the same is turned out to be false then such action can not be held to be an outcome of fraud. Hon'ble Supreme Court had proceeded to define the bona fide belief of a person in the following words:

¶ what the section postulates is the bona fide belief of an honest and reasonable landlord and not the reckless and casual opinion of an irresponsible and careless person??. There is no fraud if what he honestly believed to be true turned out to be false. The section does not place any higher degree of responsibility on the landlord.?

19. The case of S.P. Chengalvaraya Naidu (supra) relates to controversy where decree was obtained by fraud. Accordingly, Hon"ble Supreme Court ruled that decree obtained by fraud may be treated as nullity and can be questioned even in collateral proceedings. While defining fraud it has been held that, "fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a cheating intended to get an advantage. It is a deception in order to gain by another's loss. A litigant who approaches the Court should be bound to produce all the documents which are relevant for the litigation. If he withholds a vital document in order to gain an advantage on the other side then he would be guilty of fraud on the Court as well as on the opposite parties.

In the case of Jhumman Singh (supra), Hon"ble Supreme Court deprecated the filing of petition on false ground and held that such petition shall amount to abuse of process of Court for which exemplary cost may be awarded.

All these cases relate to commission of fraud in a proceeding before the competent Court or authority, do not seem to be applicable under the facts and circumstance of the case. Admittedly, Sri Guru Prasad was in possession of land in question since 1917. It has not been pleaded by the petitioner that Shri Guru Prasad has been not in possession since 1917. It has also not been denied that prior to 1979 private respondents have acquired the possession of premises in question in pursuance to sale deed referred hereinabove.

20. Consistent possession of premises in question by Shri Guru Prasad and thereafter respondents' family does not seem to be an outcome of commission of fraud. Bona fide belief in right and title with effective possession of the premises since more than 75 years can not said to be a commission of fraud more so when the petitioner had sent notices under the Act after lapse of almost 75 years.

However, a perusal of the pleading on record in the writ petition as well as from the other materials at no place the petitioner had come forward with a case that either Guru Prasad or Smt. Parvati Devi had committed fraud to acquire the premises in question which is a Nazul land. In the absence of such specific categorical pleading the argument advanced by the learned counsel for the petitioner Shri N.K. Seth relating to the commission of fraud by Shri Guru Prasad or late Smt. Parvati Devi or the private respondents seems to be misconceived. Whether Shri Guru Prasad was granted lease on 1st April, 1917 or not is a question correlate with the title and the existence of lease can be proved either by primary evidence or in the absence of original lease deed through secondary evidence as provided under the Indian Evidence Act but at no stretch of imagination from the material on record it can be assumed that late Smt. Parvati Devi or the respondents had committed fraud or acquired the property by committing some illegal act.

21. Shri V. B. Upadhyaya, learned Senior Counsel, assisted by Shri V.B. Singh

had invited attention of this Court towards various documents filed along with counter affidavit by the private respondents indicating the continuous entry of the name of Guru Prasad followed by Smt. Parvati Devi, thereafter her heirs, in the records of Lucknow Nagar Nigam.

22. According to notice issued under Section 4, 6 of the Act, the respondents had encroached the premises in question on 1st April, 1979. Though the record shows that earlier Guru Prasad, then Smt. Parvati Devi w/o late Justice (Sir) Bisheshwar Nath and thereafter respondents have been continuously in possession of premises in question right from 1917 respectively. Photostat copy of the registered sale deed dated 2nd April, 1943 on the required stamp paper has been filed as AnnexureCA1 to the counter affidavit. The sale deed has been written in Urdu language, contains the enclosure having detail of entire properties in question, discussed and disclosed in the preceding paras.

The extract of Assessment Register containing assessment list of 1943 in respect of building situated in premises in question at Babuganj Kalan owned by Justice Bisheshwar Nath has been filed as Annexure CA2 to the counter affidavit, which is copy of municipal record of Lucknow Nagar Nigam. Annexure3 and 4 are the letters written by Smt. Parvati Devi to the Nazul Officer for the renewal of lease in pursuance to sale deed dated 2.4.1943. These letters were sent by Nazul on 25.3.1943 and 2.3.1948.

During the possession of premises in question a notice dated 14/7/1961 under Section 9 of the Land Acquisition Act was served on late Smt.Parvati Devi in the required format by Land Acquisition Officer, Lucknow. A copy of the notice has been filed as AnnexureCA 5 of the counter affidavit filed by the respondents. The notice indicates the existence of a house and respondents' possession over the premises in question. However, according to learned Senior Counsel for respondents, the acquisition of premises in question alongwith other land could not be materialized and proceeding was dropped.

A letter dated 4th November, 1961 written by U.P. Nagar Mahapalika Lucknow filed as Annexure CA6 to the counter affidavit indicates that the lease rent has been paid up to 31st March, 1961 some of the lease rent receipt have been filed covering the period up to 1981 as Annexure CA7 and 8 collectively, with the counter affidavit. The letter dated 31st March, 1984 written by respondents has been filed by respondents as CA9, to demonstrate that lease rent up to the year 1984 to be remitted to the petitioner. AnnexureCA 10 has been filed to indicate that Nazul rent up to 31st March, 1984 was remitted to petitioner through cheque. Photostat copy of the cheque is the part of letter filed as AnnexureCA 10 to the counter affidavit. AnnexureCA11, 11A and 11B have been filed to demonstrate that these rent were paid from time to time and in lieu thereof receipts were issued by Nazul department.

23. A regular suit No.14 of 1976 was filed by the respondent Bhupendra Nath Srivastava against the Nagar Mahapalika, Lucknow as well as Lucknow

Development Authority, for mandatory injunction. Photostat copy of the plaint has been filed as Annexure CA12 to the counter affidavit. The content of plaint shows that it was filed because the defendant of suit had tried to dispossess the petitioner by demolishing boundary wall for construction of certain commercial building under scheme 'Kutubpur Iradat Nagar Hasanganj accommodation Scheme'. It has been pleaded in the plaint that unless the State as well as respondents do not acquire the land under the Land Acquisition Act plaintiff can not be divested from any portion of his property to give undue advantage for a housing scheme.

While filing the suit a draft deed of exchange was also annexed signed by Nagar Mahapalika, Lucknow through its Mukhya Nagar Adhikari and the respondent Bhupendra Nath Srivastava.

24. After filing of suit in the regular suit No.14 of 1976 the Lucknow Development Authority had filed written statement and virtually admitted that the defendant Bhupendra Nath Srivastava was lessee of land in question as evident from the content of Para 1 of the written statement.

25. Thereafter, again a notification was issued for acquisition of the premises in question alongwith other properties of the city under the Land Acquisition Act and notice dated 10.12.1981 was served on the petitioner (sicrespondent) a copy of which has been filed as AnnexureCA13 to the counter affidavit. However, again the acquisition could not be materialized.

A copy of the notice dated 5.1.1994 filed as Annexure CA7 to the counter affidavit indicates that it was issued in pursuance to power conferred by subsection 2 of Section 7 of the Act to the petitioner (sicrespondent) indicating therein that he is in unauthorized occupation of premises from 1st April, 1979, hence, liable to pay damages at the rate of Rs.63,144/ for each year of possession.

26. The material on record shows that against the assesement order dated 29th March, 1958 of the Nagar Nigam, Lucknow the respondent Shri Bhupendra Nath Srivastava had preferred an appeal No.60 which was allowed by the Commissioner, Lucknow Division, Lucknow by judgment and order dated 31st May, 1960 a copy of which has been filed as Annexure 18 to the writ petition. A perusal of the judgment of the Appellate Authority shows that the premise in question was consisting certain small cottage industries shops as well as residential area.

The Photostat copy of electricity bill, receipt of postal department and telephone bill as contained in Annexure19, 20 and 21 to the writ petition shows the exclusive possession of respondent Bhupendra Nath Srivastava over the premises in question.

27. It has been pleaded by respondents in Para 27 of the writ petition that the petitioner had advertised the land in question for sale inspite of fact that Civil

Appeal No.12 of 1994 and Regular Suit No.14 of 1976 was pending in the competent Court for adjudication. The advertisement or initiatives taken for sale of respondent's lands by the petitioner was a hasty decision with the flavour of extraneous reasons and considerations. According to Shri V.B. Upadhyaya, learned Senior Counsel, things were done in a manner to extend undue advantage to Gomti Constructions and other persons for extraneous reasons and considerations. Advertisement inviting tender was an act, which was not warranted under law during the pendency of litigation.

28. It has been pleaded in Para 19 of the counter affidavit that in the revenue records respondent was recorded as kashtkar and occupation of Khasra No.1056 and 1059 in the year 1961. The averment contained in para 39 of the counter affidavit which have been not denied establishes beyond doubt that respondent Bhupendra Nath Srivastava as well as mother, late Smt. Parvati Devi, have been in continuous possession of the premises in question right from 1943 and before that Shri Guru Prasad was in possession.

29. In view of discussion made hereinabove, conclusively so far as possession is concerned it may not be ruled out that right from 1917 Shri Guru Prasad was in possession of the premises in question and right from 1943 Smt. Parvati Devi, w/o Late Justice Bisheshwar Nath and thereafter her heirs including Shri Bhupendra Nath Srivastava have been in continuous possession of premises in question. Prima facie, it is also evident from material on record that earlier, name of Shri Guru Prasad was recorded in Nagar Nigam and later stage the name of respondent Shri Bhupendra Nath Srivastava was recorded. Prima facie it also appears that Lucknow Nagar Nigam and Lucknow Development Authority had treated the petitioner as lessee of premises in question and accordingly reply was filed in the civil suit. Accordingly, notice issued by the petitioner declaring the respondent as unauthorized occupation of premises in question from 1st april, 1979, at the face of record is incorrect and is an act of nonapplication of mind. At the face of record notice suffers from substantial illegality and based on unfounded facts.

RELEVANT STATUTORY PROVISIONS, DISCUSSION

AND RELATED FINDING

30. The special feature of the case is that it has been not disputed by petitioners that the premises in question contains huge bungalow constructed in pre independent period with huge infrastructure, which is also evident from the description given in the sale deed itself.

The Nazul Manual which is a compilation of Government Order contains the procedure for grant of lease or sale of Nazul land which may be in occupation of the Government. Paras 1 to 21 of the Nazul Manual deals with the procedure to let out Nazul land which is in occupation of Government. Para 22 provides that lease for building purposes shall not be shorter period than thirty years and its renewal may be done for 90 years. Para 27 deals with the process for renewal of

lease. For convenience Para 22 and 27 are reproduced as under;

Para 22: Leases for building purposes Leases for building purposes shall not ordinarily be for a shorter period than thirty years in the first instance, and shall in all cases, provide for renewals after the expiry of the first and subsequent terms up to a maximum of 90 years. The granting of a lease in perpetuity in respect of any Nazul land on any terms is prohibited.

Para 27: Renewal of lease When a lease is renewed or when the rent payable under a perpetual lease is revised, the Collector shall similarly have regard to the circumstances of the plot and to the market value of the similar plots in the neighbourhood and may enhance the rent by an amount not exceeding 50 per cent of the rent payable during the period immediately preceding the revision. In the case of a plot which the estimated value exceeds Rs.2,000 the lessee may appeal against such enhancement to the Commissioner, whose order shall be final.

The format of lease deed has been provided in form 2 of the Nazul Manual. The renewal of lease is done in the manner provided in form 3.

31. Before considering the grounds advanced by learned counsel for the parties it shall be appropriate that the relevant statutory provisions contained in the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 may be looked into. Section 2(c) of the Act defines the word premises. Section 2(e) of the Act defines the Public Premises. Section 2(f) of the Act defines the rent. Section 2(f)(b) of the Act defines temporary occupation whereas Section 2(g) unauthorized occupation.

For convenience Section 2(e), 2(f), 2(f)(b) and 2(g) are reproduced as under:

2(e): public premises means

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of:

(i) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fiftyone percent, of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first mentioned company.

(ii) any corporation (not being a company as company as defined in Section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act and owned or controlled by the Central Government.

- (iii) any University established or incorporated by the Central Act.
 - (iv) any Institute incorporated by the Institutes of Technology Act, 1961.
 - (v) any Board of Trustees constituted under the Major Port Trusts Act, 1963.
 - (vi) the Bhakra Management Board constituted under Section 79 of the Punjab Reorganisation Act, 1966 and that Board as and when renamed as the BhakraBeas Management Board under subsection (6) of Section 80 of that Act;
 - (vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory.
 - (viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and]
- (3) in relation to the [National Capital Territory of Delhi]:
- (i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area Committee,
 - (ii) any premises belonging to, the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority; [and]
 - (iii) any premises belonging to, or taken on lease or requisitioned by or on behalf of any State Government or the Government of any Union Territory.]
- (f) ?rent?, in relation to any public premises, means the consideration payable periodically for the authorized occupation of the premises, and includes
- (i) any charge for electricity, water or any other services in connection with the occupation of the premises,
 - (ii) any tax (by whatever name called) payable in respect of the premises, where such charges or tax is payable by the Central Government or the corporate Authority;
- (fb) ?temporary occupation?, in relation to any public premises, means occupation by any person on the basis of an order of allotment made under the authority of the Central Government, a State Government, the Government of a Union Territory or a Statutory Authority for a total period (including the extended period, if any) which less than thirty days;]
- (g)?unauthorized occupation?, in relation to any public premises, means the occupation, by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

32. Under Section 4 of the Act it has been provided that in case Estate Officer is of the opinion that any person is in unauthorized occupation of any public

premises and he should be evicted then he shall issue a notice in a manner provided in the Act.

Section 5 of the Act provides that if after considering the cause if any, shown by any person who is in unauthorized occupation of public premises a notice be issued under Section 4 of the Act and the Estate Officer is satisfied that the public premises is in unauthorized occupation he may make order for eviction for the reasons to be recorded therein. If any person refuses or fails to comply with the order of eviction on or before the specified date provided in the said order or within fifteen days from the date of its publication. Under subsection 1 of Section 5 the Estate Officer may after expiry of said period evict the person concerned and take possession of public premises and may also use such force as may be necessary for the purpose. Section 5A of the Act empowers the competent authority to remove unauthorized construction existing over the public premises and under Section 5B an order may be passed for demolition of unauthorized construction. Under Section 5C the Estate Officer may seal an unauthorized construction. Section 6 empowers the Estate Officer to dispose of the properties left on public premises by unauthorized occupants.

Under Section 7 of the Act the Estate Officer may by an order direct the unauthorized occupants to pay damages for the period when the person concerned was having unauthorized occupation. While directing for payment of damages the Estate Officer may also direct for payment of interest within the meaning provided under the Interest Act, 1978. However, subsection 3 of Section 7 puts an embargo of the power of Estate Officer providing that before calling for the payment of damages a notice in writing should be served on the unauthorized occupants inviting objection if any. Under Section 8 of the Act the Estate Officer has got power vested in the civil Court under the Code of Civil Procedure while deciding the dispute under the Act.

Sections 4, 5, 7 and 8 are relevant for the purpose of present controversy hence they are reproduced as under:

?4. Issue of notice to show cause against order of eviction

(1) If the Estate Officer is of opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted, the Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be in occupation of, or claim interest in, the public premises

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof, and

(ii) to appear before the Estate Officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

(3) The Estate Officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) * * *

(5) Eviction of unauthorized occupants

(1) if, after considering the cause, if any, shown by any person in pursuance of a notice under Section 4 and [any evidence produced by him in support of the same and after personal hearing, if any, given under Clause (b) of subsection (2) of Section 4], the Estate Officer is satisfied that the public premises are in unauthorized occupation, the Estate Officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) if any person refuses or fails to comply with the order of eviction [on or before the date specified in the said order or within fifteen days of the date of its publication under subsection (1), whichever is later.] the Estate Officer or any other officer duly authorized by the Estate Officer in his behalf, [may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.

7. Power to require payment of rent or damage in respect of public premises

(1) where any person is in arrears of rent payable in respect of any public premises, the Estate Officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) where any person is, or has at any time been, in unauthorized occupation of any public premises, the Estate Officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

[(2A) while making an order under subsection (1) or subsection (2), the Estate Officer may direct that the arrears of rent or, as the case may be, payable

together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978.]

(3) No order under subsection (1) or subsection (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Estate Officer.

33. Under the Public Premises (Eviction of Unauthorised Occupants) Rules 1971 (in short hereinafter referred as "the Rules") the procedure has been provided for an action under the Act. Under Rule 3 it has been provided that notices or order under the Act shall be in one of the appropriate forms appended to the Acts. Under Rule 5 during the course of enquiry the unauthorized occupants or his representative have got right to make submission in writing and also tender evidence. Rule 7 deal with the manner of taken public premises and Rule 8 deal with the manner of assessment of damages.

For convenience Rules 3, 5 and Rule 8 of the Rules which are relevant for the present controversy are reproduced as under:

?3. Form of notices and orders

A notice or order under the Act shall be in one of the appropriate forms appended to these rules.?

?5. Holding of inquiries

(1) Where any person on whom a notice or order under this Act has been served desires to be heard through his representative he should authorize such representative he should authorize such representative in writing.

(2) The Estate Officer shall record the summary of the evidence tendered before him. The summary of such evidence and any relevant documents filed before him shall form part of the records of the proceedings.?

?8. Assessment of damages

In assessing damages for unauthorized use and occupation of any public premises the Estate Officer shall take into consideration the following matter, namely:

(a) the purpose and the period for which the public premises were in unauthorized occupation:

(b) the nature, size and standard of the accommodation available in such premises;

(c) the rent that would have been realized if the premises had been let rent for the period of unauthorized occupation to a private person;

(d) any damage done to the premises during the period of unauthorized occupation;

(e) any other matter relevant for the purpose of assessing the damages.?

34. From the perusal of statutory provisions referred hereinabove as well as Rules it is apparent that notices is to be issued in the form appended therewith. A notice under subsection 1 and 2 of Section 4 is to be issued in Form A which is reproduced as under:

?FORM A

FORM OF NOTICE

Under subsection (1) and Clause (b) (ii) of subsection (2) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To,

Shri/Smt./Km???.Whereas I, the undersigned, am of opinion, on the grounds specified below that you are in unauthorized occupation of the Public Premises mentioned in the Schedule below and that you should be evicted from the said premises:

Grounds

Now, therefore, in pursuance of subsection (1) of Section 4 of the Act, I hereby call upon you to show cause on or before the??..why such an order of eviction should not be made.

And in pursuance of Clause (b) (ii) of subsection (2) of Section 4, I also call upon you to appear before me in person or through a duly authorized representative capable to answer all material questions connected with the matter along the evidence which you intend to produce in support of the cause shown, on??..at ??..for personal hearing. In case, you fail to appear on the said date and time, the case will be decided ex parte.

Schedule

Date?? Signature and seal of the Estate Officer?

35. A notice under subsection 1 of Section 5 of Public Premises Act is to be issued under Form B which is reproduced as under:

?FORM B

ORDER

Under subsection (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

Whereas I, the undersigned, am satisfied for the reasons recorded below that Shri/Smt./Km????..is/are in unauthorized occupation of the public premises

specified in the Schedule below:

Reasons

Now, therefore, in exercise of the powers conferred on me under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I hereby order the said Shri/Smt./Km????..and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said Shri/Smt./Km,,,,,,,,,and all the persons, concerned are liable to be evicted from the said premises, if need be??by the use of such force as may be necessary.

Schedule

Date??????. Signature and seal of the Estate Officer?

36. So far as the payment of damages is concerned for that purpose notices are to be issued in Form D, Form E and Form F. For convenience Form D, Form E, Form F and Form G are reproduced as under:

FORM D

FORM OF NOTICE

Under subsection (3) of Section 7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To,

Shri/Smt./Km????..

Whereas I, the undersigned, am satisfied that you are/were in occupation of the public premises described in the schedule below;

And whereas in exercise of the powers conferred on me by subsection (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I consider that a sum of Rs????..(Rupees??)being arrears of rent from the???..day of???19???up to the?..day of ???..19???..(both days inclusive) in respect of the said premises is due and payable by you to the Government statutory authority;

And whereas in exercise of the powers conferred on me by subsection (2A) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I consider that you are also liable to pay simple interest to the Government/ Statutory Authority on the said arrears at the rate determined by the undersigned till its final payment;

Now, therefore, in pursuance of subsection (3) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby call upon you to show cause on or before the???why an order requiring you to pay the said arrears of rent together with simple interest should not be made.

Schedule

Dated??? Signature and seal of the Estate Officer

FORM E

FORM OF ORDER

Under subsection (1) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To,

Shri/Smt./Km????????

Whereas you are/were in occupation of the public premises described in the Schedule below.

And whereas, by written notice dated???you are/were called upon to show cause on/or before?????why an order requiring you to pay a sum of Rs???(Rupees??.) being the rent payable together with simple interest in respect of the said premises should not be made;

And whereas I have considered your objections and/or the evidence produced by you;

And whereas you have not made any objections or produced any evidence before the said date;

Now, therefore, in exercise of the powers conferred by subsection (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I hereby require you to pay the sum of Rs?????.

In exercise of the powers conferred by subsection (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest @ Rs???per annum on the above sum w.e.f????..till its final payment.

In case the said sum is not paid within the said period or in the said manner, it will be recovered as arrears of land revenue through the Collector.

Schedule

Date?????.. Signature and seal of the Estate Officer?

FORM F

FORM OF NOTICE

Under subsection (3) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To,

Shri/Smt./Km?????.

Whereas I, the undersigned, am satisfied that you are/were in unauthorized occupation of the public premises mentioned in the schedule below;

And whereas, in exercise of the powers conferred on me by subsection (2) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I consider the damages, amounting to Rs????.. (Rupees??..) are due for the period(s) and at the rate(s) shown in Schedule II below on account of unauthorized use and occupation of the said premises;

And, wheras, in exercise of the powers conferred on me by subsection (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I consider that you are also liable to pay simple interest to the Government/ Statutory Authority on the said arrears at the rate determined by the undersigned till its final payment.

Now, therefore, under the provisions of subsection (3) of Section 7 of the Act, I hereby call upon you to show cause on or before????why an order requiring you to pay the said damages together with interest should not be made.

SCHEDULE I

SCHEDULE II

Period Rate at Amount Balance in

which assessed paid arrears

Date????.. Signature and seal of the estate Officer?

FORM G

FORM OF ORDER

Under subsections (2) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To,

Shri/Smt.Km?????

Whereas I, the undersigned, am satisfied that you are/were in unauthorized occupation of the public premises mentioned in the Schedule below:

And whereas by a written notice dated???you are/were called upon to show cause on or before?????.why an order requiring you to pay damages of Rs????..together with simple interest for unauthorized use and occupation of the said premises should not be made;

And whereas I have considered your objections and/or the evidence produced by you;

And whereas you have not made any objections or produced any evidence before the said date;

Now, therefore, in exercise of the powers conferred on me by subsection (2) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order you to pay the sum of Rs???. (Rupees???) assessed by me as damages on account of your unauthorized occupation of the premises.

In exercise of the powers conferred by subsection (2A) of Section 7 of the said Act, I also hereby require you to pay simple interest at the rate of Rs??.per annum on the above sum w.e.f???till its final payment.

In the event of your refusal or failure to pay the damages or any instalment thereof within the said period or in the manner aforesaid the amount will be recovered as an arrear of land revenue.

Schedule

Date???. Signature and seal of the Estate Officer?

37. From the statutory provisions reproduced and discussed hereinabove at the face of record it is apparent that the provisions contained in Sections 4, 5 and 6 of the Act deals with the different circumstance and situations independently while proceeding against the person or persons who may be in unauthorized occupation of public premises.

The definition as provided under subsection 3 of the Section 2 contains two ingredients viz. Firstly; the person should be in occupation of public premises without any authority and secondly in case the person concern had occupied with some authority the said authorization had expired or it has been determined by competent authority that the person or persons concerned have got no authority to occupy the premises. Accordingly it shall always be incumbent upon the competent authority to declare a person in unauthorized occupation of premises after providing opportunity of hearing to the parties with conclusive finding.

38. The first step which should be taken by the competent authority against the unauthorized occupants is to issue a notice in pursuance to provision contained in Section 4 of the Act. A notice under subsection 2 of Section 4 of the Act is to be issued in Form A. While issuing the notice the authorities should not only fill the blank in the notice but also they have to indicate the grounds in nutshell on the basis of which the order of eviction they proposes to pass. The competent authorities have to invite objection providing specific time to submit a response not earlier than seven days. The sum and substance of Section 4 is that it shall be bounden duty of competent authority or the Prescribed Authority to disclose the specific grounds and reasons, to indicate therein in what manner and from

which date a person is in unauthorized occupation of a public premises. A plain reading of Section 4 read with Form A as contained in the appendix indicates that the provisions contained in said Section is independent and stood on its own leg as a preliminary step which should be taken against the unauthorized occupants. Once the legislature had used the word 'specify the grounds' it does not mean that a vague or uncertain ground may be indicated in the notice but it means the specific and categorical grounds should be indicated in the notices which may be basis for eviction of a person from alleged public premises.

39. The second step which should be adopted by the authorities to evict unauthorized occupants from the public premises is compliance of Section 5 of the Act. Section 5 begins with the word 'if after considering the cause if any shown by any person in pursuance to notice under Section 4' means that it shall be condition precedent for the prescribed authority or any other competent authority to serve a notice in pursuance to provision contained in Section 4 of the Act (in Form A) before proceeding ahead to take other severe recourse provided under the Act. Accordingly, after deciding the reply if any submitted by unauthorized occupant if the Estate Officer or the other competent authority or the prescribed authority arrived to the conclusion for the reasons to be recorded that a person is in unauthorized occupation of public premises then shall pass a reasoned order specifying the ground and serve another notice directing such unauthorized occupants to vacate the premises. Such notice should be in Form B attached with the Schedule of the Act. However, while issuing such notices in the Form B the competent authority should specify the grounds categorically while directing the unauthorized occupant to vacate the premises. In case the person concerned does not vacate public premises within specified time then the competent authority will have power to evict such persons with the use of force as may be necessary. The provision contained in Section 5 of the Act is an independent provision and is mandatory in nature which may be followed only after exhausting the provision contained in Section 4 of the Act.

40. As discussed and reproduced hereinabove Section 7 deals with the recovery of arrears of rent and damages in lieu of unauthorized occupations. Section 7 deals with the two aspects of the matter viz;

(1) In case a person is evicted from a public premises on account of non payment of rent then such persons may be required to pay the rent in such time and such instalments as may be specified by the competent authority.

(2) Apart from recovery of arrears of rent in pursuance to provision contained in Subsection 1 of Section 7 the Estate Officer may also assess damages caused on account of unauthorized occupation of public premises by the occupant and may require such person to pay the damages within such time or in such instalments as deems fit and proper.

While directing for payment of arrears of rent and damages the competent authority may also direct for payment of interest at such rate as prescribed but

the same should not exceeding the current rate of interest within the meaning of Interest Act, 1978.

41. Subsection 3 of Section 7 of the Act places an embargo on the exercise of power by the competent authority in pursuance to provision contained in Section 7 of the Act. According to subsection 3 of Section 7 notices should be issued in writing specifying the grounds and inviting objection from the unauthorized occupant for the payment of rent or damages. While doing so it shall be also necessary for the competent authority to provide opportunity of hearing and produce evidence if any by the unauthorized occupant in response to notice for payment of rent or damages.

Notice should be issued in pursuance to provision contained in subsection 1, 2 and 3 of the Act in Form D, E, F and G appended with the Act. At the face of record the action under Section 7 of the Act is independent one which relates to payment of arrears of rent or damages alongwith interest. For exercising power under Section 7 of the Act it shall always be necessary for the authorities to serve notice in the given format disclosing the grounds and reasons. Merely filling of blank format will not be sufficient. It shall always be necessary for the authorities to assign the reason or disclose the ground and the manner in which they assess the proposed rent or damages. Merely mention of an amount for damages will not be sufficient.

42. A cumulative reading of Section 4, 5 and 7 of the Act shows that the actual or approximate date of unauthorized occupation shall be relevant while issuing notices in the manner provided under the Act. Assessment of damages or rent or to declare a person in unauthorized occupation of public premises shall always be related to the actual time of unauthorized occupation. Accordingly it shall always be necessary for the authorities while issuing a notice under the Act on the unauthorized occupant of public premises to indicate the actual date or month or the approximate period of unauthorized occupation. The mentioning of incorrect period of occupation may vitiates the entire proceedings on account of fact that only from the date of actual unauthorized occupation the competent authority will have got right to assess the rent or damages which the alleged unauthorized occupant shall liable to pay.

43. In view of above the argument advanced by Shri V.B. Upadhayaya learned Senior Counsel that a composite notice under the Act is not permissible seems to have got force. A separate notice should be issued and served on the unauthorized occupant in pursuance to provision contained in Section 4, 5 and 7 of the Act subject to fulfillment of necessary conditions referred and discussed hereinabove.

44. There is one more reason why composite notice shall not be permissible under the Act. Under Rule 3 it has been provided that notice should be issued in the manner provided in the Act. Under Rule 5 it shall be obligatory on the part of competent authority to hold the enquiry. Under Rule 8 the assessment of

damages may be done after considering the period for which public premises was in unauthorized occupation. In the Rule 8 the legislature have used to their wisdom the word 'the period for which public premises were in unauthorized occupation?', means that the actual period of unauthorized occupation shall be relevant factor while issuing notices or holding an enquiry in accordance to statutory provisions contained in the Act referred and discussed hereinabove. In the absence of actual period of unauthorized occupation the assessment of damages on account of unauthorized occupation or damages done to premises on account to unauthorized occupation or consideration of other related circumstance in pursuance to Rule 8 shall neither be feasible nor just and proper.

45. Admittedly, in the present case a composite notice was issued indicating therein that the respondents were in unauthorized occupation since 1st April 1979 and accordingly damages were calculated to the time of Rs.63,144/. As discussed hereinabove right from 1917 Shri Guru Prasad was in occupation of premises in question and thereafter Smt. Parvati Devi had acquired the property right from 1943 and after her death her legal heir had acquired the property in question. (private respondent of the writ petition). At the face of record composite notice issued by the prescribed authority is based on unfounded facts and is violative of statutory provisions contained in the Act and Rules referred and discussed hereinabove. Accordingly original notice dated 23.5.1984 issued by the competent authority against the private respondent Shri Bhupendra Nath Srivastava is not sustainable under law resulting in entire consequential action to nullity.

RIVAL SUBMISSIONS OF PARTIES

46. As discussed hereinabove it has been not disputed by the respondents that premises in question belongs to Nazul Department or it is a Government property. Whether the lease was granted to Shri Guru Prasad in accordance to provision contained in Nazul Manual or not is a question whether at any stage called for adjudication? The consistent case of respondents was that Shri Guru Prasad was lessee of the premises in question since 1917 from whom Smt. Parvati Devi had purchases the same and thereafter respondents had inherited being the legal heir and successor. As discussed hereinabove records shows that virtually it has been admitted by the petitioner and Lucknow Nagar Nigam that Smt. Parvati Devi was lessee of the property in question. The notice was issued on the ground that respondents are in unauthorized occupation from 1st April 1979. At no stage a plea was raised by the petitioner that Shri Guru Prasad was not the lessee of the property in question from whom late Smt. Parvati Devi had acquired the same through registered sale deed. In the absence of specific pleading on record relating to the unauthorized occupation in the notice, there was no occasion for the respondents to lead evidence on the issue raised by the petitioners. At no stage during the course of proceedings respondents had stated that the property in question is not a Nazul land but specific plea was that Shri Guru Prasad was lessee of the premises from whom Smt. Parvati Devi had

purchased the same and thereafter private respondents have been inherited as the family property.

Merely because the property in question is a Nazul land it can not be held that respondents are in its unauthorized occupation relying upon Narayan Bhagwantrao Gosavi Balajiwale (supra). While filing rejoinder affidavit no satisfactory reply has been given by the petitioner as to under what circumstances in a long period of almost eighty five years as well as during the pendency of civil suit respondents were treated as lessee of the property in question.

47. In cases where a person inherited a property as legal heir or successor from the ancestors there may be a situation when on account of lapse of time the original lease deed or sale deed of a property could not be produced. More so when the controversy like present case relates back of year 1917 when it has been alleged that Shri Guru Prasad had acquired the property through a lease from the Nazul department for the period of thirty years which could have been extended for 90 years. After lapse of almost 85 years a person or the persons who had acquired the property by inheritance may fail to produce the original documents in short span of time during the pendency of summary proceedings under the Act. Needless to say that in the absence of original document or primary evidence parties have got right to produce the secondary evidence under the Evidence Act. The material filed by the respondents which has been not denied by the petitioner discussed and referred hereinabove raises bonafide dispute of title relating to the grant of lease by Nazul Department to Late Shri Guru Prasad from whom Smt. Parvati Devi had purchased the property in question in the year 1943. Dispute relating to the title does not mean that the actual ownership of a property but it also relates to the grant of lease by Nazul department to late Shri Guru Prasad. Such dispute ordinarily may not be adjudicated in a summary proceedings under the Act and requires for consideration by a competent civil Court where parties can lead evidence either primary or secondary to establish their claim or counter claim.

The argument advanced by the petitioner's counsel relating to the registration of deed under Section 107 of the T.P. Act or Section 35 of the Stamp Act in view of case of Zarif Ahmad and another (supra) and Gyan Chandra (supra) or Satish Chand Makhan (supra) may be considered during the adjudication of dispute by the Court of competent jurisdiction. So far as the burden of proof is concerned undoubtedly it was on respondents which they seems to have done fairly while filing counter affidavit in the present writ petition making out prima facie case that they were recorded as lessee in the Lucknow Nagar Nigam which was virtually admitted by the petitioner from time to time in various proceedings.

So far as the payment of rent by the respondents is concerned undoubtedly it shall not amount to create a title in their favour. However payment of rent from 1943 or thereafter by Smt. Parvati Devi and her heirs with the respondents of the present writ petition or earlier to 1943 by Shri Guru Prasad makes out prima

facie case in favour of respondents that they are in possession of property in question by not commission of any fraud or forgery. However, in case a plea is raised relating to their right or title over the premises in question then always it shall be their bounden duty to prove their rights in accordance to law in the Court of competent jurisdiction.

48. Respondents' counsel had not raised any plea relating to the waiver of notice. Accordingly, it is not necessary to consider the argument advanced by the petitioners' counsel in this respect. Moreover, in case the competent authority thinks that a person is in unauthorized occupation of premises then it shall be always be incumbent upon such authority to comply with the provision contained in Section 4, 5 and 7 of the Act referred and discussed hereinabove.

49. So far as the argument advanced by the petitioner's counsel that the sale deed of the year 1943 shall not be binding upon the Nazul department may have got force in case it is proved that Shri Guru Prasad was in unauthorized occupation of premises right from 1917 as discussed hereinabove. Though Nazul is the owner of property in question but the question relating to the execution of lease deed in favour of Guru Prasad correlate with the title dispute and on account of long standing possession by Guru Prasad, thereafter Smt. Parvati Devi and again by the respondents being legal heirs and successor of Smt. Parvati Devi controversy involves disputed question of fact and title, hence liable to be adjudication by the competent Court of jurisdiction in a regular suit.

50. In the case of Bikarama (supra) a Division Bench of this Court held that any defect in the notice shall invalidate the notice ab initio. Relevant portion from the case of Bikarama (supra) is reproduced as under:

79. We do not agree. The notice has been quoted above and it is obvious that a vital requirement of Section 4 is missing. The notice does not profess, directly or indirectly, to state the ground upon which the eviction are mandatory and a valid notice specifying the grounds on which the order of eviction is proposed to be made to sine qua non for an order of eviction. We do not agree with the learned Standing Counsel that the notice if read as a whole can be construed to be a valid notice under Section 4 of the Act. It does not disclose the grounds on which eviction is sought. It is not in the prescribed form either. The defects invalidate the notice ab initio.

In the case of Kamlesh Kumar Gupta (supra) it has been reiterated by this Court that proper notice in the form appended with the Act shall be mandatory requirement, merely filing of objection will not be a ground to validate the notice. For convenience, relevant portion from the case of Kamlesh Kumar Gupta (supra) is reproduced as under:

711. It is true that the petitioner had filed an objection to the application under Section 4, but that would not satisfy the requirements of law. The petitioner might have replied to the application under Section 4 parawise, but unless the petitioner knows as to on what ground he is sought to be evicted, he could not

effectively file an objection or effectively make a representation. The mere fact, that there has been flagrant violation of the mandatory requirement of law, itself causes prejudice to the petitioner and the fact, that he had filed an objection, will not cure the defect. Even the required notice under Section 7 before passing an order for damages has not been given to the petitioner and in that respect also there is flagrant violation of subsection (3) of the Section 7.?

A Division Bench of Jammu and Kashmir High Court in the case of Yash Paul Gupta (supra) had deprecated the service of notice of eviction on account of alleged unauthorized occupation merely by mentioning that a person is in unauthorized occupation without disclosing the specific grounds in the following words, to quote:

7. The only ground of eviction which the notice specifies is, that the appellant occupied the Govt. quarter mentioned in the notice unauthorisedly. This statement in our opinion cannot be characterized as a ground of eviction by any stretch of logic. This may be at the most an inference of unauthorized occupation based upon some ground other than the fact that the appellant was an unauthorized occupant of the public premises. How his occupation of the premises which as its inception was admittedly lawful became unauthorized, must have been the outcome of some supervening circumstances. What were those supervening circumstances the appellant had every right to know, as it would be those circumstances alone which would constitute the ground for his eviction within the meaning of Clause (a) of Subsection (2). How could it be said, that merely telling the appellant that he was an unauthorized occupant because he occupied the Govt. quarter unauthorisedly tantamounted to specifying the grounds on which his eviction was proposed? Such a statement in the notice could hardly constitute a ground as already observed.

8. The learned single Judge, it appears was also conscious of this infirmity in the notice. This defect was, however, considered by him as totally inconsequential as according to him, the appellant was otherwise having full knowledge of the grounds upon which his eviction was proposed. In other words, the learned Judge was of the opinion, that where a person proceeded against under the Eviction Act was otherwise in the know of the grounds upon which his eviction was proposed, mere failure to mention those grounds in the notice served upon him under subsection (3) was immaterial, which did not render the notice invalid. We are unable to fall in the line with the learned single Judge in taking this view of subsection (2). The provisions of this subsection are mandatory and not merely directory in character, for the simple reason, that failure to make an effective reply to the notice of eviction as the consequence of absence or even vagueness of the grounds of eviction to be specified in the notice, may result in loss of the occupation of the premises. Furthermore, by construing Clause (a) of subsection (2) in such a manner, we would be indeed reasing the words ?unless otherwise known to him? in it which in fact are not there. Reliance of the learned single Judge on a Special Bench decision of the Calcutta High Court in Standard

Literature Co. Pvt. Ltd. v. Union of India, AIR 1968 Cal 1, in coming to the conclusion that no mentioning the grounds in the notice was inconsequential, was in our opinion clearly misplaced. It appears that the learned single Judge merely notices the ground urged by the petitioner in support of the writ petition without noticing the finding recorded by the Court in respect thereof.?

This Court also in the case of Kirpal Singh (supra), had again deprecated the service of notice without disclosing the specific ground relating to the unauthorized occupation.

51. In a case reported in 1969 (3) SCC 415, M/s. Wire Netting Stores and another v. The Delhi Development Authority and others, Hon''ble Supreme Court had interpreted the provision contained in Section 4 of the Public Premises (Eviction of Unauthorised Occupant) Act 1958 as applicable in Delhi. The provision contained in Section 4 of the said Act is almost a paramateria to the provision contained in the Act in question. Hon''ble Supreme Court held that the provision contained in Section 5 of the said Act may be given effect only after the procedure contained in Section 4 is complied with. Relevant portion from the judgment of M/s Wire Netting Stores (supra) is reproduced as under:

?It is only after the procedure in this section is complied with that the eviction of unauthorized occupants under Section 5 can take place. It appears that the Estate Officer did not follow the procedure of Section 4, nor did he give a notice which would comply with its terms and that is the reason why the notice has not been produced before us for our perusal. The petitioners said that they had mislaid the notice and could not produce a copy which probably is also not true. In any case, both sides seem to have suppressed the notice from the Court. In this view of the matter we can hold that the procedure laid down by Section 4 was not followed, for it was the burden of the authority to establish to our satisfaction that they were acting in accordance with the law. In any case, no opportunity appears to have been given to the petitioners for showing cause against the proposed eviction. This sis contrary not only to the law laid down but also to the principles of natural justice. In these circumstances, we have no option but to allow that petition. The action of the Authority appears to have been most highhanded on the facts of the case as brought out before us. If the authority wished to evict the petitioners from the occupation of these premises it behaved them to follow strictly the procedure laid down for their action. It is a matter of great regret that authorities constituted to take such drastic steps without recourse to civil Court should be so oblivious to their own duties as laid down in the Act.?

52. In the case of Yasin Khan (supra) this Court had again held that mere mention to ground of eviction in the notice shall not be sufficient to pass an order of eviction. It has been further held that long possession over the land raises genuine dispute relating to the question relating to title. For convenience relevant portion from the case of Yasin Khan (supra) is reproduced as under:

?I have considered the contentions raised on behalf of the parties and I have gone through the provisions of the relevant Act and Rules and I have also examined the notice alleged to have been served upon the petitioner and attached with the counter affidavit. The number of the Annexure is not indicated but it is second to the counter affidavit. The notice is dated 11.3.1976. The perusal of the notice indicates that it is not a proper notice as contemplated by the provisions of Section 4 of U.P. Act No.22 of 1972. The authorities should have given the ground for evicting the petitioner. Mere mention that the ground for eviction is the complaint by the Collector, Rampur is not a proper notice in my opinion. Moreover, the land was allotted to the petitioner for a period of one year on 6.8.1975 and the notice is dated 11.3.1976 and on the finding of the appellate Court the cancellation of the allotment was not communicated to the petitioner, therefore, no cause of action had arisen for serving notice upon the petitioner on 11.3.1976. The proceedings in pursuance of the notice dated 11.3.1976 against the petitioner is wholly unjustified and deserves to be quashed.

10. In my opinion according to the provisions of Section 4(1) of the above mentioned Act, it is incumbent upon the Prescribed Authority to specify that on the date of the notice the person is in unauthorized occupation of public premises. In the present case on the finding of the appellate Court that the allotment expired on 5.8.1976, therefore, the petitioner became unauthorized occupant on 6.8.1996, I think that it cannot be said that the petitioner was in unauthorized occupation of the disputed land on the date of notice. It appears to me that the appellate authority has misunderstood the scope of the provisions of Section 4 of the above mentioned Act and has patently erred in confirming the judgment of the Prescribed Authority regarding eviction of the petitioner from the disputed land. The appellate authority has failed to examine the provisions of Section 4 of U.P. Act No.22 of 1972 whereby it is necessary that the cause of action should have arisen before the issue of notice by the Prescribed Authority. The perusal of Rule 3 and the forms attached thereto also leads to the same inference that on the date of issuing notice the person should be in unauthorized occupation of the public premises. On the finding of the appellate authority the possession of the petitioner became unauthorized from 6.8.1976, I think the proceedings deserve to be quashed.?

53. Bombay High Court in a case reported in AIR 1992 Bombay 375, Minoo Framroze Balsara v. the Union of India and others, held that before passing an order for eviction on the ground of alleged unauthorized occupation it shall be necessary that the prescribed authority should record his prima facie satisfaction relating to the alleged unauthorized occupation. Relevant portion from the case of Minoo Framroze Balsara (supra) is reproduced as under:

?34. The provision of the Eviction Act, 1971 can be applied to persons who are in unauthorized occupation of public premises. A person, by reason of Section 2(g), is in unauthorized occupation if his occupation is without authority. He is in unauthorized occupation if he continues to occupy public premises after the

authority under which he was allowed to occupy the same has expired or has been determined for any reason whatsoever. The provisions of the Eviction Act, 1971, therefore, entitle the Government company or corporation which is the owner of the public premises to terminate for any reason whatsoever the authority of the occupant to occupy the same and, by so doing, place the Government company or corporation and the occupant in the position of landlord and tenant governed by the provisions of the Transfer of Property Act???Prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the show cause notice. The prima facie satisfaction must be twofold; firstly, that the addressee is in unauthorized occupation of public premises, and secondly, that, he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made. It must, therefore, state not only why the addressee is thought to be in authorized occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorized occupation. He also cannot show effective cause unless he knows why his eviction is proposed. The provisions of Section 4 make it clear that the addressee may seek a personal hearing from the Estate Officer and may lead evidence for the purposes of showing cause against the proposed order of eviction.?

35. Under Section 5 the Estate Officer must consider the cause that is shown by the addressee. Plainly, he must consider the addressee's case on both grounds, viz. whether he is in unauthorized occupation of public premises and whether he should be evicted. Even if he finds that the addressee is in unauthorized occupation, the Estate Officer is not obliged to make an order of eviction; he "may" make it. It is, therefore, that he has to consider whether the addressee should be evicted. He is obliged, if he makes an order of eviction, to record his reasons. The Estate Officer's order must, therefore, state why he is satisfied that the addressee is in unauthorized occupation of public premises and why he should be evicted therefrom. The validity of the Estate Officer's conclusions would be tested in appeal, which is before a District Judge or equivalent judicial officer.?

In the case of Yash Paul (supra) the Jammu & Kashmir High Court had deprecated the issuance of vague notice to evict a person on the alleged ground of unauthorized occupation. It has been held that specific ground should be given in the notices while indicting a person on the ground of alleged unauthorized occupation. Only because a person has submitted a response through notice shall not validate the notice. Relevant portion from the judgment of Yash Paul (supra) is reproduced as under:

?6. Subsection (4) makes it obligatory to serve a copy of the notice issued under subsection (3) of Section 4 on all such persons whom he knows or has reason to believe to be in possession of the public premises. This copy shall be served upon

every such person either by post or by delivering or tendereing it to that person, or in such other manner as may be prescribed under Rules. The expression ? without prejudice to the provisions of subsection (3)? makes it abundantly clear that mere failure to serve such a copy on any such person will not in any manner render the service of the notice issued under subsection (3) ineffective or invalid. The notice must, however, specify the ground or grounds on which the order of eviction is proposed to be made, and in no case shall the person against whom such a notice is issued be called upon to show cause against the eviction earlier than ten days from the date the notice has been issued. A person has two options open to him after the notice is served upon him. He may either vacate the premises in case he is convinced that his occupation of the premises is unauthorized. This may very well save him from the tedium and expense of the litigation which he may have to face before the Estates Officer. Where, however, he considers either that the premises from which he is sought to be evicted is not a public premises as defined in Section 2 of the Eviction Act, or that his occupation of the public premises is not unauthorized, he may resist the eviction proceedings. Where he chooses to face the proposed eviction proceedings, equity, good conscience and fair play demand that he should have a reasonable notice of the grounds upon which his eviction is sought, as obviously he would not be in a position to put up his defence without actually knowing what precisely is the case against him. That is why Clause (a) of subsection (2) of Section 4 contains a mandate to the Estate Officer, that he shall specify the grounds on which the order of eviction is proposed to be made. In the instant case a copy of the notice given to the appellant has also been served upon him. There is, however, a significant variance between the copy supplied to the appellant and its original which is on the file of the Estates Officer, inasmuch as no ground whatsoever has been mentioned in the copy, whereas its original contains the ground which is:

?you have occupied Govt. Quarter unauthorisedly.?

Clearly, therefore, it cannot be said that the copy supplied to the appellant was indeed a copy of the notice served upon him under subsection (3) of Section 4. Why the ground of eviction was withheld from the appellant in serving the aforesaid copy on him is not quite understandable to us, nor any explanation has been tendered by the Estates Officer for this glaring omission. Whether it was a bona fide accidental slip, or it was a calculated design to keep the appellant in the dark may be anybody's guess, Be that as it may, as we have already opined, that even nonservice of such a copy would not render the service of notice under subsection (3) invalid, we shall confine ourselves to the validity of the original notice served upon the appellant in terms of subsection (3).?

54. In view of above settled proposition of law, it is evident that it was not only incumbent upon the Nazul Officer to serve a separate notice under Section 4, 5 and 7 of the Act but also disclose the specific ground relying upon which the private respondents have been declared to be in unauthorized occupation. Only

by indicating that respondents are in unauthorized occupation without disclosing the ground shall not validate the notice. All consequential action taken in pursuance to vague notice served under Section 4 of the Act shall invalidate the consequential proceeding in view of law discussed hereinabove.

Merely because respondents have not filed the original lease deed shall not validate the notice and will create a ground to declare the petitioner in unauthorized occupation. Burden shall always lie on the competent authority to disclose the ground in the notice and issue separate notice in compliance of provision contained in Section 4, 5 and 7 of the Act as discussed hereinabove.

55. There is one more reason why the specific ground should be disclosed by the competent authority while serving the notice either under Section 4 of the Act or under Section 5 or even under Section 7 of the Act. As held hereinabove all these three provisions of the Act deals with different situations hence shall require service of different notice at different stages.

56. In the case of Joint Registrar of Cooperative Societies Madras (supra) while dealing with the matter relating to a cooperative the Apex Court held that the opinion formed by the authorities relating to the particular fact must be based on some objective satisfaction. Meaning thereby while forming a opinion relating to unauthorized occupation like in the present case authorities have to discuss the material fact and disclose the gorund while issuing the notice on the unauthorized occupants in pursuance to provision contained in the Act. Relevant portion from the case of Joint Registrar of Cooperative Societies Madras (supra) is reproduced as under:

?Para 8 But that does not and cannot mean that Registrar must as a condition precedent give a direction under those sections for the defects or the irregularities to be remedied and should take action only under the second limb i.e., when there is a willful disobedience or willful failure to comply with those orders or directions. It may be that the opinion which the Registrar has to form must be based on some objective facts but those objective facts in the absence of any clear indication under Section 72 cannot be confined to what may be disclosed after the Registrar has exercised powers in the matter of audit, inquiry and inspection under the provisions of Section 64, 65 and 66. Thus even though the opinion may be a purely subjective process, there must be cogent material on which the Registrar has to form his opinion that the society is not functioning properly in order to sustain the issuance of a notice under Section 72(1)(a) and subsequent supersession of the Committee after considering its representation.?

57. In one another case of Dolgobinda Paricha (supra) the Apex Court held that while forming a opinion relating to the particular fact the opinion should have nexus, with the conduct of the person concerned. The Apex Court held that opinion should be formed as expressed by the conduct i.e. how the conduct comes in. For convenience relevant portion from the judgment of Dolgobinda Paricha (supra) is reproduced as under:

?If the person fulfils that condition, then what is relevant is his opinion expressed by conduct. Opinion means something more than mere retailing of gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. Now, the ?belief? or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion. What the section says is that such conduct or outward behaviour as evidence of the opinion held is relevant and may, therefore, be proved. We are of the view that the true scope and effect of Section 50 of the Evidence Act has been correctly and succinctly put in the following observations made in *Chandu Lal Agarwala v. Khalilar Rahman*, ILR (1942) 2 Cal 299 at p.309: (AIR 1943 Cal 76 at p.80).

?It is only "opinion as expressed by conduct" which is made relevant. This is how the conduct comes in. The offered item of evidence is "the conduct", but what is made admissible in evidence is "the opinion", the opinion as expressed by such conduct. The offered item of evidence thus only moves the Court to an intermediate decision: its immediate effect is only to move the Court to see if this conduct establishes any "opinion" of the person, whose conduct is in evidence, as to the relationship in question. In order to enable the Court to infer "the opinion", the conduct must be of a tenor which cannot well be supposed to have been willed without the inner existence of the "opinion".?

In view of *Dolgobinda Paricha* (supra) while forming the opinion relating to the private respondent, in unauthorized occupation the conduct of private respondents relating to the alleged unauthorized occupation of land in question should have been pinpointed indicating as to how they have acquired the property in question. In the present case the petitioners been failed to consider and discuss the respondents conduct relating to the alleged unauthorized occupation of premises in question. It was the duty of petitioners to take into account the fact that Guru Prasad was in possession of premises since 1917 and thereafter the petitioner had acquired the possession. Keeping in view the facts and circumstances as available on record, it can not be ruled out that petitioners have failed to discharge their duty in accordance to law as discussed hereinabove while directing the private respondents to vacate the premised in question.

58. So far as the question relating to the title is concerned, as discussed hereinabove, undoubtedly Nazul is the owner of land in question. But still undoubtedly the fact remains that Guru Prasad had claimed the possession of premises in question on the basis of lease granted by the Nazul in the year 1917. Smt. Parvati Devi is the subsequent purchaser of the land in question. There is no material on records which may indicate that Shri Guru Prasad or Smt.Parvati Devi had committed any fraud while acquiring the premises in question the property in question. It was acquired by Shri Guru Prasad before coming into force of the Act in question. In case preson claims possession of premises in question on the basis of lease deed executed sometime 85 years back and subsequently on the basis of registered sale deed then such disput corelates with

the question of title.

59. It has been settled by the Division Bench of this Court in a case reported in AIR 1987 Allahabad 56, Purshottam Dass Tandon and others v. State of U.P., Lucknow and others, that a person who is in occupation of premises after expiry of period of lease and if Government has not taken any action to revoke the lease or evict such persons within reasonable period then such person can claim for execution of fresh lease. For convenience, relevant portion from the case of Purshottam Das (supra) is reproduced as under:

¶5. Although, as mentioned, arguments advanced by learned counsel for parties stretched over wide expanse raising issues of law and equity but it is proposed to examine them in the perspective if the lessees had any right in law to get their leases renewed, could they invoke the doctrine of promissory estoppel or claim being put at par with those whose leases had been renewed either because of Article 14 or under administrative law. Was the order dated 19th April, 1981 invalid or its clauses were repugnant being in clash with provisions of Urban Ceiling Act enacted by Parliament; did the lessees who purchased property from evacuee become owners thereof. Taking up the issue if lessees have any right to get fresh lease executed it need not be repeated that the Collector no doubt issued notices in 1958 to the lessees to surrender and leave the land but the Government, the lessor, reconsidered the matter in March 1958 and directed the Collector to grant fresh lease for the entire land in possession of the lessees if they desired to retain it on prevailing market rate of rent and premium. (see: supplementary affidavit of State filed in Civil Misc. Writ No.2293 of 1969 on 4th February, 1986). Whatever doubt remained was dispelled by order dated 23rd April, 1959, a Government decision after careful consideration to renew lease of entire area on premium mentioned therein. And this decision never changed. Learned Additional Advocate General urged that leases granted by the Secretary of the State for India were governed by Government Grants Act, 1864. Therefore, provisions of Transfer of Property Act were inapplicable. And under Government Grants Act, its nature could be determined by its tenor only. According to him once the time for which leases were granted came to an end stood determined by efflux of time. And the lessees had no right left in it. Reliance was placed on State of Madras v. Osmar Haji and Company, AIR 1970 Mad 27. Various terms and conditions of the lease deed filed in Civil Misc. Writ No.2293 were also placed in support of the submission that lessees had no right left in it. The argument is devoid of any substance because the State, always was and is agreeable to execute fresh leases. Even the learned Addl. Advocate General had to accept that Government never adopted shut door policy so far grant of fresh lease was concerned. Apart from it the Government by its own conduct stretching over long years has given rise to right in favour of the lessees to get a fresh lease from the State. Since leases were in respect of Government land, they were undoubtedly governed by Government Grants Act and their nature could be determined by their tenor. Therefore, after expiry of time for which leases were granted they came to an end. And the Government could

refuse to grant fresh lease or take over the same. But as seen earlier it did not. Rather it decided to execute fresh leases in favour of every lessee on terms and conditions mentioned in Government order. It was said so even in paragraph 3 of the supplementary affidavit filed on 4th February, 1986. In doing so or taking this decision the Government was acting in accordance with rules as paragraph 50 of the Manual itself contemplates for renewal or grant of fresh lease after expiry of the lease without any option for renewal. In law where a person, having two alternative courses of actions mutually exclusive chooses to adopt one and rejects the other expressly or impliedly then he is said to have elected to choose one. He is subsequently precluded from adopting the course which he intended to reject. It is known as doctrine of election. Like estoppel it is also child of equity. It is founded on the principle that one should not be permitted to approbate and reprobate that is, blow hot and cold in same breath. It has been extended and applied as an aspect of estoppel to prevent a person from falling a victim to what would have otherwise resulted in injustice to him and unfair advantage to other. In Chapter XIII of Estoppel by Representation by Spencer Bower and Turner III Edition page 314, the principle is explained thus?????.It was urged that this indicated that the lessees were to surrender and handover possession peaceably after expiry of the term for which the lease was granted. The expression could not be read in isolation. As is clear it was incorporated as a penal clause to apply where the lessee committed breach of conditions. It was in addition to the right of pulling down unauthorized constructions. Right of reentry either on expiration of the term for which lease was granted or even earlier was conferred on Collector only if the lessee committed breach of any covenant. The decision in AIR 1974 SC 856 does not appear to have any relevance, since the G.O. of 1959 was not only a hope and expectation but a decision of the Government to grant leases to the existing lessees and this policy of the Government did not undergo any change at any point of time. The policy in fact remained the same. The Government, therefore, having exercised its option and decided to renew leases it is too late in the day for learned Additional Advocate General to urge that granting of lease was only a concession which could be withdrawn by the Government at any time. Nor it can be claimed that the principle of election could not apply to Government in view of weighty pronouncements by the Supreme Court that Government of a constitutional democracy can not claim immunity from applicability of principles of equity and fairness. The Government thus having abandoned its right of reentry, the learned counsel for the petitioner, appears to be right in his submission that it resulted in creating a jural or legal relationship between lessor and lessee permitting them not only to continue in possession but to get a fresh lease executed in their favour. Moreover in a country wedded to ideals of democracy and welfare state it would be unthinkable to import such outdated concept. If the land is needed or building has to be demolished in public interest for general welfare probably no exception can be taken as the interest of individual has to be sacrificed for the society. But asking the lessee to vacate land or remove Malwa for no rhyme or reason but because the State was the owner cannot be accepted to be in

consonance with present day philosophy and thinking about role of state.?

60. In a case reported in (1980) 4 SCC 443, Surendra Kumar Verma and others v. Central Government Industrial Tribunal Cum Labour Court, New Delhi and another, the Apex Court held that after expiry of period of tenancy in case a tenant continues with the possession of premises without consent then such tenant may not be evicted except in accordance to law.

61. In one other case reported in (1980) 4 SCC 435, M/s. Jain Ink Manufacturing Company v. Life Insurance Corporation of India and another, the Apex Court was having occasion to interpret Section 2(g) and Section 5 of the Act and it has been held by the Apex Court that the entry into the possession of premises of a person shall be relevant to declare a person in unauthorized occupation though the Apex Court held that even if a person acquired a possession before the enactment of the Act in question may be declared in unauthorized occupation but entry into the possession of premises shall be relevant consideration. Meaning thereby it shall always be incumbent upon the authorities while serving the notice under the Act to indicate as the ground and the actual period of unauthorized occupation.

62. Hon'ble Supreme Court in a case of Govt. of Andhra Pradesh (supra) held that question relating to title can not be decided in a summary proceeding. Relevant portion from the judgment of Govt. of Andhra Pradesh (supra) is reproduced as under:

¶5. Three appeals were preferred to the Division Bench against the judgment of the learned Single Judge, two of them being by the petitioners in one writ petition and the third by the petitioner in the other writ petition. The Division Bench, while setting aside the judgment of the learned single Judge, held:

¶The question whether the lands belong to Osmania University or not will have to be decided as and when the Government comes forward with a suit for the purpose. Even if we assume for the purpose of our judgment, as we are not pronouncing any conclusion as to whether the land vested in the Government or University, that the Government is the owner, the dispute going back from 1942 cannot be dealt with in summary proceedings under Section 7 of the Land Encroachment Act.?

The summary remedy provided by Section 7, according to the Division Bench, cannot be resorted to 'unless there is an attempted encroachment or encroachment of a very recent origin' and further, that it cannot be availed or in cases where complicated questions of title arise for decision.?

7. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is 'the property of Government'. In regard to property described in subsections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute

as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorized occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorized occupation of a land for which he is liable to pay assessment under Section 3. Section 3, in turn, refers to unauthorized occupation of any land which is the property of Government. If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property of operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they can not be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

8. The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to unless the alleged encroachment is of a very recent origin, cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in *Mehrunnissa Begum v. State of A.P.* (1970) 1 Andh LT 88 which was affirmed by a Division Bench (1971) 1 Andh LT 292: (AIR 1971 andh Pra 382). Facts which raised a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary Courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.

63. Similar finding seems to come out from the judgment of Patna High Court reported in AIR 1991 NOC 3 (PAT.), *M/s. Bharat Coking Coal Ltd. v. Estate Officer and others*, which is reproduced as under:

“(D) Public Premises (Eviction of Unauthorised) Act (1971), Sections 4 and 5. Proceeding for eviction under Procedure envisaged is summary Determination of question whether premises is public premises. Decision on such jurisdictional fact raising considerable difficulties and case involving complicated questions of title. Authority can ask parties to get decision from Civil Court.”

The authority under the Act has a limited jurisdiction to determine only the disputes that may arise in relation to public premises when an application is made to it to evict an unauthorized occupant. The procedure envisaged is a summary procedure. It has jurisdiction only if the premises in question is a public premises. The question as to whether the premises in question is or is not a public premises, is a question which goes to the very root of the jurisdiction, and, therefore, involves determination of a jurisdictional fact. No doubt, even a tribunal of limited jurisdiction has the right to decide its jurisdiction. But at times a decision on a jurisdictional fact may raise considerable difficulties and involve determination of complicated questions of title. The Tribunal may find its summary procedure inadequate or its judicial training not sufficient to enable it to give a categorical finding on such a complicated question of title. In such a case, there is ample justification for it to refuse to embark upon the determination of such a question and leave it to the parties to get such a question decided by a Court of competent civil jurisdiction.

64. In the case of *State of U.P. and others v. Lalji Tandon (dead) through its LRs*, reported in (2004) 1 SCC 1 it has been settled by the Apex Court that for extension of lease deed it shall not be necessary to execute fresh lease agreement. For convenience relevant portion from the judgment of *Lalji Tandon* is reproduced as under:

“Para 13: In India, a lease may be in perpetuity. Neither the Transfer of Property Act nor the general law abhors a lease in perpetuity. (Mulla on the Transfer of Property Act, 9th Edn., 1999, p.1011). Where a covenant for renewal exists, its exercise is, of course, a unilateral act of the lessee, and the consent of the lessor is unnecessary. (*Baker v. Merckel*, also Mulla, *ibid.*, p. 1204). Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, whether the renewed lease shall also contain similar clause for renewal depends on the facts and circumstances of each case, regard being had to the intention of the parties as displayed in the original covenant for renewal and the surrounding circumstances. There is a difference between an extension of lease in accordance with the covenant in that regard contained in the principal lease and renewal of lease, again in accordance with the covenant for renewal contained in the original lease. In the case of extension it is not necessary to have a fresh deed of lease executed, as the extension of lease for the term agreed upon shall be a necessary consequence of

the clause for extension. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties. Failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be.

Para 14: The issue whether a right to a new lease consequent upon the option for renewal having been successfully exercised should again contain the covenant for renewal, is not free from difficulty and has been the subject matter of much debate both in England and in India. It would all depend on the wordings of the covenant for renewal contained in the principal lease, the intention of the parties as reflected therein and as determinable in the light of the surrounding relevant circumstances.

Para 15: A Division Bench decision of the Andhra Pradesh High Court in Syed Jaleel Zane v. P. Venkata Murlidhar wherein Jeevan Reddy, J., as His Lordship then was, spoke for the Division Bench makes almost an exhaustive discussion of the relevant English and Indian law available on the point and we express our respectful agreement with the exposition of law as made therein. We note with approval the following proposition of law laid down therein: (AIR pp.332 & 334, paras 14 & 19);

(i) In India, the law does not prohibit a perpetual lease; clear and unambiguous language would be required to infer such a lease. If the language is ambiguous the Court would opt for an interpretation negating the plea of the perpetual lease;

(ii) To find an answer to the question whether a covenant for renewal contained in the lease deed construed properly and in its real context entitles the tenant to continue as long as he chooses by exercising the option of renewal at the end of each successive period of 5 years subject to the same terms and conditions depends on the deed of lease being read as a whole and an effort made to ascertain the intention of the parties while entering into the contract. No single clause or term should be read in isolation so as to defeat other clauses. The interpretation must be reasonable, harmonious and be deduced from the language of the document;

(iii) The Court always leans against a perpetual renewal and hence where there is a clause for renewal subject to the same terms and conditions it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous.

Para 16: Another illuminating decision on the point is by Sir Ashutosh Mookerjee, J., speaking for the Division Bench of the Calcutta High Court in Secy. of State for India v. A.H. Forbes. The Division Bench on a review of several English decisions held:

(1) A lease, which creates a tenancy for a term of years, may yet confer on the lessee an option of renewal.

(2) If the lease does not state by whom the option is exercisable, it is exercisable (as between the lessor and lessee) by the lessee only, that is to say, a covenant for renewal, if informally expressed, is enforced only in favour of the lessee.

(3) The option is exercisable not merely by the lessee personally but also by his representative in interest.

(4) If the option does not state the terms of renewal, the new lease will be for the same period and on the same terms as the original lease, in respect of all the essential conditions thereof, except as to the covenant for renewal itself.

(5) There is no sort of legal presumption against a right of perpetual renewal. The burden of strict proof is imposed upon a person claiming such a right. It should be inferred from any equivocal expressions which may fairly be capable of being otherwise interpreted. The intention in that behalf should be clearly shown; otherwise, the agreement is satisfied and exhausted by a single renewal.

(6) A covenant for renewal runs with the land.

(7) The position of a lessee, who has been always ready and willing to accept a renewal on proper terms, is the same in equity as if a proper lease had been granted. Where the covenant for renewal was still specifically enforceable at the commencement of a suit for ejectment against the lessee, the position of the lessee in equity is the same as if it had been specifically enforced.

Para 18: We find ourselves in full agreement with the view of the law taken in the decisions cited hereinabove. It is pertinent to note that the respondent is not claiming a lease in perpetuity or right to successive renewals under the covenant for renewal contained in the 1887 lease. The term of 50 years under the 1887 lease came to an end in the year 1937 and the option for renewal was exercised by the respondent as assignee of the original lessee which exercise was honoured by the lessor State executing a fresh deed of lease belatedly on 20.2.1945. This lease deed does not set out any fresh covenants, mutually agreed upon between the parties for the purpose of renewal. Rather it incorporates, without any reservation, all the covenants, provisos and stipulations as contained in the principal lease as if they had been herein repeated in full. Not only was a fresh deed of lease executed but the conduct of the parties also shows that at the end of the term appointed by the 1945 lease i.e. in or around the year 1987, the lessor did not exercise its right of reentry. On the other hand, the respondent exercised his option for renewal. The officials of the appellant State i.e. the Collector and the Board of Revenue, all recommended renewal and advised the State Government to expedite the renewal. The State Government was generally renewing such like leases by issuing general orders/instructions to its officers. At no point of time prior to the filing of the counteraffidavit, on the present litigation having been initiated, the State or any

of its officers took a stand that the right of renewal, as contained in the principal deed of lease, having been exhausted by exercise of one option for renewal, was not available to be exercised again.

Para 20: The other two pleas raised on behalf of the appellant State merit a short and summary burial. The appellant's plea that the land having been acquired there could be no renewal of lease has been termed by the High Court as ? ridiculous? and we find no reason to take a different view. Suffice it to refer to a recent decision of this Court in *Sharda Devi v. State of Bihar*, wherein it has been held that the Land Acquisition Act, 1894 cannot be invoked by the Government to acquire its own property. It would be an absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. The Notification and declaration under Section 4 and 6 of the Land Acquisition Act for acquisition of the land i.e. the site below the bungalow are meaningless. It would have been different if the State would have proposed the acquisition of the leasehold rights and/or the superstructure standing thereon, as the case may be. But that has not been done. The renewal of lease cannot be denied in the garb of so-called acquisition notification and declaration which have to be just ignored.

Para 21: Lastly, it was submitted that the respondent is in breach of the terms of the lease and hence not entitled to renewal. Firstly, the High Court has held the plea taken by the appellant State not substantiated. Secondly, the exercise of option for renewal cannot be stalled on the ground that the lessor proposes to exercise the right of reentry on account of alleged breach when no steps were taken for exercising the right of reentry till the option for renewal was exercised by the lessee. If the lessee is in breach and the lease entitles the lessor to reenter, that right is available to be exercised without regard to the renewal of the lease.?

65. This Court also in the case of *Hindoo Pat and another v. District Judge, Hamirpur and others*, reported in 1985 All LJ 438, held that where the question of title is involved a person can not be evicted in a summary proceeding. For convenience relevant portion from the case of *Hindoo Pat* (supra) is reproduced as under;

?Para 5: In *Govt. of Andhra Pradesh v. Bandi Venkatarama*, AIR 1982 SC 1081, it was held that even if a person is alleged to be in unauthorized occupation of Government land, he cannot be evicted in this summary proceeding where the question of title has been raised. The Supreme Court was dealing with a case under the Andhra Pradesh Land Encroachment Act. In that Act some remedy for eviction is provided under Section 6. It was held that when a question of title of the land in dispute arose, it could not appropriately be decided in a summary proceeding as contemplated under Sections 6 and 7 of the Act and the long possession of the respondents and their predecessors in title on those plots raises a genuine dispute between them and the Government on the question of title. The facts in the present case are also akin, as the petitioners raised the

question of title that the said land was sold by one Kesar Singh as far back as in the year 1958 and they are in possession since thereafter. The long possession and payment of revenue by the petitioners are not even disputed by the respondents, on the contrary, they have been admitted. In view of these facts also even this case applies with full force. In fact, under the aforesaid 1960 Act a clear provision for eviction of such a person who is said to be in possession of surplus land is provided in Section 14(8) of the Unamended Act and Section 14(1) after its amendment.?

66. In a case reported in 1995 Supp. (2) SCC 290, *State of Rajasthan v. Padmavati Devi (Smt) (Dead) by LRs and others*, the Apex Court again ruled that where there is bonafide dispute about right to remain in possession of a land which involved question relating to the applicability and interpretation of various laws and documents as well as investigation into disputed question of facts requiring recording of evidence then such matter can not be adjudicated in a summary proceeding like under Section 91 of the Rajasthan Land Revenue Act.

For convenience relevant portion from the judgment of *State of Rajasthan (supra)* is reproduced as under:

?As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorized occupation of Government of India. The said provisions cannot be invoked in a case where the person in occupation raises bona fide dispute about his right to remain in occupation over the land. Dealing with similar provisions contained in Section 6 of the Andhra Pradesh Land Encroachment Act, 1945, this Court in *Govt. of A.P. v. Thummala Krishna Rao* has laid down that the summary remedy for eviction provided by Section 6 of the said Act could be resorted to by the Government only against persons who are in unauthorized occupation of any land which is the property of the Government and if the person in occupation as a bona fide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of complicated question of title.?

67. On the question relating to issue of composite notice petitioner's counsel Shri N.K. Seth as well as learned counsel for the intervener Shri B.K. Saxena submitted that in view of provision contained in Section 80 of the Code of Civil Procedure readwith Section 106 of the Transfer of Property Act a composite notice could have been given by the competent authority under Section 4, 5 and 7 of the Act. Shri B.K. Saxena had relied upon two judgments reported in; 1983 (2) ARC 124, *State of U.P. v. D.C. Gupta* and 1999(1) ARC 13, *Triloki Nath Pandey v. IIIrd Additional District and Sessions Judge, Bareilly and others*. The Case of *State of U.P. v. D.C. Gupta* relates to dispute between landlord and tenant. It was not a case where Nazul had leased out its land to a lessee as claimed by private respondents. In a case where relationship between landlord and tenant is in dispute giving of composite notice in pursuance to provision contained in Section 106 of the Transfer of Property Act readwith Section 80 of

the Code of Civil Procedure has been found to be correct. However, the said principle does not seem to be applicable in a proceeding where a controversy is exclusively covered under the Act in question. Moreover careful reading of case of D.C. Gupta (supra) reveals that the provision contained in Section 4 and 5 of the Act should be followed separately i.e. by serving a separate notice that is why this Court in a case of D.C. Gupta (supra) had proceeded to observe as under:

Section 4 of the U.P. Act 22 of 1972 provides that if the Prescribed Authority either of its own motion or on an application of report received on behalf of the State Government or the corporate authority, is of opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted, the prescribed Authority shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made. Section 5 provides that if, after considering the cause, if any, shown by any person in pursuance of a notice issued under Section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity or being heard, the Prescribed Authority is satisfied that the public premises are in unauthorized occupation, the Prescribed Authority may make an order of eviction.

In view of case law cited by petitioners' counsel as well as counsel for the intervenor also referred hereinabove it is evident that a notice under Section 5 may be issued only after considering the response submitted by unauthorized occupants in response through notice issued under Section 4.

68. The case of Triloki Nath Pandey (supra) also relates to a dispute adjudicated by this Court between landlord and tenant decided in pursuance to controversy under the Act No.13 of 1972. This Court had upheld the service of composite notice in pursuance to provision contained in Section 106 of the Transfer of Property Act Section 80 of Code of Civil Procedure as the dispute was between landlord and tenant.

69. The U.P. Public Premises (Eviction of Unauthorised Occupants) Act 1971 is a special Act as discussed hereinabove. The provision contained therein contains a specific procedure to evict the unauthorized occupant. The provision contained in Section 4, 5 and 7 of the Act are statutory in nature. It is settled law that when in case statute wants to do certain thing in certain way then that must be done in a same way or not at all vide; Nazir Ahmad v. King Emperor, AIR 1936 PC 253: Deep Chand v. State of Rajasthan, AIR 1961 SC 1527: Patna Improvement Trust v. Smt. Lakshmi Devi and others, AIR 1963 SC 1077: State of U.P. v. Singhara Singh and other, AIR 1964 SC 358: AIR 1967 SC 295 (para 34 A) Barium Chemicals Ltd. v. Company Law Board (para 34 A): Chandra Kishore Jha v. Mahavir Prasad and others, 1999 (8) SCC 266: Delhi Administration v. Gurdip Singh Uban and others, 2000(7) SCC 296: Dhanajay Reddy v. State of Karnataka, AIR 2001 SC 1512: Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and others, 2002 (1) SCC 633: Prabha Shankar Dubey v. State of

M.P., AIR 2004 SC 486 and Ramphal Kundu v. Kamal Sharma, AIR 2004 SC 1657.

70. In view of above that the Act in question being special law it shall always be incumbent upon the authorities to follow the provision contained therein while taking action to evict an unauthorized occupant.

71. So far as the argument advanced by Shri B.K. Saxena, learned counsel for the intervenor M/S Gomti Construction is concerned, admittedly a portion of land is transferred during the pendency of proceeding. The intervenor being a transferee pendente lite without leave of the Court shall be bound by a final outcome of the present writ petition. As settled by Hon''ble Supreme Court in a case reported in (2004) 1 SCC 191, Bibi Zubaida Khatoon v. Nabi Hassan Saheb and another, the petitioner who was the respondent in appeal should not have transferred a portion of property during the pendency of present proceeding. The alienation of property shall be hit by doctrine of lis pendens by operation of Section 52 of the Transfer of Property Act. Hon''ble Supreme Court in the case of Bibi Zubaida Khatoon (supra) had relied upon the earlier judgment of Apex Court and proceeded to hold as under:

?In the case of Dhurandhar Prasad Singh observations relevant for the purpose of these appeals read thus: (SCC pp.54142, para 7)

Where a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, yet he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary.?

FINDING

1. The provision contained in Section 4, 5 and 7 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act 1971 readwith Rule 3, 5 and 8 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Rule 1971 are mandatory in nature.

2. The provisions contained in Section 4, 5 and 7 of the Act deals with the different situations and circumstances, hence, issuance of composite notice in pursuance to provision contained in Section 4, 5 and 7 of the Act readwith Rules discussed hereinabove is not permissible.

3. While issuing notice under Section 4, 5 and 7 of the Act it shall be incumbent upon the authorities to disclose the ground in brief so that the alleged unauthorized occupants may be able to submit categorical reply to the allegations or charges contained in the notices.

4. While deciding a controversy under the Act it shall always be incumbent upon the prescribed authority to deal with the dispute within the parameter and provisions contained in the Act and finding should be based on objective assessment of the material on record.

5. While issuing a notice under Section 4 it shall be incumbent upon the competent authority to indicate the specific date and actual period of unauthorized occupation. In the present case since initially Guru Prasad was in possession of premises in question from the year 1917 and thereafter Smt. Parvati Devi had acquired the possession on the basis of registered sale deed of the year 1943 and from the Parvati Devi the private respondents had acquired the possession, the allegation of unauthorized occupation from 1st April, 1979 as given in the notice is incorrect and bases on unfounded facts. Hence the consequential action taken on the basis of the disclosure of incorrect fact and period of alleged unauthorized occupation in the notice vitiates and shall be void.

6. The material on record indicates that at various stages the Lucknow Development Authority/Nagar Nigam had accepted that the private respondents is lessee of the premises in question. The material on record further discloses the continuous possession of premises in question by Shri Guru Prasad then Smt. Parvati Devi w/o Sri Justice Bisheshwar Nath and then her heir i.e private respondents right from 1917.

7. Though admittedly Nazul is the owner of property in question but since it has been claimed that Guru Prasad had acquired the property through lesse from Nazul department in the year 1917 it shall always be permissible for the private respondents to lead evidence to install their claim by producing primary or secondary evidence in respect to execution of original lease deed of the year 1917. For extension of lease it is not necessary that fresh lease may be executed by Nazul department. Accordingly the disputed question of fact correlate with the title of property in question on the basis of alleged lease deed of the year 1917 which can not be adjudicated in the present summary proceeding in view of law discussed hereinabove. It requires recording of evidence cross examination of witness and production of primary or secondary evidence which can be done only in a regular suit. Question of title includes to prove the execution of lease deed.

8. So far as the argument advanced by the petitioner's counsel relating to the compliance of provision contained in Nazul Manual, the burden of proof, plea of waiver, applicability of various provisions of Transfer of Property Act or the Registration Act are concerned they correlate to the question of title vis a vis grant of lease to late Shri Guru Prasad in the year 1917 which can be adjudicated by the competent civil Court after recording of evidence and providing opportunity of hearing to the parties. In the absence of specific pleading in writ petition or before the prescribed authority, the argument advanced by the petitioner's counsel are left open for the adjudication by the competent civil Court.

72. Since the portion of land was transferred to Gomti Construction during the pendency of present proceeding, the right of M/s Gomti Construction shall also be covered by present finding applying the principle of law laid down by the Apex Court in Zubeda Khatun's case (supra).

73. In view of finding recorded hereinabove and provision of law discussed in the preceeding paras, the present writ petition does not survive and is devoid of merit. The impugned order of the appellate Court does not suffer from any impropriety or illegality and call for no interference.

Subject to discussion hereinabove the writ petition is devoid of merit hence dismissed. No order as to costs.

(Petition dismissed)