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A.F.R.

Court No. - 36

Case :- SECOND APPEAL No. - 461 of 2014

Appellant :- The Catholic Diocese Of Gorakhpur Through Its President
Respondent :- Bhola Deceased And 4 Others
Counsel for Appellant :- Sanjiv Singh, A. P. Tiwari, Namwar Singh, S. S. Tripathi, Subhash Ghosh
Counsel for Respondent :- S.P.K. Tripathi, Arvind Srivastava III, Ashish Kumar Srivastava, Manish Kumar Nigam, Pramod Kumar Singh, Praveen Kumar, Sanjay Goswami

Hon'ble Kshitij Shailendra,J.

THE APPEAL

1. This is defendants' second appeal arising out of non-concurrent judgments. The Original Suit No. 307 of 2011 (Bhola vs. DIOCESE and another) was dismissed by the trial court, however, the Civil Appeal No. 37 of 2011 filed by the plaintiff-respondents has been allowed by the First Appellate Court and, consequently, the suit has been decreed.

PLAINT CASE

2. The aforesaid suit was filed stating that the plaintiff was Bhumidhar in possession over plot No. 26 measuring 93 decimals situated at Mauza Jangal Salikram, District Gorakhpur. A statement No. 3234 filed by him before the Competent Authority under Urban Land (Ceiling and Regulation) Act, 1976 was pending and when the defendants, 1.5 months prior to institution of suit, started en-covering the land by raising constructions of boundary wall and the plaintiff objected to the same, the defendants threatened him to raise constructions of a hospital over the land. It was alleged through amendment that a lease deed was said to have been executed by defendant No. 2, (State of U.P.) in favour of defendant No. 1 (appellant herein), though the State had no right to execute a lease. Further pleading was that the land of the plaintiff had not been declared vacant and, consequently, a decree was prayed for directing the defendants to remove constructions raised over the portion marked by letters “अ ब स द” in the plaint map and deliver possession of the land to the plaintiff and, on their failure to do so, possession through process of the Court be delivered and the lease deed be also cancelled. Further, a decree restraining the respondents from raising any constructions over the

land bearing No. 26 measuring 93 decimals was also claimed.

IMPLEADMENT OF PARTIES AND AMENDMENT IN PLAINT

3. The Original Suit was initially filed against the DIOCESE of Gorakhpur, i.e. the present appellant only. The plaint was, later on, amended and averments were added based upon the lease deed filed by the defendant-appellant before the trial court asserting rights in the land in dispute in its favour. Pursuant to an order dated 19.02.2001, State of U.P. through District Magistrate, Gorakhpur was impleaded as defendant No. 2. The relief No. अ was amended incorporating a prayer for cancellation of the lease deed too.

DEFENCE IN WRITTEN STATEMENT

4. The defendant No. 1 (appellant) filed a written statement taking a stand that it was a registered Society and under a proposal to construct Fatima Hospital in Gorakhpur, land was required by it. On the request of the said defendant, the State officials allotted a vacant land to the appellant under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (herein-after referred to as “the Act of 1976”) and over the said

land, possession was delivered to appellant. The appellant also filed additional written statement stating therein facts regarding execution of lease in its favour by the State Government. The State of U.P., (defendant No. 2) also filed written statement stating that the plaintiff had submitted an application dated 05.02.1991 alongwith notarized affidavit dated 21.02.1991 to the effect that he had sold the entire property covered by land No. 197, which had been declared as vacant under section 10(5) of the Act, 1976 and, in exchange thereof, an area measuring 2805.90 Sq.Mts. covered by land bearing No. 26 was handed over by the plaintiff to the District Magistrate, Gorakhpur and, on the basis of such written consent of the plaintiff, the State Government had allotted the land to the appellant. It was further pleaded that after coming into force of Repeal Act No. 15 of 1999, the proceedings under the Act of 1976 had stood abated and a registered lease deed having already been executed in favour of appellant, the construction of boundary wall raised over the land was lawful.

TRIAL COURT'S JUDGMENT

5. The trial court framed 15 issues out of which relevant issues relate to right, title, interest and possession of the respective parties pursuant to the ceiling proceedings and also lease deed relied upon

by the defendants. After the parties led documentary and oral evidence, the trial court decided issues No. 1, 2, 3, 6, 9 and 13 by observing that since the plaintiff himself had submitted application 157-A and affidavit 160-C before the District Magistrate, Gorakhpur relinquishing his rights over plot No. 26, over which possession was delivered to the District Magistrate and, thereafter, a lease deed was executed by the State in favour of the defendant-appellant, the possession based upon admission and consent would bar the suit for any relief. Consequently, the trial court dismissed the suit by judgment and order dated 22.11.2011 observing that in view of Sections 41(g) and 41(i) of the Specific Relief Act, 1963, neither mandatory nor prohibitory injunction could be granted in favour of the plaintiff.

APPELLATE COURT'S JUDGMENT

6. Aggrieved, the plaintiff-respondent No.1 filed Civil Appeal No. 47 of 2011, during the pendency whereof he died and was substituted by his heirs and legal representatives. The first Appellate Court allowed the appeal by judgment and order dated 13.03.2014 and decreed the suit directing the defendant-appellant to remove boundary wall constructed by it over the land shown by letters "अ

ब स द" in the plaint map within a period of 60 days. A further decree has been drawn directing the defendants not to cause any interference in the plaintiff's possession over the land. Simultaneously, lease deed dated 13.01.1993 registered before the Sub Registrar-I, Gorakhpur, to the extent it relates to plot No. 26, has been declared as void and ineffective.

FINDINGS RECORDED BY FIRST APPELLATE COURT

7. The first Appellate Court framed following points for determination in the Civil Appeal : -

> "1– क्या अवर न्यायालय का यह निष्कर्ष कि आराजी सं० 197 में अपीलार्थी/वादी का कोई हिस्सा अधिनियम के तहत सरप्लस घोषित हुआ था, हस्तक्षेप योग्य है?
>
> 2– क्या अवर न्यायालय का यह निष्कर्ष कि कथित शपथ पत्र जो वादी/अपीलार्थी द्वारा जिलाधिकारी के समक्ष दिनांक 21.02.1991 को दिया जाना कहा जाता है, से प्रत्यर्थी/ प्रतिवादी सं02 को विवादित आराजी में कोई स्वत्व एवं स्वामित्व प्राप्त हुआ, विधि की दृष्टि से सही है ?
>
> 3– क्या प्रत्यर्थी संख्या 2 को प्रत्यर्थी संख्या 1 के पक्ष में विवादित भूमि का कोई पट्टा या कोई अन्तरण करने का अधिकार प्राप्त था ?
>
> 4– क्या 1976 के अधिनियम संख्या 33 की धारा 4 के तहत यह वाद उपशमित हो गया था ? "

8. The first Appellate Court observed that the

plaintiff-Bhola was a co-sharer of the land bearing No. 197 alongwith one Lallan and recorded a finding that share of Lallan alone was declared as vacant. It also observed that Statement No. 3234 concerning plaintiff-Bhola relating to the ceiling proceedings, despite being available in their office, had not been brought on record by the defendants that would lead to adverse inference against them. The Appellate Court also observed that since it was not proved that any share of the plaintiff-Bhola in plot No. 197 had been declared as vacant, any application or affidavit submitted by him before the District Magistrate would be deemed to be under some mistaken belief and not voluntarily and, even otherwise, the alleged surrender of land of plot No. 26 in favour of State, being in teeth of provisions of sections 183, 184, 185, 186, 190, 191, 192, 193 and 194 of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950, would not be treated as in accordance with law.

ADMISSION/STAY ORDER IN THE INSTANT APPEAL

9. In the instant appeal, an interim order of status quo was passed on 02.05.2014 before admission. It was extended from time to time. On 25.08.2015, parties were in clash before this Court as regards declaration of land of plot No. 197 as

surplus. This Court, therefore, deemed it necessary to call upon the District Magistrate concerned alongwith relevant records relating to ceiling proceedings so as to appreciate the rival contentions. The District Magistrate appeared alongwith record on 08.09.2015, on which date, after noting down contentions of both sides, the instant appeal was admitted on the following substantial questions of law:-

> "(i) Whether the lower Appellate Court was justified in decreeing the plaintiff's suit notwithstanding his admission that Plot No. 26 is being offered in lieu of his having sold the entire land of Plot No. 197 including the land, which had been declared surplus?
>
> (ii) Whether the judgment and decree of the lower Appellate Court reversing and invalidating the proceedings under Urban Ceiling Act are without jurisdiction?
>
> (iii) Whether the suit of the plaintiff-respondent is barred by the principles of estoppel and acquiescence, inasmuch as, the defendant-appellant has raised boundary wall constructed the Hospital at the disputed plot and has invested huge amount?"

COUNSEL HEARD

10. Heard at length Shri Navin Sinha, learned Senior Advocate assisted by Shri Subhash Ghosh, Shri Raghvendra Nayar and Ms. Saraswati Yadav,

learned counsel for the appellant as well as Shri Sanjay Goswami, learned counsel assisted by Shri Pramod Kumar Singh, learned counsel for the plaintiff-respondents and Shri Vinod Kumar Sahu, learned Additional Chief Standing Counsel for respondent No.2 (State of U.P.).

SUBMISSIONS ON BEHALF OF THE APPELLANT

11. Shri Navin Sinha, learned senior counsel argued with vehemence that the proceedings under the Act of 1976 for declaration of land of plot No. 197 as surplus or vacant had been undertaken and once the plaintiff himself admitted that the entire land of plot No. 197 that was declared surplus, had been sold by him and once he had given written consent in the form of application 157-ka alongwith affidavit 160-C before the District Magistrate relinquishing his rights in his other holding covered by plot No. 26, i.e. the subject land, and handed over its possession to the District Magistrate, consequential lease deed executed by the State in favour of the appellant would be valid for all purposes and title once vested in the said manner, neither the registered lease deed could be declared as null and void nor could a decree for injunction be drawn in favour of the plaintiff-respondents and, therefore, the first Appellate Court has grossly erred in reversing the decision of the trial court.

Shri Sinha referred to the lease deed dated 11.01.1991, which was executed by the Governor of the State in favour of the appellant and by referring to the schedule of property attached to the deed, it was contended that the land of plot No. 26 was given in lieu of plot No. 197 under Order No. 1611 dated 13.03.1991 (a date subsequent to preparation of lease deed) passed by the District Magistrate, Gorakhpur and for the purpose of maintenance by the allottee Society, i.e. the present appellant. Shri Sinha also referred to an order dated 10.11.1980 annexed as Annexure CA-1 to the counter affidavit filed on behalf of State of U.P. The said order, apart from containing various recitals, mentions that 4354.76 Sq. Mts. of land covered by plot No. 197 was treated as surplus land. The entire thrust of Shri Sinha is, therefore, to the effect that the plaintiff had voluntarily surrendered his right, title, interest and possession qua plot No. 26 in favour of the State in exchange of his holdings covered by plot No. 197 that was declared vacant/surplus but illegally sold by the plaintiff to third parties.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF-RESPONDENTS

12. Per contra, Shri Sanjay Goswami, learned counsel for the plaintiff-respondents vehemently submits that the plaintiff’s share in plot No. 197 was

never declared surplus and whatever proceedings were held, the same related to Lallan, the other co-sharer and, therefore, no question of alleged exchange of other holdings of the plaintiff, could arise. It is contended that the plaintiff-Bhola was the original owner of plot No. 26, area 93 decimals and had half share in plot No. 197 (area 2.64 acres) with 1.32 acres in his share. Remaining 1.32 acres of plot No. 197 belonged to one Lallan. After the commencement of Act of 1976, both Bhola and Lallan submitted separate returns under Section 6(1) of the Act. The return submitted by Bhola was numbered as 3234, whereas the return submitted by Lallan was numbered as 3235. The Competent Authority under the said Act prepared a draft statement on the basis of return No. 3234 and issued a notice under Section 8(3) of Act to plaintiff-Bhola, who filed his objections to the draft statement, mainly on the ground that most of his land was agricultural in nature and that area of the vacant land in other plot was less than the ceiling limit. The Competent Authority allowed the objections vide his order dated 18.12.1980 under Section 8(4) of the Act and cancelled the draft statement holding that returnee held the land within his ceiling limits. However, a direction was issued by the Competent Authority to his office to find out the land use of the land in the master plan

and, in case any land was found in excess of the ceiling limit, a notice be issued to the returnee to submit statement. He submits that nothing was done after the draft statement was cancelled by order dated 18.12.1980 and no proceedings were held against the plaintiff-Bhola under the Act of 1976 and, therefore, he continued to hold the land in his own rights. Further submission is that the Competent Authority proceeded against Lallan and declared 1.08 acres land in plot No. 197 from his share and that, at the most, State could exercise its rights only in respect of part of the land to the extent of share of Lallan alone and had no right over the share of plaintiff-Bhola against whom notice/draft statement was cancelled. Khatauni pertaining to 1416 F to 1420 F annexed alongwith counter affidavit was referred demonstrating that the Competent Authority directed recording the name of State of U.P. over plot No. 197 area 1.08 acres in the revenue records and the same still continues therein and, hence, once it is established that land of Bhola covered by plot No. 197 was not declared surplus/vacant and the land did not vest in the State, the plea of exchange of land of plot No. 26 at the strength of a bare application and affidavit allegedly submitted by plaintiff-Bhola before the District Magistrate and consequential grant of lease by the State in favour of appellant would be a mode

of grabbing the property of the tenure holder without any mode of transfer recognized under the law of either transfer of property or vesting of the same in the State under the Act of 1976.

13. Shri Goswami seriously disputes the validity of the lease deed by contending that though the deed was executed on 11.01.1991, it was signed by the witnesses and executants on 28.12.1992 and 30.12.1992 and the same was registered in the office of Sub-Registrar in the year 1993. The lease deed runs and ends in twelve pages, however, a letter dated 29.10.1991 sent by the District Magistrate to the Deputy Secretary, Awas Anubhag-6, U.P. Government, Lucknow through special messenger is attached to it. Just below this letter, a table finds place in which various plots have been shown, but there is no mention of plot No. 197 or plot No. 26. After the table, a Note signed by three persons, i.e. Surveyor, Junior Engineer and Assistant Engineer on 24.05.1991 is found mentioning that plot No. 26 was given in lieu of plot No. 197 under Order No. 1611 dated 13.03.1991 passed by the District Magistrate, Gorakhpur and for the purpose of maintenance by the allottee-Society, i.e. the present appellant. Submission is that the Act of 1976 does not contemplate any such provision, by which such a transfer of land or

handing over possession thereof is permissible. He submits that section 26 of the Act being a provision as regards transfer of vacant land within the ceiling limit, even no such procedure was followed and though submission of the application 157-A or the affidavit forming part thereto was not proved by cogent oral and documentary evidence, even if the same are treated to have been submitted on behalf of plaintiff or other co-sharers, the same would be in teeth of any recognized mode of transfer of immovable property and contrary to the provisions of the Act of 1976 and, hence, no rights in the property would vest either in the State Government or in the appellant. He also submits that once the State of U.P. being defendant No. 2 in the suit, respondent No. 2 in the Civil Appeal as well as in the instant second appeal, has accepted the appellate judgment by not assailing it by filing its own second appeal, the alleged rights of the present appellant being subservient to the alleged rights, if any, held by the State Government, the same would stand nullified in absence of a challenge.

SUBMISSIONS ON BEHALF OF THE STATE-RESPONDENT

14. Learned Additional Chief Standing Counsel submits that the State has not filed appeal against judgment of the First Appellate Court as the main

decree has been drawn against the appellant and, further, the District Magistrate was earlier summoned by this Court alongwith record of ceiling proceedings and he has already passed an order dated 27.07.2022 by which allotment of disputed plot No. 26 in favour of the appellant for maintenance purposes has been recalled subject to the final decision in the present second appeal.

ANALYSIS OF RIVAL CONTENTIONS IN THE LIGHT OF RECORD OF PROCEEDINGS AND SUBSTANTIAL QUESTIONS OF LAW FRAMED

15. Having heard learned counsel for both sides, what the Court notices from record is that a counter affidavit has been filed by the then Tehsildar (Judicial), Sadar Gorakhpur in the instant second appeal and in paragraph No. 13 thereof, it is stated that the plaintiff had submitted a return No. 3234 before the Competent Authority in respect of plot No. 197 stating that he was the owner of half share of the said plot and Lallan was owner of rest half share. Further statement is that Lallan had also filed return No. 3235 before the Competent Authority, whereafter the Authority passed an order dated 10.11.1980 in respect of certain area of plot Nos. 24, 25 and 197 declaring the same as surplus. It is further stated that plot No. 197 measuring 1 acre and 8 decimal vested with the State

Government, but the plaintiff-respondent and Lallan, being joint owners of the said plot, sold the land that was declared surplus and also the land that was not declared surplus and when this fact came to the knowledge of the District Magistrate, Gorakhpur, he took cognizance against the plaintiff and heirs of Lallan for illegal transfer of the Government land. At the same time, land owners and other persons filed affidavit before the District Magistrate in respect of plot No. 26 to be declared as State land in place of plot No. 197, whereafter possession of plot No. 26 had been taken by the District Magistrate as surplus land and the same stood vested in the State Government and possession thereof had also been handed over to the State Government.

16. In the supplementary counter affidavit filed on behalf of plaintiff-respondent, it is stated that the land of Bhola covered by plot No. 197 was never declared surplus in ceiling proceedings. As a matter of fact, the proceedings registered as return No. 3234 were dropped by order dated 18.12.1980 filed as Annexure CA-1 to the counter affidavit. The Competent Authority proceeded against co-share holder Lallan and declared 1.08 acres of land in plot No. 197 from his share as surplus. As regards the order dated 18.12.1980, it is stated in the affidavit

that the said order was filed by the plaintiff alongwith an application 38-C under Order XLI Rule 27 of Code of Civil Procedure before the first Appellate Court. The said application was allowed by the Appellate Court by order dated 08.11.2013, which has attained finality. The same order is also annexed as Annexure No. 12 to the affidavit filed alongwith stay application by the appellant himself as paper No. 42-C/2. The entire order is reproduced as under:-

"न्यायालय सक्षम प्राधिकारी/संयुक्त निदेशक, नगर भूमि
सीमारोपम, गोरखपुर

अन्तर्गत धारा 8(4)– नगर भूमि (अधिकतम सीमा एवं
विनियमन) अधिनियम, 1976

1. नगर भूमि (अधिकतम सीमा एवं विनियमन) अधिनियम, 1976 की धारा 6(1) के अन्तर्गत भोला पुत्र श्यामलाल ने विवरणी संख्या 3234 प्रस्तुत किया जिसमें उन्होने जंगल सालिक राम के खसरा–नम्बर 26(0–92–0), 172(0–71–0) पूरा, 18(1–81–0), 81(0–23–0), 141(2–08–0), 197(2–64–0) में आधा, 62(0–16–0), 63(0–60–0), 67(0–32–0), 77(0–08–0), 79(0–04–0), 82(0–09–0), 83(0–13–0), 85(0–06–0), 89(0–03–0), 158(0–04–0) में 1/8 भाग कहा और यह भी कहा कि उनके पास आवासीय भवन सहित भूमि भी है। प्रारूपिक विवरणी 20–11–78 को जारी की गई जिसके विरुद्ध आपत्ति प्राप्त हुई। आपत्ति के समर्थन में इंतखाब खतौनी 1383 से 85 फ, उद्धरण खसरा 1382, 1383, 1386 और 1387 फ प्रस्तुत किया गया। मैने अधिवक्ता को सुना और पत्रावली का अवलोकन किया।

2. पत्रावली पर उपलब्ध इंतखाब खतौनी 1383 से 85 फ खाता संख्या 242, 258, 263/5 के अवलोकन से स्पष्ट

होता है कि विवरणी में जिन गाटों में जो–जो विवरण लिखा गया है वह सही है। इसके अतिरिक्त जंगल सालिकराम के खसरा नम्बर 58 मि(0–67–0) में विवरणी प्रस्तुतकर्ता का हिस्सा आधा है। इस गाटे को विवरण मे नही दिखाया गया है। पत्रावली पर उपलब्ध उद्धरण खसरा 1382, 1383, 1386 और 1387 फ को देखने से स्पष्ट होता है कि खसरा नम्बर 81(0–23–0) में से 0–17–0 1382 और 83 फ में आबादी किन्तु 86 और 87 फ में पूरा 0–23–0 आबादी लिखा गया है, खसरा नम्बर 82(0–09–0), 83(0–13–0), 85(0–06–0), 158(0–08–0) लगातार आबादी 1382, 1383, 1386 और 1387 फ अंकित किया गया है और शेष भूखण्डों पर फसलें, मक्का, धान अथवा बाग को प्रविष्टि 28–1–76 से पूर्व तथा कालान्तर में की गई है। अतएव विवरणी में आये हुए भूखण्डों में से केवल खसरा नम्बर 81(0–23–0) का आधा अर्थात 0–11–5, 82, 83, 85 और 158 के कुल क्षेत्रफल 0–32–0 का 1/8 अर्थात 0–04–0 यानी कुल 0–15–5 रिक्त भूमि के रूप में है और शेष भूखण्ड कृषि भूमि के अन्तर्गत है। विवरणी मे आवासीय भवन सहित भूमि 315.07 वर्गमीटर है। इसमें रिक्त भूमि 0–15–5 अर्थात 627.28 वर्ग मीटर छोड़ने पर रिक्त भूमि का विस्तार 2000 वर्ग मीटर से कम होता है। अतः विवरणी मे सीमा से अधिक रिक्त भूमि नही है। जारी की गई प्रारूपिक विवरणी निरस्त की जाती है।

3. गोरखपुर की महायोजना 27–11–80 से प्रभाव में आ गई है। महायोजना में जंगल सालिकराम के खसरा नम्बर 18, 141, 197, 26, 172, 58, 62, 63, 67, 77, 79 और 89 का भू–उपयोग ज्ञात किया जाय और यदि भूधारक के पास सीमा से अधिक भूमि हो तो विवरणी प्रस्तुतकर्ता को नोटिस जारी की जाय कि विवरणी प्रस्तुत करें।

दिनांकः दिसम्बर 18, 1980"

(emphasis supplied)

17. Annexure CA-1 forming part of the counter affidavit filed on behalf of respondent No. 2 State of U.P., being order dated 10.11.1980, as referred to by Shri Navin Sinha during the course of arguments, does not find place on original record of

proceedings and, therefore, the same cannot be read while deciding the second appeal. It was neither on record of the trial court nor was even admitted in additional evidence at the first appellate stage. Even otherwise, in view of subsequent order dated 18.12.1980 cancelling the statement of vacant land, the said order, if at all had been in existence, would be deemed to have been nullified so as to conclude that plaintiff's share in plot No. 197 was never declared surplus under the proceedings of the Act of 1976. The order dated 18.12.1980 would, thereafter, attach finality to the ceiling proceedings by which only this much was observed regarding plot No. 197 that since master plan of Gorakhpur had come into force w.e.f. 27.11.1980, the land use of various Khasra numbers including Khasra No. 197 be determined and, in case the land holder was having land in excess, notice be issued to him for submitting statement. It is, therefore, established on record that the proceedings, initiated against plaintiff-Bhola were dropped by the ceiling authorities vide order dated 18.12.1980 under Section 8(4) of the Act of 1976 and the share of Lallan in plot No. 197, which was declared vacant stood vested in State and also recorded as such in the name of State of U.P. in the revenue records. It is also established that plot No.26 was never subject matter of ceiling

proceedings and by mere application or affidavit alleged to have been submitted by plaintiff-Bhola, land in dispute covered by plot No. 26 cannot be deemed to have vested in favour of State especially when no share of plaintiff-Bhola in plot No. 197 was ever declared surplus. Hence, the lease deed dated 11.01.1991 registered on 13.01.1993, would not confer any right upon the defendant-appellant. Further, the lease deed was executed in pursuance of Government Order dated 29.04.1989, which mentioned plot Nos. 189, 190, 207, 208, 198, 117, 110, 107, 103 and 121. Neither plot No. 197 nor plot No. 26 was included in the aforesaid Government Order.

18. Now carefully examining the lease deed executed by the State of U.P. in favour of the appellant, being paper No. 41-C/2 it is found that though the deed was executed/prepared on 11.01.1991, it was signed by the witnesses and executants on 28.12.1992 and 30.12.1992 and was registered in the office of Sub-Registrar on 13.01.1993. The lease deed runs and ends in twelve (12) pages, however, alongwith the same, a letter dated 29.10.1991 sent by the District Magistrate to the Deputy Secretary, Awas Anubhag-6, U.P. Government, Lucknow through special messenger is attached. The letter reads as under:

"महोदय,

कृपया उर्पयुक्त विषयक शासन के आदेश पत्र सं0 1947/9–व0भू0 91–385 यू0सी0/86 दिनाँक 17 सितम्बर 1991 का सन्दर्भ ग्रहण करें। कैथोलिक डायोसिस ऑफ गोरखपुर को आविंटत भूमि तथा मौके पर वास्तविक कब्जे वाली भूमि का विवरण चार्ट के रूप में संलग्न करते हुए अनुरोध है कि वास्तविक कबजे वाली भूमि के सम्बन्ध में पट्टा अभिलेख का निष्पादन कराने का कष्ट करें।"

(emphasis supplied)

Just below this letter, a table is attached, which is titled as "कैथोलिक डायोसिस ऑफ गोरखपुर को आवंटित भूमि, जो उन्हें वास्तविक रूप में मौके पर प्राप्त है का विवरण:-" In it, various plots have been shown, but there is no mention of plot No. 197 or plot No. 26. Below the table, a NOTE signed by three persons, i.e. Surveyor, Junior Engineer and Assistant Engineer on 24.05.1991 is contained. The NOTE reads as under:

"नोटः– 1– आराज़ी संख्या 24, 25 व X 28 सीमाधिक्य घोषित तथा राज्य सरकार में निहित भूमि है।

2– आराजी संख्या 26 जिलाधिकारी, गोरखपुर के आदेश संख्या 1611 दिनाँक 13.3.91 द्वारा आराजी संख्या 197 के स्थान पर लिया गया है जो आवंटी संस्था के कब्जे में रख रखाव हेतु दिया गया है।

3– आ0 सं0 128 स्थित मौजा शिवपुर आ0 सं0

121 के स्थान पर जिलाधिकारी के आदेश दिनाँक 13.3.91 द्वारा लिया गया है।"

(emphasis supplied)

19. The lease deed was signed by Shri Subhash Chandra Bankhandi, Joint Secretary, Government of U.P., Awas Anubhag on behalf of the State Government. The aforequoted 2 pages added to the deed do not bear signatures of Shri Bankhandi. The letter appended to the deed recites that plot No. 26 has been taken in pursuance of letter of the District Magistrate dated 13.03.1991 in exchange of plot No. 197 and its possession has been handed over to the appellant for its maintenance (*RAKH RAKHAO*). The said letter cannot be termed as "lease" or "part of lease deed", which was only in respect of land detailed in the Government Order dated 29.04.1989 as recited in the lease deed. The Court also finds that when the certified copy of the lease deed was issued from the office of Sub Registrar, the aforesaid letter dated 29.10.1991 and chart dated 24.03.1991 were also surprisingly made part of the lease deed, but, in view of the fact that plot No. 26 did not find mention in the table/chart, mere mention of plots No. 197 and 26 in Note No. 2 written at the bottom of the table/chart, would not mean that the land stood vested in the State or that it became part of lease deed.

20. Testing the submission of Shri Sinha that once the plaintiff-respondent, by submitting application and affidavit before the District Magistrate, himself transferred right, title, interest and possession of his plot No. 26 to the District Magistrate and, therefore, he would have no right to challenge the action of the State or the lease deed, the same does not hold any water in it, inasmuch as, title in immovable property does not vest by mere admission. Even otherwise, the admission, if any, is never a conclusive evidence as to the truth of the matter stated therein and it is only a piece of evidence, weight to be attached to which must depend on the circumstances under which it is made. Admission can also be shown to be erroneous or untrue, so long as the person to whom it was made acted upon it to his detriment. Reference in this regard can be made to the judgments of the Supreme Court in the case of ***Nagubai Ammal and others vs. B. Shama Rao and others,*** **AIR 1956 SC 593** and ***K.S. Srinivasan vs. Union of India*** **AIR 1958 SC 419.** Significantly, plaintiff-Bhola, who appeared as PW-1 before the trial court, stated in his cross-examination that he had sold his land covered by plot No. 197 and that the plot No. 26 being a grove, had been surrounded by the present appellant. Raising of boundary wall by the appellant was also

alleged. As regards submitting application or affidavit before the ceiling department, when suggestion was put to PW-1, he stated that-

> "यह कहना गलत है कि मैनें सीलिंग विभाग में इस आशय का कोई शपथ पत्र दिया था कि मेरी आराजी नं0 197 जो कि मैं बेच चुका था के बदले में 26 नं0 ले लिया जाए"

(emphasis supplied)

21. Now, to understand the documents allegedly conferring title in favour of State qua disputed plot No. 26, it is noteworthy that the entire case of both the defendants is based upon application No. 157-क and supporting affidavits 158-ग, 159-ग, 160-ग, and 161-ग, by which rights in disputed plot No. 26 were allegedly surrendered or relinquished by the plaintiff in favour of the defendants. The application 157-क contains thumb impression of Bhola, Shri Ram and Smt. Khirni and affidavit 158-ग was sworn by Smt. Khirni, wife of late Sudama, affidavit 159-ग was sworn by Mauzam, son of Sudama, affidavit 160-ग was sworn by plaintiff-Bhola and affidavit 161-ग was sworn by Shri Ram, son of Lallan. Except the plaintiff-Bhola, deponents of all other affidavits are heirs of late Lallan. In the cross examination of

plaintiff-Bhola (PW-1) as regards affidavit 158-C, he stated that he could not identify as to whether it contained thumb impression of Smt. Khirni, who was illiterate. Similar was the stand with respect to other affidavits except affidavit of Mauzam over which his signatures were identified by plaintiff-Bhola. However, since the dispute in the present case is as to whether any share of Bhola held in plot No. 197 was or was not declared surplus under the Act of 1976, only affidavit 160-ग is relevant and there appears to be no dispute that remaining part of the said plot No. 197 was declared as surplus, however, the same related to Lallan succeeded by his heirs and not to the plaintiff. As regards affidavit 160-ग plaintiff-Bhola stated that:-

> "मुझे याद नहीं है कि पत्रावली पर उपलब्ध कागज सं0 160 ग शपथ पत्र मेरे द्वारा दिया गया है या नही"

(emphasis supplied)

22. From the entire cross-examination of PW-1, it cannot be inferred that he ever proved the affidavit 160-ग as having been submitted by him. Surprisingly, no suggestion was put to him as regards his thumb impression on application 157-क. Therefore, in absence of such suggestion, contents

of the application or his thumb impression over document No. 157-क, could not be read in evidence against the plaintiff-respondent.

23. At the appellate stage, pursuant to an order passed on an application under Order XLI Rule 27 read with Section 151 of Code of Civil Procedure, various documents alongwith list Paper No. 40-C were admitted in additional evidence. A certified copy of the lease deed being paper No. 41-C/1 to C/ 13, letter dated 29.10.1991 being paper No. 41-C/14 and schedule/table being paper No. 41/15 are included in such documents. The order dated 18.12.1980 passed by the Competent Authority establishing that plaintiff's land covered by plot No. 197 was never declared surplus was also admitted as paper No. 42-C/2. Paper No. 43-C/2 on record is a map drawn by the Inspector/Surveyor, which also shows that 4354.76 Sq. Mts. of land covered by plot No. 197 was declared as surplus vide return No. 3235 relating to Lallan and there is no mention of the land belonging to plaintiff-Bhola or his share in plot No. 197. The documentary evidence produced by the appellant before the courts below, therefore, reads against the appellant and cannot infer that the land belonging to the plaintiff-respondent was ever declared as vacant/surplus. Therefore, no question, either factual or legal, as regards

exchange of plot No. 26 corresponding to share of the plaintiff in plot No. 197 would arise.

24. There is also on record an information sought from the Assistant Commissioner Stamps/Sub Registrar, Sadar-I, Gorakhpur under the Right to Information Act by application dated 03.04.2023, being paper No. 44-C/2 and 44-C/3, by which various objections and queries were raised as regards issuance of certified copy of lease deed, which initially contained 24 pages (both sides), but as to under what circumstances the remaining pages not signed by the executants of the lease deed were made part thereof while issuing certified copy of the said deed. On such application, the Sub Registrar-I, Gorakhpur informed on 20.04.2013 that the deed contained pages No. 1 to 12 duly signed by the executants thereof and, due to clerical error, the Government letter might have become part of it. As regards issuance of certified copy, Rule 241 of the Registration Manual was appended stating that the typographical error so occurred would not affect validity of the lease deed that is a question within jurisdiction of competent Court. In that connection, a letter dated 30.04.2013 issued by the Competent Authority, Urban Land Ceiling, Gorakhpur also forms part of the record as paper No. 45-C/1. alongwith which, a three member report, paper No.

45-C/2 is attached. These three members were Office Assistant, Peshkar and Nodal Officer and they responded to the query raised under Right to Information Act in the manner that against every question raised, a remark: *'copy of registered document received in the office is attached as Annexure No. 1'* is mentioned. It is, therefore, clear that all officers, who were involved in responding to the RTI query, avoided answering the question that was germane to the controversy as to in what manner Government could treat plot No. 26 as part of the lease deed executed in 1991-1992 and registered in the year 1993.

(emphasis supplied)

25. This Court would also not ignore a letter dated 26.11.1991, paper No. 46-C/10, issued by Shri Subhash Chandra Bankhandi, Joint Secretary of U.P. Government to the District Magistrate, Gorakhpur, clearly mentioning that plot No. 26, that was allotted to the appellant-Society in lieu of plot No. 197 for the purposes of maintenance, was not affected by ceiling operations and, therefore, since plot No. 26 had not vested in the State under the Ceiling Act, as to under which provision of law it could be allotted to the Society. Clarification was sought from the District Magistrate on this line. On similar lines, an earlier letter dated 10.04.1991 (46-

C/7) was written by the Joint Secretary asking the District Magistrate as to under which provision of law land unaffected by ceiling operations could be released. The District Magistrate, on 21.05.1991, responded to the letter dated 10.04.1991 and, instead of answering the query raised, it attacked on the sale made by the tenure holders of plot Nos. 197 and 121 and, as regards release of unaffected land, it was mentioned that there was no provision under the Ceiling Act, however, on the alternative of change of land holders, consideration can be made at the level of the Government.

26. As regards right of Govt./competent Authority to purchase a vacant land in excess of ceiling limit, it would now be quite necessary to refer Section 26 of the Act of 1976, which reads as under:

> "**26**. **Notice to be given before transfer of vacant lands**. (1) Notwithstanding anything contained in any other law for the time being in force, no person holding vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift, lease or otherwise except after giving notice in writing of the intended transfer to the competent authority.
>
> (2) Where a notice given under sub-section (1) is for the transfer of the land by way of sale, the competent authority shall have the first option to purchase such land on behalf of the State Government at a price calculated in accordance with the provisions of the Land Acquisition Act, 1894 (1 of 1894) or of any other corresponding

> law for the time being in force and if such option is not exercised within a period of sixty days from the date of receipt of the notice, it shall be presumed that the competent authority has no intention to purchase such land on behalf of the State Government and it shall be lawful for such person to transfer the land to whomsoever he may like: Provided that where the competent authority exercises within the period aforesaid the option to purchase such land the execution of the sale deed shall be completed and the payment of the purchase price thereof shall be made within a period of three months from the date on which such option is exercised.
>
> (3) ……..”
>
> (emphasis supplied)

27. Section 26(2) quoted above, though gives first option to the Competent Authority to purchase land on behalf of State Government, in order to exercise such an option, compliance of sub-Section (1) of Section 26 is a prerequisite and further requirement is calculation of a price of the land in accordance with the provisions of the Land Acquisition Act, 1894 or any other corresponding law for the time being in force. The provision further clarifies that if such option is not exercised within a period of 60 days from the date of receipt of the notice, it shall be presumed that the Competent Authority has no intention to purchase such land on the behalf of the State Government. Section 26(1) of the Act, therefore, recognises mode

of transfer by way of sale, mortgage, gift, lease or otherwise but it does not contemplate any transfer by submitting a letter by the vendor or filing of affidavit by him.

(emphasis supplied)

28. Transfer of Property Act, 1882 recognizes only five (5) modes of transfer of property viz, sale, gift, lease, mortgage and exchange. The appellants' case is based upon exchange of land made by the plaintiff through application 157-क and the affidavits forming part thereto. No case of sale, gift, lease or mortgage was set up by the appellant-Society or the State of U.P. Therefore, even going to the extent of examining the case of exchange, it would be apt to refer Section 118 of the Act, 1882 as contained under Chapter VI thereof. "Exchange" has been defined as under:

> "**118. "Exchange" defined.**—
>
> When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange".
>
> A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale."

(emphasis supplied)

29. It is thus clear that even if two persons mutually transfer ownership of an immovable property, in order to the transaction being termed as “exchange”, it has to be only in the manner provided for transfer of such property by sale. Therefore, “exchange” is permissible only when it has ingredients of a “sale” covered by Section 54 of the Act. In the present case, such ingredients are completely missing and, therefore, alleged handing over possession by the plaintiff to the State/District Magistrate cannot be termed as “exchange” of plot(s).

(emphasis supplied)

30. Even if the provision of “exchange”, as contained in Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950, qua agricultural land is examined, as per section 161, “exchange” means as follows:

> **“161. Exchange.**- (1) A bhumidhar may exchange with-
>
> (a) any other bhumidhar land held by him; or
>
> (b) any [Gaon Sabha] or local authority, lands for the time being vested in it under Section 117:
>
> Provided that no exchange shall be made except with the permission of an Assistant Collector who shall refuse permission if the

> difference between the rental value of land given in exchange and of land received in exchange calculated at hereditary rates is more than 10 per cent of the lower rental value.
>
> (1-A) Where the Assistant Collector permits exchange he shall also order the relevant annual registers to be corrected accordingly.
>
> (2) On exchange made in accordance with sub-section (1) they shall have the same rights in the land so received in exchange as they had in the land given exchange."

31. This Court is conscious of the situation that if transfer of immovable property by a citizen to the State or inter-se two citizens is permitted through exchange of letters or affidavits, it would lay down an unprecedented and unique but absolutely illegal mode of transfer of property and immovable property would, then, become capable of being transferred completely *dehors* the provisions of the Transfer of Property Act, Registration Act or any other law governing creation of rights in immovable property. In the instant case, the lease created in favour of the appellant is for a period of 90 years and, therefore, it had to be through any recognized mode of transfer qua the disputed plot in clear terms and, even before that, it must have been established on record that initial transfer by plaintiff-Bhola in favour of State/District Magistrate was having a sanction of law, which is not found here.

32. Now, in order to ascertain as to whether any law actually permits taking over possession on the basis of alleged voluntary surrender by the tenure holder and whether this Court is proceeding in right direction while deciding the instant appeal, this Court went through entire file to find anything substantial which could read in support of the appellant's plea. The Court found on record written submissions filed earlier on behalf of appellant through which it is contended that "voluntarily surrendering and delivering possession" is included in "vesting" under Section 10 (3) of the Act of 1976 and reliance in this regard has been placed upon a judgement of Supreme Court in ***State of U.P. vs Hari Ram,*** **2013 (4) SCC 280,** in paragraphs 28 and 29 whereof it is observed as follows:

> "28. The 'vesting' in sub-section (3) of Section 10, in our view, means vesting of title absolutely and not possession though nothing stands in the way of a person voluntarily surrendering or delivering possession. The court in ***Maharaj Singh v. State of UP and Others*** (1977) 1 SCC 155, while interpreting Section 117(1) of U.P. Zamindari Abolition and Land Reform Act, 1950 held that 'vesting' is a word of slippery import and has many meaning and the context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. The court in ***Rajendra Kumar v. Kalyan (dead) by Lrs.*** (2000) 8 SCC 99 held as follows:

> "We do find some contentious substance in the contextual facts, since vesting shall have to be a "vesting" certain. "To vest, generally means to give a property in." (Per Brett, L.J. Coverdale v. Charlton. Stroud's Judicial Dictionary, 5th edn. Vol. VI.) Vesting in favour of the unborn person and in the contextual facts on the basis of a subsequent adoption after about 50 years without any authorization cannot however but be termed to be a contingent event. To "vest", cannot be termed to be an executor devise. Be it noted however, that "vested" does not necessarily and always mean "vest in possession" but includes "vest in interest" as well.
>
> 29. We are of the view that so far as the present case is concerned, the word "vesting" takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under Section 10(3) of the Act."

(emphasis supplied)

33. The argument of the appellant as contained in the written submissions and also pressed before the Court is that once plaintiff had, by application and affidavit, agreed for acquisition and taking possession of plot No. 26 in lieu of plot No. 197, he would be deemed to have abandoned his right and interest in the land in the year 1991 and the said conduct of plaintiff would operate as estoppel against him and, therefore, in view of provisions of

Section 41(g) and 41(i) of the Specific Relief Act, his conduct would dis-entitle him from claiming any reliefs.

34. This Court is of the view that the judgment in ***Hari Ram*** (supra) would be of no help to the appellant, inasmuch as, therein, voluntary surrender was discussed in the light of Section 10(3) of the Act, 1976 and it was observed that vesting under the said provisions means absolute vesting of title and nothing stands in the way of a person voluntarily surrendering or delivering possession. It would be quite significant to reproduce here section 10 of the Act of 1976 and its relevant sub-sections for a ready reference:

> "**10. Acquisition of vacant land in excess of ceiling limit.-**(1) As soon as may be after the service of the statement under section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that-
>
> (i) such vacant land is to be acquired by the concerned State Government; and
>
> (ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may

be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub- section (1), the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub- section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) ……..”

(emphasis supplied)

35. A bare perusal of sub-section (3) of Section 10 would reveal that it speaks of deemed vesting absolutely in the State Government, but uses words **“such land”**, which means that the land which, being in excess of the ceiling limit, had been declared as vacant. By no stretch of imagination, vesting or deemed vesting or absolute vesting or voluntary surrender can be understood in respect of land, which was exempted from ceiling proceedings,

which exactly is the situation in the present case. As held above, no part of plaintiff's share in plot No. 197 was ever declared as surplus/vacant, rather, under the order dated 18.12.1980 passed by the Competent Authority, statement No. 3234 furnished by the plaintiff was accepted and the said order had attained finality.

(emphasis supplied)

36. The Court now considers the order dated 27.07.2022 passed by the District Magistrate, Gorakhpur, which has been admitted as additional evidence in the instant appeal vide order dated 21.08.2024 passed on Civil Misc. Application No. 24 of 2022 under the provisions of Order XLI Rule 27 of Code of Civil Procedure by consent of parties. The order dated 27.07.2022 came into existence during the pendency of the instant second appeal and it refers to the proceedings held under the Act of 1976 in relation to plot No. 197 alongwith other plots, institution of Original Suit No. 307 of 1991 giving rise to the instant appeal, proceedings of first Appellate Court and its decision and it is mentioned in the order that in view of order dated 13.03.2014, i.e. the first Appellate Court's judgment, being effective and the fact that plot No. 26 was given to the appellant only for the purposes of maintenance and was not allotted to it and that shortfall of the

land allotted to appellant becomes complete from the land covered by plots No. 24 and 25, the order dated 13.03.1991 by which disputed plot No. 26 had been allotted to the appellant for maintenance purposes, is recalled. It is also mentioned that the order dated 27.07.2022 would remain subject to the final decision to be pronounced in the present second appeal. Once it is held that the disputed plot No. 26 had never lawfully vested either in State or in District Magistrate nor did it form part of the lease deed executed in favour of appellant nor was transfer of its possession otherwise lawful having support of any statutory provision, the order dated 27.07.2022 recalling the previous order of giving the property to the appellant for maintenance, is hereby upheld.

37. It is also found that the Original Suit was contested both by the appellant, who was defendant No. 1 and State of U.P. that was defendant No. 2, however, no second appeal has been filed by the State of U.P. against the impugned appellate decree and, therefore, it has attained finality against State of U.P. For this additional reason, challenge made by the present appellant to the appellate decree can be said to be quite weak if not baseless, inasmuch as, the appellant was, at the best, a mere caretaker or Manager of the property as per Note No. 2

contained in Annexure which, as aforesaid, did not form part of the lease deed. It is also significant to mention that the original suit was filed in the year 1991, the lease deed was written on 11.01.1991, it was signed by the witnesses and executants on 28.12.1992 and 30.12.1992 and the same was registered in the office of Sub Registrar on 13.01.1993, i.e. during the pendency of the suit. The said dates are self explanatory to demonstrate that things were managed to the detriment of the interest of the plaintiff-respondent. The action *lis pendens* would certainly be subject to final decision in the lis covered by the suit and the appeal(s).

38. From perusal of entire record, it becomes crystal clear that settlement or allotment or even coming into possession over the disputed plot No. 26 was not through any mode recognized under any law. Even the District Magistrate did not find any provision under which a land unaffected by ceiling proceedings could be allotted or settled in favour of the Society and everything was left at the discretion of the State Government. Interestingly, by the time when the aforesaid correspondence was being exchanged inter-se District Magistrate and the State Government, the lease deed had been executed or at least prepared on 11.01.1991. As noted above, executants of the deed, i.e. Finance

Secretary of the appellant and the Joint Secretary of the State Government as well as witnesses signed the deed in December, 1992, i.e. after about 23 months. The deed was, thereafter, registered in the office of the Sub-Registrar on 13.01.1993. There is no decision of the State Government on record, in consonance with the provisions of Act of 1976 so as to justify taking over rights and possession over plot No. 26. Therefore, the action of the respondents is nothing, but apparently property grabbing by the State officials to the detriment of the interest of a rustic tenure holder, who fell as a prey in the sharp and deadly jaws of giant administrative machinery run by the State in collusion with the appellant and this Court can safely reach to a conclusion that even the application 157-Ka and the affidavits enclosed thereto might have been obtained from the tenure holders including the plaintiff-respondent under coercion in order to grab the land covered by plot No. 26, which might suit to the proposal of raising some constructions by the appellant-Society over the disputed land or the land adjoining thereto. This Court cannot approve such a property grabbing by the State or the appellant, particularly when it has no statutory or otherwise sanction of law. The office of the Sub-Registrar too is under the supervision of the District Magistrate being head of the Collectorate and in the circumstances elaborated

above, it can safely be concluded that all the officials and their team members joined hands together to design and engineer transactions and actions that had no legal foundation or sanctity and, therefore, irresistible conclusion drawn by this Court is that raising of boundary wall over the disputed land or any other constructions thereon or taking over possession of the same is a clear act of trespass.

SUBSTANTIAL QUESTIONS OF LAW ANSWERED

39. In view of above discussion, once it is found that the alleged admission made by the plaintiff-Bhola in application and affidavit allegedly submitted by him is of no consequence, significance or legal sanctity and cannot be termed as documents conferring right, title, interest or possession in favour of the appellant or the State of U.P., and having further found that share of plaintiff-Bhola in plot No. 197 was never declared surplus, the first question, on which the instant second appeal was admitted, is answered in the manner that the first Appellate Court was perfectly justified in decreeing the suit and no factual or legal error is found in its order. The second question directly/indirectly relates to jurisdiction of the civil court in upsetting the ceiling proceedings. Although no argument was advanced from the appellant side

in this regard, since the Court has to answer the said question, it itself went through the entire Act of 1976 and did not find any provision which may either expressly or impliedly bar jurisdiction of civil court. Even if sections 7, 11, 12, 32 and 33 are examined, the same relate to the land which is declared vacant under the Act and the proceedings before the Competent Authority, Tribunal, Appellate Court, State Government and also this Court in the form of second appeal against the decision of a Tribunal under Section 12, which refers to Section 11 that is a provision for payment of amount for vacant land acquired. In the instant case, once first Appellate Court as well as this Court has found that no share of plaintiff-Bhola in plot No. 197 was ever declared surplus and finality to this fact was attached by the order dated 18.12.1980 passed by the Competent Authority with no further proceedings thereafter except unlawful and artificial vesting of property covered by plot No. 26 in alleged exchange of plot No. 197, which had no concern with the Government as far as plaintiff-Bhola's share is concerned, none of the provisions under the Act of 1976 would create an express or implied bar against exercise of jurisdiction by civil court so as to protect individual civil right to property, which the plaintiff asserted in his favour. In this view of the matter, it is held that civil suit

was perfectly maintainable as per Section 9 of the Code of Civil Procedure. Hence, the judgment and decree drawn by the first Appellate Court is well within jurisdiction as the suit property covered by plot No. 26 had no concern with the appellant or the State and was alien to ceiling proceedings. As regards third question, even if the defendant-appellant had raised constructions over the said plot by investing huge amount, it is held that the suit was not barred by principles of estoppel and acquiescence as there was neither any voluntary surrender of property nor a transfer having legal sanction in favour of defendants. Consequently, all the three questions are answered in favour of the plaintiff-respondents and against the appellant as well as the State and its functionaries.

40. This Court, therefore, does not find any factual or legal error in the first Appellate Court's judgment except that heavy cost and damages should also have been imposed on the appellant and the State. Once this Court has arrived at a conclusion that the action of the State as well as appellant did not have any sanction of law, rather it amounted to grabbing land of a rustic villager and committing trespass over it, the instant appeal deserves to be dismissed with heavy cost.

41. This Court may observe that third relief

claimed in the plaint was with respect to award of cost and fourth relief was in the form of "*any other relief which the Court may deem fit and proper in the facts of the case*". The Court may take aid of Rule 33 of Order XLI of Code of Civil Procedure where the Appellate Court shall have power to pass any decree and make any order which ought to have been passed as the case may require and the said power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. These provisions do apply to Second Appeals also in view of Order XLII Rule 1 of Code of Civil Procedure. The Court finds that the first appeal was dismissed with cost, but without quantifying the same.

42. This Court deems it appropriate to refer latin legal phrase ***fiat justitia ruat caelum*** that means *"Let justice be done though the heavens fall."* The maxim signifies the belief that justice must be realized regardless of consequences. Considering the length of trespass and also applying doctrine of ***ex debito justitiae*** which applies for rendering complete justice in accordance with the requirement of justice in the given facts of a case,

since taking over possession over the plaintiff's land by the State and the appellant, joining hands together and with the aid of the entire State machinery at district and secretariate level by manipulating documents, one after another, has resulted in depriving the plaintiff and his legal heirs of user, occupation, possession and utilisation of their immovable property for a period of more than 32 years, this Court thinks it just and proper to award exemplary cost and damages against both the defendants. The Court quantifies the same as Rs.10,00,000/- (rupees ten lacs).

43. The second appeal, accordingly, stands **dismissed with cost of Rs.10,00,000/- (Rupees ten lacs)** to be jointly borne by the appellant and the State Government and its functionaries in equal share. The cost shall be deposited before the Executing Court within a period of three months from the date of this decision and the same shall be immediately released by the Executing Court in favour of legal representatives of plaintiff-Bhola without furnishing any security. It shall be open for the State Government to fix liability and responsibility upon any individual official(s) to bear cost but, in any case, it shall be deposited and paid in the manner as directed above. The Executing Court shall, within six months henceforth, execute

the decree in toto alongwith decree of cost, if not deposited by the judgment debtors, as directed above.

44. All pending applications stand disposed off.

45. Office to forthwith prepare decree based upon this judgment.

Order Date :- 10.09.2024
Sazia

(Kshitij Shailendra,J)