

Case :- Public Interest Litigation (PIL) No.7472 of 2021

Petitioner :- Sharad Kumar Dwivedi

Respondent :- State of U.P. Thru. Prin. Secy. Revenue Lko. and Ors.

Counsel for Petitioner :- Krishna Kumar Singh, Anshu Singh,
Prabhakar Vardhan Chaudhary

Counsel for Respondent :- C.S.C., Mohammad Aslam Khan,
Ratnesh Chandra

Hon'ble Dinesh Kumar Singh, J.

Writ Petition:-

1. The present writ petition under Article 226 of the Constitution of India has been filed against the alleged illegal, arbitrary and mala fide resumption of the Gram Sabha land comprising in Gata Nos.467, 468, 509, 554 (new nos.842, 1034, 1039, 1040 and 1175), measuring 3 acres situated in Village Nanakganj Grant, Pargana Gopmau, Tehsil Sadar, District Hardoi for a private trust created by one Radhey Shyam Agarwal, a retired IAS officer, father of Sanjeev Agarwal, opposite party no.5, by the then District Magistrate, Hardoi vide order dated 30.1.1987. It has been prayed in the writ petition to issue a Writ of Mandamus to opposite parties-authorities to hold an independent inquiry into the matter and a direction has been sought for removal of unauthorized/illegal constructions of Maruti Car showroom of Concept Cars Limited over the said land.

Facts of the Case:

2. A private Trust namely, Gyan Yog Charitable Trust was created by late Radhey Shyam Agarwal on 10.9.1986. This Trust was said to have been created for charitable purposes. Main objects of the Trust were to provide help to poor people in education, medical relief and free accommodation and assistance to the travellers,

providing food to the deserving people, advancement of Indian culture and literature, rural developmental etc. The Trust was settled with Rs.5,000/- which was the corpus of fixed property of the Trust. Radhey Shyam Agarwal became the first Managing Trustee and the Chairman of the Board of Trustees.

3. The revenue record before the consolidation operation was undertaken in the village, would suggest that in khatauni of 1333 Fasli (Year 1926) the lands of khata no.178 comprising of old plot nos.508, 509, 567, 544/1 (new plot nos.1034, 1035, 1039, 1040, 1175) were rerecorded as 'Jangal Dhak' in clause (5)(iii)(b)(2) of the Land Record Manual. Thus, the lands were public utility lands vested in Gaon Sabha. In 1356 Fasli (Year 1949) also the lands in the aforesaid gata numbers were recorded as 'Jangal Dhak'. The then District Magistrate, Hardoi resumed the said land for late Radhey Shyam Agarwal, a retired IAS officer purportedly in exercise of powers conferred under sub-section (6) of Section 117 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as U.P.ZA & LR Act) vide order dated 30.1.1987. It was said that the said order dated 30.1.1987 was passed in partial embellishment of the Government Order dated 16.6.1981. The total land resumed in the aforesaid gata numbers was 4-16-8 (three acres) for the Trust. The said transaction was reflected in Khata No.363 of Khatauni of 1395 Fasli. It was said that Radhey Shyam Agarwal deposited premium amount of Rs.24,000/-. After the land was transferred in the name of Radhey Shyam Agarwal, the said land was given on lease by him for annual rent of Rs.250/- in favour of Indresh Charan Das for 99 years. A school building was constructed for imparting education upto Class-VIII. It was also said that a small charitable hospital was also constructed and there was a Homeopathy Dispensary, 10 bedded Allopathy hospital which came up on the said land.

4. After death of Radhey Shyam Agarwal, vide order dated 23.10.1999, Tehsildar, Sadar, Hardoi in Case No.207 under Section 34 of the Uttar Pradesh Land Revenue Act, 1901 directed substitution of name of his eldest son, Rajeev Agarwal. In the khatauni of 1412-1417 Fasli Year, name of Rajeev Agarwal S/o Radhey Shyam Agarwal, President of the Gyan Yog Charitable Trust got recorded against the said land.

5. It is also relevant to note here that as per official version there is no record available regarding mutation of the name of Sanjeev Agarwal, opposite party no.5, S/o Radhey Shyam Agarwal. Despite no order on record in respect of mutation of name of Sanjeev Agarwal in place of Rajeev Agarwal, Sanjeev Agarwal, opposite party no.5 sold the land of Khata No.657 in Gata Nos.842M/0.0370 hectares and 1175/0.1260 hectares, total 0.1530 hectares vide sale deed dated 19.6.2010 to his two worthy sons Yash Vardhan Agarwal and Surya Vardhan Agarwal for a meagre amount of Rs.15,00,000/-. Thereafter, again vide sale deed dated 1.7.2010, a portion of the aforesaid land (area 1057.72 Sq.M) was sold to his son, Yash Vardhan Agarwal and his close and promising relative, Pradeep Kumar Agarwal for a meagre amount of Rs.12,00,000/-. Names of sons of Sanjeev Agarwal i.e. Yash Vardhan Agarwal and Surya Vardhan Agarwal and his close relative, Pradeep Kumar Agarwal got mutated vide order dated 2.1.2013 passed by the Tehsildar (Judicial), Sadar, Hardoi. After the aforesaid sale deeds were executed, the hospital building was demolished and a showroom for Maruti Cars got constructed by Concept Cars Limited, in which the Sanjeev Agarwal, opposite party no.5, and his two sons and his close relative, Mr. Pradeep Agrawal are Directors.

6. It is also relevant to mention here that Surya Vardhan Agarwal S/o Sanjeev Agarwal is the Treasurer of trust and Yash Vardhan Agarwal is also the Trustee of the Trust. It is said that a resolution for sale of the land in favour of the two sons and a close relative of the

President of the Trust was passed in the meeting of the Board of Trustees held on 20.9.2009. The excuse was that the trust was running into losses as financial aid from the Central and the State Governments got dried up and the audit balance sheet of 2009-2010 would show that there was a liability of Rs.23,02,750.85/- of sundry creditors and the trust was having no other source to pay the debt apart from liquidating the landed assets of the trust. Thus, in the meeting of the Board of Trustees dated 20.9.2009 held under the Chairmanship of Mr. K.B. Shukla, the Managing Trustee was authorized to dispose of the portion of the land, where the hospital etc. was being run by the trust. Later, the land sold, was leased to M/s Concept Cars Limited, in which Sanjeev Agarwal, Managing Trustee, his two sons and his close relative, Pradeep Kumar Agarwal are the Directors. The Concept Cars Limited had constructed a full fledged showroom over the said property and running commercial venture for profit.

7. Initially, on 18.3.2021 when this petition came up for hearing, opposite party no.5 was on caveat and represented by Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri Mohd. Aslam Khan. This Court noted very peculiar facts of the case. The land of Gaon Sabha, public utility land, which was resumed in favour of the trust, was transferred by the President of the trust in favour of his own sons and a close relative. Sons of the President of the trust are Treasurer and the trustees of the trust. Therefore, this Court formulated two questions, namely; (i) Whether the land could have been resumed and vested in a trust by the then District Magistrate in exercise of powers under sub-section (6) of Section 117 of the U.P.Z.A. & L.R. Act; and; (ii) Assuming that it could have been vested considering the public purpose sought to be achieved, whether it could have been sold off by the Trust or any of its member in favour of the Treasurer of the Trust for private purposes, if so, under what law? The Court passed the following order on 18.3.2021:-

“This is a P.I.L. filed by the petitioner seeking a Writ of Mandamus commanding the opposite party no. 3 to conduct an inquiry in the matter in pursuance of letter dated 28.07.2020 issued by opposite party no. 2 i.e. the Commissioner, Lucknow Division, Lucknow, whereby he has directed to conduct inquiry as per law.

Shri M.A. Khan, learned Senior Counsel assisted by Shri M.A. Khan, Advocate appearing for opposite party no. 5 having filed a caveat submits that the petition has been filed with oblique motive and is a personal interest litigation. Petitioner is an erst while employee of Concept Car Ltd. of which the opposite party no. 5 is the Managing Director and after his ouster from service, he has filed this petition with oblique motive and malafide intentions. Shri Khan proposes to file an affidavit in this regard.

Keeping the question of bona fide of the petitioner open for being considered, meaning thereby, if it is found that the petitioner is pursuing a personal agenda and the action is not actuated by bona fide, this Court would not encourage such a litigant, however, at this stage the Court cannot ignore certain facts and documents which are on record according to which the land in question was in the control and management of the Gaon Sabha concerned when it was resumed by the State Government in exercise of powers under Section 117 (6) of the U.P. Z.A. & L.R. Act, 1950 vide notification dated 30.01.1987 and the same was vested in a trust namely Gyan Yog Dharmarth, through its Chairman Shri R.S. Gangwar, retired I.A.S. It is said that the said trust took a decision to run a hospital and school on the said land which was earlier in the custody of the Gaon Sabha. Subsequently, it is said that the subsequent Chairman of the trust namely opposite party no. 5 herein sold of the said land to the Treasurer of the Trust namely Mr. Yash Vardhan Aggarwal who in turn has opened a Maruti showroom on the said land. Now, if these facts are correct then this Court would consider the registration of Suo Motu P.I.L., as, ultimately, the land belongs to the State and is held by it as a Trust for the people. The question would be firstly whether it could have been resumed and vested in a trust but assuming that it could have been vested considering the public purpose sought to be achieved, whether it could have been sold of by the Trust or any of its member in favour of the Treasurer of the Trust for private purposes, if so, under what law? The question then would be of larger public interest as such land is held by the State as a trustee of the people.

As Shri M.A. Khan, learned Senior Counsel appearing for opposite party no. 5 prays for time for filing counter affidavit.

10 days time as prayed is granted to him for filing counter affidavit.

The opposite party no. 1 shall file his own affidavit in the matter after getting the facts verified in the light of the law on this subject.

It is open for opposite parties no. 2, 3 and 4 also to file their counter affidavit but separately.

List/Put up this case on 05.04.2021 as fresh.

All pleas are open for consideration.

Shri Yogesh Kumar Awasthi, learned Standing Counsel shall communicate this order to the Additional Chief Secretary/Principle Secretary, Revenue, as also, to the Chief Secretary, U.P.

It is made clear that the petitioner is cautioned not to use this order for any ulterior purpose either in the media or social media as all pleas are still open for consideration and if he does so, it will have serious consequences.”

8. Learned Standing Counsel representing the State was directed to communicate the aforesaid order to the Additional Chief Secretary/Principal Secretary, Revenue, as also, to the Chief Secretary of the Uttar Pradesh.

9. After the said order was passed by this Court, a letter dated 25.3.2021 was issued by the Additional Chief Secretary/Principal Secretary, Revenue to the District Magistrate, Hardoi with direction to send some senior officers along with record to brief her regarding the issue in question. On 26.3.2021, Sub-Divisional Magistrate and the Naib Tehsildar came along with record in respect of the land in question to brief the Principal Secretary, Revenue, Government of Uttar Pradesh. The Additional Chief Secretary/Principal Secretary, Revenue, prima facie, found irregularity in the whole process and, therefore, vide order dated 26.3.2021 directed the District Magistrate, Hardoi to inquire into the matter in detail and take further action against the officials/employees concerned and to intimate the same to the State Government.

10. In compliance of the directions issued by the Additional Chief Secretary/Principal Secretary, Revenue vide order dated 26.3.2021,

the District Magistrate, Hardoi constituted a three members committee comprising of Sub-Divisional Magistrate, Sadar, Hardoi, Settlement Officer, Consolidation and the City Magistrate, Hardoi to inquire into the matter vide order dated 30.3.2021. The three members committee submitted its detailed report dated 1.6.2021 to the District Magistrate, Hardoi. The inquiry report has been placed on record with the affidavit of the Additional Chief Secretary/Principal Secretary, Revenue. The committee in its detailed report, said that the land in question was recorded in revenue record of 1333 Fasli (Year 1926) as 'Jangal Dhak' of Class-5(iii)(b)(2) land. In 1356 Fasli (Year 1949) also the said land was recorded as 'Jangal Dhak'. The said land is vested in the Gram Sabha as per Para A-124 of the U.P. Land Records Manual, and it is a public utility land.

11. The three members committee also said that the resumption order dated 30.1.1987 passed by the then District Magistrate was against the law. It was further said that transfer of the land by Mr. Sanjeev Agarwal, Managing Trustee of the Trust in favour of his two sons and a close relative for setting up commercial venture, was bad in law. The committee also noted the forging of the documents by the revenue authorities and misplacing the original file of the resumption and allotment of land by the then District Magistrate vide order dated 30.1.1987. The committee recommended for taking action and lodging of FIR against the erring officials.

12. The District Magistrate, Hardoi after considering the said report of the three members committee, vide a detailed order dated 4.6.2021 cancelled the resumption and allotment order dated 30.1.1987 passed by then District Magistrate, Harodi holding same to be *void ab initio* and directed the said land to be recorded as Gram Sabha land. FIR No.0305 of 2021 under Section 409 IPC has been registered for going missing of the original file of the resumption and

allotment order dated 30.1.1987 from the office of the District Magistrate.

13. The District Magistrate also noted in his order that after death of Radhey Shyam Agarwal, retired IAS officer, vide order dated 23.10.1999 passed under Section 34 of the U.P. Land Revenue Act, 1901, name of Rajeev Agarwal S/o Radhey Shyam Agarwal was substituted in place of Radhey Shyam Agarwal in the revenue records. However, there was no order of substitution of name of Sanjeev Agarwal in place of Sri Rajeev Agrawal. It has been further said that the transfer of land to private persons, is against the provisions of the Sections 51, 52 and 53 of the Indian Trust Act, 1882 and in violation of Section 117(6) of the U.P.Z.A. & L.R. Act. Thus, it has been said that the order dated 30.1.1987 was *void ab initio* and, therefore, the same is liable to be cancelled. Tehsildar, Sadar has been directed to take action under Section 67 of the U.P. Revenue Code, 2006 for eviction of the persons illegally occupying the land in question.

14. Sanjeev Agarwal, opposite party no.5 filed Writ Petition bearing No.12066 (MB) of 2021 before this Court on 14.6.2021 challenging the order dated 4.6.2021 passed by the District Magistrate, Hardoi. However, the said writ petition was dismissed as withdrawn with liberty to file a fresh petition on 16.6.2021. On 15.6.2021, opposite party no.5 filed a revision bearing No.1146 of 2021 before the Board of Revenue, Prayagraj impugning the order dated 4.6.2021 passed by the District Magistrate, Hardoi. Thereafter, second Writ petition bearing no.12641 (MS) of 2021 was filed before this Court impugning the order dated 4.6.2021 passed by the District Magistrate, Hardoi. This Court vide order dated 23.6.2021 directed the said writ petition to be listed along with the present writ petition. The said writ petition was, however, withdrawn by opposite party no.5 on 20.7.2021.

15. During the pendency of this writ petition, another revision bearing No.1351 of 2021 came to be filed by Ram Chandra Razwar, the Manager of the Concept Cars Limited under Section 210 of the U.P. Revenue Code, 2006 impugning the order dated 4.6.2021 passed by the District Magistrate, Hardoi. Interestingly, while the writ petition was pending on the subject matter and the High Court was in seisen of the subject matter, the Board of Revenue proceeded to decide the said revision and passed the order dated 2.8.2021. Two very interesting aspects of the order dated 2.8.2021 are to be taken note of. The Board of Revenue in paragraph eight of the said order held that the preliminary objection raised by the counsel for the complainant and the Standing Counsel for the revenue regarding maintainability of the revision on behalf of the Concept Cars Limited or its Manager had force. It was said that the Manager of the Concept Cars Limited and the Concept Cars Limited itself had no right file and maintain the revision challenging the validity of the order dated 4.6.2021 passed by the District Magistrate, Hardoi and, therefore, the Board of Revenue accepted the preliminary objection raised regarding the maintainability of the revision. It was observed that if the revisionist was so advised, he could become the party in the revision filed on behalf of the Trust impugning the order dated 4.6.2021, but the revision on behalf of the Manager of the Concept Cars Limited/Concept Cars Limited would not be maintainable. Despite the said finding on the preliminary objection, the Board of Revenue held that the prayer of the revisionist i.e. Manager of the Concept Cars Limited regarding exchange of the land in question with some other land being offered on behalf of the revisionist/Concept Cars Limited in exercise of powers under Section 161 of the U.P.Z.A. & L.R. Act and under Section 101 of the U.P. Revenue Code, 2006 would be required to be considered.

16. This Court is of the considered view that the Board of Revenue has incorrectly held that the land in Gata No.1175 was not recorded as 'public utility land' though the same was recorded as

‘Jangal Dhak’ and was a public utility land as per the provisions of Para A-124 of the U.P. Land Records Manual. The Board of Revenue held that since the said land was not a public utility land, therefore, the said land could be exchanged with some other land of equal value and there would not be any legal hurdle in doing so. The Board of Revenue thus, directed the Sub-Divisional Magistrate, Sadar, Hardoi to make inspection of the lands, which are being offered by the revisionist/Concept Cars Limited in exchange of the land in Gata No.1175, and take possession of the land offered by the revisionist in exchange of the land in Gata No.1175 of the area, which would be 10% more than the area of Gata No.1175. It has been further held that the said order of exchange would be subject to the final outcome of Revision No.1146 of 2021 filed by the Trust. It has been ordered that that the revisionist would file an affidavit before the Sub-Divisional Magistrate and will undertake that in case the order dated 4.6.2021 is affirmed, the revisionist should not claim any right in respect of the land being offered in exchange of the land in Gata No.1175, and in future if it was found that the land offered in exchange of land in Gata No.1175 had any defect of ownership, then the revisionist would be liable to compensate for the loss, if any. It has been ordered that the revisionist would file the undertaking along with application within a period of two weeks before the Sub-Divisional Magistrate and the Sub-Divisional Magistrate has been directed to make inspection of the land in Gata Nos.1143, 1167 Cha and 846, which are being offered in exchange and then out of the three gatas, the most valuable land should be accepted in exchange. After taking possession of the said land, the possession should be handed over to the Gram Sabha. It has been further directed that all this should be completed within a period of six weeks. It has been ordered that for a period of two months or from the date of taking possession of the land offered in exchange of Gata No.1175, status-quo in respect of the possession of Gata No.1175 shall be maintained.

17. Thus, on one hand the Board of Revenue held that the revision on behalf of the Manager of Concept Cars Limited or by the Concept Cars Limited itself was not maintainable, and on the other hand, it allowed the prayer of the revisionist/Manager of the Concept Cars Limited for exchange of the land. This Court finds the approach of the Board of Revenue wholly illegal, unjustified and against the judicial propriety inasmuch as when the High Court was in seisen of the matter, the Board of Revenue had no business to proceed with the matter. Further, after holding that the revision was not maintainable, the Board of Revenue had allowed the prayer of the revisionist/Manager of the Concept Cars Limited in a most illegal and uncalled for manner. The Board of Revenue has overreached its jurisdiction and this Court deprecates the way the order has been passed to favour a private party in a non-maintainable proceeding. This Court holds that the order passed by the Board of Revenue dated 2.8.2021 is wholly illegal, non est and without jurisdiction. The authorities are directed not to take any action in pursuance of the order dated 2.8.2021 passed by the Board of Revenue.

18. After Revision No.1146 of 2021 was filed by the Trust against the order dated 4.6.2021, the Trust filed a recall application before the District Magistrate, Hardoi praying to recall the order dated 4.6.2021. However, the District Magistrate vide order dated 31.1.2022 rejected the said application for recall on the ground that against the order dated 4.6.2021, a revision had already been filed by the Trust being Revision No.1146 of 2021 before the Board of Revenue and, therefore, the recall application was not maintainable. Against the said order dated 31.1.2022, the Trust has filed another Revision bearing No.511 of 2022 before the Board of Revenue and the Board of Revenue vide interim order dated 9.3.2022, admitted the said revision and strangely enough stayed the orders dated 4.6.2021 and 31.1.2022 passed by the District Magistrate, Hardoi. The Board of Revenue appears to be extra generous and benevolent

towards the revisionist. The approach of the Board of Revenue is anything but judicial.

19. Before the order dated 9.3.2022 came to be passed by the Board of Revenue, the Tehsildar, Sadar, Hardoi proceeded under Section 67 of the U.P. Revenue Code, 2006 and ordered for eviction of Devendra Das S/o Mahant Indresh Charan Das, Principal, Sri Gururamrai Public School, Lucknow Road, Hardoi and imposed the compensation of Rs.5,65,76,000/- along with cost of Rs.11,300/- vide order dated 27.1.2022 passed in Case No.6112 of 2021. Another order of the same day i.e. 27.1.2022 was passed in Case No.6113 of 2021 for eviction of Sri Siya Ram S/o Chote Lal, who had constructed shops on Gata No.749/M land in Gata No.1175/0.126 hectares along with compensation of Rs.22,20,000/- and cost of Rs.11,000/-. Third order dated 27.1.2022 was passed in Case No.6114 of 2021 Gram Sabha Vs. Sanjeev Agarwal under Section 67 of the U.P. Revenue Code, 2006 for eviction of opposite party no.5, Sanjeev Agarwal from 8248 Sq.M land along with compensation of Rs.35,04,60,000/- along with cost of Rs.12,800/-.

20. It appears that appeal(s) was/were filed against the order(s) dated 27.1.2022 passed by the Tehsildar, Sadar, Hardoi before the District Magistrate, Hardoi. However, Transfer Application No.47 of 2022, under Section 212 of the U.P. Revenue Code, 2006 was filed before the Board of Revenue on behalf of opposite party no.5 and the Board of Revenue vide order dated 22.3.2022, transferred the appeal(s) to the Court of District Magistrate, Sitapur from the court of District Magistrate, Hardoi.

Questions: -

21. The following questions are involved in the present writ petition:-

(i). Whether the present petition raises the question of public importance involving misuse of authority and powers vested in the

then District Magistrate and, therefore, the Court would be justified in looking into the matter even if it is assumed that the petitioner has some personal grudge against the Concept Cars Limited and its Directors etc.?

(ii). Whether the order dated 30.1.1987 passed by the then District Magistrate, Hardoi resuming the Gram Sabha land recorded as 'Jangal Dhak', a public utility land for a private trust created by late Radhey Shyam Agarwal, a retired IAS officer was *void ab initio* ?

(iii). Whether the order dated 4.6.2021 passed by the District Magistrate, Hardoi holding the order dated 30.1.1987 to be *void ab initio* and cancelling the said order and restoring the land back to the Gram Sabha, is just and proper order ?

(iv). Whether the land recorded as 'Jangal Dhak' in revenue record under Para A-124 of the U.P. Land Records Manual, which is a public utility land, can be offered in exchange with some other land ?

22. Since the issues involved in this writ petition are complex issues of revenue laws, this Court requested Sri P.V. Chaudhary, learned Counsel of this Court to assist the Court as Amicus in disposal of the writ petition. Sri P.V. Chaudhary willingly agreed to assist the Court and the Court records its appreciation for his valuable assistance and labour put by him in short notice, in rendering his valuable assistance for deciding the issues involved in this petition.

Submissions:-

23. Sri P.V. Chadhary, learned Amicus has submitted that the land in question was recorded as 'Jangal Dhak' in Class 5(iii)(b)(2) in revenue records from 1333 Fasli (Year 1926) and 1352 Fasli (Year 1949). Para A-124 of the U.P. Land Records Manual provides class of tenures and the categories of land within each village in the

khatauni. Class 5(iii)(b)(2) of Para A-124 is in respect of the forest and other trees shrubs, bushes etc. Two kinds of forests are mentioned i.e. (1) forest under the management of Forest Department (including erstwhile private forests made over to Forest Departments); and (2) forest vested in the Gram Sabha. Class 5(b)(2) will consist of Babool, Dhak, Sirhoar, Bankraunda etc. These lands are recorded as 'Jangal Dhak' and, therefore, the same are public utility lands. He has further submitted that under Section 132 of the U.P.Z.A. & L.R. Act, the public utility lands are saved and no bhumidhari rights shall accrue in respect of the public utility land in favour of anyone. He has also submitted that the order dated 30.1.1987 passed by the then District Magistrate, Hardoi purportedly in exercise of power under Section 117(6) of the U.P.Z.A. & L.R. Act, whereby he resumed the said land for Gyan Yog Charitable Trust through its chairman, Radhey Shyam Agarwal, a retired IAS officer, was wholly illegal inasmuch as no bhumidhari right could have been created in favour of anyone in respect of the said land being public utility land. He has further submitted that the order was *void ab initio* and was result of arbitrary and *mala fide* exercise of the powers by the then District Magistrate, Hardoi to benefit his fellow brother of IAS community.

24. Sri P.V. Chadhary, learned Amicus has further submitted that the object of the Trust was to run the trust for public purpose, and it is said that for the said object and purposes, it constructed a charitable hospital and school etc. Instead of carrying out its objects of public purpose, the Board of Trustees of the Trust in its meeting dated 9.10.2009 resolved that the land along with building should be sold and Sri Sanjeev Agarwal, the Managing Trustee was authorized for the said purpose. In furtherance of the resolution of the Board of Trustees of the Trust, Sri Sanjeev Agarwal, Managing Trustee, executed two sale deeds on 19.6.2010 and on 1.7.2010 in favour of his own sons, Yash Vardhan Agarwal and Surya Vardhan Agarwal and his close relative, Pradeep Kumar Agarwal, who are the

Treasurer and Trustees of the Trust for meagre amounts of Rs.15,00,000/- and Rs.12,00,000/- respectively. Thereafter, this land was given on lease to their own company i.e. Concept Cars Limited, in which Sanjeev Agarwal, his two sons and Pradeep Kumar Agarwal are the Directors. After demolishing the hospital building, they have constructed commercial complex and a Maruti Car showroom is being run from the commercial complex to earn profit.

25. Sri P.V. Chadhary, learned Amicus has also submitted that the public utility land belonging to the Government/Gram Sabha was initially obtained in the name of charitable trust and subsequently the same was sold by the President of the Trust to his own sons and a close relative. It is nothing but a sham transaction and fraud played by the trustees to make commercial use of the public land held in Trust. It is nothing but a breach of trust, cheating and legal fraud committed by the Trustees in connivance with the authorities concerned. The authorities/State Government is the Trustee of the land in question and instead of protecting the public utility land, they had resumed it in favour of the private persons in a *mala fide*, arbitrary and unjust manner. He has, therefore, submitted that the question involved is of huge public importance and, therefore, even if it is assumed that the petitioner has some personal grudge against opposite party no.5 or the Concept Cars Limited, this Public Interest Litigation would be maintainable, and the Court is required to examine the issue of public importance involved in the petition.

26. Sri P.V. Chadhary, learned Amicus has further submitted that this Court vide order dated 18.3.2021 has itself recorded the important issues involved in the writ petition and held that if it is found that the petitioner was espousing his personal vendetta/grudge against opposite party no.5, but if the facts mentioned in the writ petition were correct, the Court would itself examine the issues involved and register the present writ petition as Public Interest Litigation *suo motu*.

27. Sri P.V. Chadhary, learned Amicus has taken this Court to the detailed report submitted by the three members committee, which was constituted by the District Magistrate, Hardoi vide order dated 30.3.2021 and has submitted that the District Magistrate, Hardoi has rightly held that the order of resumption of land in favour of the Trust, was wholly illegal and without jurisdiction and void *ab initio*. He has further submitted that since the order of resumption dated 30.1.1987 in favour of Gyan Yog Charitable Trust through its Chairman was *void ab initio*, there is no question of exchanging the land with some other land.

28. Sri P.V. Chadhary, learned Amicus has further submitted that the land was public utility land and the same was illegally obtained by Sri Radhey Shyam Agarwal, father of opposite party no.5, by using his influence and reach being an ex-IAS officer. Though the land was obtained for charitable purpose, but the same is being used for commercial purpose and the same cannot be exchanged in any manner. Illegal encroachment of the Gram Sabha land cannot be regularized inasmuch as the same would amount to perpetuating the illegalities. Even if the opposite parties are carrying out the commercial activities for several years, the same would not vest them with any legal right to continue their illegal possession and the villagers cannot be allowed to suffer merely because the opposite party no 5 and others have continued to occupy the land for several years. The unauthorized occupants are liable to be evicted. He has, therefore, submitted that this Court should order for eviction of the opposite parties forthwith from the land in question, which is a public utility land which was wrongfully resumed by the then District Magistrate in favour of the Trust inasmuch as the opposite parties have no right to continue possession of the land in question.

29. Sri K.K. Singh, learned counsel for the petitioner has supported the submissions made by Sri P.V. Chaudhary, learned

Amicus and has prayed that writ petition be allowed, and the opposite parties be evicted forthwith from the land in question.

30. Sri Shailendra Kumar Singh, learned Chief Standing Counsel assisted by Sri Yogesh Kumar Awasthi, learned Standing Counsel has submitted that admittedly the trust namely, Gyan Yog Charitable Trust, is a private trust. The powers under Section 117(6) of the U.P.Z.A. & L.R. Act can be exercised by the State Government for resuming the land vested in the Gram Sabha or any other local authority. However, the public utility land covered under Section 132 of the U.P.Z.A. & L.R. Act cannot be allotted in favour of any person. It has been further submitted that the said land was recorded as 'Jangal Dhak' in revenue record and was a public utility land, therefore, resuming the said land for a private Trust, was in violation of Section 132 of the U.P.Z.A. & L.R. Act and, therefore, it was void *ab initio*.

31. On facts, the order passed by the District Magistrate, Hardoi has been supported. It has been submitted that the order dated 30.1.1987 was *void ab initio* in terms of law. It has also been submitted that the Trustees have played fraud and breached the trust inasmuch as they have usurped the public land held by the government under trust for their commercial venture. The land, which was allotted ostensibly for charitable purposes, is being used for commercial establishment and the transfer of the land by the Managing Trustee in favour of his sons, who are the Treasurer and the Trustees of the Trust and a close relative, is a legal fraud and thus, transfer would not vest them with any right over the land, which is a public utility land illegally allotted to the Trust for charitable purposes. It has also been submitted that the Tehsildar has already passed orders for eviction and compensation and the action accordingly would be taken against the illegal occupants and the encroachers of the Gram Sabha land.

32. Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri Mohd. Aslam Khan and Sri Ratnesh Chandra has submitted that though the land was recorded as land in Class-5(iii)(b)(2) in the revenue record but the same was not a public utility land. He has further submitted that the land of Class-5(iii)(b)(2) would refer to the nature of land to be a cultivated land, which remained uncultivated since long time, due to which stray trees etc, came up over it naturally. He has also submitted that merely use of the term 'Jangal Dhak' in revenue record, would not render the nature of the land as public utility land and merely by use of nomenclature 'Jangal Dhak', the land would not *ipso facto* become a land of public utility. He has further submitted that public utility lands are those lands, which are mentioned in Class-6 and only those lands are saved under Section 132 of the U.P.Z.A. & L.R. Act or the lands, which are reserved under the consolidation operation. The land, which has been earmarked as a public utility land, basically refers to a land which has been kept reserved for being utilized as a common land by residents of a Gaon Sabha to whom it has been entrusted under Section 117(6) of the U.P.Z.A. & L.R. Act. However, Gram Sabha will not have any absolute right over the said land and the State will continue to be ultimate owner of the property.

33. Sri Mohd. Arif Khan, learned Senior Advocate has further submitted that Section 117(6) of the U.P.Z.A. & L.R. Act deals with the power of the State Government to resume any land entrusted to Gram Sabha, and take over control of any piece of land. The reservation over such land resumed by the State Government will not continue. There is no fetter upon the power of the State Government to resume any public utility land inasmuch as on resumption, the land would not be treated to be a land in control any more by the provisions of the U.P.Z.A. & L.R. Act. He has therefore, submitted that resumption by the then District Magistrate of the land in question in favour of the Trust, cannot be said to be illegal or against any provision of Section 117(6) of the U.P.Z.A. & L.R. Act. He has

further submitted that if it is held that the State Government/Collector has power to resume the land, including the land recorded as 'Jangal Dhak', then the State Government/Collector would be empowered to assign the land to a private person and the Government Department etc. after receiving the cost of the land under the provisions of U.P. Land Records Manual inasmuch Paragraph No.361 of the U.P. Land Records Manual empowers the Government to dispose of the land in its possession by sale, by grant, by gift etc. He has, therefore, submitted that in the present case, the Collector has firstly taken the land under control of the State Government and, thereafter, has settled it in favour of Gyan Yog Charitable Trust after receiving the cost of the land, and there was no illegality committed in resumption or allotment of the land in favour of the Trust.

34. Sri Mohd. Arif Khan, learned Senior Advocate has further submitted that the Trust in question, is a private charitable Trust and therefore, any act done by the Trust with the property so purchased by it, can be challenged either by trustees or by the beneficiary thereof. The petitioner is neither the Trustee nor a beneficiary of the Trust, therefore, he is not entitled to challenge the sale of the land of the Trust in favour of two sons and a close relative of the Managing Trustee of the Trust. He has also submitted that this writ petition under the garb of 'Public Interest Litigation' would not be maintainable inasmuch as the Trust being a charitable Trust, an aggrieved person is required to approach the regular Civil Court by way of filing proceedings under Section 92 of Code of Civil Procedure. He has submitted that the purchasers of the land had already moved an application before the appropriate authority to give in exchange an equally valuable bigger piece of land in lieu of the land sold by the trust, and this Court may pass an order directing the State Government to consider the exchange as per law prevailing on the subject. He has further submitted that the exchange of the land is permitted under Section 101 of the U.P. Revenue Code, 2006 read

with Rules 101 and 102 of the U.P. Revenue Rules, 2016 and the statute itself permits the exchange of land of any kind or nature. Therefore, the authorities may be directed to consider the application of the purchasers for exchange of the land.

Relevant Provisions:-

35. Para A-124 of the U.P. Land Records Manual provides the classes of the tenure or categories of land, which reads as under:-

“A-124. Arrangement of holdings:- The arrangement of land within each village in the khatauni shall be as follows:-

Part I=

(1)

(1-A)

(1-B)

(2)

(3)

(4)

(5) Culturable Land-

(i)

(ii)

(iii) Culturable Waste-

(a) Forests of timber trees-

(1) under the management of Forests Department (including erstwhile private forests made over to Forests Department)

(2) vested in the Gram Sabha.

(b) Forests of other trees, shrubs, bushes etc.

(1) (1) under the management of Forests Department (including erstwhile private forests made over to Forests Department)

(2) vested in the Gram Sabha.”

36. Section 117 of the U.P.Z.A. & L.R. Act, 1950 is in respect of the vesting of certain lands etc. in Gram Sabhas and other local authorities. Section 117(6) of the U.P.Z.A. & L.R. Act, 1950 reads as under:-

“117. Vesting of certain lands, etc. in Gaon Sabhas and other Local Authorities.

(1) ...

(2) ...

(6) The State Government may at any time, [by general or special order to be published in the manner prescribed], amend or cancel any [declaration, notification or order] made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority and resume such thing and whenever the State Government so resumes any such things, the Gaon Sabha or

other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any, effected by it in or over that things :

Provided that the State Government may after such resumption make a fresh declaration under sub-section (1) or sub-section (2) vesting the thing resumed in the same or any other local authority (including a Gaon Sabha), and the provisions of sub-sections (3), (4) and (5), as the case may be, shall mutatis mutandis, apply to such declaration.”

37. Section 132 of U.P.Z.A. & L.R. Act, 1950 provides the category of lands in which bhumidhari rights shall not accrue. Relevant provisions of Section 132 of the U.P.Z.A. & L.R. Act, 1950 read as under:-

“132. Land in which [bhumidhari] rights shall not accrue.- *Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, [bhumidhari] rights shall not accrue in-*

(a) pasture lands or lands covered by water and used for the purpose of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation;

.....

(c) lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for taungya plantation or grove lands of a [Gaon Sabha] or a Local Authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause-

.....

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954).]”

38. Section 101 of the U.P. Revenue Code, 2006 permits the exchange of land by a Bhumidhar with prior permission in writing of the Sub-Divisional Officer. However, it further provides that the Sub-Divisional Officer shall refuse permission for exchange *inter alia* in respect of the land in which bhumidhari rights do not accrue. Section 101 of the U.P. Revenue Code, 2006 reads as under:-

“101 Exchange.- *(1) Notwithstanding anything in section 77 of this Code, any bhumidhar may with prior permission in writing of the Sub-Divisional Officer exchange his land with the land- (a) held by another bhumidhar; or (b) entrusted or deemed to be entrusted to any Gram Panchayat or a local authority under section 59. (2) The Sub-Divisional Officer*

shall refuse permission under sub-section (1) in the following cases, namely- (a) if the exchange is not necessary for the consolidation of holdings or securing convenience in cultivation; or (b) if the difference between the valuation, determined in the manner prescribed, of the lands given and received in exchange exceeds ten per 52 cent of the lower valuation; or (c) if the difference between the areas of the land given and received in exchange exceeds twenty-five per cent of the lesser area; or (d) in the case of land referred to in clause (b) of sub-section (1), if it is reserved for planned use, or is land in which bhumidhari rights do not accrue; or (e) if the land is not located in same or adjacent village of the same tahsil: Provided that the State Government may permit the exchange with land mentioned in clause (d) aforesaid, on the conditions and in the manner, prescribed. (3) Nothing in this section shall be deemed to empower any person to exchange his undivided interest in any holding, except where such exchange is in between two or more co-sharers. (4) Nothing in the Registration Act, 1908 (Act No.16 of 1908), shall apply to an exchange in accordance with this section.”

Analysis:

39. It is a trite law that if a writ petition filed by a person raises question of public importance involving exercise of power by men in authority, then it is the duty of the Court to enquire into the matter. The legal fraud played by the public authority for benefit of the private persons at the expense of public at large cannot be condoned. In the present case, even if it is believed that the petitioner has some personal grudge or score to settle with opposite party no.5 and his sons, the cause espoused by him in this writ petition is of greater public importance and, therefore, this Court in its order dated 18.3.2021 observed that looking at the facts of the case, this Court may treat this writ petition as Public Interest Litigation *suo motu*.

40. Supreme Court in the case of ***Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and others***, (2011) 5 SCC 29 in paragraph 80 held as under:-

“80. The challenge to the locus standi of the appellant merits rejection because it has not been disputed that the appellant is a public spirited organization and has challenged other similar allotment made in favour of Punjabi Samaj, Bhopal, That apart, as held in [Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi](#) (1987) 1 SCC 227 even if a person files a writ petition for vindication of his private interest but raises

question of public importance involving exercise of power by men in authority then it is the duty of the Court to enquire into the matter.”

41. The State or its instrumentalities cannot give largesse to any person according to the sweet will and whims of the authorities of the State. Every action/decision of the State and its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy.

Paragraph 65 of the said judgment reads as Under:-

“65. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non- discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.”

42. This Court in ***Gyanendra Singh Vs. Additional Commissioner, Agra Division, Agra***, 2003 (95) RD 286 has held that the land recorded as ‘Jangal Dhak’ is a forest land and is a public utility land and same cannot be transferred by way of lease, sale etc and no bhumidhari rights shall accrue in respect of the said land. These lands are saved under Section 132 of the U.P.Z.A. & L.R. Act, 1950. This Court considering the provisions of Section 132 of the U.P.Z.A. & L.R. Act, 1950 held that lands recorded as ‘Jangal Dhak’ are covered by the lands enumerated under Section 132 U.P.Z.A. & L.R. Act, 1950 and the same cannot be transferred in favour of anyone.

43. This Court defined in the said judgment that ‘Jangal Dhak’ means ‘Dhaka Forest’. Dhaka is a kind of small tree having large leaves. It has been held that the entry of the land as ‘Jangal Dhak’ would mean that it is a forest land and forest is beneficial for human life and environment. Therefore, the land in the category of ‘Jangal Dhak’ is a public utility land, in respect of which no bhumidhari right can accrue. Paragraphs 7 and 8 of the said judgement read as under:-

“7. The sub-clause (3) of Section 132 includes land held for a public purpose on which bhumidhari rights shall not accrue. The aforesaid three plots being recorded as “Dhaka Jangal” were covered by land as enumerated in Section 132 and lease of bhumidhari rights with non-transferable right cannot be granted on the said plots. No error has been committed by the courts below in cancelling the lease granted in favour of the petitioners. The submission of petitioners is that other persons have also been granted lease of “Dhaka Jangal”, hence petitioners have been discriminated in so far as the lease of other persons have not been cancelled and the petitioners have only been singled out for cancellation. The counsel for the petitioners has raised the submission based on discrimination. As noted above, lease of “Dhaka Jangal” is not permissible in accordance with Section 132 of U.P. Zamindari Abolition and Land Reforms Act and the fact that leases were granted to certain other persons cannot validate the lease of the petitioners which was in violation of Section 132 of U.P. Zamindari Abolition and Land Reforms Act. The plea of discrimination is not available in a case where the benefit which was taken by other persons cannot be said to be in accordance with law. Apex Court in Chandigarh Administration v. Jagjit Singh, (1995) 1 SCC 745, held that mere fact that the respondent has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination in case the order in favour of other persons is found to be contrary to law or not warranted in the facts of this case. Following was laid down in paragraph 8:

“8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be

investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be correct, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality; the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.....”

44. Thus, I do not find any substance in the submission of Sri Mohd. Arif Khan, learned Senior Advocate that the land in question, which was recorded as ‘Jangal Dhak’ is not a public utility land and, therefore, there was no bar under Section 132 of the U.P.Z.A. & L.R. Act, 1950.

45. This Court has taken judicial notice of the fact regarding loot of the public property and observed that during consolidation proceedings, consolidation authorities/officers liberally donate the Gram Sabha properties to influential and resourceful persons by passing illegal and arbitrary orders.

46. In the case of ***Dina Nath Vs. State of U.P. and others***, 2009 (108) RD 321, this Court directed the Collectors of all the districts in the State to reopen such cases where names of private persons are entered in revenue records based on old pattas or adverse possession over Gram Sabha land and correct the illegality by taking *suo motu*

action. Paragraphs 11 and 12 of the said judgement, which are relevant, are extracted herein below:-

“11. The experience of the Court is that during consolidation proceedings, Consolidation Authorities/ Officers liberally donate the Gaon Sabha properties to influential/resourceful persons by passing such orders as has been passed in the instant case.

12. Accordingly, all the Collectors of all the Districts in the State are directed to reopen such cases where names of private persons are entered in revenue records on the basis of old pattas or adverse possession over Gaon Sabha land and correct the illegality by taking suo motu action. However, no orders shall be set aside without issuing notice and hearing affected persons. If notice through registered post is not served then it may be served through publication in the newspaper also. If it is found that some Consolidation Officer or S.O.C. or D.D.C. has done similar thing, then the action must be proposed to be taken against him also.”

47. Supreme Court in the case of ***Dina Nath Vs. State of Uttar Pradesh and others***, (2010) 15 SCC 218, not only upheld the said direction issued by this Court in its order dated 8.9.2009 passed in the case of Dina Nath (supra), but dismissed the Special Leave Petition with exemplary cost of Rs.50,000/-. It has been further held that in a matter such as this, the Court cannot be a silent spectator and is bound to perform its constitutional duty for ensuring that the public property is not frittered by unscrupulous elements in the power corridors and acts of grabbing public land are properly enquired into and appropriate remedial action be taken. Paragraphs 5, 6 and 7 of the aforesaid judgement are extracted herein below:-

“5. We have heard Shri S.R. Singh, learned Senior Advocate appearing for the petitioner and perused the record. In our view, the learned Single Judge did not commit any error by refusing to entertain the writ petition. In a matter like the present one, the Court cannot be a silent spectator and is bound to perform its constitutional duty for ensuring that the public property is not frittered by unscrupulous elements in the power corridors and acts of grabbing public land are properly enquired into and appropriate remedial action taken.

6. Since the petitioner has not disputed that the allotment was made in the name of his mother Smt Kalawati Devi by Gaon Sabha headed by his grandfather, we do not find any justification whatsoever to entertain his challenge to the order of the learned Single Judge.

7. Accordingly, the special leave petition is dismissed with costs of Rs 50,000 which the petitioner shall deposit with the State Legal Services Authority within a period of one month from today.”

48. A Division Bench of this Court again in the case of ***Rajendra Tyagi Vs. State of U.P. through Principal Secretary, Nagar Vikas, Babu Bhawan, Lucknow and others***, 2016 (131) RD 243 took judicial notice of the loot of the Gram Sabha land with active assistance and connivance of the revenue officers on a large scale and suggested the steps to be taken by the Government to prevent the loot and take corrective measures. The Division Bench interpreted the provisions of sub-section(6) of Section 117 of the U.P.Z.A. & L.R. Act, 1950 and held in paragraph 8 as under:-

“8. The effect of section 117(1) of the Act is that after the estate has vested in the State Government under section 4, the State Government is empowered to direct that the land, among other things, which had vested in the State, shall vest in the Gram Sabha or any other local authority established in respect to the village in question. Under sub-section (6), however, the State Government is empowered to amend or cancel any declaration or notification made by it and to order resumption. When the State Government issues an order of resumption, the Gram Sabha or local authority, as the case may be, is entitled to receive compensation on account only of the development, if any, effected by it in or over the land or thing. Under the proviso to sub-section (6), the State Government, upon resumption, is empowered to make a fresh declaration vesting the land resumed in the same or any other local authority including the Gram Sabha. The provisions of sub-sections (1) and (6) make it abundantly clear that the vesting of land in the Gram Sabha or the local authority does not confer an absolute title which at all material times continues to vest in the State Government. Indeed that is the basis on which the State under sub-section (6) of section 117 is empowered to cancel or amend a notification of vesting which has been issued under sub-section (1). Upon the issuance of such a notification, the Gram Sabha or local authority in which the land has originally vested, is entitled to receive compensation in respect of the development carried out by it thereon.

The true nature of the vesting in the State Government under sub-section (1) of section 4 as contrasted with the vesting under sub-sections (1) and (6) of section 117 in the Gram Sabha or local authority has been adjudicated upon in the judgment of the Supreme Court in Maharaj Singh (supra). The Supreme Court observed as follows:

“In the instant case the Act contemplates taking over of all zamindari rights as part of land reforms. However, instead of centralizing management of all estates at State level, to stimulate local self-Government, the Act gives an enabling power-not obligatory duty to make over these estates. to Gaon Sabhas which, so long as they are in their hands, will look after them through management committees which will be under the statutory control of Government under section 126. Apart from management, no power is expressly vested in the Sabhas to dispose of the estates absolutely...”

The principle is stated thus:

“...the vesting in the State was absolute but the vesting in the Sabha was limited to possession and management subject to divestiture by Government. Is such a construction of ‘vesting’ in two different senses in the same section, sound? Yes. It is, because ‘vesting’ is a word of slippery import and has many meanings. The context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. That is why even definition clauses allow themselves to be modified by contextual compulsions. So the sense of the situation suggests that in section 117(1) of the Act ‘vested in the State’ carries a plenary connotation, while ‘shall vest in the Gaon Sabha’ imports a qualified disposition confined to the right to full possession and enjoyment so long as it lasts...”

49. This Court vide its judgment and order dated 17.7.2012 passed in *Writ-A No.33751 of 2012* in view of the fraud being played in respect of the allotment of the public utility land in favour of private persons by the authorities in power in respect of the Ghaziabad, Gautam Budh Nagar and Panchsheel Nagar (Hapur) where the land has become extremely valuable suggested as under:-

“Suggestion:-

As the land of Ghaziabad, Gautam Budh Nagar, Panchsheel Nagar (Hapur) has become extremely valuable and as for industrial and residential purposes land in those districts is urgently required and as the courts are constantly restricting the scope of acquisition of the properties belonging to private persons/bhoomidhars hence the best solution is that the State shall resume the entire gaon sabha land in these districts under Section 117(6) of U.P.Z.A.L.R. Act. This will serve two purpose one the land illegally occupied by private person through active support by officers will be taken back. Chances of further manipulation and usurpation will not be there, secondly lot of land will be available without having recourse to land Acquisition Act for Industrial Development including construction of residential colonies.”

50. The land which was a public utility land, was resumed and allotted in favour of a private person, Late R.S Agrawal, Ex-IAS officer by the then District Magistrate in purported exercise of the power under Section 117(6) of the U.P.Z.A. & L.R. Act, 1950 for charitable purpose and now it is being used for commercial purposes, therefore, such a land cannot be exchanged in any manner. Even otherwise, under Section 101 of the U.P. Revenue Code, 2006 the land in which bhumidhari rights cannot get accrued, cannot be exchanged.

51. Therefore, I am not convinced with the submission of Sri Mohd Arif Khan, learned Senior Advocate that once the land was resumed by the District Magistrate, it came out of the purview of the provisions of the U.P.Z.A.&L.R. Act, 1950 and cannot be governed under the said Act.

52. The question is whether in the said land the bhumidhari rights could have been created by transferring the said land in favour of a private person headed by a retired IAS officer.

53. As discussed above, the land recorded as a 'Jangal Dhak', is a public utility land and on such land bhumidhari rights could not have been created in favour of private person/ Trust headed by a such a person. Since the very order of resuming the land for a private Trust, was against the law and, therefore, it was *void ab initio* and no valid right, title or interest got accrued in favour of the private Trust and no exchange, therefore, is permitted. It is nothing but a *mala fide*, arbitrary and colourable exercise of the power by the then District Magistrate on a fraud played by the Trustees by usurping the public utility land ostensibly given for the charitable purposes, but they sold it amongst themselves for commercial purpose and constructed a commercial building, in which commercial establishment is being run for profit. This is nothing but an illegal encroachment of the Gram Sabha land by respondent No.5 and his family members. Such

illegality cannot be permitted to continue in perpetuity. For commercial interest of opposite party no.5 and his sons, the villagers cannot be allowed to suffer.

54. Supreme Court in the case of *Jagpal Singh and others Vs. State of Punjab and others*, (2011) 11 SCC 396, noticed that since Independence, in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. It has been further held that long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections cannot be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases, where lease has been granted under some Government Notification to landless labourers or members of Scheduled Castes/Scheduled Tribes or where there is already a school, dispensary or other public utility on the land. Paragraph 22 of the aforesaid judgement reads as under :-

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

55. In the aforesaid judgment, the Supreme Court took note of the judgement in the case of *M.I. Builders (P) Ltd. Vs Radhey Shyam Sahu*, 1999 (6) SCC 464, in which the Supreme Court ordered for restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 Crores.

56. In the case of *Friends Colony Development Committee Vs. State of Orissa*, 2004 (8) SCC 733, the Supreme Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception.

57. This Court wonders that if Late R.S. Agrawal was not an IAS officer, could the then District Magistrate have resumed the land for him. Judicial notice has been taken of the phenomenon of grabbing scarce natural resources by powerful persons in active connivance with the state machinery. A few in the administrative establishment who have commitment to the rule of law take initiative to correct the wrong done favouring powerful persons. Such officers who could muster courage of conviction face unsurmountable pressure from all quarters, which is evident in the present case. This Court believes that but for the cognizance taken by this Court of the fraud played by the Trustees in connivance with the State machinery, it would have been extremely difficult for the District Magistrate to pass the order dated 4.6.2021. This Court appreciates the courage of conviction shown by the District Magistrate and his team.

58. The natural resources are limited and scarce and meant to be preserved and protected. The State holds natural resources such as land, forests, minerals etc on behalf the citizens of this country in trust. The state authorities can not allow natural resources going in the hands of unscrupulous persons who have money and muscle power or have influence in the State machinery. If one undertakes a case study regarding the wealth in the hands of people who have

enjoyed power or in power, startling facts would come out that how people with absolutely no means or with limited means once occupied power became rich/super rich and without any known source of income from calling or profession live Maharaja lifestyle in palace like houses. Once these people reach to power, they create enormous wealth for themselves not by legal and justified means but by corruption and taking control of scarce and valuable natural resources by their influence over the administration. This Court can not shut its eyes to this alarming phenomenon. New kind of Maharajas and princes have prop up after independence who could or have reached to power even for short period. The people are not pursuing merit as they find that merit is not recognised in this country. They believe that to earn wealth and power, one should enter politics. Politics is no longer a public service but a means to achieve power and wealth. This phenomenon must be reversed if democracy has to survive in this country and society is to be governed by rule of law. Unscrupulousness must be eschewed. Merit is to be recognised and respected .

Conclusion:

59. In view of the aforesaid discussion, answers to the questions formulated above are as under:-

(i). The writ petition could not have been thrown out on the ground of alleged grudge of the petitioner against opposite party no.5 or his sons and Concept Cars Limited etc. inasmuch the writ petition involves question of huge public importance regarding allotment of public utility land in favour of the private persons in an arbitrary and illegal manner against the express provision of the law and, therefore, this Court has decided to examine the question of public importance involved in the present writ petition without going into the question of alleged personal grudge of the petitioner.

(ii). Order dated 30.1.1987 passed by then District Magistrate, Hardoi for resumption of the land in favour of the private Trust was

against the provisions of Section 132 of the U.P.Z.A. & L.R. Act, 1950 as the then District Magistrate was not empowered to resume the land for a private person/ Trust in exercise of powers purported to be vested in him under Section 117(6) U.P.Z.A. & L.R. Act, 1950 read with notification dated 16.6.1981. The order passed by the then District Magistrate was void *ab initio* inasmuch as it created the right in respect of the public utility land, which was recorded as 'Jangal Dhak' in revenue record of the relevant khatauni Fasli Years.

(iii). The District Magistrate, Hardoi after considering the three members committee report, has rightly held that the order dated 30.1.1987 was *void ab initio* and the committee has noted the fraud played by the Trustees in its detailed report. Therefore, the order passed by the District Magistrate for cancelling the entries in favour of opposite party no.5 etc., is in accordance with law and the District Magistrate deserves full credit for his decision, which has been taken in accordance with law.

(vi). As discussed above, in respect of the public utility land, no bhumidhari right can be accrued. The land recorded as 'Jangal Dhak', is a public utility land and under Section 132 of the U.P.Z.A. & L.R. Act, 1950, no bhumidhari right could not have been created in respect of the land in question. Section 101 of the U.P. Revenue Code, 2006 empowers the Sub-Divisional Officer for exchange of land, but this power does not extend to the land of the Gram Sabha, which is a public utility land and in which no bhumidhari right can be accrued. Therefore, no exchange is possible in respect of the land in question.

60. In view of the aforesaid discussion, writ petition is ***allowed*** with the following directions: -

1. Opposite party no.5 and other illegal occupants of the land in question are to be evicted forthwith inasmuch as the orders of

eviction have already been passed in compliance of the order passed by the District Magistrate on 4.6.2021.

2. Necessary action must get completed within 15 days regarding eviction. With respect to compensation, the appeal(s) shall be heard and decided by the competent authority against the orders passed by the Tehsildar, Sadar, Hardoi expeditiously preferably within a period of one month from the date of the order.

61. Let a copy of this judgment be communicated forthwith to the Chief Secretary, Additional Chief Secretary/Principal Secretary, Revenue and the District Magistrates, Hardoi and Sitapur for necessary compliance.

(Dinesh Kumar Singh, J.)

Order Date: 5th July, 2022
Rao/-