REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/INHERENT JURISDICTION

CIVIL APPEAL NO. 4983 OF 2009

State of Uttarakhand and Anr. .... Appellants

VERSUS

Ravi Kumar (Deceased) through LRs and others .... Respondents

WITH

CIVIL APPEAL NO. 4988 OF 2009

WITH

CIVIL APPEAL NO. 4984 OF 2009

WITH

CIVIL APPEAL NO. 4985 OF 2009

WITH

CONTEMPT PETITION (CIVIL) NO. 165-168 OF 2007

IN

CIVIL APPEAL NO. 4983 OF 2009

WITH

CIVIL APPEAL NO. 4989-4992 OF 2009

JUDGMENT

Surya Kant, J.

1. The core question that arises for our consideration in the present set of connected matters pertains to the ownership of land measuring 183 bigha 8 biswa which is equivalent to 28.56 acres of land, bearing Khasra Nos. 2, 3/1, 3/2, 4 to 28/1, 28/2, to 49 and situated in Village Haripur, Tehsil Haldwani, District Nainital (**hereinafter, 'Suit Land'**).

2. Since these appeals arise out of a complex factual scenario and different sets of legal proceedings which proceeded in parallel, it would be appropriate to discuss the same at length before delving into the issue of law, which require adjudication before us.

A. FACTS

A.1 THE COMMON FACTS: 1924 SALE DEED, 1967 EVICTION SUIT AND 1978 MUTATION PROCEEDINGS

3. The genesis of these disputes began on 20.06.1924, when one Mr. John Vaughn, son of Mr. Charles Vaughn obtained a lease of the Suit Land (**hereinafter, '1924 Lease Deed'**) from the erstwhile colonial rulers through the Secretary of State for India in Council for thirty years on payment of rent as agreed between the parties. The lease was also extendable for another thirty years and was subject to certain conditions, which are reproduced as follows: -

> **"X-X-X-X**
>
> **(a) The lessee to pay the first period of thirty years the yearly rental of No.183-6-4 clear of all deductions on the first**

day of March in each year at the Haldwani Tehsil or at such other place as the Deputy Commissioner of Nainital shall form time to time appoint in this behalf and also from time to time and at all times during the continuance of the said lease pay and discharge all rates, taxes, charges and assessment of every description which are now or may at any time hereafter during the said lease be assessed, charged or imposed upon the land hereby demised.

(b) Lessee agree that the said plot of land will be used for residential purposes, for poultry farming for orchards and for vegetable cultivation only.

(c) The lessee agrees that he will submit the plan of any building which he wish to erect or of any existing building which he has to modify to the Deputy Commissioner of Nainital for approval before starting building operations, that he will complete the sanctioned building within two years of the receipt of approval and that he will keep every building erected by him and also the Government buildings standing on the said plot of land and shown on the plan annexed in good and substantial repair and condition both externally and internally.

(d) The lessee agrees that he shall not claim the benefits which agricultural tenant and lessees are given in the Tarai and Bhaber estates.

(e) The lessee agrees that he will not transfer or sublet said plot of land without the written approval of the Deputy Commissioner of Nainital.

(f) The lessee agrees that he shall be responsible for the observance of Estate rules in force now or at any time hereafter regarding sanitation, reporting cattle disease etc.

(g) The lessee agrees that he shall have no right to any minerals in the aid plot of land.

(h) The lessee further agrees that if he dies heirless before the expiry of lease as also on the expiry of lease, the land hereby demised and all buildings standing on the land shall revert to the lesser without compensation.

(i) The lessee shall have the right to erect masonry wall not exceeding 4.5 feet in height or a wire fence along the boundary of the said land hereby demised.

(j) The lessee shall have the use of a share of the water when available for irrigation purposes from the tank fixed approximately at mile 6 furlong 70 feet left of the main gailuwar canal, but the lessor reserve on control over this outlet which the lessor is empowered to decrease or close whenever such decrease or closure is required on account of short supplies in or on account of executing repairs, extensions or improvements canal works etc. and

the lessee shall have no right to claim compensation for any damage done by such reduction or closer of the water supply to the said plot of land.

(k) The lessee shall have and unrestricted right to dispose of the produce of the land leased to him in any manner he may choose and the lessee shall be allowed to clear and use for his requirements the trees and bushes standing on the land hereby demised.

(l) If there be any breach by the lessee of any covenant herein before contained the Deputy Commissioner of Nainital may, not withstanding the waiver of any previous breach by the lessee giving the Deputy Commissioner of Nainital the right of re-entry, enter upon any part of whole of the land hereby demised or of the buildings standing on the said plot of land and thereupon the said land and buildings shall remain to the use of and be vested in the Secretary of State and the lessee shall not been titled to any compensation for any building erected by him or for any improvements made by him upon the land demised and this demise shall absolutely determine.

(m) The Deputy Commissioner of Nainital agrees to stamp the lease at his expense.

X-X-X-X"

(Emphasis Applied)

4. After the execution of the 1924 Lease Deed which was registered on 22.08.1925, it appears that revenue entries were made in favour of one Manohar Lal, who is said to have purchased the Suit Land through a sale deed dated 17.11.1947 (**hereinafter, 'Sale Deed'**). The same Manohar Lal is also stated to be the paternal uncle of the primary contesting respondents before us, namely Virendra Kumar and Ravi Kumar (**hereinafter, 'Respondents'**), as the relief sought by all the remaining private parties in connected matters flows from their claim on the Suit Land. It would be appropriate at this stage to reproduce the relevant portion of the Sale Deed, which records the factum of prior permission as required under the 1924 Lease Deed. The same is as follows –

> **".....whereas the vendor has full right to sell the aforesaid buildings and constructions with the permission of the Deputy Commissioner, Nainital for which the vendor has obtained the necessary permit from the proper authorities and mutation has been duly effected in the name of the vendee on 25.9.47 in the Government records in the office of the Superintendent, Tarai & Bhabar, Nainital....."**
>
> (Emphasis Applied)

5. Thereafter, it is to be noted that revenue records continued to depict the name of the predecessor of the Respondents as 'Occupancy Tenant' on the strength of the said Sale Deed. Interestingly, at the expiry of thirty years in 1954, it is admitted that predecessor of Respondents applied for renewal and paid enhanced rent as per the 1924 Lease Deed. After that, consolidation proceedings took place between 1959-1960 wherein revenue entries remained in favour of Manohar Lal and even compensation was also awarded for a portion of Suit Land which was acquired by the military authorities in 1963.

6. It was not until 1967 that the State filed a suit for possession of the Suit Land along with the damages before the concerned District Judge. During the pendency of the said suit, UP Public Premises (Eviction of Unauthorised Occupants) Act, 1972 was promulgated and accordingly, the said suit stood transferred to the Prescribed Authority under the Act. In the interregnum before the final adjudication took place before the Prescribed Authority, it is pertinent to note that Bhumidhari

certificates were also issued to the predecessor of Respondents under the applicable tenancy law by depositing the amount which was equal to twenty times the land revenue for the Suit Land. Eventually, the Prescribed Authority dismissed the suit on 25.03.1975 as being non-maintainable in view of the exclusion clause contained in the UP Public Premises (Eviction of Unauthorised Occupants) Act, 1972 whereby the lands which were held by any class of tenure-holder are exempted from the applicability of the said Act. The State's appeal against the said order before the District Judge was also dismissed on the grounds of being time-barred and the suit being non-maintainable. The relevant extract of the District Judge's order dated 30.07.1976 is as follows –

> **"There are document on record to show that in 1366 Fasli the Respondent were recorded as Occupancy tenants. Similar entries exist on the Khatauni for the year up to 1375 Fasli and in the Khatauni for 1376 Fasli the Respondents are recorded Sirdar. The learned Counsel for the respondents has referred me to section 2(b) which defines the expression "Premises". There are certain exception mentioned and sub section (ii) is in respect of land by a**

tenure holder under the U.P. Tenancy Act. The land in dispute has to be excluded from the expression "Premises" and the prescribed authority was justified in holding so. The appeal must, therefore be dismissed."

(Emphasis Applied)

7. Hence, the suit which was instated in 1967 was never adjudicated on merits per se in respect of the claim of tenancy by the Respondents, but on the technical grounds of the bar contained in the UP Public Premises (Eviction of Unauthorised Occupants) Act, 1972 as well as on the ground that the appeal against the Prescribed Authority's order was time barred. However, the District Judge's order dated 30.07.1976 remained unchallenged and ultimately, after the demise of Manohar Lal, who died issueless, mutation proceedings were initiated in 1978 by the present Respondents on the basis of a family settlement.

8. While the relevant orders in the said mutation proceedings have not been made part of the records produced before us, it is stated that the Tehsildar, Haldwani passed an order dated 04.07.1978 in favour of the Respondents. This order was later

confirmed by another order dated 30.08.1978 passed by the concerned SDM directing the Tehsildar, Haldwani to mutate the Suit Land in favour of Respondents in revenue records. Against the order of the SDM, the State preferred an appeal before the Commissioner, Kumaon which was rejected vide order dated 07.08.1980 and even the revision application against the same was dismissed on 31.12.1980. It is pertinent to note that during the proceedings, a vernacular copy of the order dated 07.08.1980 was produced before us, which we will refer to at a later stage.

9. In the end, because of the fact that the Respondents were successful in the mutation proceedings, the Pargana Officer, Haldwani passed an order dated 30.09.1981 accepting the partition between the concerned Respondents, i.e. between Virendra Kumar and Ravi Kumar, on the basis of family settlement. Meanwhile, orders dated 07.08.1980 and 31.12.1980 were challenged before the Board of Revenue in revision proceedings, but the same were dismissed via order dated 20.01.1982 with the following observation –

> **"In fact, the challenge which is raised on behalf of the government, is in respect of ownership of the land and this matter cannot be decided finally in the mutation proceeding. Therefore, the matter should be proceeded in other competent court."**

Thus, the issue of ownership again remained unadjudicated even at this stage.

10. For the ease of analysis, the key events in these proceedings are summarised as follows –

1967 Eviction Suit	
Date	**Proceedings**
10.06.1967	State files eviction suit along with damages.
1972	UP Public Premises (Eviction of Unauthorised Occupants) Act, 1972 was promulgated (*Hence, the abovementioned suit transferred to Prescribed Authority under the said Act*).
25.03.1975	Suit got dismissed as non-maintainable.
30.07.1976	Appeal against the order dated 25.03.1975 got dismissed as non-maintainable as well as time-barred.

1978 Mutation Proceedings	
Date	**Proceedings**
04.07.1978	It is stated that the concerned Tehsildar passed

	an order recording the Respondents' name in revenue records.
30.08.1978	SDM, Haldwani passed an order directing concerned Tehsildar to mutate the Suit Land in favour of Respondents (*This order is stated to have been complied by the Tehsildar*).
07.08.1980	Revision/Appeal against order dated 30.08.1798 dismissed by Commissioner.
31.12.1980	Revision against order dated 07.08.1980 dismissed.
20.01.1982	Revisions against orders dated 07.08.1980 and 31.12.1980 dismissed by Board of Revenue.

A.2 THE CANCELLATION OF REVENUE ENTRIES AND RESTRAINT ON SALE OF LAND: CIVIL APPEAL NO 4983 OF 2009 AND CIVIL APPEAL NO 4985 OF 2009

11. The subject matter of these appeals arose from an order dated 31.12.1981 passed by the District Collector, Nainital (**hereinafter, 'Expunction Order'**) during the pendency of the revision proceedings before the Board of Revenue in the

abovementioned mutation proceedings. In the said order, the Collector noted that on perusal of the revenue records, it was found that after the initial lease period of thirty years had expired, the Respondents had illegally gotten themselves recorded as 'Bhumidhar' of the Suit Land in the revenue records. Accordingly, the Collector directed the expunction of the revenue entries in favour of the Respondents and recommended that eviction proceedings be initiated against them.

12. Against the Expunction Order, the Respondents preferred a revision before the Commissioner, Kumaon who passed an interim order dated 20.01.1982 directing that no revenue entries should be deleted in light of the fact that the matter was pending before the Board of Revenue in mutation proceedings. However, as noted above, the Board of Revenue dismissed the said pending revision in the mutation proceedings on the same date. Consequently, it is stated that despite the abovementioned interim order dated 20.01.1982 of the Commissioner, the Tehsildar acted on

Expunction Order and proceeded to expunge the revenue entries in favour of Respondents.

13. Afterwards, on 16.08.1983, the Commissioner, Kumaon dismissed the revision pending against the Expunction Order noting that the same was not maintainable in view of the fact that no provision provided for revision of an order passed under the Government Grants Act of 1895 as applicable to the then State of Uttar Pradesh vide amendment made in 1960. The relevant provisions after the 1960 amendment to the Government Grants Act of 1895 are as follows –

> **"2. (1) *Transfer of Property Act, 1882, not to apply to government grants.*- Nothing contained in the Transfer of Property Act, 1882, shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein, heretofore made or hereafter to be made, by or on behalf of the Government to or in favour of any person whomsoever; and every such grant and transfer shall be construed and take effect as if the said Act had not been passed.**
>
> **(2) *U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926 not to affect certain leases made by or on behalf of***

***the Government*.-Nothing contained in the U.P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926, shall affect, or be deemed to have ever affected any rights, created, conferred or granted, whether before or after the date of the passing of the, Government Grants (U.P. Amendment) Act, 1960, by leases of land by, or on behalf of, the Government in favour of any person; and every such creation, conferment or grant shall be construed and take effect notwithstanding anything to the contrary contained in the U.P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926.**

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

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

It must also be highlighted that the Respondents, against the aforesaid action of the Tehsildar wherein he expunged the revenue entries in favor of Respondents, preferred a contempt petition before the Allahabad High Court, which was dismissed in limine on 16.08.1986 after the concerned officials tendered unqualified apologies.

14. Aggrieved by the said order dated 16.08.1983 of the Commissioner, the Respondents filed a revision before the Board of Revenue, which was heard by a Single Member who vide its order dated 22.01.1993 (**hereinafter, 'Single Member's Order'**) set aside the Expunction Order. The Single Member's Order noted that the Expunction Order was not passed under the Government Grants Act of 1895 but under the applicable land revenue laws, making it susceptible to revisionary jurisdiction. It furthermore noted that no enquiry report was ever obtained nor was any opportunity given to Respondents for being heard while passing the Expunction Order.

15. Against the Single Member's Order, the District Magistrate of Nainital wrote a letter to the Board of

Revenue seeking permission to challenge the same through a writ petition and during the interregnum, the State filed a writ petition in 1996 against the Single Member's Order (**hereinafter, 'First Writ Petition'**). Meanwhile, the Board of Revenue acted on the abovementioned letter addressed by the District Magistrate of Nainital and constituted a Three Member Bench to scrutinise the Single Member's Order.

16. The Three Member Bench in turn vide its order dated 20.12.1996 (**hereinafter, 'Three Member Bench's Order'**) held that Single Member's Order was without any jurisdiction as no power for revision existed under the land revenue laws and also noted that the Expunction Order was passed under the Government Grants Act of 1895. It furthermore noted that the Collector had rightly issued the Expunction Order as the Respondents illegally obtained revenue entries in their favour in collusion with revenue officials after the expiry of the initial lease period of thirty years. Hence, it observed that the Suit Land stood automatically resumed in favour of the State after the expiry of the

lease period, and no notice was required to be given to the Respondents at the time of passing the Expunction Order. Against this Three Member Bench's Order, Respondents filed a writ petition in 1997 (**hereinafter, 'Second Writ Petition'**).

17. Afterwards, a review petition was filed before the Single Member of the Board of Revenue in view of the observations in the Three Member Bench's Order. Accordingly, the Single Member on 03.03.1997 directed that the review petition be placed before the same bench that rendered the Three Member Bench's Order. In turn, the said bench on 18.12.1997 is said to have passed an order stating that Three Member Bench's Order did not alter the Single Member's Order and directed that the review should be filed before the Single Member only. Though, it is stated by the Respondents that no such review proceedings took place as none of the parties pursued it any further and instead the matter was kept pending in the writ proceedings as noted above. However, it has come on record that a review was indeed filed by the Appellants, which was directed to be heard urgently

and later on was transferred to the revenue court of Additional Chief Revenue Commissioner, Nainital after the formation of State of Uttarakhand.

18. During the pendency of the aforesaid writ proceedings as well as the review before the revenue court, the District Magistrate passed orders dated 02.05.2001 and 21.05.2001 (**hereinafter, 'Restrain Orders'**) directing the Special Land Acquisition Officer and the concerned Tehsildar to restraint the Respondents from selling, transferring or mutating the Suit Land or any part thereof. Aggrieved by the said orders, the Respondents filed an injunction suit, but the same was dismissed on 06.06.2002 on account of being non-maintainable. Upon dismissal of the suit, the Respondents instead filed a revision petition before the Additional Chief Revenue Commissioner, who vide his order dated 22.07.2002, declared Restrain Orders as void and illegal. It also noted that the Single Member's Order had attained finality, the State recognised ownership of the Respondents as they granted them compensation for the land acquired by military authorities in 1963 and that the revenue entries

were longstanding in favour of the Respondents. It must be noted that the Appellants filed a writ petition against the order dated 22.07.2002 before the High Court (**hereinafter, 'Third Writ Petition'**).

19. Ultimately all three writ petitions were heard together by the High Court, which vide the impugned judgement dated 07.10.2005 in Civil Appeal No 4985 of 2009 decided the matter in favour of Respondents. The High Court noted that, *firstly* the predecessor of the Respondents validly got the approval of the Commissioner as required under the 1924 Lease Deed, which was reflected in the order dated 07.08.1980 passed by the Commissioner in the mutation proceedings. *Secondly*, the revenue entries have long been standing in favour of the Respondents since 1948 which reflects that they have been accorded the status of 'Bhumidhar'. Furthermore, it noted that these entries became final since the Appellants never initiated any proceedings for their correction, and these entries could not be deleted through an administrative order as done by the Expunction Order. Consequently, the Respondents' writ, i.e.

Second Writ Petition, was allowed while the remaining writ petitions filed by the Appellants were dismissed.

20. Interestingly after the High Court passed the impugned judgement dated 07.10.2005, the pending review before the revenue court of Additional Chief Revenue Commissioner, Nainital was decided in favour of the Appellants vide an order dated 21.10.2005 wherein the authority set aside the Single Member's Order and directed that in view of the Three Member Bench's Order, the Expunction Order must be complied with.

21. Consequently, the Appellants preferred review applications against the judgement dated 07.10.2005, which the High Court dismissed vide the impugned judgement dated 05.08.2006 in Civil Appeal No 4983 of 2009 wherein it was noted that no ground for review was made out by the Appellants and the observations of the order dated 07.10.2005 were reiterated. It also specifically noted that Expunction Order stood set aside in view of the Single Member's Order and that order dated 21.10.2005 was passed without any jurisdiction by

the Additional Chief Revenue Commissioner as the High Court already decided the matter vide judgment dated 07.10.2005. We must also hasten to add that during the hearing of the abovementioned review applications, the Additional Chief Revenue Commissioner tendered an apology via an affidavit stating that he had no knowledge that the High Court had already decided the pending writ petitions through its judgment dated 07.10.2005.

22. Again for ease of analysis, the key events in these proceedings are summarised as follows –

Expunction Order Proceedings and Restrain Orders' Proceedings	
Date	**Proceedings**
31.12.1981	Collector passed Expunction Order.
20.01.1982	In revision against Expunction Order, Commissioner, Kumaon passed an interim order directing that no revenue entries should be deleted
16.08.1983	Commissioner, Kumaon held that revision against Expunction Order was non-maintainable.
22.01.1993	Single Member's Order which set aside the Expunction Order. [*First Writ Petition against this order by State.*]

20.12.1996	Three Member Bench's Order held Single Member's Order to be without jurisdiction (*Based on this, it is stated that a review application was filed before the Single Member of the Revenue Board*). [*Second Writ Petition against this order by Respondents.*]
03.03.1997	Single Member of the Revenue Board directed that the matter be listed before the same bench which passed the Three Member Bench's Order.
18.12.1997	The said bench passed an order stating that Three Member Bench's Order did not alter the Single Member's Order and directed that the review should be filed before the Single Member only (*Pursuant to this review filed by State*).
02.05.2001 and 21.05.2001	Restrain Orders issued.
06.06.2002	Injunction Suit against the restrain orders dismissed as non-maintainable.
22.07.2002	Additional Chief Revenue Commissioner set aside the Restrain Orders in revision proceedings [*Third Writ Petition against this order by State*].
07.10.2005	Impugned Judgement by HC whereby Second Writ Petition preferred by the Respondents

	was allowed while the remaining petitions were dismissed.
21.10.2005	Review pending before the revenue court of Additional Chief Revenue Commissioner, Nainital was decided in favour of the Appellants.
05.08.2006	Review against the judgement dated 07.10.2005 dismissed (*It was held that order dated 21.10.2005 was passed without jurisdiction*).

A.3 THE RESPONDENTS' 1983 INJUNCTION SUIT PROCEEDINGS: CIVIL APPEAL NO 4988 OF 2009 AND CIVIL APPEAL NO 4984 OF 2009

23. The cause for the inception of these appeals arose when the Commissioner dismissed the revision against the Expunction Order as non-maintainable. Because of the said dismissal, the Respondents apprehended that the revenue entries in their favour would be struck off, and accordingly, they filed a suit praying for perpetual injunction restraining the Appellants from evicting the Respondents from the Suit Land as well as a mandatory injunction directing the Appellants to refrain from deleting or restoring the revenue entries in their favour.

24. The Trial Court decreed the said suit in favour of the Respondents vide its order dated 20.10.1984. The Trial Court made extensive reference to 1967 Eviction Suit proceedings and 1978 Mutation Proceedings to hold that Respondents became 'Sirdar' and later on 'Bhumidhar' legally and that Appellants have no claim of title over the Suit Land. The Appellants filed an appeal against the order dated 20.10.1984, which was dismissed by the First Appellate Court on 16.06.1986 on identical reasoning as given by the Trial Court. The First Appellate Court again highlighted the factum of longstanding revenue entries in favour of Respondents and the continued possession with them to uphold the order of the Trial Court. It also observed that the dispute in respect of the revenue entries should have been adjudicated by the competent revenue court instead of being decided by the Collector vide the Expunction Order.

25. The Appellants proceeded to file the second appeal before the High Court against the First Appellate Court's order, and the same was dismissed vide the impugned judgment dated

05.11.2004 passed in Civil Appeal No 4988 of 2009. While dismissing the second appeal, the High Court noted that the suit was filed within limitation and that the courts below have rightly held that Respondents have lawfully acquired the status of 'Sirdar' and later on that of 'Bhumidhar'. Against the said judgment dated 05.11.2004, the Appellants preferred a review petition, but the same was dismissed vide the impugned judgement dated 28.07.2005 in Civil Appeal No 4984 of 2009 on identical reasoning.

26. We again proceed to summarise the litigation history in a tabular format as follows –

1983 Injunction Suit Proceedings	
Date	**Proceedings**
22.08.1983	Injunction Suit imitated by the Respondents.
20.10.1984	Injunction Suit decreed in favour of Respondents by Trial Court.
16.06.1986	First Appellate Court dismissed appeal against order dated 20.10.1984.
05.11.2004	HC dismissed the Second Appeal against order dated 16.06.1986
28.07.2005	Review against judgement dated 05.11.2004 dismissed by HC.

A.4 THE 1982 LAND ACQUISITION PROCEEDINGS: CIVIL APPEAL(S) NO. 4989-4992 OF 2009

27. The commencement point for these appeals began when the state authorities issued a notification dated 13.04.1982 under Section 4 of the Land Acquisition Act of 1894 for acquiring land measuring 70 bigha 08 biswa for the construction of Model Industrial Training Institute. Out of the entire proposed acquisition, land measuring 11 bigha 06 biswa was part of the Suit Land. Subsequently, a notification dated 16.09.1982 under Section 6 of the Land Acquisition Act of 1894 was issued, possession was taken on 23.07.1983 and an award was also passed on 30.09.1985, but the Respondents were denied compensation on the ground that land belonged to the government. Aggrieved by the denial of compensation, the Respondents filed a reference which was decided in their favour on 21.02.2006 on the strength of impugned judgements in the abovementioned connected civil appeals which determined Respondents as lawful owners of the Suit Land.

28. The Appellants filed respective appeals before the High Court against the Reference Court's order, and the same was dismissed vide the impugned judgement dated 24.07.2008 in Civil Appeal(s) No 498-4992 of 2009 wherein the High Court again held in favour of the Respondents on identical grounds and granted compensation at the rate of Rs. 8 per square feet along with solatium and applicable statutory benefits.

29. To summarise these proceedings –

1982 Land Acquisition Proceedings	
Date	**Proceedings**
13.04.1982	Notification under Section 4 of the Land Acquisition Act, 1894 issued.
16.09.1982	Notification under Section 6 of the Land Acquisition Act, 1894 issued.
23.07.1983	Possession taken.
30.09.1985	Award published but compensation was not granted to Respondents.
21.02.2006	Reference filed by Respondents allowed and court granted them compensation as per award.
24.07.2008	HC via impugned judgement granted compensation at the rate of

	Rs. 8 per square feet along with solatium and applicable statutory benefits to Respondents.

A.5 CONTEMPT PETITION (CIVIL) NO 165-168 OF 2007 IN CIVIL APPEAL NO 4983 OF 2009

30. Respondents have initiated these contempt proceedings for violation of order dated 23.02.2007 passed by this Court directing parties to maintain the status quo. The Respondents contend that the Appellants have been interfering with their peaceful possession, especially in concern with the commercial activities conducted on the Suit Land. However, since we are disposing off the appeals finally, there is no need to deal with these contempt petitions.

B. CONTENTIONS

31. We have heard learned counsel for the parties and perused the documents produced on record. We would like to point out that during the course of arguments which went on for a couple of days, the bench as well as the counsel for the parties, readily agreed that the core issue for adjudication was in

respect of the status of the Respondents under the applicable tenancy law and whether the same entitled them for ownership of the Suit Land. It is in this context that we propose to consider the arguments raised by the parties.

32. Mr. Atul Sharma, learned counsel for the Appellants made the following contentions –

a) It was submitted that the Suit Land was given on lease to Mr. John Vaughn for the limited period of thirty years under the Government Grant Act of 1895 and as per the conditions stipulated in the 1924 Lease Deed, it was necessary to obtain a prior written approval or approval of the Deputy Commissioner, Nainital before the lease rights could be transferred in favour of the Respondents. Therefore, since no such approval was ever given nor produced before the courts during the proceedings below by the Respondents, it must be construed that the predecessor of Respondents, i.e. Manohar Lal was an illegal occupant when he was put into possession of the Suit Land on the basis of the Sale Deed. He vehemently argued that the Sale

Deed was null and void as the vendor himself had no ownership title which he could lawfully alienate;

b) It was argued that even otherwise the Respondents' status remained that of illegal occupants as the initial lease period ended in 1954 and since no renewal was granted by the State. Hence, it was submitted that the Suit Land stood automatically resumed in favour of the State after the expiry of the lease period;

c) The 1924 Lease Deed explicitly stated that there would be no application of tenancy law benefits as applicable to the lessees of the Suit Land. Furthermore, it was submitted that after the 1960 State amendment to the Government Grant Act of 1895, the applicability of the tenancy laws as well as Transfer of Property Act was retrospectively barred. Hence in effect, no tenancy rights were ever created in favour of Respondents, nor could they claim lawful tenancy by evoking the doctrine of holding over;

d) It was also argued that 1967 Eviction Suit and 1978 Mutation Proceedings never decided the issue

of ownership or tenancy status. Therefore, these proceedings cannot be treated to have decided the principal issues on merits.

e) It was also argued that mere longstanding entries in favour of Respondents would not be sufficient to establish the claim of ownership and that the same were made fraudulently in connivance with revenue authorities. In other words, mutation entries in no way confer the title.

f) Finally, the Courts or quasi-judicial authorities have merely followed each other without going into the root question as to how the Respondents claimed to have become the owner or 'Bhumidhar' over the Suit Land.

33. On the contrary, Mr. Harin P. Ravel, learned senior counsel for the Respondents initiated his arguments on the first day of hearing by submitting that the Respondents claimed ownership on two independent grounds, *firstly* through the Sale Deed and *secondly,* on the strength of status accorded under the applicable tenancy laws. However, on the final day of arguments, Mr. Ravel clarified the

abovementioned stand by stating that the Sale Deed pertained to sale of leasehold rights and not the sale of title or ownership rights. Therefore at present, the claim of the Respondents is actually based on the strength of status accorded under the applicable tenancy laws as we will note while reiterating Mr. Ravel's arguments which are as follows -

a) It has been submitted that there was no mandatory requirement of prior approval from the Deputy Commissioner at time of the execution of the Sale Deed. The Respondents have relied upon the decision in ***U.P. Avas Evam Vikas Parishad v Friends Coop. Housing Society Ltd.***[1] to contend that there is a distinction between the term 'approval' and 'permission' wherein when the former term is used, all actions hold good until they are explicitly disapproved. In other words, they contend that the Sale Deed must be treated as valid until there is an explicit refusal to grant consent for transfer of rights by the Deputy Commissioner.

[1] *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd* 1995 Supp (3) SCC 456.

b) It was also argued that even otherwise, permission or approval as required from the Deputy Commissioner was granted on 16.12.1948 as recorded in order dated 07.08.1980 passed by the Commissioner in the mutation proceedings. Therefore as the approval was validly granted, albeit after the Sale Deed was executed, the predecessor of the Respondents was rightly accorded the status of 'occupancy tenant' under the United Provinces Tenancy Act of 1939 (**hereinafter, '1939 Act'**), which superseded the conditions in the 1924 Lease Deed as well as provisions of the Government Grant Act of 1895. Furthermore, it was submitted that after notification dated 30.06.1969 was issued by the State, which extended the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950 to the Suit Land (**hereinafter, 'Zamindari Notification'**), the predecessor of Respondents became 'Sirdar' as per Section 131 as applicable vide Zamindari Notification. The relevant portion of the said notification is as follows –

> **"X-X-X-X**
>
> **130- Every person belonging to any of the following classes shall be called a**

bhumidhar and shall have all the rights and be subject to all the liabilities conferred or imposed upon bhumidhars by or under this Act, namely –

(a) every person who on the date immediately preceding the appointed day held land as-

(i) an occupancy tenant (ii) a hereditary tenant, or (iii) a lessee to whom the provisions of the Government Grants Act, 1895 apply	**Processing the rights to transfer the holding by sale**

(b) every person who acquires the rights of a bhumidhar under or in accordance with the provisions of this Act."

x-x-x-x

131. *Sirdar.* - Every person belonging to any of the following classes shall be called a sirdars and shall have all the rights and be subject to all the liabilities conferred or imposed upon sirdars by or under this Act, namely –

(a) every person who, on the date immediately preceding the appointed day held kind as-

(i) an occupancy tenant **(ii) a hereditary tenant**	**Not being a tenant referred to in clause (a) of Section 130.**

(iii) a grantee at favourable rate of rent

(iv) a lessee holding a lease under the provisions of the Government Grants Act, 1895 and having rights of hereditary tenant under the terms of the lease, but not possessing the rights to transfer the holding by sale,

(b) every person who is admitted as sirdar of vacant land under the provisions of this Act,

(c) a tenant in any of the 42 Buxari villages specified in the Annexure, appended hereto, who was recorded in Class X(*l*) in the Khatauni of the previous agricultural year, and

(d) every person who, in any other manner, acquires the rights of a sirdar under or in accordance with the provisions of this Act. X-X-X-X"

c) Extending the abovementioned argument, it is submitted that predecessor of Respondents made application for becoming a 'Bhumidhar' under the

applicable rules which is stated to be allowed. It is also stated that they paid twenty times the revenue for the Suit Land and accordingly were granted a 'Bhumidhari' certificate under Section 137 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Therefore to sum up, it was submitted that the entire chronological sequence as narrated above bears testimony to the logical progression of rights of the predecessor of the Respondents culminating into title as 'Bhumidhar' as per the object of the U.P. Zamindari Abolition and Land Reforms Act, 1950. This argument is further supplemented by stating that the Appellants have failed to produce anything on record to support the plea that the concerned revenue entries during this period have been made fraudulently or through suppression of any fact.

d) It was also submitted that Appellants have deliberately failed to take any steps to correct the abovementioned revenue entries, which carry the presumption to be correct in law, despite suggestions to the contrary by the adjudication authorities in multiple proceedings, including in the 1978 Mutation Proceedings. Therefore in effect, it is

stated by Respondents by relying on multiple decisions[2] that favourable orders passed in the erstwhile proceedings between parties have become final, especially in light of the fact that the Appellants never took steps to get them set aside by competent authorities.

e) It was argued that the Respondents have acquired rights over the Suit Land by way of acquiescence and the conduct of the Appellants wherein it is alleged that in addition to failure to initiate proper proceedings to evict them, the Appellants accepted the enhanced rent, raised revenue demands and allowed them approvals for further development of the Suit Land.

f) Finally, it has been argued that the lease did not end after the expiry of the initial thirty year period in June 1954 and instead the lease got extended on an yearly basis on account of application of Section 116 of the Transfer of Property Act of 1882, through which tenancy has

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[2] *Smith v East Elloe Rural District Council* [1956] 1 All ER 855; *State of Punjab v Gurdev Singh (*1991) 4 SCC 1, para 8-9; *State of Kerala v M.K. Kunhikannan Nambir Manjeri Manikoth Naduvil* (1996) 1 SCC 435, para 7-8; *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Pvt. Ltd.* (1997) 3 SCC 443, para 17-18.

been lawfully continued by holding over on account of continuous possession by Respondents. Reliance was placed on the decision rendered in ***State of Uttar Pradesh v Zahoor Ahmad***[3] to argue that Section 116 of the Transfer of Property Act of 1882 would be applicable notwithstanding the 1960 State amendment to the Government Grant Act of 1895 and the fact that predecessor of Respondents deposited enhanced rent as per the 1924 Lease Deed which was never rejected by the Appellants.

C. ANALYSIS

34. Before we analyse the rival contentions raised by the parties, it would be appropriate to broadly highlight the issues which arise for our consideration –

i. Did the Respondents' predecessor-in-interest purchase ownership rights or leasehold rights from Mr. John Vaughan?

ii. In case of the latter, the next question that arises is whether the leasehold rights stood legally transferred to the predecessor of Respondents as

[3] *State of U.P. v. Zahoor Ahmad* (1973) 2 SCC 547.

per the conditions of the 1924 Lease deed, which was governed under the Government Grants Act of 1885?

iii. If the leasehold rights cannot be held to be validly transferred under the 1924 Lease Deed, whether the same stood determined at the time of execution of Sale Deed because of violation of the stipulated conditions?

iv. If the abovementioned question is answered negatively, did the 1924 Lease Deed stand determined at the expiration of the initial lease period of thirty years?

v. If the 1924 Lease Deed stood determined after the initial lease period of thirty years, whether the Respondents are entitled to seek protection of holding over of the lease under Section 116 of the Transfer of Property Act of 1882?

vi. Alternatively, could the lease ever deemed to have been subsisted because of the doctrine of acquiescence and through the conduct of Respondents? Furthermore, if the same could

accord them any benefit under the Zamindari Notification?

vii. Regardless of the fact that the lease deed is deemed to have subsisted, was it possible for predecessor of Respondents to be accorded the status of 'Occupancy Tenant' under the 1939 Act, which resulted in them being subsequently accorded the status of 'Sirdar' under the Zamindari Notification?

viii. Furthermore, could the predecessor of Respondents have been accorded the status of 'Sirdar' through any other alternate method as indicated under the Zamindari Notification? In other words, did the Respondents' predecessor obtain status as 'Sirdar' on account of being recorded as a 'hereditary tenant' or a 'government lessee' as per Section 131 of the Zamindari Notification?

C.1 SALE OF OWNERSHIP RIGHTS OR LEASEHOLD RIGHTS

35. At the outset, it is iterated that during the oral arguments, the Respondents have taken the stand that the Sale Deed actually pertained to sale of

leasehold rights and not of title per se. However, it is pertinent to mention that their stand has been inconsistent regarding this issue in the courts below and even the High Court vide its impugned decisions have given parallel findings regarding the nature of the Sale Deed.

36. In the impugned judgement 07.05.2005, which arose from the Expunction Order Proceedings, the High Court noted –

> **"The respondents are the recorded Bhumidhar of the land in question which is evident from the khatauni of 1401 F- 1406 F. The land was leased out to Mr. John Vaughan on 20.6.1924 who sold the land to Sri Manohar Lal vide sale deed dated 117 .11.194 7 and thereafter the land was recorded in the name of Sri Manohar Lal and on his death his successor Sri Ravi Kumar and Virendra Kumar. They are continuously recorded as Bhumidhar of the land in question. The Chief Revenue Commissioner also held in his judgment that from the order dated 20.9.1999 of Additional District Magistrate (Land Acquisition) Lucknow and from the G.O.No. 376 dated 16.5.2002 issued by**

the Secretary, Uttaranchal Government all land acquisition proceedings in respect of the land in question have come to an end and the Government has ordered that the land be kept in the ownership and possession of the Bhumidhars i.e . Sri Ravi Kumar and Virendra Kumar."

(Emphasis Applied)

On the contrary, in the impugned judgement 05.11.2004 which arose from the 1983 Injunction Suit, the High Court noted –

"In view of the amended section 131 of U.P.Z.A. & LR. Act, a lease holder would become a Sirdar on the date of enforcement of the Act viz. 1. 7.1969. <u>The plaintiffs' predecessor Sri Manohar Lal got transferred the lease existing in the name of Mr. John Vaughan with the permission of the Commissioner Kumaon and he was in possession in July 1969 on the land in suit.</u> Thus from the evidence on record it is established that the plaintiffs are the Bhumidhar, and are in possession over the land in dispute and there is no material error in the finding arrived at by both the courts below."

(Emphasis Applied)

37. Therefore, the High Court while deciding the issue of ownership in favour of Respondents on the strength of the Sale Deed, have come to different conclusions as such to the nature of the instrument. In this respect, our attention is also drawn towards the contrary stands taken by the Respondents in their pleadings which have been brought on record. In the plaint filed by them in 1983 Injunction Suit, the Respondents claim to tenure holders who were later accorded the status of 'Bhumidhar' on the basis of Zamindari Notification. On the other hand, in the Second Writ Petition, Respondents stated that the Sale Deed was actually in respect of the title per se.

38. Nevertheless, even if the clarification on behalf of Respondents which is taken for the first time at this stage is allowed, we must note that the tenor of the Sale Deed completely contradicts the said modified stance. The relevant portion of the Sale Deed is as follows –

> **".....NOW THIS DEED WITNESSETH That in consideration of the sum of Rupees Fifty Five Thousand Rs.55000/- paid by the vendee to the vendor in the**

manner following i.e., Rs.5000/- five thousand acknowledged and Rs.20000/- Twenty Thousand paid in cash before the Sub. Registrar. Rs.20000 by cheque 16124 on Imperial Bank Nainital dated the 17th November 1947 Rs.5000/- five thousand by cheque No. 16125 on the same Bank dated the 10th December 1947 which cheques have been handed over to the vendor before the Sub Registrar to day and the balance of Rs.5000/- five thousand to be paid by the vendee when the garages are vacated by the present tenants whom the vendor undertakes to vacate by the end of this month set forth above is acknowledged in full, the vendor for himself, his executors, administrators and assigns doth hereby sell, transfer, convey and assign unto the vendee the aforesaid plot of land in its entirety containing by admeasurements 28.165 acres of land more fully described at the foot of THESE PRESENTS with all residential and other buildings therein standing and the boundary wall, tank, garages and out houses together with all trees, plants, shrubs, crops and all agricultural implements and cattle as per list handed over to the vendee and all surface rights, lights, water & other rights easements to have to hold and to enjoy peaceably and for ever without any let or hindrance from the vendor or any one claiming through him or independently. It is certified by These Presents that the possession of the premises has already been made over to the vendee whose

name has already been mutated in the Government records in place of the vendor aforesaid. It is further certified that the land and premises hereby sold are absolutely free from all liens and charges save and except the yearly Government lease rent of Rs.183/6/4. The Vendor covenants with the vendee to compensate and save from harm the vendee his heirs, executors and assigns against any loss or damage that he might suffer due to any defect in the title of the vendor to sell the premises hereby transferred or to any part thereof……."

(Emphasis Applied)

These recitals of the Sale Deed highlight that the relationship between Mr. John Vaughn and Mr. Manohar Lal seemed more akin to that of a vendor-vendee in a title sale than that of the sale of leasehold rights.

39. We must again take note that in respect of the two parallel findings given by the High Court, the Respondents for the first time before this Court have given up the finding which treated the Sale Deed as a sale of title. However, we must note that both these parallel findings by the High Court have been without any serious examination of the nature of the

Sale Deed itself. In our opinion, High Court erred in respect of these findings and as the same was essential to determine the present dispute on merit, we deem it a fit case to exercise our power of remand.

40. Additionally, despite these findings being a serious lacuna for us to reach a conclusive decision, the Appellants have raised no serious objection to the modified stand taken by the Respondents wherein they stated that the Sale Deed was in respect of leasehold rights only. However, we would like to highlight several other aspects of the present disputes which further warrant the exercise of the power of remand.

C.2 DETERMINATION OF THE 1924 LEASE DEED: THE BREACH OF THE CONDITION OF PRIOR APPROVAL AND EXPIRY OF INITIAL LEASE DEED PERIOD

41. During the course of hearing, the bench raised a query in respect of the earliest stand taken by the Appellants on the aspect of breach of clause (e) of the 1924 Lease Deed in respect of prior approval. In response to the same, our attention was towards the

plaint filed by the State in the 1967 Eviction Suit, the relevant part thereof is as follows –

> **"X-X-X-X**
>
> **3. That on or about 21-8-1947 the lease, Mr. John Vaughan Transferred the property in suit to the defendant no.1 and put him in possession of the same without the written approval of the Deputy Commissioner, Nainital, an application was no doubt made to and approved by the then superintendent of Tarai and Bhabar Govt. Estates, but the orders of the Superintendent T.& B. Govt. Estates, sanctioning and approving the transfer were without any right or authority. The name of the defendant no. 1 was ordered to be entered in the revenue records by the superintendent Tarai and Bhabar Govt.Estates and entries were made accordingly. But these entries were not in order and according to law or otherwise correct and no presumption of correctness flows from them.**
>
> **The breach of the covenant by the lease has given a right to the plaintiff of re-entry and as also a right to recover damages.**
>
> **4. That on the expiry of the original lease on 20th June 1954 the defendant No. 1 deposited rent at the enhanced rates and applied for a renewal of the lease to which he was not entitled.**

5. That the approval of the superintendent, Tarai and Bhabar Govt. Estates; The entry in the revenue records on the payment of the rent do not in any way confer the rights of a lease on the defendant no. 1 whose possession continues to be wrongful from its very inception and the plaintiff is entitled to recover the possession of the premises in suit and also damages.

X-X-X-X"

42. Hence, it can be safely deduced that the Appellants did contend the issue of prior approval from the initial stage itself. Apart from the said eviction suit, two other proceedings need to be highlighted, i.e. consolidation proceedings which occurred between 1959-1960 and acquisition proceedings for a portion of land initiated by the military authorities in 1963. In respect of the consolidation proceedings, we cannot deduce the stand taken by State as no document or order in respect of the same has been produced before us. However in respect of the acquisition, order dated 22.11.1965 passed by the concerned Land Acquisition Officer, which granted compensation to the predecessor of Respondents has been brought

on record wherein it must be noted that compensation was granted on the basis of revenue entries and without any serious examination of the validity of the same. Hence, both these proceedings cannot be treated as an admission of validity of revenue entries or as accepting the waiver of breach of the condition in respect of prior approval from the Deputy Commissioner.

43. Coming back to the aspect of prior approval, the Respondents drew our attention towards the vernacular copy of the order dated 07.08.1980 passed by the Commissioner, Kumaon, in the mutation proceedings to support the plea of grant of valid approval. The relevant part of the said order in the vernacular language is as follows –

> **"Mool leejdhari shri John Vaughan ko Upayukta ki anumati 2009 se lease hastantaran ke adhikar prapt the jo anumati missal 14/23 dinank 6.12.48 dwara unhone prapt kar li thi aur jiske adhar par malkagjatomein 1948 mein sanshadhan bhi ho gayatha"[4]**
>
> [**Broadly on translation in English, it would read**: "*The original lease holder Sri John Vaughan had rights to transfer with*

the permission of Deputy Commissioner which permission he had received vide File 14/23 dated 6.12.48 and on the basis of which amendments were made in the Revenue papers in 1948."]

The following order makes it apparent that the approval from the appropriate authority as per the lease deed, i.e. Deputy Commissioner was granted only on 06.12.1948 which is more than a year later than the Sale Deed.

44. On the contrary, as per the recitals contained in the Sale Deed as extracted in **Para 4** of this judgment, it is mentioned that due permission was obtained and the consequent mutation was effected in the office of Superintendent, Tarai and Bhabar, Nainital before its execution. Hence, this abovementioned recital leads to immense confusion as to whether any approval was ever granted at the first instance. Even if such approval was granted, no indication is given as such to actually who granted the approval and if it is assumed that a subordinate authority granted the approval, no statutory instrument is produced before us to highlight whether this delegation was possible or not. The

subordinate courts as well as the High Court have merely relied on the order dated 07.08.1980 passed by the Commissioner, Kumaon to come to a sweeping conclusion that a valid approval existed in favor of the predecessor of the Respondents despite glaring contradictions which were on the face of the record. Consequently, on this issue of breach of the conditions of the 1924 Lease Deed, we again fail to arrive at a decisive conclusion as neither the original record nor its true copies have been placed on record of this Court or the High Court as well as the other forums.

45. Finally, while the Respondents have argued that until there existed an express refusal by the Deputy Commissioner for sale of leasehold rights, the sale was valid especially in light of post facto approval granted by the Deputy Commissioner as has been recorded in order dated 07.08.1980 passed by the Commissioner. They have relied on the following observation in ***U.P. Avas Evam Vikas Parishad***[5] **–**

[5] *U.P. Avas Evam Vikas Parishad* (n 1).

"6. This Court in *Life Insurance Corpn. of India* v. *Escorts Ltd.* [(1986) 1 SCC 264], considering the distinction between "special permission" and "general permission", "previous approval" or "prior approval" in para 63 held that: "We are conscious that the word 'prior' or 'previous' may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1) of the Act." Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act. As to the word 'approval' in Section 33(2)(*b*) of the Industrial Disputes Act, it was stated in *Lord Krishna Textiles Mills Ltd.* v. *Workmen* [AIR 1961 SC 860 : (1961) 1 LLJ 211] , that the Management need not obtain the previous consent before taking any action. The requirement that the Management must obtain approval was distinguished from the requirement that it must obtain permission, of which mention is made in Section 33(1).

7. It is seen that the approval envisaged under Exception (*iii*) of Section 59(1)(*a*), is to enable the Parishad to proceed further in implementation of the scheme framed by the Board. Until approval is

> **given by the Government, the Board may not effectively implement the scheme. Nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval get validated and the publications made under the Act thereby become valid."**
>
> (Emphasis Applied)

In this respect, we would like to hold that reliance on the same is misdirected for the reason that the interpretation of a contractual condition as contained in the present lease deed stands on a different footing than the interpretation of statutory provisions which were the subject matter in the case of ***U.P. Avas Evam Vikas Parishad.***[6]

46. It is now settled law that any contractual term or condition is to be interpreted as per the natural and ordinary meaning appended to the language used by the parties unless the same leads to absurdity.[7] In the present case, condition (e) of the 1924 lease deed makes it clear that no rights in the Suit Land are allowed to be transferred or created

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[6] *U.P. Avas Evam Vikas Parishad* (n 1).

[7] *M.O.H. Uduman v. M.O.H. Aslum,* (1991) 1 SCC 412, para 14; *Investors Compensation Scheme Ltd vs. West Bromwich Building Society,* [1998] 1 All ER 98.

"*without the written approval of the Deputy Commissioner of Nainital*" which bears the crystal clear requirement of the prior assent needed from the Deputy Commissioner. This interpretation is also supported from the fact that leases under the Government Grants Act of 1985 are to be strictly constructed as per the terms of the grant, regardless of any other provisions of the law as noted in ***State of Uttar Pradesh v Zahoor Ahmad***[8] which states that –

> **"16. Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of sections 2 and 3 of the Government Grants is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law."**

[8] *State of U.P.* (n 3).

47. Additionally, the bench in ***U.P. Avas Evam Vikas Parishad***[9] furthermore relied on the decisions rendered in ***Life Insurance Corpn. of India* v. *Escorts Ltd.***[10] and ***Lord Krishna Textiles Mills Ltd.* v. *Workmen***[11], wherein the terms 'permission' and 'approval' were used within same statute which necessitated the distinction between these terms. Hence, the present case is distinguishable on this aspect also, as no such distinction is warranted in the case at hand.

48. Even otherwise, the High Court and other authorities have proceeded on the premise of a valid approval. They are completely silent on whether the post facto approval could be granted and if so, who granted such approval. Again, no records are produced and its not known whether any approval was ever actually granted and when or by whom?

49. In our opinion, a reasoned finding on both the nature of Sale Deed as well as whether the same was violative of conditions of the 1924 Lease Deed goes to the heart of the present dispute, because of

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[9] *U.P. Avas Evam Vikas Parishad* (n 1).
[10] *Life Insurance Corpn. of India* v. *Escorts Ltd.* (1986) 1 SCC 264.
[11] *Lord Krishna Textiles Mills Ltd.* v. *Workmen* AIR 1961 SC 860.

which the issue of determination of lease remains unanswered. Hence, in light of the same we must also note that the Respondents' claim on the strength of doctrine of holding over or through doctrine of acquiescence as well as the reliance on the conduct of Appellants, remains in doldrums as the same are hinged on the finding in respect of determination of lease. However, before moving forward, we must highlight another aspect which requires application of mind by the High Court. We observe so for the reason that decades have passed in litigation, and it would be extremely iniquitous to remand the case to revenue authorities at such a belated stage.

C.3 RESPONDENT'S TITLE CLAIM THROUGH TENANCY LAW: THE CONUNDRUM OF VALIDITY OF REVENUE ENTRIES

50. In the present case, revenue entries starting from 1948 have recorded the Respondents' predecessor as 'Occupancy Tenant' on the strength of which they were accorded the status of 'Sirdars' vide the Zamindari Notification. Consequently, this led to predecessor of Respondents being accorded the status of 'Bhumidhar' as per the applicable

statutory scheme. Since these entries carry the statutory presumption of correctness in their favour, we must address them.

51. However, before delving into the issue of the tenancy status of the Respondents, it would be appropriate to highlight the legislative history of the term 'Occupancy Tenants'. Under the U.P. Zamindari Abolition and Land Reforms Act, 1950[12], it is assigned the same meaning as employed in the 1939 Act which is as follows-

> **28. Occupancy tenants - Every tenant, who is not a fixed rate tenant or an exproprietary tenant and who, at the commencement of this Act, has acquired a right of occupancy under the Agra Tenancy Act, 1926, or any previous enactment relating to Agra, or under the Oudh Rent Act, 1886, shall be called an occupancy tenant, and shall have the rights and be subject to the liabilities conferred and imposed on occupancy tenants by this Act.**

Hence by virtue of this definition, 'Occupancy Tenants' are the ones who have acquired a right of occupancy under the Agra Tenancy Act of 1926 and its legislative pre-enactment, i.e. Agra Tenancy Act

[12] Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, s 3(26).

of 1901 or the Oudh Rent Act of 1886. Nevertheless, this provision only confirms the occupancy rights which were enjoyed at the commencement of the 1939 Act. Therefore, new occupancy tenancies cannot be created even if it is assumed that all the concerned parties consented to the same.[13]

52. Even assuming arguendo that Mr. John Vaughn was deemed to have been granted status as an 'Occupancy Tenant' under the 1939 Act, it should be noted that his status as an 'Occupancy Tenant' cannot be transferred to the predecessor of Respondents in light of Section 33 of the 1939 Act which is as follows –

> **"33. Interest of other tenants. - (1) The interest of a tenant holding on special terms in Oudh, of an ex-proprietary tenant, of an occupancy tenant, of a hereditary tenant, and of a non-occupancy tenant is heritable, but is not transferable otherwise than in accordance with the provisions of this Act.**
> **(2) Nothing in the foregoing provisions of this section shall render illegal:**

[13] Shambhu Dayal Singh, *The Law of Tenancy in U.P.* (3rd edn, Empire Press, 1949) 131.

(a) a sub-lease of a holding as hereinafter provided.

(b) a sale of the interest of a tenant under the provisions of Section 251.

(c) a release or transfer of an interest in favour of a co-tenant:

Provided that no person shall be deemed to be a co-tenant notwithstanding that he may have shared in the cultivation of the holding, unless he was a co-tenant from the commencement of the tenancy, or has become such by succession or has been specifically recognised as such in writing by the land-holder."

The only exception to the bar on transfer of status as an 'Occupancy Tenant' in the abovementioned section is under sub-clause (b) of clause (2) wherein reference is made to Section 251 which in turns deals with sale of occupancy rights when the tenant himself is facing the execution of a decree for arrears of rent. As no factual situation has been indicated stating that Mr. John Vaughn had suffered a decree for rent arrears, we are unsure as to how any transfer of 'Occupancy Tenant' status in favour of the predecessor of Respondents was sustainable. This confusion

further indicates that the predecessor of Respondents could not have been accorded the status of 'Sirdar' under the Zamindari Notification on the strength of revenue entries which recorded him as an 'Occupancy Tenant'.

53. Hence, the High Court again made sweeping remarks in respect of the tenancy status without any serious consideration as to whether the same were legally tenable or not. We must highlight that no reference is made to any proceedings wherein the status as an occupancy tenant was ever granted to the predecessor of the Respondent and, if so, how and when the same culminated into the status of 'Sirdar' under the Zamindari Notification. These proceedings which ultimately led to the grant of status of 'Bhumidhar' in favour of the predecessor of Respondents for the first time, could have potentially served as the litmus test for the validity of these revenue entries.

54. Additionally, we must also take note of the finding of the High Court via its impugned judgement dated 07.10.2005 wherein it is held that predecessor of Respondents was rightly accorded

the status of 'Sirdars' under the Zamindari Notification on the ground that they were lease-holders governed by the Government Grants Act of 1895. However, this finding again appears unsustainable because there is no proper factual analysis as to when the 1924 Lease Deed stood determined or whether the same subsisted after the initial period of thirty years.

55. Before parting, we must also point out that initially the 1939 Act was not applicable to the Suit Land as the concerned area where it is situated was excluded from the purview of the 1939 Act, as it was specifically included in the First Schedule. Any future application of the 1939 Act in respect of the Suit Land was supposed to be through a separate notification, but the same has again not been produced in these proceedings or before any forum, which further dissuades us from rendering any final opinion at this stage.

56. The same aspect has been highlighted by Appellants who contend that the area in which the Suit Land is situated was governed by the Kumaon Tenancy Rules of 1918. On the other hand,

Respondents have produced on record a - G.O. No. 5678/ 1-B-1212~B-19 dated the 30.04.1948 titled 'Tarai and Babbar Government Estates (Kham norms), Revised norms' issued by Revenue (B) Department which notes as follows –

> **"I. Tenants on admission on have hereditary rights as defined in section 29 on the united provinces Tenancy Act expect in the 55 Buxeris village mentioned in the first schedule to the Act."**

This notification indicates the possibility of hereditary rights being accrued on predecessor of Respondents under the 1939 Act but again, we are constrained to give any finding on the same because of the lack of proper documents on record to ascertain the tenancy status of the Respondents. Hence, on this ground also the present appeals are liable to be remanded back so that the relevant statutory notifications, original records can be placed before the High Court to enable it to determine the applicable tenancy law and their impact on the alleged rights of the Respondents.

D. Conclusion

57. We are conscious of the fact that these appeals have been pending before this Court for more than 15 years. In normal circumstances, we would have ventured to decide the issues ourselves but in light of the abovementioned observations and dearth of appropriate records, we are constrained to hold that ownership rights in respect of an immovable property cannot be decided casually. We are actually left with no other option but to remand these appeals back to the High Court for effective adjudication on merits.

58. Our hands are further tied because of the fact that the ownership of certain portions of the Suit Land has apparently changed hands on account of subsequent sale by the Respondents. Furthermore, we must also note that the value of the Suit Land has increased exponentially during the entire period of litigation and the relevant parties have also done certain valuable developments. Any decision now cannot be based on conjectures and surmises or on the basis of mere guesswork. Hence, we are reluctant to give a final opinion on the matter until

the Court is satisfied on the basis of the entirety of documents which showcase how the ownership or possessory rights were created on the Suit Land.

59. There are indeed compelling circumstances which have been left unanswered by the courts below, because of which determination of several factual issues have been left in limbo. Therefore, in light of the peculiar situation, we find it expedient to remand the present appeals back to the High Court for fresh adjudication on the issues formulated in Para 34 of this judgement and the observations made above. However, we hasten to add that these observations may not to be treated as final determination on the merits of the dispute.

60. Furthermore, in light of the long-drawn pendency of these disputes, we request the High Court to take up these matters at the earliest and dispose of the same as early as possible, preferably within a period of upcoming 12 months. However, all the original records, including revenue entries as well as that of the office of Deputy Commissioner, Nainital may be requisitioned. In this regard, we direct the Appellant State to produce entire records

and notifications before the High Court and render assistance in the early disposal of these matters.

61. Consequently, these appeals are allowed in part; the impugned judgments of the High Court are set aside, and the matters are remanded to the High Court for a fresh adjudication. It is made clear that casual findings/observations made by Revenue Authorities or the Civil Court shall not be accepted at their face value unless the High Court is satisfied on a thorough inspection of the original or certified copies of the relevant record. The parties are directed to keep status quo until the matters are decided afresh by the High Court.

62. Ordered accordingly. Pending applications, if any, are also disposed of in above terms.

..... J.
(SURYA KANT)

..... J.
(J.K. MAHESHWARI)

NEW DELHI
DATED: 18.05.2023