

CASE NO.:
Appeal (civil) 1273-1275 of 1998

PETITIONER:
State of U.P. & Anr.

RESPONDENT:
Satya Narain Kapoor (Dead) by Lrs. & Ors.

DATE OF JUDGMENT: 26/10/2004

BENCH:
CJI R.C. Lahoti & Ashok Bhan.

JUDGMENT:
J U D G M E N T

WITH
IA Nos. 9-11/1999 IN CA Nos.1273-1275/1998
WITH
C.A. Nos. 1276-1278/1998
C.A. Nos. 1279-1281/1998
C.A. No. 1728/1998
C.A. No. 1886/1998
C.A. No. 2596/1998
W.P. No. 163/1999
C.A. No. 6957/2004
(Arising out of SLP (C) No.13096/1999)

R.C. LAHOTI, CJI

Leave granted in SLP (C) No. 13096/1999.

In one of the prime commercial areas of the city of Allahabad, known as Chowk Sabzi Mandi, there are situated two shops described as Nazul Shop Nos. 195 and 196 the area whereof is 63 sq. ft. each.

We are not concerned with the earlier controversy relating to the allotment and several claimants to the shops. The fact remains that on 30.10.1991, the District Magistrate directed the Nagar Mahapalika to have the shops vacated so as to be available for fresh allotment through public auction inasmuch as the shops were continuing in illegal occupation — shop No.195 in the occupation of Mohammad Ali and shop No.196 in the occupation of Anoop Kumar son of Satya Narain Kapoor.

Three writ petitions came to be filed in the High Court of Allahabad. Writ Petition No. 32605 of 1991 was filed by Satya Narain Kapoor alleging that he was the one inducted into possession of shop No.196 in the year 1973 by the allottee of the shop Late Wahidan Bibi who died on 27.12.1984 without leaving any heir upon whom her rights could devolve.

According to Satya Narain Kapoor he was the person entitled to the allotment of the shop. On 12.9.1991, an interim order was passed by the High Court staying his eviction from the shop No.196. Satya Narain Kapoor died and in his place the name of his son Anoop Kapoor has been substituted.

Writ Petition No. 20430 of 1992 was filed by one Rafiqunnisa claiming herself to be the only heir of Smt. Wahidan Bibi — the original allottee and hence entitled to the rights of the late allottee and also mutation in her favour on both the shops.

Writ Petition No. 16325 of 1994 was filed by one Mohammad

Ali in respect of Shop No.195 wherein he claimed rights under a Will in his favour also submitting that there was a partnership entered into on 17.8.1984 between Smt. Wahidan Bibi and himself and so he was entitled to continue in possession of the shop No.195 as lessee.

Thus, it would appear that the controversy arising for decision before the High Court in all the three writ petitions which were connected with each other was a very limited controversy as to who is entitled to substitution in place of the original allottee and continue or remain in possession of the two shops and this controversy was required to be resolved by reference to the provisions contained in the Rules for the Grant of Leases of Subzimandi Shops in the Allahabad District (Nazul shops). These rules are contained in the Government Order No.2547/XI, dated 16th July, 1940, as amended by Government Order No. 789-A/XI-77-88, dated 17th February, 1942.

The three writ petitions which appeared to be raising a petty dispute relating to allotment or right to occupy two small shops took a serious turn on Smt. Rafiqunnisa, the petitioner in Writ Petition No. 20430 of 1992, moving an application for withdrawal of her petition having been rendered infructuous. It was pointed out that while the three writ petitions were pending, on application of Smt. Rafiqunnisa to the Joint Secretary, State of U.P., the latter had agreed for converting nazul shop Nos. 195 and 196 as freehold and then being entered in her name. Communications to this effect were made by the Joint Secretary on 14.10.1996 followed by subsequent letters by other officials. The other two writ petitioners namely Satya Narain Kapoor and Mohammad Ali opposed the prayer made by Smt. Rafiqunnisa and then the centre of controversy shifted to elsewhere. Ever since before Smt. Rafiqunnisa moved the application based on subsequent event dated 14.10.1996 the stand of the State of U.P. as taken in its counter affidavits in all the three writ petitions was that they were liable to be dismissed as none of the writ petitioners had the status of an eligible person to claim allotment under the Rules and the learned Chief Standing Counsel appearing for the State of U.P. continued to take the same stand till the end.

It appears that during the course of hearing the Division Bench, seized of the hearing of the writ petitions, thought that there was an element of public interest involved inasmuch as the property of the State known as nazul land was being loitered away by converting the allotments into freehold much to the prejudice of the interest of the State. The Division Bench took note of the fact that Satya Narain Kapoor and Mohammad Ali, the two writ petitioners in their respective writ petitions, had started staking claim for the grant of freehold rights claiming parity with Rafiqunnisa. The shift of emphasis in the controversy is reflected in the judgment of the High Court from the following passage which follows soon after factual narration of the controversy between the private parties:

"The narration of the facts as above shows that the case on the both sides have seen changes during the pendency of these petitions. The cases originally raised issues on who is the rightful person to receive an allotment of the nazul shops under the Nazul Shops Rules. The cases have closed at the close of arguments with the note that some have been granted 'freehold' rights and some have been left out including two of the petitioners, who now contend that they are also entitled to 'freehold' rights like the others. Those who have not received the 'freehold' rights on nazul properties in the present set of cases are Satya Narain Kapoor (Writ Petition No. 32605 of 1991) and Mohd. Ali (Writ Petition No.16325 of 1994).

The person who has received freehold right is Rafiqunnisa. There is a rivalry between them on who should be granted 'freehold' rights. Three petitioners, in their respective three petitions would like to possess two nazul shops No.195 and 196. Between two shops there are three contenders. This situation cannot be unraveled by the High Court on who will be the rightful contender or who may be a better person to receive an allotment amongst three persons with only two shops available.

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

Now the perspective of the cases are changing."

The Division Bench noted that the issue initially arising for decision was: Are the petitioners entitled to receive a grant as a lease of shops which are nazul properties and governed under the Nazul Shop Rules? And, the answer of the State administration was: 'No'. The Division Bench observed that the subsequent allotment as freehold in favour of Rafiqunnisa was 'managed'. And this led the Division Bench on embarking upon very wider issues of far reaching implications. Some of the questions which the Division Bench entered into examining are noted in the judgment itself; to wit, they are: (1) What is the concept of nazul properties or estate? (2) What are the laws which relate to government grants? (3) How did the State come to possess the land which it could made available as a grant on certain terms and conditions? (4) Who possesses lands for which there is no owner and lands which are heirless?

A bare reading of the impugned judgment shows that at no point of time the three writ petitions seeking enforcement of certain private rights were converted into public interest litigations nor did the Court suo motu or otherwise initiate and register any independent proceedings by way of public interest litigation putting the State or anyone else to notice of its desire of enlarging the scope of hearing in writ petitions and entering upon larger issues of general importance, public significance and far reaching implications. The Division Bench seems to have just diverted the course of hearing as if on to a highway, abandoning the bye lanes, and, enlarging the dimension of hearing without specifically putting the parties and others concerned on notice. Certain queries seem to have been posed to the learned Chief Standing Counsel for the State of U.P., who, obviously for want of instructions, pleadings and documents, felt handicapped in responding. This state of affairs is writ large from the following passage occurring in the judgment:

"On one aspect there is no issue that these shops are on nazul land and nazul property originally managed by the then Municipal Board as managers to the State of U.P. Specifically sight of the rules ought not to be forgotten. The rules are known as "Rules for the Grant of Leases of Sabji Mandi Shops in the Allahabad District (Nazul Shops). How to deal with nazul shops, in context, was not in issue when the matters were argued between the petitioners and the State. It was a straight case of the rival contentions being examined on the

interpretation of the Nazul Shop Rules. The applicability of these rules was accepted. In the second innings of the arguments and the emerging record no one could explain how nazul properties, the nazul shops, were being shorn of its characteristics as nazul and were being treated as (a) not being nazul and (b) freehold. Even upon instructions, learned Chief Standing Counsel fairly contended that besides pleading the original case that Nazul Shop Rules apply he has not received instruction on how the rules, now may not apply. Clearly there is confusion amongst the administration on how to deal with nazul property. There does not appear to be any clear concept on the characteristics of nazul properties."

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The issues before the Court now are not who is to be evicted or who is unauthorized or who is entitled to allotment or the grant of a lease; but, clearly, one of alienation of nazul property the question to be answered before the Court is what is the concept of the estate called 'nazul'. No party, either on behalf of the petitioners or the State respondents has aided the Court by submitting on this aspect, though initially both sides referred to the Nazul Shop Rules and the Nazul Manual in great detail.

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The Court had asked the petitioners and the respondents alike that they must at least address the Court on what the origins of their rights may be in either seeking a claim or for that matter defeating a claim on a nazul estate. The Court also required the parties to address the Court on how the State has the sanction to deal with nazul properties and under what law. The Court is disappointed to note but is obliged to record that no assistance came from any quarter."

(emphasis supplied)

However, the learned Chief Standing Counsel for the State did make available whatever records he could produce off the hand and as could be made available by the officials of the State.

In the abovesaid state of affairs and backdrop of events it seems that the Division Bench embarked upon research of its own and constructed the judgment from whatever material it could collect. The Division Bench traced the history of law relating to nazul lands extending for over 200 years reaching back to the times of British rule and beginning with the United Provinces Land Revenue Act, 1801. The concept of nazul as understood in Mohammedan Law and Hindu Law was dealt with. The provisions of Crown Grants Act 1895 were referred to. The Court extensively read and utilized the contents of a Manual of the Land-Tenures of Land-Revenue Administration Prevalent in the Several Provinces, by B.H. Baden-Powell, F.R.S.E., F.R.F. Late of the Bengal Civil Services, and one of Judges, of the Chief Court of the Punjab. Some of the current laws and of comparatively recent origin and having bearing on the ownership and

management of nazul lands were also referred to such as U.P. Urban Planning and Development Act 1973, Delhi Development Act 1957. A good number of rules, circulars, manuals have been referred to. The Division Bench then proceeded to examine the legality and validity of conversion of nazul land into freehold land testing the same in the light of the provisions of the Constitution specially the Preamble, Articles 39 and 51A. As to the several Government Orders issued from time to time during 1990s which were contained in the original file of Government Orders relating to nazul properties placed before the Court by the learned Chief Standing Counsel in compliance of the Court's order, the Division Bench observed:-

"These government orders were utilized to convert nazul estate into 'freehold'. After noticing the law, government instructions since more than a hundred years ago, the Nazul Manual, the Nazul Shop Rules, all in the nature of administrative instructions, it is clear even lease in perpetuity cannot be granted and the question of changing the character of nazul estates to 'freehold' does not arise. Having held that no 'freehold' rights can be granted to nazul estates, and these estates were, are and will continue to vest with the Government in trust, the Court is left with no option but to quash all the Government Orders mentioned above as this would be permitting nazul estates to be converted into 'freehold'; and would amount to an anti trust measure (Amanat men Khayanat), against the larger public interest which the law and the concept of nazul, in any case, does not permit."

The Division Bench went on to observe that the government's decisions (if it be of the government) giving freehold rights to Smt. Rafiqunnisa was 'a making of a land scam'. The Court concluded its judgment by issuing several directions A to J (ten in number) and directed the petitions to be disposed of in terms of the said directions. It is not necessary to extract and reproduce the said directions. Suffice it to observe that the effect of the directions so issued is to nullify as unconstitutional the several government decisions the validity whereof was not specifically in issue before the Court. Not only the three writ petitioners but at least 32 others who are similarly situated and holding similar shops were adversely affected though not parties before the Court. Hundreds of others whose estates had already stood converted to freehold were prejudicially affected. Could this all have been done and that too in the manner in which the High Court has done?

The principal submission made by Shri Dinesh Dwivedi, the learned Senior Advocate for the State of U.P., has been that the issue arising for decision in the writ petitions before Court was confined to two shops only and within the scope of hearing of the writ petitions it was open for the High Court to uphold or not to uphold the allotment of shops and then to decide that in the event of allotment being upheld which of the three writ petitioners was entitled to which of the shops. Instead, the High Court has proceeded to nullify several government orders, eight in number, without giving notice to the government of what the High Court proposed to do. As a consequence of the judgment delivered by the High Court, the property of the government in nazul itself has been put in jeopardy and the right of the State to deal with it consistently with its policy decision and the law enacted in accordance therewith has been taken away as the State has been declared only a trustee of the nazul land.

We find merit in the submission made by Shri Dwivedi, the

learned Senior Counsel for the State. The private parties represented before us in several civil appeals have also found it difficult to support the impugned judgment. We are not doubting the jurisdiction of the High Court to take cognizance of an issue wherein the element of public interest is involved and to take up and entertain the same as public interest litigation and pronounce upon such issues exercising the jurisdiction which the Constitution does vest in the High Court but that has to be done by following the established rules of practice and procedure consistently with the rules of natural justice. The High Court, if convinced, should have framed specific issues with which it proposed to deal with in public interest and then should have put the State on specific notice inviting its pleadings and documents. Any other party likely to be adversely affected and interested in being heard may have been allowed the opportunity of doing so. A larger issue involving public interest and far reaching implications should not have been dealt with so lightly, casually and hurriedly as the High Court has done. So far as the dispute raised by the private parties as writ petitioners in the High Court is concerned, the High Court could have postponed the decision in such individual writ petitions until the larger issue of public interest was decided; or else the High Court could have adjudicated upon the limited dispute as to the right of allotment over the two shops and then taken up the larger public interest issue for adjudication as a separate writ petition, the decision wherein would have become applicable even to shop Nos. 195 and 196 as they being similarly situated as other shops, would have been liable to be treated equally.

For the foregoing reasons, all the appeals are allowed. The impugned judgment of the High Court is set aside. The cases are remanded to the High Court for hearing and decision afresh consistently with the observations made hereinabove.

Before parting, we would like to place on record that we have not expressed any opinion on the correctness or otherwise of the findings arrived at as a result of research so painstakingly undertaken by the learned Judges constituting the Division Bench of the High Court. Rather we have a word of appreciation for the industrious labour which the learned Judges must have invested in tracing the history of development of the law governing nazul lands without any assistance from the parties. We have been constrained to set aside the judgment of the High Court solely for the reason that before recording a finding on such a vital issue the High Court ought to have afforded an adequate opportunity to the State for defending itself by raising necessary pleadings and tracing out the documents from its archives and place the same on record. May be the result could have been different. May be after full-dressed hearing which will be held afresh now, subject to availability of pleadings and documents, and the parties, especially the State having been put on notice of the issues, the Court may be inclined to take the same view. It will be premature to formulate any opinion either way. Though the impugned judgment is being set aside, the historical facts and information collected and set out therein would still be available to be made use of by the Bench hearing the matter afresh consequent upon this order of remand.

I.A. Nos.9-11/1999 in C.A. Nos. 1273-1275/1998

The applications sought for certain directions during the hearing of the appeals. They are now infructuous. Be treated as disposed of.

W.P.(C) No. 163/1999

This petition under Article 32 of the Constitution was filed by way of public interest litigation seeking quashing and setting aside of G.O. No. 2268/9 AS-4-98, 704/N/97 dated 1.12.98 issued by Government of U.P. as illegal, void and ultra vires of the Constitution, and certain associated reliefs, in view of C.A. Nos. 1273-1275/1998 having been filed in this court. As the appeals themselves have been disposed of, with an order of remand to the High Court, we do not consider it necessary to keep the petition pending for hearing in this Court. The petition be treated as disposed

of without any adjudication on merits. The writ petitioner is at liberty to pursue such other remedy as may be open and available to him and as advised.

JUDIS