

Judgement Reserved on 22.08.2024
Judgement Delivered on 04.12.2024

Neutral Citation No.-2024:AHC-LKO:80266-DB

A.F.R.

Court No. - 9

Case :- WRIT - C No. - 11305 of 2018

Petitioner :- Ravindra Kumar Verma And Ors.

Respondent :- State Of U.P.Through Prin.Secy.Deptt.Of
Energy Lko.And Ors.

Counsel for Petitioner :- Manoj Kumar Gupta,Gajendra
Yadav,Manish Mani Sharma

Counsel for Respondent :- C.S.C.,Atul Kumar
Dwivedi,Manish Kumar

with

Case :- WRIT - C No. - 24819 of 2020

Petitioner :- Ved Prakash And Anr.

Respondent :- State Of U.P.Thru Addl.Chief Secy. Revenue
Deptt. Lko And Ors.

Counsel for Petitioner :- Ankit Pande

Counsel for Respondent :- C.S.C.,Atul Kumar Dwivedi

with

Case :- WRIT - C No. - 304 of 2021

Petitioner :- Haseena Khatoon And Ors.

Respondent :- State Of U.P. Thru Addl. Chief Secy.
Revenue Deptt. Lko And Ors.

Counsel for Petitioner :- Ankit Pande,Ankit Pande,Manish
Mani Sharma,Mohammad Yusuf Siddiqui,Pooja
Devi,Virendra Bhatt

Counsel for Respondent :- C.S.C.,Atul Kumar Dwivedi

with

Case :- WRIT - C No. - 19485 of 2021

Petitioner :- Shyam Lali And Ors.

Respondent :- State Of U.P. Thru. Addl.Chief Secy.
Revenue Lko. And Ors.

Counsel for Petitioner :- Ankit Pande, Ankit
Pande,Mohammad Yusuf Siddiqui,Pooja Devi,Virendra Bhatt

Counsel for Respondent :- C.S.C.,Atul Kumar Dwivedi

Hon'ble Mrs. Sangeeta Chandra,J.
Hon'ble Brij Raj Singh,J.

[Delivered by Justice Sangeeta Chandra]

1. We have heard Sri R. S. Pande, learned Senior Counsel assisted by Sri Ankit Pande alongwith Shri Manish Mani Sharma, Shri Mohammad Yusuf Siddiqui, Ms. Pooja Devi, Shri Virendra Bhatt, Shri Gajendra Yadav and Shri Manoj Kumar Gupta, learned counsel appearing for the petitioners in all these writ petitions learned counsel for the petitioners, Sri Sudeep Seth, learned Senior Advocate assisted by Sri Atul Kumar Dwivedi, learned counsel for the N.T.P.C. and Sri Manish Mishra, learned Additional Chief Standing Counsel for the State Respondents.

2. All the four writ petitions have been taken up together as they challenge a common order of Resumption passed by the Commisioner Faizabad Division, dated 21.02.2013 and related to land recorded as Category 6(2) *Abadi* and Para A-124 of the Uttar Pradesh Land Records Manual in three villages of Salahpur Rajor, Hussainpur and Hasanpur Sudhana in Tehsil- Tanda, District- Ambedkar Nagar. The said land has been resumed for the purpose of setting up second unit of 660 Megawatts of Tanda Thermal Power Plant by National Thermal Power Corporation (hereinafter referred to as NTPC).

3. For the convenience of exposition, this judgment is divided into the following parts:

Sl No.	Particulars
I.	Case of Petitioners in Nutshell
II.	Details of the Writ Petitions
III.	Counter Affidavits of State Government and National Thermal Power Corporation (NTPC)

IV.	Submissions of the Parties
V.	Statutory Provisions
VI.	Earlier Pronouncements
VII.	Points for determination- A. What was vested in State of U.P. under Section 4(1) of U.P.Z.A. & L.R. Act of 1950? B. Effect of further vesting in the Gaon Sabha in terms of section 117(1) of the U.P.Z.A. & L.R. Act of 1950 and resumption of the land by the State Government under section 117(6); C. To what extent benefit can be availed under section 9 of Act 1950; D. Meaning of word "held" given in Section 9 of the Act 1950; E. To Whom Burden of Proof Lies for seeking Benefit of section 9 of U.P.Z.A. & L.R. Act; F. Relevance of Khasra (P-A-3) and Khatauni (P-A-11) prepared under Section 28 and Section 32, 33 of the Land Revenue Act, 1901 and Paragraphs A-60 to A-102 and A-121 to A-160 of the UP Land Records Manual respectively; G. Validity of order of Resumption, dated 21.01.2013 passed under Section 117 (6) of the Act, 1950, by Commissioner Faizabad Division, over the Land recorded as Abadi under Category 6(2) of Paragraph A-124 of the Uttar Pradesh Land Records Manual H. Government cannot and does not acquire its own land, only resumption can be done in terms of section 117(6) of the Act, 1950 because right, title and ownership still continues with the State.
VIII.	Applicability of Durga Narain College and Adity Kumari School v. State of U.P., 2018 (140) RD 510 in the present case
IX.	Doctrine of Precedents and their binding efficacy
X.	Conclusion

I. Case of Petitioners in Nutshell

4. In a nutshell, the case of the petitioners is that their houses and adjacent lands had stood on the land recorded as *Abadi* in Category 6(2) under Para A-124 of the Uttar Pradesh Lands Records Manual since the time of their forefathers. Therefore, it would be presumed that the houses and adjacent lands were settled with the respective occupiers of the land in terms of section 9 of the Act, 1950. The assertion of the Petitioners is that the resumption of land, virtually amounts to acquiring the land of the petitioners by an administrative order. A further assertion is that once houses of the petitioners are standing thereon since the time of their forefathers, it would be deemed that the houses and appurtenant land had been settled with the respective occupiers in terms of Section 9 of the Act, 1950, and consequently, the occupiers had become owners of said land. Hence, the Commissioner Faizabad Division, has no power to resume the land regardless of whether said land has been consistently recorded as *Abadi* in Category 6(2) of Para A-124 of the Uttar Pradesh Lands Records Manual. An argument has also been raised by the Counsel of the Petitioners that the State Government has no power to resume the land. It can only be acquired by the State Government as per existing relevant provisions and laws after paying proper compensation.

II. Details of the Writ Petitions

5. The Writ Petition No.11305 (MB) of 2018 has been filed by **Ravindra Kumar Verma and four others** praying for quashing of the order dated 21.02.2013 contained in Annexure-2 to the petition passed by the Commissioner Faizabad Division. It is the contention of the petitioners that their predecessors in interest had filed Writ Petition No.28923 (LA) of 2016, praying for mandamus to be issued to the

respondents to pay fair and proper compensation to the petitioners within a specified time frame for acquisition of their land and houses in terms of the Right to Fair Compensation and Transparency and Land Acquisition, Rehabilitation and Resettlement Act 2013 (hereafter referred to as the 'Act of 2013'), and other consequential prayers. The said petition was dismissed on 09.01.2018 with the observation that the petitioners have remedy to claim compensation under the 1894 Act and since the acquisition proceedings have not been challenged the question of making a direction for payment of compensation under the New Act of 2013 did not arise. After such order was passed, the petitioners came to know that the land on which their houses were standing was resumed under Section 117(6) of the Act, 1950 by an order passed by the Commissioner Faizabad Division dated 21.02.2013. The Commissioner Faizabad Division by the impugned Notification resumed the land of several plots recorded under category 6(2) of Para A-124 of the U.P. Land Records Manual relating to village Salahpur Rajor, Tehsil Tanda Ambedkar Nagar, and the Abadi land of the petitioners is mentioned in the order as Gata Nos. 86, 87, 206, 275, 276, 277, 332, 364, 370, 390 and 391; which related to village *Abadi* had the houses of the petitioners are standing thereon since the time of their forefathers. It has been mentioned in the petition that initially a notification under Section 4 read with Section 17 of the Land Acquisition Act 1894 was issued on 07.09.2009 and the declaration and Section 6 was published on 14.07.2010, acquiring certain land, for the establishment of a power station by the National Thermal Power Corporation, Tanda Ambedkar Nagar (arrayed as respondents Nos.5 and 6). Later on, the impugned order has been issued by the Commissioner on 21.02.2013, under Section 117(6) of U.P.Z.A. & L.R. Act, intending to resume Abadi land of the Village Salahpur Rajor. It has also been

averred that the land situated in the village of the petitioners was vested in the the Gaon Sabha Salahpur Rajor by a notification issued under Section 117(1) of the U.P.Z.A. & L.R. Act on 05.09.1986, and resumption has been made without amending or cancelling the said order. It has also been stated that on 29.03.2015, a Government Order was issued by the State to give compensation under, the New Act of 2013, in pursuance of which a High-level meeting was held on 07.08.2015, where it was decided that only One Time Settlement amount will be given to the petitioners and no other amount shall be given in relation to land which was being resumed. It has also been stated that the petitioners have not received any compensation till date. Hence the instant petition has been filed praying for compensation in terms of the New Act of 2013. It appears that no interim order was granted in the said writ petition and it remained pending.

6. The Writ Petition No. Writ-C -24819 of 2020 ***Ved Prakash and Another versus State of U.P. & others***, has been filed challenging the notification dated 21.2.2013 issued by the Commissioner Faizabad Division in so far as it related to the petitioners building/house and land appurtenant thereto in Abadi Plot No.364 Ga, situated in village Salahpur Rajor, Tanda, Ambedkar Nagar and also for restraining the respondents from dispossessing the petitioners and demolishing their buildings in pursuance of the impugned notification on the ground that the house of the petitioners and the land appurtenant thereto to stood settled in favour of the petitioners under Section 9 of the U.P.Z.A. & L.R. Act as their house was in existence much before the date of vesting i.e. prior to 01.07.1952. It has been alleged that Certificates have been issued by the village Pradhan that the petitioners were living in the village since the time of their forefathers.

7. The Writ Petition No.19485 (MB) of 2021 filed by ***Shyam Lalli and 21 others***, all residents of village Salahpur Rajor and Hasanpur, Tehsil Tanda District Ambedkar Nagar, praying for quashing of resumption Notification dated 21.02.2013, in so far as it related to their houses and buildings, and lands, appurtenant thereto situated on Plot Nos.119, 63, 58, in Village Hasanpur and Plot Nos. 364 Ga, 332, 87 and 86 in village Salapur Rajor, and praying for a mandamus to be issued to the respondents not to demolish their houses. It has been averred in the petition that the petitioners were in use and occupation of land of the said plots recorded as Abadi in the two villages since the time of their forefathers and such land on which the houses were situated and other buildings and the land appurtenant thereto should be deemed as settled with them under Section 9 of the U.P.Z.A. & L.R. Act and not vested in the Gaon Sabha under Section 117(1) of the Act.

8. An interim order was granted by this Court on 16.12.2020 in this writ petition the benefit of which was extended in all other writ petitions as well.

9. The Writ Petition No. 304 (MB) of 2021, which has been filed by **Haseena Khatoon along with 13** others praying for quashing of the Notification dated 21.02.2013 issued by the Commissioner Faizabad Division Under Section 117 (6) of the U.P.Z.A. & L.R. Act in so far as it relates to the petitioners' houses and land appurtenant thereto situated in village Abadi Plot Nos. 50, 71, 69 Gha and 279 situated in village Husainpur Sudhana, Tehsil Tanda, District Ambedkar Nagar. The petitioners have also prayed for a mandamus to be issued to

the respondents not to demolish their houses and dispossess them.

10. As all three writ petitions of Ved Prakash, Shyam Lalli and Haseena Khatun have been filed by the same counsel, the pleadings are more or less the same. It has been alleged that houses and buildings which were constructed prior to the abolition of Zamindari had not been vested in the State under Section 4 and Section 6 of the U.P.Z.A. & L.R. Act and the same had been settled and vested with the owners of such houses and buildings along with land appurtenant thereto, under Section 9 of the U.P.Z.A. & L.R. Act read with Rule 26 of the U.P. Z.A. & L.R. Rules, 1952. The Counsel for the petitioners had placed reliance upon judgements rendered by this Court in ***Committee of Management, Durga Narayan College and Aditya Kumari School and Another Versus State of U.P. and Others reported in 2018 (140) RD 510***, and a judgement of the Hon'ble Supreme Court in ***U.P. State Sugar Corporation Ltd. Vs. Deputy Director of Consolidation and others 2000 (2) SCC 572***.

III. Counter Affidavits of State Government and National Thermal Power Corporation (NTPC)

11. In Writ Petition of Ravindra Kumar Verma, the National Thermal Power Corporation (hereinafter referred to as "NTPC") was arrayed as a respondent. However, in Writ Petitions filed on behalf of Ved Prakash, Shyam Lalli and Haseena Khatoon, NTPC was not arrayed as a respondent and it filed application for impleadment and application for vacation of interim orders along with counter affidavits and supplementary counter affidavits. The Court did not allow the

impleadment application but gave a right of hearing as intervener to NTPC, who is being represented by Sri Sudeep Seth, learned Senior Advocate, assisted by Sri Amit Kumar Dwivedi, Advocate.

12. Counter Affidavits have been filed in all the four writ petitions by the State Respondents, praying for vacation of interim order dated 16.12.2020. In the counter affidavit filed by the State Respondent, the necessity for acquisition of private land and resumption of Village Abadi for expansion of the second stage of the 1320 MW Thermal Power Station has been mentioned. It has also been mentioned that 271.949 hectares of private land of different categories was acquired and 30.862 ha of Gram Samaj land, and 10.236 ha of Abadi land has been resumed. The total land which was acquired/resumed being 313.47 ha in Tehsil Tanda. In the order dated 21.02.2013 Abadi land under Category 6(2) was included from three villages i.e. Salapur Rajor, Hasanpur and Hussainpur Sudhana. The Abadi land was evaluated at ₹3600 per square metre as per Circle Rate prevalent in the year 2013 and total compensation of ₹36.85 crore as determined by the district administration was deposited by the NTPC in the State Treasury. A Committee for deciding on compensation made a proposal which was accepted by the State Cabinet. The Government directed disbursal of compensation of ₹36.85 crores against Abadi land to displaced persons as part of a special welfare package. Out of the total amount of ₹36.85 crores a sum of ₹23.20 crores has already been paid to the displaced villagers. 12 plots recorded as Abadi in village Salapur Rajor, total land area measuring 2.560 ha, was resumed out of which 1.847 ha has already been handed over to NTPC. In Village Salapur Rajor, a total of 123 properties were evaluated out of which 99

property owners have voluntarily vacated their land. On Gata No. 364Ga only 64 properties were located out of which 48 properties have been vacated after receipt of compensation. Besides compensation being given at the rate of ₹3600 per square metre for land, which has been resumed, an amount of ₹9 lakhs per adult male member of a family having a house on more than 200 m² of land has also been determined whereas a sum of ₹11.5 lakhs will be given to every adult male member of a displaced family having land more than 200 m². Since the petitioners did not give their consent for handing over their land and house for the Project, payment of price of land and compensation to adult male members of their family could also not be given.

13. In the affidavits filed by the NTPC it was stated that for expansion of NTPC Tanda Thermal Power Project private land under different categories had been acquired in three villages in Tehsil Tanda earlier and later on Abadi land had been resumed by notification dated 21.02.2013 and land had been handed over to the NTPC Tanda. Being a beneficiary of such order of resumption, it was a necessary and proper party liable to be impleaded as a Respondent. It was also mentioned in such application that at present, out of a total of 68 houses situated in Plot No.364 Ga of village Salapur Rajor 48 house owners have taken compensation and their houses have been dismantled. Eight house owners have not taken compensation. One house owner has taken compensation, but his house could not be dismantled. There are 11 more unmeasured houses on the plot in question and the village is situated in the middle of Tanda Thermal Power Project and resumption has been done to ensure safety of the people living there and for sustainable operation of the Power Plant.

14. The NTPC Tanda has brought on record that in the village Salapur Rajor out of 158 houses, 129 houses have been dismantled for the second phase of NTPC Tanda Thermal Power Project and compensation to all such persons has also been paid by NTPC. At the time of filing of such affidavit in March 2021, only 29 houses remained to be evaluated. NTPC has paid the amount towards compensation, including One Time Settlement to all adult male members of each family, whose house has been dismantled. The land is being utilised for construction of two Units of 660 MW, out of which one Unit has already been commissioned and is in operation and the second Unit is being constructed. Out of the total power generated from Tanda Power Plant 76.47% will be supplied to the State of U.P. The villagers need to be immediately evacuated to ensure their safety and security. It has also been stated that the petitioners have failed to place on record any material to establish their possession of Abadi plot No. 364 Ga in the village before the date of vesting. It has also been stated that in Writ Petition No.24819 (M/B) of 2020, the petitioner no.1 Ved Prakash is not entitled to file the writ petition as in Regular Suit No. 433 of 1983, *Ram and others versus Ram Kishore and others*, the Petitioner No.1 Ved Prakash had filed a written statement and admitted on affidavit that on the basis of a mutual agreement, the said Ved Prakash has abandoned his share in the village Salapur Rajor in favour of his other family members. Hence, in so far as Petitioner No.1 is concerned, the petition is not maintainable.

15. In the counter affidavit filed by the State Respondents and the NTPC in all four writ petitions similar averments have been made regarding no documentary evidence being available of the petitioners houses standing on the village Abadi land since before 01.07.1952. It has also been stated

that the land of Hasanpur Sudhana has been utilised for construction of 660 MW Thermal Power Plant and the land occupied by the petitioners houses is situated in the middle of the area marked for Ash Dyke-II of the said Power Plant. Physical identification of the houses/structures standing on village Abadi had been carried out in 2014 and 2015 itself and the petitioners contention that they came to know about the land having been resumed only in September 2020 has been disputed as false.

16. In the Rejoinder Affidavit filed by the petitioners copies of Parivar Register of only some of the petitioners showing that they were living in the village since very long have been filed.

17. An application for vacation of interim order has also been filed by NTPC, where it has been stated that the petitioners have not approached the court with clean hands and have intentionally not disclosed that identification of buildings/houses over the plots in question had been carried out in 2014 and 2015, and that a large numbers of villagers have already taken compensation and vacated the houses and have misrepresented their case before the Court, saying that they came to know of the resumption order only in October 2020. The land that has been resumed has been handed over to the NTPC for the Second Phase of expansion of the Tanda Thermal Power Project and compensation has also been paid by the NTPC yet intentionally, it has not been arrayed as a Respondent, although it is a necessary and proper party. The claim of the petitioners regarding land on which their houses stand having been settled with them under Section 9 of the U.P.Z.A. & L.R. Act has been disputed on the ground that no documentary evidence has been filed by the petitioners to show that their houses existed prior to the date of vesting.

Resettlement and Rehabilitation Policy was drafted by the NTPC as per guidelines issued from time to time by the State Government and the Central Government and the same was approved by the State Cabinet. Not only has the NTPC provided monetary compensation as aforesaid, resettlement measures like training for self-employment, community development, allotment of shops, and welfare activities has also been implemented for which an institutional mechanism has been created for monitoring. A copy of the Rehabilitation and Resettlement Policy dated 12.01.2014 has been filed as C.A.-1 to the Counter Affidavit. The petitioners and similarly situated persons, who can at best be said to be encroachers on village Abadi land, have been given four benefits, the cost of the land, the cost of the construction standing thereon including trees, etc., and also ₹9 lakhs or ₹11.5 lakhs as the case may be for each adult male member of the family of Homestead Oustees (HSO) as on 21.02.2013, the date of the order of resumption has also been given. The rate of the compensation for the land was determined by the State Government as per the Circle Rate prevalent at the time for the three villages concerned. Out of a total of 1238 HSO, 433 are similarly situated as the petitioners who are encroachers on Abadi land. Out of them 372 persons have already entered into an agreement and have taken the compensation amount. It has also been stated that out of the 1238 HSOs, 793 persons have entered into agreement and have all got compensation. The compensation provided to Home Stead Oustees on the basis of Rehabilitation and Resettlement Policy in pursuance of the resumption order 21.2.2013, is much more than what the petitioners would have been entitled to in case of compulsory acquisition. A comparative calculation chart has been filed as Annexure to the Counter Affidavit. It

has also been stated that out of 116 houses situated in village Abadi of Salapur Rajor, 93 have been dismantled.

18. In another application filed for vacation of interim order in April 2023, the NTPC has mentioned that the land of village Hussainpur Sudhana is situated in the middle of Ash Dyke-II A and the construction of the Lagoon has been stopped due to interim order operating in favour of the petitioner since 08.01.2021. The project cost of construction of the Ash Dyke is ₹139 crores, which has to be completed in May 2019 but was delayed by 34 months, and it is causing huge loss to the NTPC. Also, the presence of the petitioners within the campus of the Tanda Power Project is a big industrial hazard, posing a threat to the petitioners as well as Manpower engaged in the running of the Power Plant and the public at large, specially in the case of an industrial accident and/or sabotage. The Power Plant in question is a national asset built with thousands of crores of rupees, and the presence of the petitioners in the middle of the Project poses a threat to the Power Plant and its machinery as well. Copies of photographs showing location of the houses protected by interim order of the Court have been filed as annexures to the Affidavit filed in support of application for vacation of interim order. It has also been said that without the availability of Ash Dyke-IIA in time, the operation of the power plant will also not be feasible. In the counter affidavit of the Respondents it has been stated that in village Hasanpur, there were a total of 37 houses which were being affected by the resumption notification and 31 house owners have taken compensation and their houses had been dismantled.

19. However, the interim order granted earlier continued to be extended from time to time and on 24 July 2023, all four petitions were taken up together, and this Court passed an order referring the matter to Mediation and Conciliation Centre so that the parties can take a chance to get the issues resolved amicably. A Direction was issued that one petitioner representing all petitioners in each of the four petitions should take part in the mediation proceedings along with Additional District Magistrate, District Ambedkar Nagar, and Head of the Police Station NTPC Tanda, or any other officer nominated by him should also participate. The lawyers representing the parties would also be allowed to participate in the mediation process by the mediators if they feel it to be necessary. The NTPC was directed to bear the expenses of to and fro journey to be undertaken by the petitioners on each day of mediation and also for other miscellaneous expenses incurred by them. The matter was directed to be listed on 05.09.2023 along with the mediation report before the Court. Status report of Mediation and Conciliation Centre dated 04.09.2023 was submitted thereafter. There is another Mediator's report January 2024, which was also placed on record. From such Mediation Reports it is evident that the mediation proceedings failed. The matter continued to be listed on various dates thereafter.

20. An application for disposal of Stay Vacation Application on behalf of the State Respondents has also been filed in July 2024, where it has been stated that various benefits have been given to the petitioners / residents of the three villages of which land has been resumed for the Second Stage of NTPC Power Plant at Tanda. More than 78% of the land and 82% of the houses have been vacated in the three villages. In respect of the three villages, out of 445 land owners, 398 have

received compensation in lieu of the land. Out of 708 property owners, 623 have received compensation in lieu of property. Out of a 389 houses, 320 have been dismantled and only 69 houses/Hutments are remaining. The Land in Hussainpur Sudhna is required for completion of Ash Dyke-IIA which is presently lying incomplete. "Ash Dyke" is a huge pond required for storage of ash generated after coal is burnt in boilers. The bottom ash (portion of ash that drops in hoppers after coal burning) is disposed/transported through a pipeline in the form of a slurry to the Ash Dyke in the pond. The ash is then deposited in the Ash bed, and the water is recycled for use. Hence, the bed of ash is a marshy land mass having huge water storage. The Ash Dyke is an essential requirement of a Coal based Thermal Power Plant and currently Ash Dyke IIB is being operated and Ash Dyke IIA will be required for continuous running of the thermal Power Plant in the near future. Village Hussainpur Sudhana is located inside the site under construction for Ash Dyke Lagoon IIA. Since the interim order is operating, and habitation is situated within the area required for construction of Ash Dyke-IIA, it would be difficult to run the Power Plant in the near future. Also, there is a great risk to life, health, and security of the petitioners as well as to the security of the Power Plant. The State Respondents have to deploy additional security of CISF personnel. The petitions that are pending before this Court with interim orders relate to only 2.204 ha of total 313.047 ha land acquired/resumed for NTPC Tanda Stage-II i.e. approximately 0.7% of the total area. The total estimated project completion cost in 2014-15 was 9,188.98 crores, but due to inordinate delay because of Interim Order operating in favour of the writ petitioners, the Project cost has escalated to more than 101,016.10 crores in January 2024.

21. It has also been stated that the additional expenditure incurred in completion of Stage-II shall be treated as "Fixed Cost of Energy" and a proportionate rise in price of Electricity will be passed on to the consumers.

22. It has been stated that out of 123 houses of village Salapur Rajor 110 house owners have given their consent and their houses have been dismantled and out of ₹53.30 crores that has been determined as compensation for the three villages where land has been resumed, ₹48.39 crores has already been disbursed to the claimants. It has also been stated that the land of village Hasanpur has about 16 structures still standing over Abadi land which has been resumed and the petitioners are living in the middle of the Power Plant and separate passage has been given to them for ingress/ egress severely compromising the safety and security not only of the Power Plant, but also of the petitioners. The access road provided to the villagers is passing through the construction area of the Flu Gas Desulphurisation System, where movement of heavy construction machinery like cranes, trailers, and other equipment is taking place all the time having a potential of accident being caused to freely roaming villagers. The Human habitation including children, ladies, and cattle is situated dangerously close to high risk machinery and chemicals, as the Power Plant is in operation and Transformers, live High Voltage wires, Boilers, Flue Gas Desulphurisation System, and other machinery along with hazardous substances and chemicals, low density diesel, and petroleum products, coal etc. is stored in the Plant area. Also, the Power Plant has an installed capacity of 1760 MW and caters to the electricity requirement of North India and is connected to the National Grid and any

malfunction in the same can lead to Grid failure and major industrial catastrophe and loss of life and property.

IV. Submissions of the Parties

23. Learned counsel for both sides have argued the matter in detail. The learned Senior Counsel Dr. Ram Surat Pandey for the petitioners strenuously argued his case mainly on the strength of the decision rendered by this Court in the case of **Durga Narain College and Adity Kumari School v. State of U.P.**⁹. He strongly assailed the order of the the Commissioner Faizabad Division, Faizabad, dated 21.02.2013, passed under Section 117(6) of the Act, 1950 and urged that authority has possessed of any jurisdiction to pass the impugned order dated 21.02.2013 which virtually amounts to acquiring the land of the petitioners by an administrative order. He further urged that the property in dispute never vested in the Gaon Sabha in terms of Section 117(1) of the Act so as to be amenable to resumption under Section 117(6) of the Act. Being a building, the property in dispute had been settled with the forefathers of the petitioners. The Counsel for the Petitioners next contended that once houses are standing on the said land since the time of their forefathers and, therefore, such land on which the houses were situated and other buildings and the land appurtenant thereto should be deemed as settled with them under Section 9 of the Act, 1950 and not vested in the Gaon Sabha under Section 117(1) of the Act. Therefore, the Gaon Sabha cannot be divested of the same under Section 117 (6) of the U.P.Z.A. & L.R. Act by the State Government by issuance of the impugned order of resumption. He further urged that houses/ buildings which were constructed prior to the

abolition of Zamindari had not been vested in the State under Sections 4 and 6 of the Act, 1950 and the same had been settled and vested with the owners of such houses and buildings along with land appurtenant there to, under Section 9 of the Act, 1950 read with Rule 26 of the U.P.Z.A. & L.R. Rules 1952, irrespective of the said land has consistently been recorded as *Abadi* in Category 6(2) of Para A-124 of the Uttar Pradesh Lands Records Manual.

24. The Counsel for the State respondent and National Thermal Power Corporation (NTPC) have vehemently argued that no documentary evidence is available to show the houses were standing on the village Abadi land since before or after the date of vesting, i.e., on 01.07.1952. They further stated that these houses were constructed much later after abolition of Zamindari Act, 1950. Therefore, the benefit of section 9 of the ZA Act cannot be extended to petitioners. The benefit of section 9 can be given only to those houses that were standing on the date of vesting. They further contended that the intention of the legislature is very clear and provides for the settlement of lawfully standing wells or buildings with the existing owners or occupiers thereof on the land in question on the date of vesting, i.e., 1st of July 1952.

25. We have considered the submissions of the learned Counsel for the parties and have perused the records.

V. Statutory Provisions

26. "**Section 4-Vesting of estate in the State.** --(1) As soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as

from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State and as from the beginning of the date so specified (hereinafter called the date of vesting), all such estates shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances.

(2) It shall be lawful for the State Government, if it so considers necessary to issue, from time to time, the notification referred to in sub-section (1) in respect only of such area or areas as may be specified and all the provisions of sub-section (1) shall be applicable to and in the case of every such notification.

27. Section-6. Consequences of vesting of an estate in the State. --*When the notification under Section 4 has been published in the Gazette, then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date of vesting, ensure in the area to which the notification relates, namely-*

(a) all rights, title and interest of all the intermediaries--

*(i) in every estate in such area including land (cultivable or barren), grove-land, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, tanks, ponds, water-channels, ferries, pathways, **abadi sites**, hats, bazars and melas (other than hats, bazars and melas held upon land to which clauses (a) to (c) of sub-section (1) of Section 18 apply).*

(ii) in all sub-soil in such estates including rights, if any, in mines and minerals, whether being worked or not;

shall cease and be vested in the State of Uttar Pradesh free from all encumbrances;

(b) all grants and confirmations of title of or to land in any estate so acquired, or of or to any right or privilege in respect of such land or its land revenue shall, whether liable to resumption or not, determine;

(c) (i) all rents, cesses, local rates and sayar in respect of any estate or holding therein for any period after the date of vesting and which, but for the acquisition would be payable to an intermediary, shall vest in and be payable to the State Government and not to the intermediary and any payment made in contravention of this clause shall not be valid discharge of the person liable to pay the same;

(ii) where under an agreement or contract made before the date of vesting any rent, cess, local rate or sayar for any period after the said date has been paid to or compounded or released by an intermediary the same shall, notwithstanding the agreement or the contract, be recoverable by the State Government from the intermediary and may without prejudice to any other mode of recovery, be realized by deducting the amount from the compensation money payable to such intermediary under Chapter III;

(d) all arrears of revenue, cesses or other dues in respect of any estate so acquired and due from the intermediary '[or an arrear on account of tax on agricultural income assessed under the U.P. Agricultural Income Tax Act, 1948] (U.P. Act III of 1949) for any period prior to the date of vesting shall continue to be recoverable from such intermediary and may, without prejudice to any other mode of recovery, be realized by deducting the amount from the compensation money payable to such intermediary under Chapter III;

(e) all amounts ordered to be paid by an intermediary to the State Government under Sections 27 and 28 of the U.P. Encumbered Estates Act, 1934 (U.P. Act XXV of 1934) and all amounts due from him under the Land Improvement Loans Act, 1883 (U.P. Act XIX of 1883), or the Agricultural Loans, Act, 1884 (U.P. Act XIX of 1884), shall notwithstanding any thing contained in the said enactments, become due forthwith and may, without prejudice to any other mode of recovery provided therefor, be realized by deducting the amount from the compensation money payable to such intermediary under Chapter III;

(f) the interest of the intermediary so acquired in any estate shall not be liable to attachment or sale in execution of any decree or other process of any Court, Civil or Revenue and any attachment existing at the date of vesting or any order for attachment passed before such date shall, subject to the provisions of Section 73 of the Transfer of Property Act, 1882 (IV of 1882), cease to be in force;

(g) (i) every mortgage with possession existing on any estate or part of an estate on the date immediately preceding the date of vesting shall, to the extent of the amount secured on such estate or part, be deemed, without prejudice to the rights of the State Government under Section 4, to have been substituted by a simple mortgage;

(ii) notwithstanding anything contained in the mortgage deed or any other agreement, the amount declared due to a simple mortgage substituted under sub-clause(1) shall carry such rate of interest and from such date as may be prescribed;

(h) no claim or liability enforceable or incurred before the date of vesting by or against such intermediary for any money, which is charged on or is secured by mortgage of such estate or part thereof shall, except as provided in Section 73 of the Transfer of Property Act, 1882 (IV of 1882), be enforceable against his interest in the estate;

(i) all suits and proceedings of the nature to be prescribed pending in any Court at the date of vesting and all proceedings upon any decree or order passed in any such suit or proceeding previous to the date of vesting shall be stayed;

(j) all mahals and their sub-divisions existing on the date immediately preceding the date of vesting and all engagements for the payment of land revenue or rent by a proprietor, under-proprietor, sub-proprietor, co-sharer or lambardar as such shall determine and cease to be in force.

28. Section 9- Private wells, trees in abadi and buildings to be settled with the existing owners or occupiers thereof.— *[All wells], trees in abadi and all buildings situate within the limits of an estate belonging to or held by an intermediary or tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary tenant or person, as the case may be, and the site of the wells or the buildings within the area appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed.*

29. Section 117. Vesting of certain lands, etc. in Gaon Sabhas and other Local Authorities.—(1) *At any time after the publication of the notification referred to in Section 4, the State Government may [by general or special order to be published in the manner prescribed], declare that as from a date to be specified in this behalf, all or any of the following things, namely—*

(i) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove;

(ii) forests;

(iii) trees, other than trees in a holding or on the boundary of a holding or in a grove or abadi;

(iv) fisheries:

(v) hats, bazars and melas held on lands to which the provisions of Clauses (a) to (c) of sub-section(1) of Section 18 apply or on sites and areas referred to in Section 9; and

*(vi) tanks, ponds, private ferries, water channels, pathways and **abadi site**:-*

which had vested in the State under this Act, shall vest in a Gaon Sabha or any other local authority established for the whole or part of the village in which the said things are situate or partly in one such local authority (including a Gaon Sabha) and partly in another :

Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be [specified in such order].

30. Section 117(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.

31. Rule 26. Private wells and buildings.—(a) *Subject to sub-rule (b), the site of a [***] well [***] or building along with the area appurtenant thereto situate within the limits of an estate shall be deemed to be settled with the*

owner of the said well, [***] or building, on the following terms and conditions :

(i) He shall have a heritable and transferable interest in the site.

(ii) He shall not be liable to ejectment on any ground whatsoever.

(iii) He shall have the right to use the site for any purpose whatsoever subject to the existing rights to easement.

(iv) Succession shall be governed by personal law.

(v) If the building is abandoned or if the well goes out of use, or if the owner dies without any heir entitled to succeed, the site shall escheat to the State.

vi) (1) He shall pay to the Gaon Sabha rent for the site equal to the amount of rent payable therefor on the date immediately preceding the date of vesting. He shall however not be liable to pay any rent for the site if no such rent was payable on the date.

(2) (i) In case the site is assigned for any public purpose, such as roads, hospitals, dispensaries, schools and the like, which will not yield any income either in the present or in the near future to the individual or body assigning it the Goan Sabha] '[or the assignor] shall report the fact to the Collector, giving the details of the land and the amount of rent involved. The Collector may exempt the site from the payment of rent for so long as it is utilized for any purpose of the nature indicated above.

(ii) When such exemption has once been sanctioned by the Collector the [Gaon Sabha] may sanction the

continuance of exemption from year to year so long as the land is being put to the same use.

(iii) At the beginning of every revenue year the '[Gaon Sabha] shall enquire whether all land in respect of which exemption has been allowed is still used for the purpose which made it eligible for exemption. If it is found that the land or any portion thereof has ceased to be so used or though used for the same purpose as before has started to yield an income to the body or the individual concerned the '[Gaon Sabha] shall report the fact to the Collector with necessary details. The Collector may, after making such inquiry as he considers necessary, direct that the exemption from the payment of rent should cease wholly or in part, as the case may demand.

(3) The person or body assigning the site [unless the assignment is of the entire interest of such person or body in the same], has no right to claim exemption from the payment of rent as a matter of course. Such exemption can only be granted by the Collector who has full discretion to reject any case which does not completely fulfill the requirements of sub-clause (2) (i) above.]

(b) The site of a private well or a building in a holding or grove shall be deemed to be settled with the tenure holder on the same tenure as the holding or the grove in which it is situate.

VI. Earlier Pronouncements

32. The Statutory Provisions have been considered by this Court and by the Supreme Court in the following decisions:-

1. *Budhan Singh v. Nabi Bux, AIR 1970 SC 1880;*¹

2. *Sheo Amber Singh v. Allahabad Bank Ltd. Allahabad*, 1962 (2) SCR 441; ²
3. *Pheku Chamar and others v. Chandra and others*, AIR 1953 All 406; ³
4. *State of U.P. vs. Ram Shri and Ors.*, AIR 1976 All 121; ⁴
5. *Maharaj Singh v. State of U.P.*, AIR 1976 SC 2602; ⁵
6. *Fruit and Vegetables Merchants Union v. Delhi Improvement Trust*, 1957 SCR 1; ⁶
7. *Rajendra Tyagi and Ors. vs. State of U.P. and Ors.*, 2016 131 RD 243; ⁷
8. *Committee of Management, Imambara Qadeem and Ors. vs. Union of India and Ors.*, 2022 157 RD204; ⁸
9. *Durga Narain College and Aditya Kumari School v. State of U.P.*, 2018 (140) RD 510; ⁹
10. *U.P. State Sugar Corporation Limited v. Deputy Director of Consolidation and others*, 2000(2) SCC 572; ¹⁰
11. *Basti Ram Vs. Nagar Nigam, Ghaziabad and Others*, 1999 (90) RD 636; ¹¹
12. *Sudesh Pal and Others Vs. State of UP and Others*, Second Appeal No. 487 of 2013 reported in 2013 (5) ALJ 690; ¹²
13. *Chandrajit Vs. Baliram (dead) and Others*” (Neutral Citation 2019: AHC: 193076); ¹³
14. *Phool Singh and Another Vs. Board of Revenue through Member Judicial, Writ Petition No. 26078 (MS) of 2017 (Neutral Citation 2019: AHC- Lucknow-28181)* ¹⁴
15. *Writ-B No. 55259 of 2017, Masroor Ahmed and Others*, (Neutral citation 2017: AHC: 179434) ¹⁵

Before we consider these judgments, we would first enumerate the issues that need to be decided in these petitions.

VII. Points for determination-

33. From the pleadings of the parties and submissions made, following points which arise for determining the controversy involved in these four writ petitions-

- A. What was vested in State of U.P. under Section 4(1) of U.P.Z.A. & L.R. Act ?
- B. Effect of further vesting in the Gaon Sabha in terms of section 117(1) of the Act 1950 and

resumption of the land by the State Government under section 117(6) of the U.P.Z.A. & L.R. Act, 1950;

- C. To what extent benefit can be availed under section 9 of U.P.Z.A. & L.R. Act, 1950;
- D. Meaning of word “held” given in Section 9 of U.P.Z.A. & L.R. Act, 1950;
- E. To Whom Burden of Proof Lies for taking Benefit of Section 9 of U.P.Z.A. & L.R. Act, 1950;
- F. Relevance of Khasra (P-A-3) and Khatauni (P-A-11) prepared under Section 28 and Sections 32, 33 of the Land Revenue Act, 1901 and Paragraphs A-60 to A-102 and A-121 to A-160 of the Land Record Manual respectively;
- G. Validity of order of Resumption, dated 21.01.2013 passed under Section 117 (6) of the Act, 1950, by Commissioner Faizabad Division, over the Land recorded as Abadi under Category 6(2) of Paragraph A-124 of the Uttar Pradesh Land Records Manual
- H. Government cannot and does not acquire its own land, only resumption can be done in terms of section 117(6) of the Act, 1950 because right, title and ownership still continues with the State; and

34. We shall expound the Issues A, B, C, D & E together while applying the case laws as mentioned hereinabove.

35. In ***Budhan Singh and Others Vs. Nabi Bux and Others***¹, the scope of Section 9 of the U.P.Z.A. & L.R. Act came up for decision before the Supreme Court. The Court read Sections 4, 6 and 9 together and observed that under Section 4 all estates vest in the State free from all

encumbrances. The proprietors or tenure holders retain no interest in respect of them whatsoever. However, in respect of land or building sites in Section 6 and Section 9, the State settled certain rights with persons who held them at the time of vesting i.e. 01.07.1952. Vesting of the estates and the deemed settlement of certain rights in respect of certain classes of land or buildings included in the estates took simultaneously, but they must be treated as different transactions. Vesting of estates in the State was absolute and free from all encumbrances. It was then followed by deemed settlement of some rights with persons mentioned in Sections 6 and 9. Therefore, in law, it would not be correct to say that what vested in the State are only those interests not coming within Section 6 or Section 9.

36. The Supreme Court in *Budhan Singh* (supra) referred to judgement rendered in ***Sheo Amber Singh Vs. Allahabad Bank Ltd***²; while dealing with the language of Section 9 of the Act, the Supreme Court defined the words "*belonging to or held*" as meant for the benefit of only those persons who were lawfully holding the wells, trees in Abadi Land or the buildings situated within the limits of the estate. Although the counsel for the appellant tried to convince the Court that Section 9 merely contemplates physical possession and nothing more on the date of vesting of the sites as well as the buildings situated on it, and therefore the building must be deemed to have been settled with them, the Supreme Court supported the contention on behalf of the respondent that the word '*held*' in Section 9 of the Act means '*lawfully held*' and that Section does not confer any benefit on a trespasser. The Supreme Court referred to two Division Benches of the Allahabad High

Court and also to a Full Bench decision of this Court, where the meaning of the word "*held*" in Section 9 came up for consideration.

37. In *Pheku Chamar and Others Vs. Harish Chandra and Others* ³, the Division Bench of this Court observed that the legislature deliberately used the word '*held*' and that word connotes the existence of a right or title in the holder. They further found that Section 9 does not confer a right on the persons having no title to the land. The settlement contemplated by the Section 9 is confined in its application to the case where the building is '*lawfully held*' by the person in possession. Section 9 does not mean that if a person has made some construction whatsoever over any land lying within the limits of an estate, however, wrongful or recent the possession might be, that construction must be deemed to have been settled with him by the State Government. Later on, the meaning of the word '*held*' in Section 9 came up for interpretation before another Division Bench of the Allahabad High Court in *Bharat and Another Vs. Chaudhary Khazan Singh and Another*, **AIR 1958 Allahabad 332**; the learned Judges declined to follow the decision in *Pheku Chamar's* case and came to the conclusion that the legislature used a wide language in Section 9, and it covers the case of buildings belonging to persons who constructed them lawfully or unlawfully.

38. The Supreme Court thereafter referred to the question of law being again referred to a Full Bench in view of the conflict of opinion of two Division Benches. While the Chief Justice Desai (as he then was) who presided over the

Bench, did not deal with the meaning of the word 'held' in Section 9, the two other judges agreed with the view taken in *Pheku Chamar's* case. The Supreme Court upheld the view taken by the Division Bench in *Pheku Chamar's* case and observed in paragraph 10 as follows:–

“We are unable to persuade ourselves to believe that the legislature intended to ignore the rights of persons having legal title to possession and wanted to make a gift of any building to a trespasser, howsoever recent the trespass might have been if only he happened to be in physical possession of the building on the date of vesting. We are also unable to accept any Legislative policy in support of that construction. – – – the settlement contemplated by Section 9 is a deemed settlement. That settlement took place immediately when the vesting took place, no enquiry was contemplated before that settlement. If there is any dispute as to with whom it was settled, the same has to be decided by the Civil Courts. The State is not concerned with the same. Section 9, merely settled the building on the person who was holding it on the date of vesting.”

39. In Paragraph-11 of its judgement in *Budhan Singh* (supra), the Supreme Court observed that it is true that according to the dictionary meaning, the word 'held' can mean either a lawful holding or even a holding without any semblance of a right such as holding by a trespasser. But the real question is as to what is the legislative intent? Did the legislature intend to settle the concerned building with a person who was lawfully holding, or with any person holding, lawfully or otherwise? It thereafter observed that :-

...“...it is true that the legislature could have used the words “lawfully held” in place of the word “held” in Section 9, but while referring to dictionary meanings given to the word “held” the Supreme Court went on to observe that in legal parlance the word “held” means to possess by legal title.

“The word “held” is technically understood to mean to possess by legal title. Therefore, by interpreting the word “held” as “lawfully held”, we are not adding any word to the Section. We are merely spelling out the meaning of that word. It may further be seen that the section speaks of all buildings – – within the limits of an estate, belonging to or held by an intermediary or tenant or other person – – the word “belonging “undoubtedly refers to a legal title. The word “held by an intermediary “also refers to a possession by legal title. The words “held by tenant also refers to holding by legal title”. In the sequence mentioned above, it is proper to us to the word ‘held’ in Section 9 when, used in relation to the words “other person” as meaning lawfully held by that person. That interpretation flows from the context in which the word ‘held’ has been used. We have mentioned that the said interpretation accords with Justice...”

(emphasis supplied by us)

40. In making such observations, the Supreme Court also referred to its earlier judgements relating to different statutes and then the scheme of the Act which was to abolish all estates and vest the concerned property in the State. But at the same time, certain rights were conferred on persons lawfully in possession of lands or buildings at the date of vesting. The Court observed that :-

“...it is reasonable to think that the persons who are within the contemplation of the Act are those who are in possession of lands or buildings on the basis of some legal title. Bearing in mind the purpose with which the legislation was enacted, the scheme of the Act and the language used in Section 9, we are of the opinion that the word ‘held’ in Section 9 means lawfully held...”

(emphasis supplied by us)

41. In ***State of U.P. Vs. Ram Shri and Others*** ⁴, ***First Appeal No. 392 of 1964 decided on 23.05.1975***, a

Division Bench of this Court was dealing with an appeal filed by the State of U.P. against the judgement of the Civil Judge, Etawah dismissing the suit. The suit was filed initially by the State of U.P. and the Gaon Sabha Mauja Vedpura on 06.01.1959 for the relief of declaration that the plaintiffs no.1 and 2 were the owners in possession of certain land situated in the village, and sought a permanent injunction, restraining the defendant not to interfere in the ownership and possession of the plaintiffs. In the alternative, if they were not found in possession over the plots in dispute including the trees standing there on, they might be given possession over the same, excluding the buildings. This suit was filed with regard to 10 plots of land recorded as Banjar, Usar, Abadi and Rasta. The plaintiffs suggested that prior to the passing of the U.P.Z.A. & L.R. Act, Shrimati Ram Shri, the defendant was the Zamindar of the aforesaid village, but on the abolition of Zamindari the right, title and interest in the said Zamindari of the village including the plots, ceased to exist and was extinguished. The rights of the defendant vested in the State of U.P., w.e.f. 01.07.1952, and since the defendant was neither the owner of the aforesaid Banjar, Usar, Rasta and Abadi plots, nor she had any right to hold any Mela or Bazaar over those plots, after abolition of Zamindari, she may be restrained, from holding such Mela or Bazar. Zila Panchayat, Etawah was added as plaintiff no.3, by way of amendment in the suit as it was alleged that the Zila Panchayat was managing the Mela and the Bazaar. The suit was contested by the defendant on the ground that all these plots were Abadi plots over which constructions belonging to her stood and therefore by virtue of these constructions, these plots would be deemed to have been settled with her under Section 9 of the Act. The suit was dismissed by the Trial Court on the finding that the

land in suit was a cattle market site of the defendant and would be deemed to have been settled with her under Section 9 of the Act.

42. Aggrieved, the State of U.P. filed the First Appeal on its own without the Gaon Sabha and the Zila Panchayat Etawah, arrayed as appellants. The defendant raised a preliminary objection about the maintainability of the appeal on the ground that the State of U.P. did not have any right or interest in the land involved in the suit as it had given the same to the Gaon Sabha i.e. the plaintiff no.2 by means of a notification issued under Section 117(1) of the Act. The Division Bench of the Court considered the definition of "aggrieved person" as given in English case-laws. *"A person aggrieved must be one who has suffered a legal grievance, a man against whom a decision has been pronounced, which had wrongfully deprived him of something, or wrongfully refused him, something or wrongly affected his title of something."*

43. The Division Bench of this Court also considered whether after Abolition of Zamindari the land which was vested in the State of U.P., could be said to be divested, and its ownership vested in the Gaon Sabha under Section 117(1) of the Act. The Court referred to Section 4, Section 6 and Section 117 of the U.P.Z.A. & L.R. Act and held that a review of the provisions would indicate that the State Government became the owner of the entire estates which were vested upon it, consequent to abolition of Zamindari. All the intermediaries ceased to have any interest in the properties which passed on to the State Government consequent upon issuance of a notification under Section 4 of the Act. The State was the absolute

owner of the property. However, to provide for proper management of the properties which were vested in the State Government, it was provided in Chapter VII of the Act that the State Government could pass on all or anyone of the things mentioned in Section 117 of the Act to the Gaon Sabha or any other local authority. The legislature has used the word 'Vest' in Section 117 of the Act, but the vesting under this section is altogether with a different object and purpose than the one which is contemplated by Section 4 and 6 of the Act. The purpose behind Section 117 is only a limited one for the purpose of superintendence, management and control, as laid down in Section 122-A of the Act.

44. This Court in *State of U.P. Vs. Ram Shri and others* (supra) referred to the meaning given to the word 'Vest' in the *Black's Law Dictionary* and also in the *Webster's Third International Dictionary* and in various English case laws and also the observations made by the Supreme Court in the *Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust* ⁶.

The Division Bench also considered whether the defendant could succeed in getting these plots declared as settled with her under Section 9 of the Act. Section 9 of the Act is an exception to the general state of affairs and, therefore, burden was on the defendant to establish that the land was such to which provisions of Section 9 applied. The defendant simply asserted that the entire area was *Abadi* covered by constructions. The Court also observed that after abolition of Zamindari the right to hold *Hats*, *Bazars* and *Melas* became exclusively that of the State. The Supreme Court had held in several judgements that the

State had, and the proprietor had not, with effect from the date of vesting of the estate, the right to hold *Mela* on the land of the proprietor. Sections 4 and 6 of the Act envisaged complete vesting, and after abolition of Zamindari, no one could be held to have a right to hold *Haat, Bazar, and Melas* on the lands vested in the State. This being the position, the land appurtenant to a building under Section 9 of the Act could be settled only for the purpose permissible under the Act and not contrary to the same. The respondent therefore could not be given any land for the purpose of holding *Haats, Bazar and Melas* on the ground that the same is appurtenant to the buildings/*Chabutaras* standing thereon since long.

45. The Division Bench of this Court in *State of U.P. Vs. Ram Shri and Others* ⁴, discussed the meaning of the word 'Vest' as employed in Section 4 and Section 117 of the Act of 1950 in detail and held as follows: –

“The legislature has used the word Vest in Section 117 of the Act as well. But the vesting in Section 117 of the estates mentioned is altogether for a different object and purpose than one which is contemplated by Section 4 and 6 of the Act. The purpose behind Section 117 is only a limited one for the purpose of superintendence, management and control as laid down in Section 122-A of the Act. By the notification issued under Section 117 of the Act. The State Government does not transfer the ownership of the property. It only transfers its possession. Sub-Section (2) and (6) of Section 117 of the Act, bear out the above position. By Sub-Section (2) as noted above, it has been laid down that notwithstanding the notification under Sub-Section (1) of Section 117 of the Act, the State Government can take it back from the Gaon Sabha in whose favour the vesting had initially taken place under Section 117, and may give the same to any other local authority, including another Gaon Sabha. Similarly, Sub-Section (6) of Section 117 also empowers the State Government to amend or cancel any declaration made under

Sub-Section (1) of Section 117 and resume such things whenever the State Government desires. The State Government has only been made liable to pay compensation for development which might have been carried on by the Gaon Sabha on the land given to it. These provisions does make it fully clear that the Gaon Sabha, in whose favour a notification under Section 117 is made, does not become the absolute owner of the property. Had that been the fact, the State Government could not take it back from the Gaon Sabha, as provided in Sub-Section (2) and (6). The fact that the State Government has only been made liable to pay development charges and not the cost of property taken back in pursuance to the notification under Sub-Section (6) of Section 117 of the Act also establishes that what had been passed on by the State Government under Sub-Section (1) of Section 117 was only right of management, superintendence and control. As a matter of fact, Section 122-A specifically deals with the power of Land Management Committee saying that it will only have superintendence, management and control of the land. It is worthy of note that this Section or any other Section in the Act, does not empower the Gaon Sabha to alienate the land given to it under Section 117 permanently. Refusing to confer the power of alienation on the Gaon Sabha is antithesis to the right of ownership. In our opinion, therefore, the State Government does have an interest in the property despite the notification under Sub-Section (1) of Section 117 of the Act. Any decision given by Court in which the State Government is a party is bound to injure or prejudice the interest of the State Government. The State Government would in that event be entitled to file an appeal against the same. -- -- Sri Shanti Bhushan, learned Counsel for the defendant submitted that as the entire rights and liabilities had been transferred to the Gaon Sabha, therefore, the State Government ceased to have any interest in the subject matter and, consequently, the State of U.P. had no right to file an appeal. but, we are unable to accept the above submission of the learned counsel for the respondent as, in our opinion, the same has no merits . The State Government, as stated above , has a legal grievance, which had a tendency to injure its interest – ..”

(emphasis supplied by us)

46. The Division Bench in *State of U.P. Vs. Ram Shri and others (supra)*⁴ observed in paragraph-22 as follows: –

“Having thus found that the word ‘Vest’ does not have a fixed connotation or meaning, we will consider the relevant provisions of the Act having a bearing on this point. We have already mentioned these provisions exhaustively. It is not necessary to repeat them. It would suffice to mention, that vesting of right, title or interest has the object of divesting the intermediaries, whereas the vesting under Section 117 of the Act has the limited purpose of placing the Gaon Sabha into possession for the purposes of enabling the Gaon Sabha to acquire present and immediate right to enjoy the same. With reference to the context in which the word ‘Vest’ has been used in Section 117 (1) of the Act, it does not mean that Gaon Sabha was conferred with absolute title or right over the things mentioned therein after divesting of the State of its title. As explained above, the Gaon Sabha has been given the right of superintendence, management and control. Title over these items regarding which notification under Sub-Section (1) of Section 117 has been issued, still remains with the State. It is this retention of title that justifies the power of resumption under Section 117 (6) of the Act. The submission of the learned Counsel for the respondent that the State was merely a formal owner and does not have paramount title is wholly untenable. With the distinction of phraseology used in Sub-Section (4) and (6) to that of Section 117 (1) of the Act. The learned counsel for the respondent asserted that the same was done by way of abundant caution and no special significance could be attached to it. We do not find any merit in this approach. The distinction made is obvious, deliberate and purposive, incorporated to achieve different objects. We, accordingly find that Section 117 (1) of the Act when it speaks of certain rights vesting in the Gaon Sabha it does not mean that ownership has passed there in to the Gaon Sabha.”

(emphasis supplied by us)

47. In ***Maharaj Singh Vs. State of U.P. and Others***⁵, the judgement of the Division Bench of this Court in *State of U.P. Vs. Smt. Ram Sri (supra)* was affirmed. The Supreme Court was considering the question of *locus standi* and whether the State can be treated as a person aggrieved

against an order of the Trial Court in favour of Zamindar of an acquired estate. In the High Court as well as the Supreme Court, the defendant stated that the land having vested in the Gaon Sabha, on the issue of notification under Section 117(1) of the Act, the State has no surviving interest in the property, and therefore, forfeited the position of a person aggrieved who alone could competently appeal against the decree. Such plea was negatived in appeal by the High Court. The Zamindar, Maharaj Singh, who was legal heir to Smt. Ram Sri had come up in appeal.

48. While discussing the question of whether the State can be said to be an aggrieved person, the Supreme Court considered the various Sections of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as U.P.Z.A. & L.R. Act).

49. The Supreme Court observed that by promulgating the U.P.Z.A. & L.R. Act, State of U.P. extinguished all Zamindari Estates and implemented a scheme of settlement of lands with intermediaries, tenants, and others by first vesting all estates in the State and empowering it to vest, divest, and vest again from time to time according to needs and requirements, the same estates in Gaon Sabha or other local authorities. Settlement of trees, buildings, or other specified items with the intermediaries, tenants or other persons found in possession was also part of the agrarian reform. *The Act had for its primary object the extinction of intermediary rights and the Supreme Court observed that the goal of legislation must make its presence felt while the judicial choice of meaning of words of ambiguous import or plurality of significations is made.* The Court considered

section 4, which related to vesting of estates in the State and the State Government.

50. The Supreme Court in *Maharaj Singh* (supra)⁵ also considered Section 6 which dealt with consequences of the vesting of estate in the State. The consequences were enumerated in Sub-Section (a) and its various subclauses important for the purpose of dealing with the issue of *locus*. Sub-Section (a) provides that right, title and interest of all intermediaries (i) in every estate in such area, including land (cultivable or barren), groveland, forests, trees (....), fisheries, tanks, ponds, waterchannels, ferries, pathways, **abadi sites**, *Haats*, *Bazars*, and *Melas*, (.....), and in all subsoil in such estates, including rights, if any, in mines and minerals....; shall cease and be vested in the State of U.P. free from all encumbrances.

The Supreme Court then observed: –

“Reading the two sister sections together certain clear conclusions emerge. Emphatically, three things happened on the coming into force of the Act. By virtue of Section 4, the right, title and interest of all intermediaries in every estate including Hats, Bazaars, and Melas stood terminated. Secondly, this whole bundle of interests came to be vested in the State, free from all encumbrances, the quality of vesting being absolute. Thirdly, one and only one species of property in Hats, Bazar and Melas was expressly excluded from total vesting of estates in the State viz Such as had been held on lands to which Section 18 (1) (a) to (c) applied. Section 9, at this stage needs to be read since it is geared to the nationalisation of Zamindari by providing for settlement, under the State, of some kinds of landed interest in existing owners or occupiers.

51. The Supreme Court thereafter considered Chapter VII of the U.P.Z.A. & L.R. Act which related to Gaon Sabha and

vesting by the State of resumed estates in them and limitations and other conditions to which such vesting is subject. The Court observed that Gaon Sabha had been given a legal personality under Section 3 of the Act and had been given the right to own and hold property, to transfer and otherwise deal with movable and immovable property and manage their landed assets through Land Management Committee. This comprehensive proprietary personality of the Gaon Sabha, however, did not confer right of ownership of land which was vested in it. The Supreme Court considered Section 117 (1) (2) and (6) and took into account the power of the State Government to declare that from the date of vesting all land and areas referred to in Section 6, which had vested in the State, shall vest in the Sabha or/and other local authority established for the village or part thereof subject to such exceptions and conditions as may be specified by the State Government in the notification. However, under Sub-Section (6) of Section 117, the Supreme Court observed that the Government may not only vest the estates in the Gaon Sabha or a local authority, but may also take away such things vested in the Gaon Sabha and transfer it to some other Gaon Sabha or local authority. The State Government thus retains the power to divest the land so vested and make it over to another local authority. Such retaining of power meant that the State remains the legal master with absolute powers of disposition over the land, vested on a temporary basis in a particular Gaon Sabha, and the Gaon Sabha is only given the power of management and supervision over land which is vested in it as it can be divested at any point of time and given to either another gaon Sabha or another local authority. The State Government continues to have a constant hold on these estates, and when it chooses, it can

take away what it had given possession of to a Gaon Sabha, notwithstanding the illusory expression “vesting” which may mislead one into the impression that an absolute and permanent ownership has been created.

52. Hence, the Supreme Court observed that the estates first vest in the State for the fulfilment of the purpose of the Act, free from all encumbrances. Such initial vesting is absolute and when the State Government acting under Section 117(1) notifies a further vesting in Gaon Sabha, the State retains the residuary legal interest, and its proprietary rights persist in it, despite its act of vesting the same estate in the Gaon Sabha. While considering the question, whether the word “vest” Connotes and denotes divergent things in the same Section and Act *vis a vis* the Government and the Gaon Saba, the Supreme Court held that the State retained a proprietary interest which entitled it to take legal action to stop its land from going into alien hands.

53. In paragraph 14 onwards upto paragraph 19 of the judgement in *Maharaj Singh (Supra)*⁵, the Supreme Court went on to explain that a word can have many meanings and to find out the exact connotation of a word in a statute, we must look to the context in which it is used. “*The context would quite often provide the key to the meaning of the word and the sense it should carry. Its setting would give colour to it , and provide a cue to the intention of the legislature in using it.*” It observed...” *to be literal or be blinkered by some rigid canon of construction, maybe to miss the life of the law itself.*”

54. The Supreme Court observed in *Maharaj Singh (supra)*⁵ that the U.P.Z.A. & L.R. Act contemplates the

taking over of all Zamindari rights as a part of land reform. However, instead of centralising management of all estates at the State level, the Act gives an enabling power to make over these estates to the Gaon Sabhas, which will look after them through Land Management Committees, which will be under the statutory control of the Government under Section 126. Apart from management, no power is expressly vested in the Gaon Sabha to dispose of the estates absolutely, for under Section 117(6), if for any reason the State thinks fit to amend or cancel the earlier vesting declaration or notification, it can totally deprive the Gaon Sabha of and resume from it, any estate. The Supreme Court observed that the nature and incidents of interest vested in the Gaon Sabha is not full ownership, incapable of being divested under no circumstances, but it is only a partial ownership and supervision with the paramount interest still surviving in the State. It went on to observe that the vesting in the State was absolute, but the vesting in the Gaon Sabha was limited to possession and management subject to divestiture by the Government. The Supreme Court observed that *the term "Vest 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"*. So the sense of the situation suggests that in Section 117(1) of the Act, "*vest in the State*" carries a-plenary connotation, while "*shall vest in the Gaon Sabha*" imports only a qualified disposition, confined to the right to full possession and enjoyment so long as it lasts.

55. The Supreme Court referred to the Black's Law Dictionary where "to vest" has been defined as "*to give an immediate fixed right of present or future enjoyment, to clothe with*

possession, to deliver full possession of land, or of an estate, to give seisin”.

56. The Supreme Court also referred to the Websters’ Third International Dictionary, which gave the meaning of “to vest” as “to give to a person a legally fixed immediate right of present or future enjoyment.”

The Supreme Court observed further that - “*The expression Vest has a fluid or flexible content and can, if the context so dictates, bear the limited sense “of being in possession and enjoyment”, and an explanation of the term ‘vesting’ which will rationalise and integrate the initial vesting, and the subsequent resumption is preferable, and more plausible and better fulfilled the purpose of the Act.*” The Supreme Court, therefore held that the State was entitled to sustain the action in a suit for ejectment. The Supreme Court observed that the Government has a right of resumption from the Gaon Sabha which is to be exercised in public interest and such right will be seriously jeopardised if the estate slips into the hands of a trespasser. The estate belonged to the State, which is vested in the Gaon Sabha for community benefit and is controlled by the State through directions under Section 126 and such control is liable to be divested, if the Gaon Sabha for any reason is likely to lose the bounty. The State has a continuing duty to salvage public property for public use.

57. The Division Bench in *State of U.P. Vs. Smt. Ram Shri* (*supra*) had placed reliance on Supreme Court’s decision in ***Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust***⁶, and the Supreme Court in *Maharaj Singh Vs. State of U.P.* (*supra*)⁵ affirmed the decision of the Division Bench of this Court. In ***Fruit and Vegetable***

Merchants Union Vs. Delhi Improvement Trust ⁶, the Supreme Court observed in paragraph 19:-

“that the word Vest is a word of variable import is shown by the provisions of Indian statutes also. For example, Section 56 of the Provincial Insolvency Act empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a Receiver for the property of the insolvent and further provides that such property shall there upon vest in such Receiver. The property vests in the Receiver for the purpose of administration of the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the Receiver not for all purposes, but only for the purpose of the Insolvency Act and the Receiver has no interest of his own in the property. On the other hand, Section 16 and 17 of the Land Acquisition Act, 1894 provides that properties, so acquired, upon happening of certain events, shall Vest absolutely in the Government free from all encumbrances. In the cases contemplated by Sections 16 and 17, the property acquired becomes the property of the Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the Vesting of the property is not for any limited purpose or limited duration. It would appear that the word ‘Vest’ has not got a fixed connotation, meaning in all cases that the properties owned by the person or the authority in whom it may Vest either in title or it may be vest in possession, or it may vest in a limited sense, as integrated in the context in which it may have been used in a particular piece of legislation . The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54 A , when they speak of a certain building, a street or square or other land vesting in a municipality or other local body or in a Trust, do not necessarily mean that ownership has passed to any of them.”

58. In a more recent decision of this Court, a Division Bench in **Rajendra Tyagi and Others Vs. State of U.P. and Others** ⁷, was considering a challenge in a public interest litigation to resumption notifications issued by the Commissioner Meerut Division with respect to certain land, which had earlier been vested in Nagar Nigam Ghaziabad and was sought to be resumed and vested with the

Ghaziabad Development Authority. Challenge was also made to the auction notice issued by the Ghaziabad Development Authority, for allotment of such plots and giving freehold rights in favour of two private respondents. The main ground of attack was that the land had vested in the State under the provisions of Section 4 (1) of the U.P.Z.A. & L.R. Act after which under Section 117 (1) of the Act, the land which had vested in the State was again vested in the Gram Sabha/Nagar Nigam, by declaration in this regard by the State. Under Sub-Section (6) of Section 117, the State Government is empowered to amend or cancel any notification made with respect to Gram Sabha or a local authority and to resume the land upon which the Government is empowered to vest the land resumed in the same or any other local authority. Hence it was urged that the provisions of Sub-Section (1) and Sub-Section (6) of Section 117 would indicate that absolute title to the land, vests in the State under Section 4, and the Ghaziabad Development Authority could not have proceeded to allot the land and give freehold rights to private builders on such land.

59. The Division Bench in *Rajendra Tyagi and others* (supra)⁷, while dealing with the provisions of Section 4 and Section 117 (1) and (6) referred to the judgement rendered by the Supreme Court in *Maharaj Singh Vs. State of U.P.*⁵, and observed in paragraph 9 as follows: –

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 others 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 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 development if any affected by it on or over the land or thing. Under the proviso to Sub-Section (6) of Section 117, 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 Gaon Sabha. The provisions of Sub-Section (1) and Sub-Section (6) make it abundantly clear that the vesting of the 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 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 development carried out by it thereon.

(emphasis supplied by us)

60. The Division Bench in *Rajendra Tyagi and others* (supra)⁷ also considered the challenge made to the allotment of freehold plots to private builders by the Ghaziabad Development Authority and held that it was clearly not consistent with the position in law as laid down by the Supreme Court in *Maharaj Singh* (supra)⁵. The GDA had proceeded on the basis that whether the land had been acquired under the Land Acquisition Act 1894, or the land had been resumed under a notification issued under Section 117 (6) of the U.P.Z.A. & L.R. Act, the GDA becomes the owner of the land and is competent to deal with it on that basis. This was contrary to the settled legal position that the entrustment under Sub-Section (6) of Section 117 is for controlling and managing the land and the land does not fall

in the title or ownership of the Gaon Sabha/ local authority. Title has vested in the State under Section 4 of the Act. The land continues to be in the ownership and title of the State Government. The GDA could not have proceeded to allot the land to the private respondents on a freehold basis. It set aside the allotment of land to private developers on a freehold basis while at the same time clarifying that it had not entertained the challenge to the order of resumption, which was passed under section 117 (6) of the Act.

61. In *Committee of Management, Imambara Qadeem And Others Vs. Union of India and Others*⁸, a Division Bench of the Court was considering the challenge made by the petitioner in 2022 to the notification issued by the State Government on 28.06.2012, under Section 117 (6) of the U.P.Z.A. & L.R. Act for resuming plot no. 146, ad-measuring 1500 m² in a village in District Prayagraj. The petitioner had alleged that he and his forefathers had lived in the said village since a very long time, and his father had constructed a building known as Imambara Qadeem over an area of 1500 m², situated in plot no. 146, which was more than hundred years old and members of the community had created a Society to look after the property. According to the petitioners, *Abadi sites*, particularly buildings do not vest in the Gaon Sabha so as to be amenable to the States power of resumption under Sub-Section (6) of Section 117 of the Act.

62. The Court in *Committe of Management, Imambara Qadeem and others* (supra) agreed with the argument raised by the respondents that the petition was highly belated and should be dismissed on that ground alone but it

also considered the merits of the case set up by the petitioners and held that they had *prima facie* not produced any evidence to show that on the date of vesting, the building that is said to-be an Imambara Qadeem was in existence. The Court observed that the burden of proof lay on the petitioners to establish that the building was in existence on the date of vesting. The benefit of Section 9 of the Act can be claimed only in respect of such buildings as were in existence on the date of vesting. A building constructed later on, cannot be held to be settled with its owners/occupiers et cetera, as held by the High Court in the case of *Basti Ram Vs. Nagar Nigam Ghaziabad (supra)*¹¹. The Court found that there was absolutely no evidence on record, except for an averment to that effect that the building was in existence since before 07.07.1949. A claim without evidence could not be accepted, and it could not be held that the land on which it stood had been settled with the petitioners' forefathers.

63. Learned counsel for the petitioners has also placed reliance on ***U.P. State Sugar Corporation Limited Vs. Deputy Director of Consolidation and Others***¹⁰. The Supreme Court in the said judgement was considering a dispute relating to consolidation proceedings in respect of three plots in a village in Meerut District UP. The private respondent had filed a Section 9 application for declaration before the Consolidation Officer that in pursuance of a lease granted by the Land Management Committee, he has Sirdari rights over the land in dispute. Objections were filed by the appellant saying that it had a storage tank for molasses and a tank for sullage water on the disputed land since 1932-33, under the previous owners and a portion of

the plots was also used as land appurtenant to staff quarters of the Mill. Surrounding the plots on all sides was other land belonging to the Mill. On the strength of these facts, the appellants contended that the plots had never vested in the State under the U.P.Z.A. & L.R. Act, 1950. Initially, the Consolidation Officer decided in favour of the appellant. The Settlement Officer Consolidation also dismissed the appeal. The Revision was also rejected by the Deputy Director Consolidation, on a procedural point, but it was remanded to him by the High Court exercising writ jurisdiction for decision afresh on merits. Thereafter the DDC reversed his earlier judgement and held that the private respondent had become Sirdar of the disputed land. The petition of the appellants was dismissed by the High Court.

64. Before the Supreme Court, it was contended on behalf of the appellants that the Mill was entitled to the benefit of Section 7 of the U.P.Z.A. & L.R. Act, which provided for saving of certain rights of landholders. It was contended that the respondent was not in possession of any part of the plots in question as the Consolidation Officer on local inspection had found that there were two tanks on the land and he had also found that the plots were appurtenant to the Mill building and its Staff colony, and that the Mill had been in possession throughout. These findings had remained undisturbed, and it was thus contended that the judgement of the DDC and that of the High Court was erroneous.

65. The Supreme Court in *U.P. State Sugar Corporation Limited* (supra) considered the fact that the predecessor in

interest to the appellants M/S. Jaswant Sugar Mills had been established by Seth Inder Sain, who had initially set up M/S Indira Sugar Works in 1932–1933 over the land in question. On such plots, there existed a storage tank for molasses and a tank for sullage water, and a portion of the said land was also used for better enjoyment of other property of the Mill, i.e. the staff colony, being land appurtenant to it. Jaswant Sugar Mill could therefore claim rights under Section 7 of the U.P.Z.A. & L.R. Act for easement and other similar rights for more beneficial enjoyment of the land it was enjoying immediately before the date of vesting and under Section 9 of the U.P.Z.A. & L.R. Act, which provided for settlement of buildings and the sites on which they were standing and land appurtenant there to, with the those persons who held them lawfully before the date of vesting, i.e. before 01.07.1952.

66. The Supreme Court in the aforesaid judgement observed that wells, trees in *Abadi* and buildings or the site of building, which are fictionally settled with the owner whereof, including the land appurtenant would not vest in the State as a consequence of notification issued under Section 4 of the U.P.Z.A. & L.R. Act. The right of easement available under Section 7 would also continue to be available to the person who had been enjoying that right on the appurtenant land for the better enjoyment of the land in his possession, and such right would not be destroyed on account of vesting of all rights, title and interest in the State. Under Chapter VII of the U.P.Z.A. & L.R. Act, which deals with Gaon Sabha Section 117 provides for vesting of land et cetera in the Gaon Sabha, including *Abadi sites* situated in a Circle, which had vested in the State under the

Act to Vest in the Gaon Sabha established for the Circle. Before a property vested in the Gaon Sabha, it should have first vested in the State Government under Section 6 of the U.P.Z.A. & L.R. Act. Inspection by Consolidation Officer had found that Jaswant Sugar Mill and before that Indira Sugar Works ,were in possession of the land surrounding the plots in question and on the plots in question there was a molasses tank and also a tank for storage of sullage water and some part of the land was being used as land appurtenant to the Staff colony, and other buildings of the Mill, the property at no stage had vested in the State, and it was settled with the owner of the buildings i.e. the predecessor in interest of the appellant. Since the property at no stage had vested in the State, therefore it could not at any subsequent stage vest in the Gaon Sabha. Therefore, the Gaon Sabha could not legally execute any lease in respect of these plots in favour of the respondent.

67. Having considered the observations of the Supreme Court in the case of *Budhan Singh and another Vs. Nabi Bux (Supra)* and in the case of *Maharaj Singh Vs. State of U.P.(Supra)*⁵, where it affirmed the decision of this Court in *State of U.P. Vs. Smt. Ram Shri (Supra)*, regarding Sections 4, 6, 9 and 117 of the U.P.Z.A. & L.R. Act and also judgments rendered by Division Bench of this Court in *Rajendra Tyagi* and *Imam Bara Qadeem (Supra)*; we have also considered the judgments cited by learned Counsel in *U.P. State Sugar Corporation (Supra)*. Now we shall consider the questions arising in the instant case, necessary for determining the controversy involved.

We shall consider issues framed by us and mentioned as A, B, C, D & E as aforesaid together.

68. *What was vested in the State of U.P. under Section 4 read with Section 6 of the Act?* It is clear from the language of Section 4 and Section 6 of the Act as interpreted by binding precedents of the Supreme Court and of this Court that all rights, and interest in all properties in land and water including Village Abadi of all intermediaries in every estate were taken away and vested in the State of U.P. free from all encumbrances. This vesting was absolute and inalienable. The lands in villages in question i.e. Salapur Rajor, Hasanpur and Hussainpur Sudhana recorded as Village *Abadi* sites also stood vested in the State of U.P. under Section 6 (a) (vi) of the Act w.e.f. 01.07.1952.

69. *The effect of further vesting in the Gram Sabha under Section 117(1) of the Act and resumption of land under Section 117(6) of such land by the State on need arising for the same.* The effect of Section 117(1) of the Act is that after the estates have vested in the State of U.P. under Section 4 of the Act, the State Government is empowered to direct that the land, among other things enumerated in Section 6, shall further vest in the Gram Sabha or any other local authority in respect of the village in questions. Such vesting however is not absolute and is only for superintendence, management and control. The Gram Sabha cannot alienate the property so vested in it. Under Sub-Section (6) of Section 117 of the Act the State Government is empowered to resume such properties and declare them to be vested in another

village or local authority and the Gram Sabha is only entitled to receive compensation for development, if any, it has carried out on such properties. The vesting in the State is absolute, but the vesting in the Gaon Sabha is limited and contingent upon the State Government's satisfaction that may lead it to resume such land for another public purpose.

70. *With regard to the applications of Section 9 of the Act and its scope.* It has been argued that Section 9 creates an exception and settles the buildings, land on which such buildings, houses etc. stand and land appurtenant thereto with the owners/ occupiers thereof who 'held' them on the date of vesting. Since such building sites and Land appurtenant thereto stood settled with their respective owners it could not be resumed. It can only be acquired. On a plain reading of Section 9 and its Rule 26 it is abundantly clear that only existing wells or buildings on the land in question on the date of vesting shall be settled with the owners/occupier thereof. The Legislative intent is very clear and it provides the settlement of existing wells, trees, buildings and area appurtenant thereto on those persons who "Lawfully held" them on the date of vesting i.e. 01.07.1952 with the intention to provide continuity of possession.

71. In the case of ***Basti Ram Vs. Nagar Nigam, Ghaziabad and Others*** ¹¹, this Court, while interpreting the provisions of Section 9 of the Act had held: –

“Provisions of Section 9 are applicable only when there is evidence and proof of the fact that there existed a well or building on the land in question on the date of vesting. There is no averment in the plaint. Nor there is any finding of fact in

this regard. Therefore, the finding of the lower Court that the land cannot be said to have been settled with the plaintiff is correct.”

72. In ***Sudesh Pal and Others Vs. State of UP and Others, Second Appeal No. 487 of 2013***¹³, the Court was considering the argument raised by the plaintiffs that the disputed land was shown as *Abadi* in the Khasara of Fasli year 1337, and therefore, the plaintiffs were entitled to the benefit of Section 9 of the U.P.Z.A. & L.R. Act. After considering the language of Section 9 of the Act, it was observed by the Single Judge that when the evidence and proof were led that there existed a well or a building on the land in question on the date of vesting, only then Section 9 would be applicable. The Trial Court had considered the fact that on the date of vesting there was no building, et cetera, which was being enjoyed by the plaintiff and on the contrary, the record of the consolidation proceedings clearly showed that the land was Banjar and had therefore vested in the State. The Court relied upon judgement rendered by the High Court in *Basti Ram Vs. Nagar Nigam Ghaziabad and others*¹¹ and the decision rendered in *Budhan Singh Vs. Nabi Bux (supra)*¹. The Court relied upon observations made in paragraph 10,11, and 12 of the judgement in *Budhan Singh(supra)* and observed that the Supreme Court had specifically observed that the word “*held*” cannot be extended as to include within its ambit a mere trespasser or a person having no otherwise right to hold the building so as to extinguish or overlook the legal right or title of State over the disputed property. The Apex Court had said that the “*word held means lawfully held*”.

73. In **Second Appeal No. 251 of 2019, “Chandrajit Vs. Baliram (dead) and Others” (Neutral Citation 2019: AHC: 193076)**¹³; the Court was dealing with the claim of the Appellants that they had a residential house since the time of their ancestors and they had started using the disputed land as their *Sahan* and under Section 9 such land used by them as *Sahan* had vested in them, and they cannot be dispossessed in any manner by a third-party. The Court observed that in a suit for Perpetual Injunction against the defendant-appellant restraining them from interfering in physical possession over the land in dispute, and to restrain them from raising construction over it, the question whether the plaintiffs-respondent could avail the benefit of Section 9 of the Act, even where there was an admission that there was no construction in existence over the disputed land had to be gone into.

74. The Court considered the judgement rendered in *Budhan Singh and Another Vs. Nabi Bux and Another (supra)* and the essential ingredients to invoke the provisions of Section 9 of the Act of the person claiming interest should have a house on it, then only such land can be treated to have vested in the owner of such house in terms of the provisions of Section 9 of the Act. Referring to paragraph 30 of the judgement in *Budhan Singh and Another(supra)*, the Single Judge observed that the Supreme Court had defined the expression “*held*” to connote possession by legal title. The expression “*held*” in various sections of the U.P.Z.A. & L.R. Act meant “*held lawfully*” and the Court cannot overlook the context in which that expression is used in section 9. Referring to the judgement rendered earlier by it, the Supreme Court had

observed that the expression "*holds*" includes a twofold idea of actual possession of a thing and also of being invested with a legal title. It referred to the scheme of the Act, which was to abolish all Estates and vest the property in the State, but at the same time to confer certain rights on persons in possession of lands or buildings in existence on the date of vesting on persons who within the contemplation of the Act were those who were in possession of lands or buildings on the basis of some legal title. Also in case the claimant is claiming possession over land which is vacant, he must show that the land is necessary for the enjoyment of his building, which was existing on the site on the date of vesting. Dealing with the definition of "*appurtenant land*" as given in *Black's Law Dictionary*, the Court held that there was no evidence that such land was legally "*held*" as per the requirement laid down by the Supreme Court in *Budhan Singh and Another (supra)*, and there was also no evidence led by the plaintiff that the land is appurtenant to his house.

75. The burden of proof to establish that the building in question was in existence on the date of vesting shall be on the petitioner. A building constructed later on, cannot be held to be settled with its owner, occupier, et cetera. In the present case, no document has been produced by the petitioners to the effect that the property in question for which they are seeking benefit under Section 9 of the Act was lawfully held by them or their predecessors-in-interest on the date of vesting. Even no document has been produced by the petitioners for showing that on the date of vesting, certain buildings, et cetera were existing on the property in dispute so as to bring it within the ambit of

section 9 of the Act, 1950. *The copies of Parivar Register filed for some of the petitioners cannot be relied upon as Parivar Register came to be maintained only after the coming into operation of U.P. Panchayat Raj Maintenance of Parivar Register Rules, 1970.*

76. A Supplementary Affidavit has been filed by Haseena Khatoon in October 2023 where it has been stated that the writ petition was referred to Mediation and Conciliation Centre, High Court Lucknow, for settlement of dispute between the petitioners and the NTPC and the State authorities in regard to compensation for the land resumed in village Hasanpur Sudhana. It is also stated that Haseena Khatoon Petitioner No.1, had moved an application to Additional District Magistrate, Ambedkar Nagar on 12.04.2021, stating therein that the ancestor of Haseena Khatoon namely Mohammed Hasan was the Zamindar of village Hussainpur Sudhana and according to the revenue records of 1865, Late Mohammed Hasan was living on and using land of Gata No. 403, having his house, mosque, well and cattle shed and other buildings in about 12 Bigha 10 biswa recorded in his name. Gata No.403 was later converted into Gata Nos.406, 407, 408, 409, 412, 413, 414, 415, 416, 417, 418, 419 and 420, in 1301 Fasli and later on changed to Gata No. 319, 323, 306, 426, 428, 429, 435, and 494 in 1331 Fasli, which Gata Numbers have remained the same in 1359 Fasli but during Consolidation Operation, new Gata numbers were allotted to different villagers and some forged entries were made in the name of some private persons who were encroachers on land of late Mohammed Hassan. During consolidation operations the land of old Gata No.403 has been given new numbers and

some of it has been recorded as Abadi land, while some has been recorded as Manure pit, Groveland, Mosque, Banjar and Abadi. It has been alleged that all the land of village Hussainpur Sudhana belonged to late Mohammed Hassan, the ancestor of Haseena Khatoon and its nature has been changed during consolidation operations. The copy of the application, made by Haseena Khatoon on 12.04.2021 and the enquiry report dated 26.09.2021 submitted by the Revenue authorities along with the old and new Gata No.s have been annexed as Annexure-1 to the Supplementary Affidavit most of which is illegible. The enquiry report, it is alleged, admits that Late Mohammed Hasan was the ancestor of Haseena Khatoon and Petitioner Nos.1 and 2 are entitled to get compensation of land acquired in village Hussainpur Sudhana. It has been alleged that no decision has been taken on such report by the Additional District Magistrate.

77. We are not convinced with the averments made in the supplementary affidavit as it is the admitted case of Haseena Khatoon that her forefathers were Zamindars of the Village Hussainpur Sudhana and as per statutory provisions of Section 4 and Section 6 all lands, wells and other properties of Zamindars had vested in the State w.e.f. 01.07.1952. The petitioner herself states that in consolidation operations the nature of the property earlier owned by her ancestors was changed and recorded as Abadi, Usar, Banjar, Manure Pit etc. Without vesting of such estate, such change in ownership and nature of properties could not have been made. The petitioners forefathers never challenged such vesting. On abolition of Zamindari they had also been compensated by the Government.

F. Relevance of Khasra (P-A-3) and Khatauni (P-A-11) prepared under Section 28 and Section 32, 33 of the Land Revenue Act, 1901 and Paragraphs A-60 to A-102 and A-121 to A-160 of the UP Land Records Manual respectively.

78. Khasra (P-A-3)- Paragraph A-60, of the U.P. Land Records Manual provides that the Khasra (field book) shall be prepared in Form No. P-A-3. Under section 28 of the Land Revenue Act and now Section 30 of the Revenue Code, 2006, the Collector is required to maintain a field book of each village in his district. The field book is an index to the map and is known as the Khasra. An entry in the khasra is an indicator of possession only. Whether there has been continuous possession over the land can be ascertained from a khasra entry. It contains all agricultural facts such as crops, irrigation, etc and also all facts required for the preparation of the Khatauni, such as names of tenure-holders, etc. Khasra is the foundation of the Record of the Rights and the source of all agricultural statistics. Its correct preparation is, therefore, of the utmost importance. Rules for its preparation are contained in paragraphs A-60 to A-102, of the U.P. Land Records Manual and its checking is done by the Supervisor *Kanungo* under paragraphs 422 to 426.

Khatauni- Paragraphs A-121 and A-123 of the U.P. Land Records Manual provide that the *Khatauni* shall be prepared in Form No. P-A-11. The *Khatauni* is a register of persons cultivating or otherwise occupying land in a village prescribed by Section 32 of the Land Revenue Act, 1901 or Section 32 of the Revenue Code, 2006. The *Khatauni* contains details of persons cultivating or “otherwise occupying land”. Detailed rules for preparation of the

Khatauni are contained in paragraphs A-121 to A-160 of the U.P. Land Records Manual. The rules for its verification and test by the Supervisor Kanungo are also given in paragraphs 433 to 435 of the U.P. Land Records Manual. The *khatauni* is a Record of title. If it is not forged or surreptitiously obtained it has great evidentiary value for determining title.

It is, therefore, clear that, Khasra is record of possession and *Khatauni* is record of right. In other words, Khasra is an indicator of possession where as *Khatauni* relates to title and nature of occupancy over the land. In the present case at hand, petitioners have led no evidence whatsoever to show that they had lawful right over the land and were also in lawful possession over the land in question.

G. Validity of order of Resumption, dated 21.01.2013 passed under Section 117 (6) of the Act, 1950, by Commissioner Faizabad Division, over the Land recorded as Abadi under Category 6(2) of Paragraph A-124 of the Uttar Pradesh Land Records Manual

79. There is no dispute between the parties regarding the nature of the land in question recorded in the revenue record. There is also no dispute regarding recording of land in revenue record as *Sarvajanik Abadi Land* under category of 6(2) of para A-124 of the U.P. Land Record Manual. Now, the question that has to be examined by this Court is that whether the title and ownership of the land recorded as *Sarvajanik Abadi Land* under category 6(2) of para A-124 of the U.P. Land Records Manual, where houses have existed since long will still continue with the State Government or the lands and houses of respective occupiers have

automatically been settled with them in terms of Section 9 of the Act, 1950.

80. Category 6 is described in para A-124 of the U.P. Land Records Manual, which pertains to barren land and the said category comprises of—

(i) lands covered with water / (ii) sites, road, railways, buildings, and other lands put to non-agricultural uses/ (iii) graveyard, and cremation grounds, other than those included in land held by tenure holders or *Abadi area* and/ (iv) otherwise barren land.

A plain reading of category (ii) makes it abundantly clear that no land, which is held or owned by a private person, has been included. further, this Court in the case of ***Phool Singh and Another Vs. Board of Revenue through Member Judicial*** ¹⁴, and in ***Masroor Ahmed and Others Vs. Deputy Director of Consolidation and others*** ¹⁵ held that the land recorded as *Abadi Land* under category of 6(2) of para A-124 of the U.P. Land Records Manual, belongs to the State/Gaon Sabha and is, therefore, vested in the State.

81. In the instant case, it is clear from the revenue records that the land in question has consistently been recorded as Sarvajanic Abadi since 1359 Fasli under Category 6(2) of para - 124 of the U.P. Land Record Manual i.e. a Government land, and it is more clear as mandated by Section 4 of the U.P.Z.A. & L.R. Act, which, as we have discussed above, after abolition of Zamindari, falls within the area of the estate covered by notification under Section 4 of the Act and stood vested in the State free from all encumbrances.

82. Hence, there is no fetter on the part of the State Government to resume the land recorded as *Abadi Land* under category of 6(2) of para A-124 of the U.P. Land Record Manual, which belongs to the State/Gaon Sabha.

H. Government cannot and does not acquire its own land, only resumption can be done in terms of section 117(6) of the Act, 1950 because right, title and ownership still continues with the State

83. The learned counsel for the petitioner placed much emphasis on the application of Section 9 of the Act and consequently it was argued that the land has been settled with the respective occupiers of the land covered under Category 6(2) of para A -124 of the U.P. Land Records Manual. He further submitted that after settlement of the land with the respective occupiers in terms of Section 9 of the Act, the State Government has no power to resume the land, it can only be acquired by the State, as per the relevant provisions of the Land Acquisition Act.

84. So far as the contention of the counsel for the petitioners that the State Government has no power to resume the land and it can only be acquired by the State as per relevant provisions of the Land Acquisition Act is concerned, this argument is without any substance and is hence rejected. We have already discussed above that the land in question falls in category 6(2) of para-A 124 of the U.P. Land Records Manual and belongs to the State /Gaon Sabha and therefore the Government should not and does not acquire its own land, only resumption can be done in

terms of Section 117(6) of the Act because title and ownership still continued with the State.

VIII. Applicability of Durga Narain College and Adity Kumari School v. State of U.P., 2018 (140) RD 510 in the Present case.

85. The learned Senior Counsel for the petitioners argued his case mainly on the strength of decision rendered by this Court in the case of ***Committee of Management, Durga Narain College and Adity Kumari School v. State of U.P.***⁹, and sought benefit in the same line.

86. In *Committee of Management, Durga Narain College (supra)*; a Division Bench of this Court was dealing with a challenge to an order of resumption passed by the Commissioner under Section 117(6) of the U.P.Z.A. & L.R. Act with respect to land which was being used by the petitioner as a playground. It was not disputed that the then Zamindar of Tirwa, District Farukhabad, Raja Durga Narayan Singh had established a school in his name and that of his wife Srimathi Adity Kumari, by raising several buildings on land belonging to him for purpose of school like classrooms, hostel and other facilities, over plot numbers 795 and 819, from which new plot nos. 623 and 738 had been carved out during consolidation operations, which were proposed to be resumed for the purpose of *Shahri Garib Awas Yojana* under the Integrated Housing and Slums Development Programme. These plots were in the shape of *Abadi* even on the date when institution was established in 1923 and was recognised in the year 1926; and was upgraded to High School and thereafter recognised as an

Intermediate College in 1946. To establish their claim of such lands being settled under Section 9 of the U.P.Z.A. & L.R. Act with the School and College, on the date of vesting, i.e. with effect from 01.07.1952, the petitioners had brought on record the *Khatauni* (record of rights) , and the *Khasra* (field book) of 1348 Fasli of the village with regard to the old plot numbers out of which the new plot numbers had been carved out, which showed such plots to be recorded as *Abadi*- school, Angrezi (English school). CH Form 41 prepared during consolidation operations and CH form 45 were also brought on record. The Record of Rights and the Record of Possession were maintained in terms of the Land Records Manual, which had statutory prescription under the UP Land Revenue Act. The revenue records which were prepared after the abolition of Zamindari entered this land as part of *Abadi* under Category 6(2) of para-A-124 of the Land Record Manual and revenue records were maintained accordingly.

87. The Court found that the occupation of the petitioners since 1923 onwards had never been disputed before the abolition of the Zamindari. The entries prepared under CH form 41 and CH form 45 during settlement proceeding under Consolidation of Holdings Act, demonstrated the connectivity of the plots in dispute with that of old plot numbers 795 and 819, particularly plot nos. 623 and 738M, which had been shown as *Abadi* certainly showed that the area was occupied and inhabited since before abolition of Zamindari. Also, it was stated in the counter affidavit that six plots, excluding the disputed plots were exclusively recorded in the tenancy of the Institution about which there was no dispute. The two plots about which the dispute had been raised were evidently contiguous and appurtenant to

the said plots, admittedly recorded in the name of the Educational Institution. There was also nothing on record to indicate that the institution was ever called upon to disassociate or withdraw itself from the said plots by any Authority. The revenue map and the actual location of these plots together with the plots already recorded in the name of the institution about which there was no dispute, showed clearly that the land in question was appurtenant to and part of the building complex of the educational institution which was established by the then Zamindar. The Register of Proprietorship, namely, the *Khewat*, was also not disputed. In the revenue records of *Khewat*, *Khatauni* and *Khasra* prior to the abolition of Zamindari, the land continued to be recorded in the name of the school. The fact of the records of the Pre-Zamindari abolition period being correct, had also not been denied by the respondents in the counter affidavit.

88. The Court also considered in detail the provisions of Section 4, Section 6 and Section 9 of the U.P.Z.A. & L.R. Act and discussed the law as laid down in *State of UP Vs. Smt. Ram Sri; and Maharaj Singh Vs. State of U.P. (supra)*⁵ with regard to Section 117(1) and Section 117(6) of the U.P.Z.A. & L.R. Act. After considering Section 9, together with the provisions of Rule 26 of the U.P.Z.A. & L.R. Rules, 1952, which provided that the site of a well or building along with area appurtenant thereto situated within the limits of an estate shall be deemed to be settled with the owner of the said well or building, and that he shall have a heritable and transferable interest in the site, and that he shall not be liable to ejectment on any ground whatsoever, and that he shall have right to use the site for any purpose whatsoever subject to existing rights to easement, and that succession

shall be governed by personal law; the Division Bench held that -

“the vesting under Section 117(1) would be subject to exceptions under Section 9 of the Act read with Rule 26 of the 1952 Rules, which by way of fiction mandated that buildings existing over Abadi sites and the site of the building with the area appurtenant thereto, shall be deemed to be settled with the existing owners and occupier thereof.

89. It was observed by the Division Bench that the State by virtue of Section 9 acknowledged the existing rights on *Abadi sites* together with building and land appurtenant thereto, in favour of the existing owners and occupiers and such land was, therefore, beyond the control, superintendence or management of the Gaon Sabha. The Division bench observed-

“.....The Gaon Sabha, therefore, could not claim any such vesting in it in terms of Section 117(1) of the Act of 1950. The natural corollary of the same was that if such land which had been settled with the existing owner or occupiers as on the date of vesting which is 01.07.1952, then the Gaon Sabha cannot be presumed to have been conferred with the right of superintendence, control or management over the same. The issue of the divesting such an owner or an occupier under Section 117(1) therefore does not arise, nor the said land vested in the Gaon Sabha for superintendence, management and control. Accordingly, such land which has been settled, cannot be the subject matter of resumption under section 117(6) of the U.P.Z.A. & L.R. Act in as much as resumption can be only of such land which has vested in the Gaon Sabha for superintendence, management and control...”

“25. This is a statutory right of property acknowledged under Section 9 of the 1950 Act, which is further explained by Rule 26 quoted hereinabove, which reinforces the rights settled with the existing owner or occupiers, making it inheritable and even not liable to ejectment on any ground whatsoever. Thus, if Rule 26 of the 1952 Rules creates a statutory bar on ejectment, then land which has settled with the existing owner or occupier cannot be made subject matter of resumption under section 117(6). The

right created under Section 9 read with Rule 26 of the 1952 Rules is a right through a settlement which is permanent in nature. The fiction of deemed settling acknowledges pre-existing rights. It is heritable and transferable and is to be governed in matters of succession by personal law. It may be for this reason that the Apex Court in the case of Hinch Lal Tiwari Vs. Kamla Devi and Others, (2001) 6 SCC 496, in paragraph 8 while construing the provisions of Section 117(1) has held that the expression “and Abadi sites”, has been wrongly placed in clause (vi) of Section 117(1). The reason is not far to see, namely, land which has been settled in terms of Section 9 would fall outside the purview of section 117, (1) and (6)”

90. Therefore, In ***Durga Narain College (supra)*** admittedly, an institution was established in year 1926 and that Abadi land recorded under Category 6(2) of Para-A-124 of U.P. Land Record Manual, was in possession of School as playground from very inception and this Court while interpreting the word “appurtenant”, especially in context of school, gave the benefit, while holding that playground is a necessary part of any educational institution. This Court further held that all activities associated with such a building, as in the present context a school, being carried out on such premises would be beneficial for the Institution and for its use in present as well as in future, and hence, would fall within the definition of the word land “appurtenant”. The division bench also observed that Section 9 which is the saving-cum- exception provision which settles buildings, site of buildings and land appurtenant thereto alongwith wells etc. with the existing owners or occupiers on the date of vesting i.e. 1.7.1952, and it is a condition precedent for getting benefit of section 9 that the house must be lawfully existed on the date of vesting i.e. 1.7.1952.

91. In ***Durga Narain College (supra)***, the petitioner institution has very well established its case regarding possession over Abadi land (under Category 6(2) land) as playground on the cut-off date i.e., the date of vesting, 1.7.1952 and it was also established through record of possession i.e., khasra in which it was recorded as 'Abadi' and 'field'. In that facts and circumstances this Court very rightly held that playground (field) is a necessary corollary of school and will come in the definition of appurtenant and will be deemed to be settled with the school. There is no such facts and circumstances in the present case at hand.

92. The factual matrix of the ***Durga Narain College (supra)*** is entirely different from the present case at hand. The observation and conclusion made in that case was correct on its own facts and circumstances and this judgment would not apply to the present case and would be of no help to the petitioners. Thus, the facts of ***Durga Narain College (supra)*** are totally different and not at all applicable in the case at hand.

93. Therefore, in the cases at hand, we have no hesitation in holding that petitioners are simply encroachers over the Government Abadi land recorded under Category 6(2) and their status is no more than that of an encroacher. As we have already discussed above, the benefit of Section 9 of the Act can be claimed only in respect of such buildings as were in existence on the date of vesting. A building, constructed later on, cannot be held to be settled with its owner, occupier etc as also held in ***Basti Ram v. Nagar Nigam, Ghaziabad and another (supra)***¹¹. and ***Committee of Management, Imambara Qadeem and***

Ors. vs. Union of India and Ors. (supra)⁸, the law in this regard is very clear.

94. In the present case, petitioners have not produced any document which shows that on the date of vesting, certain buildings etc. were existed on the property in dispute so as to bring their case within the ambit of Section 9 of Act, 1950. A building, constructed later on, cannot be taken into consideration for extending benefit under section 9 of the Act. Existence of building is a condition precedent for providing benefit under section 9 of the Act, 1950. The petitioners have not produced any document for establishing the factum of existence of houses on the date of vesting.

95. The primary function of the courts is to interpret and apply the laws according to the will of those who made them and not to transgress into the legislative domain. The job of a Judge is judging and not law-making. In Lord Devlin's words: "*Judges are the keepers of the law, and the keepers of these boundaries cannot, also, be among outriders*".

96. Therefore, we hold that, being an owner and rightful title-holder of the land, the State Government has all and every power to resume the land in terms of section 117(6) of the Act, 1950, and any building, constructed later on, cannot be held to be settled with its owner, occupier etc. and Petitioners are simply encroachers over the village Abadi land recorded under Category 6(2) of Para-A-124 of U.P. Land Record Manual. It is not the case of the petitioners that their claims have further been settled with State Government in terms of section 123 of the Act, 1950

or declaration has been made under section 229B of the ZA to that effect.

IX. Doctrine of Precedents and their binding efficacy

97. Judicial precedent means the process whereby judges follow previously decided cases where the facts are of sufficient similarity. It provides a basis for orderly development of legal rules. The doctrine of judicial precedent thus involves an application of the principle of stare decisis. In practice, this means that inferior courts are bound to apply the legal principles set down by superior courts in earlier cases. This provides uniformity in the law.

98. Since heavy reliance has been placed upon the judgement rendered in *Durga Narain Inter College (supra)* and *U.P. State Sugar Corporation Vs. DDC (supra)*, it would be useful to briefly discuss the connotation of the term *ratio decidendi* which, according to *Glenville Williams* may mean either (i) Rule that the judge who decided the case intended to lay down and apply to the facts; or (ii) the Rule that a later Court concedes him to have had the power to lay down. According to *GW Patons*, 'Jurisprudence':—

“The words **ratio decidendi** are almost always used in contra distinction to **orbiter dictum**. An orbiter dictum of course is always something said by a judge. It is frequently, easier to show that something said in a judgement is **orbiter** and has no binding authority. Clearly something said by a judge about the law in his judgement, which is not part of the course of reasoning, leading to the decision of some question or issue presented to him

for resolution has no binding authority, however, persuasive it may be, and it will be described as an **orbiter dictum**."

While deciding the **ratio decidendi** first, it is necessary to determine all the facts of the case as seen by the judge; secondly, it is necessary to discover which of those facts were treated as material by the judge. In Black's Law Dictionary ratio decidendi is explained as "*the principle or rule of law on which a Court's decision is founded and also as the rule of law on which a latter Court thinks that a previous Court founded its decision, a general rule, without which a case must have been decided otherwise.*"

99. A Constitution Bench of the Supreme Court in the case of **Krishena Kumar Vs. Union of India, 1990 (4) SCC 481**; has observed in paragraph 19 and 20 as follows: "19. *The doctrine of Precedent, that is, being bound by a previous decision, is limited to the decision itself and as to what is necessarily in Abadi involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain propositions wider than the case itself required . This was what Lord Selborne said in Caledonia Railway Company Vs. Walkers Trustees, and Lord Halsbury in Quinn Vs. Leathem. Sir Frederick Pollock has also said, –*

"Judicial Authority belongs not to the exact words used in this or that judgement, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision."

"20. In other words, the enunciation of the reason or the principle upon which a question before a

Court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on, the context abstracted from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge made and a minor premise, consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it."

(emphasis supplied by us)

100. A Constitution Bench in ***Islamic Academy of Education Vs. State of Karnataka 2002 (8) SCC 481***; observed as follows: –

"139. A judgement it is trite, is not to be read as a Statute. The ratio decidendi of a judgement is its reasoning which can be discovered only upon reading the same in its entirety. The ratio of a case or the principles and reasons on which it is based is distinct from the relief, finally granted or the manner adopted for its disposal.

(emphasis supplied by us)

101. In ***Padma Sundara Rao Vs. State of Tamil Nadu, 2002 (3) SCC 533***; it is Stated:

"9 – – there is always peril in treating the words of a speech or judgement as though they were words

in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, Said Lord Morris in Herrington Vs. British Railway Board; Circumstantial flexibility, one additional or different fact may make a world of a difference between conclusions in two cases."

(emphasis supplied by us)

102. In ***Haryana State Financial Corporation Vs. Jagdamba Oil Mills, 2002 (3) SCC 496***; the Supreme Court had said that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclids' Theorem nor as provisions of the statute. These observations must be read in the context in which they appear. Judgements of courts are not to be construed as statutes. To interpret words, phrases, and provisions of a statute, it may become necessary for judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgements. They interpret words of statutes, their words are not to be interpreted as statutes.

103. It is a settled position of law that only the *ratio decidendi* of a judgment is binding as a precedent. It is the *ratio decidendi* which forms a precedent and not the final order in the judgment, vide ***Sanjay Singh v. Uttar Pradesh Public Service Commission, Allahabad; (2007) 3 SCC 720***. Therefore, the decision applicable only to the facts of the case cannot be treated as a binding precedent.

104. The Apex Court in the case of ***Royal Medical Trust and Ors. vs. Union of India, (2015) 10 SCC 19***, held that the ratio of a decision has to be understood regard being had to its context and factual exposition. The ratiocination in an authority is basically founded on the interpretation of the statutory provision. If it is based on a particular fact or the decision of the Court is guided by specific nature of the case, it will not amount to the ratio of the judgment. Lord Halsbury in *Quinn v. Leathem* 1901 AC 495: (1900-03) ALL ER Rep 1 (HL) has ruled:

“... every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found.”

105. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a Clause or a provision in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents. (*Vide **Union of India and Ors. v. Dhanwanti Devi and Ors (1996) 6 SCC 44***). The essence of a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or

assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. We have no hesitation in saying that the pronouncement made in *Durga Narain Inter College (supra)* has to rest on its own facts and not binding in all circumstances and would be of no help to the petitioners because facts of *Durga Narain Inter College (supra)* case is totally different from the case at hand, have not at all applicable.

X. Conclusion

106. In light of the discussion above, we summarise our findings as follows:

- a. the effect of Sections 4 and 6 of the Act 1950, is that all the estates in State of U.P. to which the Act applies shall stand transferred to and shall vest in the State of U.P. free from all encumbrances;
- b. an absolute title and ownership vested in the State of U.P., free from all encumbrances under Sections 4, 3(8) and 6 of the Act, 1950 and all rights stood terminated and vested in State of Uttar Pradesh;
- c. the vesting in the State was absolute but the vesting in the Gaon Sabha was limited to possession and management subject to divestiture by Government;
- d. the vesting of land in Gaon Sabha only provided the better management and superintendence of the land by the Gaon

Sabha and the vesting of land in the Gaon Sabha by virtue of Section 117(1) is clearly not a complete vesting of right, title and interest;

- e. the Legislative intent of Section 9 of the Act, 1950, is very clear and it provides a settlement of existed/standing wells, trees, buildings and the area appurtenant thereto to those persons who lawfully held them at time of date of vesting, i.e., on 1st of July 1952, with the intention to continuity of the possession;
- f. the idea behind Section 9 of the Act is to provide continuity of the possession of the wells, trees, buildings to those persons who lawfully held them before the date of vesting shall be deemed to be settled with the said person who had been in the lawful possession before the date of vesting;
- g. the expression 'held' occurs in Section 9 of Act is interpreted to mean "lawfully held, to possess by legal title" as held by the Supreme Court in *Budhan Singh v. Nabi Bux* ¹, and not gained wrongful possession. In other words, the expression 'held' connotes possession by the legal title. The word "held" cannot be extended so as to include within its ambit the mere trespasser or persons having no otherwise right to hold the building so as to extinguish or overlook legal right or title over the disputed property of others.
- h. the benefit of section 9 of the Act can be extended only when there is evidence and

proof of factum that there was lawfully existing/standing well or building on the land on the date of vesting, i.e., on 1st of July 1952;

- i. the Burden of proof to establish that building in question was in existence on the date of vesting shall lie on the person who is seeking benefit of section 9 of the Act. It cannot shift to other parties. A building, constructed later on, cannot be held to be settled with its owner, occupier etc.
- j. the copies of Parivar Register (Kutumb Register) issued under the U.P. Panchayat Raj Maintenance of Parivar Register Rules, 1970, cannot be relied upon as the Parivar Register Rules came to be maintained only after the coming into operation of U.P. Panchayat Raj Maintenance of Parivar Register Rules, 1970. Petitioners could not produce any of the documents which establish that they were residing on the land in question on the date of vesting, i.e., 1st July 1952. Existence of building on date of vesting is a necessary condition for providing benefit under section 9 of the Act, 1950;
- k. Khasra is an indicator of possession where as Khatauni relates to title and nature of occupancy over the land. In the present case, petitioners have led no evidence whatsoever to show that they had lawful right over the land and were also in lawful possession over the land in question;

- l. the land recorded as *Sarvajanik/Village Abadi* Land under category 6(2) of para A-124 of the U.P. Land Records Manual, belongs to the State/Gaon Sabha and is vested in the State as held in *Phool Singh and Another (supra)* and *Masroor Ahmed and Others (supra)*. Therefore, there is no fetter on the part of the State Government to resume the land recorded as above;
- m. Government cannot and does not acquire its own land, only resumption can be done in terms of section 117(6) of the Act, 1950 because right, title and ownership still continues with the State;
- n. The observation and conclusion made in the case of *Committee of Management, Durga Narain College and Adity Kumari School v. State of U.P.*⁹, were correct on its own facts and circumstances and would not apply to the present case. The factual matrix of *Durga Narain College case* is entirely different from the present case;
- o. Petitioners are simply encroachers over the Government village Abadi land recorded under Category 6(2) and their status is not more than an encroacher. Existence of building on the date of vesting is a condition precedent for providing benefit under section 9 of the Act, 1950. The petitioners have not produced any document for establishing the factum of existence of houses on the date of vesting;
- p. the essence of a decision is its ratio and not every observation found therein nor what

logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found;

- q. the ratio of a decision has to be understood regard being had to its context and factual exposition. In order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute.

107. In view of the aforesaid discussion, we hold that the order of Resumption of land dated 21.02.2013, has been made in accordance with the power given under section 117(6) of the Act. We do not find any ground in the writ petitions to quash the order of resumption dated 21.02.2013. In view of the foregoing discussion, all the four writ petitions deserve to be dismissed. In the result, all the four writ petitions are ***dismissed***.

Order Date: 04.12.2024

Darpan / Rahul/ N.PAL

[Justice Brij Raj Singh]

[Justice Sangeeta Chandra]