

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11979 of 2017

H. D. Jain College, Ara, through its Principal Dr. Chandrashekhar Saha, Son of Late Jamuna Prasad Surajpuri, P.O.-Ara, P.S.Ara Town, Ara, District-Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Science and Technology, Deptt. Govt. of Bihar, Patna.
3. The Director, Science and Technology Deptt. Govt. of Bihar, Patna.
4. The District Magistrate, Ara.
5. The Sub-Divisional Officer, Ara, Sadar, District-Bhojpur.
6. Veer Kuwar Singh University, Ara through Registrar.
7. The Commissioner, Patna Division, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate Mr. Sunil Kumar Singh
For the Respondent/s	:	Smt. A. Meenakshee – G P 6

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 07-03-2019

Heard learned Counsels for the parties.

The present writ application was filed by the H.D. Jain College, Ara (hereinafter referred to as the College) through its Principal Dr. Chandrashekhar Saha for restraining the respondents from construction of building of the Engineering College on the land of the College and with further prayer for removal of encroachment already made on the land of the College. The relief as stipulated in paragraph 1 of the writ application reads as follows:

“1. That it is an application for issuance of an appropriate writs/directions commanding the respondents to restrain respondents from making construction of building of engineering college on the land of H.D. Jain college, Ara (hereinafter referred to as



the college) of Mauza-Ara, Thana No.-237, Tauzi No.-30, Khata No-1136, 1137, 1138, Khesra No-3546, 3542, 3553, 3554, 3555, 3556, 3557, 3558, 3559, 3560, 3564, 3583, 3584, 3586, 3587, 3588, 3589, 359, 3591, 3592, 3774. The petitioner further prays to issue direction for removal of encroachment from aforesaid land of the college and also grant any other reliefs for which petitioner is found entitled in the facts and circumstances of the case.”

I.A. No. 6082 of 2017

The aforementioned I.A. has been preferred on 31.7.2017 on behalf of the petitioner for staying the construction of Engineering College on the land of the College. Since the writ application was filed on 19.8.2017 but no counter affidavit was filed, hence this Court vide order dated 5.12.2017, directed to maintain status quo as existing on that day with regard to the land recorded in the revenue records in the name of the College in question. In the meantime the learned counsels for the University and the State were directed to file counter affidavit. The interim order reads as follows:

“In the meantime, status quo, as is existing today, with regard to the lands,



recorded in the revenue records in the name of the College in question, shall be maintained.”

Accordingly, I.A. No. 6082 of 2017 stood disposed of.

I.A. No. 206 of 2018

The aforementioned I.A. was preferred on 09.01.2018 on behalf of the respondent-State (respondent nos. 4 and 5) for modification of the order dated 5.12.2017, whereby the interim order of status quo was granted. The aforementioned I.A. was not taken up as it is jointly prayed for disposal of the writ application since the pleadings were almost complete. Moreover, the interim order of status quo was with regard to the land recorded in the revenue records in the name of the College in question but since the specific case of the respondent-State is that the part of the land in question is recorded as ‘Gairmajarua Aam’ and part of it is recorded ‘Gairmajarua Malgujar’, and the same is not being disputed by the either party, hence the status quo order is not affecting the petitioner.

Accordingly, the I.A. No. 206 of 2018 stands disposed of.

I.A. No. 359 of 2018



The aforementioned I.A. was filed on 16.01.2018 for amendment of the prayer to the extent of quashing Memo No. 434 dated 27.6.2017 passed by the Commissioner, Patna Division, Patna, as contained in Annexure 6, whereby and whereunder part of the land appertaining to Thana No. 237, Khata No. 1138 and 1139, Plot Nos. 3546, 3549 and 3568, total measuring an area of 4.9 acres has been transferred to Science and Technology Department, Government of Bihar. Through the same I.A., further prayer was made to implead the Commissioner, Patna Division, Patna as respondent no. 7. Paragraph no. 1 of I.A. No. 359 of 2018 reads as follows:

“1. That this is an interlocutory application for making additional prayer for quashing the order contained in Memo No. 434 dated 27.6.2017 passed by the Commissioner, Patna Division, Patna whereby and whereunder land pertaining to Anchal – Sadar, Ara, Mauza – Kesba Ara, Thana No. 237, Khata No. 1138 and 1139, Khesra No. 3546, 3569 and 3568 of Kakba 3.24676, 1.58437 and 0.06887 of 4.90 acre has been transferred to Science and Technology Department, Bihar, Patna and also to add Commissioner, Patna Division, Patna as Respondent no.7.”



Since the Divisional Commissioner, Patna was already made party respondent no. 7 vide order dated 20.2.2018 and the respondents had no objection for the amendment of the prayer, hence, I.A. No. 359 of 2018 was disposed of vide order dated 20.2.2018 to the extent of amendment of the prayer.

The factual matrix of the case is that the then Maharaja Dumraon Ranvijay Prasad Singh executed a deed of grant registered on 22.2.1945 with regard to 13 acres 35 decimals (21 bigha 7 katha 4 dhoors) of land situated in Ara town. The land is situated in two different localities of Ara town. The College is located in one side of the town, whereas the land in question is located in the other side of the town. The land in question is not being utilized till date. However, the College in question became constituent unit of Magadh University on 9.4.1962. The total area of land measuring 34 acres 59 decimals was submitted by the college in question to the Magadh University claiming the same from the then Maharaja Dumraon and Adhinath Trust. In October, 1992, Veer Kunwar Singh University, Ara was carved out from Magadh University and the College in question came within the jurisdiction of Veer Kunwar Singh University, Ara



(hereinafter referred to as the University).

The Government of Bihar took seven resolutions for the good governance and betterment of the State and one of such resolutions of the State Government, was to establish Engineering College in each district to restrain brain drain from the State of Bihar. In the district of Bhojpur, one Engineering College was sanctioned.

On 26.7.2016, the District Magistrate, Ara sought No Objection Certificate from the Registrar of the University for transfer of 10 acres of land to the Science and Technology Department, Government of Bihar for establishment of the Engineering College as proposed by the said Department. The Registrar of the University vide letter dated 01.08.2016, as contained in Annexure 3, requested the College in question to submit its view in respect of the transfer of the land and the College in its reply dated 12.8.2016 as contained in Annexure 4, did not agree to the same on the ground that the land is required for the construction of administrative building, residential quarter of staff and accordingly, 'No Objection Certificate' was refused.

The land in question was marked as a suitable and viable piece of land by the Collector, Bhojpur and the



proposal for the same was forwarded to the Principal Secretary, Science and Technology Department, Government of Bihar vide letter no. 134 dated 25.1.2017, as contained in Annexure A to the counter affidavit, filed on behalf of respondent nos. 4 and 5. The Department of Science and Technology approved the proposal and transmitted the said intimation to the District Magistrate vide letter no. 669 dated 20.3.2017, as contained in Annexure B to the counter affidavit, filed on behalf of respondent nos. 4 and 5, with a request to transmit the proposal for transfer of the land in question. The land in question appertaining to Khata No. 1138 Khesra No. 3546 and 3569 is recorded in the revenue records as Gairmajarua Malguzar in the Khatian and the land appertaining to Khata No. 1139, Khesra No. 3568 is recorded as Gairmajarua Aam, total area being 7.802 acres. Out of the aforesaid area, 4.90 acres of land was proposed for the construction of the Engineering College. On proposal being transmitted by the District Magistrate, the Divisional Commissioner, Patna vide order contained in Memo No. 434 dated 27.6.2017 assented to transfer the land in question to the Science and Technology Department, Government of Bihar. Consequently, Rs.73.13 crores was sanctioned for



establishment of engineering college on the land in question.

Clause 3 of the indenture dated 22.2.1945 stipulates that Maharaja Dumraon Ram Ranvijay Prasad Singh gave 13 acres 35 decimals of land for the infrastructure of H.D. Jain College, Ara and it was further categorically stipulated that the grantee, the College in question, shall continue in use and occupation of the land and building so long as the lands and buildings thereon are used exclusively for the purposes of educational institution. Clause 7 of the said indenture stipulates that in case the grantee breaches the terms and conditions of the indenture, it will cease to use the land and building and the grantor shall have the right to resume the grant and re-enter thereon and take possession of the land and building without any compensation. In pursuance to that, the successor in interest of the grantor, namely, Maharaja Kamal Singh resumed the land in question and requested the Science and Technology Department, Government of Bihar for construction of Engineering College and for that he made proper intimation. On 22.7.2017, the Principal of the College visited the land in question and found that the government contractor was conducting soil testing for construction of building for Engineering College and



thereafter, the present writ application was filed.

It is submitted by learned Senior counsel for the petitioner that the land was given by the then Maharaja Dumraon vide indenture dated 22.2.1945. The College in question became constituent unit of Magadh University on 9.4.1962 and at the time of being constituent unit, the entire land of the college including the land given by the Maharaja was handed over to the University and hence, the entire land vested with the Magadh University and consequently with the carving out of Veer Kunwar Singh University from Magadh University in 1992, the land in question vested with the Veer Kunwar Singh University. It is further submitted that the land in question is required for the construction of administrative building, residential quarter and future development of the College and if the return was not filed by the Maharaja then without initiating a proceeding under Section 4(h) of the Bihar Reforms Act, 1950, the land cannot be taken away. Hence, it is submitted that the Commissioner, Patna Division has no jurisdiction to transfer the land in question to the State Government.

It is contended by learned counsel for the respondent nos. 4 and 5, the District Magistrate, Ara and the



Sub-Divisional Officer, Ara that under seven resolutions for the good governance, the State Government resolved to establish Engineering College in each district and accordingly, the land in question was selected and Rs.73.13 crores have been allocated for the construction of Engineering College. The Collector selected the land in question and forwarded the proposal to the Principal Secretary, Science and Technology Department, Government of Bihar and consequently, the Department of Science and Technology approved the proposal with a request to transmit the proposal to the Commissioner, Patna for transferring the land in question. Since the land in question appertaining to Khata No. 1138 Khesra No. 3546 and 3569 is recorded in the revenue records as Gairmajarua Malguzar in the Khatiyani and the land appertaining to Khata No. 1139, Khesra No. 3568 is recorded as Gairmajarua Aam, total area of the land being 7.802 acres, hence out of the aforesaid area, 4.90 acres of land was selected for the construction of the Engineering College and a proposal was transmitted by the Collector, Bhojpur vide letter no. 691 dated 24.4.2017 with Record No. 8 of 2016-17. Consequently, the Commissioner, Patna transferred 4.90 acres of land to the Science and Technology



Department, Government of Bihar without any cost vide letter no. 434 dated 27.6.2017, as contained in Annexure C to the counter affidavit filed on behalf of respondent nos. 4 and 5.

The Collector, Bhojpur, vide memo no. 1182 dated 5.7.2017, as contained in Annexure D to the counter affidavit filed on behalf of respondent nos. 4 and 5 intimated to the Principal Secretary, Science and Technology Department, Government of Bihar with regard to the decision of the Commissioner. It is further submitted that as per Clause 7 of the indenture, in case of breach of terms and conditions of the indenture, the grantee ceases to use the land and building and the grantor shall have the right to resume the grant and re-enter thereon and take possession of the land and building without any compensation. Clause 3 of the aforesaid indenture categorically specifies that the grantee (the college) shall continue in use and occupation of the land and building so long as the lands and buildings thereon are used exclusively for the purposes of educational institution. Since the land was not used for seven decades and is not only recorded in the revenue records as Gairmajarua Malgujar and Gairmajarua Aam, but it is still vacant, hence, the successor in interest of the grantor, namely, Maharaja Kamal Singh after



giving due notice to the College, took possession of the land in question and expressed his willingness to give it to the Government for construction of the Engineering College and consequently necessary communications were made by the successor in interest. The petitioner also failed to make payment of rent to the grantor as stipulated in the indenture. The then ex-landlord did not file any return nor any Jamabandi was created, hence the land in question vests with the State. The successor in interest Maharaja Kamal Singh has not been made party, though initially the University and the Divisional Commissioner, Patna were also not made party, and till date the Magadh University has not been added as a party, hence the writ application is fit to be dismissed for non-joinder of necessary party and above all, such issue involving disputed question of fact cannot be resolved by this Court, hence the engineering college which is being constructed as per the wishes of the successor in interest, cannot be interfered by this Court in the present proceeding.

The principle objective of the indenture was for construction of college or educational institution, hence the construction of engineering college is for the larger interest, and in tune with the desire of the grantor, hence, as



per the stipulation of the indenture also, the construction of the engineering college cannot be faulted with and cannot be questioned by the college which failed to use the land for nearly seven decades.

It is submitted on behalf of respondent nos. 2 and 3, the Principal Secretary, Science and Technology Department, Government of Bihar and the Director, Science and Technology Department, Government of Bihar that 4.90 acres of land was transferred under valid order of the Commissioner, Patna Division. The land is recorded as Gairmajarua Aam and Gairmajarua Malgujar in the revenue records and Rs.73.13 crores have been sanctioned for the construction of the engineering college on 4.90 acres of land in question.

It is submitted on behalf of respondent no. 7, the Commissioner, Patna Division that the land appertaining to Khata No. 1138, Plot Nos. 3546 and 3569 is recorded as Gairmajarua Malik and land appertaining to Khata No. 1139 Plot No. 3568 is recorded as Gair Majarua Aam in the records of right. Admittedly, Maharaja Dumraon has not filed 'return' in terms of the Bihar Land Reforms Act, 1950, hence the land in question stood vested with the State Government. It is



further submitted that the indenture in question specifically stipulates that the subject land will remain in use and in occupation of the College so long the same is used exclusively for the purposes of educational institution. Though the petitioner has the right to possess the same but in case of breach of the terms and conditions of the indenture, the grantor has the right to resume the grant and since the land in question has not been utilized in terms of the indenture, the Maharaja Dumraon has shown his willingness for establishment of engineering college as proposed by the government on the land in question and also intimated that he has taken possession of the land and has offered the said land for the construction of engineering college. It is further submitted that the State Government, i.e., in the Department of Revenue and Land Reforms, has resolved that the government land having area of 3 acres to 5 acres could be transferred from one department to the other department of the State Government without any cost, by the Divisional Commissioner and thus, in pursuance to the proposal of the District Magistrate, the transfer of land in question has been made. The said resolution issued vide memo no. 359 dated 19.5.2014 has been brought on record as Annexure B to the



counter affidavit filed by respondent no. 7.

In this hotly contested case, relying upon the counter affidavit filed on behalf of the University dated 5.2.2018, Mr. Arvind Nath Pandey, learned counsel submits that the University is opposing the construction of engineering college as the entire property of the College vested with the Magadh University, after its becoming a constituent unit of Magadh University and after carving out of Veer Kuer Singh University, the entire land of the College has vested with the Veer Kunwar Singh University. Hence, neither the Maharaja Dumraon nor the State has any right to snatch the land which stood transferred to the University on the college becoming a constituent unit. It is further submitted that there is future planning for construction of hostel and quarters for teaching and non-teaching staff of the college, hence, referring to the provision under Section 23(e) of the Bihar University Act, 1976, it is submitted that only the Syndicate has the authority to accept the transfer on behalf of the University of any movable or immovable property. Hence, neither the Maharaja Dumraon nor the State has any authority to transfer the land in question. It has been prayed that the State may be directed not to disturb the peaceful possession of



the college over the land in question.

The stand of the University was opposed by the respondent nos. 4 and 5, as belated and as an afterthought, as per the plea taken in the rejoinder filed on behalf of respondent nos. 4 and 5, wherein it has been claimed that the land in question being Gairmajarua Aam and Gairmajarua Malik land and failure to file return on the part of the Maharaja Dumraon as such the land vests with the State of Bihar.

On behalf of the University, the Registrar filed further counter affidavit on 13th March, 2018 annexing therewith the agreement executed at the time of take over. It is submitted that the lands donated by the Maharaja Dumraon and Adinath Trust were handed over to the Magadh University. The petitioner filed a supplementary affidavit, referring to the meeting of Staff Council dated 9.8.2018, where resolution was passed to keep the land of the college intact and to utilize the land in question for construction of girls hostel, staff quarter under the 'Rastriya Uchcha Siksha Abhiyan'.

In the backdrop of the facts and circumstances discussed hereinabove, the following issue



requires consideration in the present writ application-

(i) Whether the land in question is Gairmajarua Aam or Gairmajarua Malik and if aforesaid is the nature of land in question, the Commissioner, Patna Division is competent to transfer the same to the Department of Science and Technology, Government of Bihar ?

(ii) Whether there has been renewal of grant after forty years as stipulated in the indenture ?

(iii) Whether the Commissioner has the jurisdiction to transfer such land to the Department of Science and Technology, Government of Bihar if the successor in interest has expressed his desire for setting up of engineering college by the government over the land in question ?

(iv) Whether the land donated by the Maharaja Dumraon on 22.2.1945 which remained vacant for seventy years, can be re-entered by the successor in interest of the grantor on failure to achieve the object mentioned in Clause 7 of the indenture dated 22.2.1945 ?

(v) Whether the wish of the original



grantor can be promoted by the successor in interest by expressing his desire for setting up of engineering college by the State over the land which remained vacant ?

(vi) Whether the land in question can be vested with the State on failure of Maharaja Dumraon to file return in terms of Bihar Land Reforms Act, 1950 ?

(vii) Whether the College has the right, title over the land in question on the basis of indenture as contained in Annexure 1 to the writ application or has only the right of enjoyment ?

(viii) Whether the land bequeathed by Annexure 1 on terms and condition can absolutely vest with the Magadh University on taking over the college as its constituent unit and subsequently to the Veer Kunwar Singh University after creation of the same in 1992?

This Court is dismayed to find that in spite of giving ample opportunities, neither the petitioner nor the respondents have brought on record the certified copy of the 'indenture' by virtue of which the petitioner claims the grant.



Photo copies as well as typed copies of the certified copy of the indenture have been filed but they reflect several variations. This Court was inclined to dismiss the writ application on this ground alone, but in view of the fact that so much indulgence has been given, and the existence of indenture, particularly its Clause 3 and 7 are not in dispute, this Court decided to pass a detailed order in this matter.

The present writ application was filed initially without making the University, the successor in interest, i.e., the present Maharaja Dumraon or the Commissioner, Patna Division or Magadh University as party respondents. Though the Veer Kunwar Singh University and the Commissioner, Patna Division were subsequently added as party respondents on the direction of this Court but till date neither the successor in interest of grantor nor the Magadh University has been made a party respondent.

This Court vide order dated 22.2.2018 directed the learned counsel for the respondent-State to bring on record the R.S. Khatiyan and C.S. Khatiyan on affidavit but the same have not been brought on record by either party till date.

On consideration of the entire materials as



discussed herein above, this Court finds that the land in question was bequeathed on certain terms and conditions. Those conditions are stipulated in Clause 3 and 7 of the indenture, as contained in Annexure 1 to the writ application, which read as follows:

“3. The grantee shall continue in use and occupation of the land and buildings therein without any interference on the part of the grantor so long as the lands and buildings thereon are used exclusively for purposes of educational institutions.”

“7. That when the grantee ceases to use the land and buildings thereon for the purposes of the college or any public educational institution or on breach of any of the terms and conditions of be grant, the grantor shall have the rights to resume the grant and to re-enter hereon and take possession of the land with the buildings thereon without payments of any compensations for the buildings, wells and other structures thereon and the grantee shall put forward no objection to re-entry and occupations of the land and buildings by the grantor.”

Clause 3 of the indenture clearly stipulates that the grantee shall continue in use and occupation of the land and building over the land so long as the lands and



buildings are used exclusively for the purposes of educational institution. The land in question is lying vacant since last seven decades, hence, it is a clear violation of the Clause 3 of indenture. Clause 7 which has been referred as Clause 6 in Annexure 1, clearly stipulates that in case of breach of terms and conditions of the indenture, the grantee ceases to use the land and building thereon and the grantor shall have the right to resume the grant and to re-enter on the land and take possession of the same without any compensation, particularly, if the grantee ceases to use the land and building for the purposes of college and public educational institution. This is not in dispute that the land has not been used for the purpose of college or any public educational institution. Such stipulation further clarifies that the grant was not only for the running of H.D. Jain College but for running 'public educational institutions' and hence, the establishment of engineering college cannot be treated as contrary to objective of the indenture to establish 'public educational institutions'. From further reading of the indenture, it appears that it was by way of lease initially for the period of forty years (from April, 1951 to 31st March, 1991) which was subject to renewal for further forty years at the option of the second



party, which reads as follows:

“1. That the First Period of the lease will be from forty years commencing from April, 1951 and ending with the 31st March, 1991.

2. That after the expiry of the first forty years the lease may be renewed and extended for another forty years at the option of the Second Party.”

Clause 7 of the indenture stipulates that on expiry of the lease or if the second party does not desire to get the lease renewed for the second term then it will belong to the first party. There is nothing on record to suggest that the petitioner opted for renewal option or it was renewed.

The above facts suggest that the College could not acquire an absolute right, title over the land in question as the grantor had granted permission to utilize the land for certain purposes and for the specific period and as such, the land cannot become the absolute property of H.D. Jain College, Ara and if the petitioner could not acquire the absolute right over the property/land in question but only the subject land/property was permitted to be used with certain conditions, consequently, the Magadh University and Veer



Kunwar Singh University also could not acquire the absolute right over the land in question, hence, it cannot be said that the land is vested with the Magadh University or its successor Veer Kunwar Singh University.

The issue as regards the entry of land in question in the records of right as Gairmajarua Aam or Gairmajarua Malgujar cannot be decided in the present writ proceeding. The entry in the records of right is taken as correct one, unless it is declared otherwise by the competent court of law. The claim of the respondent State that the land in question is recorded as Gairmajarua Aam or Gairmajarua Malgujar, has not been denied by the petitioner. There is no issue in the present writ application for the declaration of the entry of the land being incorrect, hence, this Court refrains from deciding such issue.

So far as the vesting of Zamindari on failure of the then Maharaja Dumraon in filing return is concerned, it cannot be decided in the present proceeding, rather it can only be decided in an appropriate proceeding. However, this Court cannot approve the contention of the State that the land has been vested in the State for failure to file return, as they have not resorted to statutory provision of Section 4(h) of the



Bihar Land Reforms Act, 1950.

Thus, the only issue that remains in the present writ application, is of balancing the conflicting interest involved in the present matter between the interest of the petitioner, beneficiary of the grant vide Annexure 1 vis-a-vis the successor in interest of the grantor, who is not party in the present proceeding.

The doctrine of *Cypres* is usually interpreted as a rule providing for interpretation of instruments, in equity, as nearly as possible, in conformity to the intention of the testator, unless literal construction is illegal, impracticable or impossible. The beneficiary of the grant vide Annexure 1, i.e. the successor in interest of the grantor is not a party in the present proceeding, whereas, he has definite interest on account of dedication of land for specific purpose, hence the doctrine of *Cypres* gets attracted in case of frustration of object.

Moreover, both testamentary and non-testamentary gifts for public charitable purposes must be saved by a wider intervention of Court, as public interest is served that way, as has been laid down by the Apex Court in the case of State of U.P. Vs. Bansi Dhar and Ors., reported in



AIR 1974 SC 1084. From the perusal of Clauses of the indenture dated 22.2.1945, it becomes apparent that the larger intention was to give the property for the purposes of establishment of educational institution, which very well includes the setting up of Engineering College.

The issue whether the re-entry of the grantor is automatic or only on giving notice, or there should be specific procedure for re-entry, on failure of the object, the Court, in peculiar facts and circumstances, cannot take any decision in the instant case as the Maharaja Dumraon is not a party in the present proceeding.

The other conflicting interest is between the interest of the petitioner and the interest of the State to set up an engineering college over the land in question to stop brain drain. In ordinary situation, in the matters of conflict of interest, the larger interest would prevail. Since the land in question was donated for the purpose of promotion of educational institution, the construction of engineering college over the land in question is definitely in furtherance of the object of indenture.

What is important in the matter of promoting the object of grant vide Annexure 1 is to achieve the object of



promotion of educational institution serving larger public interest. The intention of the grantor was to promote the extension of educational institution but for the several decades the land in question was kept without use and now a stand has been taken by the respondent State to set up an engineering college, as such, there is no conflict of object of Annexure 1. By setting up of engineering college the larger public purpose is served, whether H.D. Jain College sets up educational institution or the State Government sets up engineering college, the name behind the setting up the educational institution is secondary. This Court is of the view that setting up of public educational institution is in larger public interest and it will benefit the public at large, hence, it would be in furtherance of the object of indenture as contained in Annexure 1, particularly in the backdrop of the fact that there is no material on record as to renewal of the grant after forty years and the land being not used by the college for seven decades; rather it is admitted position that the land in question is still vacant.

Under the aforesaid circumstances, the Court finds that the jurisdiction under Article 226 of the Constitution of India is not to frustrate the public purpose but



to uphold the public purpose, particularly when the successor in interest Maharaja Dumraon, in so many words, has expressed his willingness for construction of engineering college on the land in question. It is to be noted here that the Senior Counsel for the petitioner has heavily relied upon judgment of the Apex Court reported in AIR 1989 SC 997. On scrutiny of the facts and circumstances, this Court is of the considered view that the judgment cited by the petitioner as referred above is not attracted in the peculiar facts and circumstances of the case as discussed above. Hence, this Court is not inclined to interfere in the matter for the following reasons:

(i) There is no conflict of object behind the stipulation made by the grantor in the indenture contained in Annexure 1, by setting up of engineering college.

(ii) There is no renewal of grant after forty years.

(iii) The land in question was kept vacant for seventy years.

(iv) The successor in interest of the grantor has expressed his desire for setting up of engineering college by the State Government.

(v) The College and the University have promissory right in terms of Annexure 1 and they have not acquired absolute



right, title over the land in question.

(vi) The land was recorded in the revenue records as Gairmajarua Aam and Gairmajarua Malgujar.

(vii) It has been held by a Four Judge bench of the Apex Court in the case of DLF Housing Construction (P) Ltd Vs. Delhi Municipal Corpn. And others (1976) 3 SCC 160 that the question related to the right of ownership over a land, where the basic facts are disputed and complicated question of law and fact are involved requiring leading of evidence, the writ court is not a proper forum for seeking relief. Paragraph 18 of the said judgment reads as follows:

“18. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit.”



Considering the facts and circumstances discussed hereinabove and noticing the serious disputes as to right, title and interest, this Court is of the considered view that the discretionary jurisdiction under Article 226 of the Constitution of India is not the appropriate forum to decide such disputed questions.

Accordingly, this writ application is dismissed.

(Dinesh Kumar Singh, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

