IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 527 of 2023
with
WRIT PETITION NO.689 of 2023

WRIT PETITION NO.527 OF 2023

1. Govind s/o Sureshkumar Agrawal,
Aged about 42 years, Occupation: Business,
R/o. 63, Wardhaman Nagar, Nagpur.

2. Mayur s/o Manoharlal Agrawal,
Aged about 32 years, Occupation: Business,
R/o. 32, Wardhaman Nagar, Nagpur.

..... **PETITIONERS**

...V E R S U S...

1. Nagpur Improvement Trust,
through its Chairman,
Office at Kingsway Road, Sadar,
Nagpur.

2. The Divisional Officer(East),
Nagpur Improvement Trust,
Surya Nagar, Nagpur.

Amended as per orders dated 18.04.2023 and 27.04.2023 Sd/- C. F. Petitioners

3. The State of Maharashtra,
through Secretary, Urban Development Department,
Mantralaya, Mumbai-32.

.... **RESPONDENTS**

with
WRIT PETITION NO.689 OF 2023

Punjab National Bank
A Body Corporate constituted under the
Banking Companies (Acquisition & Transfer of Undertakings Act)
having its head office Plot No.4, Sector-10,
Dwarka, New Delhi-110 075 and
Branch Office amongst other places at
Gandhibagh, Nagpur, being represented
through Mr. Radhakanta s/o Bhimsen Pradhan,

aged 35 years, Occupation-Service,
Authorised Officer-Punjab National Bank,
Asset Recovery Management Branch,
having office at PNB House, Kingsway,
Nagpur-440 001(MS). ..**PETITIONER**

Versus

1. Nagpur Improvement Trust,
Nagpur, through its Chairman,
having office at Civil Lines, Nagpur-440 001.

2. City Survey Officer No.2,
having office at 5th Floor, Administrative Building No.1.
Civil Lines, Nagpur-440 001.

3. Kamlesh s/o Shantilal Shah,
Proprietor of M/s Kamal Pulses,
Aged-Major, Occupation-Business,
R/o. Flat No. 302, Tulsi Apartments,
Near Itwari Telephone Exchange,
Central Avenue Road, Nagpur.

4. Vikas s/o Pandurang Thakre,
Aged Major, Occupation-Trustee,
Nagpur Improvement Trust, Nagpur.
Having office at Civil Lines, Nagpur and
residing at Shastri Layout,
Near Metro Station, Subhash Nagar Chowk,
Hingna Road, Nagpur.

5. Prakash s/o Sitaram Bhoyar,
Aged-Major, Occupation-Trustee,
Nagpur Improvement Trust, Nagpur.
Having office at Civil Lines, Nagpur and
residing at Near Mahatme Hospital,
Somalwada, Nagpur.

6. Sandeep s/o Vasantrao Itkelwar,
Aged about 50 years, Occupation-Trustee,
Nagpur Improvement Trust, Nagpur,
having office at Civil Lines, Nagpur and
residing at Itkelwar Wada, Gujri Chowk,
Near Pintu Saoji, Juni Mangalwari,
Nagpur-440 008.

7. Pravinbhai s/o Premjibhai Thakkar,
Aged-47 years, Occupation-Business,
R/o. Plot No.64, Nandanvan Road,
Infront of KDK College, Hanuman Nagar,
Nagpur-440 009.

8. Govind s/o Sureshkumar Agrawal,
Aged about 44 years, Occupation: Business,
R/o. 63, Wardhaman Nagar, Nagpur-440 008.

9. Mayur s/o Manoharlal Agrawal,
Aged about 32 years, Occupation: Business,
R/o. 32, Wardhaman Nagar, Nagpur-400 008.

Added/ amended as per Order dated 18.04.2023 Sd/- C.F.Petitioner.

10. State of Maharashtra,
through Principal Secretary, Urban Development Department, 4th floor, Main Building,
Hutatma Rajguru Chowk, Mantralaya,
Mumbai-32 (MS) ...**RESPONDENTS**

Shri C.S.Kaptan, Senior Advocate with Shri A.A.Mardikar, Advocate for petitioners in Writ Petition No.527 of 2023 and for respondent nos. 8 and 9 in Writ Petition No.689 of 2023.
Shri S.K.Mishra, Senior Advocate with Shri Nikhil Kirtane and Shri Sudhir Puranik, Advocates for respondent-Nagpur Improvement Trust in both the writ petitions.
Ms N. P. Mehta, Assistant Government Pleader for respondent no.3 in Writ Petition No.527 of 2023 and for respondent nos. 2 & 10 in Writ Petition No.689 of 2023.
Shri Harish Dangre, Advocate for petitioner in Writ Petition No.689 of 2023.
Shri S. V. Bhutada, Advocate for respondent no.3 in Writ Petition No.689 of 2023.
Shri Sunil Manohar, Senior Advocate with Shri Shantanu Khedkar, Advocate for respondent nos. 4 to 6 in Writ Petition No.689 of 2023.
Shri S.A.Mohta, Advocate for respondent no.7 in Writ Petition No.689 of 2023.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
ARGUMENTS WERE HEARD ON : 06.06.2023
JUDGMENT IS PRONOUNCED ON : 15.06.2023

<u>JUDGMENT</u> (Per A.S.CHANDURKAR, J.)

Since challenge has been raised to the decision/resolution of the Board of Trustees' of the Nagpur Improvement Trust dated 02.03.2022 in both the writ petitions, they have been heard together and are being decided by common judgment.

2. **Rule.** Rule made returnable forthwith and heard the learned Advocates for the parties.

3. The facts relevant for deciding the writ petitions are that Plot No.101, Mouza-Chikhli (Deo), Khasra Nos. 61, 63 and 69 vest with the Nagpur Improvement Trust (for short, the NIT). On 07.04.1998 the NIT was pleased to auction leasehold rights of the aforesaid property in favour of one Shri Kamlesh Shantilal Shah for industrial use. Pursuant thereto, on 24.08.1998 the NIT executed a lease deed of the aforesaid property in his favour subject to terms and conditions mentioned therein. As per Clause 1(m-1) the said plot was allotted on concessional premium and the conditions prescribed under Rule 24 of the Nagpur Improvement Trust Land Disposal Rules, 1983 (for short, the Rules of 1983) as well as the conditions that could be imposed by the Chairman were made applicable. The aforesaid lessee mortgaged the aforesaid land for obtaining financial assistance. Since the lessee failed to repay the amount borrowed by him, the Bank proceeded

to auction the aforesaid property on 18.08.2018. The said property was purchased by the respondent no.7 in Writ Petition No.689 of 2023 . The said auction purchaser thereafter on 23.10.2019 sold the aforesaid property to the petitioners in Writ Petition No.527 of 2023 who are also arrayed as respondent nos. 8 and 9 in Writ Petition No.689 of 2023 (for short, the Purchasers). Based on a complaint made by the original lessee with the NIT, its Trustees' in a meeting held on 02.03.2022 resolved to lodge a First Information Report (FIR) against the petitioner in Writ Petition No.689 of 2023-Punjab National Bank (for short, the Bank) on the ground that it had auctioned the said leasehold property without obtaining permission of the NIT. It was also resolved to resume possession of the aforesaid property and intervene in the pending proceedings initiated by the Bank before the Debts Recovery Tribunal. Acting on this resolution, a notice came to be issued to the Purchasers on 16.01.2023 requiring them to hand over possession of the leasehold property within a period of seven days. The Purchasers thus being aggrieved have challenged the resolution passed by the Board of Trustees' of the NIT dated 02.03.2022 as well as the notice issued to them by the NIT on 16.01.2023 by filing Writ Petition No.527 of 2023.

4. In Writ Petition No.689 of 2023, the Bank has challenged the said resolution dated 02.03.2022, copy of which was received by it on 06.01.2023. During pendency of the writ petition, the State Government

through its Urban Development Department issued a communication to the Chairman of the NIT on 20.03.2023 stating therein that part of resolution dated 02.03.2022 by which it was proposed to lodge a First Information Report (for short, the FIR) against the Bank was concerned, the same was rescinded. Rest of the resolution proposing to take over possession of Plot No.101 in terms of resolution dated 02.03.2022 came to be confirmed and the NIT was directed to take necessary steps in that regard.

5. Shri C.S.Kaptan, learned Senior Advocate appearing for the Purchasers submitted that the NIT was not justified in issuing notice to the Purchasers on 16.01.2023 in exercise of the power of re-entry. The only ground on which the right of re-entry was being exercised was that the no objection certificate of the NIT had not been obtained before the sale deed came to be executed in favour of the Purchasers on 23.10.2019. In fact, there was no necessity of seeking any no objection certificate in that regard. The learned Senior Advocate referred to the information supplied under provisions of the Right to Information Act, 2005 on 13.09.2012 by the NIT itself. In clear terms, it was stated that there was no requirement of obtaining no objection certificate while entering into such transaction. He also referred to the resolution dated 03.09.2016 passed by the Board of Trustees of the NIT in which it was observed that since the provisions of Section 22 A of the Registration Act, 1908 (for short, the Act of 1908) had

been quashed, there was no requirement of obtaining such no objection certificate. Attention was also invited to the communication dated 06.09.2016 issued by the NIT to the Bank of India reiterating this position. It was thus clear from the aforesaid documents that the right of re-entry by the NIT stood waived since obtaining of the no objection certificate had been dispensed with.

As regards challenge raised to the resolution dated 02.03.2022, it was submitted that there was no justifiable ground stated in the said resolution while resolving to take back possession of the plot in question from the Purchasers. The adverse statements made in the said resolution were denied and the same could not be the basis for issuing the impugned notice dated 16.01.2023. Moreover, the Purchasers alone had been singled out by taking action against them. They were not given any notice of the proceedings conducted on 13.10.2021 and the NIT had acted highhandedly against the Purchasers. Such conduct resulted in breach of the provisions of Article 14 of the Constitution of India and was thus liable to be set aside. Reliance was placed in that regard on the decisions in *Ramana Dayaram Shetty Vs. International Airport Authority of India and others* ***[(1979) 3 SCC 489]*** and *M. P. Power Management Company Limited, Jabalpur vs. SKY Power South-East Solar India Private Limited and others* ***[(2023) 2 SCC 703].*** As regards the communication dated 20.03.2023 issued by the State Government was concerned, it was submitted that there were no reasons stated therein for maintaining the latter part of the resolution dated 02.03.2022 passed by the NIT. On these counts, it was submitted that the impugned resolution dated 02.03.2022 as well as the notice dated 16.01.2023 would liable to be set aside and the Purchasers were entitled for the reliefs as prayed for in the writ petition.

6. Shri H. D. Dangre, learned counsel appearing for the petitioner-Bank in Writ Petition No.689 of 2023, in addition to the aforesaid, submitted that the NIT was precluded from contending that the no objection certificate was required to be obtained by the Bank before conducting the auction. According to him, the NIT was a party to the recovery proceedings initiated by the Bank before the Debts Recovery Tribunal but the stand that there was absence of no objection certificate by the Bank had never been raised by the NIT in the said proceedings. In any event, it was submitted that absence of no objection certificate could not be treated to be an illegality affecting the transaction but it was merely an irregularity that could be cured by obtaining post-facto sanction. The learned Advocate further submitted that the right of re-entry sought to be exercised by the NIT was available only on breach of conditions of the lease deed. This would include the default in making payment of lease amount or rent. With the provisions of Section 22 A of the Act of 1908 ceasing to operate, there was no legal basis for the NIT to insist upon obtaining the no objection certificate.

As regards the resolution dated 02.03.2022 was concerned, it was submitted that even the NIT had no objection whatsoever for rescinding the said resolution. The State Government by its communication dated 20.03.2023 partly rescinded the said resolution insofar as it was resolved to lodge a FIR against the Bank. However, there was no justification in maintaining the latter part of the said resolution, that too without assigning any cogent reason therein. It was thus submitted that there was no legal right whatsoever with the NIT to take back possession of the leasehold plot. The relief sought by the Bank ought to be granted.

7. Shri S.K.Mishra, learned Senior Advocate appearing for the NIT opposed both the writ petitions. According to him, the plot in question was a leasehold plot and pursuant to the allotment dated 07.04.1998 the lease deed came to be executed on 24.08.1998. The conditions mentioned in the lease deed were binding upon the present lessees-Purchasers. Inviting attention to Clause 12 of the letter of allotment dated 07.04.1998 it was pointed out that transfer of leasehold interest in the said land without obtaining prior permission of the NIT was not permissible. Similarly, in the lease deed dated 24.08.1998 vide Clause 1(m-1) it was stated that the plot had been allotted on concessional premium and hence the conditions prescribed by Rule 24 of the Rules of 1983 as well as the conditions imposed by the Chairman of the NIT were applicable. Referring to Rule 24 of the

Rules of 1983, it was submitted that transfer of interest in concessional grant of land could not be done without the prior sanction of the Chairman. It was an admitted position that such prior sanction had not been obtained by the Bank. It was on this basis that the NIT was exercising the right of re-entry. The leasehold rights if any would continue to operate. Since the terms of the allotment letter as well as the lease deed were accepted by the original lessee, it was not permissible for them to now urge that there was no need of obtaining the no objection certificate.

As regards the conduct of the Bank was concerned, it was submitted that on 11.05.2013 the Bank had sought permission of the NIT to sell the aforesaid land for recovering its dues. In response thereto, the NIT had on 18.07.2013 replied that the Bank had created mortgaged without following the terms and conditions of the lease deed and hence the relevant entry with regard to said mortgage had been cancelled. The Bank had preferred an appeal under Section 108A of the Nagpur Improvement Trust Act, 1936 (for short, the Act of 1936) challenging the communication dated 18.07.2013. The said appeal came to be dismissed on 06.08.2015 and that adjudication had attained finality. It was thus clear that despite aforesaid the Bank was insisting that the requirement of obtaining the no objection certificate had been dispensed with. It was further submitted that the resolution dated 02.03.2022 would now operate only in respect of the latter portion thereof since the resolution insofar as filing of the FIR was concerned had been set aside. The fact that the latter portion of the resolution had been maintained itself indicated that the action taken by the NIT was legal and proper and the State Government did not find it necessary to interfere with the same under Section 24-E of the Act of 1936. It was thus submitted that there was no case made out to interfere in writ jurisdiction.

8. Shri Sunil Manohar, learned Senior Advocate for the respondent nos. 4 to 6 in Writ Petition No.689 of 2023-Trustees also opposed the writ petitions and urged that though the said respondents had been arrayed in Writ Petition No.689 of 2023 there were no allegations of malafides made against them. As ex-officio members of the Board of Trustees the said respondents had merely considered the matter as any other matter and on the basis of material available, the resolution dated 02.03.2022 came to be passed. The learned Senior Advocate invited attention to the observations in paragraph 48 of the decision in *State of Uttar Pradesh and others United Bank of India and others* ***[(2016) 2 SCC 757]*** and urged that the mortgage created by the Bank without obtaining prior permission of the NIT was *void ab-initio*.

Ms N. P. Mehta, learned Assistant Government Pleader appearing for the respondent no.3 in Writ Petition No.527 of 2023 and for respondent nos. 2 and 10 in Writ Petition No.689 of 2023 also opposed the writ petitions and supported that the stand taken by the NIT.

Shri C.S.Kaptan, learned Senior Advocate for the Purchasers in reply submitted that while exercising power under Section 24-E of the Act of 1936 the Authority ought to have given reasons for not rescinding latter part of resolution dated 02.03.2022. Merely on the basis of the note submitted by the Chairman of the NIT, the communication dated 16.01.2023 came to be issued. The order passed under Section 108A of the Act of 1936 made a reference to the no objection certificate and not prior sanction as contended. Since reference in the various communications issued by NIT was to the absence of no objection certificate and not prior sanction, the same could not be relied upon for the present purpose. The conditions in the lease deed requiring prior sanction had stood waived. The right of re-entry sought to be now exercised was not at all justified.

Shri H.D.Dangre, learned counsel for the Bank added that there was no reference made to the provisions of Rule 15 of the Rules of 1983 in any of the impugned communications. Even notice dated 16.01.2023 was not in accordance with the said Rule. He also invited attention to the averments in para 5 of the reply filed on behalf of the NIT in the said writ petition in that regard.

9. We have heard the learned counsel for the parties and with their assistance we have perused the documents placed on record. For

appreciating the rival submissions, it would be necessary to first refer to the undisputed documentary material on record. On 07.04.1998 the NIT issued an allotment letter in favour of Shri Kamlesh Shantilal Shah in respect of land in question. Clause-12 of the allotment letter stipulates that the aforesaid land was not liable to be transferred without obtaining prior permission of the NIT. Thereafter lease deed dated 24.08.1998 came to be executed by the NIT in favour of the aforesaid lessee. Clause 1(m-1) states that the allotment of the plot was on concessional premium and hence the conditions prescribed under Rule 24 of the Rules 1983 as well as the conditions that could be imposed by the Chairman of the NIT would be applicable. Since reference in the lease deed has been made to Rule 24 of the Rules 1983, it would be necessary to refer to the same. As per the said Rule while making a concessional grant of land, the condition of restriction on transfer except with the previous sanction of the Chairman of the NIT had been stated. Under Rule 15 of the Rules of 1983 the right of forfeiture of the lease and power of re-entry of the lessor-NIT has been prescribed. This includes breach of the Rules of 1983 or any condition of the lease.

Thus from the aforesaid, it becomes clear that there was a concessional grant of the land in question in favour of the lessee - Shri Kamlesh Shantilal Shah and under Rule 24 the condition of obtaining prior sanction of the Chairman of the NIT prior to effecting any transfer had been stipulated.

10. The aforesaid land came to be mortgaged by the original lessee initially with the Akola Janta Commercial Co-operative Bank and thereafter with the Bank herein. Since the original lessee defaulted in paying his dues, the Bank initiated action under the provisions of the Securitisation and Reconstruction of Financial Assets and Security Interest Act, 2002. It held an auction on 25.10.2018 in which the land in question was purchased by the respondent no.7 in Writ Petition No.689 of 2023. The said respondent thereafter on 23.10.2019 sold the aforesaid land to the Purchasers. The said Purchasers have acquired interest in the said leasehold land in the aforesaid manner.

11. At this stage, it is necessary to refer to the action taken by the Bank while seeking to recover its dues. On 11.05.2013 the Bank issued a communication to the Chairman of the NIT seeking permission to sell the present land since it had been mortgaged with the Bank and the account of the borrower - Shri Kamlesh Shantilal Shah had been classified as the Non-Performing Asset. The NIT by its communication dated 18.07.2013 informed the Bank that since the Bank did not seek prior permission of the NIT before creating the mortgage, the entry in that regard had been cancelled on 08.11.2012 by the Bank. Hence, there was no question of granting any permission to the Bank to sell the said land. The Bank was aggrieved by the aforesaid stand taken by the NIT and challenged the communication

dated 18.07.2013 by filing an appeal under Section 108A of the Act of 1936. The Chairman of the NIT while deciding the appeal held that the NIT had not granted any no objection certificate for mortgaging the aforesaid land and therefore the Bank had no right in the said property. For the said reason, the refusal by the Recovery Officer of the NIT to grant no objection certificate was just and proper. The appeal came to be dismissed on 06.08.2015. It is the specific stand of the NIT that this order has attained finality and the Bank has not controverted the aforesaid. It is thus clear that the Bank has suffered the order dated 06.08.2015 which confirms the stand taken by the NIT that the aforesaid land came to be mortgaged with the Bank without obtaining prior permission/no objection certificate from the NIT. In these facts, therefore it would not be open now for the Bank to contend that it was not necessary for it to have obtained such no objection from the NIT before conducting auction of the said land. It thus follows that notwithstanding the order dated 06.08.2015 the Bank proceeded to conduct the said auction in which the respondent no.7 purchased leasehold rights. These very rights came to be transferred in favour of the Purchasers on 23.10.2019.

12. The rights obtained by the Purchasers would be the same rights that flow from the allotment letter dated 07.04.1998 and lease deed dated 24.08.1998. As stated above, the NIT had made a concessional grant of the aforesaid land in favour of the original lessee. With the absence of leasehold

rights in favour of the Bank which thereafter auctioned those rights in favour of the respondent no.7 in Writ Petition No.689 of 2023 coupled with the subsequent purchase of those very leasehold rights by the Purchasers, it is clear that the Purchasers cannot claim any higher right than what was originally leased out to the lessee. It goes without saying that all terms and conditions attached to the initial grant of lease were binding on the parties who subsequently got interest in the said land.

13. Coming to the Resolution dated 02.03.2022 passed by the NIT it can be seen that the same has been passed due to the failure to obtain prior sanction of the NIT in terms of Rule 24 of the Rules of 1983 prior to creating interest in the said land. The Resolution notes that the conditions of the lease had been breached by the Bank by creating a mortgage which came to be subsequently cancelled on 08.11.2012 followed by refusal of permission to sell the leasehold rights in the said land. The Resolution records that the Trustees were not satisfied in the matter and hence after hearing the concerned parties, the said resolution came to be passed. It is also a fact that insofar as it was resolved to lodge a First Information Report against the Bank that part of the resolution has been rescinded by the State Government on 20.03.2023 while exercising powers under Section 24-E of the Act of 1936. We are not in a position to accept the contention raised by the learned counsel for the Purchasers that the State Government ought to have given

reasons for not rescinding the entire resolution. Since the State Government was satisfied that the first part of the resolution dated 02.03.2022 was liable to be rescinded, it did so and that direction is not under challenge at the instance of the NIT. It has to be taken that the State Government was satisfied with the latter part of the resolution by which it was resolved to take back possession of the plot in question and hence it issued a direction in that regard. As such, no fault could be found with the communication dated 20.03.2023 issued by the State Government.

14. Once it is found that the Purchasers were the beneficiaries of a transaction that was entered into without seeking prior sanction of the NIT under Rule 24 of the Rules of 1983, there would be no basis for the Court to hold that the Purchasers had been singled out for being proceeded against thus vitiating the said action under Article 14 of the Constitution of India. In absence of any legal right having accrued in favour of the Purchasers, it cannot be said that they had been singled out for taking action. For the said reason, the decisions relied upon by the learned Senior Advocate for the Purchasers do not come to the rescue of the Purchasers. Rule 15 of the Rules of 1983 clothe the NIT with the power of re-entry and that power is sought to be exercised by issuing the impugned communication dated 16.01.2023. Such power being available with the NIT, absence of express reference to such provision in the impugned notice would not vitiate the

same. We therefore find that the exercise of such power of re-entry is in accordance with the Rules of 1983, letter of allotment dated 07.04.1998 as well as the express terms of the lease deed dated 24.08.1998. Though we find that the Bank is estopped from contending that it was not necessary for it to have obtained prior sanction/no objection from the NIT before selling the leasehold rights in the aforesaid land in view of the earlier proceedings, we have nevertheless examined its challenge to the resolution dated 02.03.2022, the communication dated 20.03.2023 as well as the notice dated 16.01.2023. We are also not in a position to accept the contention raised by the learned counsel for the Purchasers that the requirement of obtaining no objection of the NIT had been dispensed with. We find that the action of re-entry has been undertaken in exercise of such right conferred by Rule 24 read with Rule 15 of the Rules of 1983 as well as the allotment letter dated 07.04.1998 and lease deed dated 24.08.1998. The information supplied under the Right to Information Act, 2005 by the NIT cannot be treated to have dispensed with the requirement of obtaining prior sanction of the Chairman of the NIT before transferring the leasehold interest especially when the documents on the basis of which the Purchasers claim right specifically stipulate the requirement of obtaining such prior sanction.

15. For aforesaid reasons, we do not find any case made out to exercise jurisdiction under Article 226 of the Constitution of India.

Both the writ petitions thus fail. They are accordingly dismissed. Rule stands discharged with no order as to costs.

Pending civil application, if any, stands disposed of.

(MRS. VRUSHALI V. JOSHI, J.) **(A.S.CHANDURKAR, J.)**

Andurkar.

At this stage the learned counsel for the Purchasers prays that the possession of the Purchasers be protected to enable them to challenge the judgment pronounced by this Court in appeal.

This prayer is opposed by the learned counsel for the NIT.

Since there was no interim order protecting the possession of the Purchasers, the request cannot be entertained. It is thus rejected.

(MRS. VRUSHALI V. JOSHI, J.) **(A.S.CHANDURKAR, J.)**

Andurkar.