In the High Court of Madhya Pradesh
Bench Gwalior

SB:- Hon'ble Shri Justice G. S. Ahluwalia

FA 158 of 2008

Baijnath (Dead) through LRs
vs.
Firm M/s. Gwalior Land Deals and Finance, Lashkar through Director, Partner Shri Hari Shankar Goyal (dead) through LRs and Ors

&

FA 149/2008
Firm M/s. Gwalior Land Deals and Finance, Lashkar through Director, Partner Shri Hari Shankar Goyal (dead) through LRs and Ors
vs.
Suresh Kumar and Others

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Shri Sanjay Dwivedi, counsel for the appellants in FA No.158 of 2008 and for the respondent No.4 in FA No.149 of 2008.
Shri T. C. Singhal, counsel for the appellants in FA No.149 of 2008 and for the respondents No.1 to 5 in FA No.158 of 2008.
Shri Nirmal Sharma, counsel for the respondents No.1 and 2 in FA No. 149 of 2008 and for the respondents No.6 and 7 in FA No.158 of 2008
Shri Raghvendra Dixit, counsel for the respondent No.3 in FA No.149 of 2008 and Shri Raghvendra Sixit with Shri Ajit Sudele, counsel for the respondent No.8 in FA No.158 of 2008.

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JUDGMENT
(Delivered on 15/ 03/2019)

Per G.S. Ahluwalia J:-

First Appeal No. 158 of 2008 under Section 96 of Civil Procedure Code, has been filed against the Judgment and Decree dated 30-4-2005 passed by VIth Additional District Judge, Gwalior in Civil Suit No.90-A/2004, by which the Counter-claim filed against the appellant has been allowed and it has been held that the respondents no. 6 and 7 are the owner and title holder of Plot No. 318.

(2) First Appeal No. 149 of 2008 under Section 96 of Civil Procedure Code,

has been filed against the Judgment and Decree dated 30-4-2005 passed by VIth Additional District Judge, Gwalior in Civil Suit No.90-A/2004, by which the suit filed by the appellants/plaintiffs has been dismissed and Counter-claim filed by respondents no. 6 and 7, against the appellants has been allowed and it has been held that the respondents no 6 and 7 are the owner and title holder of Plot No. 317,318,319,320 and 320A.

(3) By this common judgment, both the appeals shall be disposed of, as they arise out of one judgment and decree. For the sake of brevity, the facts of F.A. No. 159 of 2008 shall be considered. The necessary facts for the disposal of the present appeal in short are that respondents no.1 to 5 had filed a civil suit against the respondents no.6, 7 and 8 for declaration of title and permanent injunction. It is the case of the plaintiffs, that the plaintiff no.1/respondent no.1 was the owner and in possession of Survey No.2286/2, 2286/3, 2286/4, 2298/1, 2298/2, 2298/3, 2298/4, 2298/5, 2299/1, 2299/2, 22992/3 and 2299/4, total area 7 Bigha and 5 Biswa. The said land was purchased by the plaintiff no.1 by two different registered Sale deeds dated 11-2-1970 and 5-6-1970. As the aforesaid Survey Numbers were the part of the Scheme No.2B of Gwalior Town Improvement Trust, therefore, an agreement dated 5-6-1970 was executed between the plaintiff No.1 and the Gwalior Town Improvement Trust, according to which, the plaintiff no.1 was authorized to carry out development work and it was agreed that the Town Improvement Trust would be entitled for supervision charges at the rate of 15%. Accordingly, 12,266 sq. gaj. of land remained in the ownership of the plaintiff no.1 and 5859 sq. gaj. of land was left open for Public purposes. The

plaintiff no.1 completed the development work as per the agreement and the land was divided in plots and the supervision charges were also paid to the Gwalior Town Improvement Trust and the Gwalior Town Improvement Trust, also accepted the ownership and possession of the plaintiff no.1 over the plots. The plaintiff no.1 was a partnership Firm and the plaintiff no.2 was one of the partners. The said partnership Firm was dissolved by deed of dissolution dated 6-9-1976 and all the partners were given their shares. Plots No.317, 318,319, 320 and 320-A situated in Survey No.2298 fell to the share of the plaintiffs. The plaintiffs had already sold Plot No.319 to one Puniabai by registered sale deed dated 13-4-1976. The Gwalior Town Improvement Trust had also granted permission to Puniabai for constructing the house. It was clarified that the above mentioned 5 plots are the disputed property in the present suit.

(4) It was further pleaded that the plaintiff no.2, after dissolution of partnership, also included his sons/plaintiffs no.3 and 4 and accordingly, an agreement dated 7-9-1976 was executed amongst the plaintiffs no.2 to 4 and handed over the actual possession of the property in dispute to the plaintiff no.5 for selling the same, and an arbitration award dated 2-11-1977 has also been passed by the Court of competent jurisdiction.

(5) It was further pleaded that the Gwalior Town Improvement Trust, illegally allotted the plots No.317, 318 and 319 to defendant no.1 and plots no.320, 320-A to defendant no.2. On the representation made by the plaintiffs no.1 and 2, the said allotment was cancelled by order dated 12-2-1979. The Gwalior Town Improvement Trust has been succeeded by Gwalior Town and

Country Development Authority and accordingly, it has been impleaded as defendant no.3. It was further pleaded, that now the plaintiffs have come to know that the defendant no.3 has restored the allotment letter dated 6-2-1974 by recalling the order dated 12-2-1979, by which the allotment was cancelled. It was pleaded that the defendant no.3 has no right or power to recall the order dated 12-2-1979. It was further pleaded that as per the agreement dated 5-6-1970, 12,266 sq. gaj. of land was to remain in the ownership and title of the plaintiffs and, therefore, the defendant no.3 has no right or authority to allot the same to anybody. A certificate dated 9-10-1975 was also issued by the Town Improvement Trust to the effect that the entire development work has been carried out by the plaintiff no.1, and the said Firm is selling the plots to the public and the said plots are still in possession of the Firm and they are not in possession of the Trust. The defendants no. 1 and 2 had purchased a piece of land for a consideration of Rs.9,000/- and whatever building material was lying on the said piece of land, was taken back by the defendants no. 1 and 2. The defendants no. 1 and 2 have also been paid compensation of Rs.8,723/- by the Gwalior Town Improvement Trust. No development work was carried out by the defendants no. 1 and 2, whereas the plaintiffs have carried out the development work on their land and supervision charges have also been paid and 5859 sq. gaj of land has also been left open for public purposes. Therefore, the allotment of land by the Gwalior Town Improvement Trust in favor of defendants no.1 and 2/respondent no. 6 and 7 is bad in law. Accordingly, the suit was filed for declaration of title and permanent injunction.

(6) The plaint was amended and it was further pleaded that actual possession of plot no.318 was given to Puniabai after execution of the sale deed dated 13-4-1976. It was further pleaded that the plaintiffs have not prayed for any relief against the defendant no.4/Puniabai (It is not out of place to mention here that defendant no.4 was impleaded by the legal representative of defendant no. 2 and not by the plaintiffs).

(7) The defendants no. 1 and 2 filed their written statement on 1-12-1988 and denied that the plaintiff no.1 is the owner and in possession of the land in dispute. It was pleaded that the defendants no.1 and 2 by two different sale deeds dated 21-4-1971 had purchased two houses from one Durga, son of Narayan and sought permission from the Town Improvement Trust. However, the Town Improvement Trust by its letter dated 29-6-1971, imposed certain conditions which were not acceptable to the defendants no.1 and 2, therefore, the defendants no.1 and 2 prayed that the land purchased by them, may be acquired by the Town Improvement Trust, and compensation at the rate of Rs.4/- per Sq. ft. may be given and some other land, in lieu of the property purchased by the defendants no.1 and 2, may be given in exchange or in the alternative, the entire compensation amount may be given. Accordingly, the Town Improvement Trust directed for payment of compensation of Rs.3,213/- to the defendant no. 1 and Rs.5,510/- to the defendant no.2 for removing the construction. Thereafter, agreement dated 15-2-1972 for exchange of land was executed between the defendants no.1, 2 and the Gwalior Town Improvement Trust, and accordingly, the property purchased by the defendants no.1 and 2 stood vested in the Gwalior

Town Improvement Trust, whereas it was agreed that 9600 sq.ft. of developed land shall be given to the defendants no.1 and 2 and accordingly, on 7-1-1972, the defendants no.1 and 2 handed over the possession of their property to the Gwalior Town Improvement Trust and by letter dated 24-7-1973, the Gwalior Improvement Trust proposed to give plot nos. 317, 318 and 319 to the defendant no.1 and Plots no.320, 320A to the defendant no.2. As the area of the disputed property was 20 sq. ft. in excess, therefore, additional amount was deposited by the defendants no.1 and 2, and accordingly, on 6-2-1974, the possession of the disputed property was handed over to the defendants no.1 and 2. Thereafter, the plaintiff no.1, by giving incorrect information to the officers of the Gwalior Improvement Trust, got the said allotment order cancelled, however, the defendants no.1 and 2 continued to remain in possession. Later on, a request was made by the defendants no.1 and 2 for restoration of the allotment order and accordingly, the original allotment orders were restored andIt was also clarified to the plaintiff no.1 that the sale deed executed by it in respect of plot no.318 is illegal. It was further pleaded that although the defendants are in possession of Plot no.318, but still a sham document was executed by plaintiff no.1. Any agreement between the plaintiffs and the Gwalior Town Improvement Trust was also denied for want of knowledge. It was further pleaded that by doing development work, nobody would get the ownership rights over the property. The plaintiffs might have carried out the development work and in lieu thereof, they must have got the money from the Gwalior Improvement Trust. It was further denied that the defendants no.1 and 2 were ever the partners of the

plaintiff no.1. No deed of dissolution was ever executed. It was further pleaded that plaintiff is in habit of instituting cases. He has already grabbed various lands by instituting frivolous cases. It was further pleaded that the plaintiff Harishanker Goyal is a very clever person and is a colonizer. He has constituted various fake Societies in the names of his wife, son and even servants and has got sale deeds of open plots in the names of the said Societies and has sold the same by dividing in small plots. Therefore, proceedings under M.P. Prevention of Corruption Act have also been initiated. It was further pleaded that the plaintiffs are trying to sell plots without any authority and if any purchaser(s) raises any construction then the defendants no.1 and 2 are entitled for possession of the said land after demolishing the construction. Accordingly, for the said purpose, Counter-claim was filed and it was prayed that the defendants no.1 and 2 are the owners and in possession of the disputed property and the plaintiffs have no legal right and title in the said disputed property. The plaintiffs or any other person has no right to raise any construction and even if it is found that any encroachment has been done and the construction has been made, then the defendants no.1 and 2 are entitled for the decree of possession after demolishing the construction. An alternative prayer was also made that in case, if it is found that the defendants no.1 and 2 are not entitled for maintaining their possession, then a decree may be passed against the defendant no.3 to give alternative land equivalent to the market price and size of the land.

(8) Thereafter, the legal representative of defendant no. 2 filed an application for impleading Puniabai, as a defendant no. 4, as plot no. 318 has been sold by

the plaintiff to her. The said application was allowed by order dated **10-11-1982.** The Legal representative of defendant no.2, thereafter filed his separate written statement as well as fresh Counter-claim against the plaintiffs and Puniabai. The claim of the plaintiffs was denied. It was pleaded that the defendant no.2 Radheshyam by registered sale deed dated 21-4-1971 had purchased the house along with land from one Durga Prasad, whereas the defendant no.1 Suresh had purchased one house by registered sale deed dated 21-4-1971 from Durga Prasad, and thereafter, the defendants no.1 and 2 applied for permission from Gwalior Town Improvement Trust, but by letter dated 29-6-1971, certain conditions were imposed which were not acceptable to the defendants no.1 and 2 and accordingly, the defendants no.1 and 2 made a prayer for acquisition of the property purchased by them and prayed for compensation. Accordingly, the respondent no.3 directed for payment of compensation of Rs. 5,510/- for removal of construction. Thereafter, an agreement dated 15-2-1972 was executed between the respondent no.3 and the defendants no.1 and 2, according to which the land belonging to the defendants no.1 and 2 stood vested in the respondent no.3 and the respondent no.3 agreed to give 9600 sq. ft. of another piece of land in exchange. Accordingly, the defendants no. 1 and 2 handed over the possession of their property to the respondent no.3 and in exchange, the plots no. 317, 318, 319 were allotted to the defendant no.1 whereas Plots No.320 and 320A were allotted to the defendant no.2. At the time of handing over of the possession, it was found that 20 sq. ft. of land is in excess and accordingly, the defendants no. 1 and 2 deposited the additional amount on 6-2-1974 and the actual possession

was handed over. Thereafter, by giving wrong information, the plaintiffs had got the allotment cancelled, whereas the defendants no.1 and 2 continued to remain in actual possession. When the defendants no.1 and 2 came to know about the cancellation of the allotment, then by filing an application on 12-11-1979, a prayer was made for restoration of allotment and accordingly, the Gwalior Development Authority by its order dated 29-10-1990 restored the order of allotment. An information was also given to the plaintiffs and it was also clarified that the sale of plot no. 318 was also contrary to law, therefore, it is clear that plots no. 317, 318 and 319 were rightly allotted to the defendant no.1, whereas the plots no. 320, 320A were rightly allotted to the defendant no.2. The plaint averments with regard to purchase of these five plots were denied. It was further pleaded that the Plot No. 318 belongs to the defendant no.1 therefore, the plaintiffs had no right or title to alienate the same. All other plaint averments were specifically denied. A Counter-claim was also filed by the Legal Representative of Defendant no.2. It was pleaded that the defendants no.1 and 2 are uncle and nephew. The plot no. 318 was allotted to the defendant no.1, but the plaintiffs, by projecting that they are the owners of the plot no.318 have sold the same to Puniabai. Accordingly, it was prayed that the sale deed executed in favour of Puniabai be set aside. It was further prayed that the construction raised on Plot No.318 be also demolished and vacant possession of the same be handed over to the defendants no.1 and 2. It was further prayed that neither the plaintiffs nor any person claiming through them, has any right or title over the property in dispute and if it is found that any of them have forcibly encroached

upon the property in dispute, then the defendants no.1 and 2 are entitled to get the possession back. It was further prayed that it be also declared that the defendants no.1 and 2 are the owners and in possession of the property in dispute, and if it is found that some construction has been raised, then the same may be demolished and vacant possession of the same be handed over to the defendants no.1 and 2. A decree for permanent injunction was also sought. In the alternative, it was prayed that if it is found that the defendants no.1 and 2 are not entitled for getting the possession of the land in dispute, then the respondent no.3 be directed to give any alternative land to the defendants no.1 and 2.

(9) The defendant no.3 (Gwalior Development Authority) filed its written statement and denied the plaint averments. It was denied that the plaintiffs are the title holders. It was pleaded that the land in dispute is a part of scheme No.2B, Gandhi Road, Gwalior. An agreement was executed between the Town Improvement Trust and the plaintiff no.1 on 5-6-1970. The defendant no.3 also admitted that by letter dated 9-10-1979, the ownership and possession of the plaintiff over disputed plot was also accepted, and remaining averments were denied. The plaint averment that the plaintiff no.1 got plots no. 317,318,319,320,310A in partition was also denied. The fact regarding dissolution of Firm was also denied for want of knowledge. So far as the fact of cancellation of allotment is concerned, it was submitted by the defendant no.3, that since, the order of cancellation of allotment was contrary to the provisions of Natural Justice, therefore, the plaint averments in this regard were denied. It was also denied that the plaintiffs were in possession of the land in dispute. It was

accepted that the defendants no.1 and 2 had never carried out any development work of their land. It was also accepted that no supervision charge was ever paid and no land was left open by defendants no.1 and 2 for public purposes. In special objections, it was submitted by the defendant no.3, that the land in dispute, originally belonged to one Durga Kachhi, which stood vested in Gwalior Town Improvement Trust as the said land was included in Scheme No.2B, Gandhi Road, Gwalior by notification dated 6-1-1967 under Section 71(2) of M.P. Town Improvement Trust. After the notification, Durga Kachhi lost all his rights and title in the disputed land, and at the most he was entitled for receiving the compensation only. **By registered sale deed executed by Durga Kachhi in favour of plaintiff no.1 as well as defendants no. 1 and 2, only rights to receive the compensation amount can be transferred.** It was further pleaded that for carrying out the development work, tenders were invited and accordingly, an agreement was executed between the Gwalior Town Improvement Trust and the plaintiff no.1 and the plaintiff no.1 was liable to pay 15% supervision charges. It was further pleaded that on 5-10-1971, an unregistered agreement was executed between the Gwalior Town Improvement Trust and the defendants no. 1 and 2 according to which, in addition to the compensation for their land, it was also agreed that 9,600 sq. ft. of land would be given in exchange. It was further pleaded that as 7 bigha 5 biswa land of the defendants no.1 and 2 was in the middloe of the land of the plaintiffs, therefore, the land of defendants no.1 and 2 was wrongly added to the share of the plaintiffs, and since, it was done by mistake, therefore, the same is not binding

on the defendant no.3. It was further pleaded that in addition to the compensation, the plots were given to the defendants no.1 and 2 in exchange of their land and actual possession was also handed over to them. Thereafter, considering the objections of the plaintiffs, the allotment made in favour of the defendants no.1 and 2 was cancelled. The defendants no.1 and 2 made a representation, which was considered, and the order of allotment was restored. It was pleaded that the plaintiffs have no right or title in the land in dispute.

(10) The defendant no.4 Baijnath, the Legal Representative of Puniabai, also filed his written statement and denied the Counter- claim filed by the defendant no.2. The appellants in F.A. No. 158 of 2008 are the Legal Representatives of Late Baijnath. It was pleaded that the plot no. 318 has been purchased from the plaintiff no.1 and the defendant no.4 was never informed about the allotment or cancellation of allotment or restoration of allotment in favour of the defendants no.1 and 2. Accordingly, a Counter-claim was also filed by the defendant no.4 seeking a relief, that it be declared that the defendant no.4 is the owner and in possession of the plot no. 318 and permanent injunction may be passed against the defendants no.1 to 3.

(11) The plaintiffs also filed their written statement to the Counter -claim filed by the defendant no.2 and pleaded that where the value of the property is more than Rs.100/-, then the title of the same cannot be transferred except by a registered sale deed. No registered sale deed has been executed in favour of the defendants no.1 and 2 and the ownership of the said plots cannot be transferred by mere letter of allotment. Several persons are in possession of the land in

dispute and they have raised the construction, which was never objected by the defendants no.1 and 2. The plaintiffs have also handed over the possession of plot no. 318 to Puniabai after execution of a registered sale deed.

(12) Thus, in fact, three Counter-Claims were filed i.e., firstly by Defendants no.1 and 2 against the plaintiffs, secondly by legal representative of defendant no.2 against the plaintiff and Puniabai and thirdly by legal representative of Puniabai for declaration of his title and permanent injunction.

(13) The Trial Court, after framing the issues, dismissed the suit filed by the plaintiffs, but decreed the Counter claim filed by the defendants no. 1 and 2 and held that the defendant no. 1 is the owner of Plots no. 317, 318, 319, whereas the defendant no.2 is the owner of Plots No. 320 and 320A. It was also decreed that the sale deed dated 13-4-1976, executed by plaintiffs in favour of Puniabai is null and void and permanent injunction was also granted thereby restraining the plaintiffs from interfering with the peaceful possession of the defendants no.1 and 2 over Plots No. 317, 319, 320, 320A, and the Counter-claim of the defendants no. 1 and 2 in respect of Plot No. 318 for decree of possession was dismissed because of under valuation, non-payment of Court fee and for erroneous relief of mandatory injunction in place of decree for possession.

(14) Challenging the judgment and decree passed by the Court below, it is submitted by the Counsel for the appellant Baijnath, that

(i) Once, the Trial Court had held that the Counter-claim filed by the defendants no. 1 and 2 for decree of possession, was not maintainable in respect of Plot No. 318 because of under-valuation, non-payment of Court

fee and for seeking erroneous prayer of mandatory injunction, then it should not have held that the defendant no.1 is the owner of Plot no. 318, by declaring him to be the owner of the same.

(ii) It is further submitted that in fact the plaintiffs had not claimed any relief against Puniabai but on the contrary, the plaintiffs themselves have pleaded that they have sold the plot no.318 to Puniabai, therefore, the Counter-claim filed by the defendant no.2 against the co-defendant was not maintainable.

(iii) It is further submitted that the Counter-claim was filed after 23 years of putting appearance and thus, it was belatedly filed.

(iv) The counter-claim filed by the legal representative of defendant no. 2 was barred by time.

(v) Further, Puniabai was not impleaded by the plaintiffs as party to the suit, but it was the legal representative of defendant no.2, who filed an application for impleading Puniabai as defendant, which was erroneously allowed by the Trial Court.

(vi) It is submitted that no body could have been impleaded as defendant, at the behest of co-defendant.

(vii) Further when the application for impleading Puniabai as a defendant was filed before the Trial Court, She was already dead, and accordingly, a dead person was impleaded and later on, her Legal representative was brought on record.

(viii) It is further submitted that notification under Section 71(1)(2) of

M.P. Town Improvement Trust was never filed before the Trial Court, and therefore, the appellant could never get an opportunity to rebut the presumption attached to it.

(ix) It is further submitted that the Gazette notification dated 6-1-1967 is not a public document, therefore, this Court cannot take Judicial Notice of the same.

(x) If any admission was made by the plaintiff no.1 in his plaint with regard to Scheme No.2-B, then the same is not binding on the appellant.

(xi) It is further submitted that there is nothing on record to suggest that the contents of the notification dated 6-1-1967 were correct.

(xii) Only a letter of allotment was issued in favour of the defendants no.1 and 2, therefore, a mere letter of allotment, not followed by an exchange deed, would not give any right or title to them.

(xiii) That a large number of similarly situated persons, who have purchased the property in question from plaintiff no.1/plaintiffs are still enjoying the property, and therefore, the equity demands that the ownership and possession of the appellant be protected.

(xiv) It is further submitted that if the possession and the right of the appellant is not protected, then this judgment should be made applicable to all similarly situated persons, because in fact, the present judgment would be *judgment in rem* and not *judgement in personam.*

(xv) It is further submitted that once, a Counter-claim was already filed by the defendants no. 1 and 2, therefore, second Counter-claim by the legal

representative of the defendant no. 2 was not maintainable.

(15) *Per contra,* it is submitted by the Counsel for the respondent no. 8 Gwalior Development Authority, that all the properties, whether they were purchased by the plaintiff no.1 or by the defendants no. 1 and 2 were part of Scheme No. 2B, Gandhi Nagar, Gwalior. A notification was published in the official Gazette on 6-1-1967 under Section 71(2) of Town Improvement Trust, and accordingly, the entire land forming part of Scheme No. 2B had stood vested in the Town Improvement Trust. Therefore, any sale deed executed after 6-1-1967 by any private person, has no value in the eye of law and does not pass on any title to the purchaser. The plaintiff no.1 as well as the defendants no. 1 and 2 had purchased the properties from private persons, subsequent to the vesting of the land in the Town Improvement Trust, and after the land vested in the Town Improvement Trust, the same could have been disposed of only as per the provisions of Section 83 of Town Improvement Trusts Act, 1960. Although there were letters of allotment in favour of defendants no. 1 and 2, but the same by itself would not be sufficient to transfer the title, unless and until, the sale deed or lease deed or exchange deed etc. are not executed. Thus, it is submitted that as the plaintiffs and defendants no.1 and 2 had purchased the properties in dispute from private persons, after the issuance of notification under Section 71(2) of M.P. Town Improvement Trust, therefore, none of the parties would get any right or title in the properties, by virtue of their respective sale deeds. Furthermore, any agreement or allotment would not give any right or title to any of the parties, therefore, the Trial Court did not commit any mistake in dismissing the suit of

the plaintiffs, but should not have allowed the counter-claim filed by the defendants no. 1 and 2. Further, a counter-claim against the co-defendant is also not maintainable. Further, the defendant has no right to file an application for impleadment of another defendant.

(16) Similarly, the Counsel for the plaintiffs submitted that the plaintiff no.1 had purchased Survey No.2286/2, 2286/3, 2286/4, 2298/1, 2298/2, 2298/3, 2298/4, 2298/5, 2299/1, 2299/2, 22992/3 and 2299/4 by sale deeds dated 11-2-1970 and 5-6-1970. On 5-6-1970 itself, he entered into an agreement with the Gwalior Town Improvement Trust for development of the said lands on payment of 15% supervision charges. The supervision charges were paid, therefore, the plaintiffs had become the owners of survey no.s Survey No.2286/2, 2286/3, 2286/4, 2298/1, 2298/2, 2298/3, 2298/4, 2298/5, 2299/1, 2299/2, 22992/3 and 2299/4 and Plots no. 317,318,319,320 and 320-A were part of above mentiioned land, therefore, the Gwalior Town Improvement Trust had no right or title to allot the same to the defendants no.1 and 2 and the thus, the Trial Court has wrongly decreed the Counter-claim filed by the defendants no. 1 and 2.

(17) Heard the learned Counsel for the parties. Before considering the various submissions made by the Counsel for the appellants as well as the Counsel for the respondents no. 6 and 7/defendants no.1 and 2, it would be appropriate to consider that whether the plaintiffs and the defendants, by virtue of their respective sale deeds executed by the private persons, could have acquired any right or title in the property or not because the entire land already vested in the Gwalior Town Improvement Trust on 6-1-1967, and all the sale deeds executed

in their favor by the private persons are subsequent to 6-1-1967.

(18) On 10-2-1982, the Counsel for the defendants no.1 and 2 filed an application under Order 1 Rule 10 C.P.C. for impleading Puniabai in the suit and by order dated 10-11-1982, the said application was allowed and it was held that Puniabai appears to be a necessary party, therefore, she was impleaded as defendant no.4. However, the Trial Court did not consider the fact that a defendant cannot pray for impleading of another co-defendant for the purpose of filing counter-claim. Later on, it appears that a statement was made on 18-12-1991 that the defendant no.4 has expired and accordingly, time was granted to bring her legal representatives on record. Later on, it was held by order dated 24-10-1994, that the suit filed by the plaintiffs does not abate on the ground on non-bringing of legal representatives of defendant no. 4. By order dated 14-11-1995, it was mentioned that Puniabai has already expired 15 years back. Thus, it is clear that Puniabai had already expired sometimes in the year 1980, however, the application for impleading her as a defendant no. 4 was filed on 10-9-1982. Thus, it is clear that a dead person was impleaded as defendant. However, by order dated 19-11-2002, the legal representative of Puniabai was brought on record. However, the crux of the matter is that the legal representative of defendant no.2 filed a counter-claim against Puniabai and it was the legal representative of defendant no.2 who filed an application for impleading Puniabai as a defendant, and ultimately, the Puniabai was impleaded as defendant no.4 and later on, her legal representative was brought on record.

(19) It appears that the legal representative of defendant no. 2 filed his written

statement and counter claim on 30-6-2004. Thus, it is clear that the defendant no.2 had filed his counter-claim against another co-defendant. The Supreme Court in the case of **Rohit Singh and others Vs. State of Bihar and others,** reported in **(2006) 12 SCC 734** has held as under :-

> **"21.** Normally, a counterclaim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counterclaim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the co-defendants in the suit. But a counterclaim directed solely against the co-defendants cannot be maintained. By filing a counterclaim the litigation cannot be converted into some sort of an interpleader suit."

(20) Therefore, it is held that the Counter-claim filed by the legal representative of defendant no.2 against the co-defendant Puniabai and thereafter against her Legal Representatives/appellants in F.A. No. 158/2008, as well as against defendant no. 3 was not maintainable. Similarly, the Counter-claim filed by defendants no.1 and 2 against the defendant no.3 was also not maintainable.

(21) Now, the next question for determination is that whether Puniabai had acquired any title from the sale deed dated 13-4-1976 or not, and whether the plaintiff no.1, by virtue of his sale deeds dated 11-2-1970 and 5-6-1970, had acquired any right or title in Survey No.2286/2, 2286/3, 2286/4, 2298/1, 2298/2, 2298/3, 2298/4, 2298/5, 2299/1, 2299/2, 22992/3 and 2299/4 and whether the defendants no.1 and 2, by virtue of their sale deeds dated 21-4-1971 and allotment letter issued by Gwalior Town Improvement Trust, had acquired any right or title in the lands in question or not?

(22) Before considering the facts and circumstances of the case, it would be

appropriate to consider the latin Maxim "*Nemo dat quod non habet"*. It is well-established principle of law *that "a seller cannot convey a better title to the buyer then he has himself"*. *Nemo dat quod non habet*, literally meaning “no one gives what he doesn’t have” is a legal rule, sometimes called the *nemo dat* rule, which states that the purchase of a possession from someone who has no ownership right to it, also denies the purchaser any ownership title. If plaintiff no.1 had no right or title, then he cannot transfer better title to Puniabai.

(23) It is the case of the defendant no.3, that a notification under Section 71(2) of M.P. Town Improvement Trust was published in Govt. Gazette and accordingly, the land covered under Scheme 2B, Gandhi Nagar, Gwalior had stood vested in the Gwalior Improvement Trust, and therefore, the plaintiff no.1, who had purchased the land by sale deeds dated 11-2-1970 and 5-6-1970, could not get any right or title in the properties, as the seller had no right or title.

(24) Before considering the above mentioned aspect of the case, it would be appropriate to consider the legal provisions of M.P. Town Improvement Trusts Act, 1960.

Section 71 of M.P. Town Improvement Trustsd Act, 1960 reads as under :-

> **"71. Notification of acquisition and vesting of land in Trust –** (1) After the acquisition of land is sanctioned by the State Government under Section 70 of the Trust may acquire such land by publishing in the Gazette a notice stating that i had decided to acquire the land and has obtained the sanction of the State Govt. for the acquisition thereof.
> (2) When a notice under sub-section (1) is published in the Gazette the land shall, on and from the date of such publication, vest absolutely in the Trust free from all encumbrance.
> (3) Where any land is vested in the Trust under sub-section (2), the Trust may by notice in writing, order any person who

> may be in possession of the land to surrender or deliver possession thereof to the Trust or any person duly authorized by it in this behalf within thirty days of the service of the notice."

Section 83 of the M.P. Town Improvement Trusts Act, 1960 reads as under:-:

> **"83. Power to dispose of land –** Subject to any rules made by the State Government under this Act, the Trust may for the purpose of this Act retain or may let on hire, lease, sell, exchange or otherwise dispose of any land vested in or acquired by it under this Act."

(25) Thus, once, the land has vested in the Town Improvement Trust, then it can be disposed of only in accordance with the provisions of Section 83 of the M.P. Town Improvement Trusts Act, 1960.

(26) A notification dated 20-9-1965 under Section 52 of M.P. Town Improvement Trust Act, 1960 was published in the Official Gazette on 20-5-1966, which reads as under :

> "No. 187-XVIII-U – In pursuance of the Provisions contained in clause (a) of sub-section (i) of Section 52 of the Madhya Pradesh Town Improvement Trusts Act, 1960 (No. 14 of 1961), the State Government hereby announces that under sub-section (1) of Section 51 of the said Act, it has sanctioned the Land Acquisition and Development Scheme No. 2-B on Gandhi Road Gwalior framed by the Gwalior Improvement Trust, Gwalior and published under Improvement Trust Gwalior notification in the "Madhya Pradesh Gazettee"dated the 210th, 27th September and 4th October 1963 for development of site for Housing Accommodation. "

A notification under Section 71(2) of M.P. Town Improvement Trusts Act, 1960 was published in the official Gazette dated 6-1-1967, which reads as under :

> **क्रं. 29/66** – सर्व संबंधित भू–स्वामियों तथा भूमि मे हित रखने वाले व्यक्तियों के सूचनार्थ मध्यप्रदेश टाउन इम्प्रूवर्मेट ट्स्ट एक्ट

1960 की घारा 71(1) के अंतर्गत प्रकाशित किया गया था कि ग्वालियर सुधार न्यास, ग्वालियर की गांधी रोड के समीप (अस्पष्ट) के विकास बाबत गृह स्थान योजना क्रं 2–ब जिसकी धारा 46 के अंतर्गत पहली विज्ञप्ति मध्यप्रदेश राजपत्र भाग 3(1) दिनांक 20 सितंबर 1963, 27 सितंबर 1963 व 4 अक्टूबर 1963 मे प्रकाशित की जा चुकी है तथा मध्यप्रदेश शासन द्वारा उक्त विधान की धारा 52 के अंतर्गत स्वीकार की गई है. उक्त योजना हेतु 95 बीधा 11 बिस्वा भूमि संपादन करने की विज्ञप्ति उक्त विधान की धारा 68(1) के अंतर्गत मध्चप्रदेश राजपत्र, दिनांक 15 जुलाई 1966 भाग 3(1) मे प्रकाशित की जा चुकी है एवं उक्त भूमि न्याया द्वारा अधिप्राप्त करने की शासन स्वीकृति उक्त विधान की धारा 70 के अंतर्गत प्राप्त कर ली गई है.

अतः ग्वालियर सुधार न्यास ग्वालियर ने उक्त भूमि जिसकी चतुःसीमा धार 46 के अंतर्गत प्रकाशित विज्ञप्ति मे दी चुकी है, को अधिप्राप्त करने के निर्णय किया है, तदनुसार इस विज्ञप्ति द्वारा सर्व–संबंधित व्यक्तियों के सूचनार्थ प्रकाशित किया जाता है कि उक्त भूमि इस विज्ञप्ति के मध्यप्रदेश राजपत्र मे प्रकाशित होने के दिनांक से धारा 71(2) के अनुसार त्रृणभार से मुक्त ग्वालियर सुधार न्यास ग्वालियर मे वेष्टित हो जावेगी.

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(27) Thus, it is clear that by virtue of notification dated 6-1-1967 issued under Section 71, the land falling within scheme 2-B had vested in Gwalior Improvement Trust, as a result of which, all the persons, having any right or title in the land falling in Scheme 2-B lost all their rights and title and were only entitled for the compensation.

(28) In the present case, admittedly, the plaintiff no.1 has purchased the land in question by two different sale deeds dated 11-2-1970 and 5-6-1970. As the land had already vested in the Gwalior Improvement Trust, therefore, Durga Kachhi had no right or title in the said lands. (It is not out of place to mention here that Durga Kachhi by sale deed dated 17-10-1969 had sold Survey No. 2286/2,2286/3,2286/4,2298/1,2298/2,2298/3,2298/4,2298/5,2299/1,2299/2,2299/

3 and 2299/4 to Harishandra Jain, Matadin and Kishanlal Arora and accordingly Harishchandra Jain and Matadin, sold their share in the said lands to plaintiff no.1 by sale deed dated 11-2-1970 and Kishanlal Arora sold his share to the plaintiff no. 1 by sale deed dated 5-6-1970 as all the sale deeds were executed subsequent to vesting of land in the Gwalior Town Improvement Trust). Thus, the plaintiff no.1 did not get any right or title from the sale deeds dated 11-2-1970 and 5-6-1970. Therefore, the plaintiff no.1 could not pass on any better right or title to Punia bai by registering the sale deed dated 13-4-1976. Thus, Puniabai could not get any right or title by virtue of sale deed dated 13-4-1976 executed in favour, by plaintiff no.1.

Thus, the appellants in F.A. No.158/2008 (Legal Representatives of Puniabai) have no right or title in Plot No. 318.

(29) It is submitted by the Counsel for the appellants in F.A. No. 158 of 2008 that since, the notification dated 6-1-1967 was not placed on record before the Trial Court, therefore, it cannot be said that the same has been duly proved. Further, the appellant was not aware of the notification and, therefore, he cannot be made to suffer.

(30) Considered the submission made by the Counsel for the appellant. The defendant no.3 had specifically stated about the notification dated 6-1-1967 and vesting of land in the Gwalior Town Improvement Trust, therefore, it is incorrect to say that the appellants in F.A. No. 158/2008 were not aware of the notification issued under Section 71(2) of M.P. Town Improvement Trusts, Act, 1960. Further, publication of a notification in an Official Gazette is the ordinary

method of bringing the notification, statute etc. to the notice of the general public.

(31) The Supreme Court in the case of **Indore Development Authority Vs. Balkrishna and others** reported in **(1997) 7 SCC 321** has held as under :-

> **"6.** It is seen that the scheme framed by the Trust and submitted to the Government under Section 52 of the Trust Act, the sanctioned scheme should be published which gives conclusiveness that valid scheme was framed as per presumption under Section 52(2) and sanction was duly granted by the Government. In other words, the sanction given by the Government accords conclusive evidence of due compliance of law and that proposed land is needed for public purpose for acquisition of the land by the Trust under the provisions of the Trust Act. Once the sanction for acquisition of land thereof was accorded under Section 70 and notification was published under Section 71(2), the land should be deemed to have been vested in the State covered by the scheme free from all encumbrances. Thereby, the vesting is complete on the date of publication of the notification under Section 71(2). It was done on 22-8-1973. The steps required to be taken under sub-section (3) and sub-section (4) of Section 71 are only ministerial acts. Therefore, vesting is not kept in jeopardy or postponed or becomes incomplete till actual possession is taken by the authorities under Section 71(3) or Section 71(4) as the circumstances so warrant, by issuance of notice and expiry of thirty days in the event of failure to deliver or surrender possession by the person in possession of the land vesting in the State; thereafter possession could be taken as per procedure in sub-section (4) of Section 71. It would, therefore, be clear that vesting is complete as soon as the notification under sub-section (2) of Section 71 was published and thereafter the land vested is free from all encumbrances. It is true that under the Adhiniyam, Section 54 enjoins the town or country development authority to commence the scheme within two years and complete the scheme within five years from the date of sanction. On failure of either of the events, the scheme gets lapsed. Section 54 reads as under:
>
> > "54. If the Town and Country Development Authority fails to commence implementation of the town development scheme within a period of two years or complete its implementation within a period of five years from the date of notification of the final scheme under Section 50, it shall, on expiration of the said period of two years or five years, as the case may be, lapse:
> >
> > Provided that, if a dispute between the authority and parties, if any, aggrieved by such scheme is brought before a court or

tribunal of competent jurisdiction, for consideration, the period for which such dispute pending before such court or tribunal shall not be reckoned for determination of the lapse of the scheme."

A co-ordinate Bench of this Court in the case of **Arvind Kumar Jain and Others Vs. State of M.P. and Others,** reported in **2017 (3) MPLJ 178** has held as under :-

"**28.** As per the judgment of *Indore Development Authority (Supra),* it is clear that once notification is published under Section 71(2) of the Trust Act, the land must be treated to be vested in the State covered by the scheme free from all encumbrances. The vesting, on publication of notification is treated to be complete and other steps based on sub-section (3) and (4) of Section 71 of the Trust Act are only held to be Ministerial Acts. In view of this principle of law laid down, I am unable to hold that because of alleged violation of sub-section (3) and (4) of Section 71, the acquisition was illegal or vesting in favour of Trust was not complete. As held in *Malwa Oil Mills (supra),* on vesting of land with Trust, the owners have no right or title on the land and their possession at the best can be termed as illegal possession."

(32) Section 23 of General Clauses Act reads as under :-

"23. Provisions applicable to making of rules or bye-laws after previous publication.—Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

(1) the authority having power to make the rules or bye-laws shall before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received

by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made."

(Underline applied)

Thus, it is clear that publication of a notification in an Official Gazette is the conclusive proof that the notification has been duly made.

(33) Under these circumstances, after the notification dated 6-1-1967 was published in the Official Gazette, then the same is the conclusive proof that it has been duly made and unless and until the presumption attached to such a notification is dislodged by the appellant, it cannot be held that no notification dated 6-1-1967 was either not made or its contents are not correct.

The Supreme Court in the case of **Pankaj Jain Agencies Vs. Union of India** reported in **(1994) 5 SCC 198** has held as under :-

"17. In the present case indisputably the mode of publication prescribed by Section 25(1) was complied with. The notification was published in the Official Gazette on the 13-2-1986. As to the effect of the publication in the Official Gazette, this Court held [*Srinivasan case* AIR at p. 1067 : SCC pp. 672-73, para 15]:

> "Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. *If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette* or some other reasonable mode of publication."
>
> (emphasis supplied)

18. We, therefore, see no substance in the contention that notwithstanding the publication in the Official Gazette there was yet a failure to make the law known and that, therefore, the notification did not acquire the elements of operativeness and enforceability.

(34) Further, publication of the notification in the official gazette itself was sufficient to hold that notice was given to the general public. It is not necessary for the authorities, that the official gazette notification should be personally informed to each and every citizen of India or to each and every person, having interest in the property. Further, the appellant had purchased the plot no. 318 in the year 1976, therefore, any transaction made subsequent to 6-1-1967 was void as the land had already stood vested in the Gwalior Town Improvement Trust.

The Supreme Court in the case of **Union of India Vs. Ganesh Das Bhojraj** reported in **(2000) 9 SCC 461** has held as under :-

> **"13.** The Court further referred to the judgment of Bailhache, J. in *Johnson* v. *Sargant & Sons* and did not approve the observation made therein to the effect that the order was not known until the morning of May 17 but it came into operation before it was made known. On the contrary, the Court held that there was great force in the learned author's (Prof. C.K. Allen) following comment on the reasoning in *Sargant case*:
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> > "This was a bold example of Judge-made law. There was no precedent for it, and indeed a decision, *Jones* v. *Robson*which, though not on all fours, militated strongly against the Judge's conclusion, was not cited; nor did the Judge attempt to define how and when delegated legislation 'became known'. Both arguments and judgment are very brief. The decision has always been regarded as very doubtful, but it never came under review by a higher court."
>
> The Court also held that:
>
> > "It is obvious that for an Indian law to operate and be effective in the territory where it operates viz., the territory of India it is not necessary that it should either be published or be made known outside the country. Even if, therefore, the view enunciated by Bailhache, J. is taken to be correct, it would be apparent that the test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of everyone who intends to pass through India. It was 'published' and made known in India by publication in the Gazette on the 24th November and the ignorance of it by the respondent who is a foreigner is, in our opinion, wholly irrelevant."
>
> The Court further observed:

> "[But where there is no statutory requirement we conceive the rule to be that it is necessary that it should be published in the usual form, i.e., by publication within the country in such media as generally adopted to notify to all the persons concerned in the making of rules. In most of the Indian statutes, including the Act now under consideration, there is provision for the rules made being published in the Official Gazette. It therefore stands to reason that publication in the Official Gazette, viz., the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned."
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> * * *
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> **18.** ..... The Gazette is admissible being the official record evidencing public affairs and the Court is required to presume its contents as genuine under Sections 35 and 38 read with Section 81 of the Evidence Act, unless the contrary is proved..... "

(35) There is another important fact which cannot be lost sight of. The appellant is claiming his title through the plaintiff no.1 and the plaintiff no.1 in its plaint has clearly admitted that Plot No. 318 was the part of the Scheme No. 2-B. Para 3 of the Plaint reads as under :

> **"3.** यह कि, उक्त सर्वे नम्बरान की भूमि ग्वालियर टाउन इम्प्रूवर्मेट ट्स्ट की स्कीम गांधी रोड योजना कं 2बी मे आने के कारण वादी कं 1 व टाउन इम्प्रूवर्मेट ट्स्ट ग्वालियर के बीच एक एग्रीमेंट दिनांक 5.6.1970 को सम्पादित होकर विधिवत रजिस्टर हुई....."

(36) It is really shocking that the plaintiff no.1 purchased the property in dispute by registered sale deed dated 5-6-1970 and on the very same day, he entered into an agreement with the Gwalior Town Improvement Trust. Thus, it is clear that the plaintiff no.1 was well aware of the Scheme No. 2B and in order to grab the valuable land of the Gwalior Town Improvement Trust, he joined hands with some unscrupulous officers/ authorities of Gwalior Town Improvement

Trust, and purchased the disputed property from private persons, and on the same day, entered into an agreement with Gwalior Town Improvement Trust for development of 2286/2, 2286/3, 2286/4, 2298/1, 2298/2, 2298/3, 2298/4, 2298/5, 2299/1, 2299/2,2299/3 and 2299/4 and accordingly sold the entire land to different persons after dividing the same in plots . Thus, it is clear that fraud has been played by the plaintiff no.1 in active connivance with the officers/ authorities of Gwalior Town Improvement Trust and succeeded in grabbing the valuable land falling within the housing scheme 2-B of Gwalior Town Improvement Trust. Since, the appellants in F.A. No. 158/2008 are claiming their title through plaintiff no.1, therefore, they cannot disown the admissions made by the plaintiff no.1 in the plaint. Thus, it is clear that in spite of the fact that the Scheme No. 2B was already notified but still, the plaintiff no.1 succeeded in grabbing the land of the Gwalior Town Improvement Trust by joining hands with the officers/ authorities of Gwalior Town Improvement Trust. Thus, it is clear that the appellants in F.A. No. 158 of 2008 have no right or title in the plot no.318, for the reasons mentioned above.

(37) So far as the right or title of the defendants no.1 and 2 are concerned, even the defendants no.1 and 2 would not get any right or title by virtue of sale deeds dated 21-4-1971. The land belonging to Durga Prasad had already vested in the Gwalior Improvement Trust. Therefore, even the defendants no.1 and 2 could not have purchased any land as their seller, Durga Prasad had already lost all his rights and title in the properties sold by him to the defendants no.1 and 2. Once, the defendants no.1 and 2 did not get any right or title by virtue of sale deeds

dated 21-4-1971, then, there was no question of exchange of lands in lieu of lands purchased by defendants no.1 and 2 by sale deed dated 21-4-1971. Further, no order of allotment has been placed on record. No exchange deed has been placed on record. Order of allotment is nothing but a decision of the Trust to allot the land in favour of someone, but unless and until a registered document either in the form of lease deed or sale deed or exchange deed etc. is executed as per the provisions of Section 83 of M.P. Town Improvement Trusts Act, 1960, no right would pass on to the beneficiary.

(38) Exchange is defined under Section 118 of Transfer of Property Act, which reads as under :

> **"118. "Exchange" defined**.— Where two persons mutually transfer the ownership of one thing for ownership of another, neither thing or both things being money only, the transaction is called an "exchange".
> A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale."

(39) The Supreme Court in the case of **Shyam Narayan Prasad v. Krishna Prasad** reported in **(2018) 7 SCC 646** has held as under :-

> **"17.** This takes us to the next question as to whether the exchange deed at Ext. P-2 is admissible in evidence or not. The transfer of ownership of their respective properties by Defendants 1 and 2 was done through Ext. P-2, deed of exchange. It was contended by Defendant 1 that the exchange was only of the businesses. However, a careful perusal of Ext. P-2 clearly shows that the RCC building is also a subject-matter of the deed of exchange. The value of RCC building exceeds Rs 100 which is not in dispute. Section 118 of the TP Act defines "exchange" as under:
>
> "**118. "Exchange Defined** —When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale."

18. It is clear from this provision that where either of the properties in exchange are immovable or one of them is immovable and the value of anyone is Rs 100 or more, the provision of Section 54 of the TP Act relating to sale of immovable property would apply. The mode of transfer in case of exchange is the same as in the case of sale. It is thus clear that in the case of exchange of property of value of Rs 100 and above, it can be made only by a registered instrument. In the instant case, the exchange deed at Ext. P-2 has not been registered.

19. Section 49 of the Registration Act, 1908 provides for the effect of non-registration of the document, which is as under:

"**49. Effect of non-registration of documents required to be registered**.—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

(*a*) affect any immovable property comprised therein, or

(*b*) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,unless it has been registered:"

20. Section 17(1)(*b*) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Registration Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17 of the Registration Act. Since, the deed of exchange has the effect of creating and taking away the rights in respect of an immovable property, namely, RCC building, it requires registration under Section 17. Since the deed of exchange has not been registered, it cannot be taken into account to the extent of the transfer of an immovable property."

(40) Therefore, in absence of any exchange deed, no right was acquired by the defendants no. 1 and 2. Further, the defendants no.1 and 2 have played fraud by adopting a very innovative method. First of all, they purchased a part of the land which had already stood vested in the Gwalior Town Improvement Trust and

thereafter, under the garb of exchange, they obtained the allotment orders in respect of plots no. 317,318,319,320 and 320A and without execution of any exchange deed, they obtained the ownership rights. Thus, it is clear that even the defendants no.1 and 2 have not acquired any right or title in plots no. 317,318,319,320 and 320A by virtue of allotment orders.

(41) It is really unfortunate that the housing scheme no. 2 B which was notified for the purposes of providing housing plots to the General Public was grabbed by the plaintiffs and the defendants no. 1 and 2 in active connivance with the officers of the Gwalior Town Improvement Trust. So far as the plaintiff no.1 is concerned, an agreement Ex.P4 was executed for the purposes of development of the land, and under the garb of said agreement, the absolute rights were given by the officers of the Gwalior Town Improvement Trust, to the plaintiff no.1. Similarly, the defendants no.1 and 2 had also purchased the land by Sale deed dated 21-4-1971, which had already vested in the Gwalior Town Improvement Trust and under the garb of exchange, allotment letters in respect of Plots No.317, 318, 319, 320 and 320A were issued in their favour. Neither the defendants no.1 and 2 could have purchased the land by sale deed dated 21-4-1971, nor any land in exchange of the property purchased by them by sale deed dated 21-4-1971 could have been given. But, it appears that the officers of the Gwalior Town Improvement Trust were out and out, trying to part away with the valuable land of the Gwalior Town Improvement Trust, by acting contrary to law.

(42) Be that as it may. The fact of the case is that the land in dispute had already stood vested in Gwalior Improvement Trust, immediately after issuance

of notification dated 6-1-1967 and from thereafter, the land forming part of Scheme No.2-B could have been disposed of by the Gwalior Town Improvement Trust, only in accordance with the provisions of Section 83 of the M.P. Town Improvement Trusts Act, 1960.

(43) Thus, the entire sale transactions by sale deeds dated 21-4-1971 in favour of the defendants no.1 and 2 and sale transactions by sale deeds dated 11-2-1970 and 5-6-1970 in favour of plaintiff no.1, were in fact nothing, but a simple waste piece of paper having no **sanctity in law.** Since, the plaintiff no.1 had no right or title to sell any of the disputed properties, therefore, even Puniabai could not get any right or title by virtue of sale deed dated 13-4-1976.

(44) Further, neither in favour of plaintiffs nor in favour of defendants no.1 and 2, no document of title has been executed by the Gwalior Town Improvement Trust, in accordance with provisions of Section 83 of M.P. Town Improvement Trusts Act, 1960. The Plaintiff no.1 had entered into an agreement dated 5-6-1970 to carry out the development work, but he was not given the ownership rights by the Gwalior Town Improvement Trust, in spite of that, the entire land was sold by the plaintiffs without any authority. Similarly, the defendants no.1 and 2 were simply given allotment letters, but no document of title was executed by the defendant no.3 as required under Section 83 of the M.P. Town Improvement Trusts Act, 1960. Neither the agreement dated 5-6-1970 nor the allotment letters issued in favour of the defendants no.1 and 2, would give any ownership right to the plaintiffs or defendants no.1 and 2. To create rights in immovable property worth above Rs.100/-, the document requires registration.

The Supreme Court in the case of **Subraya M.N. v. Vittala M.N.** reported in **(2016) 8 SCC 705** has held as under :

> **15.** Under Section 17 of the Registration Act, the documents which purport or operate to create, declare, assign, limit or extinguish any right, title or interest of the value of one hundred rupees and upwards, are to be registered. Under Section 49 of the Registration Act no document required by Section 17 or by any provision of the Transfer of Property Act to be registered shall be received as evidence of any transaction affecting an immovable property. As provided by Section 49 of the Registration Act, any document, which is not registered as required under the law would be inadmissible in evidence and cannot therefore be produced and proved under Section 91 of the Evidence Act.

(45) Thus, it is held that neither the plaintiffs are the owners of the lands in dispute, nor the defendants no.1 and 2 or their legal representatives are the owners of the land in dispute. Even Puniabai or her legal representatives have no right or title in the plot no.318.

(46) Under these circumstances, it is not essential for this Court to consider the other submissions made by the Counsel for the appellants in both the appeals and it is also not necessary to consider that whether Punia bai could have been impleaded as a defendant and whether the counter-claim against her was maintainable or not and whether a dead person can be impleaded or not.

(47) It is further submitted by the Counsel for the appellants in F.A. No. 158 of 2008, that since the predecessor-in-title of the appellants i.e., Puniabai was a *bona fide* purchaser, therefore, their possession may be protected. It is further submitted that a large number of people have purchased the property in dispute forming part of Survey no. 2286/2, 2286/3, 2286/4, 2298/1, 2298/2, 2298/3, 2298/4, 2298/5, 2299/1, 2299/2,2299/3 and 2299/4 , and still they are enjoying

their properties without any challenge to their title by anybody therefore, the possession of the appellant may also be protected. The submission made by the Counsel for the appellant is misconceived and is hereby rejected. As already held, *a seller cannot convey a better title to the buyer then he has himself.* When the plaintiff no.1 had no right or title, then he cannot transfer better title to Puniabai.

Further, the **equity cannot override the law.**

(48) The Supreme Court in the case of **National Commission for Protection of Child Rights v. Rajesh Kumar** reported in **(2018) 16 SCC 1,** has held as under :-

> "13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law."

The Supreme Court in the case of **Raghunath Rai Bareja v. Punjab National Bank** reported in **(2007) 2 SCC 230,** has held as under :-

> **"29.** Learned counsel for the respondent Bank submitted that it will be very unfair if the appellant who is a guarantor of the loan, and Director of the Company which took the loan, avoids paying the debt. While we fully agree with the learned counsel that equity is wholly in favour of the respondent Bank, since obviously a bank should be allowed to recover its debts, we must, however, state that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim "*dura lex sed lex*", which means "the law is hard, but it is the law". Equity can only supplement the law, but it cannot supplant or override it.
>
> **30.** Thus, in *Madamanchi Ramappa* v. *Muthaluru Bojjappa* (vide AIR p. 1637, para 12) this Court observed:
>
> "[What is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law."
>
> **31.** In *Council for Indian School Certificate Examination* v. *Isha Mittal* (vide SCC p. 522, para 4) this Court observed:
>
> "Considerations of equity cannot prevail and do not permit a High

Court to pass an order contrary to the law."

32. Similarly, in *P.M. Latha* v. *State of Kerala* (vide SCC p. 546, para 13) this Court observed:

> "*13*. Equity and law are twin brothers and law should be applied and interpreted equitably *but equity cannot override written or settled law.*" (emphasis supplied)

33. In *Laxminarayan R. Bhattad* v. *State of Maharashtra*(vide SCC p. 436, para 73) this Court observed:

> "*73. It is now well settled that when there is a conflict between law and equity the former shall prevail*."(emphasis supplied)

34. Similarly, in *Nasiruddin* v. *Sita Ram Agarwal* (vide SCC p. 588, para 35) this Court observed:

> "*35*. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

35. Similarly, in *E. Palanisamy* v. *Palanisamy*(vide SCC p. 127, para 5) this Court observed:

> Equitable considerations have no place where the statute contained express provisions.

36. In *India House* v. *Kishan N. Lalwani* (vide SCC p. 398, para 7) this Court held that:

> "*The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations*." (emphasis supplied)"

A co-ordinate bench of this Court in the case of **Arvind Kumar Jain (Supra)** has held as under :-

"**34.** The petitioners claimed similar treatment by contending that permission of construction etc. is given to various similarly situated persons. At the cost of repetition, in the opinion of this Court, once a notification under Section 71 (2) of the Trust Act is published, for all practical purposes, the land is vested with the Trust. By operation of the Repeal Act, all assets and liabilities of Trust got transferred and became assets and liability of Municipality. If Municipality has given permission of construction etc. to certain persons contrary to scheme, the said wrong examples cannot be followed under the garb of Article 14 of the Constitution. The claim which is founded on such permissions is based on negative equality. In 2006 (3) SCC 16, the Apex Court opined as under :

> ''*Only because some advantages would ensure to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only*

> *because some encroachments have been made and unauthorised buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law.*
>
> *It is trite law that there is no equality in illegality. (Emphasized Supplied)*

This principle is followed by Apex Court in M/s Vishal Properties Pvt. Ltd. (supra) (Para 12). Thus, on the ground of alleged discrimination, no interference is warranted by this Court."

(49) Thus, the appellant cannot be granted any relief on the ground of equity by by-passing the law. Accordingly, the prayer of the appellants in F.A. No. 158 of 2008, seeking protection of their possession on the ground that several persons have also purchased the properties from the plaintiffs and the defendants no.1 and 2 and in absence of any challenge to their sale deeds, they are enjoying the fruits of their properties.

(50) However, this Court cannot ignore the submissions made by the appellant. So far as the subsequent sales in favour of other persons forming part of survey no.s 2286/2, 2286/3, 2286/4, 2298/1, 2298/2, 2298/3, 2298/4, 2298/5, 2299/1, 2299/2,2299/3 and 2299/4 are concerned, this Court was hesitant in taking note of the same, because the other purchasers are not before the Court and they were not party to the litigation and even their sale deeds are also not in question, however, this Court could not ignore the **repeated submissions** made by the Counsel for the appellant that once it is held that after the land in question stood vested in the Gwalior Improvement Trust, then neither the plaintiffs nor the defendants no.1 and 2 had got any right or title, and thus, any further sale made by them would be ***without any right or title or authority,*** and therefore, the

subsequent purchasers are bound by this decree as they have stepped into the shoes of the sellers. At the most, the subsequent purchasers and even the successors of Puniabai can have a right to claim compensation from the plaintiffs and the defendants no.1 and 2 or their legal representatives and even from those officers of the Gwalior Town Improvement Trust, who have illegally disposed of the property of the Gwalior Town Improvement Trust.

(51) It is submitted by the Counsel for the Gwalior Development Authority, that all the cases would be reviewed and action would be taken in all those cases, where the land belonging to the Gwalior Development Authority/Gwalior Town Improvement Trust was illegally sold by the plaintiffs and the defendants no.1 and 2 and the possession would be taken back. It is further submitted that the persons, who feels that they have been cheated by unscrupulous persons, then they can file a suit for compensation against those persons, however, nobody would be allowed to retain the possession of the land belonging to the Gwalior Improvement Trust or Gwalior Development Authority. It is further submitted that the entire exercise shall be done without any further delay. It is further submitted that since, the present case is with regard to the rights of the parties, and the judgment of this Court, may not be in *rem,* but once, this Court has held that as the land in dispute had vested in the Gwalior Town Improvement Trust by virtue of notification dated 6-1-1967 and therefore, neither the plaintiffs nor the defendants no. 1 and 2 had acquired any right or title in the land forming part of Scheme no. 2B, therefore, any person claiming his title on the basis of the sale deeds executed by the plaintiffs and defendants no.1 and 2 would also not

acquire any right and title in the property, therefore, their case is squarely covered by the law that the *"a seller cannot convey a better title to the buyer then he has himself"*, and since the judgment of the High Court is binding on all the Courts within the State, therefore, the same can be applied to other similarly situated cases. To buttress his contentions, the Counsel for the respondent no. 8/defendant no. 3 has relied upon the judgment passed by the Supreme Court in the case of **Prabhjot Singh Mand (1) v. Bhagwant Singh,** reported in **(2009) 9 SCC 435** which reads as under :

> 24. It is one thing to say that the judgment delivered by this Court in *Arvinder Singh Bains* is not a judgment in rem but prima facie this Court has interpreted the Rules, which would be a law declared in terms of Article 141 of the Constitution of India.

It is further submitted that the Supreme Court in the case of **Baradakanta Misra v. Bhimsen Dixit,** reported in **AIR 1972 SC 2466** has held as under :

> **14.** Under Article 227 of the Constitution, the High Court is vested with the power of superintendence over the courts and tribunals in the State. Acting as a quasi-judicial authority under the Orissa Hindu Religious Endowments Act, the appellant was subject to the superintendence of the High Court. Accordingly the decisions of the High Court were binding on him. He could not get away from them by adducing factually wrong and illegitimate reasons. In *East India Commercial Co., Ltd. Calcutta* v. *Collector of Customs, Calcutta* Subba Rao, J., observed:
>
> "The Division Bench of the High Court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under Section 5 of the Act. This raises the question whether an Administrative Tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Article 215, every High Court shall be a Court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases

> any Government, within its territorial jurisdiction. Under Article 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."

It is further submitted that the Supreme Court in the case of **East India Commercial Co. Ltd. v. Collector of Customs AIR 1962 SC 1893** has observed as under :

> " We therefore, hold that the law declared by the highest court in the state is binding on authorities or Tribunals under its superintendence and they cannot ignore it."

(52) So far as the submission made by the Counsel for the respondent no.8/defendant no. 3 with regard to initiating action against all those persons, who have purchased the land forming part of Survey No. 2286/2, 2286/3, 2286/4, 2298/1, 2298/2, 2298/3, 2298/4, 2298/5, 2299/1, 2299/2, 22992/3 and 2299/4 is concerned, the same appears to be plausible in the light of the judgment passed by the Supreme Court in the case of **Poonaram Vs. Motiram** passed in **C.A. No. 4527 of 2009** on **29-1-2019** which reads as under :

> 13. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual

> act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent or a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of animus possidendi. The nature of possession of the trespasser is to be decided based on the facts and circumstances of each case.

(53) If the facts and circumstances of the case are considered, then although the litigation in hand deals with the personal disputes, but the question which is involved in the present case is of general importance and cannot be confined to personal adjudication of disputes. It is not a case where the suit is being dismissed by holding that the plaintiffs have failed to prove their title, but the suit as well as the Counter-claims are being **dismissed** by holding that as the land in question had already vested free from all encumbrances in the Gwalior Town Improvement Trust by virtue of notification dated 6-1-1967 and thereafter, the sale deeds in question i.e., 11-2-1970 and 5-6-1970 were executed in favour of the plaintiff no.1, whereas sale deeds dated 21-4-1971 were executed in favour of defendants no.1 and 2 and sale deed dated 13-4-1976 was executed in favour of defendant no.4, therefore, they are null and void and, thus, none of them had acquired any right or title by virtue of their respective sale deeds. This findings is certainly a finding *in rem and not in personam,* and therefore Section 35 of Specific Relief Act, would not apply. As the land belonging to the Gwalior Improvement Trust could not have been disposed of in the manner in which it was done in a clandestine manner, this Court is of the view that all subsequent

purchasers would not get any better title than what their sellers had. Therefore, the Gwalior Development Authority is free to initiate proceedings against all the persons who had purchased the properties from the plaintiffs/ plaintiff no.1 as well as from the defendants no.1 and 2 forming part of Survey No.s. 2286/2, 2286/3, 2286/4, 2298/1, 2298/2, 2298/3, 2298/4, 2298/5, 2299/1, 2299/2, 22992/3 and 2299/4. As the disputed land has been grabbed by the plaintiffs, defendants no.1 and 2, as well as Puniabai, in an illegal manner, therefore, in the light of the judgment passed by the Supreme Court in the case of **Poonaram (Supra),** the defendant no.3 i.e., Gwalior Development Authority is directed to take back the possession of the same in accordance with law. Let necessary exercise in this regard be done within a period of three months from today.

(54) The Supreme Court in the case of **M.C. Mehta vs. Union of India (Delhi vehicular air pollution)** reported in **(2001) 3 SCC 756** has held as under :-

> **"8.**On behalf of the stage-carriage permit transport operators, Mr K.K. Venugopal, learned Senior Counsel submitted that all their existing buses are meeting emission norms for diesel vehicles as prescribed under the Motor Vehicles Act and, therefore, they cannot be denied their right to ply their buses "even if they do not conform to the directions issued by this Court on 28-7-1998" since they were not heard before fixing the time schedule on 28-7-1998 (as they were not parties to the writ petition). In other words what is sought to be challenged on behalf of these operators is the correctness of the order passed on 28-7-1998 at this belated stage. It is not possible to accept that all these years, these private operators were "unaware" of the directions issued by this Court on 28-7-1998. We are not impressed with the argument of Mr Venugopal. The directions issued by us were not in any adversarial litigation. Besides our order was, and it was conceded by Mr Venugopal, an order *in rem* and not an order *in personam*. All private operators, who operate their buses in Delhi are bound by these orders, which were made to safeguard the health of the citizens, being a facet of Article

> 21 and had been publicised from time to time both in the electronic as well as print media.....”

The Supreme Court in the case of **Avishek Goenka (2) vs. Union of India,** reported in **(2012) 8 SCC 441** has held as under :-

> **"13.** The judgment dated 27-4-2012 was passed in a public interest litigation and the orders passed by this Court would be operative in rem. It was neither expected of the Court nor is it the requirement of law that the Court should have issued notice to every shopkeeper selling the films, every distributor distributing the films and every manufacturer manufacturing the films. But, in any case, this was a widely covered matter by the Press. It was incumbent upon the applicants to approach the Court, if they wanted to be heard at that stage. The writ petition was instituted on 6-5-2011 and the judgment in the case was pronounced after hearing all concerned, including the Union Government, on 27-4-2012, nearly after a year. Hence, this ground raised by the applicants requires noticing only for being rejected."

The Supreme Court in the case of **Surinder Kumar vs. Gian Chand** reported in **1958 SCR 548** has held as under :-

> **"5.** .....The judgment of the probate Court must be presumed to have been obtained in accordance with the procedure prescribed by law and it is a judgment in rem. The objection that the respondents were not parties to it is thus unsustainable because of the nature of the judgment itself."

The Supreme Court in the case of **Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd.,** reported in **(2011) 5 SCC 532** has held as under :-

> **"37.** It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a

> judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide *Black's Law Dictionary.*)"

The Supreme Court in the case of **Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju,** reported in **(2006) 1 SCC 212** has held as under :-

> "A judgment in rem is defined in English law as "an adjudication pronounced (as its name indeed denotes) by the status, some particular subject-matter by a tribunal having competent authority for that purpose". *Spencer Bower on Res Judicata* defines the term as one which "declares, defines or otherwise determines the status of a person or of a thing, that is to say, the jural relation of the person or thing to the world generally".

The Supreme Court in the case of **Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.)** reported in **(2009) 5 SCC 528** has held as under :-

> **"32.**.....It is binding on all courts and authorities. Being a judgment in rem it will have effect over other judgments. A judgment in rem indisputably is conclusive in a criminal as well as in a civil proceeding.
> **33.** We may, however, notice that whether a judgment in rem is conclusive in a criminal proceeding or not, is a matter of some doubt under the English law. Johnson and Bridgman, *Taylor of Evidence*, Vol. 2, in S. 1680 notes that "whether a judgment in rem is conclusive in a criminal proceeding is a question which admits of some doubt". It is, however, concluded that it is said that nothing can be more inconvenient or dangerous than a conflict of decisions between different courts, and that, if judgments in rem are not regarded as binding upon all courts alike, the most startling anomalies may occur."

(55) Resultantly, the appeal filed by the appellants (In F.A. No. 158 of 2008 and F.A. No. 149 of 2008) against the judgment and decree dated 30-4-2005 passed by VIth Additional District Judge, Gwalior in Civil Suit No. 90A/2004, so far as it relates to allowing the Counter-claim of the defendants no.1 and 2 is

concerned, is hereby **allowed** and therefore, the decree passed in favour of defendants no.1 and 2 is hereby set aside. It is held that the defendants no. 1 and 2 have no right or title in Plots No. 317, 318, 319, 320, 320A. So far as the counter-claim filed by the appellants in F.A. No.158 of 2008 for declaration of their title is concerned, the same is also **dismissed** and it is held that the appellants in F.A. No.158 of 2008/defendants no. 4 have no right or title in Plot No. 318. The suit filed by the plaintiffs/Appellants in F.A. No.149 of 2008 is also **dismissed** and it is held that they have no right or title in Plots No. 317, 318, 319, 320 and 320A.

(56) Decree be drawn accordingly.

(G.S. Ahluwalia)
Judge

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