THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(DIVISION BENCH)

Writ Appeal No.69/2020

Ekkisvi Sadi Grih Nirman Sahkari Samiti ….. Appellant
Versus
State of M.P. & Others ….. Respondents

Writ Appeal No.17/2020

Gwalior Development Authority & others ..... Appellants
Versus
Ekkisvi Sadi Grih Nirman Sahakari Samiti ….. Respondents
& others

Writ Appeal No.16/2020

Kamal Singh & another ..... Appellants
Versus
Ekkisvi Sadi Grih Nirman Sahakari Samiti ….. Respondents
& others

CORAM

Hon. Mr. Justice Rohit Arya
Hon. Mr. Justice Deepak Kumar Agarwal.

Presence

Shri K.N.Gupta, Senior Advocate with Shri Vivek Jain and Shri Sarvesh Sharma, Advocates for the appellant in W.A. No.69/2020, respondent no.1 in W.A. Nos. 17/2020 and 16/2020

Shri Raghvendra Dixit, Advocate for respondent nos. 2 and 3 in W.A. No.69/2020 and appellant in W.A. No.17/2020.

Shri N.K.Gupta, Senior Advocate with Shri S.D.Singh,

Advocate for respondent nos. 4 and 5 in W.A. No.69/2020 and appellants in W.A. No.16/2020.

Shri D.D.Bansal, Government Advocate for respondents/State.

J U D G M E N T
(DELIVERED ON THIS 27th DAY OF JANUARY 2022)

PER ARYA,J

This set of three writ appeals is directed against the impugned order dated 13/12/2019 rendered in W.P. No.19912/2019.

2. The factual matrix involved has a chequered history. The appellant in W.A. No.69/2020 is said to be a Co-operative Housing Society *(hereinafter referred to as "the Housing Society")* registered under the M.P. Cooperative Societies Act, 1960. Appellant no.1 Kamal Singh in W.A. No.16/2020 is the owner of land falling in Survey No. 388 admeasuring 20 bigha 6 biswa situated at Village Mau, Tahsil and District Gwalior (*for brevity "owner of disputed land")*. Appellants in W.A.No.17/2020 are Gwalior Development Authority (*for short "the GDA"*).

3. Notified Development Scheme was finally published under section 50(7) of the M.P. Nagar Tatha Gram Nivesh Adhiniyam 1973 *(hereinafter referred to as "the Adhiniyam of 1973")* known as "Maharajpur Residential Scheme" in Official Gazette on 20/1/1989. Under section 56 of the Adhiniyam, the GDA

proceeded to acquire land by way of agreements. Amongst others, the GDA entered into two agreements dated 23/11/1996 and 28/12/1997 with the Housing Society in respect of the notified land situated at Village Mow. The agreement dated 23/11/1996 was entered into in respect of land falling in Survey Nos. 858/2 min admeasuring 5 Bigha, 850/1 min admeasuring 7 bigha, total 12 bigha 4 biswa, whereas agreement dated 28/12/1997 was in respect of lands falling in Survey No.858 Min area 1 bigha, Survey No.386 min area 13 bigha 13 biswa, Survey No.412/1 area 2 bigha, Survey No.498 area 2 bigha 6 biswa, 373/2 area 2 bigha 9 biswa, Survey No.388 admeasuring 20 bigha 6 biswa, Survey No. 375 area 4 bigha 10 biswa, Survey No.374 area 0.10 biswa, Survey No. area 09 total area 47 bigha 3 biswa.

4. As such, under the agreement dated 23/11/1996, 12 bigha and 4 biswa and under agreement dated 28/12/1997, 47 bigha 3 biswa, total 59 bigha 7 biswa of land was surrendered. For the purpose of disposal of these appeals, the land falling in Survey No.388 admeasuring 20 bigha 6 biswa under the agreement dated 28/12/1997 is relevant (*hereinafter referred to as the "disputed land")*.

5. On 24/12/1997, the Housing Society entered into an agreement to sell with Kamal Singh (appellant no.1 in W.A. No.16/2020) in respect of the disputed land. Thereafter, on

28/12/1997, a tripartite agreement was entered into between the Housing Society, owner of disputed land and other owners of different lands of different survey numbers falling within the scope of notified scheme on one side and GDA on the other side. It was agreed thereunder to allot 25% of plots out of the total developed area from the surrendered land to the Housing Society. During the period 29/6/1998 to 2/6/2000, developed plots comprising area 3216 square meters and 11886 square meters were allotted to the Housing Society.

6. It appears that with the passage of time as the land prices increased, some dispute arose between the Housing Society and owner of disputed land. According to GDA, an application dated 24/5/2017 was received supported by an affidavit of President of Society dated 19/5/2017, to exclude the disputed land admeasuring 17 bigha 6 biswa from the tripartite agreement. On 25/9/2018, the GDA replied and expressed its inability to release Survey No.388 area 17 bigha 6 biswa out of total area of 20 bigha 6 biswa for the reason that the Housing Society had already received possession of the developed plots more than its entitlement to the extent of 8190 square meter. It was also stated thereunder that 3 bigha land out of Survey No.388 had already been released in the shape of developed plots to the Housing Society. The value thereof, as per Collector guidelines,was

calculated as 8,19,85,000/-. For ready reference, the rejection order (relevant part) dated 25/9/2018 (Annexure P/8) passed by the GDA is quoted infra:-

> "आपके द्वारा अनुबंधित भूमि सर्वे क्र. 388 रकवा 20 बीघा 06 विस्वा में से 17 बीघा 06 विस्वा भूमि का अनुबंध निरस्त करने हेतु शपथ पत्र संलग्न कर दूसरा आवेदन प्रस्तुत किया है, जो मुक्त किया जाना संभव नहीं है, क्योंकि आपके द्वारा प्राधिकरण से पात्रता से अधिक भूखण्ड प्राप्त कर लिये हैं । जिसका क्षेत्रफल 8198.00 वर्गमीटर अधिक है, जिसकी कीमत वर्तमान कलेक्टर गाईड लाईन से रूपये 8 करोड 19 लाख 85 हजार होती है ।"

As such, the GDA called upon the Housing Society to ensure mutation of the disputed land in favour of the GDA in the revenue records or else pay the aforesaid amount, failing which the GDA would initiate action for cancellation of plots allotted and also initiate criminal prosecution.

7. The Housing Society challenged the aforesaid communication dated 25/9/2018 (Annexure P/8) before this Court in W.P. No.25258/2018 and vide order dated 4/12/2018, the learned Single Judge disposed of the writ petition with the direction to the effect that if petitioner therein had sought extension of time to file reply and filed reply, the same would be decided by respondent no.3/GDA by passing a speaking order. The GDA finally passed the order on 28/8/2019. In the said order, GDA has narrated the entire factual matrix in relation to tripartite agreement etc. and reached the conclusion that after release of 16

bigha 4 biswa of land out of the disputed land, for excess allotment to the tune of 21030 square meters to the Housing Society, a sum of Rs.1,68,24,000/- be deposited with the GDA. Relevant portion of the order is quoted below :-

> ''(1) संस्था द्वारा पूर्व में दिनांक 26.05.2017 को शपथ पत्र दिनांक 19.05.2017 सहित आवेदन प्रस्तुत कर ग्राम मऊ की भूमि सर्वे क्र. 388 रकवा 20 बीघा 06 विस्वा में से 17 बीघा 03 विस्वा को अनुबन्ध से मुक्त करने का आवेदन दिया गया था जो नस्ती में निर्णय हेतु लम्बित था। संस्था के इस लम्बित आवेदन का निराकरण आवेदन स्वीकार करते हुए दिनांक 29.05.2019 को ग्राम मऊ की भूमि सर्वे क्र. 388 में से 16 बीघा 04 विस्वा को अनुबन्ध से मुक्त कर दिया गया। (2) संस्था द्वारा इसी दौरान ग्राम मऊ की भूमि सर्वे क्र. 386 एवं 388 रकवा 28 बीघा 09 विस्वा का नामान्तरण राजस्व अभिलेखों में प्राधिकरण के नाम करा दिया गया जिसमें से भूमि 16 बीघा 04 विस्वा भूमि उपरोक्त बिन्दु क्रमांक 01 के अनुसर संस्था के पक्ष में उसके आवेदन के आधार पर दिनांक 29.05.2019 को उपरोक्तानुसार मुक्त कर दी गई इस प्रकार शेष 12 बीघा 05 विस्वा विधिवत् प्राधिकरण को समर्पित किये जाने की श्रेणी में आ जाने से इस भूमि को भी गणना में लिया जा रहा है।
>
> इस प्रकार वर्तमान स्थिति अनुसार संस्था को 21 बीघा 09 विस्वा पूर्व में विधिवत् समर्पित मान्य की गई भूमि तथा पश्चात्वर्ती कार्यवाही के दौरान 12 बीघा 05 विस्वा विधिवत् मान्य की गई भूमि कुल भूमि 33 बीघा 14 विस्वा अर्थात् 758250 वर्गफीट भूमि संस्था द्वारा विधिवत् प्राधिकरण को सौंपी जाकर राजस्व अभिलेखों में नामान्तरण कराया गया। उक्त भूमि के बदले संस्था को अनुबन्धों शर्तों अनुसार 25 प्रतिशत विकसित भूखण्ड अर्थात् 189563 वर्गफीट भूखण्ड आवंटित किये जाने थे जिसके विरूद्ध प्राधिकरण द्वारा 210593 वर्गफीट आवंटित किये जा चुके

हैं इस प्रकार प्राधिकरण द्वारा संस्था को 21030 वर्गफीट अतिरिक्त भूखण्ड आवंटित किये गये जिनके बदले में संस्था द्वारा ना तो कोई भूमि प्राधिकरण को समर्पित की गई और ना ही उक्त भूमि का मूल्य प्राधिकरण को भुगतान किया गया।

अतः संस्था को निर्देशित किया जाता है कि 21030 वर्गफीट भूमि का वर्तमान कलेक्टर गाईड लाईन अनुसार राशि 1,68,24,000/– प्राधिकरण को एक माह के भीतर भुगतान करे अन्यथा उक्त राशि भू राजस्व के बकाया की भाँति वसूल की जावेगी।"

8. Thereafter, on 7/6/2019 an agreement was entered into between owner of disputed land Kamal Singh and GDA under section 56 of the Adhiniyam in respect of 16 bigha 4 biswa of land and on 3/9/2019, 25% of developed plots were released to him.

9. The Housing Society filed W.P. No.19912/2019 (subject matter of these appeals) challenging orders dated 28/8/2019 and 3/9/2019. The owner of disputed land filed an application for dismissal of the writ petition on the premise that the Housing Society did not come to the Court with clean hands. The right, title and interest over the disputed land continued to be that of owner of the disputed land. There was no sale or transfer of land in favour of the Housing Society, therefore, the Society had no authority to deal with the disputed land in any manner whatsoever including to enter agreement with the GDA in respect thereof in the context of the development scheme. The alleged cancellation agreement dated 15/5/2017 along with affdiavit of President of

Housing Society submitted in the GDA is another forged act of the Housing Society. The owner of disputed land had never signed such an agreement. The agreement is of 15/5/2017 and affidavit is of 19/5/2017. In any case, the Housing Society had no authority to deal with the disputed land. The owner of disputed land had approached the GDA, as acknowledged by the GDA, and therefore agreement was entered on 7/6/2019. Thereafter 16 bigha 4 biswa land was surrendered to the GDA and in lieu thereof, on 3/9/2019, 25% developed plots were allotted to him.

10. On notice, the GDA also filed a detailed reply and raised preliminary objection submitting that the Housing Society had not come with clean hands. It had suppressed the fact of filing of application before GDA for release/exemption of 17 bigha 6 biswa of land falling in Survey No.388 (disputed land). Thereafter, the GDA passed the order dated 25/9/2018 (Supra) and, as indicated above, W.P. No.25258/2018 filed by the Housing Society was decided on 4/12/2018 with the direction to the effect that if petitioner therein had sought extension of time to file reply and had filed reply, the same would be decided by respondent no.3/GDA by passing a speaking order. It is further stated in the reply that the order passed by the GDA on 28/8/2019 is self contained and explanatory. No indulgence was warranted in the said order. Since there is no illegality in the agreement entered

into between Kamal Singh (owner of the land) and the GDA on 7/6/2019 in respect of 16 bigha 4 biswa of land falling in Survey No.388, as a consequence thereof and in terms of that agreement, the GDA agreed to and released/allotted 25% developed plots to him.

11. On the aforesaid pleadings of the parties, the learned Single Judge in paragraph 15 of the impugned judgment observed as under:-

> "(15) The petitioner has alleged that forged documents have been filed by the respondents no.2 and 3, whereas the respondents no. 2 and 3 have alleged that the petitioner has suppressed material facts. Lot of disputed questions of facts have been alleged by all the parties, which cannot be decided by this Court, while exercising the power under Article 226 of the Constitution of India."

However, in the following paragraphs, learned Single Judge, firstly on interpretation of section 56 of Adhiniyam of 1973, while relying upon judgment of a Division Bench of this Court in the case of **Rajesh Kumar Gupta and others Vs. State of M.P. and others 2013(2) MPLJ 707),** ruled that the GDA could not have entered into an agreement with the land owners for acquisition of land after three years of final publication of development scheme under section 50(7) of the Adhiniyam of 1973 and the GDA should have asked the State Government to acquire land by way of acquisition under the Land Acquisition Act.

Secondly, the learned Single Judge proceeded to record

findings on merits that by entering into illegal agreement, GDA and its officers have connived and colluded with the Housing Society. They have acted contrary to the provisions of Adhiniyam of 1973. Thereafter, serious aspersions have been cast on the affairs of Housing Society.

In paragraph 24 of the order, multifarious directions have been issued to Registrar, Co-opeartive Societies for enquiry as regards compliance of various provisions of the Co-opeative Societies Act by the Housing Society and to submit the enquiry report to Principal Registrar of this Court.

In paragraph 23, the agreement entered into between the GDA and Kamal Singh (owner of the land) dated 7/6/2019 has been held to be contrary to section 56 of the Adhiniyam of 1973 and the agreement has been ordered to be kept in abeyance. Likewise, transfer of developed plots to him has also been ordered to be kept in abeyance with direction that possession be not given to him and in case the possession has already been given, the same be taken back. The GDA has been directed to submit its report to Principal Registrar in that behalf.

In paragraph 25, a general law has been laid down that no further acquisition by entering into agreements with owners of land shall be done by the GDA from the date of that order. Instead, the GDA may make a request to the State Government to acquire

land under the provisions of Land Acquisition Act.

In paragraph 27, learned Single Judge has directed that if any developed plot(s) allotted to the Housing Society were still lying vacant, the possession thereof shall be immediately taken back by the GDA and if the said developed plot(s) had been sold by the Housing Society, the market value thereof be recovered from the Housing Society and be paid to the original owners as per their entitlement. Six months' period has been fixed therefor. The entire directions have been given holding that the tripartite agreement dated 28/12/1997 by the GDA with the Housing Society and land owners was bad in law. The impugned order dated 28/8/2019 passed by the GDA has been upheld. The relevant paragraph reads thus:-

> "(27) As this Court has already come to a conclusion that the execution of the tripartite agreement dated 28-12-1997 by the G.D.A. with the petitioner and the owners, by which it was agreed to give 25% of the land to the petitioner in the form of developed plots is bad in law, therefore, by maintaining the order dated 28-8-2919 it is directed that if any of the developed plot(s) allotted to the petitioner is/are still lying vacant, then the possession of the same shall be immediately taken back by the G.D.A. In case, the developed plots allotted to the petitioner have already been sold by the petitioner, then the market value of those plots be recovered from the petitioner, and the said amount be paid to the original owners as per their entitlement. Let the entire exercise be done by the G.D.A., within a period of six months from today. The C.E.O., G.D.A. is directed to submit its report to the Principal Registrar of this Court, immediately after expiry of six months."

In paragraph 29, the SPE (Lokayukt) has been directed to

register the FIR and investigate the matter, thereafter, if the facts so warrant to initiate prosecution and complete the same within six months. The report in that behalf has been directed to be submitted to the Principal Registrar of this Court.

12. Shri K.N.Gupta, learned Senior Counsel, while criticizing the impugned order contended that once the tripartite agreement dated 28/12/1997 was entered into by the GDA with the Housing Society and owners of lands including Kamal Singh, owner of disputed land under section 56 of the Adhiniyam of 1973, the GDA could not have taken a somersault and entered into agreement with Kamal Singh in respect of 16 Bigha 4 Biswa land of Khasra No.388 and released 25% developed plots in his favour. A fraud has been played upon by the GDA. The alleged letter dated 15/5/2017 which is said to be a deed of cancellation of agreements dated 15/12/1997 and 28/12/1997 is a manufactured and incomplete document and the same could not have been entered into for deleting Survey No.388 from the agreements of 1997.

Learned counsel further contended that the learned Single Judge committed serious error of law and fact while holding that after expiry of three years' period from the date of publication of development scheme, the GDA could not have acquired the land by agreements. The aforesaid conclusion is contrary to the

mandate of S.56 of the Adhiniyam of 1973, inasmuch as S.56 empowers the development Authority to proceed to acquire land from private land owners by agreements within three years from the date of final publication of development scheme and does not require completion of acquisition by way of agreements within the said period. Learned Single Judge also committed patent error of law and fact while directing, in paragraph 24, the Registrar, Cooperative Society to conduct a detailed enquiry into constitution and functioning of the Housing Society under section 59 of the Cooperative Societies Act and to also verify as to whether requirement of law as contemplated under S.31 to S.63-A was satisfied by the Housing Society or not; in paragraph 26 that any change of use of any land or building or carrying out any development by the owner shall be void; in paragraph 27 that agreement dated 28/12/1997 was bad in law and, therefore, allotment of 25% of land to the Housing Society in the form of developed plots was also bad in law, with further direction that if allotted plots have been sold by the Housing Society, market value thereof be recovered from it and the said amount be paid to the original owners as per their entitlement.

With the aforesaid submissions, learned counsel prayed for setting aside of order passed by the learned Single Judge.

13. Shri N.K.Gupta, learned Senior counsel appearing for

owners of disputed land, while criticizing the impugned order, firstly has raised similar contention that S.56 of the Adhiniyam of 1973 does not preclude the development Authority to acquire land by way of agreements with private owners for development purpose after three years of final notification of development scheme under section 50(7) of the Adhiniyam of 1973.

Learned counsel further contended that once the order of GDA dated 28/8/2019 has been upheld by the learned Single Judge in paragraph 27 of the impugned order, the agreement entered into between the GDA and appellant Kamal Singh, owner of disputed land could not have been faulted with as the same is in accordance with S.56 of the Adhiniyam. Likewise, release of 25% developed plots in favour of appellant Kamal Singh, as against surrender of 16 Bigha 4 Biswa land of Survey No.388, also could not be taken exception to.

Learned counsel further contended that the learned Single Judge has committed grave illegality and in fact exceeded his jurisdiction in directing that plots allotted to appellant Kamal Singh shall remain in abeyance and possession thereof be recovered from him.

With the aforesaid contentions, it is submitted that the impugned order is liable to be set aside.

14. Shri Raghvendra Dixit, learned counsel for the GDA also

raised similar contention that S.56 of the Adhiniyam of 1973 does not bar the development Authority to enter into agreement with private owners of the land falling in development scheme published under section 50(7) of the Adhiniyam of 1973 after expiry of three years period from the date of publication of such scheme. In addition, he relied upon provisions of section 56 of the Adhiniyam read with Rule 20(4)(a) & (b) of the Nagar Tatha Gram Nivesh Niyam, 2012 (*hereinafter referred to as "the Rules of 2012"*) to buttress his submissions. Besides, he relied upon judgment of co-ordinate Bench of this Court in the case of **Sunil Kumar Jain Vs. State of M.P. And others** delivered in W.P. No.13166/2010 on 15/7/2011, wherein the provision of S.56 of the Adhiniyam has been held to be directory and not mandatory.

Learned counsel further contended that the finding in paragraph 29 of the impugned order that there was connivance of the Officers of GDA, in fact, is without any factual foundation. Neither there is any complaint of the owners of land nor any material available on record to conclude that the owners of land have been cheated and undue advantage has been given to the Housing Society, hence direction to SPE (Lokayukt) to register FIR and investigate the matter and thereafter proceed to prosecute for criminal liability is a wholly unwarranted direction based on surmises and conjectures.

On merits, it is submitted that after issuance of order dt.28.08.2019, GDA had decided to release survey No.388 area 16 bigha 4 biswa in favour of Kamal Singh (owner of disputed land) as explained in the said order. The G.D.A was free to execute an agreement with the actual owner of 16 bigha 4 biswa of Survey No.388 with the Kamal Singh (owner of disputed land). This Court has since already held that under Section 56 of the Adhiniyam of 1973 the process of acquisition may start within three years, but not to be completed within three years, therefore, the agreement between Kamal Singh (owner of disputed land) and the G.D.A cannot be faulted with having been entered beyond the three years of period from the date of final publication of the development scheme under Section 50 of the Adhiniyam of 1973. The officers of the G.D.A have acted bonafidely either while executing the agreement dated 28.12.1997 or the agreement with Kamal Singh on 7.6.2019. The observations of the learned Single Judge in the context of the conduct of the G.D.A are wholly unwarranted for more than one reasons:

(i) Once in para 15 of the impugned order the learned Single Judge has expressed that the subject matter of the writ petition involves disputed questions of facts and the same could not be addressed under Article 226 of the Constitution of India, no further observation could have been made against the officers.

(ii) None of the officers was either arrayed as respondent or afforded an opportunity before making serious remarks against them in discharge of their duties.

(iii) The documents available on record do not suggest that the officers of the G.D.A resorted to colourable exercise of powers or acted with ulterior motive and for collateral purposes.

(iv) The observations qua enquiry and direction for registration of FIR by the S.P.E (Lokayukt) to investigate the matter and thereafter prosecute the persons found guilty are directions much beyond the scope of the writ petition in the obtaining facts and circumstances. The G.D.A has taken decisions in accordance with law and with due approval of the competent Authorities, hence no exception thereto could have been taken to the aforesaid extent, that too without hearing the persons affected by the impugned order. With the aforesaid submissions, learned counsel prays for setting aside of the impugned order.

15. Besides, learned counsel for the appellants in all the three appeals have made a common submission that learned Single Judge, on misreading of S.56 of the Adhiniyam of 1973 and in ignorance of the corresponding Rule 20(4)(a) & (b) of the Rules of 2012, has stretched out of self imposed limitation in exercise of extraordinary jurisdiction under Article 226 of the Constitution while issuing command for cancellation of allotment; recovery of

possession of plots; initiation of enquiry by the Registrar Co-operative Society and registration of FIR, in absence of pleadings and material to that effect on record. It has further been contended that the lopsided findings are based on surmises and conjectures, therefore, the impugned order be set aside. The impugned order passed in purported exercise of powers under Article 226 of the Constitution has resulted in miscarriage of justice being out of bounds of the contours of fair play, justice, equity and good conscience.

16. Before adverting to contentions advanced by learned counsel for the parties, it is expedient to address on the question of interpretation of S.56 of the Adhiniyam of 1973 and the corresponding Rule 20 of the Rules of 2012. For ready reference, the same are quoted hereinafter:-

> "**56. Acquisition of land for Town and Country Development Authority [or Housing and Urban Development Authority of Chhatisgarh].-** The Town and Country Development Authority [or Housing and Urban Development Authority of Chhatisgarh] may at any time after the date of publication of the final town development scheme under Section 50 but not later than three years therefrom, **proceed to acquire** by agreement the land required for the implementation of the scheme and, on its failure so to acquire, the State Government may, at the request of the Town and Country Development Authority [or Housing and Urban Development Authority of Chhattisgarh], proceed to acquire such land under the provisions of the Land Acquisition Act, 1894 (No. 1 of 1894) and on the payment of compensation awarded under that Act and any other charges incurred by the State

Government in connection with the acquisition, the land shall vest in the Town and Country Development Authority [or Housing and Urban Development Authority] of Chhatisgarh subject to such terms and conditions as may be prescribed.

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Nagar Tatha Gram Nivesh Niyam, 2012

20. Acquisition of land –
(1) ….. ….. …..
(2) ….. ….. …..
(3) ….. ….. …..
(4)(a) If the Authority is satisfied that acquisition by agreement is not possible, it shall request the District Collector to acquire the said land under Land Acquisition Act, 1894 (No.1 of 1894). All expenditure incurred in such acquisition shall be borne by the Authority.
(b) Notwithstanding any action that may have been taken for acquisition of land under sub rule 4(a) above, the Authority may, on an application of the owner, enter into the agreement in Form-XX provided that on the date of such agreement proceedings under section 6 of the land Acquisition Act of 1894 have not been initiated by the competent authority.
(5) ….. …... …..

A careful reading of S.56 contemplates that the Town and Country Development Authority, may at any time after publication of final town development scheme under section 50 of the Adhiniyam of 1973, but not later than three years therefrom, **proceed to acquire land** by way of agreements for implementation of scheme, and if for any reason it fails to acquire, the State Government on its request may acquire such land for the Authority under the provisions of Land Acquisition Act, 1894.

Section 56 does not contemplate that the Town and Country Development Authority must **complete** acquisition of land by way of agreements with private owners within three years. In other words, there is no prescription of limit of three years to complete the process of acquisition by Town and Country Development Authority.

That apart, a conjoint reading of the aforesaid provision with Rule 20 Sub-rule 4(a) & (b) suggests that even if Town and Country Development Authority has requested the District Collector to acquire the land under the Land Acquisition Act, still the Authority may proceed to acquire the land by way of agreement on application of private owner, provided on the date of such agreement, proceedings under Section 6 of the Land Acquisition Act have not been initiated by the competent Authority i.e. Land Acquisition Officer.

As such, Section 56 of the Adhiniyam of 1973 read with Rule 20 Sub-rule 4(a) & (b) of the Rules of 2012 provides that the Authority may proceed to acquire land through agreements with private owners within three years from the date of final publication of scheme under section 50. The provision is directory and not mandatory. Besides, there is no outer limit of three years to acquire land by agreement with private owners. That apart, even if the Development Authority has requested the State Government

to acquire land before or after three years of publication of final development scheme, still the Authority can acquire the land by way of agreement with private owner upon his/her application, of course if the proceedings under section 6 of the Land Acquisition Act have not been initiated by the competent Authority. The aforesaid view of this Court is fortified by the judgment of a co-ordinate Bench of this Court in the case of **Sanjai Gandhi Grah Nirman Sahkari Sanstha Maryadit Vs. State of M.P. (AIR 1991 MP 72)**, as couched in the following paragraphs:-

> "18.....Section 56 of the Adhiniyam provides that after the date of publication of the final scheme under Section 50 the Authority may proceed to acquire the land required for the implementation of the scheme within a period of three years by agreement and if there is a failure in acquiring the land by agreement then request for the acquisition of the land may be made to the authority. Then Section 57 provides for the development which clearly says that when the land has vested in the Authority under Section 56 of the Act in accordance with the provisions of the Town Development Scheme, the authority shall take necessary steps to develop the land. Thereafter also the State Government or the Director has a supervisory power to ensure that the development is in accordance with the scheme and may also issue directions to the authority which are binding on the authority. As such the aforesaid provisions made in the Adhiniyam have to be taken into consideration before interpreting the word 'implementation.'
>
> After a scheme is published under Section 50(7) of the Adhiniyam, the Director has an authority to revise the final scheme within a period of two years and then under Section 56 of the Adhiniyam the Authority has been given power to initiate negotiations for acquisition a within a period of 3 years, failing which the land acquisition proceedings may be initiated and Section 57 postulates the

> commencement of the development work after the land is acquired and is vested in the authority. As such the word 'implementation' can never be construed to mean that the scheme should be fulfilled or carried out within a period of three years. Reading Section 54 of the Adhiniyam along With Sections 56 and 57 of the Adhiniyam the irresistible conclusion is that the intention of the legislature was that if a scheme is lying idle after its final publication for a period of 3 years, then it will lapse. But if steps have been taken by the authorities towards the implementation of the scheme then, the word 'implementation' shall not be construed to mean that the period of three years is the period prescribed for the completion of the scheme.
>
> 23. It has next been contended by the learned counsel for the petitioners that the provisions of Section 56 of the Adhiniyam have not been complied with inasmuch as that no attempt was made by the Authority to acquire the land by agreement. According to us the provisions contained in Section 56 of the Adhiniyam is directory as the word 'may' is used and not 'shall' and the word 'may' should be construed as 'shall' only when the intention of the Legislature is so. ”
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> *(Emphasis Supplied)*

It appears that the provisions of Rule 20, particularly that of sub-Rule 4(a) and (b) were not brought to the notice of learned Single Judge. In our considered opinion, the learned Single Judge did not construe the provisions of S.56 of the Adhiniyam of 1973 correctly for the foregoing reasons.

Learned Single Judge has placed reliance on decision of a co-ordinate Bench of this Court in the case of **Rajesh Kumar Gupta and others Vs. State of M.P. & others (Supra)** to fortify his conclusion on the interpretation of S.56 of the Adhiniyam of

1973.

This Court has carefully read the said judgment. The words "may proceed to acquire" used in Section 56 and Rule 20 sub rule 4 (a) and (b) of the Rules of 2012 appear to have escaped consideration by the Coordinate Bench (Division Bench) and it further appears that the judgment in the case of **Sanjay Gandhi Grah Nirman Sahkari Sanstha Maryadit Vs. State of M.P. (AIR 1991 MP 302)** was also not brought to the notice of the Hon'ble Bench. In our considered opinion, had the aforesaid provision of law and the judgment were brought to the notice of the Coordinate Bench, the conclusion drawn by the Bench on interpretation of Section 56 could have been avoided. As such, the judgment is *per incuriam* and an exception to the rule of precedence; *stare decisis* as explained in Corpus *Juris Secundum,* page 302 as under :-

> "Under the *stare decisis* rule, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. This rule is based on expediency and public policy, and, although generally it should be strictly adhered to by the courts it is not universally applicable."

and *sub silentio*.

There are various instances of an exception to rule of precedence perceived and laid down by the Apex Court in catena of decisions.

In the case of **Municipal Corporation of Delhi Vs. Gurnam Kaur – (1989) 1 SCC 101**, the Apex Court in para 10 and 11 has lucidely reiterated the law related to *ratio decidendi, per incurium & precedence.*

The pronouncements of law, which are not part of *ratio decidendi are* classed as *obiter dicta* and are not authoritative i.e. if the judgment was delivered without argument, without reference to relevant provisions of law and ignorance of the settled law of a binding proceeding are classed as *obiter dicta*.

It is held that a judgment wrong in principle and can not be justified by the terms of the relevant provisions should be treated as *per incuriam* as it is given in ignorance of the term of a statute or a rule having force of statute.

A decision is classified as *sub silentio* if particular point of law arises from the factual matrix of the case but not perceived by the court or brought to its notice having direct bearing on the decision of the case.

Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:

> "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party

> because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

The Apex Court in the case of **State of U.P., and another Vs. Synthetics and Chemicals Ltd., and another ((1991) 4 SCC 139)**, has carved out an exception to the rule of precedents in the following terms:-

> "Does this principle extend and apply to a conclusion of law, Which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of *sub-silentio*. A decision passed *sub-silentio*, in the technical sense that has come to be attached to that phrase, when the particular' point of law involved in the decision is not perceived by the Court or present to its mind' (Salmond 12th Edition). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd., [1941] IKB 675 the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gumam Kaur, [1989] 1 SCC 101. The Bench held that, 'precedents *sub-silentio* and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any

> occasion is not *ratio decedendi*. In *Shama Rao v. State of Pondicherry, AIR 1967 SC 1680* it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law. ”
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> *(Emphasis supplied)*

Resultantly, with full humility in command of this Court and due respect to the Division Bench, the judgment rendered in **Rajesh Kumar Gupta (supra)** passes *sub silentio* and therefore is *per incuriam* for the reasons detailed above.

Consequently, in the impugned order interpretation of Section 56 of the Adhiniyam of 1973 is not correct and therefore set aside. It is held that Section 56 of the Adhiniyam of 1973 contemplates that after the date of publication of final scheme under Section 50 (7), the Town and Country Development Authority may proceed to acquire the land required for the implementation of the scheme within a period of three years by agreement with the owners of the land and not complete the acquisition within three years. Further, if for any reason it fails so to acquire, it may request the State Government to acquire such land under the provisions of the Land Acquisition Act 1894. Such

request is not subject to period of limitation. Besides, even after request is made to the State Government, as aforesaid, under Rule 20 Sub Rule 4 (b), the Authority may on an application of the owner of the land enter into agreement in Form-XX provided that on the date of such agreement proceedings under Section 6 of the Land Acquisition Act 1894 have not been initiated by the competent authority. The matrix on record suggest that final publication of Maharajpura Residential Scheme was notified on 20.01.1989 under Section 50 (7) of the Adhiniyam of 1973 and under the scheme the land falling in five villages namely Lakhnipur, Vikrampur, Mau, Deenarpur and Jaderuakhurd were covered. The GDA had already proceeded to acquire the land on 11.3.1991, as is evident from agreements passed on Board by the GDA and taken on record i.e. agreement dt.12.7.1989 which has been executed between GDA and Raghuveer Singh, agreement dt.24.7.1989 executed between GDA and Ghanshyam Singh and agreement dt.15.11.1989 executed between GDA and Grah Nirman Sahkari Samiti, i.e. within 3 years of final publication of development scheme under Section 50 (7) of the Adhiniyam of 1973.

17. Now, the second question that arises for consideration is that of legality, validity and enforceability of the agreement entered between the petitioner society, GDA and owner of the

disputed land, Kamal Singh and other owners of different parcels of the land described in agreement dt.28.12.1997. The agreement is in relation to 47 bigha and 3 biswa.

This Court has perused the agreement and *prima facie* has found that ;

(i) the agreement is not a registered agreement,

(ii) there is no resolution of the GDA authorising signatory i.e. CEO on behalf of the GDA for execution of the agreement dt.28.12.1997.

(iii) There is no verification of the alleged agreement by the owners/farmers of different parcels of the land.

(iv) There is no document of ownership of different parcels of the land either are mentioned or made part of the agreement.

(v) There is no disclosure of payment of consideration to owners/farmers against handing over of land to GDA.

(vi) No description of proportionate allotment of plot to each of the farmers or owners under the formula of handing over 25% of the developed plots acquired through the agreement.

(vii) The society is not the owner or in possession of any parcels of the land described in the agreement, still it assured the right and authority to negotiate with GDA in respect of land described in the agreement.

As such, the agreement *prima facie* is vulnerable on many

counts and therefore can not be said to be a lawful agreement. Chapter II of the Indian Contract Act 1872 deals with the contracts, voidable contracts and void contracts. Section 10 provides that all agreements are contracts if they are made by the free consent of the parties competent to contract, **for a lawful consideration with a lawful object,** and are not hereby expressly declared to be void.

As such, the agreement dt.28.12.1997, *prima facie* does not fulfill the requirement of the lawful agreement, as provided for under Section 10 of the Indian Contract Act. It is therefore, illegal contract within the meaning of Section 23 of the Indian Contract Act. Hence, not enforceable in law.

18. The third question that arises for consideration relates to the agreement dt.07.06.2019 between the GDA and respondent No.4 – Kamal Singh .

Shri K.N.Gupta, learned Senior submits that the GDA could not have entered into agreement dt.07.6.2019 during subsistence of tripartite agreement dt.28.12.1997 and the GDA had no authority to cancel the agreement dated 28.12.1997 vide order dt.28.08.2019. Once GDA declined to release the disputed land of survey No.388 area 20 bigha six biswa vide order dt.25.09.2018, it could not have entered into the agreement dt.07.06.2019 and passed order dt.28.08.2019 and released/allotted 25% developed

plots out of survey No.388 area 16 bigha 4 biswa in favour of Kamal Singh by the impugned order dt.03.09.2019.

Shri N.K. Gupta, learned Senior counsel for respondents no.4 and 5 and Shri Raghvendra Dixit, learned counsel for the G.D.A contend that as a matter of fact the G.D.A had taken a decision by order of the Chief Executive Officer dated 29.5.2019 to resile the agreement dated 28.12.1997 in respect of 16 bigha 4 biswa out of 20 bigha 6 biswa of Survey No.388. It is only thereafter that the agreement dated 7.6.2019 was entered into between Kamal Singh and G.D.A. The agreement is a registered agreement. Referring to the various clauses of the agreement, learned senior counsel submits that as per this agreement the parties decided that G.D.A shall handover 25% of the developed plots to respondent no.4 and in compliance thereof the impugned order of allotment of plots dated 3.9.2019 was passed. The agreement so entered therefore cannot be faulted with and as a consequence the impugned order Annexure P/1 is impregnable in the eyes of law.

This Court has already concluded that tripartite agreement dt.28.12.1997 was an illegal agreement, therefore, the housing society is held to be not entitled to seek relief in the context of the agreement by criticizing the agreement dt.07.06.2019 entered into by the GDA with Kamal Singh, owner of the disputed land, more

so, in the light of the order of GDA dt.28.08.2019 affirmed by the learned Single Judge and confirmed by this Court. The communication dated 28/8/2019 quoted in preceding paragraph is self contained, explanatory and, in our opinion, impeccable in nature.

As a consequence, the finding of the learned single judge that the agreement dt.07.06.2019 since was contrary to the provisions of Section 56 of the Adhiniyam of 1973, therefore to be kept in abeyance and further direction that possession of the plots handed over to respondent No.4 pursuant to the impugned agreement to be recovered from the respondent No.4, is set aside.

19. Now the fourth question is as regards the direction of the learned Single Judge contained in para 24 referable to the housing society.

Agreement dt.28.12.1997 is vulnerable in the eyes of law as has been found by this Court and detailed in para 18. There is no documentary evidence on record that the petitioner society owned the land covered under the agreement dt.28.12.1997. There is no provision of determination and payment of amount of consideration to any of the owners of the land covered under the agreement. No details of the owners of the respective land are also provided. The agreement is not registered as required under Section 17 of the Registration Act to confer any right on tripartite.

There is no resolution of the GDA empowering the CEO to enter into the agreement with housing society under Section 56 of the Adhiniyam of 1973. Therefore, the conduct of the officers of the GDA is not free from suspicion 0and hence vulnerable in the eyes of law. Therefore, an enquiry is inevitable in the obtaining facts and circumstances against the officers responsible for entering into the agreement dt.28.12.1997 and for fixing the liability on each of the such officials after enquiry. However, looking to the fact that once the learned Single Judge had expressed that the petition involved disputed facts of the case and same could not be adjudicated under Section 226 of the Constitution of India, there was no occasion to make omnibus directions for registration of FIR by SPE (Lokayukt) to investigate the matter and thereafter prosecute the person found guilty, more so when none of the officers was arrayed as respondent or afforded an opportunity before serious aspersion were cast upon them; when there was no complaint by any of the farmers/owners with whom the tripartite agreement dated 28/12/1997 was signed by the housing society and when there was no material of the nature warranting such a direction in the obtaining facts and circumstances of the case. It needs no mention that the constitutional power under Article 226 of the Constitution of India though is not subject to statutory restrictions, nevertheless, it is to be exercised with

circumspection guided by self imposed limitation ensuring due observance of rule of law and fair play, regard being had to the concept of justice, equity and good conscience. Issuance of writ of mandamus, under Article 226 of the Constitution of India, to Policing/Public Authority to initiate criminal proceedings against individual or group of individuals, as a matter of fact, is a serious nature of writ and unless there is relevant factual matrix and compelling reasons warranting criminal investigation, the writ Court should avoid such eventuality regard being had to serious consequences flowing therefrom.

In the fitness of the things it shall be expedient to order for a detailed enquiry by the respondent/State Government in the context of the alleged agreement dt.28.12.1997 and fix the responsibility and accountability of each of the such officers after enquiry.

20. This Court is in agreement with the order of the learned Single Judge to the extent it has ordered detailed enquiry into the affairs of the society as contained in para 24 of the order by Registrar, Cooperative Societies.

21. Consequently, the following order is passed:

(i) For the reasons recorded in paragraph 17 (above), the tripartite agreement dt.28.12.1997 is held to be illegal, affirming the finding of the learned Single Judge in that behalf.

(ii) The agreement dated 07.06.2019 between Kamal Singh and G.D.A is valid and binding upon the parties.

(iii) The impugned order dated 03.09.2019 is upheld.

(iv) The direction to the S.P.E (Lokayukt) to initiate proceedings and also register FIR is hereby quashed. However, the respondent/State Government is directed to hold a detailed enquiry to ascertain the role of officers involved in the matter of execution of agreement dated 28.12.1997 and erring officer/s be dealt with in accordance with law.

(v) The Registrar, M.P. Cooperative Societies shall look into the affairs of the housing society and under section 59 of the Adhiniyam of 1973 as directed in para 24 of the order dt..13.12.2019 passed in W.P.No.19912/2019.

The order of the learned Single Judge is, accordingly, modified and the writ appeals are disposed of with the order/directions as contained in paragraph 21 (above).

(ROHIT ARYA)
JUDGE

(DEEPAK KUMAR AGARWAL)
JUDGE

and/SP