

HIGH COURT OF MADHYA PRADESH  
BENCH AT INDORE

**Writ Petition No.15591/2020**

**Dharmendra Jatav**

**Vs.**

**State of M.P., and others**

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Shri A.S.Garg, Sr. Advocate assisted by Shri Arpit Oswal,  
Advocate for the petitioner.

Shri Ankit Premchandani, Panel Lawyer for the respondents No.1  
to 4/State.

Shri A.K.Sethi, Sr. Advocate assisted by Shri Manoj Manav,  
Advocate for the respondent No.5.

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**WHETHER APPROVED FOR REPORTING;YES**

**Law laid down:**

(1) The offending sale was made vide registered sale deed dated 01/03/1994. The lease was originally granted to Kishanlal in the year 1966-67 after coming into force of the Madhya Pradesh Land Revenue Code, 1959 (for short 'the Code') and after his death, the name of his heir Narayan Jatav was entered by way of succession vide entry No.40/93-94 on 30/12/1993. *Bhumiswami* right was recorded on 10/01/1994 in favour of Narayan Jatav the father of the present petitioner.

The bar or prohibition as contained under sub-section 7(b) of section 165 of the Code is with reference to the date of transfer and not the date of grant of *patta*

(2) Since the ownership of land covered under the Code vests in the State Government, the revenue authorities under the Code have exclusive jurisdiction in respect of matters enlisted in section 257 of the Code and cancellation or omitting the entry with due notice to the other side upon acquisition of knowledge of void transaction; in violation of section 165(7b) of the Code.

(3) A transaction from its very inception being in violation of law is a nullity and, therefore, *void ab initio*. A declaration in that behalf is not required by a Court of law; whereas in contrast, a transaction which otherwise is good act in the eyes of law, unless; avoided is a voidable act, i.e., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated and a party who alleges so is obliged to

prove it; seeking a declaration in that behalf in a Court of law.

In other words, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be *void* but would obviously be voidable.

(4) A void transaction is bad in law from its very inception. No declaration to that effect is required. Therefore, the question of limitation does not arise in that behalf.

(5) Section 257(1)(f) of the Code cannot be construed providing for substitution of name in revenue record arising out of inter se competitive claims of two parties over a entry / claim viz., instead it applies to cancellation / omission of entry upon acquisition of knowledge of the offending sale in violation of section 165(7b) of the Code.

(6) Section 111 of the Code provides jurisdiction of the civil Court to decide the dispute inter se between two parties relating to right of records, where the State Government is not a party. Correction of record due to void transaction is not competitive claim of two rival parties.

(7) A landless person extended the benefit of grant of lease / patta by the State Government or the Collector loses his status as such, in the event he transfers the land in violation of section 165(7b) of the Code. Therefore, on the analogy of section 111(g)(2) of the Transfer of Property Act, such person becomes liable for initiation of action for determination of lease by forfeiture through notice by the lesser/State Government and the subject matter of land is liable for restoration to the State Government with correction of entry and taking over the possession by due process of law.

**Writ petition stands disposed of**

**Significant paragraphs: 8 to 16**

**Reserved on: 11/12/2020**

**ORDER**  
(19/01/2021)

**Rohit Arya, J.,**

The controversy involved in this writ petition under Article 226 / 227 of the Constitution of India revolves around the scope, limit and dimensions of the provision contained under section 165(7-b) of the Madhya Pradesh Land Revenue Code, 1959 (for short, 'the Code'). For ready reference the provision is quoted below:

**“165. Rights of transfer.-** (1) subject to the other provisions of this section and the provision of section 168 a bhumiswami may transfer any interest in his land.

... ..  
 (7-b) Notwithstanding anything contained in sub-section (1), a person who holds land from the State Government or a person **who holds land in bhumiswami rights under sub-section (3) of Section 158 or whom right to occupy land is granted by the State Government or the Collector as a Government lessee and who subsequently becomes bhumiswami of such land, shall not transfer such land without the permission of a Revenue Officer, not below the rank of a Collector, given for reasons to be recorded in writing.**”

(Emphasis supplied)

and collaterally section 158(3) of the Code. The relevant provision is quoted below:

**“158. Bhumiswami.** (1) Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a bhumiswami by or under this Code, namely

... ..

**(3) Every person-**

**(i) who is holding land in bhumiswami right by virtue of a lease granted to him by the State Government or the Collector or the Allotment Officer on or before the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1992 from the date of such commencement, and**

**(ii) to whom land is allotted in bhumiswami right by the State Government or the Collector or the Allotment Officer after the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1992 from the date of such allotment,**

***shall be deemed to be a bhumiswami in respect of such land and shall be subject to all the rights and liabilities conferred and imposed upon a bhumiswami by or under this Code :***

Provided that no such person shall transfer such land within a period of ten years from the date of lease or allotment and thereafter may transfer such land with the permission obtained under sub-section (7-b) of section 165.

*Explanation.*-In this section, the expression "Ruler" and "Indian State" shall have the same meanings as are assigned to these

expressions in clauses (22) and (15) respectively by Article 366 of the Constitution of India.”

2. Agricultural land falling in survey No.465/40 admeasuring 2.023 hectare village Khilchipur, tehsil Khilchipur, District Rajgarh was leased out / *patta* to late Kishanlal s/o Nathulal Jatav in the year 1966-67 (for short, 'agricultural land') by the State Government. After his demise, the name of his son Narayan Jatav was mutated in the revenue record vide entry No.40/93-94 dated 30/12/1993. The mutation record suggests that on 10/01/1994, bhumiswami rights were conferred upon him. Vide registered sale deed dated 01/03/1994; the agricultural land was transferred by Narayan Jatav in favour of Jai Prakash (respondent No.5). However, the statutory prior permission as contemplated under section 165(7-b) of the Code was not obtained from the Collector.

Pursuant to the aforesaid sale, the name of respondent No.5 was recorded in the revenue record at sl.No.74 on 02/04/1994.

The Collector, Rajgarh had issued an order on 13/01/2012 directing the competent revenue authorities to check and verify such transaction of transfer of agricultural lands without obtaining prior permission under section 165(7-b) of the Code.

3. Petitioner is heir / successor of Narayan Jatav. On 02/11/2012, he submitted a complaint before the Sub Divisional Officer that the mutation / entry dated 02/04/1994 in favour of respondent No.5 be cancelled as the sale deed dated 02/04/1994 was in violation of the provision contained under section 165(7-b) of the Code.

Upon receipt of the complainant, the report of the Tehsildar was called. Thereafter, the Sub Divisional Officer after notice to respondent No.5 had passed an order on 07/08/2014 (Annexure P/3) cancelling the entry in revenue record at sl.No.74 dated 02/04/1994 for the reason that the sale of agricultural land vide registered sale deed dated 02/04/1994 since was without obtaining prior permission of the Collector as contemplated under section 165 (7-b) of the Code is *null and void*. Therefore, the

consequential revenue entry is also liable to be cancelled.

4. The respondent No.5 preferred an appeal before the Collector under section 44 of the Code. The appeal was held to be not maintainable as the order passed by the respondent No.4 was not the original order vide order dated 24/12/2018 (Annexure P/2).

The second appeal preferred by respondent No.5 before the Commissioner has been allowed vide order dated 09/09/2020 (Annexure P/1). The second appellate authority was of the view that the lease / *patta* was granted to late Kishanlal in the year 1966-67, therefore, the bar against transfer of land without permission of the revenue authority not below the rank of Collector incorporated by Act No.15 of 1980 shall have no application.

This is the impugned order in this writ petition.

5. Shri A.S.Garg, learned senior counsel contends that the applicability of bar against transfer of land / agricultural land, the relevant date shall be the date of transfer and not the date of grant of *patta* / lease by Government to the lessee. The lease was granted in the year 1966-67 in favour of late Kishanlal and bhumiswami rights were conferred upon his heir Narayan Jatav on 30/12/1993. Therefore, the transfer of agricultural land in favour of respondent No.5 vide registered sale deed dated 01/03/1994 without obtaining prior permission from the Collector under section 165(7-b) of the Code is bad in law. Therefore, the second appellate authority has committed serious illegality by allowing the appeal. As such, the impugned order is not sustainable in the eyes of law.

Further elaborating his submissions, learned senior counsel referring to sub-section (3) of section 158 of the Code contends that bhumiswami rights by virtue of lease / *patta* granted to Kishanlal in the year 1966-67 by State Government is covered under section 165(7-b) of the Code. Hence, the date of grant of *patta* / lease is irrelevant and has no bearing over the controversy since the sale deed dated 01/03/1994 is in contravention of mandatory provision contained under section 165(7-b) of the

Code, the same was *null and void*.

To bolster the submissions, he has relied upon two division Bench judgments passed by this Court in the cases of **Mulayam Singh and others Vs. Budhawa Chamar and others, 2002(2) MPLJ 480** and **Saroj Chand Vs. Premwati and others, Writ Appeal No.345/2020 decided on 11/052020 at Gwalior Bench**.

Learned senior counsel referring to the judgment of division Bench in the case of **Budhuwa Chamar Vs. Board of Revenue, M.P., and others, 2002(1) MPLJ Note 2** contends that the transfer or alienation of leased land / patta by State Government even after acquisition bhumiswami rights shall be *void* in the absence of prior permission of the revenue authority or the Collector as provided for under section 165(7-b) of the Code. The same proposition was followed by another division Bench of this Court in the case of **Savina Park Resorts and Tours Pvt., Ltd., Vs. State of M.P., and others, (2012) 2 MPLJ 363**.

Lastly, he submits that the claim for omission of entry made in favour of respondent No.5 in the revenue record was well within the jurisdiction of the Sub Divisional Officer and subject matter covered under clause (f) of sub-section (1) of section 257 of the Code; an exclusive jurisdiction of the revenue authority.

With the aforesaid submissions, learned senior counsel prays that the impugned order deserves to be set aside.

6. *Per contra*, Shri A.K.Sethi, learned senior counsel for the respondent No.5 submits that the jurisdiction under Article 226 and 227 of the Constitution of India predominantly is an equitable jurisdiction. Therefore, a person seeking judicial intervention through this jurisdiction must come with clean hands.

In the instant case, the petitioner is son of late Narayan Jatav. In the agreement to sell dated 30/12/1993 between Narayan Jatav and Jai Prakash (respondent No.5); the petitioner appeared and signed as a witness to the said agreement. Narayan Jatav being recorded bhumiswami of the agricultural land has executed a registered sale deed dated 01/03/1994 in favour of the respondent No.5 with clear stipulation thereunder that there was no bar for the said sale under section 165(7-b) of the Code.

Based upon the aforesaid sale deed dated 01/03/1994, the land was recorded in the name of respondent No.5 by the revenue authorities as bhumiswami on 02/04/1994. Almost after 19 years on 02/11/2012, the petitioner has taken a somersault and complained against the sale seeking amendment in the revenue entry purportedly on the ground that the aforesaid sale deed executed by his father in favour of respondent No.5 was *null* and *void* for want of prior permission of the Collector as required under section 165(7-b) of the Code.

Learned senior counsel further contends that the Sub Divisional Officer had no jurisdiction to amend or omit the entry recorded in favour of respondent No.5, otherwise than in an appeal against the entry. Hence, the order passed by the Sub Divisional Officer on 07/08/2014 was bad in law. The appeal preferred by petitioner could not have been dismissed by the Collector vide order dated 24/12/2018 as not maintainable purportedly on the ground that the impugned order is not the original order. According to the learned senior counsel, the Sub Divisional Officer had exercised the original jurisdiction while ordering to omit the entry. The appeal arising therefrom under section 44 of the Code ought to have been entertained by the Collector. That was not done.

In the alternate, it is submitted that in any case, neither the complaint nor the appeal could have been entertained by the Sub Divisional Officer after 19 years of the transaction to the grave prejudice of the respondent No.5 and that too at the instance of the petitioner who had full knowledge of the transaction. Moreso, there was no application for condonation of delay in view of section 47 of the Code providing period of limitation for preferring an appeal.

Learned senior counsel also contends that the mutation / revenue entry recorded on 02/04/1994 in favour of respondent No.5 could not have been omitted, unless; the sale deed dated 01/03/1994 executed in favour of respondent No.5 was set aside by the Court of competent jurisdiction since by virtue of the registered sale deed, the rights transferred in favour of respondent No.5 are crystallized and protected under section 54 of the Transfer of Property Act. He submits that even otherwise,

the dispute / claim in respect to the record of rights as raised by the petitioner could have been addressed only by the civil Court of competent jurisdiction as provided for under section 111 of the Code. To bolster his submissions relied upon the following judgments:

- (i) A bunch of writ appeal and writ petitions, lead case being **The State of M.P., and another Vs. Chaitanya Realcon Pvt. Ltd., WA No.23/2017 decided on 22/04/2017;**
- (ii) **Full Bench judgment reported in 2010(45) MPLJ 178, Ranveer Singh Vs. State of M.P.,**

7. Heard.

8. The Madhya Pradesh Revenue Code is a social welfare legislation made for protection of ownership rights of landless persons, particularly; various classes of weaker section; a constitutional obligation under Article 39(b) and 46 of the Constitution of India. Economic empowerment of such class of persons in fact is a step to achieve economic democracy, as agricultural land gives economic status to the tiller. The prevention of their exploitation due to ignorance or indigency is a constitutional duty of the State under section 46 of the Constitution of India.

Sub-section (7-b) of section 165 of the Code was inserted vide Act No.15 of 1980 which contemplates that a 'government lessee' who subsequently becomes *bhumiswami* of such land shall not transfer such land without the permission of a revenue officer not below the rank of Collector as quoted above.

The said section is further amended vide amending Act No.17 of 1992 with effect from 28/10/1992 and a corresponding amendment is incorporated as section 158(3) quoted above.

A joint reading of both the provisions do suggest that a '*bhumiswami*' who holds the right by virtue of lease granted to him by the State Government or the Collector under section 158 of the Code shall not transfer the land so leased or allotted without prior permission of a revenue officer not below the rank of Collector.

9. The primary question emerging from rival contentions advanced by learned senior counsels is to determine the character of sale dated 01/03/1994 in the eyes of law; void or voidable?.

10. The expressions “void” and “voidable” have been subject matter of consideration on innumerable occasions by Courts.

Law is now well settled.

A transaction from its very inception being in violation of law is a nullity and, therefore, *void ab initio*. As a matter of fact, a declaration in that behalf is not required by a Court of law; whereas in contrast, a transaction which otherwise is good act in the eyes of law, unless; avoided is a voidable act, i.e., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated and a party who alleges so is obliged to prove it; seeking a declaration in that behalf in a Court of law.

In other words, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be *void* but would obviously be voidable [Judgments of Hon'ble Supreme Court in the cases of **Dhurandhar Prasad Singh Vs. Jai Prakash University and others, (2001) 6 SCC 534** relied upon.

De Smith, Woolf and Jewell in their treatise Judicial Review of Administrative Action, fifth edition, paragraph 5-044, has summarised the concept of void and voidable as follows:

“Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is *ultra vires* in the sense of outside jurisdiction, it was said to be invalid, or null and void. If it is *intra vires* it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record.”

In the instant case, the lease was originally granted to Kishanlal in the year 1966-67 after coming into force of the Code and after his death, the name of his heir Narayan Jatav was entered by way of succession vide entry No.40/93-94 on 30/12/1993. *Bhumiswami* right was recorded on 10/01/1994 in favour of Narayan Jatav the father of the present petitioner. The sale deed in favour of respondent No.5 was executed on 01/03/1994.

In the considered opinion of this Court, the bar or prohibition as contained under sub-section 7(b) of section 165 of the Code is with reference to the date of transfer and not the date of grant of *patta*. The contention advanced to the contrary and as concluded by the Commissioner in the impugned order dated 09/09/2020 (Annexure P/1) is misconceived and misdirected. Hence, rejected. Therefore, the offending sale deed dated 01/03/1994 without prior permission of the Collector was *void ab initio*.

The sale deed dated 01/03/1994 since has been held to be void for which no declaration in that behalf is required from a Court of law, the question of limitation as raised by learned senior counsel for the respondent No.5 is of no consequence and pales into insignificance. Hence, rejected.

In the judgment reported in **2002(2) MPLJ 480 Mulayam Singh and another Vs. Budhawa Chamar and others**; a division Bench in an authoritative pronouncement of law has ruled as under:

“It is not in dispute that no permission from the Collector was obtained and the sale was made without the permission of Collector. The respondent cannot transfer his land even though he is declared *Bhumiswami*, without the permission of the Collector. Transfer was made without such permission, so the appellants will not get any legal rights. In the circumstances, the Additional Collector has rightly held that the sale was in contravention of the provisions of section 165(7-B) of the Code and is *void*. Mutation effected on the basis of sale was set aside and the land was directed to be recorded in the name of the respondent No.1.”

The view of this Court in the matter of alienation of land without permission under section 165(7b) of the Code finds

support from the judgment of the Hon'ble Supreme Court in the case of **Keshabo and another Vs. State of M.P., and others, (1996) 7 SCC 765** and a division Bench of this Court in the case of **Mulayam Singh and another (supra)**.

At this stage it is appropriate to reiterate the legal connotation of word “**bhumiswami**” as perceived by a Full Bench of this Court in the case of **Ramgopal Kanhaiyalal Vs. Chetu Batte AIR 1976 MP 160** and held as under:

“14. It must be remembered that a Bhumiswami has a title though he is not the “Swami” of the “Bhumi” which he holds, in the sense of absolute ownership of land vests in the State Government, yet, he is a Bhumiswami. He is not a mere lessee. His rights are higher and superior. They are akin to those of a proprietor in the sense that they are transferable and heritable, and he cannot be deprived of his possession, except by due process of law and under statutory provisions, and his rights cannot be curtailed except by legislation.”

as affirmed by Hon'ble Supreme Court in **(2000) 3 SCC 668 Rohini Prasad and others Vs. Kasturchand and another & (2005) 10 SCC 124 Hukum Singh (Dead) by LR., and others Vs. State of M.P.**, as well as by a division Bench of this Court reported in **2012(2) MPLJ 363 Savina Park Resorts and Tours Pvt. Limited Vs. State of M.P., and others**.

Since, the ownership of land covered under the Code vests in the State Government. The revenue authorities under the Code have exclusive jurisdiction in respect of matters enlisted in section 257 of the Code and the jurisdiction of the civil Court is ousted in that behalf.

The cancellation of an entry in the revenue record on a complaint or otherwise in relation to transfer of land without permission of the Collector under sub-section 7(b) of section 165 of the Code cannot be construed substitution of name in revenue record arising out of *inter se* competitive claims of two parties over a entry / **claim**. This exercise, therefore, has rightly been carried out by a revenue officer under section 257(1)(f) of the Code.

Section 111 of the Code provides jurisdiction of the civil

Court to decide a dispute *inter se* between two private parties relating to any right recorded in the record of rights, where the State government is not a party. This provision has no application in the facts and circumstances of the case.

The Sub Divisional Officer on a complaint by the petitioner has cancelled / omitted the entry No.74 dated 02/04/1994 recorded in favour of respondent No.5 by order dated 07/08/2014 (Annexure P/3) on the premise that the sale in favour of respondent No.5 vide sale deed dated 01/03/1994 was contrary to section 165(7-b) of the Code and also bearing in mind the general directions issued by the Collector on 13/01/2012.

The contention of learned senior counsel for the respondent No.5 is that unless; appeal was preferred against the entry made in revenue record on 02/04/1994 (*supra*), the Sub Divisional Officer had no jurisdiction to cancel or omit the entry vide order dated 07/08/2014 is held to be misconceived for the reason that the Sub Divisional Officer upon acquisition of knowledge of *void* transaction, viz., sale deed dated 01/03/1994 has cancelled / omitted the entry with due notice to the respondent No.5. Records of rights can always can be corrected if prohibited in law or polluted by a void act in the eyes of law.

Consequently, there was no illegality in the order of the Sub Divisional Officer dated 07/08/2014 (Annexure P/3) amending / omitting the entry at sl.No.74 on 02/04/1994 made pursuant to the sale deed dated 01/03/1994 in favour of respondent No.5 while exercising the power under section 257(1)(f) of the Code.

11. Now the following two questions arise for consideration:

(i) Whether on the facts and in the circumstances of the case, the name of petitioner should be continued in the revenue record?; and

(ii) Whether, he is entitled for restoration of possession of the land in question?

12. The demeanour and conduct of the petitioner is relevant to answer these questions. The petitioner is a witness to the agreement to sell dated 30/12/1993 between Narayan Jatav and Jai Prakash (respondent No.5). The sale deed executed on

01/03/1994 by Narayan Jatav in favour of respondent No.5 was well within the knowledge of the petitioner. Thereafter, in the year 2012, a complaint was made by the petitioner with an ulterior motive to achieve the collateral purpose for his own benefit. Nevertheless, the cancellation or omission of entry in favour of respondent No.5 based on void sale deed dated 01/03/1994 by the Sub Divisional Officer shall not enure benefit to the petitioner.

13. Though the provisions of Transfer of Property Act (for short, 'the T.P.Act') under Chapter V are not applicable in absence of notification by the State Government in the official gazette to the contrary as provided under section 117 of the T.P. Act, however, principles underlying provisions of T.P. Act have been made applicable for agricultural leases on touchstone of justice, equity and good conscience. In particular, the provision as to the 'forfeiture' contained under section 111(g)(2) of T.P.Act has been so applied by various High Courts.

The Madras High Court in the case of **Umar Pulavar Vs. Dawood Rowther, AIR 1947 Mad. 68** has held as under:

"It is for the purpose of attenuating the rigour of the law as thus interpreted and applied in such decisions that Section 111(g) was amended in 1929 and it was made clear that even in the case of forfeiture by denial of the landlord's title a notice in writing determining the lease must be given. The principle so embodied in the section as a result of this amendment becomes, so to say, a principal of justice, equity and good conscience which must be held to govern even agricultural leases, though under Section 117 of the Act they are exempt from the operation of the chapter. To hold that with reference to agricultural leases previous notice determining the tenancy is not necessary is to ignore the policy of the Act as disclosed by the amendment which was intended to afford all tenants greater protection than what was afforded by the decisions which interpreted Section 111(g) as it originally stood. It is reasonably clear that if notice is necessary with reference to non-agricultural leases it is still more necessary in the case of agricultural leases where larger interests are at stake, generally speaking, and where in the absence of a proper notice to quit the right to the standing crops raised by the tenants might itself become a subject of dispute as between them and the landlord."

Relied upon by Bombay High Court in the case of **Tatya**

**Savla And Ors. vs Yeshwant Kondiba And Ors., AIR 1951 Bom. 283 & Andhra Pradesh High Court in the case of Cheekati Kurimainaidu & Ors vs. Karri Padmanabham Bhukta and othrs, AIR 1964 And. Pra. 539.**

14. A lease / *patta* was granted to late Kishanlal in the year 1966-67 for providing means of livelihood; a landless person for his economic empowerment through ploughing and cultivating the field. To ensure protection against exploitation due to ignorance or indigency, section 165(7-b) was inserted in the year 1980 with further amendment vide amending Act No.17 of 1992 with effect from 28/10/1992. Therefore, conscious transfer of land on 01/03/1994 by Narayan Jatav in favour of respondent No.5 to which petitioner is also party (witness for agreement to sell dated 30/12/1993) setting up title in a third person in violation of section 165(7-b) of the Code; renders the lease liable for determination by forfeiture, in view of sub-clause (2) of clause (g) of section 111 of the T.P.Act. For ready reference the said clause is quoted below:

**111. Determination of lease. A lease of immovable property determines.-**

... ..

**(g) by forfeiture:-**

... ..

(2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself;

... ..

15. In the obtaining facts and circumstances, the petitioner has lost the status of landless person. The technical objection / contention of the learned senior counsel for the petitioner is that the *lis* between the parties does not embrace such eventuality and after setting aside the impugned order, the consequences flowing therefrom shall enure benefit to the petitioner. The argument advanced is in despair and devoid of substance.

The conduct and demeanour of the petitioner & obtaining facts and circumstances do attract the maxim; **“Nullus commodum capere ptest de injuria sua propria”** (No man can take advantage of his own wrong), it is one of the salient tenets of equity. Hence, the petitioner is not held entitled to secure the assistance of the Court of law for enjoying the fruit of his own

wrong.

The Hon'ble Supreme Court in the case of **Ashok Kapil Vs. Sana Ullah (Dead) and others, (1996) 6 SCC 342** held in paragraphs 7 and 12 as under:

“7. If the crucial date is the date of allotment order, the structure was not a building as defined in the Act. But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim “***Nullus commodum capere ptest de injuria sua propria***” (No man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, the respondent cannot secure the assistance of a court of law for enjoying the fruit of his own wrong.

12. The upshot is, if the District Magistrate has commenced exercising jurisdiction under Section 16 of the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, in respect of a building which answered the description given in the definition in Section 3(i), he would well be within his jurisdiction to proceed further notwithstanding the intervening development that the building became roofless. We are inclined to afford such a liberal interpretation to prevent a wrongdoer from taking advantage of his own wrong.”

The Hon'ble Supreme Court in the case of **Eureka Forbes Limited Vs. Allahabad Bank and others, (2010) 6 SCC 193** has observed as under:

“66. The maxim “***Nullus commodum capere ptest de injuria sua propria***” has a clear mandate of law that, a person who by manipulation of a process frustrates the legal right of others, should not be permitted to take advantage of his wrong or manipulations. In the present case, Respondents 2 and 3 and the appellant have acted together while disposing off the hypothecated goods, and now, they cannot be permitted to turn back to argue, that since the goods have been sold, liability cannot be fastened upon Respondents 2 and 3 and in any case on the appellant. ....”

Therefore, in exercise of the equitable jurisdiction under Article 226 of the Constitution of India and regard being had to the concept of justice, equity and good conscience, it is considered apposite to direct the respondent / State to issue notice to the petitioner as against termination of lease drawing analogy under sub-clause (2) of clause (g) of section 111 of the T.P.Act. For restoration of possession, the State is also directed to initiate the

action against respondent No.5 by due process of law. Let the entire exercise be completed within a period of six months from today.

16. Resultantly, the order passed by the Commissioner dated 09/09/2020 (Annexure P/1) is set aside.

Writ petition stands allowed in part with the aforesaid directions. No order as to cost.

**(Rohit Arya)**  
**Judge**  
**19-01-2021**

**Sh**

