THE HIGH COURT OF MADHYA PRADESH
JABALPUR

W.P. No.7460/2020

M/s Narmada Ginning and Pressing Factory, Harda

Versus

State of Madhya Pradesh and others

Date of Order	27.10.2021
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi, J.
Whether approved for reporting	**Yes**
Name of counsels for the parties	For Petitioner : Shri Ravish Agrawal, Senior Advocate with Shri Sanjay Agrawal, Advocate. For Respondent Nos.1 and 2/State : Shri Pushpendra Yadav, Additional Advocate General. For respondent No.3: Shri R.N. Singh, Senior Advocate with Shri Akshay Pawar, Advocate.
Law laid down	**1.** In a petition filed under Article 226 of the Constitution of India, High Court must issue a writ of mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the government or a public authority. If it is found by the High Court in appropriate case, an order is required to prevent injustice to the parties direction can be issued to the government or the public

	authority to pass an order, had it properly and lawfully exercised its discretion. **2.** The party cannot put to suffer owing to any administrative lapse on the part of the government or public authority when there is no fault on its part. **3.** Under the provisions of M.P. Municipal (Achal Sampatti Antran) Rules, 2016, the Chief Executive Officer, Municipal Council is only the competent authority as per sub-rule (4) of Rule 20 to convert the lease hold rights into free hold rights, but not the State Government. **4.** Order passed by the authority without jurisdiction and suffers from *corum non judice,* is a nullity.
Significant Para Nos.	14, 34 and 35

Reserved on : 06.09.2021
Delivered on : 27.10.2021

O R D E R

(27.10.2021)

This petition is filed under Article 226 of the Constitution of India challenging the order dated 16.03.2020 (Annexure-P/10) passed by respondent No.3 whereby the petitioner has been asked to return back the land to respondent No.3 which was allotted to the petitioner on lease for a period of 30 years i.e. from 01.04.1989 to 31.03.2019.

2. By urging multifarious grounds assailing the action of the respondents, the petitioner has sought following reliefs:-

> **"**(i) That, this Hon'ble Court be pleased to call for the entire record leading to issuance of the impugned communication/letter dated 16.03.2020 (Annexure-P/10) from the Respondent No.3.
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> (ii) That, this Hon'ble Court be pleased to set aside the impugned communication/letter dated 16.03.2020, passed by the Respondent No.3, contained in Annexure-P/10.
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> (iii) That, this Hon'ble Court be further pleased to direct the respondents to decide the petitioner's application (Annexure-P/8) for conversion of land in question from lease hold into free hold within the specified time frame.
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> (iii-a) The impugned orders dated 12.05.2020 passed by respondents No.2 & 3 contained in Annexures-P-11 & P-12 respectively be set aside.
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> (iii-b) The possession of the property in question be directed to be restored to the petitioner.
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> (iii-c) That, the Resolution No.1014 dated 16.10.2019 of the Municipal Council, Harda (Respondent No.3) contained in Annexure-R-3/7 be set aside.
>
> (iv) That, this Hon'ble Court be further pleased to directed the respondents not to take possession of the land in question from the petitioner even if an application for conversion of land from lease hold land to free hold is rejected by the respondents as the petitioner has a right to submit an application for renewal of lease in accordance with Clauses-3 and 12 of the lease deed dated 16.08.1989 (Annexure-P-2), Rule 17 of Rules of 2016 (Annexure-P-5) and order dated 01.08.2016 passed by Hon'ble Division Bench of High Court in Writ Appeal No.459/2009 and if such an application is submitted the same is required to be considered by the respondent No.3.
>
> (v) That, any other relief which this Hon'ble Court deems fit and proper in the facts and

circumstances of the present matter be also granted to the petitioner.

(vi) Cost of the petition.”

3. To resolve the controversy involved in the case necessary facts are required to be taken note of which in a nutshell are;

(3.1) That the petitioner is a registered partnership firm, which was registered in the year 1983 in the name & style “M/s Narmada Ginning & Pressing Factory” and is engaged in the business of Ginning and Pressing of Cotton and also Dal & Oil Mills. The petitioner-firm have three units located over the land of different khasras i.e. Khasra Nos.58/1, 58/2 and 58/11, total area around 8.95 acres. This land has been purchased by the petitioner through six different registered sale-deeds dated 09.01.1953, 12.03.1953, 13.05.1953, 30.05.1953, 06.07.1953 and 01.02.1953. Adjoining to the aforesaid land, Khasra No.56 having an area of 6.43 acres belonging to respondent No.3 (Municipal Council, Harda) was situated and the petitioner since interested to construct godown and residential quarters for its labourers on the said land, therefore, they moved an application for granting

lease in respect of the said land to respondent No.3 in the year 1966.

(3.2) The lease was granted to the petitioner for 6.43 acres of land which is a part land of Khasra No.56 situated at Village Kulharda, Tehsil & District Harda in the year 1966. In the present case, the dispute is in respect of the land situated over Khasra No.56, area measuring 6.43 acres and as such, hereinafter it is referred to as “the land in question”.

(3.3) Initially, the lease was year-to-year basis till 1975, then in the year 1975, the petitioner was granted lease for a period of 3 years and that situation continued till 1989.

(3.4) An agreement was also executed between the petitioner and respondent No.3 for permanent lease on 27.07.1989 (Annexure-P/2) and that was granted to the petitioner for business purpose for a period of 30 years commencing from 01.04.1989 to 31.03.2019. Thereafter, a registered lease-deed dated 16.08.1989 (Annexure-R-3/2) was executed for a period of 30 years with the following stipulations:-

"1. चूंकि उक्त भूमि को पट्टटाग्राहिता अपने व्यवसाय के विकास के हेतु रेंट पर लेने इच्छुक हैं तथा पट्टटादाता उसे पट्टटे पर देने को सहमत है ।

2. यह कि उक्त पट्टटे की अवधि 30 वर्ष की है जो दिनांक1.4.1989 से प्रारंभ होकर दिनांक 31.3.2019 तक रहेगी तथा पट्टटाग्राहिता के निवेदन पर ओर आगे 99 वर्ष तक लिये नवीनीकरण योग्य रहेंगी ।

3. यह कि पट्टटाग्राहिता पट्टटे पर ली जमीन पर अपने उद्योग प्रयोजन हेतु विधवत निर्माण करा सकेगा ।"

(3.5) Thereafter, certain dispute arose between the petitioner and the respondents in respect of renewal of lease, then the petitioner filed a petition i.e. W.P. No.4918/2009 before this Court which faced dismissal on 13.05.2009 (Annexure-P/4).

(3.6) Aggrieved thereof, a writ appeal was preferred against the order of dismissal of writ petition, which was numbered as W.A.No.459/2009. During the pendency of said writ appeal, the State Government in exercise of powers conferred under Section 80 read with Section 433 of Madhya Pradesh Municipal Corporation Act, 1956 and Section 109 read with Section 355 of the Madhya Pradesh Municipalities Act, 1961 has framed Rules known as **M.P. Municipal (Achal Sampatti Antran) Rules, 2016** (for short "**2016 Rules**") in which a provision has been made for

renewal of lease as also for conversion of lease-hold land into free-hold land as per rules.

(3.7) In the said writ appeal, an application was filed by the petitioner for settlement of the controversy involved and referred therein stating that the petitioner would file an application for renewal of lease and would also file an application for conversion of lease-hold land into free-hold land because during the pendency of writ appeal, the State Government has framed rules for converting the lease-hold land into free-hold land.

(3.8) The writ appeal was finally allowed and disposed of by the Division Bench vide order dated 01.08.2016 (Annexure-P/7) with the following observations:-

> "3. Shri P.K. Kaurav, learned counsel for the Municipal Corporation fairly submits that if the appellant submits a fresh application for renewal of lease and after taking note of the Madhya Pradesh Municipal (Achal Sampatti Antran) Rules, 2016, if this Court directing the Municipal Corporation, Harda to consider the proposal/ application of the petitioner, the Municipal Corporation would have no objection in doing so.
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> 4. In view of the aforesaid, we allow this appeal in part. The impugned order passed by the writ Court dated 13.05.2009 passed in Writ Petition No.4918/2009 is quashed and the writ appeal stands disposed of with following directions:

(i) The appellant would submit fresh application for renewal of lease and the same may be considered by the Municipal Council, Harda.

(ii) That, the State Government has recently issued a Gazette Notification dated 24.02.2016 framing rules, namely Madhya Pradesh Municipal (Achal Sampatti Antran) Rules, 2016, which provides for renewal of lease as also conversion of lease hold lands into free hold land. The petitioner may be permitted to submit an application for conversion of lease hold land into free hold land on payment of charges as specified by the aforesaid rules which may be considered by Council, Harda and other concerned authorities in accordance with the Rules."

From the order, it is clear that the writ appeal was disposed of with a proposal submitted by the counsel for respondent No.3.

(3.9) In pursuance to the aforesaid order of Division Bench passed in writ appeal, the petitioner submitted an application in the prescribed format for conversion of lease-hold land into free-hold land on 24.05.2018. Respondent No.3 in accordance with the rules framed for conversion of lease-hold land into free-hold processed the application; made publication of proposals in newspapers affixing at conspicuous places; invited objections and thereafter while deciding the same, recommended for conversion of the aforesaid land from lease-hold to free-hold to the

State Government by a letter dated 17.07.2018 (Annexure-P/9). The relevant extract of the recommendation is reproduced hereinbelow:-

> "…….म.प्र. राजपत्र में उल्लेखित अनुसार समाचार पत्रों में जाहिर सूचना का प्रकाशन किया गया एवं स्थानीय स्तर पर भी सूचना की चस्पा की गई प्रति संलग्न है । उक्त भूमि को फ्रीहोल्ड पर देने हेतु चार व्यक्तियों द्वारा लिखित आपत्ति पेश की गई । जिनका निराकरण किया जाकर संबंधितो को सूचित किया गया है । उक्त आपत्तियां एवं उनका निराकरण प्रकरण के साथ संलग्न है ।"

(3.10) As per the provisions mentioned in the 2016 Rules, the entire exercise for conversion of land was required to be completed as far as possible within 120 days but that was not done and no decision was taken by the authorities on the pending application of the petitioner and in the meantime the period of lease got expired on 31.03.2019, whereas the application for conversion was already submitted by the petitioner on 24.05.2018 (on that date lease was subsisting).

(3.11) The respondents thereafter sent a letter to the petitioner, which is impugned communication dated 16.03.2020 (Annexure-P/10), asking petitioner to deliver the possession of the land in question as period of lease has expired.

(3.12) The petitioner then preferred this petition challenging the action of the respondents mainly on the ground that on the date of submitting the application for conversion of lease-hold land into free-hold land, the lease was alive and in sub-rule (6) of Rule 20 of 2016 Rules it is provided that the authorities shall finally decide the application as far as possible within a period of 120 days and the said decision had to be taken by the Chief Executive Officer, but if final decision is not taken within the specified period and lease got expired during the pendency of the said application, the petitioner cannot be left to suffer due to inaction or delay and laches on the part of the respondents/authorities.

4. The petitioner has relied upon umpteen decisions saying that the action of the authorities is completely illegal and arbitrary because it was the authority which has kept the matter pending for long, whereas as per the statute, the application for conversion of lease-hold land into free-hold land was to be decided as far as possible within 120 days.

5. After filing of the petition, the petitioner received an order dated 12.05.2020 (Annexure-P/11) wherein it was

informed that the application has been rejected by respondent No.2. The order reveals that a three member Committee was constituted for investigating the affairs of the petitioner and giving the following reasons, the application has been rejected.

> "(i) Council had cancelled its earlier resolution No.1042 dated 24.08.2016 by subsequent resolution No.1014 dated 16.10.2019.
>
> (ii) The period of lease has expired on 31.03.2019 and the same has not been renewed in accordance with the rules.
>
> (iii) That the land in question is not being used for the purpose for which it was allotted."

6. As per the petitioner, neither they were informed about the constitution of any such Committee nor were they given an opportunity of hearing. According to the petitioner, the members of the said Committee never visited the land in question physically nor issued any notice to the petitioner to remain present on spot when they inspected the land and even a copy of the report of the Committee has never been supplied to the petitioner. As per the petitioner, that report was illegal as it has been prepared in violation of principle of natural justice and based upon the material collected unilaterally behind the back of the petitioner.

7. The petitioner again received a letter dated 12.05.2020 (Annexure-P/12) from the office of respondent

No.3 for delivery of possession of the land in question to respondent No.3.

8. In pursuance to the said letter dated 12.05.2020, respondent No.3 has forcibly taken possession of some of the portion of the land in question and as per the petitioner, the said possession could not have been taken because the Division Bench in W.P. No.6062/2020 and connected petitions has passed an order dated 20.03.2020 (Annexure-P/13) restraining the authorities from dispossessing anybody during COVID epoch. The petition was accordingly, amended and the action of the respondent/authority whereby they have issued the notice of dispossession to the petitioner from the land in question has also been challenged.

9. As per the petitioner, they have been using the land for the past 55 years on the basis of valid lease executed in their favour, therefore, the impugned orders, according to the petitioner, are arbitrary, illegal and without any jurisdiction.

10. Respondent Nos.1 and 2 have filed their reply, supported their stand and stated that the possession of the land by the petitioner is unlawful. It is stated by them that the possession has been taken by the State Government

on the basis of report of Enquiry Committee. As per the report of Enquiry Committee, a resolution No.1014 dated 16.10.2019 is a subsequent resolution withdrawing earlier resolution No.1042 dated 24.08.2016. It is also stated by the respondents that the land was not being specifically utilized for the purpose for which lease had been granted. The authorities have taken a decision that as the lease was not extended, therefore, there was no reason for converting the lease-hold land into free-hold land. As per the respondents, the land was valued more than 5 crores and as per Rule 5 of 2016 Rules, respondent No.2 i.e. the Commissioner, Urban Administration and Development Department was the competent authority to take final decision in the matter and further that the State Government has rightly exercised the power and took final decision for rejecting the application as under the provisions of Section 322 and 326 of the Municipalities Act, 1961 the State is empowered to control and supervise the functions of the Municipal Council.

11. Respondent No.3 has also filed its reply emphasizing the fact that W.A. No.459/2009, was allowed and disposed of by the Division Bench with a clear direction that the petitioner would simultaneously file an application for renewal of lease as also an application for

conversion of land from lease-hold to free-hold, but the petitioner did not do so and filed the application only for conversion of lease-hold land into free-hold land. Respondent No.3 has also taken a stand that in view of the provisions of 2016 Rules, the State Government was the competent authority and as such, the possession has been taken by competent authority and resolution No.1042 dated 24.08.2016 was withdrawn by subsequent resolution No.1014 dated 16.10.2019 and according to them since lease period has expired, nothing can be done now and lease land cannot be converted into free-hold land. As per respondent No.3, sub-rule (6) of Rule 20 of 2016 Rules stipulates the words "**as far as possible**" but that does not mean that the authorities are under obligation to decide the application within the stipulated period of 120 days and according to respondent No.3 since no consequence is provided therein, the period of 120 days can be said to be directive, not mandatory for deciding the application. It is also submitted by them that the application for renewal of lease has not been filed by the petitioner though the writ appeal was allowed and disposed specifically directing the petitioner to make an application for lease renewal and also for conversion of lease-hold land into free-hold land. Respondent No.3 has

also placed reliance in regard to the provisions prescribing limitation of 120 days as directory but not mandatory and relied upon the decisions reported in the case of **Administration, Municipal Committee Charkhi Dadri and another v. Ramji Lal Bagla and others (1995) 5 SCC 272** and **Dalchand v. Municipal Corporation, Bhopal (1984) 2 SCC 486**.

Indisputably, the provision for considering the application for conversion of lease-hold land into free-hold land as far as possible within 120 days, is directory in nature.

12. Respondent No.3 has also placed reliance upon the decisions of **Syed Sugara Zaidi v. Laeeq Ahmad (2018) 2 SCC 21** and **State of Gujarat and others v. Nirmalaben S. Mehta and another (2016) 9 SCC 240** in respect of extension of lease.

However, in this case there is no dispute about the extension of lease as has been dealt by this Court hereinafter. Thus, these decisions have no applicability to the question/issue decided by this Court.

13. Considering the submissions made by the petitioner in his petition and also the submissions made by the respondents in their reply, the following questions

emerge for consideration.

I. Whether, the application for conversion of lease-hold land into free-hold land which was submitted on 24.05.2018 i.e. during the subsistence of lease period could have been rejected by order dated 16.03.2020 (Annexure-P/10) or 12.05.2020 (Annexure-P/12) passed by the respondents on the ground that period of lease has now expired on 31.03.2019?

II. Whether, the State Government or the Municipal Council has any power to decide an application for conversion of lease-hold land into free-hold?

III. Whether, the resolution No.1014 dated 16.10.2019 (Annexure-R-3/7) passed by the Municipal Council cancelling its earlier resolution No.1042 dated 24.08.2016 (Annexure-R-3-6) is illegal and without jurisdiction?

IV. Whether the petitioner has changed the purpose of lease?

14. To proficiently answer the aforesaid

questions/issues, it is indispensable to discuss the relatable facts in the following manner.

Question/issue No.I –

> "*Whether the application for conversion of lease hold land into free hold which was submitted on 24.05.2018 i.e. during the subsistence of lease period could have been rejected by order dated 16.03.2020 (Annexure-P/10) or 12.05.2020 (Annexure-P/12) passed by respondents on the ground that period of lease has now expired on 31.03.2019?*"

(14.1) The petitioner was granted permanent lease vide lease-deed dated 16.08.1989 (Annexure-R-3/2) and an agreement in that regard was executed on 27.07.1989 (Annexure-P/2). The lease was granted for industrial/business purpose for a period of 30 years commencing from 01.04.1989 to 31.03.2019. W.A. No.459/2009 (M/s Narmada Ginning and Pressing Factory, Harda Vs. State of M.P. and others) was allowed and disposed of by the Division Bench of the High Court vide order dated 01.08.2016 with the following directions.

> "(i) The appellant would submit a fresh application for renewal of lease and the same may be considered by the Municipal Council, Harda.
>
> (ii) That, the State Government has recently issued a Gazette Notification dated 24.02.2016 framing rules, namely Madhya Pradesh Municipal (Achal Sampatti Antran) Rules, 2016, which provides for renewal of lease as also conversion of lease hold hands into free hold land. The petitioner may be permitted to submit an application for conversion of lease hold land into free hold land on payment of charges as

specified by the aforesaid rules which may be considered by Municipal Council, Harda and other concerned authorities in accordance with the Rules."

(14.2) The petitioner in pursuance to the directions issued by the Division Bench while availing its option, moved an application for conversion of lease-hold land into free-hold land. The application was submitted in the prescribed format on 24.05.2018 before respondent No.3.

(14.3) Respondent No.3 in respect of such application, conducted an enquiry as envisaged in sub-rule (5) of Rule 20 of 2016 Rules and found it plausible to convert the land of the petitioner but instead of deciding, on its own, referred the matter to the State Government vide letter dated 17.07.2018 (Annexure-P/9). In the said letter, there is a reference of resolution No.1042 dated 24.08.2016.

(14.4) The petitioner has filed a copy of resolution No.1042 dated 24.08.2016 as Annexure-P/21, which reveals that the Municipal Council had permitted 3583 Lease Holders including the petitioner for converting the nature of their lands from lease-hold to free-hold.

(14.5) The matter remained pending on such application for conversion of land before the State Government and in the meantime, the period of lease got expired on 31.03.2019. After expiry of lease, respondent No.3 issued a letter on 16.03.2020 (Annexure-P/10) which is impugned in this petition asking the petitioner to deliver the possession of the land in question as the period of lease has since expired. On receipt of said letter, the petitioner filed the instant writ petition and during the pendency of this petition, the petitioner received another letter dated 12.05.2020 (Annexure-P/11) issued by respondent No.2 stating therein that the petitioner's application for conversion of land cannot be considered as earlier resolution i.e. resolution No.1042 dated 24.08.2016 has been withdrawn by the Municipal Council by subsequent resolution i.e. resolution No.1014 dated 16.10.2019. In the said letter, reference has been made about some enquiry report and it is disclosed that the land in question was not being used for the purpose for which it was allotted.

(14.6) According to the petitioner, as per sub-rules (1) and (2) of Rules 20 of 2016 Rules, a person holding a valid lease may make an application to the Chief Executive Officer for conversion of lease-hold land into free-hold land. As per the petitioner, the aforesaid rules make it clear that the application can be submitted by any person, organization, etc. when valid lease exists in their favour. On the date of submitting the application by the petitioner, a valid lease for a period of thirty years was existing and was very much alive on 24.05.2018 (Annexure-P/8), the date of submitting the application.

(14.7) As per the petitioner, respondent No.3 after receiving such application was expected to proceed further in accordance with Rule 5 of 2016 Rules and if it is found that the petitioner was eligible for conversion of land in question, he should have passed the order, but instead of doing so or to take final decision in the matter, it was unnecessarily forwarded to the State Government under misconception that the State Government is the final authority for deciding the application of conversion and thereafter the State

Government sat tight over the matter and did not pass final order and in the meantime lease period which was to be ended on 31.03.2019 got expired. As per the petitioner, in sub-rule (6) of Rule 20 of 2016 Rules it is provided that the competent authority has to take decision on the application for conversion of land as far as possible within a period of 120 days, even though the said period does not provide any consequence. It was a statutory obligation upon the authority.

(14.8) The respondents have also taken the same stand saying that the respective rule provides to take final decision on the application for conversion of land as far as possible within a period of 120 days but it is nowhere provided if the decision is not taken within 120 days then what would be the consequence thereof and as such, according to the respondents, the period of 120 days is merely directive and not mandatory in nature. They have also taken a stand that since the period of 120 days is not mandatory, therefore, the claim of the petitioner that if application is kept pending by the State

Government even after 120 days then refusal thereafter on the ground that the lease period has expired is illegal, is not justified. The respondents have also taken a stand that the Division Bench of the High Court in writ appeal clearly directed the petitioner to file the application for renewal of lease and also for conversion of land from lease-hold to free-hold, but instead of doing so the petitioner himself has opted to move an application only for conversion of lease-hold land to free-hold but did not move any application for renewal of lease and on that basis, they have supported the order passed by the State Government claiming it to be legal and valid.

(14.9) However, as per the petitioner the words "**as far as possible**" do not mean that the application for conversion of land may be kept pending *sine die* and that in any case, the application ought to have been decided within the reasonable period if not within 120 days. As per the petitioner, if the period of 120 days is doubled, even then, during the extended period of lease which was in favour of the petitioner was still alive as it expired on

31.03.2019. As per the petitioner, the Division Bench although directed the petitioner to move two separate applications for renewal of lease and for conversion of lease-hold land into free-hold land, but that does not mean that the petitioner should have moved both the applications simultaneously. The purpose of the Division Bench was infact to direct the petitioner to avail the option so as to move an application for conversion of land because the relevant rules were introduced during the pendency of writ appeal for which the respondents' counsel had also given undertaking that if the petitioner was not interested in moving such application, he could have moved an application for renewal of lease. Since both the options were open, the petitioner chose to avail the option by moving an application for conversion of lease-hold land into free-hold land keeping in mind that they have sufficient time because the application was to be decided within 120 days. If at all some more time is consumed by the authority, at the most it could be decided within a further period of 120 days as such, total period of 240 days, even though, the

lease period could not have been expired and lease would have been alive. It is submitted by the petitioner that filing both the applications i.e. for renewal of lease and for conversion of land was not possible at a time because it would give wrong inclination as would tantamount to claiming contradictory relief in each application. When conversion sought, there was no occasion for the petitioner to seek renewal of lease as the petitioner was under impression that the final decision would be taken within a period when lease was subsisting. As per the petitioner, it is the State Government which has prolonged the matter and due to lapse on their part, the petitioner cannot be made to suffer. To bolster his contention, the petitioner relied upon a decision of **P.N. Premachandran Vs. State of Kerala** reported in **(2004) 1 SCC 245**, in which the Supreme Court has clearly held that the parties cannot be made to suffer owing to the administrative lapse on the part of the State and no fault can be found with on the part of the petitioner. The Supreme Court in the said case in paragraph-7 has observed as under:-

> "7. It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Director, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect."
>
> (emphasis supplied)

(14.10) The petitioner submits that if any lapse caused by the authority, the petitioner cannot be made to suffer and as such, the stand taken by the respondents saying that since lease period had expired, application for conversion of land from lease-hold to free-hold is completely illegal in the eyes of law and that cannot be accepted.

Question/issue No.II –

> "*Whether the State Government or the Municipal Council has any power in deciding an application for conversion of lease hold land into free hold?*"

(14.11) To adjudicate this issue, it is apt to go-through the respective rules giving competence to the authority to take decision on an application for conversion of lease-hold land into free-hold. Rule 2(d) of 2016 Rules defines the word "**Conversion**" and further Rule 2(q) defines the words "**Transfer of Property"** which are as under:-

> "Rule 2(d) "**Conversion**" means the grant of free hold right in respect of the lands as mentioned;
>
> 2(q) "**Transfer of Property**" means to confer the right to use of immovable property for certain period to one or more persons by the Urban local Body under the conditions as may be determined at the premium and lease rent or as free hold;"

(14.12) Further, Rule 5 of 2016 Rules provides the competent authority for transfer of immovable property. It is apt to mention Rule 5 of 2016 Rules hereinbelow.

> " **5. Competent authority for transfer of immovable property.-**
>
> (i) In case of transfer of immovable property by sale, lease, gift, mortgage or exchange the power of approving the transfer shall be vested in the authorities as under:-

Sr. No.	Class of Urban Local Body	Value of Property	Competent authority for approval
(1)	(2)	(3)	(4)
1	Municipal Corporation having population more	Up to Rs.10.00 Crore More than 10.00 Crore	Council Commissioner, Urban Administration

	than 5 lakh	Up to Rs.20.00 Crore More than 20.00 Crore	and Development State Government
2	Municipal corporation and Municipal Council having population less than 5 lakh	Up to Rs.2.00 Crore More than 2.00 Cr. Up to Rs.5.00 Crore More than 5.00 Crore	Council Commissioner, Urban Administration and Development State Government
3	Nagar Parishad	Up to Rs50.00 Lakh. More than Rs.50.00 Lakh. Up to Rs.5.00 Crore More than 5.00 Core	Council Commissioner, Urban Administration and Development State Government

(ii) The Chief Executive Officer of the concern Urban Local Body shall prepare and forward the proposal for the approval with detailed information of the property related to the transfer. If a immovable property of the ownership of Urban Local Body is suitable for the transfer, then the required documents related with the ownership shall be collected after survey of such property. The Chief Executive Officer shall verify by submitting the details of the property that the transfer of such property is in interest of the Urban Local Body. The proposal shall be submitted before the council of the Urban Local Body for decision after completing above process. The Council shall take the decision after considering all the facts after mentioning the details of the property for transfer and the reserve price and lease rent shall be decided accordingly."

(14.13) Clause-(i) of Rule 5 provides; in case of transfer of immovable property by sale, lease, gift, mortgage or exchange, the power of approving transfer shall be vested in the authorities as mentioned therein. The words "**free hold**" is not

used in the said provision. Clause-(i) specifically provides power about the competent authority vested in case of transfer of immovable property by sale, lease, gift, mortgage or exchange. Although, in case of conversion of land from lease-hold to free-hold, there is no element of transfer of property either by sale, lease, gift, mortgage or exchange. Rule 5 of 2016 Rules deals with grant of municipal property by the mode mentioned therein. As such, Rule 5 and the competent authority mentioned therein has no application with respect to conversion of land.

(14.14) The conversion has been specifically defined in Section 2(d) of Rule 20 of 2016 Rules and as per sub-rule (4) of Rule 20, it is the Chief Executive Officer who shall be the authorised officer for conversion, and he has also been empowered to convert the lease-hold rights to free-hold under the provisions of 2016 Rules.

(14.15) Likewise sub-rule (6) of Rule 20 of 2016 Rules prescribes that the application of conversion shall, as far as possible be finally decided within

120 days by the Chief Executive Officer. Rule 20 of 2016 Rules is reproduced hereinbelow.

"**20**. **Right to conversion**,-(1) The land of the ownership of Municipal body, which is used for residential or commercial purpose or for other purposes and which is allotted to any person, organization etc. on lease then such land of lease may be brought into the category of right of conversion.

(2) Subject to the provisions of these rules, any eligible lease holder may make an application to the Chief Executive Officer in Format- "III", for grant of right of conversion in respect of land held by him in lease hold right.

(3) Any land which is of the improvement trust/special area development authority/ Development Authority or other dissolved body and is under the control of or in ownership of Urban Local Body and the developed and allotted plots on it are given on lease for residential or commercial or other purposes for a period of 30 years or more than 30 years may be converted in to freehold:

Provided that, no such land of lease shall be converted into freehold whose lease conditions specifically prohibit conversion or on which leasehold right have accrued under the Madhya Pradesh Nagriya Kshetron Ke Bhoomihin Vyakti (Pattadhari Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 or Rajiv Gandhi Patta Aashrya Yojna or Mukhyamantri Aashrya Yojana or which is not of the ownership of Urban Local Body.

(4) Chief Executive Officer shall be the authorized officer for conversion, who shall be empowered to convert the lease hold rights into the freehold right under the provisions of these rules,

(5) On receipt of the application, the Chief Executive Officer shall issue a public notice inviting objections for the conversion of such land by giving 15 days time in at lease two news papers of which one shall be a Hindi News paper and also display on the notice board of Municipal Corporation / Municipal Council/ Nagar Parishad/ Collector and Commissioner's offices and the following points shall be taken into consideration for hearing the objections that-

(i) the lease of the land is valid;

(ii) all dues related to the conditions of lease have been paid;

(iii) no breach of the conditions of lease has occurred and if a breach has occurred then it has been regularized under the provisions of these rules by depositing compounding fee;

(iv) the conditions of lease do not prohibit conversion;

(v) an affidavit to this effect has been filed by the lessee that no case involving land under conversion is pending before any Court or Authority;

(vi) other necessary documents and fee according to the instructions of the Government for the time being in force, shall be borne by the lease holder;

(vii) any other point which may be deemed appropriate by the Chief Executive Officer.

(6) The application of conversion shall, as far as possible, be finally decided within a period of 120 days by the Chief Executive Officer."

(14.16) From perusal of aforesaid rule, it is clear that for conversion of land, no other authority, except the Chief Executive Officer, has power to pass the order in regard to conversion of land. Now, it is clear that Rule 5 and Rule 20 are two distinct provisions and operate in different fields as Rule 5 deals with transfer of immovable property and Rule 20 deals with conversion of land. The conversion has been specifically defined in Section 2(d) of 2016 Rules. Rule 20 deals with conversion of land from lease-hold to free-hold. Sub-rules (4) and (6) of Rule 20 provide that the Chief Executive Officer shall be the authorised

officer for conversion and who shall be empowered to convert lease-hold rights into free-hold rights. As such, the words used "**shall**" and "**empowered**" in sub-rule (4) of Rule 20 and the words "**the application of conversion shall**" and "**be finally decided by the Chief Executive Officer**" unequivocally means that the Chief Executive Officer alone is the authority empowered to decide the application for conversion of land. But, no other authority has any role to play to decide the said application, therefore, there was no occasion for the Chief Executive Officer to forward the matter to the State Government and if any decision is taken by the State Government, that is without jurisdiction. Once the Chief Executive Officer after having processed the application submitted by the petitioner had formed an opinion that the petitioner is entitled for conversion of land, he ought to have immediately passed the order of conversion of land instead of sending the matter to the State Government because the rule clearly provides that the Chief Executive Officer has to take final decision in the matter.

(14.17) Considering the aforesaid position, it is now clear that the State Government did not have any role to play in deciding the application of conversion and, therefore, the order passed by the Commissioner Urban Administration and Development Department on 12.05.2020 (Annexure-P/11) rejecting the application of the petitioner was without any jurisdiction and suffers from *coram non judice*. The order, therefore, was void *ab initio* passed by the authority without any jurisdiction and as such, it was a nullity.

(14.18) The Supreme Court in case of **Kiran Singh and another v. Chaman Paswan and others, AIR 1954 SC 340** in paragraph-6 has observed as under:-

> "**6**. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle wellestablished that a decree passed by a court without jurisdiction is a nullity, and that its validity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration

fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was *coram non judice,* and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this petition."

(14.19) Further, in case of **Hasam Abbas Sayyad v. Usman Abbas Sayyad and others, (2007) 2 SCC 355**, in paragraph-22, the Supreme Court has observed as under:-

"**22.** The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the tribunal/court which has no authority in that behalf. Any order passed by a court without jurisdiction would be *coram non judice,* being a nullity, the same ordinarily should not be given effect to. [See *Chief Justice of A.P. v. L.V.A. Dixitulu (1979) 2 SCC 34 and MD, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. (2004) 9 SCC 619*]."

(14.20) Likewise, in case of **Chandrabhai K. Bhoir and others v. Krishna Arjun Bhoir and others, (2009) 2 SCC 315**, the Supreme Court in paragraph-26 has observed as follows:-

"**26.** Thus, the said issue, in our opinion, did not attain finality. In any view of the matter, an order passed without jurisdiction would be a nullity. It will be a coram non judice. It is non est in the eye of the law. Principles of res judicata would not apply to such cases. (See *Chief Justice of A.P. v. L.V.A. Dixitulu (1979) 2 SCC 34*), *Union of India v. Pramod Gupta (2005) 12 SCC 1* and *National Institute of Technology v. Niraj Kumar Singh (2007) 2 SCC 481*."

(emphasis supplied)

(14.21) Over and above, in case of **Sarup Singh and another v. Union of India and another (2011) 11 SCC 198**, the Supreme Court in paragraphs-20, 21 and 24 has observed as under:-

> "**20.** Insofar as the second issue is concerned, it is true that the executing court cannot go behind the decree and grant interest not granted in the decree as submitted by the counsel appearing for the appellants in the light of the decision rendered by this Court in *State of Punjab v. Krishan Dayal Sharma (2011) 11 SCC 212.* But, if a decree is found to be a nullity, the same could be challenged and interfered with at any subsequent stage, say, at the execution stage or even in a collateral proceeding. This is in view of the fact that if a particular court lacks inherent jurisdiction in passing a decree or an making an order, a decree or an order passed by such court would be without jurisdiction and the same is non est and void ab initio.
>
> (emphasis supplied)
>
> **21.** The aforesaid position is well settled and not open for any dispute as the defect of jurisdiction strikes at the very root and authority of the court to pass decree which cannot be cured by consent or waiver of the parties. This Court in several decisions has specifically laid down that validity of any such decree or order could be challenged at any stage. In *Union of India v. Sube Ram (1997) 9 SCC 69* this court held thus: (SCC pp. 70-71, para 5).
>
> > "5. ... here is the case of entertaining the application itself; in other words, the question of jurisdiction of the court. Since the appellate court has no power to amend the decree and grant the enhanced compensation by way of solatium and interest under Section 23(2) and proviso to Section 28 of the Act, as amended by Act, 68 of 1984, it is a question of jurisdiction of the court. Since courts have no jurisdiction, it is the settled legal position that it is a nullity and it can be raised at any stage."
>
> (emphasis supplied)

24. In *Chiranjilal Shrilal Goenka v. Jasjit Singh (1993) 2 SCC 507* this Court stated thus: (SCC pp. 517-18, para 18)

"18. It is settled law that a decree passed by a court without jurisdiction on the subject-matter or on the ground on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party."

(emphasis supplied)

(14.22) In case of **Zuari Cement Limited v. Regional Director, Employees' State Insurance Corporation, Hyderabad and others (2015) 7 SCC 690**, in paragraph-16, the Supreme Court has observed as under:-

"**16.** Where there is want of jurisdiction, the order passed by the court/tribunal is a nullity or non est. What is relevant is whether the court had the power to grant the relief asked for. The ESI Court did not have the jurisdiction to consider the question of grant of exemption, order passed by the ESI Court granting exemption and consequently setting aside the demand notices is non est. The High Court, in our view, rightly set aside the order of the ESI Court and the impugned judgment does not suffer from any infirmity warranting interference."

(emphasis supplied)

(14.23) The conspectus of the decision of the Supreme Court referred above would unambiguously establish that the order dated 12.05.2020 (Annexure-P/11) passed by respondent No.2 is

illegal, being without any jurisdiction and a nullity, *non est* and *coram non judice*. The consequential order, therefore, dated 12.05.2020 (Annexure-P/12) passed by respondent No.3 is also illegal and as such, possession of the land cannot be demanded by respondent No.3. The petitioner has rightly submitted that merely because lease has expired, the possession of the petitioner does not become illegal and as such, communication dated 16.03.2020 (Annexure-P/10) asking possession of the land in question from the petitioner is without any authority for the reason that the petitioner could still apply for renewal of lease pursuant to Rule 17 of 2016 Rules which reads as under:-

> "**17. Renewal of Lease.**- The power to renew the lease for next 30 years for the same purpose for which the land has been transferred in original lease deed after the expiry of the prescribed period of property transferred on lease shall be vested in Council, provided that the premium amount shall be determined as 0.5 percent of the prevailing market value for residential plot/building and as 1.00 percent of prevailing market value in case of use as commercial/industrial purposes and rate of the lease rent shall be determined as 4 times of the rate of rent of original lease deed or 0.5 percent of prevailing market value whichever is less. The renewal of lease deed shall be made under the following guidelines:-
>
> (a) An application to renew the lease may

be submitted in the last years of the period of expiry of lease but four months before the date of expiration. After the expiry of the date, the application for the renewal may be received with a compounding charge of Rs.1000/- per year.

(b) In the cases, in which lease rent and other dues are not deposited in prescribed time period by the lease holder, then the penalty shall be levied at the rate of 12 percent on outstanding amount and renewal may be made after recovering penalty of Rs.5000/- by renunciation the right to re-entre.

(c) In the case where the lease holder has started the construction work delayed but it has been completed during the period of the consideration of the case, then by renunciation the right to re-enter, the amount shall be recover by imposing penalty on the following parameter and renewal may be made:-

(i)	For the towns having population up to 1 lakh	- Rs.1500/-
(ii)	For the towns having population from 1 lakh to 5 lakh	- Rs.5000/-
(iii)	For the towns having population from 5 lakh to 10 lakh	- Rs.7500/-
(iv)	For the towns having population more than 10 lakh	- Rs.10000/-

(d) In case where construction work has not been started by the lease holder and also not completed during the period of the consideration of the case i.e. plot is vacant or partially constructed, then in such case by renunciation the right to re-enter renewal may be made by recovering an amount two times on the basis of the population as mentioned in clause (c) above.

(e) In case of a transfer of plot by gift or by sale without proper permission within the time period of lease, the lease may be renewed by recovering the amount on the basis of the population as mentioned

in clause (c) by renunciation the right to re-enter,

(f) If a plot has been transferred in contravention of the terms of lease, in a way in which division of plot takes place, then by recovering the penalty amount of Rs.10000/- for each divided plot the renewal may be made for whole undivided plot. If an approval has been given by Directorate town and Country Planning for division of plot then the renewal may be made separately for each divided plot by recovering the compounding amount.

(g) In case of plot is currently used for the purpose other than the purpose stated in the lease, lease may be renewed for the current use of the plot after getting approval for such converted use from Town and Country Planning after determining premium rate of 2 percent and the lease rent of 2 percent of the current market value. If Town and Country Planning Department has not approved the conversion of use then in that case it shall be mandatory to convert the use of the land/plot of lease in its original use otherwise the Chief Executive Officer may re-enter in to the plot.

(h) The lease may be renewed after recovering penalty of Rs.5000/- in the case where after receiving a notice for the violation of the conditions the activities consistent to the conditions has been started by closing the activities related with the violation of the conditions."

(14.24) Although, the power of superintendence of the State Government is mentioned in Sections 322 to 326 of the Municipalities Act, 1961 and that does not mean that it can be exercised for rejecting the application of conversion because it is a settled principle of law that where specific

provision is made, residuary power cannot be invoked so as to prevail over the specific provisions and this has been held by the Division Bench of this Court in case of **S. Goyanka Lime and Chemicals, Katni vs. Nagar Panchayat, Katni 2011 (2) M.P.L.J. 2019**.

In view of the discussion made hereinabove, it is clear that respondent No.3 i.e. the Chief Executive Officer, Municipal Council is the only competent authority to take decision on an application for conversion of lease-hold land into free-hold. The State Government and the Municipal Council has no role for deciding the application of conversion of lease-hold land into free-hold. The question/issue no.2 is accordingly, answered.

Question/issue No.III –

> "Whether the resolution dated 16.10.2019 (Annexure-R-3/7) passed by the Municipal Council cancelling its earlier resolution dated 24.08.2016 (Annexure-R-3-6) is illegal and without jurisdiction?"

(14.25) As per the petitioner, the resolution No.1014 dated 16.10.2019 is without jurisdiction because

the Municipal Council has no role to play in the matter in regard to conversion of lease-hold land into free-hold.

(14.26) In view of the aforesaid discussion and as per Rule 20 of 2016 Rules, it is the Chief Executive Officer who is only the competent authority and has been empowered to take final decision in the matter. Rule 20 deals with the right of conversion of lease-hold land into free-hold and it makes clear that the application for conversion has to be made before the Chief Executive Officer in a specific format and then it is the Chief Executive Officer who is an authorised officer empowered to convert the lease-hold rights into free-hold rights. Thus, neither the State Government nor the Municipal Council has any role to play for deciding the application for conversion of land.

(14.27) The Municipal Council once passed the resolution No.1042 dated 24.08.2016 (Annexure-P/21) deciding that the land of 3583 lease holders be converted into free-hold land as per the provisions of prevailing rules, then there was no reason for cancelling the said

decision that too only in respect of the land belonging to the petitioner. The resolution No.1014 dated 16.10.2019 withdrawing the decision taken in respect of the petitioner's land is nothing but a discriminatory action and also unfair on the part of the respondents. The petitioner at the inception raised an objection by sending a letter dated 14.10.2019 (Annexure-P/22) to the Collector, Harda about including the agenda that the same is illegal and the Collector Harda vide his letter dated 15.10.2019 (Annexure-P/23) directed the Municipal Council not to take-up the matter pertaining to lease-hold land belonging to the petitioner without obtaining legal opinion. A notice was also pasted in the notice board of the Municipal Council that the respective agenda should be included for discussion only after obtaining opinion and guidance from the law officer, but all went in vain. The agenda was taken-up for discussion and resolution No.1014 dated 16.10.2019 was passed withdrawing resolution No.1042 dated 24.08.2016 as regards conversion of land belonging to the petitioner. At this stage, the

opinion of the competent authority which he has expressed vide its letter dated 23.10.2019 (Annexure-P/25) wherein he has informed respondent No.1 about the illegality committed in the meeting of Municipal Council on 16.10.2019 and the prohibitory order of the Collector was also placed in the meeting and the members of the Municipal Council were also advised not to take-up the agenda but despite that the said agenda was taken-up. It indicates that the Municipal Council under some oblique motive was not willing to consider the opinion of the competent authority i.e. the Chief Executive Officer. It shows that the respondents/authorities had decided to act contrary to law and somehow rejected the application of the petitioner for conversion of lease-hold land into free-hold. It is pertinent to see that when respective rule i.e. Rule 20(4) of 2016 Rules clearly prescribed that it is the Chief Executive Officer who has to take decision on the application for conversion of land, then passing resolution No.1014 dated 16.10.2019 (Annexure-R-3/7) contrary to the view and opinion of the competent authority and

also the prohibitory order of Collector, is nothing but an arbitrary exercise making resolution no. 1014 dated 16.10.2019 illegal and without jurisdiction. Since the provisions of 2016 Rules do not give any power to the Municipal Council to pass any resolution in respect of conversion of lease, therefore, there was no occasion to pass any such resolution. But even though, the Municipal Council acted contrary to law showing their adamantine attitude so as to act against the petitioner and reason best known to them as to why the Municipal Council was behaving in such a discriminatory manner by choosing only the petitioner out of 3583 lease holders. The resolution, therefore, is without jurisdiction, passed contrary to law and as such, it is void *ab initio*.

Question/issue No.IV –

"Whether the petitioner has changed the purpose of the lease?"

(14.28) As per available material, the petitioner was the owner of land comprised of Khasra Nos.58/1, 58/2 and 58/11 area 8.95 acres on which Ginning and Pressing of Cotton as also Dall and

Oil mills are established. The land belonging to these khasras were purchased by registered sale-deed in the year 1953. Adjoining to the said land, Khasra No.56 having 6.43 acres land belonging to the Municipal Corporation, Harda is situated. The petitioner was desirous to construct residential quarters for its labourers and also a godown over the said land and, therefore, it had made an application to the Municipal Council asking lease of the said land in the year 1966. The said application was accepted and the lease was granted in favour of the petitioner initially on year-to-year basis. This practise was continued till 1975. In the year 1975, the petitioner made an application for granting a permanent lease. On such application, resolution No.122 dated 25.04.1975 (Annexure-P/16) was passed by the-then Administrator of Municipal Council, Harda, giving permanent lease for a period of 30 years and renewal for 99 years. Respondent No.3, however, granted lease for a period of 30 years and it was continued to be renewed after expiry of every 30 years till 1989. A lease-deed was

thereafter executed on 16.08.1989 (Annexure-R-3/2) for a period of 30 years commencing from 01.04.1989 and was ended on 31.03.2019 for industrial purpose (commercial purpose). As per Clauses 3 and 12 of Annexure-P/2 which is an agreement of permanent lease dated 27.07.1989, there is a renewal clause that it would be at the option of lessee.

(14.29) Undisputedly, the petitioner was in possession of the land continuously since 1966 on the basis of lease granted by the Municipal Council. The petitioner has constructed residential quarters as also godown over the said land and when dispute arose, the matter travelled up to the High Court and in view of the directions given by the High Court in W.A. No.459/2009, the petitioner moved an application for conversion of land from lease-hold to free-hold. Respondent No.3 (Municipal Council) processed the said application and found the petitioner eligible for conversion of land and thereafter decision was to be taken by the Chief Executive Officer who was the competent authority but instead of doing so, the matter was referred to the State

Government for taking final decision on the said application, but in the said letter i.e. Annexure-P/9 dated 17.07.2018 there was no reference of the fact that the petitioner was not using the land for the purpose for which lease was granted. According to the petitioner, till 17.07.2018 there was no such situation that the land was being used by the petitioner for some other purpose. Further, a letter dated 26.02.2019 (Annexure-P/18) makes it clear that respondent No.1 was informed that the petitioner became entitled to get his lease-hold land converted into free-hold land. The said letter contained that over the lease land, the petitioner has constructed shade, godown and labourer quarters and lease holder was carrying out its activities. The letter further indicates that there was no government road existing to access the lease land. Importantly, it is also mentioned in the letter that because of existing location of the lease land which is surrounded by the lands of other land owners and in absence of any government road to access the lease land, there is no possibility for proposing

any government undertaking scheme. It is worthwhile here to focus upon the letter dated 26.02.2019 written by the competent authority so as to make it clear that all necessary aspects were apprised to respondent No.1 showing as to why application submitted by the petitioner for conversion of lease-hold land into free-hold, is required to be considered and allowed. The said letter, for ready reference, is reproduced as under:-

"कार्यालय नगर पालिका परिषद, हरदा जिला–हरदा

क्रमांक/राजस्व/2019/965 हरदा दिनांक 26/2

प्रति,

श्रीमान उपसचिव
मध्यप्रदेश शासन
नगरीय विकास एवं आवास विभाग
मंत्रालय, भोपाल, मध्यप्रदेश

विषयः–लीज होल्ड भूमि को फ्रीहोल्ड भूमि में संपरिवर्तित करने बावत्।

संदर्भः–आपका पत्र क्रं.एफ 10–45/2018/18–2 दिनांक 28 जनवरी 2019।

विषयान्तर्गत उपरोक्त संदर्भित पत्र के परिपालन में निवेदन है किः–

1) माननीय उच्च न्यायालय की युगल पीठ द्वारा प्रकरण क्र.459/2009 (जिसमें कि नगर परिषद हरदा व राज्य शासन प्रतिवादी थे) अपने आदेश में दिनांक 24/2/2016 से प्रवृत्त मध्यप्रदेश नगर पालिका अचल संपत्ति का अंतरण नियम 2016 के अंतर्गत नियमानुसार लीज भूमि को फ्रीहोल्ड करने का निर्देश दिया था। इस निर्णय के प्रभाव से धारक नर्मदा जींनिग एंड प्रेसिंग फैक्ट्री हरदा स्मेव ही दिनांक 01/08/2016 को लीज भूमि को फ्रीहोल्ड में संपरिवर्तित कराने का पात्र हो गया था।

संलग्न–आपके सुलभ सन्दर्भ हेतु लगभग समस्त लीज धारकों की सूची।

2) लीजधारक के साथ निष्पादित पट्टा अभिलेख (लीज डीड) दिनांक 16/08/1989 में विर्णित शर्तों का पालन लीजधारक द्वारा विधिवत किया जा रहा है। वर्तमान में भूमि पर लीजधारक द्वारा अपनी व्यवसायिक गतिविधियां संचालित की जा रही है तथा लीजधारक को तत्कालीन प्राधिकरण द्वारा 31/03/1989 को भूमि/भवन निर्माण अनुज्ञा प्रदान की गयी थी। वर्तमान में उक्त भूमि पर शेड, गोदाम व लेबर क्वाटर निर्मित है। जिसमें लीज धारक अपनी गतिविधियां संचालित करते है। उल्लेखनीय है कि इस भूमि में जाने के लिए कोई भी शासकीय मार्ग नहीं है।

सलग्नः– 1 अनुज्ञा व नक्शे की कापी।
2 पटवारी नक्शे की छायाप्रति।

3) लीज डीड में पृष्ठ क्र.3 की कंडिका 1 में उल्लेखित है कि "30 वर्ष के लीज रेन्ट का पटटाग्राहिता द्वारा भुगतान पट्टादाता के कार्यालय में

किया जा चुका है'' से स्पष्ट होता है कि लीजधारक द्वारा 30 वर्ष का पूर्ण लीज रेन्ट निष्पादन के समय जमा किया जा चुका था।
संलग्नः— प्रति 10 वर्ष की वृद्धि अनुसार लीज रेन्ट की गणना व प्राप्त राशि की विस्तृत जानकारी।
4) कलेक्टर गाईड लाईन के अनुसार उक्त भूमि का इस वर्ष का बाजार मूल्य 5,99,45,200/— रू (पांच करोड निन्यानवे लाख पैंतालिस हजार दो सौ रूपया) है जो कि वर्तमान में प्रचलित मध्यप्रदेश शासन के संपदा साफ्टवेयर द्वारा निर्धारित किया गया है।
संलग्नः— गणन पत्रक।
5) उक्त भूमि चारों ओर से अन्य भूमि स्वामियों की भूमि के मध्य स्थित होने से इस तक पहुच मार्ग का अभाव है। इसी व्यवहारिक कठिनाई के कारण ही इस भूमि पर किसी भी शासकीय अथवा निकाय की कोई भी योजना प्रस्वावित नहीं हो सकी है और न ही संभव है। विगत 60 वर्षों से इस भूमि को मेसर्स नर्मदा जीनिंग एंव प्रेसिंग फैक्ट्री हरदा को लीज पर दी गई है। एवं इस भूमि का अनुबंध एवं शर्तों के अनुरूप ही उपयोग होकर इनका ढांचा एवं मशीनरी स्थापित है।
अतः प्रकरण अग्रिम कार्यवाही हेतु प्रेषित ।
सलंग्नः— यथोपरि।

मुख्य नगर पालिका अधिकारी
नगर पालिका परिषद हरदा "

(14.30) In view of the submissions made by the parties especially the respondents, the case is based upon the fact that some enquiry report has been submitted on 30.09.2019 (Annexure-P/19) which is based upon some spot inspection of the land in question and the striking features of the report are as follows:-

(i) That houses were constructed over the lease land pursuant to permission granted on 31.03.1989.

(ii) Such construction is as per permission granted.

(iii) During spot inspection, labourers who are residing over the land in question informed the

inspection team that they are the labourers of Seth Eknath (partner of the petitioner firm) and that they are residing over there since long.

(iv) That on the basis of map and photographs, the same situation as existed during the grant of permission for Bhawan Nirman (construction of godown), exists now.

(v) The report is also suggestive of the fact that the business operation is still being carried on by the petitioner firm and that the labourers engaged in the business are residing in the constructed houses over the land in question.

(14.31) Although, the respondents are using the said report as a tool saying that the land in question was being used for some other purpose by the petitioner, but on the contrary the petitioner has tried to establish with the help of letters dated 17.07.2018, 26.02.2019 and inspection report dated 30.09.2019 Annexures-P/9, P/18 and P/19 respectively that the land is being used for the purpose for which the same was leased out. As per the petitioner, Annexures-P/9, P/18 and P/19 have not been denied by respondent No.3

either in its return or additional return, but in the return, it is mentioned that Annexure-P/9 is nothing but an internal communication between respondent No.3 and respondent No.1 and hence is of no avail to the petitioner. Likewise, Annexures-P/18 and P/19, in the additional return, those documents have been said to be internal communication between the government authorities and those are also of no avail to the petitioner. But, according to the petitioner all these documents clearly indicate that the purpose for which the land was leased out is still same and the stand taken by the respondents that the land was being used for some other purpose, is absolutely unfounded.

(14.32) From perusal of the lease-deed, it is clear that it was granted to the petitioner for industrial purpose. Continuously the petitioner has been saying that they have established their industry adjoining to the land owned by them, purchased by them through registered lease-deed but for the purpose of constructing godown, labour quarters and other connecting activities of their industry, the lease land was being used. It is not

a case of the respondents that the land is being used for residential purpose or for some other purpose which does not come within the industrial/business purpose. Even otherwise, as per the petitioner, the report is illegal because the expert body appointed by respondent No.2 never visited the site and did not give any opportunity of hearing or information at any point of time to the petitioner before submission of its report and as such, the same suffers from principal of natural justice.

(14.33) According to the petitioner, constitution of such committee is itself illegal and it had no role to play in the matter of deciding the application of conversion of lease-hold land into free-hold. Reliance upon the report of committee is said to be arbitrary and illegal as the report is merely a piece of paper in the eyes of law and it cannot be taken into account because it was prepared in violation of principles of natural justice and that report according to the petitioner cannot be made basis for rejecting the application of the petitioner for conversion of lease-hold land into free-hold.

(14.34) I find substance in the submissions made by the counsel for the petitioner in regard to the report which has been referred in the impugned order. The respondents have nowhere stated and even during the course of arguments did not deny this fact that the said committee which has submitted the report has ever intimated the petitioner about constitution of committee before inspecting the spot or even after preparing the report the petitioner was given any opportunity to submit its explanation about the contents of the report. In the eyes of law, if any such report or document is produced which prejudices the interest or rights of the party and is prepared behind the back of the party, it is nothing but an arbitrary exercise and such document has no legal sanctity. It is trite law that any order, report or action which prejudices the rights of the parties and is prepared without giving any opportunity of hearing to the person concerned, the same is illegal and has no legs to stand and as such, that document and report cannot be made foundation of any decision. Astoundingly, when the documents which have been

discussed hereinabove are of the respondents/authorities indicating that the land was being used by the petitioner for the same purpose for which lease has been granted then a report contrary to the said finding that too without giving any opportunity of hearing to the petitioner, is worthless and has no value.

15. Learned counsel for the petitioner has placed reliance upon a judgment of the Supreme Court reported in **AIR 1964 SC 1643 (Brajlal Manilal and Co. Vs. Union of India and another)**, in which the Supreme Court in paragraphs-4 and 5 has observed as under:-

> **"**4. As we have already indicated, the State Government had refused renewal of the certificate of approval because they considered that there had been a change in the composition of the firm which destroyed its identity. On the other hand, the case of the appellants was that the terms of the partnership deed made express provisions for the continuance of the identity of the firm, notwithstanding changes in the persons composing the firm by death, retirement or because of the accession of new members to replace deceased or retiring partners or even otherwise. If the report of the State Government made any points against the representations made by the appellants and these were being taken into consideration by the Union Government, in common fairness, the appellants were entitled to be informed as to what these were and an opportunity to point out how far they militated against the contention raised by them.
>
> "5. Learned counsel for the respondent – Union of India, did not seek to support the petition taken by the Central Government that they were justified in refusing to disclose the contents of the report they obtained from the State Government which afforded them the factual basis on which they

> rejected the application for review. We have therefore no hesitation in holding that the order of the Central Government now under appeal is vitiated as being contrary to the principles of natural justice, in that the decision was rendered without affording to the appellants a reasonable opportunity of being heard which is a sine qua non of a fair hearing.**”**

16. As per the petitioner, the Supreme Court in the case of **The D.F.O., South Kheri and others v. Ram Sanehi Singh** reported in **(1971) 3 SCC 864** has not only considered the scope of judicial review in a matter of contract, but also considered that when an administrative order is prejudicial and a person against whom it is passed entitled to a hearing alike to judicial tribunals and bodies of person invested with authority to adjudicate upon matters involving civil consequences. In paragraph 5 of the said decision, it has been observed as under:-

> “5. It la unnecessary to consider whether the order of the Divisional Forest Officer is made on "irrelevant grounds" because it is clear that before passing the order the Divisional Forest Officer did not call for any explanation of the respondent, and gave him no hearing before passing the order. It is averred in Paragraph-22(i) of the petition that the "cancellation order is in violation of the principles of natural justice having been done at a very late stage without affording any opportunity to the petitioner (respondent) to say anything against the action canceling his tallies". To that averment, ho reply was made by the forest authorities against whom the petition was filed. Granting that the order was administrative and not quasi-judicial, the order had still to be made in a manner consonant with the rules of natural justice when it affected the respondent's rights to property. This Court in the case of State of Orissa v. Dr. (Miss) Binapani Dei held in dealing with an administrative order that "the rule that a party to whose prejudice the order is

intended to be passed is entitled to a hearing applied alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our Constitutional setup that every citizen is protected against exercise of arbitrary authority by the State or its officers". The Divisional Forest Officer in the present case set aside the proceeding of a subordinate authority and passed an order which involved the respondent in considerable loss. The order involved civil consequences. Without considering whether the order of the Divisional Forest Officer was vitiated because of irrelevant considerations, the order must be set aside on the simple ground that it was passed contrary to the basic rules of natural justice."

(emphasis supplied)

17. Further, in a case reported in **(1970) 1 SCC 764 (Messrs. Mahabir Prasad Santosh Kumar Vs. State of U.P. and others)**, the Supreme Court in paragraphs-7 and 8 has observed as under:-

"7. Opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him : it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the

> authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.
>
> 8. The High Court in rejecting the petition filed by the appellants has observed that the District Magistrate in considering the explanation of the appellants has "considered all the materials" and also that "the State Government in considering the appeal had considered all the materials". We have, however, nothing on the record to show what materials, if any, were considered by the District Magistrate and the State Government. The High Court has also observed that Clause 7 of the Sugar Dealers' Licensing Order does not require "the State Government to pass a reasoned order. All that is required is to give an aggrieved person an opportunity of being heard." We are of the view that the High Court erred in so holding. The appellant has a right not only to have an opportunity to make a representation, but they are entitled to have their representation considered by an authority unconcerned with the dispute and to be given information which would show the decision was reached on the merits and not on considerations of policy or expediency. This is a clear implication of the nature of the jurisdiction exercised by the appellate authority : it is not required to be expressly mentioned in the statute. There is nothing on the record which shows that the representations made by the appellants was even considered. The fact that Clause 7 of the Sugar Dealers' Licensing Order to which the High Court has referred does not "require the State Government to pass a reasoned order" is wholly irrelevant. The nature of the proceeding requires that the State Government must give adequate reasons which disclose that an attempt was made to reach a conclusion according to law and just."

18. The counsel for the petitioner has placed reliance upon a case reported in **(2019) 7 SCC 172 (Vasavi Engineering College Parents Association Vs. State of Telangana and others)**, in which the Supreme Court has held as under:-

> "18. Judicial restraint in exercise of Judicial review was considered in the State (NCT of Delhi) v. Sanjeev [State (NCT of Delhi) v. Sanjeev, (2005) 5 SCC 181 : 2005 SCC (Cri) 1025 1025] as follows: (SCC p. 191, para 16)
>
> "16... One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 (HL)] (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated."

Thus, this Court has no hesitation to say that the report which has been prepared by the respondents without giving any opportunity of hearing to the petitioner, the decision taken by the authority on the basis of that report is absolutely illegal and the stand taken by the respondents that no opportunity was required to be given to the petitioner before preparing the said report is also not sustainable because the Supreme Court in the cases referred hereinabove has very categorically observed that opportunity in such a matter is indispensable. Since the respondents have taken an adverse decision on the said report, the order of respondents, therefore, vitiates being contrary to the principle of natural justice and apart from that the decision of the State Government is also without

jurisdiction.

19. The stand taken by the respondents is that the lease period has expired on 31.03.2019 and as such, no application for renewal has been submitted by the petitioner and that the possession of the land has already been taken, therefore, the petitioner is not entitled for any relief. The counsel for the respondents have submitted that no mandamus can be issued by this Court in exercise of power provided under Article 226 of the Constitution of India for restoration of possession.

20. The petitioner has tried to substantiate that the decision for not considering the application for conversion of the respondents is absolutely illegal and without jurisdiction and further since the petitioner is in possession of the land for last more than 55 years that too on the basis of valid lease, forcible possession taken by the respondents is completely *de hors* the law and the petitioner cannot be dispossessed in such an unlawful manner. The counsel for the petitioner has submitted that this Court has ample power under Article 226 of the Constitution of India to issue mandamus to the respondent/authority for handing over the possession to the petitioner and as such, the possession which has been unlawfully taken from the petitioner shall be restored. It is

submitted by the counsel for the petitioner that not only this, but this Court has ample power to direct the respondent/authority to allow the application of the petitioner of conversion of lease-hold land into free-hold.

21. Shri Agrawal, learned senior counsel appearing for the petitioner has submitted that the application for conversion had been filed at the time when lease was very much alive and the respondents/authorities did not consider the said application within the prescribed time but sitting over the same not taken any final decision even during the sufficient time and that lapse on the part of the respondents/authorities cannot make the petitioner's application redundant and infructuous. Shri Agrawal further submitted that there is a provision for renewal of lease even an application can be moved by the petitioner after expiry of the period as the respective provision provides so. Moreover, he submitted that now in the existing circumstance when respondents/authorities acted arbitrarily and passed the order without any competence, this Court cannot shut its eyes and allow the authorities to act in such a manner and for the ends of justice mandamus can be issued in a positive manner directing the respondent/authority to allow the application and to restore the possession by handing over the possession of

the lease land to the petitioner. The counsel for the petitioner has placed reliance upon a decision of the Supreme Court reported in **(2020) 9 SCC 356 (Hari Krishna Mandir Trust Vs. State of Maharashtra and other)** in which the Supreme Court in paragraphs-88 and 99 to 107 has observed as under:-

> "**88**. Mr Adkar submitted that the matter should be remanded to the Government for de novo adjudication to consider all relevant aspects of the matter. The Corporation respects and reveres the great personalities involved in the appellant Trust, and for that reason the present litigation is not adversarial in nature, but in the interest of justice. Proper legal method should be followed before arriving at any conclusion one way or the other. Mr Adkar's arguments are untenable, since as recorded in the judgment and order under appeal, the facts pleaded by the appellant are not in dispute. At the cost of repetition it is reiterated that the name of Pune Municipal Corporation was incorporated without recourse to any procedure contemplated under the Regional and Town Planning Act. The respondents have not produced any materials evincing compliance with the procedure prescribed under the Regional and Town Planning Act. The case made out by the appellant cannot be rejected on the basis of assumption. Since the parties have been litigating for over a decade-and-a-half, we are not inclined to remit the matter back to the authority concerned for de novo hearing and decision.
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> **99**. In case of dispossession, except under the authority of law, the owner might obtain restoration of possession by a proceeding for mandamus against the Government as held by this Court in Wazir Chand v. State of H.P. AIR 1954 SC 415 : 1954 Cri LJ 1029 Admittedly, no compensation has been offered or paid to the appellant Trust. As observed by this Court in K.T. Plantation (P) Ltd. v. State of Karnataka (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414, even though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly provided in Article 300-A of the Constitution, it is inbuilt in the Article. The State seeking to acquire private property for public purpose cannot say that no compensation shall be paid. The Regional and Town Planning Act also does not

contemplate deprivation of a landholder of his land, without compensation. Statutory authorities are bound to pay adequate compensation.

100. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a writ of mandamus or in the nature of mandamus, but are duty-bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute, or a rule, or a policy decision of the Government or has exercised such discretion mala fide, or on irrelevant consideration.

101. In all such cases, the High Court must issue a writ of mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.

102. In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the Government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In Director of Settlements, A.P. v. M.R. Apparao [Director of Settlements, A.P. v. M.R. Apparao, (2002) 4 SCC 638] . Pattanaik, J. observed: (SCC p. 659, para 17).

> “17. … One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, “mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal

> right to the performance of a legal duty by the party against whom the mandamus is sought and such right *must be subsisting on the date of the petition (see Kalyan Singh v. State of U.P., AIR 1962 SC 1183)*. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law."
>
> (emphasis in original)

103. The Court is duty-bound to issue a writ of mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of mandamus is that mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through mandamus. Unless a statutory duty or right can be read in the provision, mandamus cannot be issued to enforce the same.

104. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief, questions of fact may fall to be determined. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. Reference may be made inter alia to the judgments of this Court in Gunwant Kaur v. Municipal Committee, Bhatinda (1969) 3 SCC 769 and State of Kerala v. M.K. Jose (2015) 9 SCC 433. In M.K. Jose this Court held: (SCC pp. 442-43, para 16)

> "16. Having referred to the aforesaid decisions, it is obligatory on our part to refer to two other authorities of this Court where it has been opined that under what circumstances a disputed question of fact can be gone into. In Gunwant Kaur v. Municipal Committee, Bhatinda (1969) 3 SCC 769, it has been held thus: (SCC p. 774, paras 14-16)
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> > '14. The High Court observed that they will not determine disputed question of fact in a writ petition. *But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State*. The High Court, however, proceeded to dismiss the petition in limine. *The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article*

226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.'"

(emphasis in original and supplied)

105. In ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. (2004) 3 SCC 553, this Court referring to previous judgments of this Court including Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769 held : (ABL International Ltd. case [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , SCC pp. 568-69 & 572, paras 19 & 27)

> "19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.
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> * * *
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> 27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:
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> (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
>
> (b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule;
>
> (c) A writ petition involving a consequential relief of monetary claim is also maintainable."

106. In the present case, it is not even in dispute that the private road in question did not at any point of time belong to Pune Municipal Corporation. It is shown to be held by the holders by adjacent Plots Nos. 473-B1, 473-B2 and 473-B3.

107. In the facts and circumstances of the instant case, in the light of admissions, on the part of the respondent authorities that the private road measuring 414 sq.m. was private property never acquired by Pune Municipal Corporation or the State Government, the respondents had a public duty under Section 91 to appropriately modify the scheme and to show the private road as property of its legitimate owners, as per the property records in existence, and or in the award of the arbitrator. In our considered opinion, the Bombay High Court erred in law in dismissing the writ petition with the observation that the

land in question had vested under Section 88 of the Regional and Town Planning Act."

22. Further, in case of **Union of India and another Vs. S.B. Vohra and others** reported in **(2004) 2 SCC 150**, the Supreme Court in paragraphs-12, 13 and 14 has observed as under:-

> "**12**. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.
>
> **13**. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.
>
> **14**. In Comptroller and Auditor General of India v. K.S. Jagannathan (1986) 2 SCC 679 it was held that: (SCC p. 691, para 18)
>
> Article 226 is designedly couched in a wide language in order not to confine the power conferred by it on the High Courts only to the power to issue prerogative writs as understood in England. The High Courts exercising jurisdiction under Article 226 can issue directions, orders or writs so as to enable the High Courts to reach injustice wherever it is found and to mould the reliefs to meet the particular and complicated needs of this country."

23. The Supreme Court in case of **Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another** reported in **(1996) 5 SCC 54** in paragraph-11 has held as under:-

> "**11.** It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognisance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief. What precisely has been done by the learned Single Judge, is clear from the above emphasised words which may be reread with advantage. The question of claim to damages and their ascertainment would only arise in the event of the Life Insurance Corporation, respondent, succeeding to prove that the appellant Company was an unlawful sub-tenant and therefore in unauthorised occupation of public premises. If the findings were to go in favour of the appellant Company and it is proved to be a lawful sub-tenant and hence not an unauthorised occupant, the direction to adjudge the claim for damages would be rendered sterile and otiose. It is only in the event of the appellant Company being held to be an unlawful sub-tenant and hence an unauthorised occupant that the claim for damages would be determinable. We see therefore no fault in the High Court adopting such course in order to balance the equities between the contestants especially when it otherwise had power of superintendence under Article 227 of the Constitution in addition. We cannot be oblivious to the fact that when the occupation of the premises in question was a factor in continuation of the liability to pay for the use and occupation thereof, be it in the form of rent or damages, was also a continuing factor. The cause of justice, as viewed by the High Court, did clearly warrant that both these questions be viewed interdependently. For those who seek equity must bow to equity."

24. Further, in the case reported in **(1986) 3 SCC 247** parties being **Harmindar Singh Arora Vs. Union of India and others** the Supreme Court has observed that acceptance of bid by respondents though it was much higher and detriment to the State and rejection of the

tender of the lowest bidder under the terms of the tender notice was found to be illegal, therefore, the Supreme Court quashed the acceptance of tender of respondent No.4 by the authorities instead directing consideration of the tender of the lowest bidder, specifically mandated that the tender of the lowest bidder be accepted.

25. In case of **State of Orissa Vs. Dr. (Miss) Binapani Dei and others** reported in **AIR 1967 SCR 1269,** the Supreme Court in paragraphs-6, 9 and 12 has held as under:-

> "**6.** It was the case of the first respondent in her petition before the High Court that the State had arbitrarily fixed her date of birth as April 16, 1907, and on that basis had declared her superannuated before she attained the age of 58 years. On behalf of the State it was denied that the true date of birth of the first respondent was April 10, 1910, and that the authorities of the State had arbitrarily and maliciously chosen to refix her date of birth. Under Article 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Article 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court. In the present case the question in dispute was about the regularity of the enquiry and the High Court was apparently of the view that the question whether the State acted arbitrarily did not raise any question of investigation into complicated issues of fact. No interference with the exercise of the discretion of the High Court is therefore called for.
>
> **9.** The first respondent held office in the Medical Department of the Orissa Government. She, as holder of that office, had a right to continue in service according to the Rules framed under Article 309

and she could not be removed from office before superannuation except “for good and sufficient reasons”. The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom in enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

12. It is true that some preliminary enquiry was made by Dr S. Mitra. But the report, of that enquiry officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907 should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an

administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

26. The Supreme Court in case of **University of Calcutta and others Vs. Sm. Gopa Chakraborty and another** reported in **AIR 1993 Cal. 1** in paragraphs-4, 5 and 6 has observed as under:-

"**4.** Mr. Harasit Chakraborty, the learned Advocate for the respondent-writ petitioner, on the other hand, has contended that there is no rule regarding the procedure to be followed for re-examination. It is done by the University according to practice. That the answer script which has to be re-examined is sent to an examiner other than the original examiner. The admitted position in the present case, it is urged, is that Paper VI could not be re-examined as it was lost and the marks in Paper VIII in which the respondent-writ petitioner got 23, on re-examination remained unaltered. The student, the writ petitioner, was not certainly at fault for the loss of Paper VI. In various affidavits, sworn by the appellant-University and its different officers filed by the Registrar of the university, it was disclosed that the writ petitioner candidate was given average marks in the lost paper VI calculated on the basis of marks obtained by her in paper-V, paper-VII and Paper VIII in which she obtained 52, 42 and 23 respectively. By adding the average marks she got in all 156. It was further disclosed that she was given six marks on the basis of average marking and 3 marks on the basis of general grace marks. This 9 (67+3) marks was added to her marks which she obtained in Paper VI, i.e. 30 marks. It appears from the facts disclosed in the affidavits of the appellant and its officers that such average marks or extra 9 marks was given by the Vice Chancellor on 28-5-84 in terms of the resolution adopted by the Syndicate in its minutes of the proceeding against the item Nos. 30 and 31 dated 31-3-83 and 26-4-83 respectively. It would further appear that even this

revised marks, i.e. 30 marks in the lost paper VI was not quoted in the letter sent to the candidate. It is the case of the university that it was not done through oversight. Mr. Chakraborty has strenuously urged that the appellant could not produce any rules or disclose any modality for awarding average marks or grace marks and whatever they did, they did according to their discretion. He has further objected to the stand taken by the appellant that the writ petitioner candidate made no grievance as to her marks obtained in Papers VI and VIII and made no representation with regard to marks obtained in such papers. Her specific case, it is submitted by Mr. Chakraborty, in the writ petition that she had to move even the Minister of Education having failed to obtain the form for re-examination in respect of Papers VI and VIII in B.A. II examination. According to him, the stand taken by the university in this regard is wholly unfounded. He finally submits that the learned trial Judge in the facts and circumstances of the case rightly held that the average marks should be calculated on the basis of undisputed marks in paper VI and Paper VII which were 52 and 42 respectively. If calculation is done on the basis of the marks obtained in the undisputed paper V and VII then average marks would be 47. He has further proceeded to submit that if “general grace marks theory” of awarding 3 marks by the university be accepted, this extra 3 marks if added to the total of 164 it would come to 167. This marks if added to the marks the writ petitioner obtained in Part I examination which was 155 would make a total of 322. The learned Trial Judge instead of going by this calculation took the mean and awarded 1 mark in Paper VIII and thus came to the conclusion that the candidate would get by this process 165 and if this mark be added to the marks obtained by her in Part I examination it would bring the total marks 320 which is the minimum marks for obtaining honours in total eight honours papers at the rate of 40% marks in each of the papers. According to him, there is no ground for interference with the finding of the learned trial Judge in this appeal.

5. On examination of the respective case of the parties as disclosed by the pleadings and affidavits and the materials on record in the shape of minutes of the proceedings of the Syndicate and the correspondence that passed internally between the different departments of the university and between the writ petitioner and also the appellant, the university, it is clear that the appellant, university acted after discussion and deliberations in the meeting of the Syndicate and in the exercise of their discretion instead of following any rules or procedure. The discretion,

according to well established principles means that when something is to be done according to discretion it must be done according to rules of reasons and justice and not private opinion and humour. It is to be not arbitrary, vague and fanciful but legal and regular. It must be exercised within the limit to which an honest man is competent to the discharge of his office ought to confine himself *Sharp v. Wakefield*, 1891 AC 173. “If people, who have to exercise a public duty by exercising their discretion, taken into account the matter which should the court consider not to be proper for their guidance of their discretion, then in the eye of law they have not exercised that discretion” — (*Maxwell on the Interpretation of Statutes* 11th Edition page 118). “It is well settled that a public body invested with statutory powers ……may take care not to exceed or abuse out of the power. It must keep within limits of the authority committed to do it must act to good faith and it must act reasonably *Mayor etc. v. N.W. Railway Company*, 1905 AC 426 at page 430 See *Maxwell on the Interpretation of Statutes* 12th Edition 146. This approach to construction has two consequences: The statutory discretion must be truly exercised and when exercised it must be exercised reasonably (Maxwell 146). See also *Johnson v. Buttress* (1936) 56 CLR 113 at p 135: “When a man is occupying a position involving assendency or influence over another or a dependence or trust on his part it is his duty to use his position of influence in the interest of no one but the man who is governed by his judgment.” The court, as in the present case, examined the propriety of use of discretion by dominant authority like the university in which the examinees, candidates, guardians and the people at large usually repose their trust and confidence, should follow the tests contained in the principles stated above. The learned trial Judge while considering the pros and cons of the matter after examining the relevant materials on record came to the conclusion that the university acted arbitrarily and did not do justice to the writ petitioner. In order to do justice to the writ petitioner, the learned trial Judge took a fair and just view of the matter and awarded minimum of the marks in order to enable the writ petitioner to get honours in the examination in which she appeared. The Supreme Court in the decision of *Madan Gopal v. Man Raj*, AIR 1976 SC 461 held that there is no particular ritualistic formula in which the order of the court has to be passed when it used its own discretion. See also *S.G. Jaisinghani v. Union of India*, AIR 1967 SC 1427. It lays down that discretion when conferred upon executive authorities, must be found within clearly defined limits. It means sound discretion guided by law. It must be governed by rule, not by humour, it must not

> be arbitrary, vague and fanciful. It is also the law that the court in appeal should only examine whether the discretion by trial court has been properly exercised and it would not substitute its own discretion in place of the discretion exercised by the trial court. *Mysore State v. Mirza*, AIR 1977 SC 747 : (1977 Lab IC 272). If the discretion has been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion *U.P. Co-operative v. Sundar*, AIR 1967 SC 249. The trial Judge, in our view, has used his discretion very fairly and reasonably in the facts and circumstances of the case. We are of the view that no interference is called for with the order passed by the learned trial Judge in this regard.
>
> **6.** The learned trial Judge also considered the sufferings, anxiety and harassment of the writ petitioner who appeared in B.A. Part II examination sometime in February, 1983 and moved the court more than once in writ petition for getting justice and held that the university which had lost the answer scripts in paper VI should take a compassionate view as to the grievances of the writ petitioner. We are in agreement with the view taken by the learned trial Judge. After struggling for 7 years she could get the judgment in her favour only in February, 1990. We find no infirmity in the said judgment."

27. The Supreme Court also in the case of **Karnataka State Forest Industries Corporation v. Indian Rocks (2009) 1 SCC 150** has dealt with the scope of Article 226 of the Constitution of India and considered as to in what circumstances, the writ of mandamus can be issued. It is observed by the Supreme Court even in a matter of contract when it is found that the action of the State is arbitrary or discriminatory and violative of Article 14 of the Constitution of India, writ petition is not only maintainable, but mandamus can also be issued to protect

the legal rights of the petitioner. In this case, a government undertaking engaged in sale of seized and confiscated granite blocks to persons who intended to purchase in the tender-cum-allotment sale on “as is where is basis”. The bidder has to make arrangement to obtain transit permit at his own cost from the Forest Department. The dispute arose out of the contract awarded alleging breach of its conditions then it has been cancelled at the risk and cost basis. There was some outstanding towards the bidder to whom contract was awarded but he refused to pay the amount. Finally, bidder filed a writ petition claiming the following relief:-

(i) Issue an order, direction or writ in the nature of mandamus directing the State Organisation to implement government order dated 16.01.1996.

(ii) Issue an order, direction or writ in the nature of mandamus, directing the respondents to refund the sum of Rs.9,44,478.55 together with interest calculated at 18% in terms of the government order dated 16.01.1996.

The Single Bench of the High Court allowed the writ petition directing the State Corporation to refund the sum of Rs.3,75,905.35 with interest, then writ appeal was preferred, which was also dismissed. Against the said

order, SLP was preferred, in which, the Supreme Court while dismissing the SLP, has observed as under:-

> "38. Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract qua contract, it is trite that when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable. (See ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [(2004) 3 SCC 553.
>
> 39. There cannot be any doubt whatsoever that a writ of mandamus can be issued only when there exists a legal right in the Writ Petition and a corresponding legal duty on the part of the State, but then if any action on the part of the State is wholly unfair or arbitrary, the superior courts are not powerless. Reliance placed by Mr. Divan on G.J. Fernandez v. State of Mysore and other, ([1967] 3 SCR 636) is not apposite. In that case itself it was held :-
>
> > "12. Thus under Art. 162 the State Government can take executive action in all matters in which the legislature of the State can pass laws. But Art. 162 itself does not confer any rule making power on the State Government in the behalf."

28. The Supreme Court in the case of **Zonal Manager, Central Bank of India v. Devi Ispat Limited and others (2010) 11 SCC 186** has dealt with the scope of judicial review in contractual matter and has observed as under:-

> "**28**. It is clear that, (a) in the contract if there is a clause for arbitration, normally, writ court should not invoke its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Art. 226; and (c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Art. 14

> of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power. In the light of the legal position, writ petition is maintainable even in contractual matters, in the circumstances mentioned in the earlier paragraphs.
>
> **29**. In the case on hand, it is not in dispute that the appellant-Bank, being a public sector Bank, discharging public functions is "State" under Article 12. In view of the settlement of the dues on the date of filing of the writ petition by arrangement made through another Nationalized Bank, namely, State Bank of India and the statement of accounts furnished by the appellant-Bank subsequent to the same i.e. on 14.05.2009 is 0.00 (nil) outstanding, we hold that the High Court was fully justified in issuing a writ of mandamus for return of its title deeds."

29. The counsel for the petitioner also relied upon the judgments of the Delhi High Court wherein specific mandamus was issued in exercise of power under Article 226 of the Constitution of India directing conversion of lease hold land into free hold and such judgments are as follows:-

(i) Annu Chopra Vs. D.D.A. decided vide order dated 04.01.2005.

(ii) J.K. Bhartiya and Ors Vs. Union of India and Anr., 126 (2006) DLT 302 decided vide order dated 05.12.2005.

(iii) Maharaj Krishan Kapoor Vs. Delhi Development Authority and Anr. [W.P.

(C) No.4886/2006] decided vide order dated 07.09.2007. The said decision has been upheld by the Division Bench of Delhi High Court in LPA No.1365/2007 vide order dated 11.08.2009.

30. In case of **Annu Chopra** (supra) the question regarding conversion of lease-hold land into free-hold land has been considered by the Delhi High Court and while exercising writ jurisdiction under Article 226 of the Constitution, it has been been observed as under:-

> "49. Since, in the instant case record of DDA does not show any prior notice being served upon the petitioner, no misuse charges can be levied. However, counsel for the petitioner submitted that petitioner would not like to retract from the concession given by her in letter dated 9.12.2003. In that view of the matter, in view of the circulars dated 26.6.2001 and 8.8.2001, misuse charges which can be levied from the petitioner have to be restricted to the period 22.10.1997 up to 28.6.1999. It has to be noted that record of DDA shows that the dealing assistant of DDA has put a note on the file that matter for levy of misuse has to be dealt with as per circulars dated 26.6.2001 and 8.8.2001. The said note is dated 17.12.2003. The nate has been approved by the Director (RL) on 17.12.2003.
>
> 50. For the area qua which misuse charges can be levied, area circulated by DDA being 55.27 Sq. Mtrs. has been found to be the ipsi dixit of the officers of the DDA. Petitioner admitted using 11.87 Sq. Mtrs. Area for running pre-nursery/KG classes. Since strictly speaking petitioner would not be liable to make any payment towards misuse charges and whatever flows towards the coffers of the DDA in as per her concession, misuse charges have to be calculated by treating 11.87 Sq. Mtrs. area as being misused.
>
> 51. Rule is made absolute. Impugned letter dated

> 23.9.2004 is quashed in so far misuse charges in sum of Rs. 7,78,071/- are demanded. Mandamus is issued to DDA to raise a demand on the petitioner for misuse charges treating area misused as 11.87 Sq. Mtrs. Period of misuse to be restricted from 22.10.1997 to 28.6.1999. On the petitioner paying the revised demand, application of the petitioner for conversion of the property from lease hold to free hold would be processess. DDA would raise the revised demand within 4 weeks from today. Petitioner would pay the same within 4 weeks thereafter. Within 4 weeks of receipt of misuse charges, DDA would execute the conveyance deed converting the land from lease hold to free hold subject to the petitioner paying the stamp duty and any other unpaid charges and on completing formalities.
>
> (emphasis supplied)
>
> 52. No costs."

It is clear from the aforesaid decision that a writ of mandamus can be issued by the High Court exercising jurisdiction under Article 226 of the Constitution with a positive direction giving the authority to allow the application for conversion of lease-hold land into free-hold land.

31. Further, in the case of **J.K. Bhartiya** (supra) again, the Delhi High Court consider the dispute with regard to converting lease-hold land into free-hold land in a petition filed by the holders of lease-hold land claiming conversion of their land into free-hold land in view of the conversion policy, which was modified/clarified from time to time and also claimed refund of sum of Rs.4,84,168/- from Delhi Development Authority. The High Court finally

allowed the writ petition with the following directions:-

> “49. The two writ petitions are accordingly allowed as under:-
>
> (i) WP(C) No. 9911-12/05 is disposed of with a direction to DDA to refund sum of Rs. 18,35,646/- to the petitioners within a period of 60 days from date of the present decision, failing which the amount would be paid with interest @ 12% p.a. with effect from 60 days from date of the present decision till date of payment. Mandamus is issued to DDA to convert the leasehold tenure in respect of plot No. D-5, Maharani Bagh, New Delhi into freehold in the names of the petitioners after receiving the conversion charges and surcharge thereon if not already paid. If paid, necessary conveyance deed would be executed on the petitioner's obtaining the proforma of the conveyance deed and paying the requisite stamp duty thereon. Needful would be done within four months from date of the present decision.
>
> (ii) WP(C) 4590-95/04 is disposed of with a direction to DDA to refund a sum of Rs. 4,84,168/- to the petitioners 5 and 6 within a period of 60 days from date of the present decision, failing which the amount would be paid with interest @ 12% p.a. with effect from 60 days from date of the present decision till date of payment. Mandamus is issued to DDA to convert the leasehold tenure in respect of plot No. D-1087, New Friends Colony, New Delhi into freehold in the names of the petitioners 5 and 6 after receiving the conversion charges and surcharge thereon if not already paid, subject to petitioners 5 and 6 paying the restoration charges since the lease has been determined and re-entry has been ordered, which order requires to be undone. Needless to state the quantum of restoration charges would be as per DDA's circular dated 2.8.1996. (It may be noted that Sh. Ravinder Sethi, learned Senior Counsel for the petitioners had consented in this respect that the petitioners 5 and 6 would pay the restoration charges). If paid, necessary conveyance deed would be executed on the petitioners 5 and 6 obtaining the proforma of the conveyance deed and paying the requisite stamp duty thereon.
>
> (emphasis supplied)
>
> (iii) Needful would be done within four months from date of the present decision.”

32. Further, in the case of **Maharaj Krishan Kapoor** (supra), the Delhi High Court again considered the dispute with regard to the conversion of lease-hold land into free-hold land as per the policy introduced by the Delhi Development Authority and exercising writ jurisdiction under Article 226 of the Constitution of India, allowed the writ petition with the following directions:-

> "29. Accordingly, the impugned demand for permission fee raised by the DDA against the Petitioner by its letter dated 3.3.2006 in respect of the premises in question is held to be bad in law and is hereby quashed. As regards the liability the SBI, the facts of the present case show that the SBI had already been deducting the composition fee component from the monthly rent payable to the petitioner for the premises in question during the period from 16.1.1992 onwards till it vacated the premises. It remains to be seen whether this amount was remitted by the SBI to the DDA. The question of the liability of the SBI for the period prior thereto will also have to be determined in light of the order dated 29.11.2006 of the Hon'ble Supreme Court. If in light of these facts and circumstances, the DDA seeks to contend that the permission fee is still owing to it for the premises in question it will open to the DDA proceed against the SBI in accordance with law.
>
> 30. The Petitioner has admittedly paid the entire conversion charges together with interest. Therefore, within a period of four weeks from today, and in any event not later than 8.10.2007, the DDA will pass the necessary orders granting conversion of the premises in question from leasehold to freehold and also execute the necessary conveyance deed in favor of the petitioner within the same period.
>
> 31. With the above directions, the writ petition is allowed with costs of Rs. 5,000 which will be paid by the DDA to the Petitioner also within a period of four weeks from today, and in any event not later than 8.10.2007."

33. The order passed by the writ court was

further assailed and the Division Bench in LPA No.1365/2007 while dismissing the appeal, has observed as under:-

> "8. In our opinion, appellant-DDA having decided to prosecute respondent-SBI for misuse of premises in question and having been a party to quashing of the said proceedings, cannot now insist that respondent-owner should first make the payment of misuse charges before appellant-DDA can grant conversion of the aforesaid premises. In fact, we find that appellant-DDA's stance of recovery of misuse charges is an afterthought and has been taken for the first time in the present proceedings, as initially it was appellant-DDA's case that the respondents were not entitled to any permission and for breach of the Perpetual Lease covenants, respondent-SBI was liable to be criminally prosecuted. Even in March, 2006 at the time of rejection of respondent- owner's application, the appellant-DDA asked for payment of aforesaid amount on account of permission fee and not misuse charges.
>
> 9. We are also in agreement with learned Single Judge that if indeed the misuse had continued from 1st April, 1990 to 6th May, 1999 then why did DDA not raise such a demand prior to 3rd March, 2006 against the respondent-owner. Keeping in view the aforesaid, we are of the opinion that the stance adopted by appellant-DDA is inequitable in the facts and circumstances of this case.
>
> 10. Consequently, present appeal is dismissed but appellant-DDA is given liberty to recover, if so permissible in law, the demand of Rs. 36,23,538/- from respondent-SBI. However, Appellant-DDA is directed to pass necessary orders granting conversion of premises in question from leasehold to freehold and also to execute necessary conveyance deed in favour of respondent-owner within a period of four weeks from today."

34. Considering the aforesaid decisions and the view taken by the Courts therein, it is clear that the High Court in exercise of its power under Article 226 of the Constitution can issue mandamus and give directions to

compel performance in an appropriate and lawful manner and in an appropriate case, in order to prevent injustice to the party and can mould the relief to meet the requirements of the case and the Court may itself pass an order or give directions which the Government or the Public Authority should have passed, had it properly and lawfully exercised its discretion.

35. In the manner in which the respondents/authorities have acted against the petitioner, I find that this would be a futile exercise to remit the matter to the authority to reconsider the application of the petitioner and to pass an appropriate order thereon. Considering the material produced by the parties before this Court, I have no hesitation to say that the respondent/authority acted arbitrarily, illegally and without jurisdiction refused to allow the application submitted by the petitioner for conversion of lease-hold land into free-hold land. As already observed above that there was no necessity to make any recommendation and to seek approval from the State Government because it is the Chief Executive Officer who is the competent authority to take final decision on the application and the said authority was very much inclined to allow the application and has already expressed its opinion in letter dated 26.02.2019

(Annexure-P/18) then merely because the decision could not be taken by the State Government on the said application and on a recommendation of the competent authority till the expiry of lease period and refused to consider the application on the ground that lease period is expired and as such the application cannot be considered, is an absolutely arbitrary and illegal exercise of power. It indicates that the respondents/authorities were bent upon to dispossess the petitioner for the reason best known to them, whereas law permits the petitioner to get conversion of his lease-hold land into free-hold land.

36. In the circumstance, this Court is duty bound to pass an order to do substantial/complete justice. Therefore, all the relatable questions framed by this Court hereinabove are answered in favour of the petitioner on the basis of detailed discussion made hereinabove elaborately considering the material available on record.

37. Consequently, this petition is **allowed** and the impugned orders dated 16.03.2020 (Annexures-P/10), 12.05.2020 (Annexures-P/11) and 12.05.2020 (Annexures-P/12) are set aside with the following directions:-

(i) Respondent No.3 shall pass an order

allowing the application of the petitioner for conversion of lease-hold land into free-hold land; and,

(ii) The respondents shall restore the possession of the land in question and handover the same to the petitioner forthwith.

38. Looking to the facts and circumstances of the case, the parties are directed to bear their own costs.

(SANJAY DWIVEDI)
JUDGE

Sudesh
ac/-