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HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Reserved

Civil Misc. Writ Petition No. 10815 of 2000

Anwar Husain and others Petitioners

Versus

State of U.P. and others Respondents.

For Petitioner : Shaukat Siddiqui,
Sadhna Upadhyaya
Rudreshwari Prasad.
Arvind Kumar Shukla
K. N. Shukla
.....Advocates.

For Respondents : Standing Counsel.

For Applicant (U.P.S.R.T.C) : Sameer Sharma,
Advocate.

Hon'ble A. K. Yog, J.
Hon'ble B. B. Agarwal, J.

(Delivered by A. K. Yog, J.)

Heard learned counsel appearing for respective parties. Also perused the record of the above mentioned writ-petition. The above writ petition was directed (see Court orders dated 19.3.2002, 27.7.2005 and 01.09.2004 on the order-sheet of the case) to be listed along with the record of the following writ petitions:

(1) Writ petition no.32401 of 1998 - Syed Shah Khursheed Ahmad Hashmi Vs. D.M. Allahabad and ors., (decided vide Jt. & order dt. 12.10.1998 passed by Palok Basu & I. M. Quddusi, JJ.

(2) Writ Petition no.44517 of 1998- Syed Shah Khursheed Ahmad Hashmi Vs. State of U.P. and ors., decided vide Jt. & order dt. 16.12.1999 passed by A. A. Desai and Onkeshwar Bhatt, JJ.

(3) Writ petition no.5071 of 2000 - Mohd. Rais and 4 others Vs State of U.P. and ors., decided vide Jt. & order dt. 31.1.2000 passed by O.P. Garg and S. K. Jain, JJ.

Reference shall be made to the above three writ-petitions at appropriate place while dealing with the merits of the above Writ Petition in hand.

FACTS OF THE CASE :

Anwar Husain and 36 other persons, as contemplated under Section 80, Code of Civil Procedure, served notice dated June 8, 1999 upon the State Government. Relevant extract of the notice reads:

1. That my aforesaid clients have constructed their residential house over the portion of Nazul plot no.13, Civil Station, Allahabad within the compound of 2, Nawab Yusuf Road, Allahabad and they all are occupying their residential houses for the last 40 years as they have constructed the same openly and adversely, within the knowledge of the Govt. and District Administration and Administrator and no objections were raised by either you noticee or by your official.

2. That the employees and subordinates of you noticee threaten to demolish the constructions belonging to my aforesaid clients with intention to evict them and hence the present notice is being given to you u/s 80 C.P.C to the effect that you noticee may not demolish the constructions belonging to my aforesaid clients lying over the said plot no.13, Civil Station, Allahabad in any manner and kindly settle the matter amicably. I, therefore, call upon you through this notice that you noticee may not demolish the said constructions belonging to my aforesaid client in any manner otherwise my aforesaid clients shall file a suit for permanent injunction on the basis of the cause of action arose to them as you noticee threatened to demolish the

construction. The relief sought in the suit shall be as follows. The Govt. their agents, servants and employees may be restrained by means of permanent injunction from demolishing the constructions belonging to the above mentioned clients in any manner lying over portion of 13, Nazul Plot Civil Station, within compound of 2, Nawab Yusuf Road, Allahabad in any manner. "

(underlined to lay emphasis)

After eight months of giving under Section 80 C.P.C Notice, Plaint (verified on 8.2.2000) along with an interim injunction application (6 Ga) supported by an affidavit sworn by Mohd. Ismail, was filed in the Court of Civil Judge (Junior Division-West) Allahabad. It was registered as Original Suit no.188 of 2000 -Anwar Hussain and others Vs. State of U.P & Ors.. The Plaintiffs, inter alia amongst others, alleged that they are in peaceful possession of their respective portions in the disputed premises - known as Yusuf Manzil, 2 Nawab Yusuf Road, Allahabad- situate over Nazul plot no.13, Civil Station, Allahabad, measuring more than two acres of land, hereinafter called the 'premises in question'; that they have raised residential/commercial constructions 40 years ago over certain portions of the said premises; that by virtue of alleged possession they have acquired and matured title by 'adverse possession', and on that basis prayed for a decree of permanent injunction to restrain the Defendant/s from interfering in their peaceful possession or demolishing their constructions over the premises in question be passed.

Copies of the plaint, Interim-injunction Application and its supporting Affidavit have been filed as Annexure 2 (collectively) to the writ petition. Plaintiffs, on the same averments as made in the plaint, also prayed for an ex-parte ad interim injunction order during pendency of 'Suit' to protect themselves from 'apprehended dispossession' by the Defendants. For convenience, relevant paras of the plaint are quoted below:-

" 1 to 8

9. That initially the said Nazul plot no.13 was given on lease on 1868 to one Miss James Samuel Liyans for 50 years for residential purposes. After the expiry of the said period of lease the said plot no.13, Civil Station, Allahabad was again leased out in favour of one Nawab Abdul Majid for 50 years which was effected from 1.1.1918. The period of the said lease of 50 years was completed on 31.12.1967.

10. That after the death of Sri Nawab Abdul Majid the lease hold plot no.13, Civil Station, Allahabad was renewed in the name of HIS SON Nawab Mohd. Yusuf.

11. That Nawab Mohd. Yusuf died in the year 1956 issue less.

12.....

13. That except the residential Kothi of Nawab Mohd. Yusuf, the entire land of the said plot no.13 was lying vacant and it was not maintained by any one, Even after the death of Nawab Mohd. Yusuf the entire land of the Nazul plot no.13 was lying vacant and it was neither maintained by the Govt. nor it was maintained by Late Nawabv Mohd. Yusuf Sahab.

14.....

15.....

16.....

17. That after the death of Nawab Mohd. Yusuf the entire different various construction for residential purposes as well as for commercial purposes were constructed by different persons including the plaintiffs on the vacant land of Nazul plot no.13, Civil Station, Allahabad in the knowledge of the public at large and also in the knowledge of the District Administration including the defendant but no objections were raised either by the Govt. official and Administration or by the public at large and openly and independently the constructed were made by different persons including plaintiff on the different portions shown in the plaint map on the said Nazul Plot no. 13, Civil Station, Allahabad according to their need and convenience.

18. that the disputed constructions belonging to the plaintiffs nos.1 to 37 have been constructed by the plaintiffs and the construction belongs to plaintiff no.35 was constructed by the father of plff no.35, and the construction belonging to the plaintiff no.36 has also been made by his father and the construction belonging to the plaintiff no.37 has also been constructed by his father.

19. That the entire constructions belonging to the plaintiffs which is the property in dispute in this suit are all about 40 years old and all the plaintiffs are exercising all their proprietary rights over the said constructions belonging to them.

20. That the plaintiffs are already enjoying their houses for residential purposes and they are also paying usual taxes in respect of the electricity, etc.

21.....

22.....

23.....

24. That the plaintiffs had no knowledge about the previous litigation as some persons claiming as Mutwalli of the Nawab Yusuf Saheb in respect of the bungalow no.2, Nawab Yusuf Road, Alld. and he was claiming the said property as Waqf property. The plaintiffs have no concern with the said Mutwalli. The plaintiffs have also no connection in any way with the family of Nawab Yusuf Husain.

25. That the plaintiffs perfected and matured their rights over the constructions made by them by adverse possession as the plaintiffs. constructions are old one and they all are about 40 years old. The constructions were made by the plaintiffs openly, independently in the knowledge of the Govt. and no objections were raised by the Govt. and hence the rights of the plaintiffs have been matured over the disputed construction which is the property in dispute in this suit.

26.....

27.....

28. That the plaintiffs are enjoying the property in dispute by constructing their own houses on the portion of Nazul Plot no.13, Civil Station, Allahabad within the compound of 2, Nawab Yusuf Road, Allahabad openly, independently, exclusively and in the knowledge of the defendant and their subordinates and administrators and they have no right to demolish the constructions in dispute belonging to the plaintiffs but they are bent upon to demolish the construction in dispute by force with high handedness. The present suit is being filed by all plaintiffs. jointly as the common question of law and fact is involved.

29.....

30. That the valuation of the suit for purposes of jurisdiction and payment of Court fee is Rs.10,000/- and the requisite Court fee on injunction is being paid herewith. "

The plaintiffs therefore prays for the following reliefs: -

- (a) That the defendants, their men, agents, servants, associates, employees and administrators be restrained by means of permanent injunction from demolishing the houses in dispute belonging to the plaintiffs lying over the portion of Nazul plot no.13, Civil Station, Allahabad which has been shown in the annexed plaint map with red lines in any manner and they further be restrained from evicting the plaintiffs ever the property in dispute in any manner and they also be restrained from interfering in any manner in the peaceful possession and enjoyment of the plaintiffs ever the property in dispute.
- (b) That the cost of the suit be awarded to the plaintiffs against the defendant.
- (c) Any other relief which the Court deems fit and proper be awarded to the plaintiffs. against the defendant. "

Trial Court-Civil Judge(Junior Division) West, Allahabad refused to grant ex parte interim injunction vide its judgement and order dated February 10, 2000/Annexure 3 to the writ petition. The Trial Court, however, directed notice to be issued to the Defendants and fixed 29.2.2000 for hearing of Ad-interim injunction application.

Not satisfied with the aforesaid order dated February 10, 2000 passed by the Trial Court, plaintiffs filed Civil Revision no.269 of 2000 along with an application for interim relief (supported by an affidavit) before the Court of District Judge, Allahabad; copies of 'memorandum of revision', interim injunction application and the affidavit filed in support thereof, are Annexures 4-A and 5 to the writ petition. It appears another Civil Revision no.270 of 2000 was also filed, by some other set of aggrieved persons.

Ind Additional District Judge, after hearing the parties, dismissed both these Civil Revisions vide impugned Judgement and order dated 28.2.2000 (Annexure 6 to the writ petition), holding that no case for exparte interim injunction was made and directed Trial Court to decide Interim Injunction application(paper no.6 Ga) on merit .

Being aggrieved, plaintiffs have approached this Court by filing present writ petition under Article 226, Constitution of India with the prayer to :-

"issue a writ order or direction in the nature of CERTIORARI quashing the impugned order dated 28.2.2000 passed the A.D.J. Ind Allahabad in Civil Revision No.269/2000 (Annexure No.6 to the writ petition)" and

b) issue a writ order or direction in the nature of MANDAMUS, restraining the respondents from forcefully evicting and dispossessing the petitioners from their residential houses situated on the plot no.13, Civil Station Allahabad (known as 2 Nawab Yusuf Road, Allahabad) and from demolishing as until final decision in Suit No.188/2000 pending in the court of Civil Judge (Junior Division) West, Allahabad."

DETAILS OF PREVIOUS LITIGATION:

Before considering the grievance of the Petitioner in the present Writ Petition, it is necessary to take into account the 'previous litigation' referred to in Para 24 of the Plaint of Original Suit No.188 of 2000 - giving rise to the present writ petition.

Table given below -depicts comparative status of the Petitioners before us as well as the Plaintiffs in Original Suit No.188 of 2000 (giving rise to the present writ Petition) and the three writ petitions decided in the past by the Court:-

SL.

No.

Name

In O.S.

No.188 of 2000- Anwar Hussain Versus State of U.P. & others

Impleaded as Plaintiff no.

In Writ Petition no.10815 of 2000 -Anwar Husain and others Versus State of U.P. and others

Impleaded as petitioner no.

In Writ Petition no. 32401 of 1998-Syed Shah Khursheed Ahmad Hashmi and others Versus District Magistrate , Allahabad

and others decided on 12.11.1998(P.Basu & I. M. Quddusi, JJ)

Impleaded as petitioner no.

In Writ Petition no. 44517 of 1998-Shah Khursheed Ahmad Hashmi and others Versus State of U.P and others decided on 16.12.1999(A.A.Desai & O. Bhatt ,JJ.)

Impleaded as petitioner no.

In Writ Petition no. 5071 of 2000-Mohd. Rais and others Versus State of U.P. and others decided on 31.1.2000(O.P.Garg & S. K. Jain,JJ.)

Impleaded as petitioner no.

1.

Anwar Husain s/o of Late Mohd. Husain

1

1

56

2.

Mohd. Qadir S/o Mohd. Sabir

2

2

37

3

Smt. Shahjadi W/o late Ram Dhani

3

3

21

4

Smt. Siddiqun W/o Late Jumman

4

4

38

5.

Smt. Bano Begum w/o Shaukat Ali

5

5

35

6.

Smt. Mohisina Bibi W/o late Mohd. Yar Khan

10

10

53

7.

Smt. Zohra Begum w/o late Mubark Ali

11

11

27

8.

Smt. Akbari Begum w/o Ahmad Ali

13

13

8

9.

Smt. Zubaida Begum w/o Sabir Hussain

15

15

34

10.

Abdul Jabbar S/o Abdul Sattar

17

17

16

11.

Abdul Gaffar S/o Abdul Sattar

18

18

16

2

12.

Mohd. Saheed Siddiqui S/o late Abdul Latiff Siddiqui

19

19

60

59-Brother

13

Sri Mohd. Ismail S/o Faizullah khan

20

20

40-Brother

14.

Mohd. Jameel khan

S/o Faizullah Khan

22

22

40

15.

Mohd. Shafi S/o Late Mirai

24

24

48

16.

Nizamuddin Ahmad

S/o Badruddin Ahmad

26

26

49- Brother

17.

Mohd. Tausif S/o late Abdul Latif

27

27

59

18.

Mohd. Siddiqui S/o Subhan Ali

29

29

45

19.

Mohd. Anis S/o

Mohd. Yasin

30

30

11

20

Smt. Bilquis Latif

W/o Zainuddin

31

31

61

27- D/o Abdul Latif Siddiqui

21

Ajmeri S/o Md. Sabir

35

35

39

22

Syed Shah Khurshed Ahmad Hashmi

1

1

23.

Mohd. Raies S/o Late Mohd. Hanif

33(mother)Barkatun Nishan W/o Md. Hanif

33(mother)Barkatun Nishan W/o Md. Hanif

5

1

24.

Mohd. Hanif Siddiqui S/o Late Abdul Hassan

His wife-Barkatun Nisa no.33

His wife-Barkatun Nisa no.33

4

25

Mohd Sayeed Siddiqui S/o Faizul Husain

32-
Rasheed Ahmad(Brother)

5

On perusing the above table, it is found that out of 37-Plaintiff in Original Suit No.118 of 2000 (and the petitioners in the present writ petition) at least 21 of them were petitioners in the earlier Writ Petition No. 32401 of 1998 and 2 of them were petitioner in writ petition no.5071 of 2000. Besides it Mother, Brother, Wife and Daughter of Four of these Petitioners were also the petitioners in earlier writ petition no.32401 of 1998. Three of the petitioners in writ petition no.32401 of 1998 are petitioners in writ petition no.5071 of 2000. Whereas Syed Shah Khursheed Ahmad (claiming to be Mutwalli of the 'waqf' referred in Para 24 of the plaint) is the Petitioner in the two Writ Petition No.32401/1998 and Writ Petition No.44517 of 1998. In writ petition no.32401 of 1998, the Petitioners (which included some of Plaintiffs- Petitioners before us) had pleaded:-
".....

5. That Late Nawab Sir Mohd. Yusuf had no male or female issue. He had one nephew namely, Syed Shah Mohd. Hashmi, the father of the present Mutwalli, petitioner no.1.

6. That a wakfnama was executed on 5.4.1956 by Late Nawab Sir Mohd. Yusuf,

8. That the validity of the aforesaid Wakfnama was examined by the Hon'ble Supreme Court in Civil Appeal No.567 of 1981 and Civil Appeal no.16678 of 1996. The Hon'ble Supreme Court delivered its judgement on 28.11.1996 and the same is reported in Supreme Court cases, 1997 vol.9 page 324.....

9. That it is noteworthy that as per the terms of the object of the aforesaid wakfnama, the property in question had to be utilised for the benefit of poor penniless people and their predecessors who were poor penniless inhabitants of various portion of the aforesaid Bungalow no.2 Nawab Yusuf Road, Alld. were showered benevolence by Late Nawab Mohd. Yusuf by accommodating them in various portion of the aforesaid premises, the occupation of the petitioner and their predecessors had been continuing for their decades. The long occupation of the petitioners is well established from the factum of their occupation and the recognition thereof by Municipal Authorities and the local administration at various levels. The following documentary proof of occupation of almost of the petitioners are available which are enumerated hereunder.

(i) Ration Card

(ii) Voter-list

(iii) The receipt of house-tax and water tax.

(iv) Electricity bills.

(v) Identify Card issued by Election Commission.

(vi) Correspondences bearing address of the premises in question.

(vi) Bank Pass-book showing the address of the premises in question.

The compilation of such documents is being filed herewith and is marked as Annexure-3 to this writ petition.

10. That the aforesaid clinching documents are the conclusive evidence of the fact that the petitioners had been in occupation of premises in question in the capacity of duly recognised and authorised occupant.

18. That, thereafter, petitioners moved a representation before the District Magistrate, Allahabad on 5.10.1998. A copy of the same was also handed over to Additional District Magistrate (City), Allahabad. A true copy of the representation dated 5.10.1998 is being filed herewith and is marked as Annexure-5 to this writ petition.

Grounds (i) Because the respondents have no right to demolish the accommodation which is part of Wakf property created through a Wakf, the validity whereof has been up-held by Hon'ble Supreme Court in Appeal no.567 of 1981 and Appeal no.16678 of 1996, reported in SCC(1997)9, page 324.

(ii) Because the respondents by resolving to demolish the ages old constructions in Bungalow no.2, Nawab Yusuf Road, Allahabad (A wakf Property) without issuing any notice and without adopting any procedure of law under any Central or State Act what-so-ever are basically proceeding to trample the basis spirit of Article 21 of the Constitution of India.
(underlined to lay emphasis)

Said writ petition no.32401 of 1998 was finally disposed of vide judgement and order dated 12.11.1998, which reads :
" Hon'ble Palok Basu,J.
Hon'ble I. M. Quddusi, J.

The writ petition has been filed by Syed Shah Khursheed Ahmad Hashmi and 61 others with the following relief;

- (1) issue a writ, order or direction in the nature of writ of mandamus commanding the respondents not demolish the accommodation situated in Bungalow No.2, Nawab Yusuf Road, Allahabad.
- (2) issue a writ, order or direction in the nature of mandamus directing the respondents not to dispossess the petitioners from their occupation from Bungalow No.2, Nawab Yusuf Road, Allahabad.
- (3) issue a writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case;
- (4) to award cost of the petition to the petitioners.

Sri S. M. A. Kazmi, learned counsel for the petitioners has been heard who has placed the entire writ petition and enclosures. Sri Pradeep Kumar who has appeared on behalf of the opposite parties who are District Magistrate, Regional Manger, U.P. State Transport Corporation, Allahabad, Additional District Magistrate (City), Allahabad, Sub-Divisional Officer(Sadar), Allahabad and the Senior Superintendent of Police, Allahabad, has also been heard.

.....
Sri Pradeep Kumar, learned Additional Chief Standing Counsel has drawn the attention of the Court to the litigation which came up to this Court through Writ petition no.3136 of 1969 which was filed by Smt. Zubaida Begum widow of late Mohammad Yusuf describing herself as resident of 2, Nawab Mohammad Yusuf Road, Allahabad because lease of the property was not renewed, a photo copy of the said judgement has been filed along with the counter affidavit. It has been averred that it is a Nazul property, the lease has expired long ago, the lease has not been renewed and that the original lessee has died leaving no successor.

.....
In view of the aforesaid discussion the writ petition is finally disposed of with the direction that the pending representation of the petitioners or a fresh one which will be filed by the petitioners along with the certified copy of this order within a week from today shall be decided by the District Magistrate, Allahabad with a speaking order within three weeks from today. Copy of this order along with the writ petition be furnished within 24 hours. Status quo shall be continued till three weeks from today or decision of the District Magistrate which ever is earlier. "

(underlined to lay emphasis)

On the basis of the Ration Cards, Voter list, Receipts of House Tax & Water Tax - Electricity Bills, etc., these persons claimed to have been in possession on the basis of permission given by the Waqf. Those very persons in present Writ Petition now endeavouring to claim 'Adverse possession' on that very evidence in the suit giving rise to present writ petition.

Persons aggrieved (particularly -Petitioners of Writ Petition no. 32401 of 1998) approached District Magistrate/Collector, Allahabad by filing a 'representation'-(Annexure 5 to the writ petition no.32401 of 1998). Para 3,6 and 11 of the said representation read :

"3. That it may be stated with great respect that the validity of the aforesaid wakf and the conditions contained therein were subject matter of examination by Hon'ble Supreme Court and finally judgement was passed by Hon'ble Supreme Court, reported in Supreme Court case (1997), 9 SCC page 324 in Civil Appeal No. 567 of 1981 and Civil Appeal no.16678 of W#1996 decided on 28.11.1996. A photo copy of the judgement delivered by Hon'ble Supreme Court in respect of the aforesaid Wakfnama up-holding the validity of the same is being filed herewith and is marked as Annexure -II to this representation.

6. That it is noteworthy that all the accommodation within the premises of Bungalow no.2 are authorised constructions of which the municipal taxes are being paid by various inhabitant and their occupation over decades is well proved by innumerable proof available. The copy of some clinching documents are being collectively filed herewith and is marked as Annexure -3 to this representation.

11. That it is noteworthy that all the inhabitants have their ration cards, their names in the voter list, their other documentary evidence which would establish beyond doubt their occupation since ages over the aforesaid Bungalow which is WAKF PROPERTY. "

(underlined to lay emphasis)

The then District Magistrate/Collector, Allahabad, rejected the above representation on 3.12.1998 (Annexure 7 to Writ Petition No.44517 of 1998) and noted:

(a) Nazul Land in question -plot no.13, Civil Station Allahabad --2 Nawab Yusuf Road, was given on lease by State Government to Ms. James Samel Lions for 50 years i.e. till 31.12.1917. Ms. James transferred her rights in the said land (with the approval of the then Collector and later vide order dated 31.03.1920 lease was renewed w.e.f. 1.1.1918 in favour of Nawab Abdul Mazid for residential purpose for a period of 50 years (i.e. till 31.12.1967) at the rate of Rs.90/- per annum, and thereafter it devolved upon --Nawab Mohd. Yusuf.

(b) Nawab Mohd.Yusuf and his wife Smt. Zubaida Begum had no issue. Nawab Mohd. Yusuf , later executed 'Wakf deed' dated 5/7-4. 1956 in respect of his properties situated in Jaunpur and also Nazul Plot no.13, Civil Station Allahabad/2 Nawab Yusuf Road, Allahabad (i.e Land in question). Nawab Mohd. Yusuf appointed his Sister's Son Maternal Nephew (BHANJA), namely - Sayed Shah Hashmi as Mutwali. Nawab Mohd. Yusuf died on 3.5.1956. Name of Syed Shah Hashmi was got entered as 'Mutwalli' 31.5.1957 in Nazul Register; and lastly

(c) Smt. Zubaida Begum after death of her husband -Nawab Mohd Yusuf, filed Original Suit No.8 of 1957 (Smt. Zubaida Begum Versus Sayed Shah Ahmad Khurshed Hashmi and others) challenging validity of Wakf deed. Sayed Shah Ahmad Khurshed Hashmi died on 5.5.1962 leaving behind two sons (1) Khursheed Ahmad Hashmi, and (2) Iqbal Ahmad Hashmi. The Suit being dismissed, Civil Appeal no. 567 of 1981 in High Court and later Civil Appeal No.1678 of 1996 (Zubeda Begum and others Versus Syed Shah Khursheed Ahmed Hashmi and others) in Supreme Court were also dismissed by the Apex Court on 28.11.1996, reported in (1997)9 Supreme Court Cases 324.

(d) Perusal of aforesaid Judgement of the Supreme Court, shows that it was never brought to the notice of the Apex Court

that land in question was Nazul land which was given on lease for fixed term and limited purpose by the State Government. The State Government was not impleaded as party to the above Original Suit No.8 of 1957 or in subsequent proceedings arising therefrom and ultimately decided finally up to the Apex Court and to that extent there was no adjudication of the status/rights of the State Government vis a vis lessee in the Nazul land in question. The District Magistrate placed reliance upon AIR 1966 Allahabad page 201- (Mst. Peeran W/o Abdul Razzaq Versus Hafiz Mohammad Ishaq and others) wherein this Court categorically held that lease property could not be subject matter of 'Waqf' and the 'State', as absolute owner, was legally competent to resume possession after expiry of lease period.

The District Magistrate held that the State Government was legally entitled after expiry of 'lease period' to resume the premises in question after expiry of 'lease period' which the State Government proposed to utilise for 'public purpose', namely, to extend Civil Lines Bus Stand and shift Leader Road Bus Stand.

(e) While rejecting the representation, District Magistrate also directed Sayed Shah Khurshed Ahmad Hashmi and 61 other persons (who were petitioners in writ petition no.32401 of 1998) to remove unauthorised structures and vacate the Nazul plot in question within one month or otherwise face eviction by force.

Having failed before the District Magistrate, Syed Khurshed Ahmad Hasmi along with others filed, Writ Petition No.44517 of 1998 (Syed Shah Khurshed Ahmad Hashmi and others Versus State of U.P. and others) against aforesaid order dated 3.12.1998 passed by the then District Magistrate. This writ petition was dismissed vide Judgement and order dated 16.12.1999; the relevant extract of the said judgment is quoted below :-

"Hon'ble Ashok A. Desai, J.

Hon'ble Onkareshwar Bhatt,J.

.....
 Heard Mr. P.C. Misra, learned counsel for the petitioner at length. The main theme of the contention is that the petitioner is entitled to a continuance of a lease and secondly it being a Waqf property, Waqf Board is entitled to a notice before divesting the property or transferring the lease. With the assistance of Mr. Misra and learned counsel for the respondents we perused the documents. In our view the claim of the petitioner is totally devoid of merit for the following reasons.

A- Undisputedly, the lease was for a period of 50 years with effect from 1.1.1918. Undisputedly, it has expired on 31.12.1967. One of the revenue documents on which reliance is placed by the petitioner has indicated this aspect in Col. 10.

B- Zubeda Begum, widow of the author of Waqf Nawab Mohd. Yusuf filed suit. One of the questions she raised that her husband Nawab Mohd. Yusuf was not competent to create a Waqf. Civil Court negated all the contentions and dismissed the suit.

C- Zubeda Begum also challenged the eviction notice by filing writ petition. This Court by judgment dated 57.1971 dismissed the petition and observed that the Government took decision not to renew the lease. This Court also referred that a lease deed incorporated the clause to hand-over the vacant possession after expiry of the period.

D- After 20 years the petitioner, in a capacity of Mutawalli, applied for renewal. Renewal was not granted. Even though the learned counsel relying on a Supreme Court decision, claimed a right of continuance of lease. The petitioner has not questioned the non-renewal.

E- The petitioner after 10 years elected the occasion of publication in newspaper of transferring the lease in favour of the Corporation for filing the petition. Undisputedly, even at that time there was no continuing lease.

In view of this, the ground of the petitioner that Waqf Board was entitled to a notice is totally devoid of substance since at the relevant time Waqf did not hold the property as a lessee has come to an end on 31st December, 1067.

Since the Government took a decision to utilize the land for a public purpose, namely, to establish a bus stand of a Transport Corporation. The petitioner had no legitimate right to claim the renewal of lease. In view of this, we find that the petition is devoid of merit and is liable to be dismissed.

The petition is dismissed. "

(underlined to lay emphasis)

The very next day itself, i.e. 17.12.1999, Syed Shah Ahmad Khurshed Ahmad Hashmi filed an affidavit sworn by him on 16.12.1999 at 5.P.M. (by 'Amar Bhadur Singh' Clerk of Sri P. C. Mishra, Advocate, High Court Allahabad) in W.P. No.44517 of 1998. Para 1, 2 and 3 of the said affidavit read:-

" 1. That the deponent is the petitioner in the aforesaid case and as such he is fully acquainted with the facts of the case deposed to below.

2. That the deponent is in possession over the premises in dispute since 1962. The aforesaid writ petition has been dismissed by this Hon'ble Court. The petitioner has no alternative arrangement to shift immediately and it will take time to make arrangement and as such 3 months time may kindly be granted to vacate the Bunglaw.

3. That the deponent undertakes to vacate premises after the time granted by this Hon'ble Court. "

(underlined to lay emphasis)

In view of the above development, this Court again passed order dated 3.1.2000, which reads:

"Hon. A.A.Desai, J.

Hon. Onkareshwar Bhatt,J.

Later on on 17.12.1999 the petitioner presented an affidavit seeking time to vacate.

Heard learned counsel for the petitioner. He does not wish to press the prayer for extension of time. As such the same is rejected as not pressed. "

Against aforementioned judgement and order dated 16.12.1999 Syed Shah Khurshed Ahmad Hashmi filed Special Leave to Appeal (Civil) no.4329 of 2000 in the Apex Court which was dismissed vide judgement and order dated 7.9.2001 (Annexure

no.1 to the Civil Misc. (listing) Application No.84799 of 2001 in the present Writ Petition). The said order reads:-
"The Special leave petition is dismissed. "

This shows that Division Bench Judgement & Order dated 16.12.1999 (quoted above) had become final.

It is fully proved on record that Syed Shah Khurshed Ahmad Hashmi (petitioner in Writ Petition No.44517 of 1998) and Sixty one petitioners in writ petition No.32401 of 1999 had earlier approached this court claiming relief on the plea of 'Waqf', they never claimed to be trespassers or illegal/ unauthorised occupants and that their constructions on the premises in question, according to their own case in previous litigation, were with the consent of the Mutwali.

Mutwali' having failed to establish his right or claim over the premises in question and having finally lost the case after contest up to the Apex Court, no person claiming through alleged 'WAKF' has legal right to continue in possession over any portion of the premises in question nor it is now open for them (or their Legal representatives) to take contrary stand and plead Adverse Possession.

The above orders show that there was no case of 'Adverse Possession' against true owner (i.e. the State) in the past till Original Suit no.188 of 2000 was filed.

Five persons, namely, Mohd. Rais, Abdul Gaffar, Amar Nath Pandey, Mohd Hanif Siddiqui and Mohd. Sayeed Siddiqui (at least three of them are Plaintiffs-Petitioners in the present writ petitions) filed writ petition no. 5071 of 2000.- Mohd. Rais and others Versus State of U.P and others. Para no.9, 10, 15 and 21 of the writ petition read:-

9. That it is noteworthy that as per the terms of the aforesaid Waqfnama, the property in question had to be utilised for the benefit of poor penniless people and their predecessors who were poor penniless inhabitants of various portion of the aforesaid Bungalow No.2, Nawab Yusuf Road, Allahabad were showered benevolence by Late Nawab Mohd. Yusuf by accommodating them in various portion of the aforesaid premises, the occupation of the Mutawalli and their predecessors had been continuing for three decades. The long occupation of the petitioners is well established from the factum of their occupation and the recognition thereof by Municipal Authorities and the local administration at various levels. The following documentary proof of occupation of almost of the petitioners are available which are enumerated hereunder :

- (i) Ration Card.
- (ii) Voter-list.
- (iii) The receipt of house-tax and water tax.
- (iv) Electricity bills.
- (v) Identify Card issued by Election Commission.
- (vi) Correspondences bearing address of the premises in question.
- (vii) Bank Pass-book showing the address of the premises in question.

10. That the aforesaid clinching documents are the conclusive evidence of the fact that the petitioners had been in occupation of premises in question in the capacity of duly recognised and authorised occupant.

15. That the Mutwalli Syed Shah Khurshed Ahmad Hashmi filed Civil Misc. Writ Petition no.32401/98 making direction not demolish the construction of the premises of Bungalow no.2. This Hon'ble Court by order dated 12.11.1998 directed the District Magistrate to decide the representation within 3 weeks with direction to maintained status quo.

21. That in view of the order dated 3.12.1998 passed by the District Magistrate the petitioners are being removed without making any offer of alternative land and the accommodation."

(underlined to lay emphasis)

In this petition also there is no claim of hostile or of adverse possession with notice to the true owner. This writ petition was also dismissed by Division Bench of this court vide judgement and order dated 31.1.2000; for convenience relevant extract of it is reproduced :-

"Hon. O.P. Garg, J.

Hon. S.K. Jain, J.

.....
The dispute relates to Bungalow no.2 situate at Nawab Yusuf Road, Allahabad. It is a Waqf property. The petitioners, it is alleged are the occupants of certain portions of the said bungalow. It is stated that same portion of the aforesaid property is likely to be demolished by the Nagar Nigam, Allahabad. Since the petitioners have occupied the premise without any valid authority, they have no right to question the demolition. No interference in the matter is therefore, warranted.

The writ petition is dismissed.

However, the petitioners are directed to vacate the portions occupied by them in the said bungalow within a period of 15 days from today and if they do not do so the Nagar Nigam shall be at liberty to act in accordance with provision of the Act. It would also be open to the Nagar Nigam to evolve some scheme for the rehabilitation of the petitioners."

(Underlined to lay emphasis)

Points raised by the learned counsel for the parties are discussed hereinafter :

I.- REGARDING JURISDICTION OF DIVISION BENCH :-

Learned counsel for the petitioner, at the outset, raised an objection that this writ petition should be listed before Single Judge.

The said objection was, however, withdrawn when the counsel was confronted with the order of Hon'ble the Chief Justice dated 26.5.2005.

It will be recalled that present writ petition, (arising out of order passed by Trial Court rejecting Interim Injunction application in original Suit, is ordinarily cognizable by a bench of Single Judge. In the instant case, however, a statement was made before learned Single Judge that the dispute in the present Writ Petition overlaps the subject matter of some writ petitions heard by 'Division Bench' as Public Interest Litigation(PIL). Consequently, Hon'ble the Chief Justice, exercising powers under Chapter V Rule 8, Rules of Court, 1952 (as Amended up to date), directed present writ petition to be heard by Division Bench hearing writ petition as PIL.

Objection, of the above nature is deprecated. We have no doubt that it is apparently raised with an 'ulterior-motive' to delay the hearing of the writ petition on every possible pretext/excuse because petitioners are enjoying illegal and unauthorised 'possession' under learned Single Judge ex parte- interim order in the Writ-Petition.

The above conduct of the petitioners is also evident from the fact that they engaged one counsel after another-from time to time and sought for adjournments on this score. Above facts are writ large and reflected on the perusal of the order-sheet of the present writ-petition.

II - NON-IMPLEADMENT OF U.P.S.R.T.C, A NECESSARY PARTY:

U.P. State Road Transport Corporation (U.P.S.R.T.C.) filed Civil Misc. Impleadment Application No.36578 of 2000 (supported by affidavit sworn by A.K. Srivastava, the then Regional Manager, UPSRTC) praying for impleadment of 'UPSRTC' as Respondent no.4. Para 2 of the said Affidavit read :-

"2. That the petitioners filed the present writ petition challenging the order passed by the Additional District Judge, Allahabad. Despite the fact that the Corporation had filed a caveat not only in the suit no.188/2000 but also in the revision nos.269 of 2000 and was also a party in the earlier writ petition nos. 32401 of 1988: Sayeed Shah Khurshid Ahmad Hashim and 62 others Vs. U.P.S.R.T.C and others and writ no.44517 of 1998: Sayeed Shah Khurshid Ahmad Hashmi Vs. U.P.S.R.T.C; and others filed relating to the land in question yet the petitioners have not impleaded the U.P. State Road Transport Corporation in the present writ petition."

Copy of this application was served upon the learned counsel representing the petitioners on 27.4.2000 but, as also admitted by the learned counsel for the petitioner, no counter affidavit to contest the said application was filed. Along with Impleadment application, U.P.S.R.T.C also filed a Civil Misc. (Stay Vacate) Application No.36579 of 2000 as well as parawise counter affidavit (in reply to the Writ Petition) sworn by A. K. Srivastava, the then Regional Manager, U.P. State Road Transport Corporation, Allahabad. This Court allowed impleadment application by means of order dated 11.8.2005, which reads:-

" Hon'ble A.K. Yog, J.
Hon'ble B.B.Agarwal, J.

Refer to Court our dated 19.3.2002 on Applic. No36649 of 2002.

No objection or counter affidavit filed in spite of notice being given way back on 27-4-2000 to learned counsel for the petitioner Ms. Sadhana Upadhyay, Advocate. Otherwise also, petitioner is not in a position to dispute that premises is required by the Respondents (particularly existing bus stand in the management of U.P. State Road Transport Corporation-called UPSRTC). Apart from the above, we find that along with Stay Vacate Application No. 36579 of 2000, the applicant/UPSRTC also filed counter affidavit (sworn by A.K.Srivastava, the then Regional Manager, UPSRTC, Allahabad) containing parawise reply to the writ petition itself. Petitioner has filed rejoinder affidavit in reply to the said counter affidavit of UPSRTC. Impleadment of UPSRTC is thus a procedural formality and by UPSRTC being brought on record in the array of the parties, hearing of the case is not to be delayed.

In view of the above, Impleadment application is allowed.

Learned counsel for the petitioner is directed to make necessary correction and implead UPSRTC as Respondent No. 4 at relevant places in the record of the writ petition today in Court failing which registry shall make note to this effect."

The Petitioners have not cared to implead UPSRTC- a necessary party and failed to comply with the direction given by the Court in this respect. The Writ-Petition can be dismissed on this score only.

III. REGARDING ADVERSE POSSESSION:

On behalf of the petitioners it is next argued that they are in 'possession' of the premises in question and have a right to maintain the same by maturing right on the ground of 'Adverse Possession'. It is further argued that they ought to have been granted ad interim injunction to restrain the Defendants from demolishing their constructions over the land in dispute so that suit was not rendered infructuous.

In reply, Sri Samir Sharma, Advocate, joined by the learned Standing Counsel, submit that the case of the petitioner on the ground of adverse possession is on the face of record, untenable inasmuch as the pleadings as a whole in the plaint, even if assumed to be correct for the sake of argument, are not sufficient to decree the Suit on the ground of Adverse possession. It is pointed out that there is no pleading in the plaint to the effect that alleged possession was 'open', 'hostile' and coupled with the proclamation, within the knowledge of 'true owner',namely; the State Government, of their independent title. It is submitted that legal status of State or State Government cannot be equated with that of private individuals in the matter of claim of title on the basis of 'Adverse Possession'.

The relevant pleadings in the plaint on the issue of 'Adverse Possession' are contained in Plaint para 19, 24 25 & 28; wherein Plaintiffs-Petitioners have asserted :-

(i) Plaintiffs perfected and matured their rights by raising certain constructions which are about 40 years old.

(ii) The constructions were made by the Plaintiffs openly 'independently' 'in the knowledge of the Government', and

(iii) 'no objections were raised by the Government' and

(iv) hence the rights of the Plaintiffs have matured over the 'disputed constructions'- which is the property in dispute.

To claim immunity from action of dispossession at the instance of True Owner in law, one has to plead and prove-(i) continuous possession over property in question beyond period of Limitation within which True Owner can bring an action in law (ii) such possession has been throughout open and hostile (iii) the 'True Owner' has notice/knowledge that the person alleging his possession is claiming independent right/Title over the property in question as against the 'rights' and 'Title' of the True owner; and (iv) that such True Owner has failed to assert his title within the requisite period of Limitation.

Conspicuously, there is no categorical pleading in the plaint that possession over the land in question was proclaimed to be 'adverse' or 'hostile' visa vis the 'True Owner' (i.e. State) and in spite of notice /knowledge thereof the True Owner failed to assert and claim their own 'Title' or ownership in the premises in question.

The Plaintiffs thus even failed to plead necessary facts constituting essential ingredients to establish their title by 'Adverse Possession'. In absence of necessary pleading, Plaintiffs cannot claim 'Decree' on the ground of 'Adverse Possession'. Filing of Original Suit no.188 of 2000, giving rise to present writ petition, in the murky back-ground, where curtains were rung in earlier litigation as noted above, unmistakably show that the present litigation is nothing but a handiwork of the petitioners to hoodwink the earlier decision of High Court in Writ Petition No.5071 of 2000 and somehow manage to perpetuate their "illegal possession". Plea of "Adverse-possession", after previous litigation of 30 years is a blatant attempt of taking a somersault by resorting to contrary pleading in the present Original Suit No.188 of 2000.

It is a paradox of law that sometimes persons in their anxiety to elude the coils of legal machinery and zest to over reach judicial decision, tend to exaggerate the dimensions of their own misbehaviour. The case in hand is a glaring example of it and of malicious adventure by the plaintiff-petitioners. Litigation perseverance is not to be encouraged or rewarded.

It is interesting to note that the facts pleaded in para 24 of the Plaint are contrary to what some of these Plaintiffs/petitioners or their predecessors/Legal representatives had pleaded in earlier writ petitions.

Plea of maturing 'title' by way of adverse possession was never pleaded or claimed by any of them in the earlier writ petitions. On the contrary, in earlier Writ Petitions all these people claimed rights on behalf of and through 'Mutwali' of an alleged 'waqf' created by erstwhile lessee late Nawab Mohd. Yusuf (as claimed by Shah Khurshed Ahmad Hashmi). These non-disclosures and apparent contradictions, completely belie the case of 'Adverse Possession' pleaded by the plaintiffs/petitioners in the Plaint as discussed later in this judgement.

From the above, it is apparent that present suit is based on concocted/frivolous pleadings and the same are 'after thought'. Shri Sameer Sharma, Advocate, also pointed out that plaintiffs-petitioners, for the first time, came in picture, when Syed Shah Kurshed Ahmad Hashmi and 61 persons lost in writ petition no. 32401 of 1998.

Record of previous litigation show that Government had taken decision to resume possession of the premises in question for public purpose (i.e. shifting of Roadways Bus Stand from congested old city area, Allahabad Zero Road) vide its order/decision dated May 3, 1969 and notices were given accordingly to Khursheed Ahmad Hashmi, Iqbal Ahmad Hashmi and widow of the Original lessee (Smt. Zubeda Begum).

Smt. Zubeda Begum filed writ petition no. 3136 of 1969-(Smt. Zubeda Begum Versus The Collector, Allahabad and others) seeking to challenge aforesaid eviction notice. The said writ petition was dismissed vide Judgement and order dated 5.7.1971. The relevant extract of the said judgement reads :-

"Smt. Zubeda Begum has filed the present petition challenging notice dated 30th June, 1969 issued by the Collector Allahabad, which required the petitioner to vacate the premises known as Bangalow No.2 Nawab Yusuf Road, Allahabad and to deliver the vacant possession of the Site No.123, Civil Station, Allahabad failing which she was to be evicted therefrom.

.....
In view of what I have stated above, this petition fails and is accordingly dismissed with costs.

Dated 5.7.1971

Sd/-

K.N.S "

(underlined to lay emphasis)

Lease expired in 1967. Plaintiffs claim to be in possession of their respective portions of the land in question on the basis of permission given by the 'Mutwalli' of the alleged 'Wakf'. Admittedly, notice for eviction was given by the State Government to the lessee in the year 1969. As alleged by plaintiffs-petitioners, 'disputed' constructions were raised 40 years, (before filing of original suit not 188 of 2000) that is somewhere in 1960. Apparently plaintiffs-petitioners, by no stretch of imagination, could mature rights on the basis of their alleged 'possession' which was, otherwise apparently not for more than 8 to 9 years in 1969 (out of which 7 years 1960-67 was either permissive or under interim order or Court in previous litigations.

On the own showing of the Plaintiffs, their 'Possession' started somewhere in the year 1956; they obtained ration cards, electricity and water connections and receipts in lieu of payment of Bills on the above address; and allegedly paying house tax and water tax to the concerned authorities/local bodies and on that basis, they claim to have matured their rights over their respective portions of the land by 'adverse possession' (para 9 of the writ petition). None of the above documents at all show that their possession was 'hostile' or 'adverse' to the title of the true owner (i.e. the Defendants).

Plaintiffs-petitioners do not have even a 'Prima facie' no case on merit.

IV- ABUSE OF PROCESS OF COURT AND LAW :-

From the record of 'previous writ-petitions and other litigations' - it is already noticed earlier in the judgement, that some of the persons who were parties to the earlier writ proceedings in High Court (apart from Syed Shah Khurshed Ahmad Hasmi) but lost the battle in Court, are now the plaintiffs-petitioners before us.

It is interesting to note that writ Petition no.44517 of 1998 and Writ Petition no.5071 of 2000 were dismissed on 16.12.1999 and 31.1.2000 respectively while 'plaint' of Original Suit no. 188 of 2000 has been verified on 8.2.2000, i.e. within 8 days of

dismissal of Writ-Petition no.5071 of 2000. The close proximity between the two events is strikingly significant and unmistakably hints suggest and convinces one to believe that there is a definite link between the parties in the two proceedings .

Previous litigation between the parties amply demonstrates abuse of process of Law & Court. The facts on record as noted above show that Original Suit no.188 of 2000 is nothing but an off-shoot of 'previous litigation' initiated by those persons who have in the past lost in the Court only a few days back and that the Original Suit No.188 of 2000 is to litigate by proxy to over-reach earlier judgements (particularly Judgement dated 31.1.2000).

The plaintiffs-petitioners, (even though some of them were parties to the previous litigation) are guilty of not disclosing relevant and material facts of Writ Petition No.32401 of 1998 dismissed on 12.11.1998 and dismissal of Writ Petition No. 44517 of 1998 on 16.12.1999 (filed by so called Mutawalli on the basis of alleged Waqf) dismissal of S.L.P. on 7.9.2001 by the Apex Court and dismissal of Writ petition no.5071 of 2000 on 31.1.2000, by Division Bench issuing mandamus to vacate the premises in 15 days. In these circumstances there is no hesitation in holding that the plaintiffs/petitioners before us are guilty of playing fraud and committing gross abuse of process of law and Court. Fraud vitiates equity and everything and relief of Injunction under specific Relief Act in the above background cannot be granted to the plaintiff-petitioners.

V- REGARDING RES JUDICATA :

Supreme Court, the case of Gulabchand Chhotalal Parikh Versus State of Gujarat, AIR 1965 SC 1153, held that the decision in earlier writ petition on merit shall operate 'res judicata' in subsequent proceedings; relevant Para 60,61 and 62 of the judgement are quoted :-

60. As a result of the above discussion, we are of opinion that the provisions of S.11, C.P.C., are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject matter. The nature of the former proceeding is immaterial.

61. We do not see any good reason to preclude such decisions on matters in controversy in writ proceedings under Arts. 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. We, therefore, hold that, on the general principle of res judicata, the decision of the High Court on a writ petition under Art. 226 on the merits on a matter after contest will operate as re judicata in a subsequent regular suit between the same parties with respect to the same matter."

(Underlined to lay emphasis)

(2) In the case of- Union of India. Vs. Nanak Singh, AIR 1968 (3) SC 1370 Supreme Court held :

"6. If the order of the High Court in appeal from the order in the writ petition operated constructively as res judicata, it might have been necessary to consider the question which was left open by the Court in Gulabchand's case, AIR 1965 SC 1153. But in our view the judgment in the previous case operates by express decision as res judicata. It is true that in order that the previous adjudication between the parties may operate as res judicata, the question must have been heard and decided or that the parties must have an opportunity of raising their contentions thereon....."

(Underlined to lay emphasis)

(3) Similar view is taken in the case of The State of Punjab Vs Bua Das Kausahl, AIR 1971 SC 1676(4); wherein it observed:

"4."

The question whether the decision in a writ petition operates as res judicata in a subsequent suit filed on the same cause of action has been settled by this court in Union of India v. Nanak Singh, (1998)2 SCR 887= (AIR 1968SC1370). It has been observed that there is no good reason to preclude decisions on matters in controversy in writ proceedings under Art. 226 or Art. 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of finality of decision after full contest."

(Underlined to lay emphasis)

(4). In case of Govt. of Andhra Pradesh Versus M. Narasimha Murthy, AIR 1991 SC 1732 (P-4) is quoted below:-

"4. It has to be noticed, as rightly contended by Mr. Nambiar, that the jurisdiction of the Tribunal was specifically in issue in the writ filed by the respondent challenging the order of dismissal. He had contended that R.3(2) was invalid. The High Court dismissed the writ upholding the dismissal of the respondent. It was open to the respondent to contend before this Court in the special leave petition instituted by him that the High Court was wrong in not specifically rendering a finding as to the validity of R.3(2). Whatever that be, the special leave petition having been dismissed, the decision of the High Court upholding the Government's order dismissing the respondent had become final. Subsequently, it was into open to the respondent to agitate the very same question in a suit which he subsequently filed. It was a clear case of the question having been already concluded by the decision of the High Court dismissing the writ in which he had specifically raised the question as to the validity of R.3(2)."

VI- DECREE OF INJUNCTION - DISCRETIONARY REMEDY :-

'Injunction' Decree cannot be claimed as of right. It is a discretionary relief (and not as of right) under Specific Relief Act; and Court can refuse to grant it on the ground of conduct of plaintiff or for other reasons which may be expedient and in the interest of justice and equity.

VII- PETITIONERS' CONDUCT -DISENTITLE THEM RELIEF :

Petitioners have dis-entitled them to claim relief in the present petition under Article 226, Constitution of India as they have not approached this Court with clean hands being guilty of deliberately suppressing of relevant facts; knowing attempting to mislead the court and thus abusing process of law and court; as held in :

(1) 1951 All 746 (FB)- para 51.

(Asiatic Engineering Co. Vs. Achhru Ram and others)

"51. In our opinion, the salutary principle laid in the cases quoted above should appropriately be applied by Courts in our country when parties seek the aid of the extraordinary powers granted to the Court under Art. 226 of the Constitution must come with clear hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements & from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression, misrepresentation or misstatement of facts. Applying this principle to the present case, we feel that, in this case, the petitioner Company has disentitled itself to ask for a writ of prohibition by material suppression, misrepresentation & misleading statement which have been found by us above....."

(2) AIR 1983 SC 622- (para 1)

(Dr. Vijay Kumar Kathuria and others Versus State of Haryana and others)

"1. After holding a fulfilled enquiry during the course of which oral as well as documentary evidence was produced by the parties in support of their respective versions, the District Judge has recorded a finding against the petitioners to the effect that to their knowledge their provisional admissions had been cancelled by the concerned authorities much before the crucial date namely, 1-10-1982. In other words, it is clear that on 1-10-1982 the petitioners made a false representation to this Court that they were continuing their studies as post-graduate students of Medical College Rahtak on 1-10-1982, and obtained an order of status quo as of that date to be maintained from this Court. But for the misrepresentation this Court would never have passed the said order. By reason of such conduct they have disentitled themselves from getting any relief or assistance from this Court and the Special Leave petition are liable to be dismissed."

(3) AIR 1996 S.C. 1733 (Pr. 4, 7 & 9)

(Municipal Corporation of Delhi versus Kamla Devi and another)

4. In the present appeal filed by the Municipal Corporation, it is stated that having filed an appeal against the assessment order, Kamla Devi filed a suit in Ghaziabad deliberately concealing the fact of filing of the said appeal and has obtained a decree thereby trying to hoodwink the Courts below. It is then stated in Para 10 that the Corporation has sent a Bill dated July 8, 1991, to the respondent-assessee on the basis of the assessment order dated July 8, 1991, to the respondent-assessee on the basis of the assessment order dated January 28, 1991, and that it was shocked when it was apprised of an order of stay passed by a Court in Uttar Pradesh. It is also stated that the Corporation has not received any suit notice from the Ghaziabad Court. Since the filing of the suit in Ghaziabad Court is said to be an abuse of the process of Court, it is prayed that the said judgement and decree be set aside by this Court.

7. The first question is whether the filing of this suit by Kamla Devi in Ghaziabad Court was a proceeding taken bona fide by her or whether it was only a sharp practice designed to abuse the process of law and to take unfair advantage over the Corporation. On a consideration of the facts and circumstances of the case, we are satisfied that it was a clear case of abuse of process of Court and of law. We are also satisfied that the averment made in para 2 of the plaint to the effect that the officers of the appellant-Corporation went to Ghaziabad to attach the movables of Kamla Devi or her grand-children to realise the tax under the order dated January 28, 1991, is a total falsehood and was a mere pretence to create jurisdiction in Ghaziabad Court. Not a single document or any other scrap of paper has been filed before the Ghaziabad Court in support of the said allegation. Moreover, the frame of the suit and the language and terms in which the declaration and prohibitory injunction are asked for suggest a clear attempt to overreach the process of Court. The object clearly was to obtain a declaration that the assessment order dated January 29, 1991, is illegal and invalid from a Court outside Delhi. the fact that Kamla Devi (plaintiff) chose to conceal the fact of her filing the appeal against the said assessment order is also indicative of the mala fides on her part. It is true that the Court has limited the prohibitory injunction only to properties in Ghaziabad but it has granted a declaration that the very assessment order to valid and illegal which means that it cannot be enforced even within the limits of Delhi Municipal Corporation. In the Special leave Petition, it is stated by the Corporation that the Bill of demand pursuant to the assessment order aforesaid was sent only on July 8, 1991, to the respondent whereas the suit was filed on April 19, 1991. Once this Court is satisfied that Kamla Devi has abused the process of law and misused the legal system, the objections put forward by the respondents' counsel are of no consequence. this Court is entitled to act in such cases to prevent such abuse and misuse."

9. Accordingly, this appeal is allowed, the judgement and decree of the learned Civil Judge, Ghaziabad, Uttar Pradesh dated September 11, 1991, in Suit No.451 of 1990, is set aside. In view of their reprehensible conduct the respondents (legal representatives of Kamla Devi, who appeared in this Court as representing her estate) are directed to pay exemplary costs in a sum of rupees fifty thousand. Such practices ought to be put down with a stern hand so that others similarly minded may desist from indulging in similar acts.

Conduct of the petitioners cannot be approved in the interest of justice "Ex-debito Justiae". In the instant case, Original Suit No. 188 of 2000 (giving rise to the present writ petition) is outcome of unscrupulous designs on the part of plaintiff-petitioner.

This suit is unmistakably a shame litigation; Respondents have been; dragged into frivolous litigation; and contest it at the expense of public "money" apart from the fact that a public welfare Scheme has been frustrated since 1969 (about 36 years). Move of the State Government to take possession of the premises in question for public purpose has been forestalled by obtaining interim order by pursuing frivolous litigation on suppressing material facts.

Legal Maxim Allegans Contraria Non Est Audiendus' means -He is not to be heard who alleges things self-contradictory to each other. The underlying principle is that once foundation falls everything falls. The plaintiffs-petitioners and their predecessor, as the record shows took recourse to contrary pleading the Original Suit no.188 of 2000 and the previous litigation.

Writ jurisdiction under Article 226 and 227, Constitution of India, is a constitutional remedy and it is the prerogative of the High Court to check sharp practise at the behest of unscrupulous litigants.

In the case of T. Arivandandam Vs. T.V. Satya pal and another,(1977)4 SCC 467, Apex Court held :-

"We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful -- not formal --reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue,The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi :

" It is dangerous to be too good."

Reference may be made to the case of-Baroda Municipal Corporation Versus Sharmjivi Bathlary Association and others1992 Suppl (2) SCC 629, wherein Apex Court observed :

1.The respondents before us were parties to an earlier proceeding in this Court being Writ Petition No.657 of 1986 and had in terms of the directions of the Court dated May 2, 1986 given undertaking to the Court that they shall remove the handcarts, cabins etc. on or before December 31, 1986,

3. We are of the view that it was an attempt to thwart the scheme by approaching the civil court. It is an abuse of process of the court and gives rise to a situation where contempt action should lie. We, however, do not propose to take such action, but consider it very appropriate and in the interest of justice to direct dismissal of the suit itself. By this order of ours, the said suit being No.1761 of 1989 in the Court of VIth Joint Civil Judge, Sr. Division, Vadodara shall stand dismissed and all interlocutory orders made therein shall stand dismissed.....

(Underlined to lay emphasis)

Again, in-M/s Pepsi Foods Ltd., Vs. S. J. Magistrate & others-JT 1997(8) SC 705 (para 30) Apex Court observed :-

"30. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245 (2) of the Code or to face trial when the complaint and the preliminary evidence recorded make out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising their jurisdiction. Provisions of Article 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view the High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it."

Supreme Court, approving High Court judgement approach-that ".....Litigious perseverance is not to be rewarded, rather it is to be discouraged....." in the case of Abdul Rehman Vs. Prasony Bait Anr, (2003) 1 Supreme Court Cases 488 held- vide para 18, 31 & 33 as follow:-

"18. A bare perusal of the said provision leaves no manner of doubt that the High Court had the requisite jurisdiction to suo motu withdraw a suit to its file and adjudicate itself all or any of the issues involved therein.

31. In the aforementioned situation, in our opinion, the appellant must be held to have taken recourse to abuse of the process of court underlying the principle that the litigation should be allowed to attain finality in public interest. Although the concept of issues estoppel or estoppel by records are distinct and separate from the concept of abuse of process in public interest, the court may refuse the plaintiff from pursuing his remedy in a court of law.

33. We are, further, of the opinion that no case has been made out for interference with the impugned judgement in exercise of jurisdiction of this Court under Article 136 of the Constitution of India, even it be held that the High Court had committed some irregularities in withdrawing the suit and disposing of the same."

Present petition was filed on 29 February, 2000 and an ad interim order was passed by learned Single Judge :

"Hon. R. H. Zaidi, J.

" Notice on behalf of the respondents have been accepted by the learned Standing Counsel. He prays for and is granted three weeks time to file counter affidavit. Two weeks thereafter granted to the petitioner to file rejoinder affidavit.

List thereafter.

In the meanwhile the operation of the impugned order dated 28.2.2000 shall remain stayed until further orders of this Court.

Further the parties are directed to maintain status quo as on today.

Let a certified copy of this order be given to the learned counsel for the petitioner on payment of usual charges today. "

In view of the above, it is stated at the Bar that Trial Court, could not proceed with the decision of the ad interim injunction

application on merit and the original suit is still pending as such.

This Court did not stay hearing of the Original Suit and why it is kept pending by the Court below is difficult to appreciate. Present Writ petition was, however, dismissed in default on 14.2.2002. Petitioner filed Civil Misc. Recall/Restoration Application No.36649 of 2002 (along with Affidavit of Anwar Hussain) which was allowed. The Writ petition was restored vide court order dated 19.3.2002-

" Hon.R.H.Zaidi,J

Heard learned counsel for the parties.

Cause shown for the absence on the date fixed is sufficient. The order dated 14.2.2002 is hereby recalled. The writ petition is restored to its original number. The interim order, if any granted earlier, shall continue.

Learned counsel for the petitioner prays for and is granted ten days time to file rejoinder affidavit.

List this petition for hearing on 8th April, 2002 alongwith the writ petitions no.32401 of 1998 and 44517 of 1998. The impleadment application shall be heard at the time of hearing of the writ petition. "

Impleadment Application, referred in the above order, was filed by UPSRTC.

Petitioners again filed Civil Misc. Application no.88310 of 2001 (for modification of order dated 29-02-2000 passed by R. H. Zaidi, J.). The prayer made in this Application reads:-

" It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to modify the stay order dated *26.2.2000 passed by Hon'ble R. H. Zaidi, J. up to the extent that the respondents may be restrained from taking any further steps regarding the ejection of the petitioners or demolition of the existing houses of the petitioners existing over the land in dispute by taking help of their agency namely Uttar Pradesh State Prades State Regional Transport Corporation, and/or may pass any other further suitable order which this Hon'ble Court may deem fit and proper under the circumstances of the case." (underlined to lay emphasis)

*NOTE: Date 26.2.2000 may be read as 29.2.2000.

Prayer made in Civil Misc. application no.88310 of 2001 in the writ petition shows that the plaintiffs-petitioners were fully alive to the fact that possession was being taken by U.P.S.R.T.C, the relief sought by them was precisely against U.P.S.R.T.C, still they did not implead U.P.S.R.T.C. This also casts serious aspersions upon 'bona fide' of the plaintiffs-petitioners and present writ petition is liable to be dismissed on this score also.

This Application was rejected by this Court on 11-08-2005 and Petitioner was directed to implead UPSRTC as Respondent in the Writ Petition because UPSRTC was party in earlier Writ Petitions and also applied for impleadment in the Original Suit (giving rise to the present Writ Petition). The Petitioner/Plaintiff did not implead UPSTRC with an ulterior Motives and oblique purpose deliberately to linger the litigation as they had an ex parte interim order in their favour. Writ Petition is, therefore, liable to be dismissed summarily on the ground of non-impleadment of necessary party (i.e. UPSRTC).

Court below, II Additional District Judge, Allahabad refused to grant exparte injunction vide impugned Judgement and order dated 28.2.2000 taking into account that present Suit was for same 'Lis' as was in earlier litigation (being writ petition no.32401 of 1998, writ petition 44517 of 1998 and writ petition no.5071 of 2000) wherein several persons (including the plaintiffs-petitioners) had litigated with respect to the same property but lost. The trial court order refusing to grant exparte injunction is affirmed by the Lower Appellate Court on sound and cogent reasons.

In the last we note that under impugned order dated 28.2.2000 (passed by the lower Appellate Court) Trial Court was directed to consider ad interim injunction application (6 Ga) on merit and decide the Application after hearing the parties at the earliest but still the same has remained pending because of this Writ Petition.

We find no manifest error apparent on the face of record in the impugned judgement passed by the Courts below.

Even at the cost of repetition, we emphasise that Original Suit no.188/2000 cannot be allowed to continue as it is gross abuse of process of Court. It is the obligation of this Court-not only to deprecate and discourage such litigation but also to curb this kind of tendency by bringing an end to such litigation.

Plaintiffs-petitioners are also liable to pay costs as held in 1994(4) S.C.C. 711 (para 15)- Oil and Natural Gas Commissioner Vs. Utpal Kumar Basu and others which reads:-

" 15. In the result, we allow this appeal, set aside the order of the High Court and direct that the writ petition will stand disposed of for want of jurisdiction. Since we are satisfied that NICCO had not invoked the jurisdiction of the Calcutta High Court bona fide, we think that this is a fit case for granting exemplary costs to ensure that such abused of the Court's jurisdiction does not take place in future. We,therefore, direct NICCO to pay Rs.50,000 by way of costs. "

Costs Rs.1 lakhs for abuse of Process of Law JT 2006(4) S.C. 553 (Pr.47) T.N. Godavarman Trirumulpad Vs. Union of India and others, wherein Apex Court observed:

"The applicant has abused the process of law and deserves to be sternly dealt with the enormous judicial time has been wasted which could have been used for deciding other cases. It has also resulted in C.E.C & others incurring huge expenses and their wastage of time as wells. In this view, we quantify costs at Rs.1,00,000/- payable by the applicant....."

ORDER

1. We hereby quash the Plaint of Original Suit No.188 of 2000(Anwar Hussain and ors Vs. State of U.P. and ors.) and direct the respondents to file a certified copy this Judgement in Original Suit No. 188 of 2000 (Anwar Hussain and ors Vs. State of U.P. and ors.) within four weeks of receipt of it and to inform the concerned Trial Court forthwith.

2. Respondent nos.1 and 2 are hereby directed to take possession forthwith of the premises in question-Nazul Plot No. 13, Civil Station, (2 Nawab Yusuf Road), Allahabad.

3. We direct each petitioner to pay Rs.10,000/- as costs which shall be deposited with the District Magistrate, Allahabad within one month of receipt of notice from concerned Respondent or within one month of receipt of certified copy of this judgment. In default, such cost shall be recovered by Respondent no.2/Collector, Allahabad, as land revenue. Out of said cost of Rs.10,000/- Respondent no.2 shall be entitled to retain Rs.7,500/- and balance Rs.2,500/- shall be paid to the Applicant

Respondent/U.P.S.R.T.C.

Subject to the above directions writ petition is dismissed with costs, as indicated above.

Dated: 10th May, 2006

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