

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10181 OF 2011
(arising out of SLP (C) No.13585 of 2011)

Smt. Khela Banerjee and another	...	Appellants
	versus	
City Montessori School and others	...	Respondents
	with	

CIVIL APPEAL NO. 10180 OF 2011
(arising out of SLP (C) No.22369 of 2011)

J U D G M E N T

G. S. Singhvi, J.

The main question which arises for consideration in these appeals is whether, having rejected its prayer for issue of a mandamus to Lucknow Development Authority (LDA) to accept the total amount of sale consideration with regard to plot No.92A/C (Khasra No. 754), Mahanagar, Lucknow, the High Court could have relied upon the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (for short, 'the 2009 Act') and granted relief to City Montessori School (respondent No.1 in Civil Appeal No.10181 of 2011 and the appellant in Civil Appeal No.10180 of 2011) in substantially similar terms. An ancillary question which needs determination is whether the High Court had rightly quashed the action taken by LDA and Nazul Officer, Lucknow in compliance of order dated 4.5.2009 passed in Writ Petition No.4085/2009.

For the sake of convenience, the parties shall hereinafter be referred to as the appellants and respondent No.1.

Background facts and details of the cases filed by the parties

3.1. The Nazul Officer leased out plot No.92A, Mahanagar, Faizabad Road, Lucknow to Shri Moni Mohan Banerjee (hereinafter described as 'Shri Banerjee') in 1958 for a period of 30 years with a right to seek two renewals of 30 years each. The terms of the lease were incorporated in the registered deed executed on 14.2.1959.

3.2. After about 3 years, the Nazul Officer granted lease of the adjoining plot bearing No. 92 A/C to Shri Banerjee for a period of 7 years commencing from 1.8.1961 for garden purposes. The registered lease deed dated 29.1.1964 executed between the Governor of Uttar Pradesh through the Nazul Officer and Shri Banerjee contained a stipulation that at the end of 7 years period, the lessee shall hand over possession of the plot to the Government. However, Shri Banerjee did not surrender the plot on or after 31.7.1968 and continued to occupy the same till January, 1996.

3.3. In 1992, the Government of Uttar Pradesh took a policy decision for conversion of leasehold Nazul lands into freehold and disposal thereof. This policy was circulated vide G.O. dated 23.5.1992 and was subsequently modified vide G.O. dated 2.12.1992 and G.O. dated 3.10.1994, paragraph 4 whereof postulated conversion of open Nazul land declared surplus under the Ceiling Act and horticulture/agriculture lease land into freehold and disposal thereof by auction or by inviting tenders.

3.4. In furtherance of the policy contained in G.O. dated 3.10.1994, LDA issued tender notice dated 24.11.1994 and invited bids for disposal of plots (open Nazul land which had been converted into freehold). However, before the bids received pursuant to notice dated 24.11.1994 could be accepted, the State Government changed the nature of some of the plots from residential to commercial. Therefore, LDA cancelled tender notice dated 24.11.1994 and invited fresh bids for eight plots including plot No.92A/C.

3.5. Shri Banerjee, who was illegally occupying plot No.92-A/C filed Suit No.285 of 1994 in the Court of Civil Judge, Lucknow with the prayer that G.Os. dated 2.12.1992 and 3.10.1994 may be quashed and LDA be restrained from dispossessing him pursuant to tender notice dated 24.11.1994.

3.6. Respondent No.1 filed Writ Petition No.11 of 1995 for quashing tender notice dated 20.12.1994 on the ground that the same was contrary to the Zonal Development Plan prepared under the U.P. Urban Planning and Development Act, 1973 and prayed that a mandamus be issued to the official respondents to accept the tenders submitted pursuant to notice dated 24.11.1994 and complete the formalities for the execution of the sale deed. Respondent No.1 also applied for stay but could not convince the High Court to entertain its prayer.

3.7. Faced with the possibility of losing an opportunity to get the plots in respect of which tenders were invited vide notice dated 20.12.1994, respondent No.1 submitted bids for four plots including plot No.92 A/C. The competent authority accepted the bids of respondent No.1. The latter deposited 25% of the bid money, i.e., Rs.7,40,700/- but did not pay the balance amount within the stipulated period despite notices dated 21.2.1995 and 8.3.1995 issued by LDA. Instead, Shri Jagdish Gandhi, Manager of respondent No.1 made representation for early delivery of possession of the plots and grant of permission to pay 3/4th of the price in six-monthly installments in accordance with G.O. dated 3.10.1994. LDA did not accept the request of Shri Jagdish Gandhi by observing that the facility of paying the price of plots in six-monthly installments is not available in the cases involving disposal of open Nazul land and garden leases. Shri Jagdish Gandhi then approached the Principal Secretary to the Governor and succeeded in persuading him to send letter dated 3.4.1995 to the State Government to instruct the officers of LDA to hand over possession of the plots and accept the balance amount in easy installments. The State Government forwarded that letter to LDA, which declined to accept the request made by Shri Jagdish Gandhi on the ground that the advertisement did not contain any such stipulation. Simultaneously, a decision was taken to cancel the bids and this was conveyed to respondent No.1 vide letter dated 14.6.1995.

3.8. Respondent No.1 did not challenge cancellation of the bids because its Manager was sure that he will be able to pull strings in the power corridors and get the desired relief. This is evinced from the fact that the representation made by him was accepted by none else than the Governor of the State, who passed order dated 17.12.1995 and directed that possession of the plots be handed over to the management of respondent No.1 and the balance amount be accepted in ten six-monthly installments with interest which may be fixed keeping in view the rates charged for the schemes framed by the Development Authority.

3.9. In furtherance of the direction given by the Governor, the State Government sent letter dated 12.1.1996 to the Vice-Chairman of LDA, which reads as under:

"No.48/9-Aa-4-96-39N/91

From:

Shri Rakesh Kumar Goyal,
Joint Secretary,
Government of Uttar Pradesh

To

The Vice Chairman,
Lucknow Development Authority,
Lucknow

Govt. Section-4 Lucknow dated 12th January, 1996

Subject: Regarding handing over possession of Nazul Land comprised in Khasra no.91-A-B-754, 92-A-C-754, 10-A-758, 90-A-A-754 allotted to the City Montessori School, Lucknow through tender

Sir,
Please refer to your Letter No.425/NS dated 9th January, 1996 on the above subject.

In this regard I have been directed to state to you that all the above four plots of land which have been approved in favour of Manager, Shri Jagdish Gandhi, City Montessori School and which was cancelled vide Government Order dated 14th June, 1995, after careful consideration in the matter the Government has decided that with reference to all the above four plots of land if Shri Jagdish Gandhi has deposited 25% amount and if there is no stay order against him, its possession be handed over to Shri Jagdish Gandhi and balance 75% amount be realised in future 10 six monthly instalments and interest payable thereon shall be informed subsequently.

Sd/-
(Rakesh Kumar Goel)
Joint Secretary"

3.10. On the same day, an agreement was executed between the Vice-Chairman of LDA acting on behalf of the Governor of Uttar Pradesh and respondent No.1 through its Manager Shri Jagdish Gandhi. The relevant portions of the agreement (as contained in the paper book of Civil Appeal No.10180 of 2011) are reproduced below:

"DEED OF AGREEMENT

This Deed of Agreement is executed between the Vice-Chairman, Lucknow Development Authority, on behalf of H.E. the Governor of the State of Uttar Pradesh, hereinafter referred to as the Vendor, meaning thereby its representatives, assigns and legal representatives (The First Party)

AND

City Montessori School, Station Road, Lucknow through its Manager, Shri Jagdish Gandhi, aged about 60 years son of late Sh. Phoolchand Agrawal resident of 12, Station Road, hereinafter referred to as the Purchaser, meaning thereby the Purchaser, its heirs, legal heirs and assigns (The Second Party).

Whereas as per the directions contained in the Government Order No. 48/9-Aa-4-96-39N/91, dated 12.1.1996, issued with regard to management and disposal of Nazul land, a Nazul Land Khasra No. 92-A/C 754, area 7305 sq. ft. situated at Mahanagar Faizabad Road, Lucknow was disposed of for commercial purpose by way of free-hold tender/auction. In response to the above auction, by this office letter No. 71 N.S., dated 20.5.96 an amount of Rs.22,21,300.00 was required to be deposited. You deposited Rs.7,40,000.00 by bank drafts in Nazul Fund, details of which are given below. Challan No. BDN-8070443 dated 7.1.95 - Rs. 25,000.00, BDN-8070445 dated 7.1.95 Rs.2,71,200.00 BDN-8069790 dated 13.12.95 Rs.1,80,000.00, BDN-136509 dated 2.2.95 Rs.2,64,500.00 - Total Rs.7,40,700.00, which means that 25% of the total auction amount has been deposited. The Second Party sought permission to deposit rest 75% amount in installments, which the Government has granted by Government Order No. 48/9-Aa-4-96-39L/91 dated 12.1.1996 to deposit 75% amount in further ten half yearly installments from the date of delivery of possession. Information of rate of interest on the above 75% amount will be conveyed, to the Second Party after receiving instructions from the Government in this regard.

Thus, the Agreement between the aforesaid two parties will be as under:-

1. Whereas The Second Party has paid 25% of the total tender/auction amount according to the demand letter and remaining 75% amount will be deposited together with the interest, as fixed by the Government, by the Second Party in 10 half yearly installments without any default from the date of execution of the Agreement;

2. Whereas the payment of the installments as indicated above will be paid by the Second Party compulsorily by the prescribed time limit, failing which or in case of failure to deposit two consecutive installments, this Deed of Agreement will become void and the First Party shall be free to exercise its discretionary power to forfeit 1/4th of the total deposit and refund the remaining amount and the First Party, if desired so, shall be free to enter the land in question and shall have right to sell it in favour of any third party;

3. Whereas 25% of the total tender amount has been paid by the Second Party and for rest of the 75% amount an agreement has been reached at between the parties. Possession of the land in question is being delivered by way of the instant Agreement. Therefore, according to the prevailing Greater Scheme (Mahayojana) of 2001, if the Second Party produces building map, it will be considered for approval, holding thereby that the possession of the land is with the Second Party, that the Nazul Land in question or building constructed on it can be transferred only when the entire tender/auction amount and the total expenditure payable by that time are cleared to the First Party. Sale Deed in respect of the Nazul Land will be executed on the stamp paper by paying required stamp fees. Stamp fee and other expenses will be borne by the Second Party;

4. Whereas the Second Party shall deposit the remaining aforementioned tender amount in 10 half yearly installments under relevant accounts titled "0075 legal general services-105 Sale of Land & Property -03 lump-sum amount on converting Nazul land into freehold property" by the prescribed date by treasury challan/ bank draft in main branch of the State Bank at Lucknow;

5. xxx xxx xxx

6. xxx xxx xxx

7. xxx xxx xxx

Witness:

1.
2.

V K Gupta
Special Nazul Officer/Joint Secretary
LDA, Lucknow"

(underlining is ours)

3.11. Simultaneously, Certificate dated 12.1.1996 was issued by LDA showing delivery of possession of plot No.92A/C to Shri Jagdish Gandhi. The same reads as under:

"Office of the Lucknow Development Authority
(Nazul Department) Lucknow

Possession Certificate

Possession of Nazul land Khasra No. 92-A/C(754), area 7305 sq. ft., situated at Mahanagar, Faizabad Road, Lucknow is handed over to Sh. Jagdish Gandhi, Manager, City Montessori School, Lucknow today 12.1.1996.

Boundary of the above mentioned land is as under:-

East - Road Mount Carmel School
West - Land of City Montessori School
North - Sh. M M Banerjee's house
South - Faizabad Road

Signature of the person to whom possession is delivered Signature of the person who delivered the possession

(Jagdish Gandhi)

(P K Mishra)

Ameen, L.D.A."

3.12. Although the management of respondent No.1 knew that the balance price is required to be paid in ten six-monthly installments, it deliberately omitted to do so and performed the ritual of sending one letter every year to the functionaries of LDA on the issues of demarcation of land and fixation of installments to show that the balance amount could not be paid due to LDA's failure to indicate the amount required to be deposited along with interest.

3.13. After 13 years of the execution of agreement and taking possession of the plot, respondent No.1 filed Writ Petition No.8514/2009 with the following substantive prayers:

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to accept forthwith the total amount of sale consideration with regard to plot no. 92-A/C 754 along with interest whatsoever may be fixed either by this Court or by the respondents;

(ii) Issue an appropriate writ, order or direction in the nature of certiorari to quash the entire proceedings of conferring free-hold rights on the respondents no. 4 & 5 on the said plot no. 92-A/C 754 Mahanagar Lucknow which has already been purchased by the petitioner in auction as hold on 09.01.05 and the agreement dt. 12.01.96 been executed by the respondent no. 3 in favour of the petitioner and possession has also been delivered vide possession certificate dt.12.01.96 after, summoning the record of the proceedings from the office of the opp. Party no. 2 & 3"

3.14. In the meanwhile, Shri Banerjee filed Writ Petition No.446/1996 and prayed that the State Government, LDA and the Nazul Officer may be restrained from taking any action in violation of lease deed dated 14.2.1959 or give strip of garden lease to any other person without taking proceedings in accordance with law or convert the same for any other purpose. The same was disposed of by the High Court vide order dated 30.8.2005 with an observation that if any action is taken by respondent Nos.3 and 4 in violation of the terms of lease then the writ petitioner shall be free to approach an appropriate forum.

3.15. During the pendency of Writ Petition No.446/1996, the State Government issued another order dated 17.2.1996 for conversion of Nazul land from leasehold to freehold and made the same applicable to the cases in which the lease had already expired but the lessee was continuing in possession. The primary object of this order was to legitimize the continued illegal occupation of land by the erstwhile lessees.

3.16. With a view to take advantage of the policy contained in order dated 17.2.1996, Shri Banerjee submitted application dated 23.3.1996 to the Vice-Chairman, LDA for conversion of plot No.A-92, Faizabad Road, Mahanagar into freehold. He submitted another application dated 29.3.1996 to the Special Nazul Officer, LDA with similar prayer by stating that the plot had been allotted to him for the purpose of gardening. Along with the first application, Shri Banerjee annexed photostat copy of lease deed dated 29.1.1964, which related to plot No.92 A/C. The application made by Shri Banerjee was not entertained by LDA on that ground that after the expiry of lease period, the plot was auctioned and the bid given by respondent No.1

had been accepted.

3.17. When the management of respondent No.1 started construction of boundary wall on plot No.92A/C, Shri Banerjee raised objection by claiming that he was in lawful possession of the plot. Thereupon, respondent No.1 filed Suit No.58/1996 for permanent injunction. The trial Court prima facie felt convinced that respondent No.1 was having possession of the plot and passed injunction order dated 22.2.1996, which was confirmed on 13.5.2002.

3.18. Shri Banerjee died on 10.5.1996. After about two years, the appellants submitted application dated 17.3.2008 for mutation of their names in respect of plot No.92A. They claimed that by virtue of Will dated 14.7.2005 executed by the deceased, they had become owners of the plot. After some time, they filed Writ Petition No.5049/2008 with the grievance that the application made by them was not being decided by the competent authority and prayed for issue of direction to LDA to sanction mutation in their favour. The Division Bench of the High Court passed an interim order dated 6.6.2008 and directed the Nazul Officer, Lucknow to consider and decide the application made by the appellants. Thereafter, LDA passed order dated 25.3.2009 and sanctioned conversion of plot No.92/A from leasehold to freehold. Thereafter, the appellants deposited Rs.4,97,692/- as conversion charges.

3.19. During the pendency of Writ Petition No.5049/2008, appellant No.2 - Chandak Banerjee filed Suit No.538/2008 for a declaration that auction held pursuant to advertisement dated 20.12.1994 was illegal and inoperative. He also prayed that the respondents be restrained from interfering with his possession over plot No.92A/C. The appellants also filed Writ Petition No.4085/2009 for issue of a mandamus to LDA to convert leasehold rights into freehold in respect of plot No.92A/C. The same was disposed of by the High Court vide order dated 4.5.2009, which reads as under :

"Heard Sri Pratish Kumar, learned counsel for the petitioners, learned Standing Counsel for opposite party no.1 and Sri D.K. Upadhyay, learned counsel for opposite parties no.2 and 3.

The petitioner has alleged that a lease of appurtenant land bearing Plot No.92 A/C measuring 6 Biswas 5 Biswansis 13 Kachwansis (7188 sq.ft.) situated at Mahanagar was granted in favour of Sri M.M. Banerji by the Nazul Officer, Lucknow for gardening purpose for a period of seven years.

Learned counsel for the petitioners submits that Sri M.M. Banerji, predecessor in interest of the petitioners in pursuance of the Government Order dated 17.02.1996 had applied for free hold rights of the property after depositing the requisite amount but till date no decision has been taken by the Nazul Officer, Lucknow with respect to the free hold rights to the petitioner who are successors of late Sri M.M. Banerji, who was the original lease holder.

In view of the aforesaid facts, we dispose of the writ petition with a direction to the opposite party no.2 to take a final decision with respect to the free hold rights of Nazul Plot No.92 A/C, situated at Mahanagar Lucknow within two months from the date a certified copy of this order is produced."

3.20. In compliance of the direction given by the High Court, the Nazul Officer passed order dated 3.8.2009 and converted 4433 sq. feet of land out of the total area of 7188 sq. feet of plot No.92A/C into freehold. The remaining area was retained for widening the road. On next day, the appellants deposited conversion charges amounting to Rs.1,95,939/-.

3.21. In the writ petitions filed by them, the appellants did not implead respondent No.1 as a party, but the latter impleaded them as respondent Nos.4 and 5 in Writ Petition No.8514(M/B) of 2009. Respondent No.1 also gave details of the cases filed by the parties and annexed copies of the orders passed by the Civil Courts and the High Court. The appellants

contested Writ Petition No.8514/2009 and pleaded that the State Government did not have the power to ordain delivery of possession of the plot to respondent No.1 because the bid given by it had been cancelled by LDA on account of non payment of the balance price. They also pleaded that agreement dated 12.1.1996 was nullity and was not binding on them.

3.22. After noting the factual matrix of the case, the Division Bench of the High Court considered the question whether respondent No.1 could seek a mandamus for enforcement of agreement dated 12.1.1996 and answered the same in negative by making the following observations :

"Though we accept and hold in terms of the legal submissions, as above, urged by Shri Shanti Bhushan, Learned Senior Counsel, yet looking to the factual background of "Though we accept and hold in terms of the legal submissions, as above, urged by Shri Shanti Bhushan, Learned Senior Counsel, yet looking to the factual background of this case, we are of the considered view that the impugned agreement entered into between the petitioner and the official respondents on 12.01.1996 would not be enforceable in law after the lapse of a period of 13 years only on the strength of depositing an amount of Rs.7,40,700/-, said to be the one-fourth of the total consideration amount. It appears that the petitioner engaged itself only in correspondence with the official respondents and in litigation, in stead of paying the rest of the principal amount, leaving aside the interest amount, which could have been determined later by the Authority concerned. Even no efforts were made to seek direction from the Courts to accept the deposit of principal amount before the filing of this writ petition. It also appears that the initial agreement was cancelled on 14.06.1995 for default in depositing the rest, say, 3/4th of the consideration amount which had been demanded vide the letters dated 21.02.1995 and 08.03.1995. However, taking a considerate view, on a written request made by the petitioner school, the payment schedule was rearranged vide the agreement dated 12.01.1996 but again no amount was deposited towards the payment of any of the instalments. Thus, the petitioner school was not ready and willing to perform its obligation under the agreement and in Law."

3.23. The Division Bench then adverted to the appellants' plea that the direction in Writ Petition No.4085 (M/B) /2009 cannot be nullified by entertaining a petition filed under Article 226 of the Constitution and held that they are not entitled to get the plot in dispute by paying the paltry amount of Rs.1,95,939/-. This is evinced from the following extracts of the impugned order :

"Here, in the instant case, the garden lease in respect of the property in question was granted for a brief period of 7 years in favour of Shri Moni Mohan Banerjee, the predecessor in interest of private respondent nos.4 and 5, which expired in 1968. As per the condition of garden lease agreement, the plot in question was to stand surrendered to the State after the expiry of lease deed. Moreover, after the garden lease period was over, no effort was made by Shri Moni Banerjee for a renewal and perhaps, it was also not renewable under the terms of the lease deed. Thereafter, the land was converted into a commercial property, and it was advertised for auction sale wherein the tender of the petitioner school being the highest bidder was accepted and a lease agreement was executed between the petitioner and the official respondents. Simultaneously, the possession of the property was also delivered to the petitioner school. It is also noticeable that Shri Moni Mohan Banerjee did not participate in the auction sale despite having knowledge about the status of property through the advertisement. It is only when the petitioner school wanted to construct a boundary wall that Shri Moni Mohan Banerjee put a resistance and went in litigation but in none of the litigations any title in respect of the property was settled in favour of Shri Banerjee or his successors in interest. Shri Moni Mohan Banerjee had no sanction of any lease agreement or Government order to continue with possession of the property and as noticed above, even some attempts were also made by the official respondents to take back the possession of property from Shri Moni Mohan Banerjee and his successors. Thus, the official respondents had a clear intention that the impugned property was in illegal possession of Shri Moni Mohan Banerjee. Moreover, with the efflux of time between 1968 and 1996 when the Government

Notification dated 17.02.1996 was issued to provide for conversion of lease hold right into freehold right, in respect of Nazul lands in occupation of people, the nature of land had been changed to commercial property and it was put to auction. Thus the claim of private respondents had become stale which could not have been revived by a direction of this Court to consider or take a final decision on the application of respondent nos.4 and 5 in view of the ratio of Judgment in C. Jacob's case (supra) and the property could not have been settled for a paltry amount of Rs.1,95,939/- whereas the same property was sold in auction for an amount of over Rs.29 lacs in favour of the petitioner way back in 1995, and presently, its market price is over Rs.2 Crore. The direction to consider the claim of respondent nos.4 and 5 was passed in Writ Petition no.4085 (MB) of 2009 vide the order dated 04.05.2009, which on reproduction reads as under:

xxx

xxx

xxx

It is a settled principle of law that if an authority is directed to consider the case, it should consider judiciously on merit and in accordance with law and not arbitrarily causing a huge loss to public exchequer under the umbrella of a Court's order directing to consider or take final decision on the case. Thus, the order of official respondent nos.2 and 3, Lucknow Development Authority and Nazul Officer, as also the demand notice and subsequent proceedings regarding grant of freehold right in favour of private respondent nos. 4 and 5 deserve to be and is hereby quashed."

3.24 Notwithstanding its finding that a mandamus cannot be issued for enforcing agreement dated 12.1.1996, the High Court virtually allowed the writ petition of respondent No.1 by relying upon the 2009 Act and directed the official respondents to hand over possession of the plot No.92 A/C to the said respondent and execute the sale deed on payment of market price at the current rate. The reasons recorded by the High Court for granting relief to respondent No.1 are as under:

"Needless to say that this Court is not only the court of law but also a Court of equity and, therefore, its decision must subserve the cause of justice and in an appropriate case it may grant such relief to which the writ petitioner would be entitled to in law as well in equity. Equity is not anti-law but a moral dimension of law. Rather it is a grace and conscience of living law, and thus, a Court's discretion is to be exercised with circumspection within the precincts of justice, equity and good conscience while keeping in view the given facts and circumstances of the case.

Thus, taking into consideration the facts that the Parliament has passed the Right to Education Act, that the petitioner deposited 25% (Rs. 7,40,700/-) of the consideration amount way back in 1995, and that he is ready to pay the present market price of the plot whereas no such offer has come from private respondent nos. 4 and 5 during the course of hearing, we think it expedient in the interest of justice to direct the settlement of property in question in favour of the petitioner school upon making payment of cost price at the current market rate prevailing in the locality.

In the premises set out hereinabove, we partly allow the writ petition with direction to official respondents to hand over the possession of the plot in question and execute the sale deed after completing necessary procedural formalities on payment of market price at current rate prevailing in the locality where the plot is situated within a period of two months from the date of receiving a copy of this order. In case, the petitioner fails to pay the market price at current rate to be determined by the authority concerned, the official respondents would be at liberty to invite fresh tender for the auction of the same at a price not less than the prevailing market price so that the public exchequer is not made to suffer in any manner and the property is able to fetch the maximum price."

Learned counsel for the appellants argued that the direction given by the High Court is legally unsustainable and is liable to be set aside because in the writ petition filed by it, respondent No.1 had not claimed relief. He further argued that letter dated 12.1.1996 sent by the State Government

to the Vice-Chairman, LDA with a direction to hand over possession of four plots to Shri Jagdish Gandhi and to accept the balance price in ten six-monthly installments with interest as also the agreement executed between the State Government and respondent No.1 were nullity and the mere fact that respondent No.1 had paid 25% of the bid amount could not be made basis for indirect revival of the agreement after a gap of almost 15 years. Another argument of the learned counsel is that the writ petition filed by respondent No.1 was highly belated and the High Court committed serious error by entertaining the same.

Shri Shanti Bhushan, learned senior counsel appearing for respondent No.1 argued that agreement dated 12.1.1996 was binding on the parties and the High Court committed serious error by declining to issue a mandamus for its enforcement only on the ground that respondent No.1 had not paid the balance price. Learned senior counsel relied upon Rules 50, 50A and 51 of the Nazul Manual and the provisions of the 2009 Act and argued that having accepted the bid of respondent No.1, LDA and its functionaries could not refuse to act in accordance with the agreement. Learned senior counsel submitted that the installments of price could not be paid by respondent No.1 because despite repeated representations, LDA neither gave the schedule of installments nor indicated the rate of interest. Learned senior counsel laid considerable emphasis on the fact that respondent No.1 is a charitable institution and argued that even though it may have committed default in payment of the balance price, the High Court was not justified in directing payment of current market price as a condition for transfer of the plot in question.

Before dealing with the respective arguments, we consider it necessary to mention that even though the prayer made in Writ Petition No.11/1995 gives an impression that respondent No.1 was claiming relief in respect of plots for which tender notice was issued on 24.11.1994, the contents of paragraphs 15 to 34 thereof clearly show that respondent No.1 was really claiming plot No.92A, Faizabad Road, Mahanagar, Lucknow of which lease was granted to Smt. Rajrani Srivastava sometime in 1958. We may also mention that the Will executed by Shri Banerjee in favour of the appellants was only in respect of plot No.92-A.

The first question which merits consideration is whether the conclusion recorded by the High Court on the issue of enforceability of agreement dated 12.1.1996 is correct and respondent No.1's prayer for issue of a direction to LDA to accept the balance price was rightly rejected. It is an admitted position that in response to tender notice dated 20.12.1994, respondent No.1 gave bids for four plots including plot No.92A/C and paid 25% of the price offered by it but did not pay the balance amount necessitating cancellation of the bid, about which intimation was given vide letter dated 14.6.1995. Respondent No.1 did not challenge the cancellation of bids by availing appropriate legal remedy but its Manager succeeded in convincing the Governor of the State to pass an unusual order for handing over possession of the plots and acceptance of the balance amount in six-monthly installments. The reasons which prompted the Governor to act in violation of the rules of business and ordain restoration of the plots in favour of respondent No.1 albeit without setting aside the decision of LDA to cancel the bids are not borne out from the records produced before this Court. Therefore, we hold that the order passed by the Governor and the consequential actions taken by the State Government and LDA including the execution of agreement dated 12.1.1996 did not create an enforceable right in favour of respondent No.1 and the High Court rightly declined to issue a mandamus to LDA to accept the offer made on its behalf for payment of the balance price.

It is significant to note that agreement dated 12.1.1996 contained an unequivocal stipulation that if respondent No.1 fails to pay the installments of balance price within the prescribed time limit then the agreement would become void and LDA will be free to sell the plot to any other person. Admittedly, respondent No.1 did not pay the instalments of balance price. Therefore, the agreement stood automatically terminated and LDA became entitled to dispose of the plot by adopting an appropriate mechanism consistent with the doctrine of equality enshrined in Article 14 of the Constitution. It is rather intriguing as to why the functionaries of

LDA remained silent for more than 13 years and did not repossess the plot in question. This was perhaps due to the pressure brought by the Manager of respondent No.1 from different quarters, administrative as well as political.

The next question which requires consideration is whether the High Court could invoke the provisions of the 2009 Act and direct LDA to hand over possession of plot No.92A/C to respondent No.1 and execute the sale deed on payment of market price at the current rate. In the writ petition filed on behalf of respondent No.1 it was not claimed that in view of the provisions contained in the 2009 Act, LDA is bound to allot plot No. 92A/C or allow respondent No.1 to retain the plot for which its bid had been accepted by the competent authority. Therefore, neither the appellants nor the official respondents had the opportunity to controvert such claim and show that the provisions of the 2009 Act do not provide for allotment/sale of land to the educational institutions. The High Court has made a passing reference to the 2009 Act and granted relief to the respondent No.1 only on the ground that it had already deposited 25% of the bid amount way back in 1995 and respondent Nos.4 and 5 had not made an offer to take the plot by paying the current market price. We have carefully gone through the provisions of the 2009 Act and find that they do not even remotely deal with the issue of allotment of land to the educational institutions. Therefore, the Division Bench of the High Court was not at all justified in ordering transfer of the plot to respondent No.1 and that too by ignoring its own finding that the said respondent was a ranked defaulter and the writ petition was filed after a time gap of 13 years without any tangible explanation.

The Nazul Rules on which reliance has been placed by Shri Shanti Bhushan do not have any bearing on the issues raised in these appeals. Rule 50 of the Nazul Rules lays down that in all cases, whether of sale or of new leases or of renewal of leases which have expired without option of renewal which involves a concession in favour of the vendee or the lessee, e.g., in which it is proposed to fix the sale price or the rent at a rate lower than the prevailing market rate or at which it is proposed to sell or lease the land without holding a public auction or inviting public tenders, prior approval of the State Government shall be obtained before sanction, even though such cases, owing to the value of the land being within the limits laid down in the rules, could otherwise be sanctioned without reference to the State Government. Rule 50-A deals with lease of small stretches for gardening purposes and lays down that such lease shall be for a short period not exceeding seven years and shall be subject to the conditions enumerated in that rule. Rule 51 deals with grant of lease or sale of nazul land at concessional rates for charitable purposes like, hospitals, educational institutions and orphanages. It further lays down that the concession shall not exceed half the annual rental in the case of lease or half of the total market value in the case of sale. Two provisos to this rule specify the limits of concession. Rule 52 contains a non-obstante clause and empowers the State Government to sanction a lease or sale of nazul land for the particular purpose and at the particular rate keeping in view the special circumstances of the case. These rules do not, in any manner, support the cause of respondent No.1 because it failed to pay the price of land in terms of the bid given pursuant to tender notice dated 20.12.1994 or even in terms of agreement dated 12.1.1996 and tried to concoct evidence to show that LDA was the defaulter.

The issue which remains to be considered is whether the appellants are entitled to plot No.92 A/C and the High Court committed an error by quashing the action taken by the LDA and the Nazul Officer in furtherance of order dated 4.5.2009 passed in Writ Petition No.4085/2009. It is not in dispute that the term of the garden lease had ended on 31.7.1968 and the same was not extended by the competent authority. Therefore, in view of the stipulations contained in lease deed dated 29.1.1964, he was bound to hand over the plot to the Government. However, Shri Banerjee continued to unauthorisedly occupy the plot till its disposal by LDA in 1994 by inviting bids. Although, respondent No.1 also failed to abide by the terms of agreement dated 12.1.1996, Shri Banerjee was not entitled to take benefit of order dated 17.2.1996 and seek conversion of leasehold rights into freehold because LDA had already accepted the bid given by respondent No.1

and delivered possession of the plot to Shri Jagdish Gandhi. The appellants who claim to be beneficiaries of the Will executed by Shri Banerjee cannot claim a better right. Writ Petition No.4085/2009 filed by them was nothing but an abuse of the process of law. Unfortunately, the Division Bench of the High Court, which disposed of the writ petition vide order dated 4.5.2009 did not even bother to call upon the respondents to admit or controvert the averments contained in the writ petition filed by the appellants and directed the Nazul Officer to decide their representation for grant of freehold rights in respect of plot No.92A/C. The error committed by the High Court in entertaining the writ petition of the appellants was compounded by the Nazul Officer who ordered conversion of leasehold rights into freehold rights in respect of 4433 sq. ft. and gave an opportunity to the appellants to grab a valuable piece of land by depositing a paltry amount of Rs. 1,95,939/- as against the market price of Rs.2 crores. It is a different thing that the appellants did not succeed in their design and the High Court quashed the action taken by the Nazul Officer for conversion of the plot.

In the result, Civil Appeal No. 10181 of 2011 is partly allowed and the direction given by the High Court for handing over possession of plot No. 92 A/C to respondent No.1 on payment of the current market price is set aside. However, the decision of the High Court to quash the action taken by LDA and the Nazul Officer in furtherance of order dated 4.5.2009 passed in Writ Petition No. 4085 of 2009 is upheld. Civil Appeal No. 10180 of 2011 is dismissed. For filing frivolous and unwarranted litigation, which has consumed substantial time of various Courts including this Court, the appellants and respondent No.1 are saddled with cost of Rs. 10 lakhs each. They are directed to deposit the amount of cost with the Supreme Court Legal Services Committee within a period of two months from today.

Respondent No.1 is directed to hand over possession of plot No.92A/C to the Vice-Chairman, LDA within a period of 15 days. If the appellants have managed to take possession of the plot then they shall surrender the plot to the Vice-Chairman, LDA with 15 days. Thereafter, LDA shall dispose of the plot by public auction keeping in view the propositions laid down by this Court in Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh (2011) 5 SCC 29 (paragraphs 65 and 66). It is needless to say that respondent No.1 shall be free to participate in the auction which may be conducted by LDA in compliance of this order. The appellants shall be free to withdraw the amount deposited for conversion of plot No.92 A/C.

.....J.
[G.S. SINGHVI]

.....J.
[SUDHANSU JYOTI MUKHOPADHAYA]

New Delhi,
July 02, 2012.

ITEM NO.1B
(For Judgment)

COURT NO.5

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO.10181 OF 2011

KHELA BANERJEE & ANR

Petitioner(s)

VERSUS

CITY MONTESSORI SCHOOL & ORS.

Respondent(s)

WITH Civil Appeal NO. 10180 of 2011

Date: 02/07/2012 These Appeals were called on for Judgment today.

For Appellant(s)

Mr. Anil Nag, Adv.

For Respondent(s)

Mr. R.P. Gupta, Adv.

Hon'ble Mr.Justice G.S.Singhvi pronounced the Judgment of the Bench comprising His Lordship and Hon'ble Mr.Justice Sudhansu Jyoti Mukhopadhaya.

Civil Appeal No. 10181 of 2011 is partly allowed and the direction given by the High Court for handing over possession of plot No. 92 A/C to respondent No.1 on payment of the current market price is set aside. However, the decision of the High Court to quash the action taken by LDA and the Nazul Officer in furtherance of order dated 4.5.2009 passed in Writ Petition No. 4085 of 2009 is upheld. Civil Appeal No. 10180 of 2011 is dismissed. For filing frivolous and unwarranted litigation, which has consumed substantial time of various Courts including this Court, the appellants and respondent No.1 are saddled with cost of Rs. 10 lakhs each. They are directed to deposit the amount of cost with the Supreme Court Legal Services Committee within a period of two months from today.

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(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Singed non-reportable judgment is placed on the file)