

**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
(ORIGINAL JURISDICTION)
ORIGINAL APPLICATION NO. 1270 OF 2024**

IN THE MATTER OF

Imran Ali

... Applicant

//Versus//

Ministry of Environment,
Govt. of Uttar Pradesh & Ors.

... Respondents

N.D.O.H. 13.02.2025

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Place: New Delhi

Dated: 31-01-2025

Filed by:-

Through

Saurabh Ajay Gupta

SAURABH AJAY GUPTA

Advocate for Respondent Nos. 5, 6, & 7

Chamber No. 79, A. K. Sen Block

Supreme Court of India

New Delhi-110001.

chambersofsaaurabhajaygupta@gmail.com

9910297074

**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
(ORIGINAL JURISDICTION)
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IN THE MATTER OF

Imran Ali

... Applicant

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Ministry of Environment,
Govt. of Uttar Pradesh & Ors.

... Respondents

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT
NOS. 5, 6, AND 7**

MOST RESPECTFULLY SHOWETH:

I, Aman Goel, aged about 42 Years, s/o Sh. Pradeep Goel,
r/o Near chhatri Wala Kuan Mohalla Mahajan, Mahajan,
Kiratpur, Najibabad, Bijnor, U.P- 246731, do hereby
solemnly affirm and state as under:



That I am the Respondent No. 5 in the above-captioned Original Application. I have read the Original Application filed by the Applicant and I am fully conversant with the facts of the case and competent to swear this Affidavit for myself and on

behalf of the Respondents No. 6 & 7, hereinafter referred to as the 'Respondents'.

2. That, at the outset, the Respondents deny the contents of the Original Application filed by the Applicant, being misconceived, misleading and wrong. The Respondents deny each and every statement, allegation, averment and submission made by the Applicant in the Original Application, as if the same have been specifically traversed and denied in seriatim except to the extent which are specifically admitted hereinafter. Nothing may be deemed to be admitted therein, unless the same is specifically admitted herein by the Respondents.

3. BRIEF FACTS



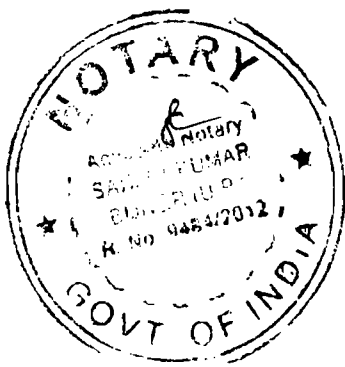
a) That the land in question bearing Khasra Nos. 2181/1, 2181/2, and 2182/2, was originally in the name of Shri Sataya Prakash Sharma s/o Krishan Durtt Sharma. Shri Sataya Prakash Sharma held the land as a Sirdar and subsequently became a Bhumidhar after

SANKAR KUMAR
Notary Public (U.P.)

[Handwritten Signature]

depositing 20 times the land revenue on 18.09.1970. Following this, his name was recorded in the revenue records as a Bhumidhar.

- b) That on 28.03.1974, Shri Sataya Prakash Sharma sold the land to Shri Ramesh Chand Goel, Shri Akshay Goel, Smt. Deepti Jindal, and Shri Rakesh Kumar Goel, who were partners in the firm Lallumal Ramesh Chand, Kiratpur (hereinafter referred to as the "erstwhile owners").
- c) That in the year 2013, the erstwhile owners filed a Civil Suit No. 586 of 2013, titled "*Ramesh Chand Goel and Ors. v. State of U.P. through Collector, Bijnor and Ors.*", before the Court of Civil Judge (Senior Division), Bijnor, Uttar Pradesh, seeking a permanent injunction against the State of Uttar Pradesh. The Ld. Civil Judge (Senior Division) vide its judgment dated 09.12.2015 held that the provisions of



SARAJ KUMAR
Notary Senior (U.P.)

Saraj

the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 do not apply to Khasra Nos. 2181/1, 2181/2, and 2182/2 and the State's assertion that the disputed land constituted a pond or barren land belonging to the Uttar Pradesh Government was unsubstantiated. The Court further held that the land in dispute is not a barren land or pond. A true, translated, and typed copy of the judgment dated 09.12.2015 passed by the Ld. Civil Judge (Senior Division) in Civil Suit No. 586 of 2013 is annexed herein and marked as **Annexure R5/1.**

- d) That in the year 2018, the judgment of the Civil Judge (Senior Division) was challenged by the Nagar Palika Parishad Kiratpur in Civil Appeal No. 14 of 2018, titled "*Nagar Palika Parishad Kiratpur through Chairman v. Ramesh Chand Goel and Ors.*", before the Ld. District Judge,



Bijnor. The Ld. District Judge upheld the judgment of the Ld. Civil Judge, stating:

"All these documentary evidence are corroborated by P.W.1 Ramesh Chand Goel and also with evidence of defendant. witness D.W.1 Suresh Chand. On behalf of defendant no. 1 to 4 State of U.P. and Nagar Palika Parishad, Kiratpur in documentary evidence only photostat copies have been filed and no original of the same has been filed. It is settled principle of law that photostat copies are not admissible in evidence, unless the conditions of Section 65 of the Evidence Act are fulfilled. No evidence with regard to the condition of Section 65 of the Evidence Act has been filed on behalf of defendant. However, for the sake of argument, from the perusal of paper no. C-41, which is Khatauni of 1359 Fasli, it is found that land of Khasra no. 2182/2 is shown to be barren land and land of Khasra no. 2181/1 is shown to be



the land of pond. From thorough perusal of this khatauni, it is found that no order of any competent authority is mentioned in this Khatauni.

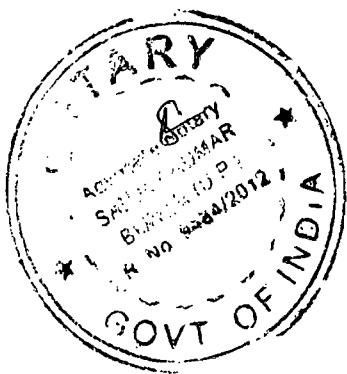
On behalf of defendant s D.W.1 Area Lekhpal, Suresh Chand has been examined. This witness himself admits that the land in property-in dispute situates in municipal area of Kiratpur, which was initially town area Kiratpur. This witness also admits that he is not aware how and by whom order land of Khasra no. 2181/1 and 2182/2 was recorded as Barren and land of pond. There is no such record with him in regard to the entry made to that effect in Khatauni of 1359 Fasli. While this witness admits that initially Sataya Prakash Sharma was Seerdar of the land of property in dispute and later on he acquired Bhumidhari rights after having deposited twenty times land revenue and entries in this respect have been



made by competent authority and these entries have never been challenged by the State of U.P. Later on Satay Prakash also transferred the same to the plaintiffs by executing sale deed in the year 1974 and names of the plaintiffs were also recorded in revenue record as Bhumidhar of the same, which were never challenged by the defendants.

This fact is also admitted to the defendants/appellants that the plaintiffs-respondents after obtaining permission from Municipal Board, Kiratpur had erected shops and other construction over the disputed and after completion of construction, house tax was levied and realised from them by the Municipal Board, Kiratpur.

From the oral and documentary evidence, available on record, it is well proved that land of property in suit, which was initially in town area and later on came in municipal area and



said land remained Non Z.A. land in consolidation proceedings and entries in the name of Sataya Prakash remained in force and this entries were never challenged in consolidation proceedings. Later on, also the entries made by the Revenue Authority, in the name of plaintiffs and their predecessors remained intact and the same were never challenged by the defendants before the Revenue Authority or Consolidation Authority.

In rebuttal, only one Khatauni of 1359 Fasli has been filed by the appellants/defendants, in which disputed land has been recorded as land of pond and barren land, but the entries made in said Khatauni are not based on any order of competent revenue authority. How this entry came into existence, there is no explanation on behalf of defendants. As such reliance cannot be placed on Khatauni of 1359. Prior to Khatauni of 1359 Fasli, in land



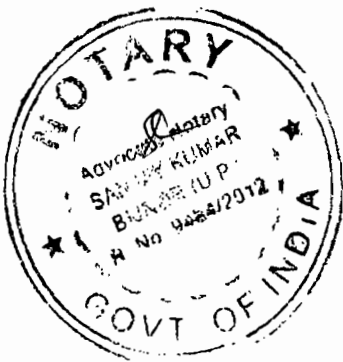
Sanjay

of aforesaid khasra number no entry of pond and barren land is found in any revenue or consolidation record, as is evident from the documentary evidence adduced on behalf of the plaintiffs/respondents.

The authorities, on which reliance has been placed by the appellants, are not applicable in the present facts and evidence adduced on behalf of parties to the suit.

In *Om Prakash vs. D.D.C. Faizabad (H.C. L.B.)* cited in R.D. 1996 Supplementary page 354, the Hon'ble Allahabad High Court held that entry in Khatauni made by Lekhpal without order of Competent authority, no reliance can be placed.

As such from the oral and documentary evidence adduced on behalf of both the parties, the plaintiffs are found the owner and in possession of the property in dispute and said land is not barren land or land of pond.



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Accordingly, both the points of determination are disposed of in favour of respondents and against the appellants. At the upshot of discussion, I am of the view that impugned judgment and decree needs no interference and this civil appeal has no force, same deserves to be dismissed with costs."

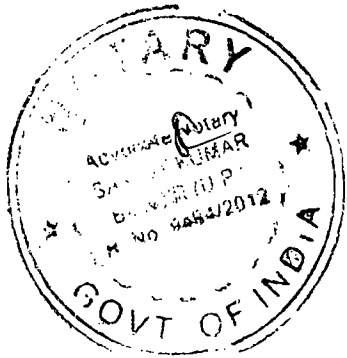
A true copy of the judgment dated 28.04.2018 passed by the Ld. District Judge, Bijnor in Civil Appeal No. 14 of 2018 is annexed herein and marked as **Annexure R5/2**.

- e) That Nagar Palika Parishad Kiratpur and Executive Officer, Nagar Palika Parishad preferred Second Appeal Defective (SAPLD) No. 330/2020 before the Hon'ble High Court of Judicature at Allahabad challenging judgment dated 28.04.2018 passed by the Ld. District Judge, Bijnor in Civil Appeal No. 14 of 2018. It is humbly submitted that Second Appeal



Defective (SAPLD) No. 330/2020 is pending adjudication before the Hon'ble High Court.

- f) That it is humbly submitted that the land in question was sold out by the erstwhile owners by executing various sale deeds from 2019 to 2024 in favour of Garnish Lands Pvt. Ltd., Garnish Infracon Pvt. Ltd. and, Garnish Builders Pvt. Ltd.
- g) That on 07.06.2022 Nagar Palika Parishad Kiratpur granted permission to Garnish Lands Pvt. Ltd., Garnish Infracon Pvt. Ltd. and, Garnish Builders Pvt. Ltd. for the construction of commercial market upon the disputed land. A true, translated, and typed copy of the permission letter dated 07.06.2022 is annexed herein and marked as **Annexure R5/3**.
- h) That on 27.02.2024 Nagar Palika Parishad Kiratpur granted permission to Garnish Lands Pvt. Ltd., Garnish Infracon Pvt. Ltd. and, Garnish Builders Pvt. Ltd. for further



construction of commercial market upon the disputed land. A true, translated, and typed copy of the permission letter dated 27.02.2024 is annexed herein and marked as **Annexure R5/4.**

i) That on 12.09.2024, Respondent No. 5 was appointed as an Additional Director of Garnish Lands Pvt. Ltd.

j) That the Garnish Builders Pvt. Ltd. and Garnish Infracon Private Ltd. got merged/ amalgamated with Garnish Lands Pvt. Ltd. by the order dated 14.10.2024 of the Regional Director (NR). A true copy of the order of Regional Director (NR) dated 14.10.2024 is annexed herein and marked as **Annexure R5/5.**



k) That on 22.10.2024, Applicant herein filed Original Application No.1270/2024 before this Hon'ble Tribunal. Thereafter, on **25.10.2024**, Applicant herein filed an IA No. 542/2024 in

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Original Application No. 1270/2024 for grant of stay.

4. PRELIMINARY SUBMISSIONS:

- a) That the answering Respondents state that at the outset, the contents of the Original Application are false, and devoid of any basis.
- b) That it is humbly submitted for the kind consideration of this Hon'ble Tribunal that the land in question was purchased by Garnish Lands Pvt. Ltd., Garnish Infracon Pvt. Ltd., and Garnish Builders Pvt. Ltd. (now merged into Garnish Lands Pvt. Ltd.), as well as Respondent No. 7, who are the rightful owners of the property. It is submitted that Respondent No. 6 neither holds ownership of the land nor serves as a director of Garnish Lands Pvt. Ltd., making his inclusion in the case appear baseless and solely intended for harassment. Further, even, Respondent No. 5



Sanjay Kumar
SANJAY KUMAR
Notary, Bilhar (U.P.)

was appointed only as an Additional Director of Garnish Lands Pvt. Ltd on 12.09.2024.

- c) That Answering Respondents submit that the issue regarding whether the land in question, i.e., Khasra No. 2181, situated in Kiratpur, District Bijnor, Uttar Pradesh, was a pond or not, has already been adjudicated upon by the Court of Civil Judge (Senior Division), Bijnor, Uttar Pradesh, in Original Case No. 586 of 2013 titled "*Ramesh Chand Goel and Ors. V State of U.P. through Collector, Bijnor and Ors.*" The Ld. Civil Judge held that the disputed property is not a barren land or a pond. The aforesaid judgment of the Ld. Civil Judge (Senior Division) was upheld by the District Judge, Bijnor, in Civil Appeal No. 14 of 2018, titled "*Nagar Palika Parishad Kiratpur through Chairman, Nagar Palika Parishad Kiratpur Paragana Kiratpur, Tehsil Najibabad District Bijnor and Ors. V Ramesh Chand Goel and*



Sanjay

Ors.” stating that the land in question is neither a pond nor a barren land.

- d) That it is further submitted for the kind consideration of this Hon'ble Court that a Second Appeal Defective (SAPLD) No. 330/2020, titled “Nagar Palika Parishad Kiratpur and Another V. Ramesh Chandra Goel And 6 Others” is presently pending before the Hon'ble High Court of Judicature at Allahabad.
- e) That the Respondents vehemently deny any unlawful activities, including illegal encroachment, unauthorized filling of pond/waterbody, or environmental degradation as alleged by the Applicant.

PARAWISE REPLY:

- a) That the averments made in the Synopsis and List of Dates are denied in toto being incorrect and misleading.
- b) That the contents of para 1 to 3 need no reply being formal in nature.



c) That the allegations levelled in para 4 are denied. The land in question, i.e., Khasra No. 2181, is not a notified pond/waterbody, as alleged by the Applicant. It is submitted that the issue has already been decided by the Ld. Civil Judge (SD), Bijnor, vide a judgment and order dated 09.12.2015 passed in Civil Suit No. 586 of 2013 which was also affirmed by judgment and order dated 28.04.2018 passed by the Ld. District Judge, Bijnor in Civil Appeal No. 14 of 2018 whereby it was held that the land in question is not barren land or a pond. The Applicant's claim is therefore baseless and without merit.



d) That the contents of para 5 are denied. It is denied that Respondents Nos. 5-7 (Answering Respondents) have carried out any illegal activities or unlawful filling/encroachment. The judgments dated 28.04.2018 passed Ld. District Judge Bijnor in Civil Appeal No. 14 of

- f) That the contents of para 7 and 8 are denied. It is submitted that the land is not notified as a pond in government records. The entries in the Khatauni of 1359 Fasli, relied upon by the Applicant, have been specifically discredited by the Ld. District Judge vide the judgment and order dated 28.04.2018 passed in Civil Appeal No. 14 of 2018, whereby the Ld. District Court observed:

“From the oral and documentary evidence, available on record, it is well proved that land of property in suit, which was initially in town area and later on came in municipal area and said land remained Non Z.A. land in consolidation proceedings and entries in the name of Sataya Prakash remained in force and this entries were never challenged in consolidation proceedings. Later on, also the entries made by the Revenue Authority, in the name of plaintiffs and their predecessors



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2018 categorically state that the land was lawfully owned and possessed by the erstwhile owners after acquiring the same through a sale deed, and the entries in the revenue records have never been challenged.

- e) That the contents of para 6 are specifically denied. It is submitted that Garnish Lands Pvt. Ltd. became the owner of the land in question upon the execution of various sale deeds as mentioned in the preceding paragraphs. At the time when the land in question was purchased, it already had shops and other constructions established by the erstwhile owners. It is further submitted for the kind consideration of this Hon'ble Tribunal that the construction upon the land in question was done after obtaining valid permissions from the Nagar Palika Parishad Kiratpur. The allegations of unlawful filling and encroachment are baseless and contrary to the findings of the Ld. Courts.



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remained intact and the same were never challenged by the defendants before the Revenue Authority or Consolidation Authority.

In rebuttal, only one Khatauni of 1359 Fasli has been filed by the appellants/defendants, in which disputed land has been recorded as land of pond and barren land, but the entries made in said Khatauni are not based on any order of competent revenue authority. How this entry came into existence, there is no explanation on behalf of defendants. As such reliance cannot be placed on Khatauni of 1359. Prior to Khatauni of 1359 Fasli, in land of aforesaid khasra number no entry of pond and barren land is found in any revenue or consolidation record, as is evident from the documentary evidence adduced on behalf of the plaintiffs/respondents.

The authorities, on which reliance has been placed by the appellants, are not



applicable in the present facts and evidence adduced on behalf of parties to the suit.

In Om Prakash vs. D.D.C. Faizabad (H.C. L.B.) cited in R.D. 1996 Supplementary page 354, the Hon'ble Allahabad High Court held that entry in Khatauni made by Lekhpal without order of Competent authority, no reliance can be placed.

As such from the oral and documentary evidence adduced on behalf of both the parties, the plaintiffs are found the owner and in possession of the property in dispute and said land is not barren land or land of pond. Accordingly, both the points of determination are disposed of in favour of respondents and against the appellants."

Further, that a Second Appeal Defective (SAPLD) No. 330/2020, titled "Nagar Palika Parishad Kiratpur and Another V. Ramesh Chandra Goel And 6 Others" against the order



dated 28.04.2018 passed by the Ld. District Judge, is currently pending before the Hon'ble High Court of Judicature at Allahabad.

- g) That the contents of para 9 are denied. The Applicant's claims regarding the natural and environmental significance of the land are refuted. It is humbly submitted that the land has been lawfully owned, developed, and utilized by Garnish Lands Pvt. Ltd. after fulfilling all legal requirements. It is further submitted for the kind consideration of this Hon'ble Tribunal that the applicant has not produced any photographs or any other documents to indicate filling up/ encroachment of the pond by the Answering Respondents. The answering Respondents humbly submit that the order dated 28.04.2018 passed by the Ld. District Judge categorically observed the non-existence of any pond on the land in question.



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- h) That the contents of para 10 are denied. The allegations of connivance with government officials are baseless and defamatory. The Garnish Lands Pvt. Ltd. have acted strictly in accordance with the law, and the judgment dated 28.04.2018 passed by the Ld. District Court Bijnor, in Civil Appeal No. 14 of 2018 affirm their legal ownership and possession of the land. Further, the answering Respondents are the law-abiding citizens and have not acted in violation of any law.
- i) That the contents of para 11 are denied. It is reiterated that the land in question does not fall under the purview of environmental protection laws as alleged. The judgments dated 09.12.2015 passed by the Ld. Civil Judge (Senior Division) in Civil Suit No. 586 of 2013 and judgment dated 28.04.2018 passed by the Ld. District Judge, Bijnor in Civil Appeal No. 14 of 2018, affirm that the land in question



is not a pond or a waterbody. Further, that a Second Appeal Defective (SAPLD) No. 330/2020, titled "*Nagar Palika Parishad Kiratpur and Another V. Ramesh Chandra Goel And 6 Others*" against the order dated 28.04.2018 passed by the Ld. District Judge, is currently pending before the Hon'ble High Court of Judicature at Allahabad.

j) That the contents of para 12 are denied. The Applicant's reliance on the Hon'ble Supreme Court's judgment in "*Mirza Abid Beg Vs. State of UP*" is misplaced and has no bearing on the present case.

k) That the contents of para 13 are denied. It is denied that any continuous or subsisting cause of action exists in favour of the Applicant. The issues raised by the Applicant have already been adjudicated upon by the Ld. Civil Judge (Senior Division) vide a judgment and order dated 09.12.2015 passed in Civil



Suit No. 586 of 2013 and vide judgment and order dated 28.04.2018 passed by the Ld. District Judge, Bijnor in Civil Appeal No. 14 of 2018.

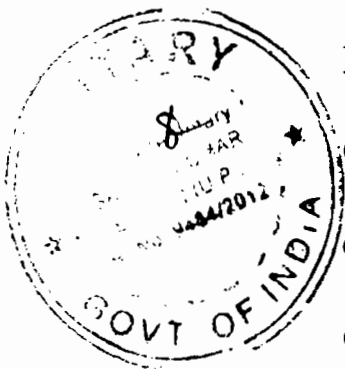
- l) That the contents of para 14, Sub-Paras (A to K), are denied. The Applicant's claims are contrary to the judgment and order dated 09.12.2015 passed by the Ld. Civil Judge (SD) in Civil Suit No. 586 of 2013 and the judgment and order dated 28.04.2018 passed by the Ld. District Judge, Bijnor in Civil Appeal No. 14 whereby it was categorically held that the land is not a pond or barren land and that the entries in favour of the erstwhile owners remain unchallenged and valid. The allegations of environmental violations and unlawful acts are baseless.

- m) That the contents of para 15 to 19 are denied and it is humbly submitted that the matter is pending before the Hon'ble High Court of



Judicature at Allahabad in Second Appeal Defective (SAPLD) No. 330/2020, titled "*Nagar Palika Parishad Kiratpur and Another V. Ramesh Chandra Goel And 6 Others*"

5. That the Applicant's purported public interest is a pretext to settle personal grievances, as evident from the baseless allegations made without due diligence.
6. That the Respondents seeks leave to make additional submissions, if required, during the course of the proceedings.
7. That in light of the above submissions, the Respondents most respectfully pray that this Hon'ble Tribunal may be pleased to dismiss the Original Application filed by the Applicant with exemplary costs and/ or pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.



Sanjay Kumar

[Signature]
DEPONENT

VERIFICATION:

I, Aman Goel, aged about 42 Years, s/o Sh. Pradeep Goel, r/o Near chhatri Wala Kuan Mohalla Mahajan, Kiratpur, Najibabad, Bijnor, U.P- 246731, do hereby solemnly affirm and declare that the contents of the above affidavit are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

Verified at Bijnor on this the 21st day of January, 2025

[Signature]
DEPONENT



Sworn before me on this 21st day of Jan 2025
by Sri Aman Goel
who has been identified by Sri. Aklesh Kumar
who is personally known to me Agarwal Advocate
whose signature [Signature] is appended

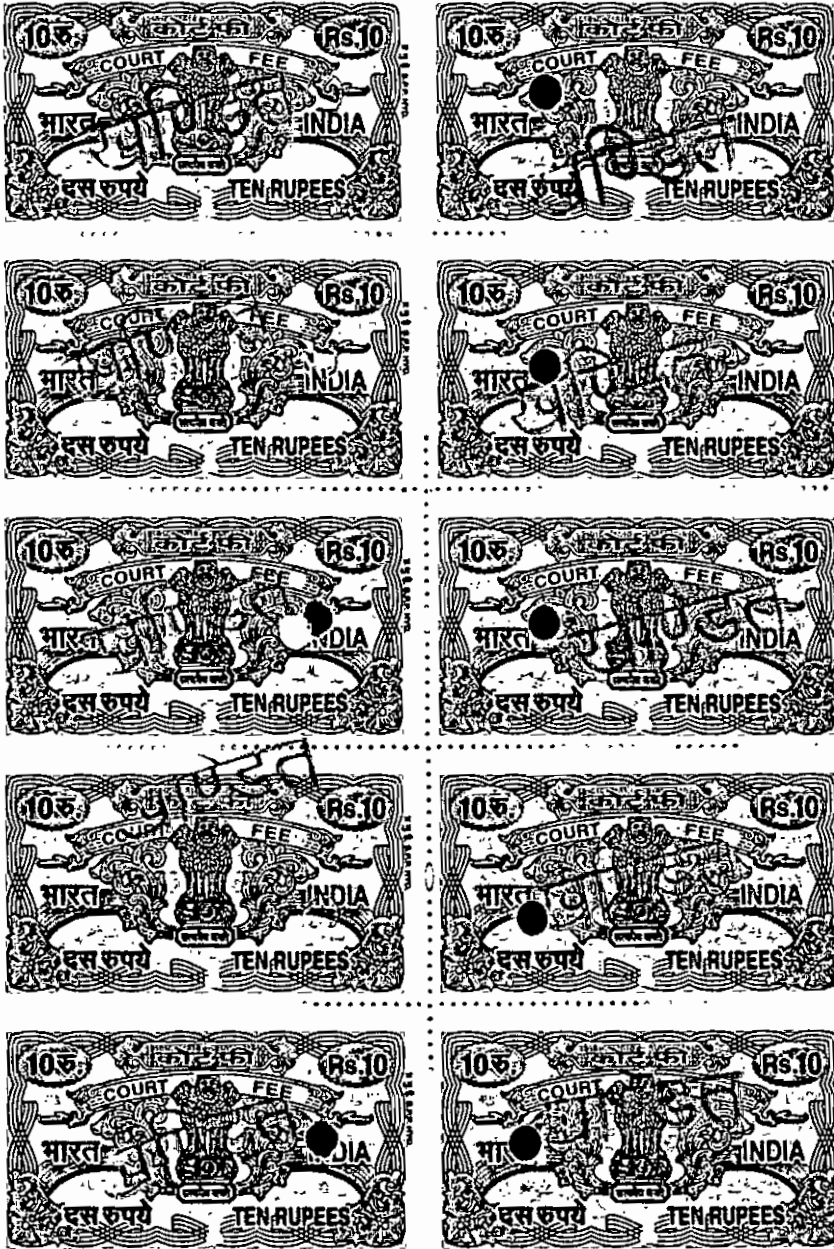
[Signature]
21-1-25

Sanjay Kumar
Notary Bijnor (U.P.)

URGENT 85

अजय कुमार अग्रवाल, एडो
सीओपीओ नं-145133, पंजी०नं० 5397/82
कौन-3 डिस्ट्रिक्ट सिविल बार एसोसिएशन, बिजौर
फि० बी-14, नई बस्ती, निर्मल रादन, बुखारा रोड
बिजौर (यूपी) 246701
मो० नं- 8456050478, 9058900888
पृथं सीओपीओ (सिविल), सिविल कोर्ट बिजौर।

ANNEXURE R5/1



07
09/12/2015

- 1. Date of Receipt of Application 4-12-2015
- 2. Date of Preparation copy 4-12-2015
- 3. Date of Sending notice 4-12-2015
- 4. Date of receipt of copy by applicant
- 5. Name of Signatory of Person who Received the copy

न्यायालय CJ(SD) बिजौर
OS No - 586/2013

रमेश चन्द्र गौयल आई डी राज्य सरकार आई

नवल निजी बैंक 09/12/2015 की
नियमित हस्ताक्षर सम्पन्न हो



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न्यायालय सिविल जज, सीनियर डिवीजन, बिजनौर
पीठासीन- अपर्णा पाण्डेय (उत्तर प्रदेश न्यायिक सेवा)
मूलवाद संख्या 586 सन् 2013

- 1- रमेश चन्द्र गोयल आयु लगभग 76 वर्ष
- 2- सुरेश चन्द्र गोयल आयु लगभग 62 वर्ष
पुत्रगण स्व० लल्लूमल निवासीगण मौ० माहजनान, कस्बा व पर० किरतपुर, वादी नं० 1 हाल निवासी द्वारा डा० संदीप गोयल, एस०डी० पुरम, किरतपुर रोड, कस्बा, पर० व तह० बिजनौर एवं वादी नं० 2 हाल निवासी श्री कृष्णा बैंकट हॉल, मौ० हसनपुरा, निकट बस स्टैण्ड, कस्बा व पर० किरतपुर, तह० नजीबाबाद, जिला बिजनौर।
... वादीगण

बनाम

- 1- राज्य सरकार उ०प्र० द्वारा जिलाधिकारी, बिजनौर।
- 2- तहसीलदार, नजीबाबाद, जिला बिजनौर।
- 3- नगर पालिका परिषद, किरतपुर द्वारा अध्यक्ष नगर पालिका परिषद, किरतपुर, कस्बा व पर० किरतपुर, तह० नजीबाबाद, जिला बिजनौर।
- 4- अधिशासी अधिकारी, नगर पालिका परिषद, किरतपुर, कस्बा व पर० किरतपुर, तह० नजीबाबाद, जिला बिजनौर।

..... प्रतिवादीगण

- 5- राकेश कुमार गोयल आयु लगभग 54 वर्ष पुत्र श्री बशेषचन्द्र गोयल, निवासी मौ० माहजनान, हाल निवासी मौ० हसनपुरा, निकट बस स्टैण्ड, कस्बा व पर० किरतपुर, तह० नजीबाबाद, जिला बिजनौर।

.....तरतीबी प्रतिवादी

निर्णय

- 1- प्रस्तुत वाद वादीगण द्वारा प्रतिवादीगण के विरुद्ध स्थायी निषेधाज्ञा हेतु संस्थित कर याचना की गयी कि प्रतिवादीगण 1 कमशः



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ता 4 को निषेधित किया जाये कि वह वादीगण की आराजी भूमिधरी खसरा नम्बर 2181/1 व 2 रकबई 3 बीघे 8 बिस्वांसी पुख्ता व ख0 नं0 2182/2 रकबई 7 बिस्वे 9 बिस्वांसी पुख्ता कुल रकबई 3 बीघे 15 बिस्वे 9 बिस्वांसी पुख्ता जिसकी सीमा वाद पत्र के अन्त में दी गई है, वह वादीगण एवं प्रतिवादी सं0 5 के स्वामित्व एवं अधिपत्य में कोई विघ्न अथवा उनके दुकानात, मकानात आदि को तोड़कर या अन्य किसी भी रीत से स्वयं या अपने प्रतिनिधियों/कर्मियों या एजेन्ट द्वारा उत्पन्न ना कराये।

2- संक्षेप में वादीगण का वाद पत्र में कथन है कि आराजी भूमिधरी खसरा नम्बर 2181/1 व 2 रकबई 3 बीघे 8 बिस्वांसी पुख्ता व ख0 नं0 2182/2 रकबई 7 बिस्वे 9 बिस्वांसी पुख्ता कुल रकबई 3 बीघे 15 बिस्वे 9 बिस्वांसी पुख्ता, स्थित ग्राम किरतपुर (अब मौ0 हसनपुरा), कस्बा व पर0 किरतपुर, तह0 नजीबाबाद, जिला बिजनौर के वे तथा प्रतिवादी सं0 5 एवं श्रीमति चन्द्रावती पत्नि स्व0 श्री लल्लूमल बहैसियत साझेदार फर्म लल्लूमल रमेशचन्द्र किरतपुर, पंजीकृत विक्रय पत्र दिनांक 28-09-1974 इकरारी सत्यप्रकाश शर्मा पुत्र कृष्णदत्त शर्मा से स्वामी व अधिपति रहे हैं। खसरा नम्बर 2181/1 व 2 एवं खसरा नम्बर 2182/2 सम्मिलित इकजाई भूमि है, जिसकी मालिक फर्म लल्लूमल रमेशचन्द्र की साझेदार श्रीमति चन्द्रावती का देहान्त 1989 में हो गया। उपरोक्त भूमि कय करने के पश्चात् वादीगण, प्रतिवादी सं0 5 तथा श्रीमति चन्द्रावती का इन्द्राज राजस्व अभिलेखों में हो गया। उपरोक्त खसरा नम्बरान पर सत्यप्रकाश शर्मा बहैसियत सीरदार काबिज चले आते थे और उन्होंने भूमिधरी के अधिकार बीस गुना लगान अदा करके दिनांक 18-09-1970 को प्राप्त कर लिये है, जिसका इन्द्राज खतौनी वर्ष 1970 से 79 फसली में हो गया है। सत्यप्रकाश की उपरोक्त नम्बरान का कमशः 11 बिस्वे 10 बिस्वांसी पुख्ता रकबा राज्य सरकार द्वारा अधिग्रहित किया गया, जिसका मुआवजा भी दिनांक 20-06-1970 को सत्यप्रकाश शर्मा को कमशः

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मालिक व काबिज मानते हुए स्वीकार कर नियमानुसार पंचाट के जरिये अदा किया गया। प्रतिवादी सं० 4, प्रतिवादी सं० 3 जो कस्बा किरतपुर का स्थानीय निकाय का अधिकारी है और अपने अधिकारियों के हर कृत्य के लिये जिम्मेदार है। इसी प्रकार प्रतिवादी सं० 2 राज्य सरकार अपने अधिकारियों के कृत्य के लिये जिम्मेदार है। वादीगण एवं प्रतिवादी सं० 5 के उपरोक्त भूमिधरी आराजी, प्रतिवादी सं० 3 की सीमाओं के अन्दर है और आबादी क्षेत्र में आ चुकी है। वादीगण द्वारा अधिकार पूर्वक प्रश्नगत सम्पत्ति पर दुकान आदि का निर्माण करके अपना अध्यासन स्थापित किया है तथा प्रतिवादी सं० 3 से नियमानुसार निर्माण की स्वीकृति प्राप्त कर दुकान का निर्माण कराया है। इस प्रकार प्रतिवादी सं० 3 व प्रतिवादी सं० 4 द्वारा वादीगण के स्वामित्व एवं अधिपत्य की भूमि होना मानते देखते एवं स्वीकार करते आये हैं। प्रतिवादी सं० 3 ने गृह कर भी आरोपित कर रखा है, जो वादीगण के नाम से प्रतिवादी सं० 3 की मांग पंजिका में दर्ज है और वादीगण प्रतिवादी सं० 3 व प्रतिवादी सं० 4 को नियमानुसार गृह कर अदा करके रसीदें प्राप्त कर रहा है। वादीगण की सम्पत्ति से अन्य किसी व्यक्ति को कोई सम्बन्ध नहीं है। प्रतिवादी सं० 4 ने वादीगण को दिनांक 13-08-2013 का पत्रांक 285/न० पा० परि०, किरतपुर, 2013-14 जो वादीगण को दिनांक 19-08-2013 को प्राप्त हुआ। प्रतिवादी सं० 4 ने उक्त नोटिस में वादीगण के खसरा न० 2181 को तालाब की भूमि बताते हुए, प्रतिवादी सं० 2 के पत्रांक 54 दिनांक 30-07-2013 के आधार पर वादीगण एवं प्रतिवादी सं० 5 तथा चन्द्रावती द्वारा कब्जा कर लेना बताते हुए एक माह के भीतर कब्जा हटाने को कहकर, उसके उपरान्त तहसील/पालिका द्वारा तालाब से कब्जा हटवाने की धमकी दी गयी, जबकि प्रश्नगत खसरा न कभी तालाब रहा है और न ही राजस्व अभिलेखों में तालाब के रूप में इन्द्राज रहा है। प्रतिवादी सं० 3 द्वारा दिया गया नोटिस अवैध एवं भ्रामक है। वादी को अपना पक्ष रखने का कोई अवसर नहीं दिया गया। वादीगण की कुल 17 दुकान बनी हैं तथा प्रतिवादी सं० 5 की

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कुल 21 दुकान व बैंक का भवन तथा निवास स्थान है और सभी दुकान में काबिज है। प्रतिवादीगण से निवेदन करने पर भी कोई सुनवाई नहीं हुई। इस प्रकार याचना की गई है कि प्रतिवादीगण 1 लगायत 4 को निषेधित किया जाये कि वह प्रश्नगत सम्पत्ति जिसका विवरण वाद पत्र में दिया गया, जिसमें वादीगण तथा प्रतिवादी सं० 5 के स्वामित्व एवं अधिपत्य में कोई विघ्न अथवा दुकानात, मकानात आदि को तोड़ने से बाज रहे।

3- उपरोक्त के विरुद्ध प्रतिवादी सं० 1 व प्रतिवादी सं० 2 द्वारा जवाब दावा कागज सं० क-49 प्रस्तुत कर वाद पत्र में किये कथनों का खण्डन किया है एवं यह कथित किया है कि ग्राम किरतपुर के महाल चौहानान खेवट नम्बर-103 में अभिलेखों में राजाराय भारत सिंह पुत्र राजाराय डालचन्द्र निवासी साहनपुर का नाम अंकित है और खसरा नम्बर 1347 फसली के कॉलम नम्बर 5 में अंकित महाल चौहानान खेवट नम्बर 1 अंकित है, जिसके कॉलम नम्बर 1 में 2181 अंकित है, जिसमें पड़ावा व तालाब अंकित है। प्रश्नगत आराजी आधार वर्ष 1359 फसली में बंजर व तालाब के रूप में दर्ज है और इसकी वास्तविक स्वामी उ०प्र० सरकार है। ग्राम किरतपुर की खतौनी (एन०जैड०ऐ०) 1367 फसली के खाता नम्बर- 14 पर बंजर अंकित है तथा तत्कालीन सुपरवाइजर कानूनगो द्वारा ग्राम किरतपुर के खसरा नम्बर-2181/1 क्षेत्रफल 3 बिघे पुख्ता व 2181/2 क्षेत्रफल 1 बिघा पुख्ता व खसरा नम्बर-2182/2 क्षेत्रफल 1-1-14 बिघे पुख्ता पर सत्यप्रकाश पुत्र कृष्णदत्त का कब्जा दर्ज करने के आदेश अंकित हैं। ग्राम किरतपुर की खतौनी अन्दर नगर पालिका 1377 फसली से 1379 फसली के खतौनी 160 पर सत्यप्रकाश का नाम खसरा नम्बर-2181/1 क्षेत्रफल 4 बिघे पुख्ता, खसरा नम्बर 2182/2 क्षेत्रफल 1-1-14 बिघे पुख्ता कुल 2 खेत क्षेत्रफल 5-1-14 बिघे पुख्ता लगान 36.84 रुपये सीरदारी में मूल खातेदार के रूप में एन०जैड०ऐ० से अन्दर नगर पालिका की खतौनी में बिना किसी

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आदेश के अंकित हो गयी। यह फर्जी प्रविष्टि है, इसके बाद वाद नम्बर 32 दिनांक 05-09-1970 में लगान जमा कर सनद भूमिधरी प्राप्त करने के आदेश 1377-1379 फसली में अंकित है। खतौनी 1380-1384 फसली के खाता नम्बर-110 पर सत्यप्रकाश पुत्र कृष्णदत्त का नाम उपरोक्त गाटा नम्बर, क्षेत्रफल व लगान पर श्रेणी-1 के रूप में अंकित है। तत्पश्चात् खातेदार द्वारा दिनांक 28-03-1974 को विक्रय पत्र फर्म लल्लूमल रमेशचन्द्र द्वारा पार्टनर रमेशचन्द्र आदि का नाम अंकित है। आधार वर्ष 1359 फसली में प्रश्नगत आराजी तालाब के रूप में दर्ज थी और तालाब था, जिस वजह से किसी भी व्यक्ति का कोई अधिकार नहीं है और वादीगण को प्रश्नगत आराजी पर कब्जा बनाये रखने का कोई विधिक अधिकार नहीं है। यह भी कथित किया गया कि उपरोक्त वाद जमींदारी उन्मूलन के प्रावधानों से बाधित है तथा धारा 80 सी०पी०सी० से बाधित होने के कारण भी पोषणीय नहीं है। इस प्रकार याचना की गई है कि वादी का वाद निरस्त किया जाये।

4- प्रतिवादी सं० 1 व 2 द्वारा अतिरिक्त प्रतिवाद पत्र 149-क में उपरोक्त कथनों का समर्थन किया है।

5- प्रतिवादी सं० 3 व प्रतिवादी सं० 4 द्वारा जवाब दावा 62-क प्रस्तुत कर वाद पत्र में किये गये कथनों का खण्डन किया है और यह कथित किया कि उपलब्ध दस्तावेजों के अवलोकन से विदित होता है कि विवादित आराजी आधार वर्ष 1359 फसली में बंजर व तालाब के रूप में दर्ज है तथा इसकी वास्तविक स्वामी उ०प्र० सराकर है, जो नगर पालिका की सीमा के अन्तर्गत है, इसके अलावा ग्राम किरतपुर की खतौनी (एन०जैड०ए०) 1367 फसली के खाता सं०-14 पर लेजर अंकित हैं। किन्तु तत्पश्चात् भी राजस्व अभिलेखों में सत्यप्रकाश का नाम व कब्जा दर्ज करने के सम्बन्ध में जो प्रविष्टि है वह बिना किसी विधिक अधिकार/निर्णय के दर्ज है जो फर्जी है।

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फर्जी एन्डी होने के कारण निष्पादित बैनामा दिनांकित 28-03-1974 से वादी को कोई हकूल वैध स्वामित्व एवं कब्जे का प्राप्त नहीं हुआ। वादीगण के विक्रेता ने यदि कोई मुआवजा हासिल कर लिया तो उसका लाभ वादी नहीं उठा सकता। वादीगण किसी फर्जी इन्द्राज का लाभ नहीं उठा सकता। जहां तक निर्माण की स्वीकृति किये जाने का प्रश्न है, यह बात उल्लेखनीय है कि किसी भी भूमि पर किसी भी प्रकार के निर्माण की स्वीकृति दिये जाने के सन्दर्भ में भूमि के स्वामित्व के बाबत कोई न्यायिक निर्णय प्रतिवादीगण द्वारा नहीं दिया जाता है। वादीगण द्वारा यादें फर्जी प्रविष्टि वाले दस्तावेज प्रस्तुत कर निर्माण की स्वीकृति प्राप्त की है तो उसका लाभ वादी को नहीं मिलेगा। वादीगण क्लीन हैण्ड नहीं हैं। इस प्रकार याचना की गई है कि वादी का वाद सव्यय निरस्त किया जाये।

6- प्रतिवादी सं० 5 द्वारा जवाब दावा क-86 प्रस्तुत कर वाद पत्र में किये गये कथनों का समर्थन किया है तथा कथित किया है कि कस्बा किरतपुर महाल चौहान खेवट नं० 1 खसरा नं० 2181 व 2182 के जमींदार राजाराम भगत सिंह पुत्र राजा राय डालचन्द थे। खसरा नं० 2181 व 2182 कस्बा किरतपुर अन्दर हदूद स्थानीय निकाय थे, लिहाजा नम्बरान उपरोक्त की जमींदारी अधिनियम सं० 1 सन् 1951 से समाप्त नहीं हुई, उक्त नम्बरान पर जैड0ए0 एक्ट 1 सन् 1951 के प्राविधान लागू नहीं होते। उत्तर प्रदेश सरकार के स्थानीय निकाय के अन्तर्गत आने वाले क्षेत्रों की जमींदारी समाप्ति के एक्ट नं० 8 सन् 1957 बनाया तथा कस्बा किरतपुर शहरी क्षेत्र की जमींदारी समाप्ति हेतु सरकार द्वारा 01-07-1963 में अधिसूचना जारी की गयी व धारा 8 के अन्तर्गत उक्त नम्बरान सीमांकन अधिकारी उक्त कृषि भूमि घोषित किये गये। यह भी कथित किया गया कि विवादित नम्बरान पर बरवक्त सम्पत्ति शहरी जमींदार सत्य प्रकाश पुत्र कृष्ण दत्त शर्मा बहैसियत सीरदार काबिज व दखील थे तथा बादहू दिनांक 18-09-1970 ई० को सत्यप्रकाश द्वारा लगान का 20 गुना

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जमा करके विवादित नम्बरान में भूमिधरी अधिकार प्राप्त किये। सन् 1968 में खसरा नं० 2181 क्षेत्रफल 0-7-0 व 2182 क्षेत्रफल 0-4-10 भूमि राज्य सरकार द्वारा वास्ते सड़क अधिग्रहित कर ली गयी, जिसका मुआवजा राज्य सरकार द्वारा सत्य प्रकाश शर्मा को विवादित नम्बरान का मालिक व काबिज स्वीकार करते हुए प्रदान किया गया। सत्य प्रकाश पुत्र कृष्ण दत्त शर्मा ने उक्त नम्बरान के जुज भाग जो भूमि सड़क अधिग्रहण में शेष बची थी, को दिनांक 28-03-1974 ई० को फर्म लल्लूमल रमेश चन्द्र द्वारा पार्टनर रमेश चन्द्र व सुरेश चन्द्र पुत्रगण श्री लाला लल्लूमल व राकेश कुमार पुत्र श्री वशेष चन्द्र व श्रीमति चन्द्रवती पत्नी लाला लल्लूमल को विक्रय कर दिया, इस प्रकार वादीगण व प्रतिवादी सं० 5 वादग्रस्त सम्पत्ति पर अधिकार पूर्वक काबिज व दखील चले आते हैं। विवादित नम्बरान में मौके पर कभी भी तालाब नहीं रहा और न ही खसरा नम्बरान कभी सम्पत्ति राज्य सरकार रही है। प्रतिवादी सं०-03 द्वारा बिना किसी अधिकार के नोटिस दिया गया। इस प्रकार गचना की गयी है कि प्रतिवाद पत्र स्वीकार कर वादीगण का वाद स्वीकार किया जाये।

7- प्रतिवादी सं०-1 व 2 द्वारा दिये गये प्रतिवाद पत्र के विरुद्ध प्रति उत्तर पत्र 53-क प्रस्तुत कर वाद पत्र में किये गये कथनों का समर्थन किया है। यह कथित किया है कि प्रतिवाद पत्र के प्रस्तर-25 के कथन से स्पष्ट है कि खसरा नम्बर 2181 सरकार या प्रतिवादीगण या नगर पालिका या गाँव सभा की सम्पत्ति के तौर पर राजस्व अभिलेखों में कभी दर्ज नहीं हुई, बल्कि निजी सम्पत्ति रही है और व्यक्तिगत नामों से खेवट का इन्द्राज रहा है। 1359 फसली का इन्द्राज यह सिद्ध नहीं करता कि खसरा नम्बर 2181 की स्वामी उत्तर प्रदेश सरकार रही हो। किरतपुर 17 अप्रैल 1865 की गजट नोटिफिकेशन संख्या 384ए के अनुसार यू०पी० अधिनियम संख्या 20 सन् 1865 के अनुसार उक्त दिनांक से ही कस्बा घोषित हो चुका था और उसके उपरान्त यू०पी० टाउन ऐरिया एक्ट 1914 व यू०पी०

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म्युनिसिपलटी एक्ट-1916 के अन्तर्गत कमशः टाउन ऐरिया, नगर पालिका क्षेत्र के तौर पर स्थापित हो गया और प्रश्नगत खसरा नम्बर 2181 नगर पालिका क्षेत्र किरतपुर अन्तर्गत होने के कारण उत्तर प्रदेश अधिनियम 1 सन् 1991 के कोई भी प्रावधान प्रस्तुत मामले पर लागू नहीं होते हैं। सत्यप्रकाश के नाम का इन्द्राज फर्जी प्रविष्टी नहीं है। 1359 फसली में श्रेणी जमन 14-3 बंजर (2) दर्शायी गयी है, जो गलत है। वास्तविकता में यह भूमि श्रेणी 1 व 2 की भूमि, लैंड रिकार्ड मैनुअल के चैप्टर 8 के पैरा नं० 124 के अनुसार है।

8- इसी प्रकार प्रतिवादी सं०-3 व 4 द्वारा प्रस्तुत प्रतिवाद पत्र के विरुद्ध प्रति उत्तर पत्र 66-क प्रस्तुत कर प्रतिवाद पत्र का खण्डन किया है एवं कथित किया है कि विवाद ग्रस्त सम्पत्ति 1359 फसली के बंजर व तालाब के रूप में दर्ज नहीं रहा, न ही श्रेणी 6 अथवा श्रेणी 9 का तालाब या बंजर दर्ज रहा है। स्वीकृत रूप से उपरोक्त आराजी एन० जैड० ए० क्षेत्र में रही है, जिसकी वजह से उत्तर प्रदेश जमींदारी विनाश अधिनियम 1950 का कोई प्रावधान लागू नहीं होता। यह भी कथित किया है कि नगर पालिका परिषद किरतपुर के रजिस्टर मालिकान में भी खसरा संख्या 2181 व 2182/2 का कोई इन्द्राज नहीं है और राजस्व अभिलेखों में भी श्रेणी 6 में कोई भूमि अकृषिक भूमि या जलमग्न भूमि केवल सड़क पुख्ता में अधिग्रहित भूमि के अलावा नदारद है। जिसका तात्पर्य यह है कि प्रश्नगत खसरा नम्बर में सड़क में अधिग्रहित अंश को छोड़कर शेष भूमि जलमग्न भूमि के रूप में कभी नहीं रही है। प्रश्नगत खसरा नं० पर स्वर्गीय सत्यप्रकाश का वैधानिक कब्जा होने के कारण ही प्रतिवादी सं०-1 के राजस्व अधिकारियों व कर्मचारियों द्वारा प्रश्नगत नं० पर दिनांक 18-06-1961 को विधि पूर्वक नाम इन्द्राज किया गया तथा बहैसियत सीरदार स्व० सत्यप्रकाश को सड़क अधिग्रहण का मुआवजा दिया गया। स्व० सत्यप्रकाश ने खसरा सं० 2182/3 में से मौ० इस्माइल को व इसी खसरा नं० में से अ० वाहिद को सम्पत्ति विक्रय किया और

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इसी खसरा नं० में से मौ० अली को भी विक्रय किया गया। इन तीनों केताओं के नाम भी राजस्व अभिलेखों में कमशः इन्द्राज हुए और यह लोग आज भी काबिज हैं, जबकि तीनों बैनामे फर्म लल्लूमल रमेशचन्द्र को किये गये बैनामे से पूर्व के हैं।

9- प्रति उत्तर पत्र 163-ग के द्वारा अतिरिक्त जवाब दावा 149-क का खण्डन किया है और वादी का दावा डिकी किये जाने की याचना की है।

10- उभय पक्षों के अभिवचनों के आधार पर न्यायालय द्वारा निम्नलिखित वाद बिन्दु विरचित किये गये।

1- क्या वादीगण एवं प्रतिवादी सं०-5 विवादित सम्पत्ति जिसका पूर्ण विवरण वादपत्र के अन्त में तालिका-अ में दिया गया है, के मालिक काबिज हैं?

2- क्या प्रतिवादीगण सं० 1 ता 4 वादीगण को विधि विरुद्ध तरीके से बिना विधिक प्रक्रिया अपनाये वादग्रस्त आराजी से जबरदस्ती बेदखल करना चाहते हैं?

3- क्या दावा वादीगण अल्पमूल्यांकित है तथा प्रदत्त न्यायालय शुल्क अपर्याप्त है?

4- क्या दावा वादीगण धारा 331 जमींदारी उन्मूलन अधिनियम के प्राविधानों से बाधित है?

5- क्या दावा वादी आदेश 07 नियम 11 सी०पी०सी० से बाधित है?

6- वादीगण किस अनुतोष को पाने के अधिकारी हैं?

11- वादी की ओर से अपने कथन के समर्थन में सूची 9-ग/1 लगायत 9-ग/3 से 10-क/1 लगायत 10-क/4 सत्यापित प्रतिलिपि विक्रय पत्र इकरारी श्री सत्यप्रकाश शर्मा बहक फर्म लल्लूमल रमेशचन्द्र द्वारा साझेदार रमेशचन्द्र, सुरेशचन्द्र, राकेश

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कुमार एवं चन्द्रावती दिनांकित 28-03-1974, खतौनी 1419 फसली 1424 कागज सं० 11-ग, खसरा फसली वर्ष 1420 कागज संख्या 12-ग, खतौनी फसली वर्ष 1380-84 13-ग/1, खतौनी वर्ष 1377-79 कागज सं० 13-ग/2, नकल फार्म नमूना धारा एल०ए० एक्ट (भूमि अध्यापित) मौजा किरतपुर, परगना किरतपुर ता फौ० 20-6-70 कागज सं० 13-ग/3, नकल फार्म ए स्टेटमेंट 13-ग/4, नकल नक्शा चकतरासी ग्राम किरतपुर परगना किरतपुर 14-ग, नक्शा 15-ग, नगर पालिका द्वारा जारी रसीद कागज सं० 16-ग/1 लगायत 16-ग/9 तथा रसीद कागज सं० 17-ग/1 लगायत 17-ग/4, अधिशासी अधिकारी नगर पालिका परिषद किरतपुर द्वारा अनुमति बाबत निर्माण दुकान दिनांकित 17-06-2005 कागज सं० 18-ग/1 तथा संलग्न नक्शा 18-ग/2, नगर पालिका परिषद द्वारा जारी अनुमति कागज सं० 19-ग/1 लगायत 19-ग/2, कार्यालय नगर पालिका परिषद, किरतपुर, बिजनौर द्वारा जारी नोटिस 20-ग/1, कार्यालय तहसीलदार नजीबाबाद द्वारा प्रेषित पत्र अधिशासी अधिकारी कागज सं० 20-ग/2, नोटिस कार्यालय नगर पालिका द्वारा जारी 21-ग/1 लगायत 21-ग/2 एवं सूची 68-ग से नकल बस्ता खतौनी 1380-1382 फसली कागज सं० 69-ग, नकल खतौनी फसली 1391-1400 कागज सं० 70-ग, खतौनी फसली 1401-1406 कागज सं० 71-ग, नकल इन्तेखाब रजिस्टर गृहकर निर्धारण कागज सं० 72-ग, रसीद 73-ग, नकल इन्तेखाब रजिस्टर गृहकर निर्धारण कागज सं० 74-ग, रसीद 75-ग, नकल इन्तेखाब रजिस्टर गृहकर निर्धारण कागज सं० 76-ग, रसीद 77-ग, नकल इन्तेखाब रजिस्टर गृहकर निर्धारण कागज सं० 78-ग, रसीद 79-ग, सत्यापित प्रतिलिपि विक्रय पत्र इकरारी सत्यप्रकाश बहक मौ० इस्माईल दिनांकित 13-10-1997 कागज सं० 80-ग/1 लगायत 80-ग/4, सत्यापित प्रतिलिपि विक्रय पत्र इकरारी सत्यप्रकाश बहक अ० वाहिद दिनांकित 20-10-1970 81-ग/1 लगायत 81-ग/3, सत्यापित प्रतिलिपि विक्रय पत्र इकरारी सत्यप्रकाश बहक मौ० अली

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दिनांकित 20-10-1970 कागज सं० 82-ग/1 लगायत 82-ग/3 दाखिल किया है।

12- प्रतिवादी सं० 5 की ओर से सूची 104-ग से नकल जो०च० आकार पत्र 40 कागज सं० 105-ग, खतौनी फसली वर्ष 1359 कागज सं० 106-ग, नकल बस्ता खतौनी 1359 फसली 107-ग, नकल भूचित्र किरतपुर 108-ग दाखिल किया है।

13- प्रतिवादी सं० 1 व 2 की ओर से सूची 39-ग से छायाप्रति फर्द खसरा फसली 1337 कागज सं० 40-ग/1 लगायत 40-ग/2, छायाप्रति नकल फर्द खतौनी फसली सन् 1359 कागज सं० 41-ग, खसरा नकल 1359 फसली 42-ग, नकल खतौनी छायाप्रति वर्ष 1367 फसली कागज सं० 43-ग, छायाप्रति सन् 1389-1392 फसली (खेवट सं०-1) कागज सं० 44-ग/1 लगायत 44-ग/2, छायाप्रति फर्द खतौनी वर्ष 1377-79 कागज सं० 45-ग, छायाप्रति खतौनी वर्ष 1380-1384 46-ग, खतौनी फसली वर्ष 1419-1424 छायाप्रति कागज संख्या 47-ग एवं सूची सबूत 152-ग से नोटिस कागज संख्या 153-ग, खसरा कागज संख्या 154-ग व खतौनी 155-ग दाखिल किया है।

14- प्रतिवादी सं० 3 व 4 द्वारा कोई अभिलेखीय साक्ष्य प्रस्तुत नहीं किया है।

15- वादी की ओर से मौखिक साक्ष्य में रमेशचन्द्र गोयल को पी०डब्ल्यू०-1 के रूप में परीक्षित हुए हैं।

16- प्रतिवादी द्वारा सुरेशचन्द्र को बतौर डी०डब्ल्यू०-1 परीक्षित कराया गया है।

17- प्रतिवादी सं०^{3 व} 4 की ओर से बाबूराम टैक्स कलेक्टर को
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परीक्षित कराया गया है। पक्षकारों की ओर से अन्य कोई साक्ष्य प्रस्तुत नहीं किया गया है।

18- पत्रावली में रिपोर्ट कमीशन मय नक्शा कागज संख्या 28-ग व 29-ग दाखिल है।

19- मेरे द्वारा उभय पक्षों के विद्वान अधिवक्तागण की बहस सुनी तथा पत्रावली का सम्यक् अवलोकन किया।

20- पत्रावली पर उपलब्ध मौखिक एवं दस्तावेजी साक्ष्य के परिपेक्ष्य में न्यायालय द्वारा विरचित वाद बिन्दुओं का बिन्दुवार विश्लेषण किया जा रहा है।

निष्कर्ष

निस्तारण वाद बिन्दु संख्या 01

21- वाद बिन्दु संख्या-01 इस प्रकार विरचित किया गया है कि क्या वादीगण एवं प्रतिवादी सं0-5 विवादित सम्पत्ति जिसका पूर्ण विवरण वादपत्र के अन्त में तालिका-अ में दिया गया है, के मालिक काबिज हैं?

22- उपरोक्त वाद बिन्दु को साबित करने का भार वादीगण एवं प्रतिवादी सं0-5 पर है। वादीगण द्वारा कथित किया गया है कि वह आराजी भूमि खसरा नम्बर 2181/1 व 2181/2 रकबा 3 बीघे 8 बिस्वे पुख्ता व खसरा सं0 2182/2 रकबई 7 बिस्वे 9 बिस्वांसी पुख्ता, कुल रकबा 3 बीघे 15 बिस्वे 9 बिस्वांसी पुख्ता स्थित ग्राम किरतपुर कस्बा व परगना किरतपुर, तहसील नजीबाबाद जिला बिजनौर के वादीगण तथा प्रतिवादी संख्या-5 एवं स्व0 श्रीमति चन्द्रावती पत्नि स्व0 श्री लल्लूमल बहैसियत साझेदार फर्म लल्लूमल रमेशचन्द किरतपुर

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पंजीकृत विक्रयपत्र दिनांकित 28-03-1974 से स्वामी व काबिज रहे हैं तथा उपरोक्त खसरा नम्बरान पर वादीगण एवं प्रतिवादी संख्या-5 का नाम राजस्व अभिलेखों में इन्द्राज हो गया है। वादी द्वारा अपने कथन के समर्थन में सूची 9-ग/1 लगायत 9-ग/3 से दाखिल कागज संख्या 10-ग/2 दाखिल किया गया जिसके अवलोकन से विदित होता है कि प्रश्नगत आराजी स्थित ग्राम किरतपुर, परगना किरतपुर अन्दर हदूद नगर पालिका किरतपुर का बैनामा सत्यप्रकाश द्वारा स्वयं को मालिक काबिज होते हुये, बेचने की आज्ञा जिलाधीश महोदय बिजनौर से 22-01-1974 प्राप्त करने के पश्चात् फर्म लल्लूमल रमेशचन्द किरतपुर, नजीबाबाद, जिला बिजनौर जिसके साझीदार रमेशचन्द व सुरेशचन्द पुत्र लल्लूमल व राकेश कुमार व श्रीमती चन्द्रावती के पक्ष में दिनांक 28-03-1974 को निष्पादित किया गया। कागज संख्या 11-ग फसली वर्ष 1419-1424 के अनुसार श्रेणी 1-क में वादीगण का नाम प्रश्नगत खसरा नम्बरान के बाबत दर्ज है।

23- वादी द्वारा वाद पत्र में यह कथित किया गया है कि उपरोक्त खसरा नम्बरान सत्यप्रकाश शर्मा बहैसियत सीरदार काबिज थे और सत्यप्रकाश शर्मा ने उपरोक्त खसरा नम्बरान में भूमिधर के अधिकार का 20 गुना लगान अदा करके दिनांक 18-09-1970 को प्राप्त कर लिया, जिसका इन्द्राज खतौनी फसली वर्ष 1377-1379 में हो गया। वादी द्वारा दाखिल कागज संख्या 13/2-ग नकल खतौनी ग्राम किरतपुर परगना किरतपुर नजीबाबाद जिला बिजनौर फसली वर्ष 1377-1379 के अवलोकन से विदित होता है कि उक्त खतौनी में श्रेणी 2 में भूमि जो सीरदारों के अधिकारों में होना उल्लिखित है, अंकित है। उक्त खतौनी में ही खाता संख्या 160 पर सत्यप्रकाश पुत्र कृष्णदत्त, खसरा नम्बर 2181/1 व 2 तथा 2182/2 कुल क्षेत्रफल 5-1-14 बीघे नजीबाबाद मुकदमा नम्बर 32/15-9-1970 में पारित आदेश के अनुसार सत्यप्रकाश ने अपने खाते का लगान 36.84 रुपये जमा कर सनद भूमिधरी अधिकार प्राप्त करने की प्रविष्टि अंकित है।

कमशः





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इसी खतौनी के अग्रिम कॉलम के अनुसार खाता नम्बर 160 पर भूमि अध्यापित अधिकारी द्वारा मुकदमा संख्या 13/24-01-1972, ~~के कम संख्या 21 पर~~ खसरा संख्या 2181 व 2182 में 11 बिस्वे 10 बिस्वांसी से सत्यप्रकाश का नाम खारिज करके सड़क पी.डब्लू.डी. दर्ज है। कागज संख्या 13-ग/3 व 13-ग/4 के अवलोकन से विदित होता है कि न्यायालय एल.ए.ओ. नजीबाबाद मोजा किरतपुर परगना किरतपुर द्वारा वाद संख्या 15 (टी) धारा एल.ए. एक्ट में भूमि अध्यापित अधिकारी द्वारा दिनांक 20-06-1970 को सत्यप्रकाश पुत्र कृष्णदत्त को मालिक मानते हुए 11 विस्वा 10 विस्वांसी भूमि अधिग्रहित की गयी। इस प्रकार उपरोक्त प्रपत्रों के अवलोकन से यह विदित होता है कि सत्यप्रकाश शर्मा प्रश्नगत उपरोक्त खसरा नम्बरान के बतौर सीरदार काबिज थे और उनके द्वारा 20 गुना लगान अदा करने के पश्चात् सनद भूमिधरी अधिकार प्राप्त किया गया था। सत्यप्रकाश द्वारा उक्त नम्बरान के शेष भाग जो भूमि सड़क अधिग्रहण में बची थी उसमें से दिनांक 28-03-1974 को वादीगण के पक्ष में बैनामा निष्पादित किया।

24- प्रतिवादी संख्या-1 व 2 द्वारा यह कथित किया गया है कि खेवट नम्बर 103 के अभिलेखों में राजाराय भरत सिंह पुत्र राजाराय डालचन्द्र निवासी सहनपुर का नाम अंकित है तथा खसरा नम्बर-1347 फसली के कालम नम्बर-5 में अंकित महाल चौहानान खेवट नम्बर-1 अंकित जिसके कालम नम्बर-1 में खसरा नम्बर-2181 अंकित है, जिसमें पड़ावा व तालाब अंकित है। यह भी कथन किया गया है कि प्रश्नगत आराजी आधार वर्ष 1359 फसली में बंजर व तालाब के रूप में दर्ज है और इसका वास्तविक स्वामी उत्तर प्रदेश सरकार है। इसी प्रकार प्रतिवादी संख्या-3 व 4 द्वारा भी यह कथित किया गया है कि विवादित आराजी आधार वर्ष 1359 फसली में बंजर व तालाब के रूप में दर्ज है तथा इसका वास्तविक स्वामी उत्तर प्रदेश सरकार है तथा जो नगर पालिका की सीमा के अन्तर्गत है। इसके

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विपरीत वादीगण तथा प्रतिवादी सं०-5 का यह कथन है कि 1359 फसली का इन्द्राज हरगिज यह सिद्ध नहीं करता है कि प्रश्नगत खसरा उत्तर प्रदेश सरकार की भूमि रही हो, प्रश्नगत खसरा नम्बरान बंजर व तालाब के रूप में दर्ज नहीं रहा हो न ही श्रेणी 6 व 9 का तालाब या बंजर रहा हो।

25- उपरोक्त अभिवचनों के आधार पर न्यायालय को यह देखना है कि क्या प्रतिवादीगण द्वारा दाखिल कागज संख्या 41-ग फसली वर्ष 1359 में दर्ज तालाब उत्तर प्रदेश सरकार की सम्पत्ति है अथवा नहीं?

26- उपरोक्त के सम्बन्ध में वादी द्वारा जवाबुलजवाब कागज संख्या 53-क के प्रस्तर-6 में यह कथित किया गया है कि किरतपुर 17 अप्रैल 1865 के गजट अधिसूचना संख्या-384ए के अनुसार यू.पी. अधिनियम संख्या-20 सन् 1865 के अनुसार उक्त दिनांक से ही कस्बा क्षेत्र घोषित हो चुका था और उसके उपरान्त उत्तर प्रदेश टाउन एरिया 1914 के अन्तर्गत व यू.पी. म्यूनिशिपल एक्ट 1916 के अन्तर्गत कमशः टाउन एरिया, नगर पालिका के क्षेत्र के तौर पर स्थापित हो गया है और प्रश्नगत खसरा नम्बर-2181 नगर पालिका क्षेत्र किरतपुर के अन्तर्गत होने के कारण उस पर उत्तर प्रदेश अधिनियम संख्या-1 सन् 1951 के कोई भी प्राविधान प्रस्तुत मामले में लागू नहीं होते हैं। उपरोक्त गजट की फोटो प्रति वादी द्वारा अवलोकनार्थ प्रस्तुत की गयी। गवर्मेन्ट गजट नॉर्थ वेस्टर्न प्रोविन्सेस, इलाहाबाद अप्रैल, 26 1865 (नं० XVIII) में प्रकाशित 17 अप्रैल 1865 के गजट नोटिफिकेशन संख्या-384ए के अनुसार (It is hereby notified that the provisions of Act XX of 1856 will from this day, be introduced into the Towns of the Bijnour District marginally noted.) उपरोक्त नोटिफिकेशन के मार्जिन में किरतपुर क्षेत्र अंकित है। कागज संख्या 40-ग/1 व 41-ग प्रतिवादी द्वारा दाखिल किया गया है, उसके अनुसार 1337 फसली में भी कस्बा किरतपुर परगना किरतपुर अंकित है। प्रतिवादी संख्या-5 द्वारा दाखिल
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कागज संख्या 106-ग खतौनी फसली वर्ष 1359 की सत्यप्रतिलिपि का अवलोकन से विदित होता है कि 2181/1 व 2 के समक्ष टाउन अंकित है। इसके अतिरिक्त स्वयं प्रतिवादी द्वारा अपने जवाब दावे में 1367 फसली खतौनी को एन.जैड.ए. में दर्ज होने का कथन किया गया है तथा ग्राम किरतपुर की खतौनी 1367 फसली को अन्दर नगर पालिका होना कहा गया है। उपरोक्त प्रपत्रों से यह स्पष्ट होता है कि प्रश्नगत खसरा नम्बरान करबा तत्पश्चात् टाउन एरिया तथा नगर पालिका क्षेत्र के अन्तर्गत है। उत्तर प्रदेश जमींदारी विनाश अधिनियम 1950 की धारा-1 (2) के अनुसार, " इसका विस्तार सम्पूर्ण उत्तर प्रदेश में होगा सिवाय उन क्षेत्रों के जो कि 07 जुलाई, 1949 को, संयुक्त प्रान्त नगर पालिका अधिनियम, 1916 के प्राविधानों के अन्तर्गत एक नगर पालिका में या एक अधिसूचित क्षेत्र में या कैंटोनमेंट अधिनियम, 1924 के अन्तर्गत एक छावनी में, या संयुक्त प्रान्त टाउन एरिया एक्ट, 1914 के अन्तर्गत टाउन एरिया में, समाविष्ट थे।" इस प्रकार उभय पक्षों द्वारा दाखिल प्रपत्रों एवं अभिवचनों के आधार पर स्वीकृत रूप से प्रश्नगत खसरा नम्बरान किरतपुर के अन्तर्गत रही है और खतौनी में एन.जैड.ए. के रूप में दर्ज है। ऐसी स्थिति में उत्तर प्रदेश जमींदारी विनाश एवं भूमि सुधार अधिनियम-1950 के प्राविधान प्रस्तुत मामले में लागू नहीं होते हैं।



27- उत्तर प्रदेश अरबन एरिया जैड0ए0 एवं लैण्ड रिफॉर्मस अधिनियम 1956 की धारा-1 (2बी) के अनुसार "It shall extend to the areas which-in the case of the rest of uttar pradesh, were, on the 7th day of july, 1949, included in a municipality, or a notified area under the provisions of the U.P. municipalities Act, 1916, Or in a cantonment under the provisions of the cantonment Act, 1924 or a town area under the provisions of the U.P. Town Areas Act, 1914"

28- धारा-1 (3) के अनुसार "It shall come into force
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at once except in the areas mentioned in the schedule where it shall come into force on such date and subject to such exceptions or modifications not affecting the substance as the State Government may by notification publish in the official Gazette appoint in this behalf and different dates may be appointed and different exceptions or modifications made for different areas"

29- धारा-2 (1) के अन्तर्गत "Agricultural area" परिभाषित किया गया है।

30- राजस्व विभाग, नोटिफिकेशन नम्बर 2653/1ए-168-60 दिनांकित जून, 20, 1963, यू0पी0 गजट पार्ट-1 में प्रकाशित दिनांकित जून, 29, 1963, पी.1217. के अनुसार "In exercise of the powers under section 8 of the U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956 (U.P. Act No. IX of 1957), the Governor of Uttar Pradesh is pleased to declare that as from the first day of July, 1963, all agricultural areas in the following Urban areas of the State, which have been so demarcated under section 5 of the aforesaid Act, shall vest in the State of Uttar Pradesh, and as from the beginning of that date, all such agricultural areas stand transferred to, and vest, except as provided in the said Act, in the State free from all encumbrances." तथा क्रम संख्या-31 पर किरतपुर नोटिफाइड एरिया उल्लिखित है।

31- इस प्रकार उत्तर प्रदेश सरकार द्वारा स्थानीय निकाय के अन्तर्गत आने वाले क्षेत्रों की जमींदारी समाप्ति के लिये यू0पी0 एक्ट नम्बर-9 सन् 1957 बनाया गया। उपरोक्त अधिनियम की धारा-18 के अन्तर्गत वो व्यक्ति जो प्रश्नगत सम्पत्ति पर काबिज थे

क्रमशः





वो सीरदार के रूप में स्थापित हुये। वादी की ओर से अपने तर्क का समर्थन में 1964 एएलजे पेज-14 हरसरन दास बनाम काले प्रस्तुत कर कथन किया गया है कि यू0पी0 शहरी क्षेत्र जमींदारी विनाश अधिनियम, 1956 की धारा-18 (2)(b) के अनुसार जिनको सीरदारी अधिकार प्राप्त हो गये थे उन्हें प्रश्नगत सम्पत्ति से निकाला नहीं जा सकता था। इस प्रकार जहां तक प्रतिवादी का यह कथन है कि आधार वर्ष 1359 फसली की खतौनी है, उपरोक्त विवेचना से यह स्पष्ट हो चुका है कि प्रश्नगत खसरा नम्बरान पर यू0पी0जैड0 ए0 एक्ट, 1950 के प्राविधान लागू नहीं होते हैं। अतः ऐसी स्थिति में आधार वर्ष फसली सन् 1359 नहीं है। उ0प्र0 अरबन एरिया जैड0ए0 अधिनियम के अनुसार कस्बा किरतपुर हेतु अधिसूचना 01 जुलाई, 1963 को जारी हुई तथा धारा-8 के अन्तर्गत किरतपुर कृषि भूमि घोषित हुआ।

32- प्रतिवादीगण द्वारा अपने इस तर्क के सम्बन्ध में कि प्रश्नगत खसरा नम्बर-1359 फसली में तालाब के रूप में दर्ज है, इसलिये उत्तर प्रदेश सरकार उसकी वास्तविक स्वामी है, सूची 39-ग से कागज संख्या 41-ग/1 लगायत 41-ग/2 दाखिल किया गया है। यद्यपि उक्त प्रपत्र फोटोप्रति हैं, परन्तु उक्त खतौनी के अवलोकन से यह विदित होता है कि फसली वर्ष 1337 कस्बा किरतपुर, परगना किरतपुर पर अंकित खसरा संख्या-2181 के कॉलम नं0-5 में महाल चौहानान खेवट संख्या-1 अंकित है तथा उक्त अभिलेख में राजाराय भरत सिंह पुत्र राजाराय डालचन्द का नाम अंकित है। इस प्रकार प्रतिवादी द्वारा दाखिल किये गये स्वयं के प्रपत्रों से यह विदित होता है कि फसली वर्ष 1337 में प्रश्नगत खसरा नम्बर-2181 पर उत्तर प्रदेश सरकार अथवा नगर पालिका का नाम राजस्व अभिलेखों में दर्ज नहीं है, अपितु उक्त सम्पत्ति राजाराय की निजी सम्पत्ति थी और उसके नाम से खेवट का इन्द्राज रहा है। प्रश्नगत खसरा नम्बरान पर बंजर तथा तालाब दर्ज है, परन्तु उत्तर प्रदेश सरकार की सम्पत्ति

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होने का कोई भी इन्द्राज अंकित नहीं है। उपरोक्त विवेचना से यह साबित हो चुका है कि फसली वर्ष 1359 प्रस्तुत मामलों में आधार वर्ष नहीं है, प्रश्नगत सम्पत्ति पर यू.पी. जैड.ए. के प्रावधान लागू नहीं होते हैं। यह भी उपरोक्त विवेचना में स्पष्ट हो चुका है कि प्रश्नगत सम्पत्ति स्थित कस्बा किरतपुर, उत्तर प्रदेश शहरी क्षेत्र में जमींदारी समाप्ति हेतु सरकार द्वारा दिनांक 01-07-1963 में अधिसूचना जारी की गयी थी। प्रतिवादी द्वारा दाखिल कागज संख्या 43-ग से स्पष्ट है कि उक्त अधिसूचना जारी होने के पूर्व ही दिनांक 18-06-1961 को सत्यप्रकाश का नाम कब्जेदार के रूप में अंकित हो चुका था। इस प्रकार यदि तर्क के लिये यह मान भी लिया जाये कि फसली वर्ष 1359 में प्रश्नगत भूमि तालाब के रूप में दर्ज है तो भी इसका कोई लाभ प्रतिवादीगण को नहीं मिलेगा। प्रश्नगत किरतपुर क्षेत्र में अधिसूचना सन् 01 जुलाई, 1963 जारी होने के पूर्व सत्यप्रकाश का नाम प्रश्नगत नम्बरान के बाबत दर्ज हो चुका था। वादीगण एवं प्रतिवादी संख्या-5 द्वारा यह भी स्पष्ट कथित किया है कि प्रश्नगत आराजी न तो बंजर व तालाब के रूप में दर्ज रही है, न ही श्रेणी-6 व 9 तालाब या बंजर दर्ज रहा है तथा नगर पालिका परिषद किरतपुर के रजिस्टर मालिकाना में प्रश्नगत खसरा नम्बरान का कोई इन्द्राज नहीं है। राजस्व अभिलेखों में भी श्रेणी-6 में कोई अकृषिक भूमि या जलमग्न भूमि केवल सड़क पुख्ता में अधिग्रहित भूमि के अलावा नदारद है। वादी द्वारा दाखिल कागज संख्या 14-ग व 15-ग के अवलोकन से विदित होता है कि खसरा नम्बर-2181 व 2182 पर उत्तर प्रदेश जोत चकबन्दी नियमावली, 1954 में परम्परागत चिन्हों के अनुसार तालाब का कोई चिन्ह अंकित नहीं है। कागज संख्या 70-ग फसली वर्ष 1391-1400 किरतपुर, तहसील नजीबाबाद, जिला बिजनौर के अवलोकन से विदित होता है कि श्रेणी-6 में अकृषिक भूमि के अन्तर्गत जलमग्न भूमि नदारद अंकित है। इसी प्रकार कागज संख्या 71-ग नकल बस्ता खतौनी फसली वर्ष 1401-1406 में भी श्रेणी-6 में अकृषिक भूमि के अन्तर्गत जलमग्न भूमि नदारद है और सड़क पुख्ता

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का इन्द्राज है। उक्त प्रपत्रों से यह स्पष्ट होता है कि प्रश्नगत आराज पर उक्त खसरा नम्बरान पर सड़क में अधिगृहित भाग को छोड़कर शेष भाग जलमग्न भूमि नहीं है। कागज संख्या 14-ग नक्शे के अवलोकन से विदित होता है कि खसरा नम्बरान 2181 व 2182 में सड़क के लिये अधिगृहित भूमि लाल स्याही से दर्शायी गयी है। अदत्तन खतौनी के अनुसार भी तालाब का कोई इन्द्राज नहीं है। अतः ऐसे में प्रतिवादी का यह कथन कि प्रश्नगत खसरा नम्बरान पर तालाब है और वह उत्तर प्रदेश सरकार की भूमि है, स्वीकार किये जाने योग्य नहीं है।

33- प्रतिवादी द्वारा दाखिल कागज संख्या. 43-ग फसली वर्ष 1367 के अवलोकन से विदित होता है कि दिनांक 18-06-1961 को खसरा नम्बरान 2181/1 व 2181/2 पर सत्यप्रकाश का कब्जा होना दर्ज है। यद्यपि उक्त प्रपत्र फोटोप्रति हैं, परन्तु प्रतिवादी संख्या-1 व 2 द्वारा प्रस्तर-27 में यह स्वीकार किया गया है कि फसली वर्ष 1367 ग्राम किरतपुर की खसरा नम्बरान 2181/1 क्षेत्रफल 3 बीघे पुख्ता व खसरा नम्बर-2181/2 क्षेत्रफल 1-1-14 बीघे पुख्ता पर सत्यप्रकाश पुत्र कृष्णदत्त निवासी ग्राम किरतपुर का कब्जा दर्ज करने का आदेश सुपरवाईजर कानूनगो के द्वारा किया गया। वादी द्वारा दाखिल कागज संख्या 13-ग/2 फसली वर्ष 1377-1379 की सत्यप्रतिलिपि के अनुसार मुकदमा संख्या-32 दिनांकित 15-09-1970 के अनुसार सत्यप्रकाश ने अपने खाते का लगान 36.84/- रुपये अदा कर सनद भूमिधरी अधिकार प्राप्त होना अंकित है। उक्त इन्द्राज को स्वयं प्रतिवादी संख्या-1 व 2 द्वारा जवाब दावा के प्रस्तर-28 में स्वीकार किया है। डी0डब्लू0-1 द्वारा अपनी प्रतिपरीक्षा में स्वीकार किया है कि वर्ष 1370-79 फसली की खतौनी में श्रेणी-2 जो सीरदारों के अधिकारों में हैं, बतौर सीरदार सत्यप्रकाश पुत्र कृष्णदत्त खाना नं-2 में दर्ज है। इसी खतौनी के खाना नं-3 में पूर्व 1371 फसली दर्ज है। यह भी स्वीकार किया है कि सत्यप्रकाश का नाम

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बतौर सीरदार 1371 फसली से पूर्व ही चला आ रहा है और सत्यप्रकाश ने लगान का 20 गुना जमा करके सीरदार के भूमिधरी अधिकार प्राप्त किये और भूमिधरी सनद प्राप्त की। उत्तर प्रदेश सरकार द्वारा सत्यप्रकाश को सीरदार के अधिकार प्रदान किये गये।" इस प्रकार स्वयं प्रतिवादी द्वारा अपने साक्ष्य में भी वादी के कथनों का समर्थन किया है। इसी प्रकार कागज संख्या 13-ग/1 नकल खतौनी फसली वर्ष 1380-1384 किरतपुर, नजीबाबाद, जिला बिजनौर श्रेणी 1 भूमि जो भूमिधरों के अधिकारों में है, उसमें खाता संख्या-110 में सत्यप्रकाश पुत्र कृष्णदत्त का नाम प्रश्नगत नम्बरान के बाबत अंकित है और कॉलम नम्बर-7 में आदेश दिनांकित 31-05-1977 के अनुसार खाता नम्बर-110 से सत्यप्रकाश पुत्र कृष्णदत्त का नाम खारिज होकर फर्म लल्लूमल रमेशचन्द्र किरतपुर नजीबाबाद जिला बिजनौर जिसके साझेदार श्री रमेशचन्द्र व सुरेशचन्द्र पुत्र श्री लल्लूमल व राकेश कुमार व श्रीमति चन्द्रावती का नाम दर्ज होना अंकित है। उक्त प्रविष्टि को भी प्रतिवादी द्वारा जवाब दावे के प्रस्तर-29 में स्वीकार किया है। इस प्रकार प्रतिवादी द्वारा खतौनी (एन.जैड.ए.) फसली वर्ष 1367 पर सत्यप्रकाश का कब्जा दर्ज होने का आदेश, फसली वर्ष 1377-1379 में सत्यप्रकाश का नाम बतौर सीरदार तथा आदेश दिनांकित 05-09-1970 में लगान जमा कर सनद भूमिधरी अधिकार प्राप्त होने का आदेश स्वीकार किया है। खतौनी फसली वर्ष 1380-1384 के खाता नम्बर-110 में सत्यप्रकाश को श्रेणी-1 के रूप में खातेदार होना भी स्वीकार किया है। प्रतिवादीगण सं० 1 ता 4 द्वारा वादपत्र में प्रश्नगत आराजी की चौहददी के बाबत कोई खण्डन नहीं किया है। रिपोर्ट कमीशन मय नक्शा कागज संख्या 29-ग से प्रश्नगत सम्पत्ति की चौहददी की पुष्टि होती है।



34- उपरोक्त प्रपत्रों के सम्बन्ध में मात्र प्रतिवादी संख्या-1 ता 4 द्वारा यह कथित किया गया है कि उक्त प्रविष्टि फर्जी है, जो बिना किसी आदेश के अंकित हो गयी। इस सम्बन्ध में उल्लेखनीय है
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कि राजस्व अभिलेखों को रखरखाव राजस्व विभाग का है, अभिलेख में इन्द्राज की प्रविष्टि को रिबट किया जा सकता है। प्रतिवादीगण द्वारा अपने कथन के समर्थन में कोई प्रपत्र अथवा कोई साक्ष्य प्रस्तुत नहीं किया है जिससे कि यह साबित होता कि उक्त प्रविष्टि फर्जी है। उनके द्वारा स्वयं दाखिल सभी प्रपत्र फोटो प्रति हैं। कागज संख्या 43-ग स्वयं उनके द्वारा दाखिल की गयी है जिसमें सत्यप्रकाश का कब्जा होना दर्ज है। डी0डब्लू0-1 द्वारा प्रतिपरीक्षा में फर्जी होने के सम्बन्ध में मात्र यह कथन किया है कि 1377-1379 फसली वर्ष की खतौनी में उसने सत्यप्रकाश के नाम को फर्जी इसलिये बताया कि पूर्व खतौनी में नाम दर्ज नहीं है, परन्तु उक्त साक्षी द्वारा स्वयं कागज संख्या 115-क/9 में यह स्वीकार किया कि "यह कहना सही है कि लैण्ड लॉर्ड मन्थूअल के पैरा-10ए के अनुसार सुपरवाइजर काननूनगो को कब्जा दर्ज करने का अधिकार है। 43-ग के इन्द्राज से यह स्पष्ट इन्द्राज है कि पैरा-10ए के अनुसार ही सत्यप्रकाश का नाम सुपरवाइजर काननूनगो ने दर्ज किया। उक्त इन्द्राज को सरकार द्वारा आजतक कहीं कोई चुनौती नहीं दी गयी है। रिकार्ड के अनुसार यह बात सही है कि लगान का 20 गुना जमा करके भूमिधरी अधिकार प्राप्त कर लिये गये थे।" इस प्रकार उक्त साक्षी के साक्ष्य से यह स्पष्ट होता है कि कब्जा दर्ज करने का आदेश नियमानुसार किया गया है। इसके अतिरिक्त उनके द्वारा कथित इन्द्राज की कहीं पर कोई आपत्ति नहीं की गई है और न ही कोई चुनौती दी गयी है। जिसे स्वयं प्रतिवादी द्वारा अपने साक्ष्य में स्वीकार किया है।

35- जहां तक कब्जे का सम्बन्ध है, वादीगण एवं प्रतिवादी संख्या-5 द्वारा यह कथित किया गया है कि उपरोक्त खसरा नम्बरान में वादीगण की कुल 17 दुकानें बनी हैं और प्रतिवादी सं0-5 की कुल 21 दुकान, बैंक का भावन व प्रतिवादी सं0-5 का निवास स्थान है और सभी दुकानों में किरायेदार काबिज है। प्रतिवादी सं0-1 व 2 द्वारा उक्त कथन का विशिष्ट रूप से कोई खण्डन नहीं किया गया है और

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न ही उसके कथन के विरुद्ध कोई आपत्ति की है। वादी द्वारा अपने कथन के समर्थन में सूची 9-ग से कागज संख्या 16/1-ग ल0 16/9-ग मूल रसीद गृहकर कर अदायेगी हेतु नगर पालिका परिषद द्वारा जारी दाखिल की गयी है जिस पर अदाकर्ता के रूप में रमेशचन्द्र पुत्र लल्लूमल का नाम अंकित है। इसी प्रकार कागज संख्या 17/2-ग ल0 17/4-ग नगर पालिका परिषद किरतपुर द्वारा जारी रसीद के अवलोकन से विदित होता है कि अदाकर्ता के रूप में श्री सुरेशचन्द्र पुत्र लल्लूमल का नाम अंकित है। कागज संख्या 72-ग के अवलोकन से विदित होता है कि नकल इन्तखाब रजिस्टर गृहकर निर्धारण सूची वर्ष 1976-77 से 1980-81 में सम्पत्ति नम्बर 40, 36 स्थित किरतपुर मौ0 हसनपुरा, जिला बिजनौर में मालिक मैसर्स लल्लूमल रमेशचन्द्र अंकित है। इसी प्रकार कागज संख्या 74-ग रसीद 75-ग, कागज संख्या 76-ग मय रसीद 77-ग, कागज संख्या 78-ग मय रसीद 79-ग भी गृहकर निर्धारण नकल इन्तखाब रजिस्टर गृहकर निर्धारण पर सम्पत्ति पर रमेशचन्द्र पुत्र लल्लूमल का नाम अंकित है तथा उक्त प्रपत्रों से यह विदित होता है कि प्रश्नगत सम्पत्ति में वादी का कब्जा है। मौखिक साक्ष्य में पी0डब्लू0-1 द्वारा वादपत्र में किये गये कथनों का समर्थन किया है, कब्जे के सम्बन्ध में प्रतिपरीक्षा में पी0डब्लू0-1 द्वारा कथित किया गया है कि बाद बैनामा विवादित नम्बरान पर खरीददार दखील हो गये। विवादित आराजी में लल्लूमल रमेशचन्द्र द्वारा निर्माण कराया गया, दुकानात बनायी गयी, जिन्हें इस्तेमाल किया जा सकता है। इसमें किरायेदार के साथ ऑरियन्टल बैंक भी शामिल है, राकेश का ऊपरी मंजिल पर रिहायशी मकान बना है। इस प्रकार वादी के मौखिक साक्ष्य से यह स्पष्ट होता है कि वादीगण का कब्जा प्रश्नगत आराजी पर है। डी0डब्लू0-1 द्वारा कागज संख्या 115/7-क में यह स्वीकार किया है कि झगड़े वाली जमीन पर फर्म लल्लूमल रमेशचन्द्र के सभी साझीदार की दुकानें बनी हैं, बैंक का भवन, दीवारें बनी हैं था सीमा रेखा बनी हैं। आगे कागज संख्या 115/10-क पर डी0डब्लू0-1 द्वारा यह कथित किया कि

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वर्तमान में विवादित भूमि पर वादीगण का कब्जा है। मकान, दुकान, वादीगण का बना है तथा बैंक भवन भी वादीगण का बना हुआ है। इस प्रकार प्रतिवादी द्वारा भी अपने साक्ष्य में यह स्वीकार किया है कि प्रश्नगत सम्पत्ति पर वादीगण का कब्जा है। अतः उपरोक्त विवेचना के आधार पर यह साबित होता है कि वादीगण द्वारा उपरोक्त खसरा नम्बरान को जरिये बैनमा दिनांकित 28-03-1974 से सत्यप्रकाश पुत्र कृष्णदत्त द्वारा कय किया गया। तत्पश्चात् वादीगण का नाम राजस्व अभिलेखों में इन्द्राज हुआ। यह भी साबित हो चुका है कि सत्यप्रकाश दिनांक 18-06-1961 का कब्जा राजस्व अभिलेखों में अंकित किया गया। फसली वर्ष 1367 में सत्यप्रकाश बतौर सीरदार 20 गुना लगान जमा करने के पश्चात् उन्हें भूमिधरी अधिकार प्राप्त हो गये। भूमिधरी अधिकार प्राप्त होने के पश्चात् दिनांक 20-06-1970 को भूमि अधिगृहित अधिकारी द्वारा प्रश्नगत खसरा नम्बरान में से सत्यप्रकाश को मालिक मानते हुये 11 बिस्ता 10 विस्वांसी भूमि अधिगृहित की गयी और सत्यप्रकाश द्वारा उक्त नम्बरान के शेष भाग में से, जो सड़क अधिगृहण के शेष भाग में से बची थी, उसका बैनामा दिनांक 28-03-1974 को वादीगण व प्रतिवादी सं०-5 के पक्ष में निष्पादित किया गया।



36- इस प्रकार उपरोक्त विवेचना एवं साक्ष्य से यह साबित होता है कि वादीगण व प्रतिवादी सं०-5 प्रश्नगत आराजी के मालिक व काबिज है। अतः वाद बिन्दु संख्या-01 सकारात्मक रूप से वादीगण के पक्ष में निर्णीत किया जाता है।

निस्तारण वाद बिन्दु संख्या-02

37- वाद बिन्दु संख्या-02 इस प्रकार विरचित किया गया है कि क्या प्रतिवादीगण सं० 1 ता 4 वादीगण को विधि विरुद्ध तरीके से बिना विधिक प्रक्रिया अपनाये वादग्रस्त आराजी से जबरदस्ती बेदखल

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करना चाहते हैं?

38- इस सम्बन्ध में वादीगण का कथन है कि प्रतिवादी सं०-3 द्वारा दिया गया नोटिस दिनांक 30-08-2013 अवैध, अनाधिकृत मनमाना एवं अस्पष्ट है और उक्त नोटिस दिये जाने से पूर्व प्रतिवादी सं०-3 व 4 ने वादीगण को अथवा प्रतिवादी सं०-5 को कोई सुनवाई का एवं अपना पक्ष रखने का कोई अवसर नहीं दिया और न ही प्रतिवादी सं०-2 द्वारा प्रतिवादी सं०-3 व 4 को पत्र दिनांक 30-07-2013 लिखे जाने से पूर्व वादीगण व प्रतिवादी सं०-5 को सुनवाई एवं अपना पक्ष रखने का कोई अवसर प्रदान किया और प्रतिवादीगण का वादीगण एवं प्रतिवादी सं०-5 का कब्जा हटाया जाने का नोटिस एवं धमकी पूर्ण रूप से एकपक्षीय एवं शून्य कार्यवाही है। इसके विपरीत प्रतिवादीगण द्वारा कथित किया गया कि वादीगण द्वारा गांटा संख्या 2181 तालाब की भूमि पर कब्जा कर लिया था, जिसे कब्जा मुक्त कराये जाने हेतु नोटिस वादीगण को दिया गया। पत्रावली में दाखिल कागज संख्या 20-ग/1, 20-ग/2 कागज संख्या 21/1-ग व 21/2-ग के अवलोकन से विदित होता है कि नगर पालिका परिषद, किरतपुर, जिल. बिजनौर द्वारा वादीगण को गांटा संख्या 2181 तालाब की भूमि से कब्जा हटाये जाने हेतु दिनांक 13-08-2013 को जिला शासकिय अधिवक्ता, राजस्व बिजनौर द्वारा विधिक राय प्राप्त कर नोटिस दिया गया। यद्यपि वादी का जहां तक यह कथन का प्रश्न है कि उसे प्रतिवादीगण सं० 1 ता 4 द्वारा विधि विरुद्ध तरीके से वादग्रस्त आराजी से बेदखल करने का प्रयास किया गया, वाद बिन्दु संख्या-01 के निस्तारण से यह साबित हो चुका है कि वादीगण द्वारा उपरोक्त खसरा नम्बरान को जरिये बैनामा दिनांकित 28-03-1974 से सत्यप्रकाश पुत्र कृष्णदत्त से कय किया गया। तत्पश्चात् वादीगण का नाम राजस्व अभिलेखों में इन्द्राज हुआ। अतः ऐसी स्थिति में तदानुसार वाद बिन्दु संख्या-02 निर्णीत किया जाता है।

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निस्तारण वाद बिन्दु संख्या-03

39- वाद बिन्दु संख्या-03 वाद मूल्यांकन तथा प्रदत्त न्याय शुल्क के सम्बन्ध में है।

40- उपरोक्त वाद बिन्दु का निस्तारण न्यायालय द्वारा दिनांक 09-12-2013 को नकारात्मक रूप से किया जा चुका है, जो कि इस निर्णय का भाग रहेगा। पुनः निस्तारण की कोई आवश्यकता नहीं है।



निस्तारण वाद बिन्दु संख्या- 04

41- वाद बिन्दु संख्या-04 इस प्रकार विरचित किया गया है कि क्या दावा वादीगण धारा-331 जमींदारी उन्मूलन अधिनियम के प्राविधानों से बाधित है?

42- उपरोक्त वाद बिन्दु को साबित करने का भार प्रतिवादीगण पर है। प्रतिवादीगण द्वारा अपने प्रतिवादपत्र के प्रस्तर-33 में उल्लिखित किया गया कि वादीगण का वाद जमींदारी उन्मूलन अधिनियम के प्राविधानों से बाधित है। इसके विपरीत वादीगण का कथन है कि वादीगण के स्वामित्व का कोई भी विवाद प्रस्तुत वाद में नहीं है, क्योंकि वादीगण रिकॉर्डेड टेन्योर होल्डर है और एक वैध बैनामे से वादग्रस्त भूमि के लगातार 39 वर्षों से स्वामी व अधिपति बतौर संकमणीय भूमिधर चले आते हैं। वादीगण का दावा हरगिज धारा-331 खात्मा जमींदारी अधिनियम के प्राविधानों से बाधित नहीं है। वाद बिन्दु संख्या-01 के निस्तारण में यह स्पष्ट हो चुका है कि प्रश्नगत सम्पत्ति एन.जैड.ए. के अन्तर्गत है। ऐसी स्थिति में यू0पी0 जमींदारी विनाश अधिनियम के प्राविधान लागू नहीं होते हैं। अतः वाद बिन्दु संख्या-04 नकारात्मक रूप से निर्णीत किया जाता है।

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निस्तारण वाद बिन्दु संख्या-1152

43- वाद बिन्दु संख्या-05 इस प्रकार विरचित किया गया है कि क्या दावा वादी आदेश 07 नियम 11 सी0पी0सी0 से बाधित है?

44- इस वाद बिन्दु को साबित करने का भार प्रतिवादीगण पर है। प्रतिवादीगण द्वारा इस सम्बन्ध में कथित किया गया है कि वादीगण को प्रतिवादीगण के विरुद्ध वाद योजित करने का कोई कारण उत्पन्न नहीं हुआ है। प्रतिवादीगण के उक्त कथन के विरुद्ध वादीगण द्वारा कथित किया गया कि उनको प्रतिवादीगण द्वारा गाटा संख्या 2181 से कब्जा हटाये जाने हेतु नगर पालिका परिषद, किरतपुर द्वारा नोटिस दिया गया। नोटिस दिनांकित 13-08-2013 कागज संख्या 20/1-ग व 21/1-ग के अवलोकन से विदित होता है कि प्रतिवादी सं0-4 द्वारा वादीगण को उक्त नोटिस दिया गया जिसमें गाटा संख्या 2181 को तालाब की भूमि बताया गया इसके अतिरिक्त उक्त आराजी से वादी का कब्जा हटवाये जाने हेतु निर्देशित किया गया। चूंकि वाद बिन्दु संख्या-01 के निस्तारण से साबित हो चुका है कि वादीगण व प्रतिवादी सं0-5 प्रश्नगत आराजी के मालिक व काबिज है। इस प्रकार वादी को वाद का कारण उत्पन्न होना पाया जाता है। तदनुसार वाद बिन्दु संख्या-05 नकारात्मक रूप से वादी के पक्ष में निर्णीत किया जाता है।



निस्तारण वाद बिन्दु सं0-06

45- वाद-बिन्दु सं0-06 अनुतोष से सम्बन्धित है। उपरोक्त विवेचना एवं पत्रावली पर उपलब्ध साक्ष्य से स्पष्ट हो चुका है कि वादीगण प्रश्नगत आराजी के मालिक व काबिज है। तदनुसार वाद बिन्दु सं0-06 निर्णीत किया जाता है।

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दावा वादी आज्ञप्त होने योग्य है।

आदेश

दावा वादी आज्ञप्त किया जाता है। प्रतिवादीगण सं० 1 ता 4 को हमेशा के लिये निषेधित किया जाता है कि वह आराजी खसरा संख्या 2181/1 व 2 रकबई 3 बीघे 8 बिस्वांसी पुख्ता व खसरा संख्या 2182/2 रकबई 7 बिस्वे 9 बिस्वांसी पुख्ता कुल रकबई 3 बीघे 15 बिस्वे 9 बिस्वांसी पुख्ता जिसका विवरण तालिका-अ में दिया गया है, स्थित ग्राम किरतपुर कस्बा व परगना किरतपुर, तहसील नजीबाबाद, जिला बिजनौर में वादीगण एवं प्रतिवादी सं०-5 के स्वामित्व एवं अधिपत्य में कोई विघ्न अथवा वादीगण एवं प्रतिवादी सं०-5 की दुकानात, मकानात आदि को तोड़ने से वाज रहे।

मामले के तथ्यों एवं परिस्थितियों के दृष्टिगत पक्षकार अपना दाद व्यय स्वयं वहन करेंगे। पत्रावली दाखिल दफ्तर हो।

दिनांक:-09-12-2015

Aparna Pandey
(अपर्णा पाण्डेय) 2/12/15

सिविल जज, सीनियर डिवीजन,
बिजनौर

आज यह निष्पत्ति खुले न्यायालय में मेरे द्वारा हस्ताक्षरित व दिनांकित होकर उद्घोषित किया गया।

दिनांक:-09-12-2015

Aparna Pandey
(अपर्णा पाण्डेय) 2/12/15

सिविल जज, सीनियर डिवीजन,
बिजनौर

Sunder
9-12-15
As

सं. 11/12/15
9/12/15
केन्द्रीय न्यायालय बिजनौर

IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION
BIJNOR,

PRESIDING OFFICER: APARNA PANDEY (HIGHER
JUDICIAL SERVICES) .

CIVIL SUIT NO. 586 OF 2013.

1. RAMESH CHAND GOYAL AGED ABOUT 76 YEARS.
2. SURESH CHANDRA GOYAL AGE ABOUT 62 YEARS.

SONS OF LATE LALLU MAL RESIDENT OF: MOHALLA
MAHAJNAN, KASBA AND PARGANA KIRATPUR,
PLAINTIFF NO.1 PRESENT AT: THROUGH DR.
SANDEEP GOYAL S.D. PURAM, KIRATPUR ROAD,
CITY PARGANA AND TEHSIL: BIJNOR AND
PLAINTIFF NO. 2 PRESENT AT SHRI KRISHNA
BANQUET HALL, MOHALLA HASANPURA NEAR BUS
STAND, KASBA AND PARGANA KIRATPUR TEHSIL
NAJIBABAD, DISTRICT BIJNOR.

.....PLAINTIFF

VERSUS

1. STATE GOVERNMENT UTTAR PRADESH THROUGH
DIVISIONAL MAGISTRATE, BIJNOR.
2. TEHSILDAR NAJIBABAD, DISTRICT BIJNOR.

3. MUNICIPAL CORPORATION, KIRAT PUR THROUGH PRESIDENT MUNICIPAL COUNCIL, KIRATPUR KASBA AND PARGANA KIRATPUR, TEHSIL AND DISTRICT BIJNOR.

4. EXECUTIVE OFFICER, MUNICIPAL CORPORATION, KIRATPUR KASBA AND PARGAA KIRAT PUR, TEHSIL NAJIBABAD, DISTRICT BIJNOR.

.....DEFENDANTS

5. RAKESH KUMAR GOYAL AGED ABOUT 54 YEARS SON OF SHRI BASHESHWAR CHANDRA GOYAL RESIDENT OF MOHALLA MAHAJNANA, PRESENT AT; MOHAMMAD HASAN PURA, NEAR BUS STAND, KASBA AND PARGANA TEHSIL NAJIBABAD DISTRICT BIJNOR.

..... PROFORMA DEFENDANTS

ORDER / DECISION

1. That the present suit has been filed by the plaintiff against the defendants for permanent and mandatory injunction and also prayed to stay the defendant no.1 to defendant no. 4 of the land vide khasra no. 2181/1 and 2, area admeasuring 3 Bigha 8 Biswansi pucca and khasra no. 2182/2 area

7 biswa 9 Biswansi, total land area 3 Bigha 15 Biswa 9 Biswansi pucca and which boundary has been given in the end of the plaint, the said land is in the ownership and in possession of the plaintiff no.1 and 2 and defendant no. 5 and no raise any restriction in the ownership and possession of the above said land and not raise any objection and restriction by their representative/ employees.

2. That in brief, in the plaint it is stated by the plaintiff that the said land vide khasra no. 2181/1 and 2, area admeasuring 3 Bigha 8 Biswansi pucca and khasra no. 2182/2 area 7 biswa 9 Biswansi, total land area 3 Bigha 15 Biswa 9 Biswansi pucca situated at village Kiratpur, (now Mohalla Hasanpura) Kasba and pargana Kiratpur, tehsil Nazibabad, district Bijnor and the defendant no. 5 and Smt. Chandrawati wife of Late Shri Lallu Mal, as a capacity of

partners of firm Lallu Mal Ramesh Chandra Kiratpur, registered sale deed dated 28.09.1974 executed by Satya Prakash Sharam son of Krishan Dutt Sharma, and from that period, he is owner and possession holder of the above said land. That the land Khasra no. 2181/1 and 2 and Land Khasra no. 2182/2 is joint ownership land and the partner namely Smt. Chandrawati of the firm Lallu Mal Ramesh Chand has been expired in the year 1989. That after purchase of the said land, the plaintiff, defendant no.5 and the name of Smt. Chandrawati mentioned in the revenue record. That on the above said Khasra nos. Satya Prakash had become as capacity of the Sirdaar and he paid the 20 times extra tax and received on dated 18.09.1970 and which entry mentioned in the Khatoni year 1970 to 1979 crop. That the above mentioned nos. of the Satya Prakash vide land area 11 Biswa 10 Biswansi had

been acquired by the government and which compensation had been given on dated 20.06.1970 to Satya Prakash Sharma as understood him as owner and possession holder and given the compensation through Panchaat. That defendant no.4, defendant no. 3, who is local authority of the Kiratpur and completely responsible for all the act of its employees. That like this defendant no.2 state government is responsible for all acts of its employees, that the land of the plaintiffs and defendant no.5 is situated within the boundary of the defendant no.3 and it is situated in populated/ abadi area. That the plaintiffs get constructed the shops on the questioned land and established its ownership and possession and also taken the permission and acceptance from the defendant no.3 after that constructed the shop. Like this the defendant no. 3 and

defendant no.4 have accepted the ownership and possession of the plaintiffs and accepted their ownership. That the defendant no.3 have also received the house tax and which is also mentioned in the demand letter of the defendant no. 3 on the name of the plaintiff and the said plaintiffs according to the rules of the defendant no. 3 and defendant no. 4 have given the house tax and is receiving the letter. That any other persons have no any relation and connections with the above said land. That the said defendant no. 4 have sent the letter vide letter dated 13.08.2013 vide letter no. 285/N.P. Corporation Kiratpur vide year 2013-2014, which has been received to the plaintiff on dated 19.08.2013. That in the said notice the defendant no. 4 stated that the land of the plaintiff is pond land and on the basis of the letter of the defendant vide letter

no. 54 dated 30.07.2013 and said that plaintiffs and defendant no. 5 and Chandra Wati have taken possession and also directed to remove the possession within the period of one month and thereafter threatened to remove the possession by the tehsil/ municipal corporation, whereas question khasra was never a pond and is not mentioned as pond in the revenue document. That the notice of the defendant no. 3 is completely illegal and unlawful and they have not given any chance to plaintiff for give the defense. That the plaintiffs have total 17 shops and defendant no. 5 have total 21 shops and bank building and residence and all shops are in working. That after request to the defendants, no any hearing has been done. That therefore prayed to stay the defendant no. 1 to defendant no. 4 to not demolish the shops, house and others situated / constructed in

the land which is in the ownership and possession of the plaintiff and defendant no.5.

3. That against which the defendant no.1 and defendant no. 2 has filed the written statement vide document no. A-49 and completely denied the facts of the plaintiff and has stated that in the village Kiratpur Mahaal Chauhanan vide Khewat no. 103 the name of Raja Rai Bharat Singh son of Raja Rai Dal Chandra, resident of Sahanpur is mention and the land Khasra no. 1347 Fasli in the column no. 5 mention Mahaal Chohanan Khewat no. 1 is mention and in the column no. 1, 2181 is mention and in which Padawa and pond is mention. That in the question land in the crop year 1359 the waste land and pond is mention and which actual owner is Uttar Pradesh government. That in the village Kiratpur Khatoni (NZA) 1367 fasli in the khata no. 14 the waste

land is mentioned and by the then supervisor Kanungo Kiratpur vide land khasra no. 2181/1 area 3 Bigha Pucca and 2181/2 area 1 Bigha pucca and khasra no. 2181/2 area 1-1-14 Pucca the order of taking possession of Satya Prakash son of Krishan Dutt is mention. That village Kiratpur khatoni under municipal corporation 1377 Crop to 1379 Crop on the khatoni no. 160 the name of Satya Prakash vide Khasra no. 2181/1 area 4 Bigha pucca, Khasra no. 2182/2 area 1-1-14 Bigha pucca total 2 land/field area 5-1-14 Pucca tax Rs. 36.84 in Sirdaari in shape of original khata holder under NZA in khatoni of the municipal corporation have been mentioned without order. That it is forged and fabricated order. That thereafter suit no. 32 dated 05.09.1970 the order of paying/ deposit of the tax and received the document of ownership land is mention in

1377-1379 crop. That in the khatoni 1380-1384 Crop on the land khata no. 110 the name of Satya Prakash Son of Krishan Dutt is mentioned as Gatta no., area and tax in category 1. Thereafter by the Khata holder on dated 28.03.1974 of the sale deed by Firm Lallu Mal Ramesh Chand the name of Ramesh Chandra and others are mention. That base year 1359 fasli the question land is mention as pond and it was also pond and due to which no any other person has right on the above said land and the plaintiff have no any legal right on the above said question land, it is also stated that the above said land is bound under the provision of the Zamindari abolition act and the suit is also barred under section 80 of the CPC it is not maintainable. Therefore, it is prayed to dismiss the present suit.

4. That the defendant no.1 and defendant no.2 have also filed the additional written statement document 149-A and has favour the statement.
5. That the defendant no. 3 and defendant no. 4 have filed the written statement document no. 62-A and also denied the facts of the plaint and it is also stated that after the observation of the documents it came into the knowledge that the disputed year 1359 crop it is mentioned as waste and pond land and the Uttar Pradesh government is actual owner and which is within the boundary of the Municipal corporation and except this the ledger is mentioned on the land khatoni of village Kiratpur (NZA) 1367 crop khata no. 14, but thereafter in the revenue records/ document the entry of the Satya Prakash in relation to possession, the said entry is without any legal rights/ order and it is completely forged and fabricated.

5. That the said defendant no.3 and defendant no.4 has filed the written statement 62-A and also denied the facts of the plaint and also stated that from the observation of the documents it came into the knowledge that the disputed land is mentioned as waste land and pond in the crop year 1359 fasli and the Government of Uttar Pradesh is actual owner and which is under the boundary of the Municipal corporation and except this in the khatoni of village Kiratpur (NZA) 1367 fasli khata no. 14 the ledger is mentioned, but thereafter in relation to the mention the name and possession of Satya Prakash the said entry is legally forged and fabricated and due to the forged entry the executed sale deed dated 28.03.1971 the said plaintiff has no any ownership and possession right with the said land. If the seller of the plaintiff has received any compensation than the

plaintiff cannot take benefit of it, whereas on the possession of the permission of the construction, it is mentioned that in relation to the given of permission of construction on any land, in relation to the land no any judicial order has been passed by the defendant. If the plaintiff has presented the forged entry document and has received the permission of the construction on the land than the plaintiff will not receive the benefit of it.

6. That the defendant no. 5 has filed the written statement A-86 and has also favour the facts mentioned in the plaint and also stated that Landlord/ Zamindar of the Kasba Kiratpur Mahaal Chauhan Khewat no. 1, Khasra no. 2181 and 2182 was Rajaram Bhagat Singh son of Raja Rai Dal Chand. That the Land Khasra no. 2181 and 2182 area Kiratpur under the boundary of the local authority, therefore the Zamindari have not been

finished from act no. 1 of year 1951 and ZA Act 1 year 1951 does not applied on the above said land. That the area situated under local authority/ bodies of the zamindari finished vide act no. 8 years 1957 have been made and for finished the end of the Zamindari of Kiratpur urban area the government has issued the notification on dated 01.07.1963 and under section 8 the above said nos. have been declared as agriculture land by boundary officer. That it is also stated that on the disputed land the urban Zamindari Satya Prakash son of Krishan Dutt were in possession as a capacity of Sirdaar and on dated 18.09.1970 Satya Prakash has paid the 20 time extra payment and had received the landlord rights in the disputed property. That in the year 1968 the land Khasra no. 2181 area 0-7-0 and 2182 area 0-4-10 the land had acquired by the state government for the

purpose of road and which compensation was paid by the state government to the Satya Prakash Sharma and treat as landlord of the said land. That Satya Prakash son of Krishan Dutt Sharma had sale the remaining land area which was not acquired by the government, the said Satya Prakash had sold the said land on dated 28.03.1974 through sale deed to firm Lallu Mal Ramesh Chand through its partner Shri Ramesh Chandra and Suresh Chandra son of Shri Lala Lallu Mal and Rakesh Kumar son of Shri Vashesh Chand and Smt. Chandra Wati wife of lala Lallu Mal and like this the said plaintiffs and defendant no. 5 is in ownership and in possession of the above said land. That at spot there is no any pond on the above said land at present and the said land khasra nos. was in ownership of the state government, that the defendant no. 3 has given the notice without any right,

therefore it is prayed to please allow the present plaint filed by the plaintiff.

7 That against the written statement given by defendants No. 1 and 2, rejoinder document no. 53-A has been presented and the statements made in the plaint have been supported. It is stated that it is clear from the statement in paragraph 25 of the written stamen that Khasra No. 2181 was never recorded in the revenue records as the property of the government or the defendants or the Municipality or the Village Council, but it was a private property and the Khewat was recorded in personal names. The entry/mutation of 1359 Fasli does not prove that the Uttar Pradesh Government was the owner of Khasra No. 2181. Kiratpur was declared a town from the said date as per the Gazette Notification No. 384 A dated 17 April 1865 and as per U.P. Act No. 20 of 1865 and

thereafter U.P. Town Area Act 1914 and U.P. Municipality Act 1916, the town area was gradually established as Municipal corporation area and since the Khasra number 2181 in question is under the Municipal corporation area Kiratpur, no provisions of Uttar Pradesh Act 1 of 1991 are applicable to the present case. The entry of Satyaprakash's name is not a fake entry. In 1359 Fasli, the category 14-3 Barren (2) has been shown, which is wrong. In reality, this land is category 1 and 2 land, as per paragraph no. 124 of chapter 8 of the Land Record Manual.

8. Similarly, against the written statement filed by defendant no. 3 and 4, the written statement has been refuted by filing rejoinder document no. 66-A and it has been stated that the disputed property was not recorded as barren land and pond in 1359 Fasli, nor was it recorded as pond or

barren in category 6 or category. Admittedly, the above-mentioned land has been in NZA area, due to which no provision of Uttar Pradesh Zamindari Abolition Act 1950 is applicable. It has also been stated that there is no entry of Khasra number 2181 and 2182/2 in the register of owners of Municipal council Kiratpur and in the revenue records also, no land in category 6 is non-agricultural land or submerged land except the land acquired in road pucca. Which means that in the Khasra number in question, except the portion acquired in the road, the remaining land has never been submerged land. Due to the legal possession of late Satyaprakash on the Khasra number in question, the revenue officers and employees of defendant no.1 duly registered the name on the number in question on 18.06.1961 and in the capacity of Sirdar, late Satyaprakash was given

compensation for road acquisition. Late Satyaprakash sold property from Khasra no. 2182/3 to Md. Ismail and from the same Khasra no. to A. Wahid and out of this Khasra No. was also sold to Mohd. Ali. The names of these three buyers were also entered in the revenue records respectively and they are still in possession, whereas all three agreements are prior to the agreement made to the firm Lallu mal Ramesh Chandra.

9. That by the rejoinder document no. 149-A has been refuted by written statement 163-C and the prayed to decree the prayer of the plaintiff.
10. On the basis of the pleadings of both the parties, the following issues were framed by the court.
 1. Whether the plaintiffs and defendant no. 5 the owners and occupants of the

disputed property, whose full details are given in Table-A at the end of the plaint?

2. Whether the defendants no. 1 to 4 want to forcefully evict the plaintiffs from the disputed land in an illegal manner without following the legal procedure?
 3. Whether the plaintiffs claim undervalued and the court fees paid insufficient?
 4. Whether the plaintiffs barred by the provisions of Section 331 of the Zamindari Abolition Act?
 5. Whether the plaintiffs barred by Order 07 Rule 11 CPC?
 6. What relief are the plaintiffs entitled to?
11. That document no. 9-C/1 to 9-C/3 to 10-A/1 to 10-A/4 Verified copy of the sale deed

Agreement executed by Shri Satya Prakash Sharma in favour of the firm Lallu Mal Ramesh Chandra and partners Ramesh Chandra, Suresh Chandra, Rakesh Kumar and and Chandravati dated 28-03-1974, Khatauni 1419 crop year 1424 document no. 11-G, Khasra crop year 1420 document no. 12-G, Khatauni crop year 1380-84 13-G/1, Khatauni year 1377-79 document no. 13-G/2, copy form sample section L.A. Act (land occupation) Village Kiratpur, Pargana Kiratpur date of order 20.6.70 document no. 13-G/3, copy form A statement 13-G/ 4. Copy of site plan of Chaktraasi village Kiratpur Pargana Kiratpur 14-C, map 15-C, receipt issued by Municipal Corporation document no.16-C/1 till 16-C/9 and receipt document no.17-C/1 till 17-C/4, permission issued by Executive Officer Municipal Council Kiratpur regarding construction shop dated 17-06-2005 document no. 18-C/1 and attached site

plan document no. 18-C/2, permission issued by Municipal Council document no. 19-C/1 till 19-C/2. Notice 20-C/1 issued by the office of Municipal corporation Kiratpur, Bijnor, Letter sent by the office of Tehsildar Najibabad, Executive Officer, document No. 20-C/2, Notice 21-C/1 till 21-C/2 and List 68-C to Copy of Bag of Khatauni 1380-1382 Crop document No. 69-C, Copy Khatauni Crop 1391-1400 document No. 70-C, Khatauni Crop 1401-1406 document No. 71-C, Copy mutation/ Intekal Register House Tax Assessment document No.72-C, Receipt 73-C, Copy mutation / Intekal Register House Tax Assessment document No. 74-C, Receipt 75-C, Copy of mutation / Intekal Register House Tax Assessment Paper No. 76-C, Receipt 77-C, Copy Intekhab Register House Tax Assessment Paper No. 78-C, Receipt 79-C, Verified copy of Sale Deed Agreement Satyaprakash executed in favour of Mohd.

Ismail dated 13-10-19971 document No.80-C/1 to 80-C/4, Verified copy of Sale Deed Agreement Satyaprakash in favour of A. Wahid dated 20-10-1970 81-C/1 to 81-C/3, Verified copy of Sale Deed Agreement Satyaprakash in favour of Mohd. Ali Dated 20-10-1970, document no. 82-C/1 to 82-C/3 have been filed.

12. That on behalf of defendant no. 5 have filed list no. 104-C copy of Chart size sheet 40, document no.105-C, Khatauni crop year 1359 document no.106-C, copy of Khatauni 1359 crop year 107-C, copy of Site plan Kiratpur 108-C have been filed.

13. That on behalf of defendant no. 1 and 2, photocopy of Fard Khasra crop year 1337 from list 39-C, document no. 40-C/1 to 40-C/2 have been filed. Photocopy of memo/fard Khatauni crop year 1359 document no. 41-C, copy of Khasra 1359 crop year 42-C, copy of Khatauni year 1367 Fasli document no.43-C,

photocopy of 1389-1392 crop year (Khewat number-1) document no. 44-C/1 till 44-C/2, photocopy of Fard Khatauni year 1377-79 document number 45-C, photocopy of Khatauni year 1380-1384 46-C. Khatauni crop year 1419-1424 photocopy of document number 47-C and list of proof 152-C to notice document number 153-C, Khasra paper number 154-C and Khatauni 155-C have been filed.

14. No documentary evidence has been presented by defendant no. 3 and 4.
15. That Ramesh Chand Goyal has been examined as PW-1 in oral evidence on behalf of the plaintiff.
16. Suresh Chandra has been examined as DW-1 by the defendant.
17. That the Babu Ram Tax Collector on behalf of defendant no.4. No other evidence has been presented by the parties.

18. The report of the commission along with map document no. 28-G and 29-G is filed in the file.
19. I have heard the arguments of the learned advocates of both the parties and have thoroughly examined the file.
20. In the context of oral and documentary evidence available on the file, the issues framed by the court are being considered issued by issues.

CONCLUSION

DISPOSAL OF ISSUE NO.1.

21. Issue number 1 has been framed in such a way that whether the plaintiffs and defendant no.5 are the owners and occupants of the disputed property whose full details are given in Table-A at the end of the plaint?
22. The onus / burden of proving the above mentioned issue lies on the plaintiffs and

defendant no. 5. It has been alleged by the plaintiffs that the said land Khasra No. 2181/1 and 2181/2 area 3 Bigha 8 Biswe Pucca and Khasra No. 2182/2 area 7 Biswe 9 Biswansi Pucca, total area 3 Bigha 15 Biswe 9 Biswansi Pucca situated in village Kiratpur town and Pargana Kiratpur, Tehsil Najibabad District Bijnor, plaintiffs and defendant number 5 and late Smt. Chandravati wife of late Shri Lallu Mal as partnership firm Lallumal Ramesh Chand Kiratpur, the owner and occupant have been the owner since the registered sale deed dated 28-03-1974 and the name of the plaintiffs and defendant number-5 has been entered in the revenue records on the above mentioned Khasra number. In support of his statement, the plaintiff filed document number 10-G/2 from list 9-G/1 to 9-G/3, on perusal of which it is known that the sale deed of the land in question situated in

village Kiratpur, pargana Kiratpur within the limits of Municipal corporation Kiratpur was executed by Satyaprakash on 22-01-1974 after the permission of the District Magistrate Bijnor for sale by himself being the owner and occupant, and executed in favour of the firm Lallumal Ramesh Chand Kiratpur, Najibabad, District Bijnor whose partners are Ramesh Chand and Suresh Chand sons of Lallu Mal and Rakesh Kumar and Mrs. Chandravati on 28-03-1974. According to document number 11-G of Fasli year 1419-1424, the name of the plaintiffs is registered in category 1-A in respect of the Khasra numbers in question.

23. That it has been alleged by the plaintiff in the plaint that the above Khasra number was occupied by Satyaprakash Sharma as Sirdar and Satyaprakash Sharma acquired the rights of the landholder in the above Khasra number by paying 20 times the tax on

18.09.1970, which was entered in the Khatauni of the crop year 1377-1379. From the observation of the document number 13/2-G filed by the plaintiff, copy of Khatauni village Kiratpur Pargana Kiratpur Najibabad district Bijnor of the crop year 1377-1379, it is evident that in the said Khatauni, the land which is mentioned to be in the rights of Sirdars is mentioned in category 2. In the same Khatauni, in account number 160, Satyaprakash son of Krishna Dutta, Khasra number 2181/ 1 and 2 and 2182/2, total area 5-1-14 bigha Najibabad, as per the order passed in case number 32/ 15-9-1970, an entry has been made that Satyaprakash has deposited the tax / rent of his account of Rs.36.84 and obtained the right of revenue of land ownership. According to the first column of the same Khatauni, on Khata no. 160, the Land Authority Officer has registered the

road PWD by cancelling the name of Satyaprakash from 11 Biswa 10 Biswansi in Khasra number 2181 and 2182 on case number 13/ 24-01-1972. From the observation of document no. 13-G/3 and 13-G/4, it is known that in the case number 15 (T) section L.A. Act, by the court L.A.O. Najibabad, Village Kiratpur Pargana Kiratpur, 11 Biswa 10 Biswansi land was acquired by the Land Authority on 20-06-1970, considering Satya Prakash son of Krishna Dutt as the owner. Thus, from the perusal of the above documents, it is known that Satyaprakash Sharma was in possession of the above mentioned Khasra numbers as Sirdar and he had obtained the sanad land ownership rights after paying 20 times the rent. Satyaprakash executed a deed in favour of the plaintiffs on 28-03-1974 from the remaining part of the said numbers which was left after the acquisition of the road.

24. That it has been stated by the defendants number 1 and 2 that the name of Raja Rai Bharat Singh son of Raja Rai Dalchand resident of Sahanpur is mentioned in the records of Khewat number 103 and Mahal Chauhanan Khewat number 1 is mentioned in column number 5 of Khasra number 1347 Fasli, in column number 1 of which Khasra number 2181 is mentioned, in which Padawa and pond are mentioned. It has also been stated that the land in question is recorded as barren and pond in the year 1359 Fasli and its real owner is the Uttar Pradesh government. Similarly, it has also been stated by defendant number 3 and 4 that the disputed land is recorded as barren and pond in the year 1359 Fasli and its real owner is the Uttar Pradesh government and which is within the limits of the Municipality. The opposite plaintiffs and defendant no. 5 state that

the entry of 1359 Fasli does not at all prove that the Khasra in question was the land of Uttar Pradesh Government, the Khasra number in question was not recorded as barren land or pond, nor was it a category of the pond or barren.

25. That on the basis of the above pleadings, the court has to see whether the pond recorded in paper no. 41-G filed by the defendants in Fasli year 1359 is the property of Uttar Pradesh Government or not?

26. In relation to the above, it has been alleged by the plaintiff in paragraph no. 6 of Rejoinder document no.53-A that according to the Gazette notification number 384-A of 17 April 1865, Kiratpur was a part of U.P. According to Act No. 20 of 1865, the town area was declared from the said date and thereafter under Uttar Pradesh Town Area Act 1914 and U.P.

Municipal Act 1916, the town area has been established as the area of the Municipality and since the Khasra No. 2181 in question falls under the Municipality area of Kiratpur, no provisions of Uttar Pradesh Act No.1 of 1951 are applicable on it in the present case. The photocopy of the above-mentioned gazette was submitted by the plaintiff for perusal. According to the Gazette Notification No. 384A of 17 April 1865 published in the Government Gazette North Western Provinces, Allahabad, April, 26, 1865 (No. XVII) (It is hereby notified that the provisions of Act XX of 1856 will from this day, be introduced into the Towns of the Bijnour District marginally noted.) Kiratpur area is mentioned in the margin of the above notification. Document number 40-G/1 and 41-G have been filed by the defendant, according to which in 1337 Fasli also the town Kiratpur Pargana Kiratpur is

mentioned. That the document filed by defendant number 5, from the perusal of the true copy of document number 106-G Khatauni Fasli year 1359, it is known that Town is mentioned before the document no. 2181/1 and 2. Apart from this, the defendant himself has stated in his written statement that the Khatauni of 1367 Fasli is registered in N.Z.A. and the Khatauni of village Kiratpur of 1367 Fasli is said to be within the area of Municipal corporation. From the above documents, it is clear that the Khasra number in question is within the town and then the town area and Municipal corporation area. Uttar Pradesh Zamindari Abolition Act shall be applicable in the State except those areas which on 07th July, 1949, were included in a Municipality under the provisions of United Province Municipality Act, 1916 or in a notified area or in a cantonment under

Cantonment Act, 1924 or in town area under United Province Town Area Act, 1914." Thus, on the basis of the forms and pleadings filed by both the parties, it is accepted that the Khasra numbers in question were under Kiratpur and are recorded as N.Z.A. in the Khatauni. In such a situation, the provisions of Uttar Pradesh Zamindari Abolition and Land Reforms Act-1950 are not applicable in the present case. According to Section-1 (2) of 1950, "Its extension is limited to the entire answer

27. Uttar Pradesh Urban Areas Z.A. and Land Reforms Act 1956 According to Section 1 (2B) of the Act, "It shall extend to the areas which-in the case of the rest of Uttar Pradesh, were, on the 7th day of july, 1949, included in a municipality, or a notified area under the provisions of the U.P. municipalities Act, 1916, Or in a cantonment under the provisions of the

cantonment Act, 1924 or a town area under the provisions of the U.P. Town Areas Act, 1914"

28. According to Section 1(3) "It shall come into force at least at once except in the areas mentioned in the schedule where it shall come into force on such date and subject to such exceptions or modifications not affecting the substance as the State Government may by notification publish in the official Gazette appoint in this behalf and different dates may be appointed and different exceptions or modifications made for different areas"
29. That under the section 2(1) explained as agricultural area.
30. Revenue department, notification no. 2653/1-A 168-60 dated 20, 1963, U.P. Gazette Part I, published on dated 29.06.1963 1217 according to it "In

exercise of the powers under section 8 of the U.P. Urban Areas Zamindari Abolition and Land Reforms Act. 1956 (U.P. Act No. IX of 1957), the Governor of Uttar Pradesh is pleased to declare that as from the first day of July, 1963, all agricultural areas in the following Urban areas of the State, which have been so demarcated under section 5 of the aforesaid Act, shall vest in the State of Uttar Pradesh, and as from the beginning of that date, all such agricultural areas stand transferred to, and vest, except as provided in the said Act, in the State free from all encumbrances" and on the serail no.31 the Kiratpur notified area is mention.

31. Like this by the Uttar Pradesh government under the areas comes within the local authorities for abolition of zamindari, U.P. Act no. 9 year 1957 have been established. That under section 18 of the

above said act the said persons were in possession of the question property. He was established as a Sirdar. The plaintiff has submitted 1964 ALJ page-14 Har Saran Das versus Kale in support of its argument and stated that according to section-18 (2) (b) of the U.P. Urban Area Zamindari Abolition Act, 1956, those who had acquired Sirdari rights could not be evicted from the property in question. Thus, as far as the defendant's statement is that the year is the Khatauni of 1359 Fasli, it has become clear from the above discussion that the provisions of the U.P. ZA Act, 1950 do not apply to the Khasra numbers in question. Therefore, in such a situation, the year is not Fasli 1359. According to the U.P. Urban Area ZA Act, notification for the town of Kiratpur was issued on 01 July, 1963 and Kiratpur was declared agricultural land under section-8.

32. The defendants have filed document number 41-G/1 to 41-G/2 from list 39-G' in relation to their argument that the Khasra no. 1359 in question is recorded as a pond in Fasli and hence the Uttar Pradesh government is its actual owner. Although the said documents are photocopies, but from the perusal of the said Khatauni it is evident that in column no. 5 of Khasra number-2181 recorded on Fasli year 1337 town Kiratpur, Pargana Kiratpur, Mahal Chauhanan Khevat number 1 is mentioned and the name of Raja Rai Bharat Singh son of Raja Rai Dalchand is mentioned in the said record. Thus, it is evident from the documents filed by the defendant himself that in the Fasli year 1337, the name of Uttar Pradesh Government or Municipal Corporation is not recorded in the revenue records on the Khasra no.2181 in question, but the said property was the personal

property of Raja Rai and Khewat was registered in his name. The Khasra no. in question is recorded as barren and pond, but the property of Uttar Pradesh Government it is not entered anywhere. It has been proved from the above discussion that the Fasli year 1359 is not the year in the present case, the provisions of U.P.Z.A. are not applicable on the property in question. It has also become clear from the above discussion that the Government had issued a notification on 01.07.1963 for the abolition of Zamindari in the urban area of Kiratpur town, Uttar Pradesh, where the property in question is located. It is clear from the document number 43-G filed by the defendant that before the said notification was issued, the name of Satyaprakash was already registered as the occupant on 18-06-1961. Thus, even if it is assumed for the sake of argument that the

land in question is registered as a pond in the Fasli year 1359, even then the defendants will not get any benefit from it. In the Kiratpur area in question, before the notification dated 01 July 1963 was issued, the name of Satyaprakash was registered in respect of the number in question. It has also been clearly stated by the plaintiffs and defendant no.5 that the land in question has neither been recorded as barren land nor as pond or barren land, nor has category-6 and 9 been recorded as pond or barren and there is no entry of the Khasra number in question in the ownership register of Municipal council Kiratpur. In the revenue records also, no non-agricultural land or submerged land in category 6 is missing except the land acquired in road pucca. From the observation of paper number 14-G and 15-G filed by the plaintiff, it is known that on

Khasra number-2181 and 2182, no sign of pond is marked as per the traditional signs in Uttar Pradesh Jot Consolidation Rules, 1954. From the observation of document number 70-G, crop year 1391-1400, Kiratpur, Tehsil Najibabad, District Bijnor, it is known that under category-6, submerged land is mentioned as missing under non-agricultural land. Similarly, in document no.71-G, copy bag of Khatauni, crop year 1401-1406, under category 6, submerged land is missing and there is entry of the pucca road. From the said documents it is clear that on the said Khasra number on the Arazi in question, except the part acquired for the road, the rest of the part is not submerged land. From the observation of document number 14-C map it is known that in Khasra numbers 2181 and 2182 the land acquired for the road is shown in red ink. According to Khatauni also there is no

entry of the pond. Therefore, in such a situation the statement of the defendant that there is a pond on the Khasra number in question and it is the land of Uttar Pradesh government is not acceptable.

33. That from the observation of document no. 43-C filed by the defendant for Fasli year 1367 it is known that on dated 18.06.1961 it is recorded that Satyaprakash is in possession of Khasra numbers 2181/1 and 2181/2. Although the said documents are photocopies, but it has been accepted by the defendants no.1 and 2 in paragraph 27 that the order for registering the possession of Satyaprakash son Krishna Dutt resident of village Kirat Pur on Khasra number 2181/1 area 3 bigha pucca and Khasra number 2181/2 area 1-1-14 bigha pucca of village Kiratpur in the crop year 1367 was given by the supervisor kanungo. According to the true copy of document number 13-G/2

of crop year 1377-1379 filed by the plaintiff, according to case number 32 dated 15-09-1970, it is mentioned that Satyaprakash got the sanad of Landlord / Bhumi Dhari rights by paying the rent/tax of Rs.36.84/- of his account. The said entry has been accepted by the defendants number 1 and 2 themselves in paragraph 28 of the reply. DW-1 has admitted in his cross-examination that in the Khatauni of the year 1370-79 Fasli, category-2 which is in the rights of Sirdars, Satya Prakash son of Krishna Dutt is recorded as Sirdar in Column No.2. The previous Fasli of 1371 is recorded in Column No.3 of the same Khatauni. It is also admitted that the name of Satya Prakash. The term Sirdar has been in existence since before 1371 Fasli and Satyaprakash obtained the rights of Sirdar as a land holder by paying 20 times the tax / rent and obtained a land holder sanad.

Satya Prakash was given the rights of Sirdar by the Uttar Pradesh government." Thus the defendant himself has supported the plaintiff's statements in his evidence. Similarly, in paper number 13-G/1 copy of Khatauni crop year 1380-1384 Kiratpur, Najibabad, district Bijnor, category 1 land which is in the rights of landholders, in account number-110, the name of Satyaprakash son of Krishna Dutt is mentioned in respect of the number in question and according to the order dated 31.05.1977 in column no. 7, the name of Satya Prakash son of Krishna Dutt has been cancelled from Khata no. 110 and the name of the firm Lallu Mal Ramesh Chand Kiratpur Najibabad district Bijnor whose partners are Shri Ramesh Chand and Suresh Chandra son of Shri Lallu Mal and Rakesh Kumar and Smt. Chandravati has been registered. The said entry has also been accepted by the

defendant in paragraph 29 of the reply. Thus, the defendant has filed a Khatauni (N.Z.A.) crop year 1367. The order of Satyaprakash's possession, Satyaprakash's name as Sirdar in Fasli year 1377-1379 and the order of obtaining Sanad Bhumidhari rights by paying rent in the order dated 05.09.1970 have been accepted. Satya Prakash is also accepted to be a Khatedar as Category-1 in Khatauni No.110 of Fasli year 1380-1384. Defendants No.1 to 4 have not denied anything in the plaint regarding the boundary of the Arazi in question. The report of the commission along with site plan document no. 29-G confirms the boundary of the property in question.

34. That with regard to the above said letters, it has been alleged only by defendant No.1 to 4 that the said entry is fake, which was recorded without any order. It is noteworthy in this regard that the revenue

records are maintained by the revenue department, the entry of mutation in the records can be rebutted. The defendants have not presented any document or any evidence in support of their statement which proves that the said entry is fake. All the documents filed by them are photocopies. That the document number 43-C has been filed by them themselves in which Satyaprakash's possession is recorded. In cross-examination, DW-1 has only stated that in the Khatauni of the 1377-1379 crop year, he declared the name of Satyaprakash as fake because the name is not recorded in the previous Khatauni, but the said witness himself admitted in paper number 115-A/9 that "It is correct to say that according to Para-10A of the Land Lord Manual, the Supervisor Kanungo has the right to register possession. It is clear from the entry in 43-G that according to Para-10A,

the name of Satyaprakash was registered by the Supervisor Kanungo. The said entry has not been challenged by the government anywhere till date. According to the record, it is true that by depositing 20 times the tax/rent, Bhumidhari rights were obtained." Thus, it is clear from the evidence of the said witness that the order to register possession has been made as per the rules. Apart from this, no objection has been raised anywhere on the said entry by them nor any challenge has been given. Which has been accepted by the defendant himself in his evidence.

35. That in relation to the possession, it has been alleged by the plaintiffs and defendant no. 5 that in the above Khasra number, the plaintiffs have a total of 17 shops and defendant no. 5 has a total of 21 shops, bank building and residence of defendant no.5 and all the shops are

occupied by tenants. Defendant no.1 and 2 have not specifically denied the said statement and, in this regard, the plaintiffs state that the notice dated 30.08.2013 given by defendant no.3 is illegal, unauthorized, arbitrary and vague and before giving the said notice, defendant no. 3 and 4 did not give any opportunity to the plaintiffs or defendant no.5 to be heard and to present their side, nor did defendant no.2 give any opportunity to the plaintiffs and defendant no.5 to be heard and to present their side before writing the letter dated 30.07.2013 to defendant no.3 and 4 and the notice and threat of the defendants to remove the possession of the plaintiffs and defendant no.5 is completely unilateral and void action. On the contrary, the defendants alleged that the plaintiffs had occupied the land of the pond in Gata/Khata no.

2181, for which notice was given to the plaintiffs to vacate the possession. From the perusal of Document No. 20-G/1, 20-G/2, Document No. 21/1-G and 21/2-G filed in the file, it is known that Municipal corporation, Kiratpur, District Bijnor, after obtaining legal opinion from District Government Advocate, Revenue Bijnor, issued notice to the plaintiffs on 13-08-2013 to vacate the possession of pond land of Khata / Gata No.2181. Although, as far as the plaintiff's statement is concerned that an attempt was made by defendants No. 1 to 4 to evict him from the disputed land in an illegal manner, it has been proved by the settlement of case point No. 1 that the plaintiffs purchased the above Khasra nos. through a deed dated 28-03-1974 from Satya Prakash son of Krishna Dutt. Thereafter, the names of the plaintiffs were entered in the revenue records. Therefore, in such a

situation, issue number-02 is decided accordingly.

DISPOSAL OF ISSUE NO. 3

39. Issue no.3 is regarding the dispute of assessment and the court fee paid.

40. That the above issue has been disposed of by the court on 09-12-2013 in the negatively, which will be a part of this decision. There is no need to dispose it again.

DISPOSAL OF ISSUE NO. 4.

41. Dispute number-04 is framed in such a way that whether the claim of the plaintiffs is barred by the provisions of Section-331 of the Zamindari Abolition Act?

42. The onus / burden of proving the above issues is on the defendants. The defendants mentioned in paragraph 33 of the written statement that the suit of the plaintiff is barred by the provisions of the Zamindari

Abolition Act. On the contrary, the plaintiffs state that there is no dispute of ownership of the plaintiffs in the present case, because the plaintiffs are recorded tenure holders and have been the owner and occupant of the disputed land for 39 consecutive years through a valid deed as transferable land holder. The claim of the plaintiffs is not at all barred by the provisions of Section 331 of the Abolition of Zamindari Act. In the settlement of the issue no. 1, it has become clear that the property in question is under N.Z.A. In such a situation, the provisions of the U.P. Zamindari Abolition Act are not applicable. Therefore, the Issue no. 4 is decided negatively.

43. That the issue no. 5 is framed as whether the claim is barred by Order 07 Rule 11 CPC?

44. That the burden of proving this issue is on the defendants. The defendants have stated in this regard that the plaintiffs have no reason to file a suit against the defendants. Against the said statement of the defendants, the plaintiffs have stated that they were given notice by Municipal corporation, Kiratpur to vacate the possession of Khata No.2181 by the defendants. From the perusal of the notice dated 13.08.2013, Document no.20/1-G and 21/1-G, it is evident that the said notice was given by defendant no.4 to the plaintiffs in which Khata no.2181 was declared as pond land and in addition, the plaintiffs were directed to be removed from the said plot. Since, it has been proved by the settlement of Issue no.1 that the plaintiffs and defendant no.5 are the owners and

occupants of the plot in question. Thus, the plaintiff is found to have a cause of action. Accordingly, Issue no. 5 is decided negatively in favour of the plaintiff.

DISPOSAL OF ISSUE NO. 6.

45. That the issue no. 6 is related to relief. It is clear from the above discussion and evidence available on the file that the plaintiffs are the owners and occupants of the plot in question. Accordingly, the case issue no. 6 is decided.

Suit is able for stay.

O R D E R

The suit is decreed. Defendants No. 1 and 4 are forever prohibited from causing any disturbance in the ownership and possession of plaintiffs and defendant No. 5 in the land

Khasra No. 2181/1 and 2 area ad- measuring 3 Bigha 8 Biswansi Pucca and Khasra No.2182/2 measuring 7 Biswe 9 Biswansi Pucca, total area 3 Bigha 15 Biswe 9 Biswansi Pucca, details of which are given in Table-A, situated in village Kiratpur town and pargana Kiratpur, tehsil Najibabad, district Bijnor, or from demolishing the shops, houses etc. of plaintiffs and defendant No. 5.

In view of the facts and circumstances of the case, the parties will bear their own litigation expenses.

The file will be consigned to record room.

Dated: 09-12-2015

Sd/-
(Aparna Pandey)
Civil Judge, Senior Division,
Bijnor

This decision is announced today in open court signed and dated by me.

Date: 09-12-2015

Sd/-

(Aparna Pandey)

Civil Judge, Senior Division,

Bijnor



True Translated Copy

RAMAOTAR SINGH

Advocate

En. No. U.P. 5251/83

C. O. P. No. 111528

Civil Court, BJI-OR

Mob.:- 9045803058



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21-11-24

च.पा.बालक (J(SD) वि.क्र. 1

OS No. 586/2013

रमेश चन्द्र जोशी व ऊ.पं. मल्ल

1. Date of Receipt of Application: 21-11-24
 Date of Preparation copy: 23-11-24
 Date of Sending notice: 25-11-24
 Date of receipt of copy by applicant: 25-11-24
 Name & Signature of Person who Received this copy: [Signature]

नाम निजी CA की स्थापना
दाखल करने हेतु



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no-56
165**In the Court of District Judge, Bijnor.****Present: Subhash Chand, HJS****Civil appeal no. 14/2018**

- 1-Nagar Palika Parishad Kiratpur through Chairman, Nagatr Palika Parishad Kiratpur Pargana Kiratpur, Tehsil Najibabad District Bijnor.
2- Executive Officer Nagatr Palika Parishad Kiratpur, Pargana Kiratpur, Tehsil Najibabad District Bijnor.

--Appellants-defendants

Vs.

- 1-Ramesh Chand Goel s/o Lallu Mal r/o Mohalla Mahajan, Kiratpur presently r/o through Dr. Sandeep Goel, S.D.Puram, Kiratpur road, Bijnor District Bijnor.
2/1- Akshay Goel s/o Suresh Chand Goel r/o Civil Lines-2, Bijnor District Bijnor.
2/2- Deepti Jindal d/o Late Suresh Chand Goel, w/o Deepak Jindal r/o Buland Shahar, District Buland Shahar.
3-Rakesh Kumar Goel s/o Bashesh Chand Goel r/o Mohalla Mahajan, presently r/o mohalla Hasanpura, Kiratpur, Tehsil Najibabad District Bijnor.
4- State of U.P. through Collector, Bijnor.
5- Tehseeldar Najibabad, District Bijnor.

---Respondents-plaintiffs

Judgment

This civil appeal is preferred on behalf of Municipal Board Kiratpur, and another against Ramesh Chand and others against the judgment and decree dated dated 9-12-2015 in O.S. No. 586/2013 Ramesh Chand Goel vs. State of U.P. and others, whereby the learned Civil Judge (SD) Bijnor decreed the suit of the plaintiffs.

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The brief facts leading to this civil appeal are that the plaintiffs Ramesh Chand and Suresh Chand Goel filed civil suit against the State of U.P. and others for permanent prohibitory injunction.

The brief facts of O.S. No. 586/2013 are that land of Khasra no. 2181/1 and 2 area 3 Bigha, 8 Biswa Pukhta and land of Khasra no. 2182 /2 area 7 Biswa and 9 Biswansi total area 3 Bigha, 15 Biswa and 9 Bishwansi Pukhta situate in village Kiratpur Pargana Kiratpur Tehsil Najibabad District Bijnor is Bhumidhari land of plaintiffs and defendant no. 5, who are partner of Firm Lallumal Ramesh Chand, Kiratpur vide sale deed dated 28-3-1974. Smt. Chandrawat, partner of Firm Lallumal Ramesh Chand had died on 9 May 1989. On the basis of sale deed, entries in revenue record remained in the name of partners of the Firm. The initial owner of the land was Satay Prakash Sharma s/o Krishan Durtt Sharma. Satay Prakash Sharma originally was Sirdar of Khasra no. Khasra no. 2181/1 and 2 and Khasra no. 2182/2 and he had become Bhumidhar of the same after having deposited 20 times land revenue of the same on 18-9-1970. Thereafter his name was recorded in revenue record as Bhumidhar. 11 Bishwa and 10 Bishwansi land of Khasra no. 2181 and 2182 was acquired by the State of U.P. and compensation for the same was paid to Satay Prakash Sharma on 20-6-1970. The defendant no. 3 is local body and defendant no. 4 is office bearer of the same. While defendant no. 2 is office bearer of defendant no. 1 State Government. Whole of the land of these khasra number are within Abadi of municipal area Kiratpur. Plaintiff and defendant no. 5 had irrected shops in the land of said Khasra numbers after having got prior permission from the Municipal Board, Kiratpur. House tax is also being paid by the plaintiffs to defendant no. 3 and 4. Defendant no. 4 on 13-8-2013 gave letter no. 285/ Municipal Board, Kiratpur 2013-14,

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which was received to the plaintiffs on 19-8-2013, having alleged the land of Khasra no. 2181 to be the land of pond and were asked vide letter dated 30-7-2013 to remove the construction from the land of Khasra no. 2181 and in failure to comply the notice, were also threatened to evict the plaintiffs and defendant no. 5 from the same forcibly. If the defendant becomes successful in demolishing the construction raised by plaintiffs, it would cause irreparable loss to the plaintiffs. In land of aforesaid Khasra numbers, 17 shops are of the plaintiffs and defendant no. 5 and defendant no. 5 has also raised construction of 21 shops, building of bank and his residence as well. As matter is of urgent nature, the suit is being filed without having served prior notice of two months under the provisions of Section 326(1) of Municipal Board Act and exemption of the same has been sought u/s 326(4) of Municipal Board Act. As such the plaintiffs sought relief of permanent prohibitory injunction against the defendant for restraining the defendant no. 1 to 4 not to demolish the shops and also not to make interference directly and indirectly in the land of property in dispute detailed and described at the foot of the plaint.

On behalf of defendant no. 1 and 2 written statement paper no. 49-A is filed, in which averment of the plaint are denied in substance and in additional pleas it is stated that the plaintiffs have no cause of action against the responding defendants. Whole of the village Kiratpur is entered in Mahal Chohanani Khewat no. 103 and of Rajarai Bharat Singh s/o Rajarai Dalchand r/o Sahanpur and in Khatauni of 1347 Fasli in Khewat no.1 and in column no. 1 Khasra no. 2181 is recorded as PADAVA and pond. In Khatauni of 1359 Fasli, this land was recorded as barren and land of pond, of which actual owner is State of U.P. In Khatauni of 1367 Fasli of village Kiratpur in Khata no. 14 this



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land is recorded as Barren land and the then Supervisor -Kanoor had recorded the name of Satay Prakash s/o Krishan Dutt in respect of land of Khasra no. 2181/1 area 3 Bigha pukhta, Khasra no. 2181/2 area 1 Bigha Puphta, and Khara no. 2182/2 area 1-1-14. In Khatauni of 1377 - 1379 Fasli of Kiratpur in municipal area, name of Satay Prakash was recorded as Sirdar at khasra no. 2181/1 area 4 Bigha pukhta and Khasra no. 2182/2 area 1-1-14 . Said entries are forged entries . Thereafter, Satay Prakash had deposited 20 time of land revenue of the same and on 5-9-1970 his name was recorded as Bhumidhar. Name of Satay Prakash is recorded as Category no.1 as Bhumidhar in Khatauni of 1380 Fasli - 1384 Fasli. Thereafter, on 28-3-74 Firm Lallumal Ramesh Chand through its partners Ramesh, Suresh and Rakesh and Smt. Chandrawati w/o Lallumal was recorded in revenue record as Bhumidhar on the basis of sale deed. As the land of disputed property is recorded as land of pond in Khatauni of 1359 Fasli ,therefore, no title acquired to any person over said land. No notice u/s 80 of C.P.C. was served upon the responding defendant . The suit of the plaintiffs is barred by order 7 rule 11 of the C.P.C. The suit has wrongly been filed and the court fees paid is insufficient. As such the suit deserves to be dismissed.

Written statement paper no. 62-A is filed on behalf of defendants no. 3 and 4 , in which averment of the plaint was denied in substance and in additional plead, it is stated that in Khatauni of 1359 Fasli land in dispute was recorded as barren and land of pond, of which actual owner is State Government and this land is under municipal area, Kiratpur. But in revenue record, name of Sataya Prakash remained recorded . The entry of name of Sataya Prakash was forged entry. Plaintiffs had purchased the disputed land from Sataya Prakash on 28-3-



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1974 and their names were mutated in revenue record and as such entry of the plaintiffs in revenue record is also forged entry. No right can be acquired to the plaintiffs in the land of public utility. The plaintiffs had obtained permission for raising construction after having concealed material fact. It has been averred in the plaint that 38 shops, bank and residence are in the disputed property as such valuation of the disputed property can not be less than of one Carore. In this way, court fees paid is insufficient. Legal notice was not served on the defendant. Therefore, suit of the plaintiffs deserves to be dismissed.

On behalf of defendant no. 5 Rakesh Kumar written statement paper no. A-86 is filed, in which averments of the plaint of the plaintiff are admitted in substance and in additional pleas all the averments of the plaint have been reiterated.

Paper no. 3-A replication is filed on behalf of plaintiffs, in which averments of written statements are denied in substance and in additional plead it is stated that entries in revenue record of barren land and land of pond is against the rule of Land Record Manual and the same is not binding upon the plaintiffs and ultimately all the averments of the plaint are vetted.

Additional Written Statement paper no. 149-A is also filed on behalf of defendant no. 1 and 2, in which all the averments made by defendant no.1 and 2 are reiterated.

On the basis of pleadings of the parties the following issues have been framed by the learned court below-

1-Whether the plaintiff and defendant no. 5 are owner and in possession of the property detailed and described in schedule-A at the foot of the plaint ?

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2-Whether defendant no. 1 to 4 are bent upon to evict the plaintiffs from the property in dispute forcibly without adpoting due course of law ?

3-Whether the suit is under valued and the court fees paid is insufficient ?

4-Whether the suit of the plaintiffs is barred by section 331 of the U.P. Z.A. & L.R. Act ?

5-Whether the suit of the plaintiffs is barred by Order 7 Rule 7 of C.P.C. ?

6-Whether the plaintiffs are entitled to get any relief?

The plaintiff in support of their plaint's contentions filed paper no. C-11 certified copy of sale deed executed by Satay Prakash in favour of Firm Lallumal Rameshchand dated 28-3-1974, paper no. C-13 copy of form L.A. Act relating to village Kiratpur dated 20-6-1970, paper no. C-14 copy of map Chak Tarasi of village Kiratpur, , paper no. C-16/1 to C-16/9 receipts issued by Nagar Palika, paper no. C-17 permission granted by Municipal Board Kiratpur for raising construction alongwith map, paper no. C-20 notice issued by Municipal Board Kiratpur, paper no. C-72 to paper no. C-78 copies of register of assessment of house tax of different years, paper no. C-80 copy of sale deed dated 30-10-1971 executed by Sataya Prakash in favour of Ismail, paper no. C-81 copy of sale deed dated 20-10-1970 executed by Sataya Prakash in favour of Vahid, paper no. C-82 copy of sale deed dated 20-10-1970 executed by Sataya Prakash in favour of Mohd. Ali, The plaintiffs also filed copies of different khatauni relating to the disputed property situated in town Kiratpur.



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In oral evidence on behalf of plaintiffs, **P.W.1 Ramesh Chand Goel** has been examined.

Defendant no. 5 Rakesh Kumar in documentary evidence has filed Jot Akar Patra 40 paper no. C-105, Khatauni 1359 Fasli paper no. C-106, copy barta Khatauni of 1359 Fasli paper no. C-107 and copy of map of land of Kiratpur paper no. C-108

Defendant no. 1 and 2 also filed per list C-39 copy of Fard Khasra of crop year 1337 paper no. 40-C/1 to 40-C/2, copy of Fard Khatauni crop year 1359 paper no. C-41, copy of Khasra of crop year 1359, paper no. C-43, photostat copies of khatauni of crop year 1389 to 1392 of Khewat no. 1 paper no. C-44 to C-47, notice paper no. C-153 Khasra paper no. C-154 and Khatauni paper no. C-155.

No documentary evidence has been filed by defendant no. 3 and 4.

The defendant has examined **Suresh Chand Lekh Pal** as D.W.1.

Defendant no. 3 and 4 has examined **Babu Ram Tax Collector** as D.W.2.

The learned trial court decreed the suit of the plaintiffs on merits vide judgment dated 9-12-2015. After having been aggrieved with the impugned judgment and decree dated 9-12-2015, passed by the learned Civil Judge (SD), Bijnor this civil appeal has been preferred on behalf of Municipal Board, Kiratpur and another on the ground that the impugned judgment and decree passed by the learned trial court is against the facts and law. Learned court below had failed to appreciate the evidence on record according to law as in Khatauni of 1359 Fasli land in dispute was recorded as barren and land of pond, which is under the control of Municipal Board Kiratpur, therefore, no title or interest can be conferred to the plaintiffs by execution of sale deed dated 28-3-1974 by Sataya Prakash Sharma in favour of plaintiffs. House tax

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receipts and name recorded in municipal board record, can not be basis of title of the disputed land . In this case question of title is involved, therefore, no injunction should have been granted to the plaintiffs against the appellants in regard to the property in dispute. During pendency of the appeal, respondent no. 2 Suresh Chand Goel died and after his death his legal heirs 2/1 Akshay Goel and Smt. Deepti Jindal were substituted. As such prayed to set aside the impugned judgment and decree and to allow this civil appeal.

For disposal of this civil appeal, following points of determination are being framed-

- 1- Whether the plaintiffs -respondents are owner and in possession of the property in dispute ?
- 2- Whether the property in dispute is barren land and land of pond, if so its effect ?

Since both the points of determination are inter related and maintained on same evidence, so both are decided simultaneously ?

On behalf of appellants learned counsel contended that land of property in dispute was recorded as barren land and land of pond in revenue record in Khatauni of 1359 Fasli and being the land of public utility no right , title and interest can be accrued to the plaintiffs' predecessor Sri Sataya Prakash Sharma and after execution of sale deed by Sataya Prakash Sharma in favour of plaintiffs no right, title and interest accrued to the plaintiffs. Revenue record can not be evidence of the title of any person and revenue entries , which are not as per rules, can be rebutted by other evidence and the same can not be relied upon. The entries of the name of Sataya Prakash and plaintiffs in revenue record are forged and the same can not be the basis of title of the property in disputed. In support of his contention , learned counsel of the



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appellants relied upon the following case laws-

- 1- Yogendra Yadav and another vs. State of U.P. and others (Alld. H.C.), 2017(121) ALR 697.
- 2- Sant Bux Singh vs. J.D. Consolidation (Alld. H.C.), 1986 LCD page 216,
- 3- Antyoday Sewa Samiti vs. D.D.D. of consolidation Etah and others , (Alld. H.C.) 2010(110)R.D. 794.
- 4- Ajay Kumar Gupta vs. Smt. Usha Sharma (Alld. H.C.), 2012(94) ALR 771 .

On behalf of plaintiffs -respondents , learned counsel contended that the land of property in dispute is not governed by the provisions of U.P. Zamindari Abolition and Land Reform Act . Land in dispute is land of Non Z.A. and the same is in municipal area of Municipal Board , Kiratpur. As such provisions of U.P. Z.A. & L.R. Act are not applicable on the property in dispute. In the year 1865 Kiratpur was declared as Notified area vide notification no. 334 -A dated 17-4-1965. , which has been published in Gazettee on 24-4-1865. The land of property in dispute is governed by U.P. Urban Area Z.A. Act 1957. Defendant no. 1 and 2 also admit this fact that land of the property in dispute is governed with the provisions of U.P. Urban Area Z.A. Act 1957. D.W.1 Suresh Chand, who is Area Lekh pal and is examined on behalf of defendant also admits this fact that Satya Prakash was Sirdar of the land in dispute and later on acquired rights of Bhumidhari after having deposited 20 times land revenue and after execution of sale deed by Satya prakash Sharma, in favour of plaintiffs in the year 1974, the plaintiffs became the Bhumidhar of the same. Revenue entries made in the name of plaintiffs as well as their predecessor Sataya Prakash Sharma were made according to rule of Land Revenue Manual. According to Section 1 of



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U.P. Urban Area Z.A. Act 1957, the land which fall in area of municipal are and cantonment board , on 30 June 1954 shall be governed with the provisions of said Act. In revenue map , land of disputed khasra number was never shown to be barren land and land of pond. If any entry is made by Revenue Authorities subsequently, in revenue record, without any proper order, the same have no effect on the right of the plaintiff. Moreover, on behalf of defendants no documentary evidence has been filed . Only photo stat copies , have been filed and the same can not be admissible in evidence. No explanation has also been given on behalf of defendants that why the original documents were not being filed and in support of his contention relied upon the following case laws-

- 1- Nagar Nigam Lucknow vs. Smt. Krishna Devi , 2014 (32) LCD 1626 of Hon'ble Allahabad High Court (Lucknow Bench).
- 2- Sadul Ajeej vs. District Judge Gorakhpur and others 1999 (17) LCD -1356 of Hon'ble Allahabad High Court.

Learned counsel for the respondent no.5 Rakesh Kumar contended that provisions of U.P. Zamindari Abolition and Land Reform Act are not applicable on the property in dispute Admittedly Gtaya Prakash was Sirdar of the land in dispute and after depositing 20 times land revenue of the same he became Bhumidhar of the land in dispute . Khewat was the register of title in view of Section 32 of the U.P. Land Revenue Act 1901. Land in dispute is governed by the provisions of U.P. Urban Area Z.A. Act 1957. The entries made in the name of plaintiffs and defendants no. 5 are in accordance with provisions of Land Revenue Manual and the same were never challenged before any competent authority by the appellant. Accordingly contended to dismiss the appeal.

On behalf of plaintiffs in oral evidence examined P.W.1

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Ramesh Chand. This witness in his examination in chief deposed all the averments made in the plaint. In his cross examination this witness says that the disputed land is in Khasra no. 2181/1, 2181/2 and 2182/2. What was the nature of disputed land in Khatauni of 1359 Fasli, is not known to him. It is wrong to say that it was recorded as barren and land of pond in 1359 Fasli. Name of Satya Prakash was recorded in revenue record as Sirdar. The land in dispute is the land of Non Z.A. in the Municipal area of Kiratpur. land in dispute was purchased in the name of Firm from Satya Prakash in the year 1974. Satyaprakash had deposited twenty times of land revenue and became Bhumidhar of the land in dispute. He does not re-collect for how many shops he obtained permission from the Municipal Board, Kiratpur. Now 40 shops are erected in the land in dispute. Prior to year 1960, Satay Prakash was Sirdar and in the year 1970, he had become Bhumidhar of the same.

On behalf of State of U.P. (defendant no. 1 and 2) examined **D.W.1 Suresh Chand**. This witness in his examination in chief supported the averments of the written statement of defendant no. 1 and 2. In his cross examination, this witness says that as per record, land in dispute was in town area, Kiratpur, which is now in municipal area, Kiratpur, which is known as Non Z.A. area. He is not aware how this land came in Z.A. area, which was of Non Z.A. area. He is not aware of any such notification. He has not seen any record of 1337 Fasli to 1359 Fasli. When Urban Zamindari was abolished, he is not aware. It is correct to say that Satay Prakash had deposited twenty times land revenue and he acquired rights of Bhumidhari. This fact is not in his knowledge that any objection was filed against the order dated 15-9-1970 passed in favour of Satay Prakash. According to paper no. C-13 part land of Satya Prakash was acquired for road and compensation was paid to Satay



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Prakash . He has seen Khatauni of 1367 Fasli, in which name of Satay Prakash is recorded as Sirdar. It is correct to say that name of plaintiffs were recorded in revenue record on the basis of sale deed dated 11-3-1974 and no objections ever raised against the same. Now shops of Firm Lallu Mal Ramesh Chand, bank accommodation and house are erected in the disputed land, of which the owners are Lallu Mal Ramesh Chand and its partners. The land in dispute was originated from Khawet No.1 of Mahal of Chauhanan, Kiratpur, Zamidar of which was Raja Rai Bharat Singh s/o Dal Chand .When Zamindari was abolished, at that time disputed land was Non Z.A. and **Zamidari of said land was abolished by Act no.8 of the year 1957. According to C.H. No. 40 land of Khasra lno. 2181and 2182 are under town area.** As per paper no. C-43, which is Khatauni of 1367 Fasli and is being filed on behalf of State of U.P. name of Satay Prakash was recorded by Supervisor-Kanoongo in revenue record. **It is correct to say that according to para no. 10-A of Land Record Mannual, Supervisor-Kanoongol has authority to make an entry of possession. On behalf of State of U.P. , entry made in the name of Satay Prakash was never challenged.** At present plaintiffs are in possession of the land of property in dispute.

On behalf of defendants no. 3 and 4 examined **D.W.2 Babu ram Tax Collector**, who in his examination in chief supported the averments of the written statement filed on behalf of defendants no. 3 and 4 and in his cross examination this witness says that the disputed land come within the area of Municipal Board . Khatauni of 1359 Fasli, in which land of Gata No. 2181 is entered as land of pond, is Khatauni of Non Z.A.

Admittedly, land of property in dispute is in Municipal area, which was initially under town area , Kiratpur. On behalf of



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plaintiffs , learned counsel while arguing his case adduced copy of Gazette-Notification . From perusal of the same, it is found that vide Notification no. 334-A dated 17-4-1865 published in Gazette on 24-4-1865 Kiratpur alongwith Nehtaur , Seohara and others of the District Bijnor were declared as Notified area, which were later on addressed as Town Area.

In view of provisions of Section 1 of U.P. Urban Area Abolition Act 1956, the land of town area Kiratpur, was governed with the Act of U.P. Urban Area Zamindari Abolition Act 1956.

On behalf of plaintiffs paper no. C-11 is filed which is Khatauni of Kiratpur of 1377 Fasli to 1379 Fasli. From the perusal of this paper, it is found that **at Khasra No. 2181/1 and 2181/2 and 2182/2 in their respective area, name of Satya Prakash S/o Krishan Dutt was recorded as Sirdar and in case no. 32/ 15-9-1970 vide order dated 15-9-1970 Bhumidhari rights were conferred to Satay Prakash with regard to the disputed land after having deposited twenty times land revenue of the same.**

From perusal of Paper no. C-12, it is found that P.W.D. Bijnor for construction of Kiratpur bye pass, vide order dated 20-6-1970 of the court of L.A.O. Bijnor ,under Land Acquisition Act , **part land of Khasra no. 2181/1 and 2 and Khasra no. 2182/2 was acquired for road. From the perusal of paper no. C-13, it is found that Satay Prakash was paid compensation for his acquired land alongwith other Bhumidhar.**

Paper no. C-14 is map of Chak Tarasi and from perusal of the same it is found that in Khasra no. 2181 and 2182 , no mark of pond is shown.

Paper no. C-10 is certified copy of sale deed , which was



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executed by Sataya Prakash s/o Krishan Dutt in favour of Firm Lallu Mal Ramesh Chand, whose partners are Ramesh Chand, Suresh Chand, Rakesh Chand and Smt. Chandra Wati. This sale deed was executed on 11-3-1974. This is registered sale deed and the land which is sold, is Bhumidhari land of Kiratpur of Khasra no. 2181/1, 2181/2 and 2182/2 having total area of 3 Bigha 15 Biswa and 9 Biswansi pukhta.

Paper no. C-13 is Khatauni of 1380 Fasli - 1384 Fasli . From the perusal of the same, it is found that name of Firm Lallu Mal Ramesh Chand through its partners Ramesh Chand, Suresh Chand, Rakesh Chand and Smt. Chandra wati were mutated in place of Staya Prakash in respect of land of Khasra no. 2181/1, 2181/2 and 2182/2.

Paper no. C-11 is Khatauni of 1419 Fasli to 1424 Fasli and from perusal of this paper, it is found that the plaintiffs/respondents are recorded Bhumidhar with transferable rights of the land of 2181/1 area 0.860Hect. and land of 2182/2 area 0.095 Hect. total 0.955-Hect. This land is in Municipal area.

Paper Ino. C-19 is map of shops , sanctioned by Municipal Board Kiratpur. From the perusal of paper no. C-19/1, it is found that permission was accorded to raise construction by the Executive Officer of Municipal Board Kiratpur (Bijnor.) on 18-7-2001. Likewise, paper no. C-18/1 and paper no. C-18/2 are also permission to erect the shops , given by Executive Officer of Municipal Board, Kiratpur dated 17-6-2005. Paper no. C-16/1 to C-16/9 and paper no. C-17/1 to C-17/4 are receipts of house tax imposed and realised by Nagar Pakia Parishad, Kiratpur.

Paper no. C- 78 is the Assessment Register of Tax of



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Municipal Board of the years 2002-2003 and 2006-2007 in which shops and rooms are shown to be constructed and name of plaintiffs are recorded as owner.

Paper no. C-105 is C.H. Form no. 40 . From the perusal of the same it is found that Khasra no. 2181 and 2182 are shown to be under town area Kiratpur.

All these documentary evidence are corroborated by P.W.1 Ramesh Chand Goel and also with evidence of defendant witness D.W.1 Suresh Chand. On behalf of defendant no. 1 to 4 State of U.P. and Nagar Palika Parishad, Kiratpur in documentary evidence only photostat copies have been filed and no original of the same has been filed . It is settled principle of law that photostat copies are not admissible in evidence, unless the conditions of Section 65 of the Evidence Act are fulfilled. No evidence with regard to the condition of Section 65 of the Evidence Act has been filed on behalf of defendant. However, for the sake of argument, from the perusal of paper no. C-41 , which is Khatauni of 1359 Fasli, it is found that land of Khasra no. 2182/2 is shown to be barren land and land of Khasra no. 2181/1 is shown to be the land of pond. From thorough perusal of this khatauni , it is found that no order of any competent authority is mentioned in this Khatauni.

On behalf of defendant s D.W.1 Area Lekhpal, Suresh Chand has been examined. This witness himself admits that the land in property in dispute situates in municipal area of Kiratpur, which was initially town area Kiratpur. This witness also admits that he is not aware how and by whom order land of Khasra no. 2181/1 and 2182/2 was recorded as Barren and land of pond. There is no such record with him in regard to the entry made to that effect in



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Khatauni of 1359 Fasli. While this witness admits that initially Sataya Prakash Sharma was Seerdar of the land of property in dispute and later on he acquired Bhumidhari rights after having deposited twenty times land revenue and entries in this respect have been made by competent authority and these entries have never been challenged by the State of U.P. Later on Satay Prakash also transferred the same to the plaintiffs by executing sale deed in the year 1974 and names of the plaintiffs were also recorded in revenue record as Bhumidhar of the same, which were never challenged by the defendants.

This fact is also admitted to the defendants/appellants that the plaintiffs-respondents after obtaining permission from Municipal Board, Kiratpur had erected shops and other construction over the disputed and after completion of construction, house tax was levied and realised from them by the Municipal Board, Kiratpur.

From the oral and documentary evidence, available on record, it is well proved that land of property in suit, which was initially in town area and later on came in municipal area and said land remained Non Z.A. land in consolidation proceedings and entries in the name of Sataya Prakash remained in force and this entries were never challenged in consolidation proceedings. Later on, also the entries made by the Revenue Authority, in the name of plaintiffs and their predecessors remained intact and the same were never challenged by the defendants before the Revenue Authority or Consolidation Authority.

In rebuttal, only one Khatauni of 1359 Fasli has been filed by the appellants/defendants, in which disputed land has been recorded as land of pond and barren land, but the entries made in



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said Khatauni are not based on any order of competent revenue authority.. How this entry came into existence, there is no explanation on behalf of defendants. As such reliance can not be placed on Khatauni of 1359 . Prior to Khatauni of 1359 Fasli , in land of aforesaid khasra number no entry of pond and barren land is found in any revenue or consolidation record, as is evident from the documentary evidence adduced on behalf of the plaintiffs/respondents.

The authorities , on which reliance has been placed by the appellants, are not applicable in the present facts and evidence adduced on behalf of parties to the suit.

In **Om Prakash vs. D.D.C. Faizabad (H.C. L.B.)** cited in R.D. 1996 Supplementary page 354, the Hon'ble Allahabad High Court held that entry in Khatauni made by Lekhpal without order of competent authority, no reliance can be placed.

As such from the oral and documentary evidence adduced on behalf of both the parties, the plaintiffs are found the owner and in possession of the property in dispute and said land is not barren land or land of pond. Accordingly, **both the points of determination are disposed of in favour of respondents and against the appellants.**

At the upshot of discussion I am of the view that impugned judgment and decree needs no interference and this civil appeal has no force, same deserves to be dismissed with costs.

ORDER

Civil appeal no. 14/2018 Nagar Palika Parishad and others vs. Ramesh Chand Goel and others is hereby dismissed with costs and the impugned judgment and decree are hereby confirmed.

Let the record be sent down to the learned court below

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alongwith the copy of judgment of this Court.

Dt.28.4.2018

Subhash Chand
28/04/18
(Subhash Chand)

District Judge,
Bijnor

Judgment signed,dated and pronounced in open court today.

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from
23/11/24
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Dt.28-4-2018

Subhash Chand
28/04/18
(Subhash Chand)

District Judge,
Bijnor.

सत्य प्रतिनिधि
Subhash Chand
मुख्य प्रतिनिधि
केन्द्रीय प्रतिनिधि विभाग
जिला जज, बिजनौर



मैसर्स गार्निश लैंड प्रा0 लि0, गार्निश इंफ्रा कॉन प्रा0 लि0, गार्निश बिल्डर्स प्रा0 लि0, हेड ऑफिस- 26/6, पटेल नगर नई दिल्ली, वाके मौहल्ला हसनपुरा, किरतपुर जिला बिजनौर, द्वारा प्रस्तुत व्यवसायिक मार्केट के मानचित्र की स्वीकृति अध्यक्ष नगर पालिका परिषद् किरतपुर द्वारा दिनांक 26/22 को निम्नलिखित शर्तों के अधीन दी गयी है।

1. आवेदक अपने स्वामित्व प्राप्त वैधानिक भूमि में ही अपना निर्माण कार्य करायें।
2. पूरब दिशा में स्थित राकेश गोयल किसी भी प्रकार का अतिक्रमण न करें और किसी प्रकार का प्रक्षेप/सीढ़ी/दरवाजा/रोशनदान आदि न निकालें। अपनी व्यवसायिक मार्केट का रास्ता आवागमन हेतु मानचित्र/बैनामे के अनुसार रखें।
3. पश्चिम दिशा में नैशनल हाईवे (बिजनौर नजीबाबाद रोड) किसी भी प्रकार का अतिक्रमण न करें और किसी प्रकार का प्रक्षेप/सीढ़ी आदि न निकालें।
4. उत्तर दिशा में नैशनल हाईवे (बिजनौर नजीबाबाद रोड) किसी प्रकार का अतिक्रमण न करें और किसी प्रकार का प्रक्षेप/सीढ़ी आदि न निकालें।
5. दक्षिण दिशा में स्थित आराजी कब्रिस्तान किसी भी प्रकार का अतिक्रमण न करें और किसी प्रकार का प्रक्षेप/सीढ़ी/दरवाजा/रोशनदान आदि न निकालें।
6. मानचित्र स्वीकृति/अनुज्ञा से स्वामित्व का कोई सम्बन्ध नहीं है।
7. स्वीकृत मानचित्र के अनुसार निर्माण कराना अनिवार्य है निर्माण व्यवसायिक है। जिस पर 1 प्रतिशत सैस चालान संख्या द्वारा अंकन 36788/- रुपये श्रम विभाग में जमा कर दिया है।
8. पार्किंग व रेन वाटर हारवेस्टिंग का निर्माण अनिवार्य होगा।
9. स्वीकृति पत्र प्राप्ति की तिथि से 12 माह के अन्दर अपना निर्माण कार्य पूर्ण करा लेना अनिवार्य होगा।
10. निर्धारित अवधि के पश्चात् निर्माण कार्य जारी रखने/पुनः प्रारम्भ करने से पूर्व स्वीकृत मानचित्र का नवीनीकरण/समयवृद्धि कराना अनिवार्य होगा।
11. गैर नवीनीकरण/स्वीकृत मानचित्र के विपरीत निर्माण पाये जाने की दशा में पालिका नियमों के अन्तर्गत होने वाली दण्डात्मक कार्यवाही की जिम्मेदारी आवेदक की स्वयं ही होगी।
12. प्रस्तावि निर्माण एनएचएआई रोड के किनारे है एनएचएआई से मानचित्र स्वीकृति कराने के उपरान्त व उनके द्वारा दिये गये प्रतिबन्धों के अनुसार ही निर्माण कार्य करें।
13. अपने खुली भूमि मे कम से कम पांच वृक्ष लगाना अनिवार्य होगा। तथा वृक्ष लगाते हुए पांच फोटो कार्यालय में जमा करने के उपरान्त ही अनुमति दी जायेगी।
14. किया जाने वाला निर्माण सुसंगत भारतीय मानक संस्थान एवं नेशनल बिल्डिंग कोड के प्राविधानों के अनुरूप अर्ह स्ट्रक्चरल इन्जीनियर एवं वास्तुविद द्वारा प्रमाणित डिजाइन के अनुसार ही होगा।
15. प्रश्नगत निर्माण में दी गयी स्वीकृति को आवेदक द्वारा छल कपट, गलत दस्तावेज से प्राप्त कर ली जाती है तो उ0प्र0 नगरपालिका अधिनियम 1916 की धारा 180 की उपधारा-6 के अन्तर्गत दी गयी स्वीकृति को निरस्त कर दिया जायेगा।
16. भू-स्वामित्व अथवा अन्य किसी महत्वपूर्ण तथ्य को छिपाकर प्राप्त की गई स्वीकृत की जानकारी होने पर मानचित्र निरस्त कर दिया जायेगा और इस दौरान किया गया निर्माण अनाधिकृत मानकर ध्वस्त करा दिया जायेगा एवं भुकम्परोध प्राविधानों का अनुपालन सुनिश्चित किया जायेगा।
17. लोक निर्माण विभाग, अग्निशमन विभाग, विद्युत विभाग अथवा अन्य किसी विभाग से अनुमति वांछित होने पर उसे प्राप्त कर एक-एक प्रति इस कार्यालय में जमा कराने की जिम्मेदारी स्वयं आपकी होगी तथा सम्बन्धित विभागों के नियमों का पूर्णतः पालन भी करना होगा।
18. राष्ट्रीय राजमार्ग पर हो रहे निर्माण में भारतीय राष्ट्रीय राजमार्ग प्राधिकरण (NHAI) मेरठ से अनुमति/अनापत्ति प्रमाण-पत्र लेकर ही निर्माण कार्य करेंगे। तथा अनुमति वांछित होने पर उसे प्राप्त कर एक-एक प्रति इस कार्यालय में जमा कराने की जिम्मेदारी स्वयं आपकी होगी तथा सम्बन्धित विभागों के नियमों का पूर्णतः पालन भी करना होगा।
19. निर्माण के दौरान या बनजाने के उपरान्त यदि यह पाया जाता है कि दुकान सरकारी भूमि पर आंशिक/पूर्ण रूप से तैयार है तो दी गई स्वीकृति/अनुज्ञा स्वतः निरस्त मानी जायेगी।
20. निर्माण की स्वीकृति से छः माह के पश्चात स्वीकृत मानचित्र के अनुसार गृहकर लागू कर दिया जायेगा। जिसकी जमा करने की पूर्ण जिम्मेदारी आपकी होगी।
21. प्रस्तावित निर्माण स्थल के निकट तालाब की भूमि 7590 वर्ग मी0 पर किसी प्रकार का अतिक्रमण नहीं करेंगे।
22. प्रस्तावित निर्माण स्थल के सम्बन्ध में माननीय न्यायालय द्वारा जो निर्णय दिया जायेगा यह अनुज्ञा-पत्र न्यायालय के निर्णय के आधीन रहेगा तथा सक्षम न्यायालय का अन्तिम निर्णय मान्य होगा।

OFFICE OF MUNICIPAL COUNCIL KIRATPUR (BIJNOR)
LETTER NO.: 37/N.P.P.K/2022-23
PERMIT LETTER

DATED 07-06-2022

The map of commercial market submitted by M/s Garnish Land Pvt. Ltd., Garnish Infracon Pvt. Ltd., Garnish Builders Pvt. Ltd., Head Office- 26/6. Patel Nagar New Delhi, Walke Mohalla Hasanpura, Kiratpur District Bijnor, has been approved by the Chairman Municipal Council Kiratpur on 07.06.2022 under the following conditions.

1. The applicant should get his construction work done in the legal land owned by him.
2. Rakesh Goyal situated in the east direction should not do any kind of encroachment and should not make any kind of projection/stairs/door/vent etc. Keep the path of your commercial market for traffic as per the map/deed.

3. Do not encroach on the National Highway (Bijnor Najibabad Road) in the west direction and do not make any kind of projection/stairs etc.
4. Do not encroach on the National Highway (Bijnor Najibabad Road) in the north direction and do not make any kind of projection/stairs etc.
5. Do not encroach on the Arazi graveyard situated in the south direction and do not make any kind of projection/stairs/door/skylight etc.
6. Ownership has no relation with map approval/permission.
7. It is mandatory to construct as per the approved map, the construction is commercial. On which 1 percent cess marking by challan number Rs. 36-7838/- has been deposited in the Labor Department.
8. Construction of parking and rain water harvesting will be mandatory.

9. It will be mandatory to complete the construction work within 12 months from the date of receipt of the approval letter.
10. Before continuing/restarting the construction work after the stipulated period, it will be mandatory to renew/extend the approved map.
11. In case of non-renewal/construction found contrary to the approved map, the applicant himself will be responsible for the punitive action under the Municipality rules.
12. The proposed construction is on the side of NHAI road, so construction work should be done only after getting the map approved from NHAI and as per the restrictions given by them.
13. It will be mandatory to plant at least five trees in your open land. And permission will be given only after submitting five photographs of planting trees in the office.

14. The construction to be done will be as per the design certified by a qualified structural engineer and architect in accordance with the provisions of the relevant Indian Standards Institute and National Building Code.
15. If the approval given for the construction in question is obtained by the applicant by fraud or by using wrong documents, then the approval given under subsection-6 of section 180 of UP Nagar Palika Act 1916 will be cancelled.
16. If it is known that the approval was obtained by hiding the land ownership or any other important fact, then the map will be cancelled and the construction done during this period will be considered unauthorized and demolished and compliance of earthquake resistance provisions will be ensured.

17. If permission is required from Public Works Department, Fire Department, Electricity Department or any other department, then it will be your responsibility to obtain it and submit one copy of each to this office and also you will have to fully follow the rules of the concerned departments.
18. In the construction being done on the National Highway, construction work will be done only after taking permission/No Objection Certificate from National Highway Authority of India (NHAI) Meerut. And if permission is required, it will be your responsibility to obtain it and submit a copy of each to this office and you will also have to fully follow the rules of the concerned departments.
19. During construction or after construction, if it is found that the shop is partially/fully built on government land, then the approval/permission given will be automatically considered cancelled.

20. After six months from the approval of construction, house tax will be implemented as per the approved map. The full responsibility of depositing it will be yours.
21. There will be no encroachment of any kind on the 7590 sq.m. pond land near the proposed construction site.
22. Whatever decision will be given by the Hon'ble Court regarding the proposed construction site, this permission will be subject to the decision of the court and the final decision of the competent court will be valid.

EXECUTIVE OFFICER
MUNCIPAL COUNCIL
KIRATPUR (BIJNOR)



True Translated Copy

कार्यालय नगर पालिका परिषद किरतपुर (बिजनौर)

पत्रांक: 145/न0पा0प0कि0/2023-24

दिनांक 27-02-2024

अनुज्ञा-पत्र

मैसर्स गार्निश लैंड प्रा0 लि0, गार्निश बिल्डर्स प्रा0 लि0, गार्निश इंफ्रा कॉन प्रा0 लि0, 26/6, ग्राउन्ड फ्लोर पटेल नगर नई दिल्ली, वाके मौहल्ला हसनपुरा, किरतपुर जिला बिजनौर, द्वारा प्रस्तुत व्यवसायिक मार्केट के मानचित्र की स्वीकृति अध्यक्ष नगर पालिका परिषद किरतपुर द्वारा दिनांक 26-2-24 को निम्नलिखित शर्तों के अधीन दी गयी है।

1. आवेदक अपने स्वामित्व प्राप्त वैधानिक भूमि में ही अपना निर्माण कार्य करायें।
2. पूरब दिशा में स्थित आराजी अन्य किसी भी प्रकार का अतिक्रमण न करें और किसी प्रकार का प्रक्षेप/सीढ़ी/छज्जा दरवाजा/रोशनदान आदि न निकालें। अपनी व्यवसायिक मार्केट का रास्ता आवागमन हेतु मानचित्र/बैनामे के अनुसार रखें।
3. पश्चिम दिशा में नैशनल हाईवे (बिजनौर नजीबाबाद रोड)/रास्ता कब्रिस्तान किसी भी प्रकार का अतिक्रमण न करें और किसी प्रकार का प्रक्षेप/सीढ़ी आदि न निकालें।
4. उत्तर दिशा में नैशनल हाईवे (बिजनौर नजीबाबाद रोड) किसी प्रकार का अतिक्रमण न करें और किसी प्रकार का प्रक्षेप/सीढ़ी आदि न निकालें।
5. दक्षिण दिशा में स्थित आराजी कब्रिस्तान किसी भी प्रकार का अतिक्रमण न करें और किसी प्रकार का प्रक्षेप/सीढ़ी/दरवाजा/रोशनदान आदि न निकालें।
6. आपके द्वारा दिये गये शपथ-पत्र दिनांक 25-10-2023 के क्रम में उक्त निर्माणाधीन स्थल पर कोई विवाद/वाद मा0 न्यायालय में विचाराधीन नहीं है। यदि भविष्य में निर्माणाधीन स्थल पर कोई तालाब सम्बन्धी विवाद/वाद उत्पन्न होता है तो इसकी पूर्ण जिम्मेदारी आवेदक की होगी।
7. मानचित्र स्वीकृति/अनुज्ञा से स्वामित्व का कोई सम्बन्ध नहीं है।
8. स्वीकृत मानचित्र के अनुसार निर्माण कराना अनिवार्य है निर्माण व्यवसायिक है। जिस पर 1 प्रतिशत सैस बैंक ड्राफ्ट संख्या 000107 द्वारा अंकन 2,03,700-00 रुपये श्रम विभाग में जमा कर दिया है।
9. पार्किंग व रेन वाटर हारवेस्टिंग का निर्माण अनिवार्य होगा।
10. स्वीकृति पत्र प्राप्ति की तिथि से 12 माह के अन्दर अपना निर्माण कार्य पूर्ण करा लेना अनिवार्य होगा।
11. निर्धारित अवधि के पश्चात् निर्माण कार्य जारी रखने/पुनः प्रारम्भ करने से पूर्व स्वीकृत मानचित्र का नवीनीकरण/समयवृद्धि कराना अनिवार्य होगा।
12. गैर नवीनीकरण/स्वीकृत मानचित्र के विपरीत निर्माण पाये जाने की दशा में पालिका नियमों के अन्तर्गत होने वाली दण्डात्मक कार्यवाही की जिम्मेदारी आवेदक की स्वयं ही होगी।
13. प्रस्तावि निर्माण एनएचएआई रोड के किनारे है एनएचएआई से मानचित्र स्वीकृति कराने के उपरान्त व उनके द्वारा दिये गये प्रतिबन्धों के अनुसार ही निर्माण कार्य करें।
14. अपने खुली भूमि में कम से कम पांच वृक्ष लगाना अनिवार्य होगा। तथा वृक्ष लगाते हुए पांच फोटो कार्यालय में जमा करने के उपरान्त ही अनुमति दी जायेगी।
15. किया जाने वाला निर्माण सुसंगत भारतीय मानक संस्थान एवं नेशनल बिल्डिंग कोड के प्राविधानों के अनुरूप अर्ह स्ट्रक्चरल इंजीनियर एवं वास्तुविद द्वारा प्रमाणित डिजाइन के अनुसार ही होगा।
16. प्रश्नगत निर्माण में दी गयी स्वीकृति को आवेदक द्वारा छल कपट, गलत दस्तावेज से प्राप्त कर ली जाती है तो उ0प्र0 नगर पालिका अधिनियम 1916 की धारा 180 की उपधारा-6 के अन्तर्गत दी गयी स्वीकृति को निरस्त कर दिया जायेगा।
17. भू-स्वामित्व अथवा अन्य किसी महत्वपूर्ण तथ्य को छिपाकर प्राप्त की गई स्वीकृति की जानकारी होने पर मानचित्र निरस्त कर दिया जायेगा और इस दौरान किया गया निर्माण अनाधिकृत मानकर ध्वस्त करा दिया जायेगा एवं भुकम्परोध प्राविधानों का अनुपालन सुनिश्चित किया जायेगा।
18. लोक निर्माण विभाग, अग्निशमन विभाग, विद्युत विभाग अथवा अन्य किसी विभाग से अनुमति वांछित होने पर उसे प्राप्त कर एक-एक प्रति इस कार्यालय में जमा कराने की जिम्मेदारी स्वयं आपकी होगी तथा सम्बन्धित विभागों के नियमों का पूर्णतः पालन भी करना होगा।
19. राष्ट्रीय राजमार्ग पर हो रहे निर्माण में भारतीय राष्ट्रीय राजमार्ग प्राधिकरण (NHAI) मेरठ से अनुमति/अनापत्ति प्रमाण-पत्र लेकर ही निर्माण कार्य करेंगे। तथा अनुमति वांछित होने पर उसे प्राप्त कर एक-एक प्रति इस कार्यालय में जमा कराने की जिम्मेदारी स्वयं आपकी होगी तथा सम्बन्धित विभागों के नियमों का पूर्णतः पालन भी करना होगा।
20. निर्माण के दौरान या बनजाने के उपरान्त यदि यह पाया जाता है कि व्यवसायिक मार्केट सरकारी भूमि पर आंशिक/पूर्ण रूप से तैयार है तो दी गई स्वीकृति/अनुज्ञा स्वतः निरस्त मानी जायेगी।
21. निर्माण की स्वीकृति से छः माह के पश्चात् स्वीकृत मानचित्र के अनुसार गृहकर लागू कर दिया जायेगा। जिसकी जमा करने की पूर्ण जिम्मेदारी आपकी होगी।
22. प्रस्तावित निर्माण स्थल के निकट तालाब की भूमि 7590 वर्ग मी0 पर किसी प्रकार का अतिक्रमण नहीं करेंगे।
23. प्रस्तावित निर्माण स्थल के सम्बन्ध में माननीय न्यायालय द्वारा जो निर्णय दिया जायेगा यह अनुज्ञा-पत्र न्यायालय के निर्णय के आधीन रहेगा तथा सक्षम न्यायालय का अन्तिम निर्णय मान्य होगा।

अनुज्ञा-पत्र
नगर पालिका परिषद
किरतपुर (बिजनौर)

OFFICE OF MUNICIPAL COUNCIL KIRATPUR (BIJNOR)

LETTER NO.: 145/N.P.P.K/2023-24

PERMIT LETTER

DATED 27-02-2024

The map of commercial market presented by M/s Garnish Land Pvt. Ltd., Garnish Builders Pvt. Ltd., Garnish Infra Con Pvt. Ltd., 26/6, Ground Floor Patel Nagar New Delhi, Walke Mohalla Hasanpura, Kiratpur District Bijnor, has been approved by the Chairman Municipal Council Kiratpur on 26-2-24 under the following conditions.

1. The applicant should get his construction done in the legal land owned by him.
2. Do not encroach on the land situated in the east direction in any other way and do not make any kind of projection/stairs/balcony, door/vent etc. Keep the path of your commercial market as per the map/deed for traffic.

3. Do not encroach on the National Highway (Bijnor Najibabad Road)/road graveyard in any way in the west direction and do not make any kind of projection/stairs etc.
4. Do not encroach on the National Highway (Bijnor Najibabad Road) in the north direction and do not make any kind of projection/stairs etc.
5. Do not encroach on the Arazi cemetery located in the south direction in any way and do not make any kind of projection/stairs/door/skylight etc.
6. As per the affidavit dated 26-10-2023 given by you, no dispute/case is pending in the Hon'ble Court on the said under-construction site. If in future any dispute/suit related to pond arises at the under-construction site, then the applicant will be fully responsible for it.
7. There is no relation of ownership with map approval/permission.

8. It is mandatory to construct as per the approved map, the construction is commercial. On which 1 percent cess of Rs.2,03,700-00 has been deposited in the Labor Department by marking through bank draft number 000107.
9. Construction of parking and rain water harvesting will be mandatory.
10. It will be mandatory to complete the construction work within 12 months from the date of receipt of the approval letter.
11. It will be mandatory to renew/extend the approved map before continuing/restarting the construction work after the stipulated period.
12. In case of non-renewal/construction found contrary to the approved map, the applicant himself will be responsible for the punitive action under the Municipality rules.

13. The proposed construction is on the side of the NHAI road, so carry out the construction work only after getting the map approved from NHAI and as per the restrictions given by them.
14. It will be mandatory to plant at least five trees in your open land. And permission will be given only after submitting five photographs of planting the trees in the office.
15. The construction to be done will be as per the design certified by a qualified structural engineer and architect in accordance with the provisions of the relevant Indian Standards Institute and National Building Code.
16. If the approval given for the construction in question is obtained by the applicant by fraud or by using wrong documents, then the approval given under subsection-6 of section 180 of UP Nagar Palika Act 1916 will be cancelled.

17. If it is known that the approval was obtained by hiding the land ownership or any other important fact, then the map will be cancelled and the construction done during this period will be considered unauthorized and demolished and compliance of earthquake resistance provisions will be ensured.
18. If permission is required from Public Works Department, Fire Department, Electricity Department or any other department, then it will be your responsibility to obtain it and submit one copy of each to this office and also to fully follow the rules of the concerned departments.
19. In the construction being done on the National Highway, construction work will be done only after taking permission/No Objection Certificate from National Highway Authority of India (NHAI) Meerut. And if permission is required, it will be your responsibility to obtain it and submit a copy

of each in this office and you will also have to fully follow the rules of the concerned departments.

20. During construction or after construction, if it is found that the commercial market is partially/fully built on government land, then the approval/permission given will be automatically considered cancelled.
21. After six months from the approval of construction, house tax will be implemented as per the approved map. The full responsibility of depositing it will be yours.
22. There will be no encroachment of any kind on the 7590 sq.m. pond land near the proposed construction site.
23. Whatever decision will be given by the Hon'ble Court regarding the proposed construction site, this permit will be subject to the decision of the

court and the final decision of the competent court
will be valid.

EXECUTIVE OFFICER

MUNCIPAL COUNCIL

KIRATPUR (BIJNOR)

A handwritten signature in black ink, appearing to read 'Saurin Singh', is positioned above the text 'True Translated Copy'.

True Translated Copy

[Pursuant to section 233 and rule 25 (5) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]

RD-1 filed vide SRN: AA9604469 dated 09.08.2024

Confirmation order of scheme of amalgamation or merger

of
Garnish Builders Private Limited
and
Garnish Infracon Private Limited

with
Garnish Lands Private Limited

The case is presented by Shri Sanjay Kumar Gupta, Joint Director in the O/o Regional Director (NR). He has stated that pursuant to the provisions of section 233 of the Companies Act, 2013, the scheme of amalgamation or merger of Garnish Builders Private Limited (Transferor Company No.1 registered in NCT of Delhi) and Garnish Infracon Private Limited (Transferor Company No.2 registered in NCT of Delhi) with Garnish Lands Private Limited (Transferee Company registered in NCT of Delhi) has been approved by their respective members and creditors as required under section 233(1)(b) and (d) of the Companies Act, 2013. He has confirmed compliance of procedure as laid down under the Companies Act, 2013 and Rules made thereunder. Further, he has stated that the Appointed Date of the scheme is 01.04.2024. Lastly, he stated that Registrar of Companies, NCT of Delhi & Haryana has given his report and conveyed no objection to the proposed scheme subject to compliance of provisions of the Companies Act, 2013. However, no such communication, in writing, is received from the Official Liquidator, Delhi so far.

Accordingly, the scheme is confirmed subject to the condition that any part of the scheme in contravention of this Companies Act, 2013 shall be null & void in terms of section 6 of the Act and further condition that the other authorities retain their recourse to recovery in respect of any existing or future tax liabilities/claims of the Transferor Company from the Transferee Company.

A copy of the approved scheme is attached to this order.

(VINOD SHARMA)

REGIONAL DIRECTOR (NR).

Date:

14 OCT 2024

Place: New Delhi

F. No. RDNR/233/AA9604469/2024

8095

1. Garnish Builders Private Limited, E-1/45, Unity Apartment, Sector-18, Rohini, New Delhi-110089.
2. Garnish Infracon Private Limited, E-1/45, Unity Apartment, Sector-18, Rohini, New Delhi- 110089.
3. Garnish Lands Private Limited, E-1/45, Unity Apartment, Sector-18, Rohini, New Delhi- 110089.
4. Registrar of Companies, NCT of Delhi & Haryana.
5. Official Liquidator, Delhi.



SCHEME OF AMALGAMATION
OF
GARNISH BUILDERS PRIVATE LIMITED
("THE TRANSFEROR COMPANY No - 1")
AND
GARNISH INFRACON PRIVATE LIMITED
("THE TRANSFEROR COMPANY No - 2")
WITH
GARNISH LANDS PRIVATE LIMITED
("THE TRANSFEREE COMPANY")
AND
THEIR RESPECTIVE SHAREHOLDERS
(Under Section 233 of the Companies Act, 2013)

I. PREAMBLE

The Scheme of Amalgamation is presented under Section 233 for amalgamation of Garnish Builders Private Limited ("The Transferor Company No - 1") And Garnish Infracon Private Limited ("The Transferor Company No - 2") With Garnish Lands Private Limited ("The Transferee Company") and their respective shareholders ("Scheme"). The Scheme also provides for various other matters consequential or otherwise integrally connected herewith.

II. RATIONALE OF THE SCHEME

The Transferor and Transferee Company believe that, the Scheme of Amalgamation would benefit the companies and its stake holders by facilitating the elimination of multiple entities and hence providing administrative convenience.

III. PARTS OF THE SCHEME

The Scheme is divided into following three parts:

- Part A-** Deals with Definitions and Share Capital.
- Part B -** Deals with the amalgamation of Garnish Builders Private Limited And Garnish Infracon Private Limited With Garnish Lands Private Limited.
- Part C** Deals with General Clauses, Terms and Conditions.



[Signature]
 Director/Authorised Signator

Page 1 of 16

For GARNISH BUILDERS PRIVATE LIMITED

[Signature]
 Director/Authorised Signator

For GARNISH INFRACON PVT. LTD.
[Signature]
 Director/Authorised Signator

PART A**DEFINITIONS AND SHARE CAPITAL****1 DEFINITIONS**

In this Scheme, unless inconsistent with the subject or context, the following expressions shall have the following meaning:

- 1.1 **“Act” or “the Act”** means the Companies Act, 2013 and shall include any statutory modifications, re-enactment or amendments thereof for the time being in force and the rules and regulations made there under.
- 1.2 **“Appointed Date”** means the 1st April, 2024 or such other date as may be fixed or approved by the Central Government or such other competent authority.
- 1.3 **“Central Government”** means the Central Government of India or any Government Authority to which such powers are delegated by the Central Government vide a notification to that effect, under the powers given to the Central Government under the provisions of section 458 of the Companies Act, 2013.
- 1.4 **“Effective Date”** means the date on which the certified copies of the Orders sanctioning this Scheme passed by the Central Government are filed with the Registrar of Companies, Delhi and Haryana at New Delhi;
- 1.5 **“Transferor Company-1”** means Garnish Builders Private Limited, a company incorporated under the Companies Act, 2013 and having its registered office at E-1/45 Unity Apartment, Sector - 18, Rohini, North West Delhi, Delhi, India, 110089.
- 1.6 **“Transferor Company-2”** means Garnish Infracon Private Limited, a company incorporated under the Companies Act, 2013 and having its registered office at E-1/45 Unity Apartment, Sector - 18, Rohini, North West Delhi, Delhi, India, 110089.



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- 1.7 **“The Transferee Company”** means Garnish Lands Private Limited, a company incorporated under the Companies Act, 2013 and having its registered office at E-1/45 Unity Apartment, Sector - 18, Rohini, North West Delhi, Delhi, India, 110089.
- 1.8 **“Scheme”** or **“the Scheme”** or **“this Scheme”** means this Scheme of Amalgamation in its present form as submitted to the Central Government for sanction including / with any modifications / amendments thereto / therein made under Clause 14 of the Scheme.
- 1.9 All terms and words not defined in this Scheme shall, unless repugnant or contrary to the context or meaning thereof, have the same meaning as subscribed to them under the Act and other applicable laws, rules, regulations, bye laws, as the case may be, including any statutory modification or re-enactment thereof from time to time.
- 1.10 The Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the Central Government or made as per Clause 15 of the Scheme, shall be effective from the Appointed Date but shall be operative from the Effective Date.
- 1.11 Any references in the Scheme to “upon the Scheme becoming effective” or “effectiveness of the Scheme” shall mean the Effective Date.

2 SHARE CAPITAL

2.1 Transferor Company-1

- 2.1.1 The Authorized, issued, subscribed and paid-up share capital of Transferor Company-1 as on **31st December, 2023** is as under:


Particulars	INR
Share Capital	
Authorized Capital	
30,000 Equity Shares of Rs. 10 each	3,00,000
Total	3,00,000
Issued, Subscribed and Paid-up Share Capital	
30,000 Equity Shares of Rs. 10 each, fully paid up	3,00,000
Total	3,00,000



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Subsequent to the above Balance Sheet date, there has been no change in the authorized, issued, subscribed and paid up share capital of the Transferor Company No. 1.

2.2 Transferor Company – 2

2.2.1 The Authorized, issued, subscribed and paid-up share capital of Transferor Company-2 as on **31st December, 2023** is as under:

Particulars	INR
Share Capital	
Authorized Capital	
30,000 Equity Shares of Rs. 10 each	3,00,000
Total	3,00,000
Issued, Subscribed and Paid-up Share Capital	
30,000 Equity Shares of Rs. 10 each, fully paid up	3,00,000
Total	3,00,000

Subsequent to the above Balance Sheet date, there has been no change in the authorized, issued, subscribed and paid up share capital of the Transferor Company No. 2.

2.3 Transferee Company

2.3.1 The Authorized, issued, subscribed and paid-up share capital of Transferee Company as on **31st December, 2023** is as under:

Particulars	INR
Share Capital	
Authorised Capital	
100,000 Equity Shares of Rs. 10/- each	10,00,000
Total	10,00,000
Issued, Subscribed and Paid-up Share Capital	
80,000 Equity Shares of Rs. 10/- each, fully paid up	8,00,000
Total	8,00,000



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Subsequent to the above Balance Sheet date, there has been no change in the authorized, issued, subscribed and paid up share capital of the Transferee Company.

PART B

AMALGAMATION OF TRANSFEROR COMPANY NO. 1 & TRANSFEROR COMPANY NO. 2 WITH TRANSFEEE COMPANY

3 TRANSFER AND VESTING

3.1 With effect from the Appointed Date, the entire business and whole of the undertaking of the Transferor Company No. 1 & Transferor Company No. 2 including all its properties and assets (whether movable or immovable, tangible or intangible) of whatsoever nature such as licenses, permits, trademarks, patents, quotas, approvals, lease, tenancy rights, permissions, incentives, if any, and all other rights, title, interest, certificates, registrations under various legislations, contracts, consent, approvals or powers of every kind nature and descriptions whatsoever, shall under the provisions of Section 233 of the Act and pursuant to the orders of the Central Government and without any further act, instrument or deed, but subject to the existing charges affecting the same as on the Effective Date be transferred and/or deemed to be transferred to and vested in the Transferee Company so as to become the properties and assets of the Transferee Company.

3.2 Without prejudice to Clause 3.1 above, in respect of such of the assets of the Transferor Company No. 1 & Transferor Company No. 2 as are movable in nature or are otherwise capable of transfer by manual delivery or by endorsement and/or delivery, the same may be so transferred by the Transferor Company No. 1 & Transferor Company No. 2, and shall, upon such transfer, become the property, estate, assets, rights, title, interest and authorities of the Transferee Company by way of physical delivery or novation.

3.3 The transfer and vesting as aforesaid shall be subject to the existing charges / hypothecation / mortgages, if any, as may be subsisting and agreed to be created over or in respect of the said assets or any part thereof, provided however, any reference in any security documents or arrangements to which the Transferor Company No. 1 & Transferor Company No. 2 are party wherein the assets of the Transferor Company No. 1 & Transferor Company No. 2 have been or are offered or agreed to be offered as security for any



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financial assistance or obligations shall be construed as reference only to the assets pertaining to the Transferor Company No. 1 & Transferor Company No. 2 and vested in the Transferee Company by virtue of this Scheme to the end and intent that the charges shall not extend or deemed to extend to any assets of the Transferee Company.

Provided that the Scheme shall not operate to enlarge the security for the said liabilities of the Transferor Company No. 1 & Transferor Company No. 2 which shall vest in the Transferee Company by virtue of the Scheme and the Transferee Company shall not be obliged to create any further, or additional security thereof after the merger has become effective or otherwise. The transfer / vesting of the assets of the Transferor Company No. 1 & Transferor Company No. 2 as aforesaid shall be subject to the existing charges / hypothecation / mortgages over or in respect of the assets or any part thereof of the Transferor Company No. 1 & Transferor Company No. 2.

3.4 All debts, liabilities, duties and obligations of whatsoever nature of the Transferor Company No. 1 & Transferor Company No. 2 shall also, without any further act, instrument or deed be transferred to and vested in and assumed by and/or deemed to be transferred to and vested in and assumed by the Transferee Company pursuant to the provisions of Section 233 of the Act, so as to become the debts, liabilities, duties and obligations of the Transferee Company and further that it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which debts, liabilities, duties and obligations liabilities have arisen, in order to give effect to the provisions of this Clause.

3.5 The Transferee Company may at any time after the coming into effect of the Scheme in accordance with the provisions of the Scheme, if so required, under any law or otherwise, execute Deeds of Confirmation, in favour of any other party to any contract or arrangement to which the Transferor Company No. 1 & Transferor Company No. 2 is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall under the provisions of the Scheme be deemed to be authorised to execute any such writings on behalf of the Transferor Company No. 1 & Transferor Company No. 2 and to implement or carry out all such formalities or compliance referred to above on the part of the Transferor Companies to be carried out or performed.



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3.6 With effect from the Appointed Date and upon the Scheme becoming effective, all development rights, statutory licenses, permissions, approvals or consents to carry on the operations and business of the Transferor Company No. 1 & Transferor Company No. 2 shall stand vested in or transferred to the Transferee Company without any further act or deed and shall be appropriately mutated by the statutory authorities concerned in favour of the Transferee Company. The benefit of all statutory and regulatory permissions, environmental approvals and consents, registrations or other licenses and consents shall vest in and become available to the Transferee Company pursuant to this Scheme.

3.7 This Part of the Scheme has been drawn up to comply with the conditions relating to "Amalgamation" as specified under Section 2(1B) of the Income Tax Act, 1961. If any terms or provisions of the Scheme are found or interpreted to be inconsistent with the provisions of the said Section of the Income Tax Act, 1961, at a later date including resulting from an amendment of law or for any other reason whatsoever, the provisions of the said Section of the Income Tax Act, 1961, shall prevail and the Scheme shall stand modified to the extent determined necessary to comply with Section 2(1B) of the Income Tax Act, 1961. Such modification will however not affect the other parts of the Scheme.

4 CONSIDERATION

4.1. Upon the Scheme finally coming into effect and in consideration of the transfer and vesting of all the said assets and liabilities of the Transferor Company No. 1 & Transferor Company No. 2 to the Transferee Company in terms of the Scheme, the Transferee Company shall, without any further application or deed, issue and allot Share(s) to the Shareholders of the Transferor Company No. 1 & Transferor Company No. 2, whose names appear in the Register of Members as on the Record Date, in the following ratio:



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- 4.1.1 Allotment of 0.60 (Zero Point Six) Equity Share of **Garnish Lands Private Limited** of Rs. 10/- (Ten) each against every 1 (One) Equity Shares Rs. 10/- (Ten) each held in **Garnish Builders Private Limited**, (i.e., for every 10 equity shares held in Garnish Builders Private Limited- 06 equity shares of Garnish Lands Private Limited will be allotted);
- 4.1.2 Allotment of 0.80 (Zero Point Eight) Equity Share of **Garnish Lands Private Limited** of Rs. 10/- (Ten) each against every 1 (One) Equity Shares Rs. 10/- (Ten) each held in **Garnish Infracon Private Limited**, (i.e., for every 10 equity shares held in Garnish Builders Private Limited- 8 equity shares of Garnish Lands Private Limited will be allotted);
- 4.2. Payment of any fraction of share may be considered at the respective NAV of Garnish Lands Private Limited, Garnish Builders Private Limited and Garnish Infracon Private Limited in cash.
- 4.3. The issue and allotment of Equity Shares by the Transferee Company, as provided in this Scheme, is an integral part thereof. The members of the Transferee Company, on approval of the Scheme, shall be deemed to have given their approval u/s 62 of the Act and other applicable provisions, if any, for issue of fresh Equity Shares in terms of this Scheme.
- 4.4. Cross holding of shares between the Transferor Companies and/or between the Transferor Companies and the Transferee Company on the record date, if any, shall stand cancelled.
- 4.5. Approval of this Scheme by the remaining Shareholders and/or Creditors of the Transferor Company No. 1 & Transferor Company No. 2 and the Transferee Company, as the case may be, and sanction by the Regional Director under section 233 of the Companies Act, 2013, shall be sufficient compliance with the provisions of section 61, 62 of the Companies Act, 2013, read along with National Company Law Tribunal Rules, 2016, and other applicable provisions, if any, relating to the enhancement of share capital of the amalgamated company



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 For GARNISH LANDS PRIVATE LIMITED
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- 4.6. Equity Shares to be issued in terms of Para 4.1 above shall be subject to the provisions of the Memorandum and Articles of Association of the Transferee Company. New Equity Shares shall rank pari passu in all respects with the existing Equity Shares of the Transferee Company.
- 4.7. Save as provided herein above, the Transferee Company shall increase/modify its Authorized Share Capital for implementing the terms of the Scheme, to the extent necessary.
- 4.8. It is, however, clarified that provisions of this Scheme with regard to issue of shares by the Transferee Company will not apply to the share application money, if any, which may remain outstanding in the Transferor Company No. 1 & Transferor Company No. 2.

5 COMBINATION OF AUTHORISED SHARE CAPITAL

- 5.1 Upon the coming into effect of this Scheme, the Authorized Share Capital of the Transferee Company shall automatically stand increased without any further act, deed or thing on the part of the Transferee Company including payment of stamp duty and fees, if any payable to the concerned Registrar of Companies under the Companies Act, 2013, by the authorized share capital of the Transferor Company No. 1 amounting to Rs. 3,00,000/- & Transferor Company No. 2 amounting to Rs. 3,00,000/- and consequently, Clause V of the Memorandum of Association of the Transferee Company shall, without any further act, instrument or deed, be and shall stand altered, modified and amended pursuant to Sections 13 and Section 61 of Companies Act 2013, as the case maybe in the manner set out in Clause V of the MOA and be replaced by the existing Clause.



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- 5.2 The approval of this Scheme by the shareholders of the Transferee Company shall be deemed to be the approval for increase of the Authorized Share Capital of the Transferee Company as per Clause 5.1 above, under applicable provisions of the Act and any other consents and approvals required in this regard.
- 5.3 Pursuant to this Scheme, the Transferee Company shall file the necessary documents/intimations as per the provisions of Companies Act 2013 with the Registrar of Companies, Delhi or any other applicable authority to record the change in the authorized share capital.

6 ACCOUNTING TREATMENT IN THE BOOKS OF THE TRANSFEEE COMPANY

- 6.1 As on the Appointed date all assets and liabilities recorded in the books of the Transferor Company No. 1 & Transferor Company No. 2 shall be recorded by the Transferee Company at their respective fair values.
- 6.2 The value of the net assets would be credited to the Capital Reserve Account of the Transferee Company.
- 6.3 In case of any differences in accounting policy between the Transferor Company No. 1 & Transferor Company No. 2 and the Transferee Company, the accounting policies followed by the Transferee Company will prevail and the difference till the Appointed Date will be quantified and adjusted in the Capital Reserve Account to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistent accounting policy.



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For GARNISH CONTRACTORS

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PART CGENERAL TERMS AND CONDITIONS**7 PROFITS, DIVIDEND, BONUS/ RIGHT SHARES**

The Transferor Company No. 1 & Transferor Company No. 2 shall not utilize profits or income, if any, for any purpose including declaring or paying any dividend in respect of the period falling on and after the Appointed Date.

8 CONDUCT OF BUSINESS TILL EFFECTIVE DATE

With effect from the Appointed Date and upto and including the Effective Date:

- 8.1 The Transferor Company No. 1 & Transferor Company No. 2 shall be deemed to have been carrying on and shall carry on its business and activities and shall be deemed to have held and stood possessed of and shall hold and stand possessed of all its properties and assets pertaining to the business and undertaking of the Transferor Company No. 1 & Transferor Company No. 2 for and on account of and in trust for the Transferee Company. The Transferor Company No. 1 & Transferor Company No. 2 hereby undertakes to hold the said assets with utmost prudence until the Effective Date.
- 8.2 The Transferor Company No. 1 & Transferor Company No. 2 shall carry on its business and activities with reasonable diligence, business prudence and shall not, except in the ordinary course of business or without prior written consent of the Transferee Company alienate charge, mortgage, encumber or otherwise deal with or dispose of the Transferor Company No. 1 & Transferor Company No. 2 or part thereof.
- 8.3 All the profits or income accruing or arising to the Transferor Company No. 1 & Transferor Company No. 2 or expenditure or losses arising or incurred or suffered by the transferor companies pertaining to the business and undertaking of the transferor companies shall for all purposes be treated and be deemed to be and accrue as the income or profits or losses or expenditure as the case may be of the Transferee Company.



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8.4 The Transferee Company shall be entitled, pending the sanction of the Scheme, to apply to the Central/State Government, and all other agencies, departments and authorities concerned as are necessary under any law or rules, for such consents, approvals and sanctions, which the Transferee Company may require pursuant to this Scheme.

9 EMPLOYEES

- 9.1 The Transferor Company No. 1 & Transferor Company No. 2 shall not vary the terms and conditions of employment of any of the employees except in the ordinary course of business or without the prior consent of the Transferee Company or pursuant to any pre-existing obligation undertaken by the Transferor Companies as the case may be, prior to the Effective Date.
- 9.2 On the Scheme becoming effective, the employees, if any, of the Transferor Company No. 1 & Transferor Company No. 2 shall become the employees of the Transferee Company, without any break or interruption in their services, on same terms and conditions on which they are engaged as on the Effective Date. The Transferee Company further agrees that for the purpose of payment of any retirement benefit/ compensation, such immediate uninterrupted past services with the Transferor Company No. 1 & Transferor Company No. 2 shall also be taken into account. The Transferee Company undertakes to continue to abide by the terms of agreement/ settlement entered into by the Transferor Company No. 1 & Transferor Company No. 2 with employees' union/ employee or associations of the Transferor Company No. 1 & Transferor Company No. 2, as the case may be.
- 9.3 The accounts/ funds of the employees, whose services are transferred under Clause 9.1 above, relating to superannuation, provident fund and gratuity fund shall be identified, determined and transferred to the respective Trusts/ Funds of the Transferee Company and such employees shall be deemed to have become members of such Trusts/ Funds of the Transferee Company, as the case may be.



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10 LEGAL PROCEEDINGS

10.1 If any suit, appeal or other proceeding of whatever nature by or against the Transferor Company No. 1 & Transferor Company No. 2 is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company, as the case may be, in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company No. 1 & Transferor Company No. 2 as if this Scheme had not been made.

10.2 In case of any litigation, suits, recovery proceedings which are to be initiated or may be initiated against the Transferor Company No. 1 & Transferor Company No. 2, the Transferee Company shall be made party thereto and any payment and expenses made thereto shall be the liability of the Transferee Company.

11 CONTRACTS, DEEDS, ETC.

11.1 Subject to the other provisions of this Scheme, all contracts, deeds, bonds, insurance, letters of intent, undertakings, arrangements, policies, agreements and other instruments, if any, of whatsoever nature pertaining to the Transferor Companies to which the Transferor Company No. 1 & Transferor Company No. 2 are parties and subsisting or having effect on the Effective Date, shall be in full force and effect against or in favour of the Transferee Company, as the case may be, and may be enforced by or against the Transferee Company as fully and effectually as if, instead of the Transferor Company No. 1 & Transferor Company No. 2, the Transferee Company had been a party thereto.

11.2 The Transferee Company shall enter into and/or issue and/or execute deeds, writings or confirmations or enter into any tripartite arrangements, confirmations or novations, to which the Transferor Company No. 1 & Transferor Company No. 2 will, if necessary, also be party in order to give formal effect to the provisions of this Scheme, if so required or becomes necessary. The Transferee Company shall be deemed to be authorised to execute any such deeds, writings or confirmations on behalf of the Transferor Company No. 1 & Transferor Company No. 2 and to implement or carry out



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all formalities required on the part of the Transferor Companies to give effect to the provisions of this Scheme.

12 SAVING OF CONCLUDED TRANSACTIONS

The transfer of properties and liabilities under Clause 3 above and the continuance of proceedings by or against the Transferor Company No. 1 & Transferor Company No. 2 under Clause 10 above shall not affect any transaction or proceedings already concluded by the Transferor Company No. 1 & Transferor Company No. 2 on and after the Appointed Date till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company No. 1 & Transferor Company No. 2 in respect thereto as done and executed on behalf of the Transferee Company.

13 DISSOLUTION OF THE TRANSFEROR COMPANIES

On the Scheme becoming effective, the Transferor Company No. 1 & Transferor Company No. 2 shall stand dissolved without being wound-up.

14 APPLICATION TO THE CENTRAL GOVERNMENT

The Transferor Company No. 1 & Transferor Company No. 2 and the Transferee Company, if required, shall with all reasonable dispatch make all necessary applications under Section 233 of the Act to the Central Government for seeking approval of the Scheme.

15 MODIFICATION OR AMENDMENTS TO THE SCHEME

Subject to approval of Central Government, the Transferor Company No. 1 & Transferor Company No. 2 and the Transferee Company with the approval of their respective Boards of Directors may consent, from time to time, on behalf of all persons concerned, to any modifications/amendments or additions/deletions to the Scheme which may otherwise be considered necessary, desirable or appropriate by the said Boards of Directors to resolve all doubts or difficulties that may arise for carrying out this Scheme and to do and execute all acts, deeds matters, and things necessary for bringing this Scheme into effect or agree to any terms and / or conditions or limitations that the Central Government or any other authorities under law may deem fit to approve of, to direct and or impose. The aforesaid powers of the Transferor Company No. 1 & Transferor Company No. 2 and the Transferee Company to give effect to the modification/amendments to the Scheme may be exercised by their respective Boards of Directors or any person authorised in



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that behalf by the concerned Board of Directors subject to approval of the Central Government or any other authorities under applicable law.

16 CONDITIONALITY OF THE SCHEME

This Scheme is and shall be conditional upon and subject to:

- 16.1 The Scheme being approved by the requisite majorities in number and value of such classes of persons including the respective members and/or creditors of the Transferor Company No. 1 & Transferor Company No. 2 and the Transferee Company as required under Section 233 of the Act.
- 16.2 The requisite consent, approval or permission of the Central Government or any other statutory or regulatory authority as prescribed in Section 233 of the Act, which may be necessary for the implementation of this Scheme.
- 16.3 The certified copy of the Order of the Central Government sanctioning the Scheme, are filed with Registrar of Companies, Delhi and Haryana, by the Transferor Company No. 1 & Transferor Company No. 2 and the Transferee Company respectively.

17 EFFECT OF NON-RECEIPT OF APPROVALS

In the event of any of the said sanctions and approvals referred to in the preceding Clause not being obtained and/ or the Scheme not being sanctioned by the Central Government or such other competent authority and / or the Order not being passed as aforesaid before March 31, 2025 or within such further period or periods as may be agreed upon between the Transferor Companies and the Transferee Company by their Boards of Directors (and which the Boards of Directors of the Companies are hereby empowered and authorised to agree to and extend the Scheme from time to time without any limitation) this Scheme shall stand revoked, cancelled and be of no effect, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any rights and/ or liabilities which might have arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law.



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For GARNISH INFRACON
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18 COSTS, CHARGES & EXPENSES

All costs, charges, taxes including duties, levies and all other expenses, if any (save as expressly otherwise agreed) of the Transferor Company No. 1 & Transferor Company No. 2 and the Transferee Company arising out of or incurred in connection with and implementing this Scheme and matters incidental thereto shall be borne by the Transferee Company.

For GARNISH AND PVT LTD

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For GARNISH INFRACON PVT LTD
Director/Authorised





saurabh ajay <chambersofsaaurabhajaygupta@gmail.com>

Service Counter Affidavit and Reply on behalf of Respondent No. 5, 6 & 7 in OA No. 1270 of 2024 Titled Imran Ali vs Ministry of Environment

1 message



saurabh ajay <chambersofsaaurabhajaygupta@gmail.com>
To: imran.hrln@gmail.com, eonppkiratbi-up@nic.in

Fri, Jan 31, 2025 at 11:30 AM

PFA copies of Counter Affidavit and Reply on behalf of Respondent No. 5, 6 & 7 in OA No. 1270 of 2024 Titled Imran Ali vs Ministry of Environment

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Regards,
SAURABH AJAY GUPTA
Advocate

2 attachments

-  **REPLY On behalf of R 5, 6 & 7 OF I.A. NO. 542 OF 2024.pdf**
213K
-  **COUNTER AFFIDAVIT On behalf of R 5, 6 & 7.pdf**
11758K