

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 1284 OF 2024**

IN THE MATTER OF:

Mr. Tarun Kumar Jain & Ors. ...Applicants

Versus

Kanpur Development Authority & Ors. ...Respondents

NDOH: 08.07.2025

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THROUGH



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PLACE: NEW DELHI
DATED: 19. 05. 2025

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Mr. Tarun Kumar Jain & Ors. ...Applicants

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**REPLY ON BEHLAF OF RESPONDENT NO. 5/JAWAHAR VIDYA
SAMITI**

MOST RESPECTFULLY SHOWETH:

1. The instant Original Application (hereinafter, referred to as 'OA') has been preferred by the Applicants who claims to be the residents of the are in vicinity of Plot No. 70, Block W-1, Kanpur City (hereinafter, referred to as 'said plot of land'). In the OA the Applicants have inter alia prayed mainly for the following reliefs:

- a. Direction to Kanpur Development Authority to not hand over the possession of a park situated at Plot No. 70, Block W-1, Kanpur City.
- b. Not to undertake any action towards felling of tress.

- c. To permit the Applicants to raise all issues before Consumer Dispute Redressal Forum in pending execution.
2. The present Reply is being filed by the Respondent No. 5 i.e., Jawahar Vidya Samiti (hereinafter, referred to as 'Answering Respondent') through its Secretary/Manager Mr. Sudhir Prakash Shukla who is duly authorized to file the present reply on behalf of the Answering Respondent. True copy of the Authority Letter issued in favor of Mr. Sudhir Prakash Shukla is annexed herewith as **ANNEXURE R-1**.
3. At the very outset, it is vehemently submitted that the present OA filed by the Applicants is wholly meritless, misconceived, an utter waste of precious judicial time and thus deserves to be dismissed in limine. The Answering Respondent categorically denies each and every contention, averment and/or allegation made in the OA save and except what is specifically admitted hereinafter. Nothing stated in the OA shall be deemed to be an admission on part of the Answering Respondent merely on account of non-traverse.

4. The present Preliminary Reply is not a para-wise reply to the OA, and the Answering Respondent craves leave and reserves its right to file an additional detailed/para-wise reply if the need so arises in future.

PRELIMINARY OBJECTIONS

5. Before delving into the baseless, misconceived and frivolous averments made by the Applicants in the OA, the Answering Respondent wishes to raise the following Preliminary Objections which go to the very root of the maintainability of the present:
 - I. Barred by Principles Res Judicata
 - II. Violation of Judicial Propriety

I. BARRED BY PRINCIPLES RES JUDICATA

6. At the threshold, it is most respectfully submitted that the present OA is clearly barred by the principles of Res Judicata since this Hon'ble Tribunal has already adjudicated upon the very same issue in OA No. 494 of 2023 titled '*Manoj Kumar Pandey & Anr. v. State of Uttar Pradesh & Ors.*' wherein it was categorically held that there exists no evidence whatsoever to

prove that Plot No. 70, W/1 Block of scheme Juhi of Kanpur has been earmarked as a Park, and consequently the said OA was disposed. Copy of the OA No. 494 of 2023 titled '*Manoj Kumar Pandey & Anr. v. State of Uttar Pradesh & Ors*' is annexed herewith as **ANNEXURE R-2**.

7. For the convenience of this Hon'ble Tribunal, the relevant prayers made in OA No. 494 of 2023 are reproduced hereinbelow:

- a. Direct Respondent not to create any lease deed through which the park/open space could be handed over for any use other than a park.
- b. Direct the Respondent No. 2 not to demarcate the park/open space situated on Bhukhand-70 W/1, Yojna-Juhi, Kanpur, UP for any other use other than the park/open space.
- c. Direction staying any kind of encroachment into the park/open space situated on Bhukhand-70 W/1, Yojna-Juhi, Kanpur, UP.

- d. Pass Directions restraining Respondents to use the park/open space situated on Bhukhand-70 W/1, Yojna-Juhi, Kanpur, UP for private use.
 - e. Direct the Respondents to allot any other place to Respondent No. 3 instead of demarcating the park/open space situated on Bhukhand-70 W/1, Yojna-Juhi, Kanpur, UP.
8. This Hon'ble Tribunal was pleased to issue notice in OA No. 494 of 2023 vide order dated 16.08.2023. Copy of the order dated 16.08.2023 passed by this Hon'ble Tribunal in OA No. 494 of 2023 titled '*Manoj Kumar Pandey & Anr. v. State of Uttar Pradesh & Ors*' is annexed herewith as **ANNEXURE R-3**.
9. Subsequently, OA No. 494 of 2023 was listed before this Hon'ble Tribunal on 20.11.2023. In the said order, this Hon'ble Tribunal elaborately reproduced the history of litigation pertaining to the subject plot of land, wherein it was unambiguously recorded that no record whatsoever exists declaring the plot in question as a park. Furthermore, in

Paragraph 5 of the order dated 20.11.2023, this Hon'ble Tribunal also noted that despite efforts, the Ld. Counsel for the Petitioners therein could not even prima-facie demonstrate that the land in question has been earmarked for a park. The relevant paragraph of the order dated 20.11.2023 are extracted hereinbelow for the kind perusal of this Hon'ble Tribunal:

“...5. Before this Tribunal also though learned Counsel for the Petitioner has made the efforts but could not prima-facie demonstrate that the land in question has been earmarked for the park...”

True copy of the order dated 20.11.2023 passed in OA No. 494 of 2023 titled '*Manoj Kumar Pandey & Anr. v. State of Uttar Pradesh & Ors*' is annexed herewith as **ANNEXURE R-4**.

10. Eventually, OA No. 494 of 2023 came to be disposed of by this Hon'ble Tribunal vide order dated 19.01.2024, while categorically holding that there exists no evidence whatsoever that the land/plot in question is earmarked as a park. The

relevant paragraphs of the order dated 19.01.2024 are extracted hereinbelow for the kind perusal of this Hon'ble Tribunal:

“

ORDER

1. *In the original application twin issues raised by the applicant are: firstly, area under consideration is a park, therefore, no lease could be granted to respondent no.3 and secondly, order/communication dated 16.06.2023 issued by respondent no.6 for cutting trees is unsustainable.*
2. *Tribunal in the proceedings dated 20.11.2023 had considered the first issue relating to the plea that the area in question is a park and has taken note of the history of litigation relating to the said area specially the order of the High Court at Allahabad dated 24.05.2023 passed in Writ Petition (C) No. 17800/2023 as also the order of the Hon'ble Supreme Court dated 10.07.2023 passed in SLP (C) No.13906/2023 and had reached to the conclusion that the Counsel for the applicant could not prima facie demonstrate that the land in question has been earmarked for the park.*
3. *Today, also the Counsel for the applicant was given an opportunity to show if any document exists earmarking the land in question as a park but he could not do so. Hence, first plea that land in question is earmarked for park cannot be accepted....”*

Copy of the order dated 19.01.2024 passed in OA No. 494 of 2023 titled '*Manoj Kumar Pandey & Anr. v. State of Uttar Pradesh & Ors*' is annexed herewith as **ANNEXURE R-5**.

11. In addition to the above, and anticipating that the Applicants herein might attempt to raise a defence of not being aware of the proceedings in OA No. 494 of 2023 and its subsequent disposal by this Hon'ble Tribunal while deciding the core issues against the Applicants therein, the Answering Respondent craves leave to bring the following germane facts to the notice of this Hon'ble Tribunal.

12. Mr. Manoj Kumar Pandey, S/o Mr. Srikant Pandey, R/o 127/176, W-1 Block, Saket Nagar, Juhi Colony, Kanpur Nagar, UP-208014 was the lead Applicant in OA No. 494 of 2023. Interestingly, the Applicant No. 2 in the present OA is one Mr. Ravi Pandey, S/o Mr. Srikant Pandey, R/o 127/176, W-1 Block, Saket Nagar, Juhi Colony, Kanpur Nagar, UP-208014. Hence, it stands established beyond reasonable doubt that the Applicant No. 2 herein is the real brother of the lead Applicant in OA No. 494 of 2023, and both siblings are residing

at the same residential address. In such circumstances, it would be fallacious and inconceivable for the Applicants herein to even remotely claim or argue that they were not aware of the proceedings in OA No. 494 of 2023. Any such claim or argument would be nothing but a disingenuous attempt to mislead this Hon'ble Tribunal.. True copy of the memo of parties filed in OA No. 494 of 2023 titled '*Manoj Kumar Pandey & Anr. v. State of Uttar Pradesh & Ors*' is annexed herewith and marked as **ANNEXURE R-6**.

13. What further cements the above is the fact that even the documents relied upon by the Applicants in OA No. 494 of 2023 and the present OA are carbon copies of each other. The Applicants have, in a brazen display of audacity, relied upon the exact same set of documents in both the OAs in an ill-conceived attempt to mislead this Hon'ble Tribunal into believing that the plot of land in question is a park. The following documents have been relied upon by the Applicants in both the OAs:

- a. Copy of Inspection report dated 18.03.2021
- b. Copy of Paper Publication dated 13.01.2016

c. Photographs

It is noteworthy that this Hon'ble Tribunal has already considered these very documents threadbare in OA No. 494 of 2023 and has found them woefully inadequate to even prima facie establish that the land in question is a park.

14. What is even more astonishing is the fact that the documents filed in the present OA have been blindly lifted from the previous OA without even bothering to remove the old Annexure numbers handwritten on them. This act of sheer negligence and lack of diligence on part of the Applicants speaks volumes about the cavalier manner in which the present OA has been filed. It is evident that the Applicants have filed the present OA as a mere afterthought and a desperate attempt to take a second bite at the cherry, without even taking the basic precaution of removing the tell-tale signs which expose their malafide intention.
15. The aforesaid facts and circumstances paint a crystal clear picture – the present OA is a textbook example of an abuse of the process of law. It is a brazen attempt to reagitate the very

same issue which already stands conclusively decided by this Hon'ble Tribunal. The principles of res-judicata and constructive res-judicata exist to prevent precisely such vexatious and frivolous litigation which serve no purpose other than to waste precious judicial time and resources. It is the solemn duty of this Hon'ble Tribunal to nip such ill-conceived OAs in the bud and send a strong message that such blatant attempts to abuse the process of law will not be tolerated. In light of the above, it is most respectfully prayed that the present OA deserves to be dismissed in limine on this ground alone, with exemplary costs.

16. It is trite law that no party should be vexed twice for the same cause of action. The present OA is a flagrant violation of this cardinal principle. The Applicants, having failed to succeed in their earlier OA, are now seeking a second innings on the same issue by filing the present OA. Such a practice, if allowed, would open the floodgates for endless litigation and would render the finality of judgments a mere illusion. It is therefore imperative that the present OA be dismissed with

punitive costs to deter such vexatious and frivolous litigation in future.

17. The present OA is also liable to be dismissed on the ground of estoppel by record. The findings recorded by this Hon'ble Tribunal in OA No. 494 of 2023 operate as an estoppel against the Applicants and they cannot be allowed to reagitate the same issue in the present OA. The Applicants are bound by the findings recorded in the earlier OA and cannot seek to avoid the same by filing a fresh OA on the same issue.

18. Lastly, it is well settled that a litigant who approaches the Court must come with clean hands. The conduct of the Applicants in filing the present OA despite the earlier adjudication by this Hon'ble Tribunal on the same issue disentitles them from seeking any relief from this Hon'ble Tribunal. What is even more disconcerting is the fact that the Applicants have not even disclosed the disposal order dated 19.01.2024 passed by this Hon'ble Tribunal in OA No. 494 of 2023 while filing the present OA in October 2024. This suppression of material facts is a serious breach of the

Applicants' duty to disclose all relevant facts before this Hon'ble Tribunal and amounts to a gross abuse of the process of law. The Applicants have not only wasted precious judicial time but have also attempted to mislead this Hon'ble Tribunal by concealing material facts. Such conduct deserves to be dealt with sternly to send a strong message that the judicial process cannot be taken for a ride and that litigants cannot be permitted to approach the Court with unclean hands.

19. In light of the above, it is most respectfully prayed that the present OA deserves to be dismissed with exemplary costs on the ground of res judicata alone. The Applicants' conduct in suppressing material facts and abusing the process of law also deserves to be strongly deprecated. Any other view would result in gross injustice and would encourage unscrupulous litigants to abuse the judicial process with impunity.

II. VIOLATION OF JUDICIAL PROPRIETY

20. It is of utmost importance to bring to the kind attention of this Hon'ble Tribunal that subsequent to the passing of the order dated 19.01.2024 by this Hon'ble Tribunal in OA No.

494/2023 titled 'Manoj Kumar Pandey & Anr. v. State of Uttar Pradesh & Ors.', the Applicants therein have chosen to assail the said order by way of a Civil Appeal bearing Diary No. 58310/2024 (later registered as CA No. 3476/2025) before the Hon'ble Supreme Court of India. In a significant development, the Hon'ble Supreme Court, vide order dated 28.02.2025, has been graciously pleased to issue notice in the said appeal, thus admitting the same for final hearing. True copy of the Civil Appeal bearing Diary No. 58310/2024 (later registered as CA No. 3476/2025) is annexed herewith and marked as **ANNEXURE R-7**. True copy of the order dated 28.02.2025 passed by the Hon'ble Supreme Court of India in the Civil Appeal is annexed herewith and marked as **ANNEXURE R-8**.

21. In the humble submission of the Answering Respondent, the aforesaid development assumes great significance inasmuch as the core issue sought to be reagitated in the present OA, i.e., whether the subject plot of land bearing No. 70, Block W-1, Kanpur City is a park or not, is presently sub-judice before the highest court of the land in CA No. 3476/2025. It is a

settled principle of law that once the Hon'ble Supreme Court is seized of a matter, all subordinate courts and tribunals must defer to the wisdom and supremacy of the Hon'ble Supreme Court. It is therefore most respectfully submitted that the Applicants herein, if they are so aggrieved, can always approach the Hon'ble Supreme Court by way of an appropriate application for intervention in CA No. 3476/2025 and raised their grievances, if any, before the Hon'ble Supreme Court. Needless to say, any order that may ultimately be passed by the Hon'ble Supreme Court in CA No. 3476/2025 would be binding on all courts and tribunals across the country, including this Hon'ble Tribunal.

22. It is further submitted that in the event the Hon'ble Supreme Court is pleased to dismiss CA No. 3476/2025, the issue as to the nature and status of the subject plot of land would stand conclusively decided against the Applicants therein. In such a scenario, this Hon'ble Tribunal would be rendered functus officio and there would be no occasion for this Hon'ble Tribunal to pass any further orders on the same issue. It is a cardinal principle of judicial discipline and propriety that

multiplicity of proceedings on the same issue before different courts and tribunals must be avoided at all costs to obviate the possibility of conflicting and contradictory orders being passed. It is therefore most respectfully submitted that this Hon'ble Tribunal must await the final outcome of CA No. 3476/2025 before proceeding any further with the present OA.

23. Without prejudice to the above and in the alternative, it is most respectfully submitted that if the Hon'ble Supreme Court, in its infinite wisdom, deems it fit and proper, it may also consider putting a temporary pause on the handover of possession of the subject plot of land to the Answering Respondent during the pendency of CA No. 3476/2025. However, it may be pertinent to note that the Hon'ble Supreme Court, vide order dated 10.07.2023 passed in SLP (C) No. 13906/2023, had already directed the Kanpur Development Authority to comply with the order of the executing court and handover possession of the subject plot to the Answering Respondent within a period of 4 weeks. The said order having attained finality and not being the subject

matter of challenge in CA No. 3476/2025, the Answering Respondent has a vested and crystallized right to seek possession of the subject plot in accordance with the order of the Hon'ble Supreme Court in SLP (C) No. 13906/2023.

24. In view of the aforesaid facts and circumstances, it is most respectfully submitted that the present OA, involving an issue similar to the one being sub-judice before the Hon'ble Supreme Court, may not be the appropriate remedy for the Applicants herein. It is humbly prayed that this Hon'ble Tribunal may be pleased to direct the Applicants, if they are so advised, to seek recourse to their remedies before the Hon'ble Supreme Court by way of an appropriate application for intervention in CA No. 3476/2025. This would not only avoid multiplicity of proceedings but would also be in consonance with the settled principles of judicial discipline and propriety. The Answering Respondent humbly seeks the indulgence of this Hon'ble Tribunal to take a considered view in the matter and pass appropriate orders in the interest of justice.

PRELIMINARY SUBMISSIONS

25. In addition to and without prejudice to the above stated preliminary objections, the Answering Respondent is making the below preliminary submissions which directly deals with the prayers made by the Applicants in the present OA.
26. The Answering Respondent wishes to place on record the chronology of events leading to the filing of the present OA before this Hon'ble Tribunal to establish that the plot of land in question is not a park as alleged by the Applicants, and this Hon'ble Tribunal ought not pass any order whatsoever which can lead to a situation in which Answering Respondent are restrained directly or indirectly from enjoying the lawful rights in the said plot of land.

Date	Particular
19.01.1984	Respondent No. 1/Kanpur Development Authority <i>vide</i> resolution No. 38/29 dated 19.01.1984, allotted the said plot of land admeasuring 5138.67 sq. mtrs at the rate of INR 86/- per sq.mtrs on lease for 99 years to the Answering Respondent for a the purpose

	of opening a charitable school. The Answering Respondent event deposited 1/4 th of the entire consideration amount.
19.12.2003	<p>Since, the possession of the land was not given to the Answering Respondent, hence a Consumer Complaint bearing No. 1222/2002 was filed before the District Consumer Dispute Redressal Forum, Kanpur City. The Ld. District Dispute Redressal Forum, Kanpur City vide its Judgement dated 19.12.2003 directed the Respondent No. 1 to handover the possession of the said plot of land on payment of the balance consideration by the Answering Respondent within 1 month, and grant possession within the next 2 months.</p> <p>True translated copy of the Judgement dated 19.12.2003 passed by the Ld. District Dispute Redressal Forum, Kanpur City in Consumer Complaint bearing No. 1222/2002 is annexed herewith and marked as Annexure R-9.</p>
03.07.2015	The judgement dated 19.12.2003 was challenged by the Respondent No. 1 before State Consumer Dispute Redressal Commission, Uttar Pradesh, Lucknow in Appeal No. 165 of 2004 which was dismissed by the Ld. State Consumer Dispute Resolution Commission vide its Judgement dated

	<p>03.07.2015. It is pertinent to state herein that a cost of INR 5,000/- was imposed on the Respondent No. 2 by the Ld. State Consumer Dispute Resolution Commission for not granting the possession to the Answering Respondent.</p> <p>True translated copy of the Judgement dated 03.07.2015 passed by the State Consumer Dispute Redressal Commission, Uttar Pradesh, Lucknow in Appeal No. 165 of 2004 is annexed herewith and marked as Annexure R-10.</p>
13.01.2016	<p>The Applicants alleges that the site of the said plot of land was declared as a park under Rule 4 of 'The Uttar Pradesh Parks, Playgrounds and open spaces (Preservation and Regulation) Rules, 1975.</p> <p>The said advertisement is already on record of this Hon'ble Tribunal at Page No. 116 of the OA.</p>
28.11.2019	<p>A Revision Petition bearing No. 3201 of 2015 was preferred by the Respondent No. 1 before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi against the order dated 03.07.2015 passed by the State Consumer Dispute Redressal Commission,</p>

	<p>Uttar Pradesh, Lucknow in Appeal No. 165 of 2004.</p> <p>True copy of the Judgement dated 28.11.2019 passed in Revision Petition No. 3201 of 2015 by the National Consumer Disputes Redressal Commission is annexed herewith and marked as Annexure R-11.</p>
20.01.2020	<p>Answering Respondent filed execution bearing No. 04/2020 before the District Consumer Dispute Redressal Forum, Kanpur City seeking execution of the order dated 19.12.2003.</p>
15.12.2020	<p>Against the order dated 28.11.2019 passed by the Hon'ble National Consumer Dispute Redressal Commission in Revision Petition bearing No. 3201 of 2015 an SLP bearing Diary No. 24590/2020 was filed before the Hon'ble Supreme Court of India by the Respondent No. 1. The said SLP was dismissed by the Hon'ble Supreme Court of India.</p> <p>True copy of the order dated 15.12.2020 passed by the Hon'ble Supreme Court of India in SLP bearing Diary No. 24590/2020 is annexed herewith and marked as ANNEXURE R-12.</p>

11.01.2021	<p>A letter was issued by the Kanpur Development Authority in favor of the Answering Respondent directing the Answering Respondent to deposit the pending consideration amount for execution of a lease deed. The amount was duly deposited by the Answering Respondent.</p> <p>Note: <u>This letter specifically notes that the said plot of land was allotted for a School.</u></p> <p>True translated copy of the letter dated 11.01.2021 issued by Kanpur Development Authority is annexed herewith and marked as ANNEXURE R-13.</p>
23.01.2021	<p>Respondent No. 1 executed a registered lease deed of the said plot of land. in favor of the Answering Respondent. True copy of the Registered Lease Deed dated 23.01.2021 is annexed herewith and marked as ANNEXURE R-14.</p>
03.02.2021	<p>Respondent No. 1 issued a letter dated 03.02.2021 offering the possession of the of the said plot of land to the Answering Respondent.</p> <p>True translated copy of the letter dated 03.02.2021 issued by Respondent No. 1 is annexed herewith and marked as ANNEXURE R-15.</p>

21.05.2022, 02.06.2022, 03.06.2022	Internal Note Sheets/Communications took place between the Respondent State Departments wherein it was categorically stated that the said plot of land belongs to the Answering Respondent as a lease deed has been executed in favor of the Answering Respondent as per directions of Hon'ble Supreme Court of India. True translated copy of the internal note sheets dated 21.05.2022, 02.06.2022, and 03.06.2022 is annexed herewith and marked as ANNEXURE R-16. (Colly)
18.06.2022	Respondent No. 1 filed its objection in the Execution Petition bearing No. 04/2020 before the District Consumer Dispute Redressal Forum, Kanpur City
04.07.2022	Respondent No. 1 cancelled the allotment of the said plot of land which was earlier issued in favor of the Answering Respondent. The said cancellation is under challenge before the Hon'ble High Court of Judicature at Allahabad in Writ C. No. 23521 of 2022.
15.07.2022	The Ld. District Consumer Dispute Redressal Forum, Kanpur City passed an order in Execution Petition No. 04/2020 directing that the possession of the said plot of land be given

	<p>to the Answering Respondent within 25 days from the date of the order.</p> <p>True translated copy of the order dated 15.07.2022 passed by the District Consumer Dispute Redressal Forum, Kanpur City in Execution Petition No. 04/2020 is annexed herewith and ANNEXURE R-17.</p>
27.04.2023	<p>Due to non-compliance of the order dated 15.07.2022, the Ld. District Consumer Dispute Redressal Forum, Kanpur City issued non-bailable warrants against the officers of Respondent No. 1.</p> <p>True translated copy of the order dated 27.04.2023 passed by District Consumer Dispute Redressal Forum, Kanpur City in Execution Petition No. 04/2020 is annexed herewith and ANNEXURE R-18.</p>
24.05.2023	<p>Respondent No. 1 filed a Writ Petition No. 17800 of 2023 before the Hon'ble High Court of Judicature at Allahabad challenging the order dated 27.04.2023. The Hon'ble High Court dismissed the Writ Petition while imposing cost of INR 5 Lakhs on Respondent No. 1</p> <p>Note: <u>The Hon'ble High Court recorded that the Answering Respondent has suffered at the hands of the Respondent State and is not</u></p>

	<p><u>allowed to use the land allotted to it. Furthermore, it was also noted that an opportunity was given to produce any notification under the Uttar Pradesh Parks, Playgrounds and open spaces (Preservation and Regulation) Act, 1975 declaring the said plot of land as a park. However, the Respondent failed to produce any such notification.</u></p> <p>True copy of the order dated 24.05.2023 passed by the Hon'ble High Court of Judicature at Allahabad in Writ Petition No. 17800 of 2023 is annexed herewith and marked as ANNEXURE R-19.</p>
10.07.2023	<p>The order dated 24.05.2023 passed in Writ Petition No. 17800 of 2023 by the Hon'ble High Court of Judicature at Allahabad was challenged before the Hon'ble Supreme Court of India in SLP No. 13906/2023.</p> <p>The Hon'ble Supreme Court disposed off the said SLP while noting that there is no reason to interfere with the order. However, the cost of INR 5 Lakhs imposed on the Respondent State was waived off.</p> <p>Note: <u>The Hon'ble Supreme Court categorically stated that 4 weeks time is</u></p>

	<p><u>granted to comply with the orders before the Executing Court.</u></p> <p>Hence, the Respondent Authority was duty bound to handover the possession of the said plot of land to the Answering Respondent within 4 weeks from 10.07.2023 in compliance of the order dated 15.07.2022.</p> <p>True copy of the order dated 10.07.2023 passed by the Hon'ble Supreme Court of India in SLP No. 13906/2023 is annexed herewith and marked as ANNEXURE R-20.</p>
25.07.2023	<p>The Applicants in OA No. 494/2023 despite being fully aware of the directions passed by the Hon'ble Supreme Court of India preferred the said OA before this Hon'ble Tribunal concealing material facts and circumstances from this Hon'ble Tribunal.</p> <p>The said OA No. 494/2023 is already annexed above as Annexure R-2.</p>
16.08.2023	<p>Notice issued by this Hon'ble Tribunal in OA No. 494/2023. Copy of the order is already annexed above as Annexure R-3.</p>
20.11.2023	<p>This Hon'ble Tribunal notes in its order that the Counsel for the Petitioners in OA No. 494/2023 could not prima-facie demonstrate that the said plot of land has been earmarked</p>

	for a park. Copy of the order is already annexed above as Annexure R-4.
19.01.2024	OA No. 494/2023 was disposed off by this Hon'ble Tribunal while holding that there is no evidence to show that the said plot of land is a park. However, the secondary issue pertaining to permission to cut tree was remanded back to the competent authority to decide the same afresh. Copy of the order is already annexed above as Annexure R-5.
22.10.2024	The present OA was filed by the Applicants reagitating the issues which have already been decided in OA No. 494/2023.
12.11.2025	Notice was issued by this Hon'ble Tribunal in the present OA.

27. The above chronology of events and the documents annexed along with the present reply clearly establish the following:
- a. That a valid lease deed dated 23.01.2021 (Annexure R-14) has been duly executed between the Respondent No. 1 and the Answering Respondent in respect of the subject plot of land for a period of 99 years. The said lease deed confers a valid and subsisting leasehold right

in favor of the Answering Respondent over the subject plot of land.

- b. That the issue of granting possession of the subject plot of land to the Answering Respondent has been conclusively decided in favor of the Answering Respondent by various judicial forums, including by the Hon'ble Supreme Court of India vide order dated 10.07.2023 passed in SLP No. 13906/2023 (Annexure R-20). By virtue of the said order, the Respondent No. 1 has been directed to handover possession of the subject plot of land to the Answering Respondent within a period of 4 weeks, and the said direction has attained finality.
- c. That the issue of whether the subject plot of land is a park or not has been categorically decided against the Applicants by various judicial forums, including by this Hon'ble Tribunal itself in OA No. 494/2023 vide order dated 19.01.2024 (Annexure R-5), wherein it has been held that there is no evidence whatsoever to show that the subject plot of land is a park. A similar finding has also been recorded by the Hon'ble High Court of

Judicature at Allahabad vide order dated 24.05.2023 passed in Writ Petition No. 17800/2023 (Annexure R-19), wherein the State Authorities were granted an opportunity to produce any notification under the Uttar Pradesh Parks, Playgrounds and open spaces (Preservation and Regulation) Act, 1975 declaring the subject plot of land as a park, but the State Authorities failed to do so.

28. The aforesaid factual matrix leaves no manner of doubt that the Answering Respondent has a crystallized legal right over the subject plot of land, both in terms of the registered lease deed dated 23.01.2021 (Annexure R-14) and also in terms of the various orders passed by the judicial forums directing the Respondent No. 1 to handover possession of the subject plot of land to the Answering Respondent. Any attempt by the Applicants to reagitate the settled issue of the subject plot of land being a park is not only barred by the principles of res judicata, but also amounts to contempt of the orders passed by the various judicial forums, including the order dated

10.07.2023 passed by the Hon'ble Supreme Court of India in SLP No. 13906/2023 (Annexure R-20).

29. It is further submitted that the present OA is a thinly disguised attempt to overreach and nullify the binding directions passed by the various judicial forums in favor of the Answering Respondent. The Applicants, having failed to stall the execution of the lease deed and the handing over of possession before the competent judicial forums, cannot be permitted to abuse the process of law by filing such frivolous and vexatious OAs before this Hon'ble Tribunal. Such conduct of the Applicants deserves to be deprecated in the strongest possible terms.

30. In light of the above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the present OA with exemplary costs. It is further prayed that this Hon'ble Tribunal may be pleased to put an end to such vexatious and frivolous litigation being indulged in by the Applicants and impose deterrent costs on the Applicants so as to send a strong

message that such abuse of the process of law will not be tolerated.

REPLY ON MERITS

31. At this juncture it is pertinent to once again refer to the prayers made by the Applicants in the present OA.

- I. Direction to Kanpur Development Authority to not hand over the possession of a park situated at Plot No. 70, Block W-1, Kanpur City.
- II. Not to undertake any action towards felling of tress.
- III. To permit the Applicants to raise all issues before Consumer Dispute Redressal Forum in pending execution.

I. DIRECTION TO KANPUR DEVELOPMENT AUTHORITY TO NOT HAND OVER THE POSSESSION OF A PARK SITUATED AT PLOT NO. 70, BLOCK W-1, KANPUR CITY

32. At the outset, it is most respectfully submitted that the prayer made by the Applicants seeking a direction to the Kanpur Development Authority to not hand over possession of the said plot of land to the Answering Respondent is wholly untenable

in law and contrary to the binding directions passed by the various judicial forums, including the Hon'ble Supreme Court of India.

33. It is pertinent to note that the issue of whether the said plot of land is a park or not has already been conclusively decided against the Applicants by various judicial forums, including by this Hon'ble Tribunal in OA No. 494/2023 vide order dated 19.01.2024 (Annexure R-5). The Applicants' reliance on the Paper Publication dated 13.01.2016 and the Inspection Report dated 18.03.2021 to buttress their argument that the said plot of land is a park is wholly misplaced and untenable in law.

34. It is submitted that the said plot of land was allotted to the Answering Respondent by the Kanpur Development Authority way back in the year 1984. The Kanpur Development Authority, being the competent authority to prepare the Master Plan for the entire Kanpur City, has clearly demarcated the said plot of land as "Land for educational purposes" in the Master Plan, Layout Plan, and Site Plan. True copy of the relevant pages of the Master Plan, Layout Plan, and the Site

Plan depicting the said plot of land for educational purposes is annexed herewith and marked as **Annexure R-21**.

35. It is further submitted that the procedure for preparation and amendment of the Master Plan in the State of Uttar Pradesh is governed by the provisions of the Uttar Pradesh Urban Planning and Development Act, 1973. The said Act is applicable to the whole of the State of Uttar Pradesh (except cantonment areas and land leased to the Central Government), and the Master Plan, Layout Plan, and Site Plan referred to above have been prepared in strict compliance with the provisions of the said Act. Once the said plot of land has been demarcated as "Land for educational purposes" in the statutory plans prepared under the Uttar Pradesh Urban Planning and Development Act, 1973, the same cannot be altered or modified by any subsequent notification or publication issued under any other legislation, unless the procedure prescribed under Section 13 of the Uttar Pradesh Urban Planning and Development Act, 1973 is followed. True copy of the Uttar Pradesh Urban Planning and Development Act, 1973 is annexed herewith and marked as **Annexure R-22**.

36. Without prejudice to the above, it is submitted that the Paper Publication dated 13.01.2016 relied upon by the Applicants has been issued in complete violation of the provisions of the Uttar Pradesh Urban Planning and Development Act, 1973. A bare perusal of Section 1 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975, under which the said Paper Publication has been purportedly issued, would reveal that the said Act is applicable only to areas included in Nagar Mahapalikas, Municipalities and Town Areas, and is not applicable to land belonging to Development Authorities. In such a situation, the publication under the provisions of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 for land belonging to the Kanpur Development Authority could not have been issued, especially when there is no repealing clause in the said Act repealing the provisions of the Uttar Pradesh Urban Planning and Development Act, 1973.

37. Even assuming (though not admitting) that the said Paper Publication dated 13.01.2016 was validly issued, the same

does not ipso facto result in the said plot of land being converted into a park. A careful perusal of Rules 4 and 5 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Rules would reveal that the publication under Rule 4 is merely an advertisement of the proposed list of parks, and not a gazette notification notifying any particular land as a park. The relevant portion of Rules 4 and 5 are reproduced hereinbelow for ready reference.

“Rule 4: Preparation of list of Parks Playgrounds and open spaces

(1) The list in respect of all the parks, playgrounds and open spaces shall be prepared by the local bodies with respect to their respective area of jurisdiction

(2) The list shall contain ward wise serial number, name, location size/area and other relevant information of the parks, playgrounds and open spaces

Rule 5: Publication of list and receipt of objections

(1) The list prepared under rule 4 shall be published by the local authority in two daily newspapers having circulation in the concerned area for inviting objections and suggestions

(2) Objections and suggestions, if any, may be submitted in writing to the prescribed authority within a period of three months from the date of publication of list under sub rule (1)

(5) The list approved under sub rule (3) or sub rule (4) shall be published in two

newspapers having circulation in the concerned area.”

38. In the present case, the Paper Publication dated 13.01.2016 relied upon by the Applicants is admittedly one issued under Rule 4, and is therefore a mere advertisement of the proposed list of parks. The same cannot, by any stretch of imagination, be construed as a gazette notification declaring the said plot of land as a park. The Applicants have gravely misinterpreted the said publication in a desperate attempt to make out a false case.

39. It is further submitted that even if there exists any such publication under Rule 4, the same does not, in and of itself, operate to lawfully declare any land as a park. After such publication, the competent authority is required to consider the objections, if any, received from interested parties, and thereafter a declaration in terms of Rule 5(5) has to be made. It is only upon the issuance of such a declaration and its publication in the Official Gazette that any land can be said to have been validly notified as a park. In the present case, admittedly no such declaration has been issued under Rule

5(5) in respect of the said plot of land. As such, the entire case set up by the Applicants is liable to be rejected on this short ground itself.

40. Furthermore, it is submitted that the Paper Publication dated 13.01.2016 referred to by the Applicants is for an entirely different plot of land than the one in question. A careful examination of the said Paper Publication reveals that it pertains to a park named "Panchsheel Park" located in Usmanpur ward, Saket Nagar, Kanpur, with an area of 3286 square meters. This is a completely different address and area compared to the plot of land that is the subject matter of the present case, which is located at Plot No. 70, Block W/1, Scheme Juhi Kalan, Kanpur, and measures 5138.67 square meters. The stark differences in the location, address, and area of the two plots of land make it abundantly clear that the Paper Publication relied upon by the Applicants has no relevance or bearing whatsoever on the present case. The Applicants' attempt to mislead this Hon'ble Tribunal by relying on a Paper Publication that pertains to an entirely different plot of land is highly deplorable and must be strongly condemned. It is

apparent that the Applicants have resorted to such deceptive tactics only to create confusion and derail the proceedings before this Hon'ble Tribunal. In light of the above, it is most respectfully submitted that the Applicants' reliance on the Paper Publication dated 13.01.2016 is wholly misplaced and ought to be rejected outright by this Hon'ble Tribunal.

41. With regard to the Inspection Report dated 18.03.2021 relied upon by the Applicants, it is submitted that the same is a mere internal noting of the Kanpur Development Authority, and cannot, in any manner, alter or modify the status of the said plot of land which has been duly notified for "educational purposes" under the relevant statutory provisions. In any event, the said Inspection Report dated 18.03.2021 has already been considered and dealt with by this Hon'ble Tribunal in OA No. 494/2023, and has been found to be wholly insufficient to establish even a prima facie case in favor of the Applicants.

42. In view of the above, it is most respectfully submitted that the Applicants have miserably failed to establish that the said plot

of land is a park. The reliance placed by the Applicants on the Paper Publication dated 13.01.2016 and the Inspection Report dated 18.03.2021 is wholly misplaced and untenable in law. The said plot of land has been duly allotted to the Answering Respondent and has been consistently shown as "Land for educational purposes" in all the statutory plans and documents. Furthermore, the subsequent internal notings/communications between the Respondent State Departments, annexed hereinabove as Annexure R-16 (Colly), categorically state that the said plot of land belongs to the Answering Respondent, and a lease deed has been executed in favor of the Answering Respondent in compliance with the directions of the Hon'ble Supreme Court of India. These notings/communications unequivocally establish that the Kanpur Development Authority has no right or claim over the said plot of land, and that the same has been validly allotted to the Answering Respondent. In light of these subsequent developments, the Applicants cannot be permitted to indirectly overreach the statutory provisions and the binding orders

passed by the competent judicial forums by relying on wholly irrelevant and non-est documents.

43. The above facts and circumstances clearly establish that the Applicants' contention regarding the said plot of land being a park is wholly unsubstantiated and untenable in law. The said plot of land has been consistently shown as "Land for educational purposes" in all the statutory plans and documents, and has been validly allotted to the Answering Respondent by way of a registered lease deed. The subsequent notings/communications between the Respondent State Departments further confirm that the Kanpur Development Authority has no right or claim over the said plot of land, and that the same belongs to the Answering Respondent. In such circumstances, the only question that remains to be considered is whether there is any impediment in handing over possession of the said plot of land to the Answering Respondent in compliance with the orders passed by the competent judicial forums. This aspect is dealt with in the subsequent paragraphs.

44. It is pertinent to note that the issue of handing over possession of the subject plot of land to the Answering Respondent has been conclusively decided by the Hon'ble Supreme Court of India vide order dated 10.07.2023 passed in SLP No. 13906/2023 (Annexure R-20), whereby the Hon'ble Supreme Court has directed the Kanpur Development Authority to comply with the order passed by the executing court within a period of 4 weeks. The said direction has attained finality and cannot be reopened by the Applicants in the present proceedings.

45. It is a settled principle of law that no subordinate court or tribunal can pass any order which is contrary to or inconsistent with the directions passed by the Hon'ble Supreme Court of India. In the present case, any direction by this Hon'ble Tribunal to the Kanpur Development Authority to not hand over possession of the subject plot of land to the Answering Respondent would be in the teeth of the directions passed by the Hon'ble Supreme Court of India in SLP No.

13906/2023 (Annexure R-20) and would amount to overreaching the order of the Hon'ble Court.

46. In view of the above, it is most respectfully submitted that the prayer made by the Applicants seeking a direction to the Kanpur Development Authority to not hand over possession of the subject plot of land to the Answering Respondent is not only contrary to the settled position of law, but also amounts to an abuse of the process of law. The Applicants cannot be permitted to indirectly nullify the binding directions passed by the Hon'ble Supreme Court of India by seeking such prayers before this Hon'ble Tribunal. The present OA therefore deserves to be dismissed with exemplary costs on this ground alone.

47. Though not strictly relevant for the adjudication of the present OA before this Hon'ble Tribunal, the Answering Respondent deems it necessary to place on record certain subsequent developments which clearly demonstrate the mala fide intent of the Applicants in filing the present OA. The Applicants have

annexed a letter dated 17.08.2023 issued by the Kanpur Development Authority (Annexure A-7) whereby the Kanpur Development Authority had purportedly offered alternate plots of land to the Answering Respondent in view of the unilateral cancellation of the allotment on 04.07.2022. It is submitted that the said cancellation is already under challenge before the Hon'ble High Court of Judicature at Allahabad in Writ Petition No. 23521 of 2022. However, the Applicants have willfully concealed the subsequent events and developments from this Hon'ble Tribunal, which clearly establish that the Kanpur Development Authority itself has taken steps to give effect to the orders passed by the competent judicial forums, including the Hon'ble Supreme Court of India, directing the handing over of possession of the subject plot of land to the Answering Respondent.

48. Pursuant to the orders passed by the competent judicial forums, the Kanpur Development Authority issued a letter dated 18.07.2024 to the Police Commissioner, Kanpur requesting police assistance for handing over possession of the subject plot of land to the Answering Respondent. True copy of

the letter dated 18.07.2024 issued by the Kanpur Development Authority is annexed herewith and marked as **Annexure R-23**. Subsequently, the Kanpur Development Authority issued another letter dated 11.09.2024 to the Police Commissioner, Kanpur reiterating its request for police assistance in handing over possession of the subject plot of land to the Answering Respondent. True copy of the letter dated 11.09.2024 issued by the Kanpur Development Authority is annexed herewith and marked as **Annexure R-24**.

49. It is submitted that an attempt was indeed made by the Kanpur Development Authority to handover physical possession of the subject plot of land to the Answering Respondent on 18.09.2024, but the same was unlawfully obstructed by local antisocial elements, including one Mr. Bhupesh Awasthi and some of the Applicants herein. Thereafter, the Kanpur Development Authority once again issued a letter dated 08.10.2024 to the Police Commissioner, Kanpur requesting adequate police protection and assistance for handing over possession of the subject plot of land to the

Answering Respondent on 18.10.2024. However, the process was once again disrupted by the local antisocial elements. True copy of the letter dated 08.10.2024 issued by the Kanpur Development Authority is annexed herewith and marked as **Annexure R-25.**

50. The aforesaid facts clearly establish that the Kanpur Development Authority has repeatedly taken steps to comply with the directions passed by the competent judicial forums for handing over possession of the subject plot of land to the Answering Respondent, but the same has been unlawfully obstructed by the Applicants and other antisocial elements. In such circumstances, it is most respectfully submitted that the Applicants cannot be permitted to abuse the process of law by filing the present OA seeking wholly untenable and misconceived prayers which are contrary to the binding directions passed by the Hon'ble Supreme Court of India.

51. The Applicants' attempt to overreach the orders passed by the competent judicial forums by filing the present OA is clearly

mala fide and deserves to be deprecated in the strongest possible terms. The present OA therefore deserves to be dismissed with exemplary costs.

52. It is paramount to bring to the knowledge of this Hon'ble Tribunal that the Applicants have not approached this Hon'ble Tribunal with clean hands. The Applicants have made a prayer before this Hon'ble Tribunal seeking a stay on the handover of possession of the said plot of land to the Answering Respondent. However, the Applicants have deliberately concealed the fact that prior to filing the present OA on 22.10.2024, a Civil Suit bearing No. 2095/2024 titled 'Harish Kumar Khatri & Ors. v. Jawahar Vidya Samiti & Ors.' (registered as Case No. 485/74/2024) was filed by the same local antisocial elements who obstructed the handover of possession to the Answering Respondent. The said suit was filed before the Senior Civil Judge, Kanpur Nagar on 11.10.2024, seeking reliefs that would effectively prevent the possession of the said plot of land from being given to the Answering Respondent. It is apposite to state herein that

Applicant No. 1/Tarun Kumar Jain, Applicant No. 3/Mansukhesh Kumar Singhal, Applicant No. 5/Pradeep Kumar Shukla, Applicant No. 6/Shiv Kumar Maurya, Applicant No. 8/Vijay Bhatia, Applicant No. 9/Bhartendu Mishra, Applicant No. 10/Ram Prakash Kushwaha, Applicant No. 12/Awdhesh Tripathi, and Applicant No. 13/Abhinav Mishra were all Plaintiffs in the said Civil Suit, which was filed in a representative capacity along with an application under Order 1 Rule 8 of the Code of Civil Procedure, 1908. True translated copy of the Civil Suit bearing No. 2095/2024 along with the application under Order 1 Rule 8 filed before the Senior Civil Judge, Kanpur Nagar is annexed herewith and marked as **Annexure R-26**.

53. The said Civil Suit was dismissed by the Ld. Senior Civil Judge, Kanpur Nagar on 17.10.2024, holding that the suit was not maintainable in a representative capacity. True translated copy of the order dated 17.10.2024 is annexed herewith and marked as **Annexure R-27**.

54. Aggrieved by the dismissal order dated 17.10.2024, the Plaintiffs therein, who are none other than the Applicants herein, filed a Revision Petition bearing No. 884/2024 on 18.10.2024 before the Ld. District Judge, Kanpur in a desperate attempt to somehow stall the lawful handover of possession of the subject plot of land to the Answering Respondent. However, their nefarious designs were once again thwarted when the said Revision Petition was also dismissed by the Ld. District Judge, Kanpur on 21.10.2024, upholding the Answering Respondent's unassailable stance that the said plot of land has been validly allotted to the Answering Respondent. The Ld. District Judge, in his well-reasoned order, categorically held that any temple, park, or plants on the said land are nothing but illegal encroachments, and the Answering Respondent could not get possession solely due to the incessant legal proceedings initiated by the Applicants and their associates. The Ld. District Judge also sagaciously observed that even if an encroacher has illegally developed a temple or a park on the encroached land, it would not grant any legal right whatsoever to the encroacher. The Ld. District

Judge further held that even if the technical aspects of filing a representative suit were to be ignored, the suit would still not be maintainable in the peculiar facts and circumstances of the case. Most importantly, the Ld. District Judge unequivocally held that possession of the subject plot of land needs to be handed over to the Answering Respondent forthwith in compliance with the order dated 24.05.2023 passed by the Hon'ble Supreme Court of India. What is even more shocking is the fact that immediately after the dismissal of the said Revision Petition on 21.10.2024, the present Original Application was filed by the Applicants on 22.10.2024, which is a clear indication of their desperation and their mala fide intention to somehow stall the lawful handover of possession of the subject plot of land to the Answering Respondent by hook or by crook. The conduct of the Applicants in filing the present OA within a day of the dismissal of their Revision Petition is a classic example of forum shopping and abuse of the process of law, which deserves to be deprecated in the strongest possible terms by this Hon'ble Tribunal. True translated copy of the order dated 21.10.2024 passed by the

District Judge Kanpur in Revision Petition No. 884/2024 is annexed herewith and marked as **Annexure R-28**.

55. In light of the above, it is most respectfully submitted that the present OA is a clear abuse of the process of law and deserves to be dismissed with exemplary costs. The Applicants cannot be permitted to engage in forum shopping and repeatedly file vexatious proceedings with the sole aim of obstructing the lawful possession of the subject plot of land by the Answering Respondent. Such conduct on part of the Applicants is not only contrary to the settled principles of law but also undermines the sanctity of the orders passed by the competent judicial forums, including the Hon'ble Supreme Court of India. The present OA therefore deserves to be dismissed with exemplary costs, and the Applicants ought to be saddled with heavy costs for their mala fide and vexatious conduct.

II. NOT TO UNDERTAKE ANY ACTION TOWARDS FELLING OF TRESS

56. With respect to the prayer made by the Applicants seeking a direction to restrain the Respondents from undertaking any

action towards the felling of trees on the subject plot of land, it is most respectfully submitted that the said prayer is wholly misconceived and untenable in light of the following facts and circumstances.

57. It is pertinent to note that the issue of felling of trees on the subject plot of land has already been considered and decided by this Hon'ble Tribunal vide order dated 19.01.2024 passed in OA No. 494/2023 (Annexure R-5). By virtue of the said order, this Hon'ble Tribunal had set aside the earlier order dated 16.06.2023. whereby the cost of cutting the trees on the subject plot of land was estimated at INR 45,000/-, and had remanded the matter back to the competent authority to decide the same afresh in accordance with the provisions of the Act of 1976. True translated copy of the order dated 16.06.2023 is annexed herewith and marked as **Annexure R-29**.

58. Pursuant to the directions passed by this Hon'ble Tribunal in OA No. 494/2023 (Annexure R-5), the office of the Divisional Director, Social Forestry Forest Division, Kanpur re-examined the matter and issued a fresh letter dated 24.04.2024

addressed to the Kanpur Development Authority, whereby the cost of cutting down the trees on the subject plot of land was re-estimated at INR 11,98,561/- (Rupees Eleven Lakhs Ninety Eight Thousand Five Hundred Sixty One Only) in accordance with the provisions of the applicable laws. True translated copy of the letter dated 24.04.2024 is annexed herewith and marked as **Annexure R-30**.

59. The Answering Respondent, being keen to comply with the directions passed by this Hon'ble Tribunal and to take possession of the subject plot of land in accordance with the lease deed and the orders passed by the competent judicial forums, duly submitted the revised estimated cost of INR 11,98,561/- to the Kanpur Development Authority. Consequently, the Kanpur Development Authority issued a letter dated 27.05.2024 addressed to the Divisional Director, Social Forestry Forest Division, Kanpur enclosing a Demand Draft of INR 11,98,561/- towards the payment of the revised estimated cost of cutting down the trees on the subject plot of land. True translated copy of the letter dated 27.05.2024 is annexed herewith and marked as **Annexure R-31**.

60. Thereafter, the Kanpur Development Authority duly followed the procedure prescribed by law and issued a public Auction Notice dated 11.06.2024 for auctioning the trees standing on the subject plot of land. True translated copy of the Auction Notice dated 11.06.2024 is annexed herewith and marked as **Annexure R-32.**

61. In the said public auction, M/s Aman Timber Traders emerged as the highest bidder, and accordingly, a letter dated 11.07.2024 was issued by the Kanpur Development Authority in favor of M/s Aman Timber Traders directing them to deposit the balance amount. True translated copy of the letter dated 11.07.2024 is annexed herewith and marked as **Annexure R-33.**

62. Upon compliance with all the formalities and the deposit of the requisite amounts by M/s Aman Timber Traders, the Kanpur Development Authority issued a formal Work Order dated 16.07.2024 in favor of M/s Aman Timber Traders for carrying out the work of cutting down the trees standing on the subject plot of land. True translated copy of the Work Order dated

16.07.2024 is annexed herewith and marked as **Annexure R-34**.

63. The aforesaid factual matrix clearly establishes that the issue of felling of trees on the subject plot of land has been duly considered and decided by the competent authorities in accordance with the directions passed by this Hon'ble Tribunal in OA No. 494/2023 (Annexure R-5) and the procedure prescribed by law. The Applicants cannot be permitted to re-agitate the same issue and seek a restraint on the felling of trees, which has already been sanctioned by the competent authorities after following the due process of law.

64. It is further submitted that the felling of trees on the subject plot of land is necessary to enable the Answering Respondent to take possession of the land and to put it to use in accordance with the terms of the lease deed and the orders passed by the competent judicial forums. Any restraint on the felling of trees at this stage would amount to indirectly nullifying the binding directions passed by the Hon'ble Supreme Court of India and the other competent judicial forums, which have crystallized

the rights of the Answering Respondent over the subject plot of land.

65. In light of the above submissions, it is most respectfully prayed that the prayer made by the Applicants seeking a restraint on the felling of trees on the subject plot of land is wholly devoid of merit and deserves to be rejected by this Hon'ble Tribunal. The Applicants cannot be permitted to misuse the process of law and seek reliefs which are contrary to the settled position of law and the binding directions passed by the competent judicial forums.

III. TO PERMIT THE APPLICANTS TO RAISE ALL ISSUES BEFORE CONSUMER DISPUTE REDRESSAL FORUM IN PENDING EXECUTION

66. The The last prayer made by the Applicants in the present OA is a permission from this Hon'ble Tribunal to raise all issues before the District Consumer Dispute Redressal Forum in the pending Execution Petition bearing No. 04/2020. At the very outset, it is most respectfully submitted that this prayer is

wholly misconceived, untenable, and deserves to be rejected by this Hon'ble Tribunal for the below reasons.

67. Firstly, it is submitted that this Hon'ble Tribunal is not the appropriate forum for the Applicants to seek such a prayer. It is a settled principle of law that an Execution Proceeding is purely a proceeding between the Decree Holder, Judgment Debtor, and the Executing Court. No third party has any locus standi to interfere in an execution proceeding, unless specifically permitted by the Executing Court itself. If the Applicants herein believe that they have valid reasons to interfere in the pending Execution Petition, then the proper course of action for them would be to move an appropriate application before the Executing Court itself, rather than seeking such a prayer before this Hon'ble Tribunal. It is most respectfully submitted that this Hon'ble Tribunal ought not to pass any orders granting permission to the Applicants to raise arguments in the Execution Petition, as doing so would be contrary to the well-settled principles of judicial propriety and would amount to overreaching the jurisdiction of the Executing Court.

68. Secondly, and without prejudice to the above, it is submitted that the Applicants herein have already approached the Executing Court seeking permission to raise arguments in the pending Execution Petition, and their request has been categorically rejected by the Executing Court. It is pertinent to note that an Application under Order 21 Rule 97 of the Code of Civil Procedure, 1908 was filed by the same antisocial elements, including the Applicants herein, before the Executing Court seeking permission to raise arguments in the Execution Petition. However, the said Application was dismissed by the Executing Court vide its well-reasoned order dated 20.11.2024, holding that the Applicants have no locus standi to interfere in the execution proceedings. True translated copy of the order dated 20.11.2024 passed by the Executing Court is annexed herewith and marked as **Annexure R-35.**

69. In view of the above, it is most respectfully submitted that this Hon'ble Tribunal ought not to pass any orders which are in contradiction to the orders already passed by the Executing

Court. The prayer made by the Applicants seeking permission to raise arguments before the Executing Court is nothing but an attempt to overreach the jurisdiction of the Executing Court and to indirectly nullify the well-reasoned order passed by the Executing Court on 20.11.2024. Such a prayer, if granted, would be contrary to the well-settled principles of judicial discipline and would lead to a situation where orders passed by one court are being openly flouted by another court.

70. The Applicants are essentially seeking to use this Hon'ble Tribunal as a tool to overreach the jurisdiction of the Executing Court and to indirectly interfere in the execution proceedings, which is impermissible in law. Such conduct on part of the Applicants deserves to be strongly deprecated by this Hon'ble Tribunal, and the Applicants ought to be saddled with exemplary costs for wasting the precious time of this Hon'ble Tribunal.

71. In view of the above, it is most respectfully prayed that the prayer made by the Applicants seeking permission to raise arguments before the Executing Court deserves to be rejected

by this Hon'ble Tribunal with exemplary costs. It is further prayed that this Hon'ble Tribunal may be pleased to take a stern view of the mala fide conduct of the Applicants in filing the present OA and may be pleased to saddle them with exemplary costs for abusing the process of law.

72. In light of the above submissions, it is most respectfully prayed that the present Original Application is wholly devoid of merit, misconceived, and an abuse of the process of law. The Applicants have miserably failed to establish any legal right or claim over the subject plot of land, which has been validly allotted to the Answering Respondent by way of a registered lease deed. The Applicants' attempt to reagitate the settled issue of the subject plot of land being a park is not only barred by the principles of res judicata but also amounts to contempt of the binding orders passed by the competent judicial forums, including the Hon'ble Supreme Court of India. The prayers sought by the Applicants are contrary to the settled position of law and seek to nullify the crystallized rights of the Answering Respondent over the subject plot of land. The conduct of the

Applicants in filing the present Original Application is a brazen attempt to overreach the jurisdiction of the competent judicial forums and is a classic example of forum shopping and abuse of the process of law. In view of the above, it is most respectfully prayed that the present Original Application deserves to be dismissed in limine with exemplary costs. Any other view would result in grave miscarriage of justice and would encourage unscrupulous litigants like the Applicants to abuse the process of law with impunity.

PRAYER

In light of the above facts and circumstances, it is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- i. Dismiss the instant OA filed by the Applicants without granting any reliefs to the Applicants whatsoever;
- ii. Award cost in favor of Answering Respondent;

67

- iii Pass such other and further order as this Hon'ble Tribunal deems fit and proper in the interest of justice, equity, and good conscience.

Sidhar
मंत्री
जवाहर विद्या समिति
RESPONDENTNO.5

THROUGH

Gauravarora

GAURAVARORA
ADVOCATESFORRESPONDENTNO.5

A-24,Basement,EastofKailash,
NewDelhi-110065

Email:office@awmlegal.in

Ph: +91-9560019879

PLACE:

DATE: 09.05.2025



**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 1284 OF 2024**

IN THE MATTER OF:

Mr. Tarun Kumar Jain & Ors.

...Applicants

Versus

Kanpur Development Authority & Ors.

...Respondents

AFFIDAVIT

I, Sudhir Prakash Shukla, S/o Sh. S.N.P. Shukla, aged about 72, working as Mantari/Manager of Jawahar Vidya Samiti, do here by solemnly affirm and declare as under:

1. That I am the Authorized Representative of Respondent No. 5 in the present matter and as such aware about the facts and circumstances of the present case and competent to affirm this affidavit.
2. That the accompanying Reply has been drafted by my Advocate upon my instructions. I have read and understood the content of the same which are true and correct. No part of it is false and nothing material has been concealed there from.
3. That I have perused the accompanying Reply and the contents of the same are true and correct as per my own knowledge and as per information derived from the records.



Sudhir

- 4. That the Annexure filled along with the Reply are a true copies of their originals
- 5. That the contents of the accompanying Reply are not being reproduced here in forth sake of brevity and the same may be read as part of the present affidavit.

Sudhar

DEPONENT

मंत्री

जवाहर विद्या समिति

VERIFICATION

I, the above-named deponent, do here by solemnly affirm and verify that the contents of the above affidavit are true to my knowledge and belief, no part of the same is false and nothing material has been concealed there from.

Verified at Kanpur Court/Outpost on this day of 9/May/, 2025



Sudhar

DEPONENT

मंत्री

जवाहर विद्या समिति

Sworn before me this day at _____
 to _____
 and who is _____
 Record in file of No. _____

रमेश चंद्र
9
 09/05/25

70 ANNEXURE R-1
JAWAHAR VIDYA SAMITI**2A/241, AZAD NAGAR- KANPUR NAGAR- 2080025**

☎ - 9336109000

Date:- 09/05/2025

LETTER OF AUTHORITY

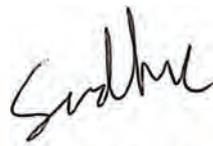
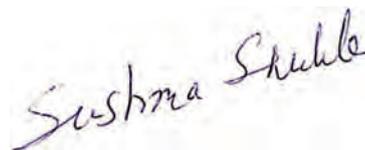
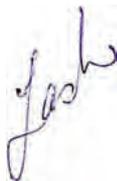
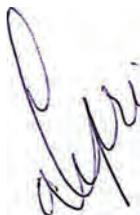
RESOLVED THAT Mr. Sudhir Prakash Shukla, Authorized signatory of the Respondent Jawahar Vidhya Samiti, aged about 71 years, resident of 3A/46(4), Azad Nagar, Kanpur-208002, is hereby authorized to take all such legal actions and steps including filing/defending of reply/objection before the National Green Tribunal original application No. 1284 of 2024 titled as Tarun Kumar Jain & Others. vs. State of U.P & Ors., and sign and verify pleadings, replies, objections, affidavits, replies, petitions, sign and submit documents, ratify, admit, deny documents in any court of law in India, including but not limited to Hon'ble National Green Tribunal and/or appoint Attorneys/Advocates/Legal Experts, Settle Court cases for and on behalf of the Society as may be required in connection with the aforesaid case or legal matter in any court, tribunal, revenue authorities or government bodies.

FURTHER RESOLVED THAT all acts/ deeds and actions of the aforesaid person shall be binding on the Society.

JAWAHAR VIDYA SAMITI


SECRETARY

AUTHORIZED SIGNATORY


Sudhir Prakash Shukla
Sushma Shukla

ANNEXURE R-2

**BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH, AT NEW DELHI**

**(Under Section 18 (1) read with 14 and 15 of the National Green
Tribunal Act, 2010)**

ORIGINAL APPLICATION NO.- OF 2023

IN THE MATTER OF:

Manoj Kumar Pandey and Anr.

.....Applicants

Versus

State of Uttar Pradesh and Ors.

.....Respondents

**TO
THE HON'BLE CHAIRMAN AND
HIS COMPANION MEMBERS OF
THE NATIONAL GREEN TRIBUNAL**

**HUMBLE APPLICATION
SUBMITTED BY THE
APPLICANT ABOVE NAMED**

MOST RESPECTFULLY SHOWETH:

1. The Applicants are the resident of the 127/176, W-1 Block, Saket Nagar, Juhi Colony, Kanpur, U.P.- 208014 and law-abiding citizen. The applicants are interested in the protection of the environment and the in protection of the

right to clean environment guaranteed under Article 21 of the Constitution of India.

2. The present application is being filed under Section 18 (1) read with 14 and 15 of the National Green Tribunal Act, 2010 before this Hon'ble Tribunal seeking quashing/ setting aside of Clearance given by Samajik Vaniki Prabhaag, Kanpur through Prabhagiya Nideshak vide letter no. 6343, dated 16.06.2023 wherein permission/ clearance has been granted for cutting of total 178 trees present within the territory of the said park/open space situated at Bhukhand-70, Block W/1, Yojna- Juhi, Kanpur, U.P. without appreciating the environmental loss in the locality and further direction restraining the Respondent No. 2 from converting the only park/open space situated at Bhukhand-70, Block W/1, Yojna- Juhi, Kanpur, U.P. into school or for any other use without any de-notification issued by the competent authority of the same and without allotting any other space for the purpose of use as a park.

BRIEF FACTS OF THE MATTER:

3. That the park/open space situated at Bhukhand-70, Block W/1, Yojna- Yuhi, Kanpur, U.P. is the only park situated in the locality. It is also submitted that the said park has been in existence since long time. The said park is having an area of 5138.67 sq meters full of greenery, walking track and place of recreation of children and adult. Photos of the park/open space are hereby marked and annexed as Annexure P-1.
[Pages from 29 to —]

4. That it is also submitted that the park/open space is having an area of 5138.67 sq meters was allotted by the Respondent No. 2 to Respondent No. 3 on 11.05.1984. Copy of the allotment letter dated 11.05.1984 is hereby marked and annexed as Annexure P-2. [Pages from 70 to 71]
 5. That it is submitted that the aforesaid park is the only source of greenery and open space. It is also submitted that suddenly on 23.01.2021 the officials of Respondent No. 2 came to the spot and started measuring of the said park. It is when the officials of the Respondent No. 2 were enquired about the purpose of the measurement, it came to the knowledge of the Applicants that the competent authority has decided to hand over the said park/open space to private person for establishing school on the said plot destroying the park/open space.
 6. That it is submitted that the competent authority has not even de-notified the said plot as park/open space. Therefore, being aggrieved of the action on the part of the Respondents the Applicants along with other residents of the said locality made several representations to competent authorities highlighting the importance of the park/open space in the said locality.
 7. That it is pertinent to mention here that the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 has been enacted only to protect the parks, playgrounds and open spaces in the locality. The said Park/open space is duly notified under Rule 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation
-

and Regulation) Rules, 1975. Copy of the paper publication dated 13.01.2016 is hereby marked and annexed as Annexure P-3. [Pages from 32 to —]

8. That the said park/open space is the only open space located in the area and therefore, conversion of the same into any other building or school would be detrimental for the environment of that particular area. It is submitted that conversion or destruction of the only park/open space in the locality would violate the spirit of the environmental law. Copy of Google images are hereby marked and annexed as Annexure P-4. [Pages from 33 to —]
9. That the said park/open space was allotted by the Respondent No. 2 to the Respondent No. 3 way back in 1984 without assessing the environmental protection and application of mind. The said park/open space was lying vacant as it is and dispute between the Respondent No. 2 and Respondent No. 3 arose and due to which consumer complaint was filed before the District Consumer Dispute Redressal Commission. The District Commission directed Respondent no. 2 to hand over the possession of the said park/open space to the Respondent No. 3 vide order dated 19.12.2003. The said order was upheld by the State Commission and the National Consumer Disputes Redressal Commission (NCDRC). The order of the NCDRC was challenged before the Hon'ble Supreme Court which was dismissed on the ground of delay.
10. That the Respondent No. 2 executed lease deed dated 23.01.2021 in favour of the Respondent No. 3 to hand over

the said park/open space without even consulting the provisions of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975. Copy of the Lease deed dated 23.01.2021 is hereby marked and annexed as Annexure P-5. [Pages from 74 to 58]

11. That it is pertinent to mention here that spot inspection of the said park/open space was conducted by the Respondent No. 2 before handing over the possession of the said plot to the Respondent No. 3. Accordingly, the official engineers from the department of the Respondent No. 2 conducted the spot inspection and found that the said plot is well developed park with proper boundary walls consisting of well-structured pathways, temple, two banyan tree, one peepal tree, two neem tree and two kadam tree. It was found that the said plot has been used by the local resident as park/open space since long. On the basis of the spot inspection the officials of the Respondent No. 2 submitted final report dated 18.03.2021 opining that delivery of the said park/open space to any private individual for the other purpose other than park/open space is not possible. Copy of the spot inspection report dated 18.03.2021 is hereby marked and annexed as Annexure P-6. [Pages from 57 to —]

12. That when it came to knowledge of the local people who have been using the said park/open space since long that the said park is being demarcated and handed over to private individual then they made several representations to various competent authorities objecting the demarcation of the well-established only park in the locality. They have objected on

- the ground that the park is the only open space in the locality where children play, old persons walk and all other persons use to inhale some fresh air. Copy of the representations made by the local people in the locality is hereby marked and annexed as Annexure P-7. [Pages from 60 to 71]
13. That it is also submitted that Kanpur Municipality in response to a letter of Respondent No. 2 dated 04.10.2021 categorically stated that the said plot situated on Plot no.70, Block W/1 in Juhi Scheme has been declared as park and published under the heads of lists of parks on 19.08.2011 and 13.01.2016. Copy of the letter of Kanpur Municipality dated 05.10.2021 is hereby marked and annexed as Annexure P-8. [Pages from 72 to —]
14. That in these circumstances Public Interest Litigation No. 518 of 2022 titled as Ravi Pandey Vs. State of U.P & Ors. was filed before the Hon'ble High Court of Judicature at Allahabad wherein the High Court sought response from the Respondent No. 2 vide order dated 23.03.2022. Copy of the order dated 23.03.2022 passed by the High Court in Public Interest Litigation No. 518 of 2022 titled as Ravi Pandey Vs. State of U.P & Ors. is hereby marked and annexed as Annexure P-9. [Pages from 73 to —]
15. That it is submitted that on the basis of the guidelines dated 20.10.1999 issued by the Housing Department, Government of U.P and various judgments of the Hon'ble Supreme Court and High Courts Respondent No. 2 passed an order cancelling the allotment of the said plot wherein the said park is situated and proposed for return of deposited amount

of Rs. 9,13,485.40 with 9% interest to the Jawahar Vidya Samiti, to whom the park was allotted for construction of School/ private use. Copy of the order dated 04.07.2022 passed by the Respondent No. 2 cancelling the allotment of the park to Jawahar Vidya Samiti is hereby marked and annexed as Annexure P-10. [Pages from 74 to 81]

16. That in pursuance of ongoing litigation for sale and allotment of the said park, the Respondent No. 2 identified other three plots which can be handed over to the Jawahar Vidya Samiti, instead of the said park and filed application dated 16.02.2022 before the District Consumer Forum in Execution Case No. 04/2020. Copy of the application dated 16.02.2022 filed by the Respondent No. 2 before the District Consumer Forum in Execution Case No. 04/2020 is hereby marked and annexed as Annexure P-11. [Pages from 82 to 84]

17. Samajik Vaniki Prabhaag, Kanpur through Prabhagiya Nideshak has issued letter no. 6343, dated 16.06.2023 wherein permission/ clearance has been granted for cutting of total 178 trees present within the territory of the said park/open space without appreciating the environmental loss in the locality. Copy of the letter no. 6343, dated 16.06.2023 issued by the Respondent No. is hereby marked and annexed as Annexure P-12. [Pages from 85 to 87]

GROUNDS

The present Original Application is being filed before this Hon'ble Tribunal on the following grounds amongst others without prejudice to each other:

- A. **BECAUSE** the Kanpur Development Authority has acted upon in violation of the judgment passed by the Hon'ble Supreme Court in Bangalore Medical Trust vs. B.S. Muddappa & Ors. Reported in (1991) 4 SCC 54 wherein it was considered the question as to the duty of the State Authorities to preserve the open spaces for public parks.
- B. **BECAUSE** it is the obligatory duty of the Municipal Corporation and Corporation Authorities to provide park, gardens and playgrounds under Section 114 (xli) of the Uttar Pradesh Municipal Corporation Act, 1959 and the Respondents has acted on the contrary of the laws passed by the legislature.
- C. **BECAUSE** the Corporation has the power under Section 383 of the Uttar Pradesh Municipal Corporation Act, 1959 to make/prepare master plan for the city which mandatorily includes public parks, play-grounds and other recreational facilities and therefore the act of the Respondent No. 2 to hand over the said only park/open space to the Respondent No.3 is complete violation of established laws.
- D. **BECAUSE** the Respondent No. 4 well within the authority to declare any area in any locality as park/open space, prepare a list of all those park/open spaces and published under the Uttar Pradesh Parks, Playgrounds and Open

Spaces (Preservation and Regulation) Act, 1975 and anyone thereafter may raise any objection with regard to the said declaration within three months, but in the present case the Respondent no. 3 had never raised any such objection after the declaration of the said open space as park under Rule 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Rules, 1975, therefore raising the objection of the Respondent no. 3 is barred by limitation.

- E. **BECAUSE** no, park, playground or open space, specified in the list published under section 3 or section 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975, as the case may be, shall except with the previous sanction of the prescribed authority, be used for any purpose other than the purpose for which it was used on the date immediately preceding the date of commencement of the said Act.
- F. **BECAUSE** the Respondent No. 4 is duty bound to maintain in a clean and proper condition all parks, playgrounds and open spaces belonging to or vested in it and included on the list published under section 3 or section 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975.
- G. **BECAUSE** no person shall, except with the previous sanction of the prescribed authority construct any building or put up any structure likely to affect the utility of the park, playground or open space specified in the list published under section 3 or section 4 of the Uttar Pradesh Parks,

Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975.

- H. **BECAUSE** in the case of a park or playground not vested in a local authority but included in the list published under section 3 or section 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975, the prescribed authority may, by notice, require the owner or occupier of such park or playground to remove or alter any projection, encroachment or obstruction in or over any such park or playground or to make within a date specified in the notice such repairs to any building in such park or playground as the prescribed authority may consider necessary under the Act.
- I. **BECAUSE** the Section 13 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 specifically provides that Until the preparation and publication of a list of parks, playgrounds and open spaces under this Act, (which shall be completed within a period of two years from the commencement of this Act) no land, which in an open space or is used as a park or playground immediately preceding the date of commencement of the Act shall be used or dealt with for any purpose except as such park or playground save with the prior permission in writing of the prescribed authority.
- J. **BECAUSE** the Respondents are under obligation to abide by the public trust doctrine.

LIMITATION

That the instant application is being filed within the period of limitation as prescribed under Section 14 and 15 of the National Green Tribunal Act, 2010 as the substantive and procedural illegality of the Respondents has come to the knowledge of the applicant recently on the basis of the the letter no. 6343, has been issued on 16.06.2023 wherein permission/ clearance has been granted for cutting of total 178 trees present within the territory of the said park/open space situated at Bhukhand-70, Block W/1, Yojna- Juhi, Kanpur, U.P without appreciating the environmental loss in the locality.

PRAYER

In the present facts and circumstances of the present Petition and in the interest of justice it is humbly prayed that this Hon'ble Tribunal may kindly be pleased to pass:

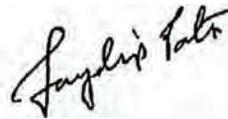
- I. Pass an appropriate order setting aside/quashing the impugned clearance given by the Respondent No. 6 Vaniki Prabhaag, Kanpur through Prabhagiya Nideshak who has issued letter no. 6343, dated 16.06.2023 wherein permission/ clearance has been granted for cutting of total 178 trees present within the territory of the said park/open space without appreciating the environmental loss in the locality;
- II. Direct Respondents not to create any lease deed through w i the pa k/ope . pac could be handed over for any use
or h r . h e . e a r ;

Done see
Already
Executed
on 23/11/2023
on each
sfo
to get
out

- III. Direct the Respondent No. 2 not to demarcate the park/open space situated on Bhukhand-70, Block W/1, Yojna- Juhi, Kanpur, U.P. for any other use other than the park/open space;
- IV. Direction staying any kind of encroachment into the park/open space situated on Bhukhand-70, Block W/1, Yojna- Juhi, Kanpur, U.P.;
- V. Pass Direction restraining Respondents to use the park/open space situated on Bhukhand-70, Block W/1, Yojna- Yuhi, Kanpur, U.P. for private use;
- VI. Direct the Respondents to allot any other place to Respondent No 3 instead of demarcating the park/open space situated on Bhukhand-70, Block W/1, Yojna- Juhi, Kanpur, U.P. AND
- VII. Pass any other order/orders as this Hon'ble Tribunal may deem fit and appropriate.

**AND FOR THIS ACT OF KINDNESS THE APPLICANT AS
IN DUTY BOUND SHALL EVER PRAY.**

FILED BY-



JAYDIP PATI AND SHASHANK KUMAR
Chamber No. Y-42 and 43
Civil Side, Tis Hazari Courts
New Delhi-110054
Email Id: jaydippiatioffice@gmail.com
Advocates for the Applicant

Date: 20/07/23
Place: New Delhi

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH, AT NEW DELHI

(Under Section 18 (1) read with 14 and 15 of the National Green
Tribunal Act, 2010)

ORIGINAL APPLICATION NO.-

OF 2023

IN THE MATTER OF:

Manoj Kumar Pandey and Anr.

.....Applicants

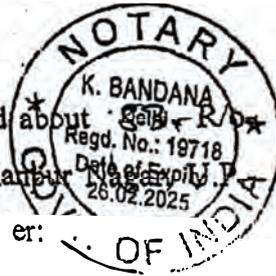
Versus

State of Uttar Pradesh and Ors.

.....Respondents

AFFIDAVIT

I, Manoj Kumar Pandey, S/o- Srikant Pandey, Aged about 58 years, R/o
127/176, W-1 Block, Saket Nagar, Juhi Colony, Kanpur, U.P.
208014 do hereby solemnly affirm and declare as under:



1. I say that I am the Applicant in the present Original Application and I am well conversant with the facts and circumstances of the case and competent to depose the present affidavit.
2. I say that I have read and understood the contents of the accompanying application which has been drafted on my instructions and I say that the facts stated therein are true to my knowledge.
3. I say that averments of facts stated herein above are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.



[Handwritten Signature]

DEPONENT



VERIFICATION:-

Verified at New Delhi, on this _____, 2023; that the contents of the present affidavit are _____ my knowledge, no part of it is false and nothing material ~~is~~ concealed therefrom.

[Handwritten Signature]

DEPONENT

IDENTIFIED

22/7/2022

ATTESTED
NOTARY PUBLIC DELHI
GOVT OF INDIA
Mob.: 9654768453



ANNEXURE R-3

Item No. 04

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 494/2023

Manoj Kumar Pandey & Anr.

Applicant(s)

Versus

State of U.P. & Ors.

Respondent(s)

Date of hearing: 16.08.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Jaydip Patil & Mr. Shashank Kumar, Advs.

ORDER

1. Issue raised in this application is conversion of green park zone into commercial/residential activities and cutting of trees in violation of environmental rules. It is contended that vide order dated 18.03.2021 issued by the Kanpur Development Authority, the authority has communicated that for delivery of possession of plot on the basis of lease deed dated 23.01.2021 on Plot No. 70, Block W-1, Juhi Kala, Kanpur, the plot was inspected and it was found that there is developed park with boundary wall, pathway, temple and several trees at site in question and is being used by local residents as park. On the basis of this, delivery of possession is not possible. The same park has been notified by the Horticulture Superintendent Kanpur Municipality vide letter No. D/328/Horticulture/2021-22 dated 05.10.2021 as park and that has been published. It is further reported that total area has been published/notified as park under the provisions of U.P. Park, Playground and Open Space (Regulation and Control) Rules, 2005.

2. Issue notice to Respondents No. 2 to 6 returnable within four weeks. Respondents are directed to submit their reply within Six weeks through E-filing portal, preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.
3. Applicant is directed to take necessary steps for service to the respondents by both ways and also on available email.
4. We deem it just and proper to call a report on the matter in issue in present Original Application, from a Joint Committee consisting of:-
 - i. District Magistrate, Kanpur Nagar
 - ii. One representative from Prabhagiya Nideshak Samajik Vaniki Prabhaag, Kanpur
 - iii. One representative from State Pollution Control Board
5. The Committee is directed to visit the place and submit the factual and action taken report within six weeks. The State PCB will be the nodal agency for coordination and logistic support.
6. Applicant is directed to supply the copy of the application and relevant documents to the Committee and Respondent(s) within a week and after compliance of service, the applicant has to submit an affidavit that the notice and copy of the application have been served upon the Committee and respondent(s).
7. The report in the matter be filed by the Committee through email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.
8. List the matter on 20.11.2023.

9. A copy of this order be forwarded to District Magistrate, Kanpur Nagar, Prabhagiya Nideshak Samajik Vaniki Prabhaag, Kanpur and State PCB by e-mail for compliance.

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

August 16, 2023
Original Application No. 494/2023
DV

ANNEXURE R-4

Item No. 05

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**Original Application No. 494/2023
(I.A. No. 648/2023)

Manoj Kumar Pandey & Anr.

Applicant(s)

Versus

State of U.P. & Ors.

Respondent(s)

Date of hearing: 20.11.2023

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Jaydip Pati & Mr. Shashank Kumar, Advs.

Respondent: Mr. Bhanwar Pal Singh Jadon & Mr. Chetan Jadon, Advs. for the State of
Uttar Pradesh
Mr. Shashwat Tripathi & Mr. Ashish Shukla, Advs. for R - 3
Mr. Arvind Kumar, Adv. for UPPCB (Through VC)**ORDER**

1. In this original application applicant has raised mainly two issues. Firstly, the area which is under consideration is a park, therefore, no lease can be granted for that area and secondly, the order/communication dated 16.06.2023 issued by Respondent No. 6 for cutting of trees is un-sustainable.

2. In terms of the previous order, report on behalf of the joint Committee as also preliminary reply on behalf of Respondent No. 3 have been filed.

3. Along with the reply Respondent No. 3 has filed order of the High Court of Allahabad in Writ-C No. 17800 of 2023 dated 24.05.2023 wherein the issue of the same Plot being Plot No. 70, W/1 Block of scheme Juhi of Kanpur has been considered. The High Court in the said

order has taken note of history of litigation in respect of that plot as under:

“5. Undisputedly, the petitioner allotted to the respondent No.2 a plot No.70 W/1 Block of Scheme Juhi of Kanpur, measuring 5138.67 square meters by order dated 19.01.1984. The lease was for a period of 99 years. The respondent No.2 complied with the terms of the allotment order but since lease deed was not being executed and possession was not handed over, therefore, the respondent No.2 filed a Complaint Case No.1222 of 2002 (Jawahar Vidya Samiti vs. Kanpur Development Authority and another), which was allowed by order dated 19.12.2003 passed by the District Consumer Forum, Kanpur. The operative portion of the order is reproduced below:

“परिवादी संस्था का उपभोक्ता वाद स्वीकार किया जाता है। विपक्षी सं०-1 को आदेश दिया जाता है की वह परिवादी संस्था से एकमुश्त विवादित भूखण्ड का अवशेष ¼ मूल्य रूपया 3,31,444.22 पैसा दिनांक 11.5.1984 से 22.3.97 तक 10 प्रतिशत वार्षिक ब्याज सहित एक माह के अंदर जमा कराकर, उसके पक्ष में भूखण्ड का अग्रिम दो माह के अंदर निबन्धन करके अध्यासन प्रदान करे। यदी परिवादी एक माह के अंदर एकमुश्त अवशेष धनाशिश विपक्षी के खाते में जमा नहीं करता है तो वह निर्णय के दिनांक से 21 प्रतिशत वार्षिक ब्याज भी उक्त धनाशिश पर विपक्षी को भुगतान करेगा।

उभय पक्ष अपना-अपना वाद व्यय स्वयं वहन करे।”

6. Against the aforesaid order, the petitioner filed an Appeal No.165 of 2004 (Kanpur Development Authority through Vice Chairman vs. Jawahar Vidya Samiti) before the State Consumer Disputes Redressal Commission, U.P. Lucknow, which was dismissed by order dated 03.07.2015 and the judgment and order of the District Consumer Forum dated 19.12.2003 was affirmed. Against the order of the State Consumer Disputes Redressal Commission, the petitioner filed a Revision Petition No.3201 of 2015 before the National Consumer Disputes Redressal Commission, New Delhi which was also dismissed by judgment and order dated 28.11.2019. Against the aforesaid judgment and order of the National Consumer Disputes Redressal Commission, New Delhi, the petitioner filed a Special Leave Petition (Civil) Diary No(s).24590/2020, which was dismissed by Hon'ble Supreme Court by order dated 15.12.2020. Thereafter, the petitioner executed a registered lease deed dated 23.01.2021 in favour of the respondent No.2 for the aforesaid plot No.70. However, the petitioner did not give possession of the aforesaid plot to the respondent No.2 and instead to harass the petitioner, he obtained a report from his Executive Engineer that the plot in question is being used by local residents as park. An Execution Case No.4 of 2020 was filed by the respondent No.2, which was pending before the District Consumer Disputes Redressal Commission, Kanpur Nagar for execution of the judgment and order dated 19.12.2003 which stood affirmed upto Supreme Court. Proceeding with his further approach of harassment to the respondent No.2, the petitioner has passed an

order on 04.07.2022 proposing to cancel the allotment and to return the deposited amount of Rs.9,13,485.40 with simple interest @ 9% per annum. He proposed to file a case before the competent authority for cancellation of the lease deed dated 23.01.2021. Aggrieved, the respondent No.2 filed Writ-C No.23521 of 2022, which is pending. Thereafter, the petitioner herein filed Writ-C No.30250 of 2022, in which he made two statements before this court, as under:

- (i) Land has been declared as Park, therefore, the order of the Consumer Forum has become inexecutable.**
- (ii) Petitioner may be permitted to give another piece of land.**

7. The order dated 22.12.2022 passed in Writ-C No.30250 of 2022 (Kanpur Development Authority vs. District Consumer Dispute And Redressal And Another) is reproduced below:

“Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Shivam Yadav, learned counsel for the petitioner.

The case of the petitioner is that the order dated 19.12.2003 passed by the District Consumer Dispute Redressal Forum, Kanpur Nagar, Kanpur/respondent no.1 is though unimplementable, is being sought to be executed by the respondent no.2. Learned Senior Counsel Sri Anoop Trivedi assisted by Sri Shivam Yadav has stated that at the time when the order was passed by the respondent no.1 the land could be sold but now when that land has been declared a park, the order of the Consumer Forum has become inexecutable.

Learned Senior Counsel prays that this Court may order that the petitioner may be permitted to give another piece of land instead of the land which the respondent no.1 has ordered the petitioner to sell to the respondent no.2.

In view of the above submission, we consider it appropriate that the petitioner may file an appropriate application before the District Consumer Dispute Redressal Forum. If the application is filed within one week from today, the respondent no.1-District Consumer Dispute Redressal Forum, Kanpur Nagar would pass appropriate orders within a period of two weeks thereafter in accordance with law.

With above observation, the writ petition is disposed of.”

8. Thereafter, the petitioner herein filed an application dated 06.01.2023 before the respondent No.1 praying to keep on hold the execution proceedings in view of the afore-quoted order of the High Court dated 22.12.2022. Against the aforesaid application, the respondent No.2 filed objection dated 11.01.2023 praying for rejection of the application and to initiate proceedings under Section 72 of the Act, 2019. On 02.02.2023 the petitioner herein filed yet another application praying for a month's time to provide proper plot to the decree-holder, i.e. the respondent No.2. It appears that an internal correspondence took place between the Tehsildar, Kanpur

Development Authority, Kanpur and Special Officer (Law) but no plot in alternative could be offered by the petitioner to the respondent No.2.

9. Under the briefly aforementioned facts of the case, proceeding under Section 72 of the Act, 2019 was sought to be initiated against the petitioner and in that connection, the respondent No.1 directed to the petitioner by order dated 03.02.2023 to submit explanation within ten days. It appears that the petitioner has submitted some application dated 16.02.2023 to which an objection dated 27.02.2023 was filed by the respondent No.2 praying to reject the application of the petitioner and pass an order under Section 72 of the Act, 2019. In these circumstances, the respondent No.1 has passed an order dated 27.04.2023, as under:

“27.04.2023

पत्रावली पेश हुई। विपक्षी की ओर से स्थगन प्रार्थना पत्र दिया गया है, परन्तु विपक्षी के विरुद्ध धारा-72 उपभोक्ता संरक्षण अधिनियम की कार्यवाही चल रही है। ऐसी स्थिति में विपक्षी की व्यक्तिगत उपस्थिति आवश्यक है। अतः स्थगन प्रार्थना पत्र का कोई औचित्य नहीं है और खारिज किया जाता है।

दिनांक 22.03.2023 को इस आयोग द्वारा आदेश पारित किया गया कि विपक्षी के विरुद्ध धारा-72 उपभोक्ता संरक्षण अधिनियम की कार्यवाही अग्रसर की जाती है और विपक्षी को तलब किया गया, कि वह उपस्थित इस बिन्दु पर अपना पक्ष रखे कि क्यों न उसे आयोग के आदेश की अवहेलना के लिये दोषी मानते हुये दण्डित किया जाये। उसके बाद भी विपक्षी उपस्थित नहीं आया। चूंकि धारा 72 की कार्यवाही एक दण्डिक कार्यवाही है, जिसमें सजा का प्राविधान है अतः उक्त कार्यवाही आवश्यक है कि विपक्षी की उपस्थिति में की जाये, परन्तु विपक्षी उपस्थित नहीं हो रहा है। अतः उसे वारण्ट के द्वारा तलब किया जाना आवश्यक है। तदनुसार विपक्षी कानपुर विकास प्राधिकरण के उपाध्यक्ष के विरुद्ध आयोग के समक्ष उपस्थिति हेतु गैर जमानती वारण्ट तामीला हेतु थानाध्यक्ष स्वरूप नगर को भेजा जाये।

पत्रावली वास्ते सुनवाई / आदेश व विपक्षी की हाजिरी हेतु दिनांक 27.05.2023 को पेश

(नीलम यादव)
सदस्य

(बिकानू राम)
अध्यक्ष"

10. The aforementioned order dated 27.04.2023 has also been challenged in the present writ petition.

11. Section 72 of the Consumer Protection Act, 2019 reads, as under:

“Section 72. Penalty for non-compliance of order

(1) Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than

twenty-five thousand rupees, but which may extend to one lakh rupees, or with both

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.

(3) Save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.”

12. Sub-Section (1) of Section 72 of the Act, 2019 provides that **whoever fails to comply with any order** made by the District Commission or the State Commission or the National Commission, as the case may be, **shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.** Sub-Section (2) of Section 72 confers upon the District Commission, the State Commission or the National Commission power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.

13. It is undisputed that the petitioner has failed to comply with the order of the District Commission as briefly noted above, particularly the order dated 03.02.2023 and has also not complied with the order of the this Court dated 22.12.2022 in Writ-C No.30250 of 2022.

14. Since despite time granted to the petitioner, the petitioner failed to comply with the order of the District Consumer Disputes Redressal Commission, Kanpur Nagar as aforementioned, therefore, the respondent No.1 has lawfully exercised powers vested in it by virtue of sub-Section (2) of Section 72 of the Act, 2019 which resulted in passing of the impugned orders dated 03.02.2023 and dated 27.04.2023 passed by the respondent No.1, are well in accordance with law.

15. Apart from the above, we repeatedly asked learned counsel for the petitioner to produce before us any notification under the U.P. Parks, Playgrounds and Open Places (Preservation and Regulation) Act, 1975 declaring plot No.70 as a park. On the other hand, learned counsel for the respondent No.2 has produced before us an office note of the Officer Incharge (Assets) Nagar Nigam, Kanpur dated 02.06.2022 in which it has been mentioned that the KDA Plot No.70

W/1 Block of Scheme Juhi of Kanpur was illegally and unauthorisedly allotted for one year by the Udyan Adhikari for maintenance to one Sri Bhupesh Awasthi, President, Bhagwan Parashuram Mahasabha which period having expired, the allotment also has to be cancelled and the aforesaid plot is not the property of the Nagar Nigam nor it is owned by Nagar Nigam.

16. We have noticed these facts in just preceding paragraph merely for the purposes to make assessments of the high-handedness and harassment attitude of the petitioner against the respondent No.2, who having contested the matter for about 21 years, is not allowed to use the plot allotted to him and also in terms of the registered lease deed. Therefore, for the continuous harassment being caused by the petitioner to the respondent No.2, and dragging in litigation for about 21 years deserves to be awarded exemplary cost which we assess at Rs.5,00,000/-."

4. The above order of the High Court was subject matter of challenge before the Hon'ble Supreme Court at the instance of Kanpur Development Authority in SLP (C) No. 13906 of 2023 which was disposed of by order dated 10.07.2023 by passing the following order:

"Heard Mr. Tushar Mehta, learned Solicitor General as also the learned senior counsel for the respondents. In so far as the merits of the impugned order, we see no reason to interfere. However, in peculiar facts and circumstances of the instant case, we do not approve of the cost of Rs. 5 Lakhs, which has been imposed upon the petitioner-authority. Hence, the cost imposed is waived.

The cost of Rs. 5 Lakhs, which is said to have been deposited by the petitioner-Authority, may be withdrawn by the petitioner. On execution of the order, if any action to be taken arises, to that extent, the right to proceed as per law, is left open.

Further, we make it clear that the non-interference with the impugned order herein, shall not preclude the authorities in proceeding in accordance with law after providing opportunity to the respondents herein. In that regard, all contentions of the parties urged in Writ Petition(C) No. 23521/2022 are left open to be urged and this Order shall not come in the way of the High Court considering it in accordance with law.

However, time of four weeks is granted to comply the Order before the Executing Order.

Petition is accordingly, disposed of along with the pending application(s), if any."

5. Before this Tribunal also though learned Counsel for the Petitioner has made the efforts but could not *prima-facie* demonstrate that the land in question has been earmarked for the park.

6. Second issue raised in this OA is in respect of correctness of the order dated 16.06.2023 issued by Respondent No. 6 granting permission to cut as many as 45 trees. The order does not mention about any necessity for cutting of trees and any application of mind by the concerned authority in this regard.

7. We also *prima-facie* find that the valuation of trees is not adequate and security of Rs. 45,000/- for compensatory plantation of ten times of the trees to be cut is on the lower side.

8. Learned Counsel appearing for the State seeks four weeks' time to look into the issue and file reply.

9. In this view of the matter, we are also of the opinion that response of Respondent No. 6 is necessary.

10. Applicant is directed to serve the respondents who are not represented today.

11. List on 19.01.2024.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

November 20, 2023
Original Application No. 494/2023
(I.A. No. 648/2023)
DV

ANNEXURE R-5

Item No. 12

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**Original Application No. 494/2023
(I.A. No. 648/2023)

Manoj Kumar Pandey

Applicant

Versus

State of Uttar Pradesh through Principal Secretary

Respondent

Date of hearing: 19.01.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Jaydip Pati, Mr. Shashank Kumar & Mr. Nitish Kumar Rai, Advs. for Applicant

Respondent: Mr. Bhanwar Pal Singh Jadon, Mr. Chetan Jadon, Mr. Ravin Singh Solanki & Mr. Hardik Saxena, Advs. for the State of UP
Ms. Harshita Raghuvanshi, Adv. for R - 2 (Through VC)
Mr. Ashish Shukla, Adv. for R - 3
Mr. Arvind Kumar, Adv. for UPPCB (Through VC)**ORDER**

1. In the original application twin issues raised by the applicant are: firstly, area under consideration is a park, therefore, no lease could be granted to respondent no.3 and secondly, order/communication dated 16.06.2023 issued by respondent no.6 for cutting trees is unsustainable.

2. Tribunal in the proceedings dated 20.11.2023 had considered the first issue relating to the plea that the area in question is a park and has taken note of the history of litigation relating to the said area specially the order of the High Court at Allahabad dated 24.05.2023 passed in Writ Petition (C) No. 17800/2023 as also the order of the Hon'ble Supreme Court dated 10.07.2023 passed in SLP (C) No.13906/2023 and had reached to the conclusion that the Counsel for the applicant could not

prima facie demonstrate that the land in question has been earmarked for the park.

3. Today, also the Counsel for the applicant was given an opportunity to show if any document exists earmarking the land in question as a park but he could not do so. Hence, first plea that land in question is earmarked for park cannot be accepted.

4. So far as, second plea is concerned that relates to the correctness of the communication/order dated 16.06.2023 issued by Social Forest Tree Department, State of UP whereby permission to cut 45 green trees has been granted. Said communication/order reveals that many of the trees permitted to be cut were old trees.

5. Learned Counsel appearing for the State has referred to Sections 5 and 6 of U.P. Protection Trees Act, 1976. He has not disputed that impugned communication/order does not reveal any enquiry in terms of Section 5 of the Act has been conducted. Hence, he has submitted that the issue relating to grant of permission to cut the trees standing on the land in question will be reconsidered and fresh order on the application of respondent no.3 for this purpose will be passed by following the due process.

6. Hence, we set-aside the impugned order dated 16.06.2023 permitting the competent authority to decide the application for permission to cut the tree afresh keeping in view the requirement and procedure prescribed under Act of 1976, any other relevant enactment, rules, regulations and notifications. Let the said application be decided expeditiously.

7. Original application no. 494/2023 and IA no. 648/2023 are disposed of accordingly.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

January 19, 2024
Original Application No. 494/2023
(I.A. No. 648/2023)
JG.

ANNEXURE R-6

**BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH, AT NEW DELHI**

**(Under Section 18 (1) read with 14 and 15 of the National Green
Tribunal Act, 2010)**

ORIGINAL APPLICATION NO.-

OF 2023

MEMO OF PARTIES**IN THE MATTER OF:**

1. **Manoj Kumar Pandey**
S/o- Srikant Pandey,
R/o- 127/176, W-1 Block,
Saket Nagar, Juhi Colony,
Kanpur Nagar, U.P.- 208014

2. **Amal Pandey**
S/o- Manoj Kumar Pandey,
R/o- 127/176, W-1 Block,
Saket Nagar, Juhi Colony,
Kanpur Nagar, U.P.- 208014

....Applicants

Versus

1. **State of Uttar Pradesh**
Through Principal Secretary
Housing and Urban Planning Development
Email: awas@up.nic.in WRV+2RW, Sarojini Naidu Marg, Raj Bhavan
colony, The Mall Avenue, Lucknow, Uttar Pradesh 226027
2. **Kanpur Development Authority**
Through Kanpur Vice Chairman
Email: kda@kdaindia.co.in Moti Jheel Campus, Kanpur (U.P)
3. **Jawahar Vidya Samiti M.I.G.-1, Indira Nagar, Kanpur**
Nagar, Through its Secretary/Manager Sudhir Prakash
Shukla, R/o 2A/241, Azad Nagar, Kanpur Nagar.

4. Kanpur Nagar Nigam**Through Kanpur Municipal Commissioner****Email: Kanpur_nagar.nigam@yahoo.co.in** ADD-F8G8+7M3, Moti Jheel, Moti Jheel Ave.
Harsh Nagar, Kanpur, Uttar Pradesh 208002**5. District Magistrate, Kanpur Nagar****Email: dmkap@nic.in** DM Office, Collectorate, Civil Lines Kanpur (UP)**6. Samajik Vaniki Prabhaag, Kanpur through****Prabhagiya Nideshak.** H Block, Swatantra Senani Marg, Near Shlok Trivedi Park, Kidwai Nagar, Kanpur, Uttar Pradesh 208011
Directions**Email: dfokanpurnagar@gmail.com****7. State of U.P****Through Addl. Chief Secretary****Department of Environment and Forest****U.P Secretariate, Lucknow- 226001, U.P.****Email: pccf-up@nic.in****.....Respondents****JAYDIP PATI AND SHASHANK KUMAR****Chamber No. Y-42 and 43****Civil Side, Tis Hazari Courts****New Delhi-110054****Email Id: jaydipatiooffice@gmail.com****Advocates for****the Applicant****Advocate for the Petitioners****Date: 25/07/23****New Delhi**

ANNEXURE R-7

IN THE SUPREME COURT OF INDIA

[ORDER XX (F) RULE 2013]

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024

[AGAINST THE FINAL ORDER DATED 19.01.2024 PASSED BY
NATIONAL GREEN TRIBUNAL ^{Manoj Kumar Pandey} IN ORIGINAL APPLICATION
494 OF 2023]

WITH PRAYER FOR INTERIM RELIEF**POSITION OF THE PARTIES**

BEFORE NGT BEFORE THIS COURT

1. Manoj Kumar Pandey

S/o-Srikant Pandey,

R/o-127/176, W-1 Block,

Saket Nagar, Juhi Colony,

Kanpur Nagar,

U.P.-205014.

Applicant No.1

Appellant No.1

2. Amal Pandey

S/o- Manoj Kumar Pandey,

R/o- 127/176, W-1 Block,

SaketNagar, Juhi Colony,

Kanpur Nagar,

U.P.-208014.

Applicant No. 2

Appellant No. 2

Versus

State of Uttar Pradesh

Through Principal Secretary

Housing and Urban

Planning Development

RWRV+2RV,

Sarojini Naidu Marg,

Raj Bhawan Colony,

The Mall Avenue, Lucknow,

Uttar Pradesh, 226027.

awas@up.me.in

Applicant No.1 Respondent No.1

2. Kanpur Development Authority

Through Kanpur Vice Chairman

Moti Jheel Campus, Kanpur (UP)

kda@kdaindia.co.in Applicant No.2 Respondent No.2

3. Jawahar Vidya Samiti

M.I.G-1, Indira Nagar,

Kanpur Nagar,

Through its Secretary/Manager

Sudhir Prakash Shukla,

R/o 2A/241, Azad Nagar,

Kanpur Nagar.

Applicant No.3 Respondent No.3

4. Kanpur Nagar Nigam

Through
Kanpur Municipal Commissioner,
ADD-F8G8+7M3,Moti Jheel,
Moti Jheel Ave, Harsh Nagar,
Kanpur, Uttar Pradesh 208002.
Kanpur_nagar.nigam@yahoo.co.in

Applicant No.4 Respondent No.4

5. District Magistrate, Kanpur Nagar,
DMOffice, Collectorate,
Civil Lines Kanpur(UP).

dmkap@nic.in Applicant No.5 Respondent No.5

6. Samajik Vaniki Prabhaag,Kanpur
Through Prabhagiya Nideshak,
H Block, Swatantara Senani Marg,
Near Shlok Trivedi, Park,
Kidwai Nagar, Kanpur,
Uttar Pradesh, 208011.
dfokanpurnagar@gmail.com

Applicant No.6 Respondent No.6

7. State of U.P.
Through Addl. Chief Secretary
'Department of Environment and Forest

U.P Secretariat, Lucknow- 226001, U.P.

pccf-up@nic.in

Applicant No.7 Respondent No.7

(All are contesting Respondents)

**A CIVIL APPEAL UNDER SECTION 22 OF THE NATIONAL
GREEN TRIBUNAL ACT, 2010 AGAINST THE
ORDER/JUDGMENT DATED 19.01.2024 OF NATIONAL
GREEN TRIBUNAL, PRINCIPAL BENCH DELHI IN OA NO.
494 OF 2023**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUDGES OF THE SUPREME COURT OF INDIA
THE APPELLANTS ABOVE NAMED CIVIL APPEAL OF THE
ABOVE NAMED APPELLANTS.

MOST RESPECTFULLY SHOWETH:

1. That the present Civil Appeal is directed under Section 22 of the National Green Tribunal, 2010 impugning the Order dated 19.01.2024 in O.A.494 of 2023 passed by Ld. National Green Tribunal.

1(a). There are two applicants in the Original Petition and inadvertently instead of Manoj Kumar Pandey & Anr. Manoj Kumar Pandey was written in impugned order. And for respondent there is more than one respondent State of Uttar Pradesh through Principal Secretary and Others should have been written.

2. **Questions of Law**

That the present appellants raises the following substantial question of

law for the consideration and adjudication of this Hon'ble Court:

I. Whether the Ld. Tribunal while noting that:

"2. Tribunal in the proceedings dated 20.11.2023 had considered the first issue relating to the plea that the area in question is a park and has taken note of the history of litigation relating to the said area specially the order of the High Court at Allahabad dated 24.05.2023 passed in Writ Petition (C) No. 17800/2023 as also the order of the Hon'ble Supreme Court dated 10.07.2023 passed in SLP (C) No.13906/2023 and had reached to the conclusion that the Counsel for the applicant could not prima facie demonstrate that the land in question has been earmarked for the park.3. Today, also the Counsel for the applicant was given an opportunity to show if any document exists earmarking the land in question as a park but he could not do so. Hence, first plea that land in question is earmarked for park cannot be accepted."failed to appreciate the law regarding a park and open space which has been there for long cannot be utilized for commercial purposes.

II. Whether the Ld. Tribunal was right in coming to the conclusion that **land in question is earmarked for park cannot be accepted**" despite the publication of subject park dated 13.01.2016 in Hindi Daily

Newspaper AMAR UJALA, by Kanpur Nagar Nigam, Udyan Vibhag though for inviting objections and suggestions which was further published on 29.05.2016 with the caption: Under Rule 4 of the **Uttar Pradesh Parks, Play grounds and Open Spaces (Preservation and Regulation) Rule 2005**, a list of parks falling within the bound of Kanpur have been published in daily Newspaper dated 12.01.2016 and 13.01.2016 inviting objections and suggestions and after considering the objections and suggestions after approval of Mandlayukt Kanpur, a list of park was also published in the News Paper Daily Amar Ujala (Hindi), Kanpur which finds mention of the park against the name Panchwati Udyan (Near Deaf and Dumb School), W-, Saket Nagar.

III. Whether the Ld. Tribunal, erred in not granting the relief to the Appellants against conversion of green park zone into commercial/residential activities and cutting of trees in violation of environmental rules in view of the judgment of the Apex Court in PIL 60792/2014 titled as Nagrik Sangatahn Sewa through Secy. V. State of Uttar Pradesh and others on 24.03.2015 *“The right to a clean and healthy environment is part of the right to life under Article 21 of the Constitution. Public parks have to be preserved and utilized only for that purpose as recreational open spaces. Across the State, glaring*

instances have come before the Court that these green spaces are being progressively allowed to be utilized for extraneous purposes by unscrupulous local bodies and officials, such as the setting up of shopping malls and other commercial use. This is a clear breach of the statutory duty cast upon planning authorities under the Uttar Pradesh 24 Urban Planning Development Act, 1973. Land use of a public and park cannot be altered in this manner. Statutory authorities cannot be permitted to convert the few remaining open spaces to commercial use. Any use other than as a recreational open space in the case of a public park would be illegal."

IV. Whether the Ld. Tribunal failed to adhere to the Single Judge, Hon'ble Delhi High Court failed to appreciate the Supreme Court Judgment in the **Bangalore Medical Trust v. Muddappa and Ors.** (1991) 4 SCC 54 wherein it has been clearly stated that: "Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public Interest in the reservation and preservation of open spaces for parks and play grounds cannot be

sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

25 Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill effects of urbanisation."

V. Whether the Ld. Tribunal ignored the dicta of Apex Court in Animal and Environment Legal Defence Fund v. Union of India & Ors. reported in (1997) 3 SCC 549. The Hon'ble Apex Court has enunciated the doctrine of the public trust based on ancient theory of Roman Empire. Idea of this theory was that certain common property such as lands, waters and airs were held by the Government in trusteeship for smooth and unimpaired use of public. Air, sea, waters and the forests have such a great

importance to the people that it would be wholly unjustified to make them a subject of private ownership. The American courts have also in various cases expanded the concept of this doctrine. The doctrine enjoins upon the Government to protect the natural resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.”

3. BRIEF FACTS OF THE CASE

- i. That the park/open space situated at Bhukhand-70, Block W/1, Yojna- Yuhi, Kanpur, U.P. is the only park situated in the locality. It is also submitted that the said park has been in -existence since long time. The said park is having an area of 5138.67 sq meters full of greenery, walking track and place of recreation of children and adult.

- ii. That it is also submitted that the park/open space is having an area of \$138,67 sq meters was allotted by the Respondent No 2 to Respondent No. 3 on 11.05.1984. Copy of the allotment letter dated 11.05.1984 is annexed

hereto and marked as Annexure A1. [Pages from 3! to

- iii. That it is submitted that the aforesaid park is the only source of greenery and open space. It is also submitted that suddenly on 23.01.2021 the officials of Respondent no. 2 came to the spot and started measuring of the said park. It is when the Officials of the Respondent No. 2 were enquired about the purpose of the measurement, it came to the knowledge of the Appellants that the competent authority has decided to hand over the said park/open space to private person for establishing school on the said plot destroying the park/open space.
- iv. That it is submitted that the competent authority has not even de-notified the said plot as park/open space. Therefore, being aggrieved of the action on the part of the Respondents the Appellants along with other residents of the said locality made several representations to competent authorities highlighting the importance of the park/open space in the said locality.

- v. That it is pertinent to mention here that the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 has been enacted only to protect the parks, playgrounds and open spaces in the locality. The said Park open space is duly notified under Rule 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Rules, 1975.
- vi. That the said park/open space is the only open space located in the area and therefore, conversion of the same into any other building or school would be detrimental for the environment of that particular area. It is submitted that conversion or destruction of the only park/open space in the locality would violate the spirit of the environmental law.
- vii. That the said park/open space was allotted by the Respondent No. 2 to the Respondent No. 3 way back in 1984 without assessing the environmental protection and application of mind. The said park/open space was lying vacant as it is and dispute between the Respondent No.

2 and Respondent No. 3 arose and due to which consumer complaint was filed before the District Consumer Dispute Redressal Commission. The District Commission directed Respondent no. 2 to hand over the possession of the said park/open space to the Respondent No. 3 vide order dated 19.12.2003. The said order was upheld by the State Commission and the National Consumer Disputes Redressal Commission (CDRC). The order of the NCDRC was challenged before the Hon'ble Supreme Court which was dismissed on the ground of delay.

- viii. That the Respondent No. 2 executed lease deed dated 23.01.2021 in favour of the Respondent No. 3 to hand over the said park/open space without even considering the provisions of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975. True typed copy of the Lease deed dated 23.01.2021 is annexed hereto and marked as **Annexure A2**. [Pages from 34 to 58]

- ix. That it is pertinent to mention here that spot inspection of the said park/open space was conducted by the Respondent No 2 before handing over the possession of the said plot to the Respondent No. 3. Accordingly, the official engineers from the department of the Respondent No. 2 conducted the spot inspection and found that the said plot is well developed park with proper boundary walls consisting of well- structured pathways, temple, two banyan tree, one peepal tree, two neem tree and two kadam tree. It was found that the said plot has been used by the local resident as park/open space since long. On the basis of the spot inspection the officials of the Respondent No. 2 submitted final report dated 18.03.2021 opining that delivery of the said park/open space to any private individual for the other purpose other than park/open space is not possible. True Typed Copy of the spot inspection report dated 18.03.2021 is annexed hereto and marked as **Annexure A3** [pages from ... १ ..]

- x. That when it came to knowledge of the local people who have been using the said park/open space since long that the said park is being demarcated and handed over to private individual then they made several representations to various competent authorities objecting the demarcation of the well- established only park in the locality. They have objected on the ground that the park is the only open space in the locality where children play, old persons walk and all other persons use to inhale some fresh air. The Typed Copy of the representations made by the local people in the locality is annexed hereto and marked as Annexure A4. [Pages from 52 to 63]
- xi. That it is also submitted that Kanpur Municipality in response to a letter of Respondent No. 2 dated 04.10.2021 categorically stated that the said plot situated on Plot no.70, Block W/1 in Juhi Scheme has been declared as park and published under the heads of lists of parks on 19.08.2011 and 13.01.2016. True Typed Copy of the letter of Kanpur Municipality dated

05.10.2021 is annexed hereto and marked as **Annexure A5**. [Pages from 64..]

xii. That in these circumstances Public Interest Litigation No. 518 of 2022 titled as Ravi Pandey Vs. State of U.P & Ors was filed before the Hon'ble High Court of Judicature at Allahabad wherein the High Court sought response from the Respondent No. 2 vide order dated 23.03.2022. Copy of the order dated 23.03.2022 passed by the High Court in Public Interest Litigation No. 518 of 2022 titled as Ravi Pandey Vs. State of U.P & Ors. is annexed hereto and marked as **Annexure A6**. [Pages from 65 To 66.]

xiii. That it is submitted that on the basis of the guidelines dated 20.10.1999 issued by the Housing Department, Government of U.P. and various judgments of the Hon'ble Supreme Court and High Courts Respondent No. 2 passed an order cancelling the allotment of the said plot wherein the said park is situated and proposed for return of deposited amount of Rs. 9.13.485.40 with 9%

interest to the Jawahar Vidya Samiti, to whom the park was allotted for construction of School/ private use. True Typed Copy of the order dated 04.07.2022 passed by the Respondent No. 2 cancelling the allotment of the park to Jawahar Vidya Samiti is hereby marked and annexed as Annexure A7. [Pages from 67.. to 76]

- xiv. That in pursuance of ongoing litigation for sale and allotment of the said park, the Respondent No. 2 identified other three plots which can be handed over to the Jawahar Vidya Samiti, instead of the said park and filed application dated 16.02.2022 before the District Consumer Forum in Execution Case No. 04/2020.
- xv. Samajik Vaniki Prabhaag, Kanpur through Prabhagiya Nideshak has issued letter No. 6343, dated 16.06.2023 (hereby marked and annexed as Annexure A8. [Pages from 77-86] wherein permission clearance has been granted for cutting of total 178 trees present within the territory of the said park/open space without appreciating the environmental loss in the locality.

Respondent No. 2 to hand over the said only park/open space to the Respondent No.3 is complete violation of established laws.

- D. BECAUSE Ld. Tribunal has ignored that the Respondent No. 4 is well within the authority to declare any area in any locality as park/open space, prepare a list of all those park/open spaces and published under the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 and anyone thereafter may raise any objection with regard to the said declaration within three months, but in the present case the Respondent no. 3 had never raised any such objection after the declaration of the said open space as park under Rule 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Rules, 1975, therefore raising the objection of the Respondent no. 3 is barred by limitation.
- E. BECAUSE no park, playground or open space, specified in the list published under Section 3 or Section 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975, as the case may be, shall except with the previous sanction of the prescribed authority, be used for any purpose other than the purpose for which it was used on the date

immediately preceding the date of commencement of the said Act,

- F. BECAUSE the Ld. Tribunal kept aside that the Respondent No. 4 is duty bound to maintain in a clean and proper condition all parks, playgrounds and open spaces belonging to or vested in it and included on the list published under section 3 or section 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975.
- G. BECAUSE the Ld. Tribunal ignored that no person shall, except with the previous sanction of the prescribed authority construct any building or put up any structure likely to affect the utility of the park, playground or open space specified in the list published under section 3 or section 4 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975.
- H. BECAUSE Ld. Tribunal failed to take note that in the case of a park or playground not vested in a local- authority but included in the list published under Section 3 or Section 4 of Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and

Regulation) Act, 1975 of Uttar Pradesh, the prescribed authority may, by notice, require the owner or occupier of such park or playground to remove or alter any projection, encroachment or obstruction in or over any such park or playground or to make within a date specified in the notice such repairs to any building in such park or playground as the prescribed authority may consider necessary under the Act.

- I. BECAUSE the Section 13 of the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 specifically provides that Until the preparation and publication of a list of parks, playgrounds and open spaces under this Act, (which shall be completed within a period of two years from the commencement of this Act) no land which in an open space or is asked as a park or playground immediately preceding the date of commencement of the Act shall be used or dealt with for any purpose except as such park or playground save with the prior permission in writing of the prescribed authority.

- J. Because the Ld. Tribunal failed to take note that the order dated 19.12.2003 passed by the District Consumer Redressal Forum Kanpur in Complaint Case No. 1222/2002 is inconsistent with

Section 57 of the India Evidence Act as the Forum was required to take mandatorily judicial notice of All laws in force in the territory of India and all public Acts. The Forum neither asked for any documents qua service sufficient nor any order for proceeding ex-parte against Mandalayukt, Kanpur Nagar and hence the decree is illegal. The complaint is neither as per Consumer Law nor otherwise and is time barred. The complaint was to be dismissed for being time barred and hence the decree passed by the Consumer Court is illegal and cannot be executed.

- K. BECAUSE Ld. Tribunal ignored that the Respondents are under obligation to abide by the public trust doctrine.
5. The appellants herein have not preferred any other Appeal against the impugned order/judgment dated 19.01.2024 passed by The National Green Tribunal, Delhi, in O.A. No. 494 of 2023.
6. That the Appellants are interested in protection of environment and protection of right to clean environment. The appeal is concerned with the protection of Plot No. 70, Block W 1, Yojna Juni, Kanpur, U.P. The order was passed on 19.01.2024 there is no unreasonable delay in filing this appeal. The Appellants and other members of the society was hoping against the hope to save the park. The Kanpur District Consumer

Redressal Forum is held up with Execution Petition and has directed the Kanpur Development Authority, Respondent No. 2 to hand over the possession of the subject park to Respondent No. 3. It is pertinent to note that the plot has been declared park and published in the Newspaper, Amar Ujala, 29 May, 2016 and hence the park cannot be utilized for other commercial matters. The Appellants were waiting for the outcome of the Miscellaneous Petition No. 884 of 2024 which was ultimately dismissed. The Appellants are trying their best to get the Park protected from being handed over to the Respondent No. 3 in terms of the order passed by District Consumer Redressal Forum. Hence, the delay caused. The time limitation is 90 days from the date of communication of order. i.e. 19.01.2024. The delay caused due to above mentioned reasons.

7. Prayers:

In view of the aforesaid facts and circumstances, the appellant humbly pray that this Hon'ble Court that this Hon'ble Court my graciously be pleased to:

- A. Admit and allow the present Civil Appeal and set aside the order/judgment dated 19.01.2024 passed by National Green Tribunal ^{Principal Bench} at New Delhi in O.A No. 494 of 2023; and

B. Pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE APPELLANT AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

DRAWN BY:

D.K. Yadav

NEW DELHI



FILED BY:

(RAMESHWAR PRASAD GOYAL)

Advocate for the Appellants

Place: New Delhi

Date: 12/12/2024

IN THE SUPREME COURT OF INDIA

[ORDER XX (F) RULE 2013]

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024

[AGAINST THE FINAL ORDER, DATED 19.01.2024 PASSED BY
NATIONAL GREEN TRIBUNAL IN ORIGINAL APPLICATION
494 OF 2023]

IN THE MATTER OF:-

MANOJ KUMAR PANDEY & ANR. APPELLANTS

VERSUS

STATE OF UP THROUGH PRINCIPAL SECRETARY

& ORS

RESPONDENTS

CERTIFICATE

Certified that this Civil Appeal is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents, grounds have been taken therein or relied upon in this Civil Appeal except such mentioned in the application for filing additional documents. It is further certified that the copies of the documents/annexures attached to this Civil Appeal are necessary to answer the questions of law raised in this Appeal and to make out

grounds urged in this Appeal for consideration by this Hon'ble Court.
This certificate is given on the basis of the instructions given by the
Appellants/person authorized by the Appellants whose affidavit is filed
in support of this Civil Appeal.


(**RAMESHWAR PRASAD GOYAL**)
Advocate-on-Record for the Appellants

Filed on: 12/12/2024

ITEM NO.25

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s). 58310/2024

[Arising out of impugned final judgment and order dated 19-01-2024
in OA No. 494/2023 passed by the National Green Tribunal]

MANOJ KUMAR PANDEY & ANR.

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(IA No. 9813/2025 - CONDONATION OF DELAY IN FILING
IA No. 46896/2025 - EXEMPTION FROM FILING O.T.
IA No. 9815/2025 - EXEMPTION FROM FILING O.T.
IA No. 46893/2025 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 28-02-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) :Mr. Dharmendra Kumar Yadav, Adv.
Mr. Rameshwar Prasad Goyal, AORFor Respondent(s) :Mr. Sarvam Ritam Khare, AOR
Mr. Kushagra Sharma, Adv.
Mr. Anuj Agarwal, Adv.
Mr. Akarsh Khare, Adv.UPON hearing the counsel the Court made the following
O R D E R

1. Delay condoned.
2. Issue notice, returnable in four weeks.
3. Dasti service, in addition, is permitted.
4. In addition to the usual mode, liberty is granted to the petitioner(s) to serve notice through the Standing Counsel for the respondent(s).
5. Reply affidavit, if any, be filed by the caveator(s) in the meantime.

(NARENDRA PRASAD)
DEPUTY REGISTRAR(ANJU KAPOOR)
COURT MASTER

ANNEXURE R-9**District Consumer Disputes Redressal
Forum, Kanpur Nagar**

Bench of:

Shri S.K.S. Senger, Chairman

Shri K.K. Gill, Member

Shri (illegible) Mishra, Member

Compliant No. 1222/ 2002

In the matter of: -

Jawahar Vidhya Samittee, registered
institution, registered under the Registration
Act, 1807 located at MIG -1, Indira Nagar,
Kanpur Nagar,

Through Shri Bhudhar Narayan Mishra, Ex.
MLA, resident of house No. 113/ 84, Swaroop
Nagar, Kanpur Nagar

... Complainant

Vs.

1. Kanpur Development Authority, through its Vice Chairman, located at Motijheel, Kanpur Nagar
2. Divisional Commissioner, Kanpur Division, Kanpur Nagar

... Opposite Parties

JUDGMENT

(Pronounced by Shri S.K.S. Senger, Chairman)

The complainant Jawahar Vidhya Samittee has filed the present consumer complaint/suit holding that the complainant presented an application to the office of the Opposite Party No. 1 for the land allotment for opening the school. On which the Opposite Party No. 1 by passing a school's proposal No. 38/ 39 dated 19.01.1984, allotted the

plot No. 10 W/ 1 admeasuring 5138.67 sq.mtr. under the block plan Juhi for 99 years at the rate of Rs. 86 per sq. mtr. with the rent of Rs. 10 per year, wherein the complainant has been instructed in the said allotment letter to deposit 1 / 4th amount of the total premium i.e. Rs. 1,10,481.40 in the office of the Opposite Party No. 1 within 30 days of the receipt of this letter. After receiving the letter, the complainant in compliance of the said letter, deposited an amount of Rs. 1,10,481.40 through the cheque No. (illegible) dated 06.06.1984 Punjab and Sindh Bank, with the current account of Opposite Party No. 1. After depositing the said amount, the complainant requested the Opposite Party No. 1 that by giving the possession of the

aforesaid plot, kindly execute its registration/ contract. The Opposite Party No. 1 neither considered the representation/ request of the complainant nor replied to the said representation/ request. The Joint Secretary of the Opposite Party sent a letter dated 09.12.1996 seeking all the documents/ record relating to the disputed plot from the complainant. The complainant submitted the said documents/ record with the office of the opposite party. On not getting any hearing, the complainant yet again sent a letter dated 14.01.1997 to the Joint Secretary, Zone - 1, wherein it was instructed to deposit the receipt of the deposited amount of Rs. 1,10,481.40 and other original certificates in the office of the Opposite

Party No. 1. In compliance of which, the complainant submitted all the documents and bank certificate of the payment through the bank, etc. in the office of the Opposite Party No. 1. But as there was no action, the Chairman of the Complainant sent an application dated 22.03.1997 to the Joint Secretary of the Opposite Party holding that the 1/4th amount of the allotted plot/ land has been deposited and wants to pay a lump sum amount of the balance amount. So by granting the permission of depositing the lump sum amount, the plot be registered in their name so that by approving the map of the school building, they can construct the building on it. Yet again on 22.12.1998, the complainant sent a letter to the office of the Opposite Party

No. 1 requesting that the total value of the plot is Rs. 4,41,825.62, out of which, 1/4th amount i.e. Rs. 1,10,481.40 has been deposited. Thus the order be passed for the registry. On 20.11.2001, the complainant received a letter of the Special Officer Zone - 2 of the Opposite Party, holding that the market value of the plot allotted to the complaint is Rs. 34,60,288.20. On making it lump sum, Rs. 10,08,075/- is payable towards 21 percent interest for 5 years. Thus it has been instructed to pay a total amount of Rs. 71,28,500.94 alongwith interest by 31.12.2001. On 10.07.2002, the complainant institute sent a letter to the General Secretary, State of Uttar Pradesh, Housing Development, Lucknow, holding that the Opposite Party by arbitrarily

violating the previous allotted terms, is making the illegal demands by increasing the value of the allotted plot from 4,41,825.62 to 71,28,500.94. It has also been requested in the said representation that the complainant institute is a social and educational institution and they are being putting so much illegal pressure on them, while the institute is regularly requesting the opposite party at the time of the allotment to execute the registration of the plot in their favour by obtaining the lump sum amount from the complainant. Special Secretary of the Government of Uttar Pradesh sent a letter dated 06.08.2002 to the Opposite Party No. 2 directing the Opposite Party No. 2 that by taking the action within 15 days in the case

of complainant, dispose of the matter and inform the Government. The proposal No. 77/ 7 passed in I. No. 81/ 38 in the Board Meeting of the Opposite Party No. 1 that the registry of the disputed plots be executed on lease to the complainant institute on the basis of the previous terms. But despite the aforesaid proposal, the opposite party did not execute the registry of the plot allotted in favour of the complainant. The complainant is a consumer under section 2(d) of the Consumer Protection Act. There is a service deficiency of the opposite party. Thus the complainant is entitled to get the plot at the previously allotted rates. Thus the complainant by way of the suit, prayed that in compliance of the allotment letter No. 3813/ D/ B./ 11.05.1984, by obtaining

the outstanding amount of Rs. 3,31,444.22 against the plot No. 70 W/1 Block Plan Juhi Kanpur having the area of 5138.67 sq. mtr. allotted to the complainant institute on lease for 99 years at the rate of Rs. 86 per sq. mtr. with the previously fixed terms, the lease deed be executed and registered in favour of the complainant institute and the permission be granted for the building construction by passing the map, and the amount of Rs. 1 lac be compensated alongwith the litigation expenses.

The Opposite Party No. 1 by filing its counter, opposed the suit, holding that the complaint is not maintainable. The complainant is not a consumer. The purpose of the complainant institute is business. The complainant does not have any right to file

a suit and contest the matter on behalf of the Samittee/ Committee. The defendant was sent a letter dated 28.11.98 which was received by the complainant on 02.12.98, wherein it was requested to deposit the outstanding amount of Rs. 30,60,228.20 for the said allotted land, but despite the information, the complainant did not deposit the amount. The Opposite Party No. 1 in its counter, admitted that the value of the plot at the time of the allotment of the disputed plot, was Rs. 4,41,925.62. The complainant vide the account payee cheque, had deposited its 1/4th amount. The complainant was allotted the plot in the year 1984. The complainant deposited the 1/4th amount in the year 1984. Then the complainant kept on sitting and sent the

letter in the year 1996. Thus the complainant does not have any right to raise the objection on increasing the cost. The complaint is not maintainable. In the year 1996, the opposite party on 14.02.96, published an advertisement in the newspaper Dainik Aaj regarding the disputed plot, holding that if anyone has the allotment of the said disputed plot, kindly submit the paper/ document relating to its allotment within 7 days then the lease would be executed. On not providing the proof, it would be allotted to someone else. Even despite this advertisement, the complainant did not present any document in the office of the opposite party. Thus the opposite party allotted the said plot to other institute. As and when the opposite

party came to know about the allotment of the complainant, the opposite party revived allotment of the said plot to the complainant. Still the complainant did not deposit any amount. The opposite party sent the letter and reminder to deposit the increased amount. The complainant instead of depositing the amount, filed the consumer suit. The complainant is not a consumer. The dispute of the value of plot is not a consumer dispute. The complainant institute is running an institute in order to get the benefit. The complainant is a commercial institute. The complainant institute has filed the suit before the Ld. Forum in order to being protected from the court fee. Thus the suit of the complainant is liable to be dismissed.

In support of its submission, complainant filed its affidavit and certified extract, copy of the proposal of the Board of Opposite Party, copy of the memorandum of the institute, copy of the proposal of the institute, list of (illegible) session 2000 - 2001, 2001 - 20 and 2002 - 003 of the Managing Committee. Certified copy of the proposal No. 38/ 39 of the Opposite Party Board and the copy of the proposal No. 81/ 38 were filed. The complainant institute also filed its written argument.

In support of its submission, opposite party filed the affidavit of Renu, Pathak, Special Officer.

Seriously considered/ perused the statements of the parties and the evidence submitted by them.

The following points arises in this suit for the decision/ judgment: -

1. Whether Bhudhar Narayan Mishra has the right to file the suit/ case on behalf of the complainant institute?
2. Whether the complainant is the consumer of the opposite party No. 1 and is entitled to file the suit/ case before this Forum?
3. Whether there is any contract in between the complainant institute and the opposite party No. 1 regarding the disputed plot and the parties are binding to comply the same?

4. Whether there is any service deficiency in the service of the opposite party No. 1 to the complainant institute?
5. Relief.

DETERMINATION/ CONCLUSION

Point No. 1: The opposite party has challenged the entitlement of Bhudhar Narayan Mishra in filing the complaint. The complainant in para No. 1 of the complaint has held that the complainant institute is a registered institute and the Chairman of this institute viz. Shri Bhudhar Narayan Mishra has all the right to file the suit/ case. Keeping in view this submission of para No. 1 of the complaint, the argument of the Ld. Counsel for the opposite party is baseless that the MLA is mentioned in furtherance of the name of

Bhudhar Narayan Mishra in the address of the complainant in the complaint. In para No. 1 of the complaint, the complainant institute has mentioned in detail about its right and entitlement to file the complaint. In support of which, the complainant institute has filed the authorization letter, certified copy of the Rule/ Regulation and the affidavit. The complainant also filed the certified copy of the proposal passed by the Managing Committee of the Institute on 05.07.2002, wherein it is mentioned that with all consequences, the committee has decided that the Ld. Chairman Shri Bhudhar Narayan Mishra is hereby authorized to take the action at the Authority Level, Government Level and Court Level or other (illegible) necessary for the land allotted to the Committee. He will take the

appropriate action keeping in view the interest of the institute. Vide this proposal, Shri Bhudhar Narayan Mishra was authorized by the Managing Committee to take the action on the Court's level. Thus vide this proposal, Shri Bhudhar Narayan Mishra is the competent authority of the complainant institute for filing a case/ suit before the Ld. Consumer Forum and he has all the right to file the complaint.

Point No. 2: As per the submission of the complaint, complainant vide its proposal No. 3839 dated 19.01.1984, allotted the plot No. 10 W/ 1 admeasuring 5138.67 sq.mtr. under the block plan Juhi for 99 years at the rate of Rs. 86 per sq. mtr. with the rent of Rs. 10 per year. According to which, the complainant was issued the allotment letter No. 3883 T./ B./11.05.84, wherein the complainant was

instructed to pay the 1/4th amount i.e. Rs. 1,10,481.40 in the office of the opposite party within 30 days. The complainant in compliance of the said terms of the allotment letter, deposited an amount of Rs. 1,10,481.40 on 06.06.1984 with the account No. 2150 of the opposite party in Punjab and Sindh Bank. In para No. 15 of its written statement, the opposite party No. 1 has admitted that the value of the plot was fixed at Rs. 4,41,925.62 at the time of allotment. The complainant in the year 1984, deposited the 1/4th amount through the cheque. In support of their submissions, the parties filed their affidavit. From the admitted facts and the (illegible) evidence of the parties, it is undisputedly proved that on the application of the complainant, the opposite party allotted the

plot No. 70 Block W-1 Juhi Plan to the complainant. At the time of allotment, its value was Rs. 4,41,925.62. The complainant in compliance of the said terms of the allotment letter, deposited an amount of Rs. 1,10,481.40 on 06.06.1984 with the Punjab and Sindh Bank. On the allotment proposal of the complainant and on depositing the 1/4th amount i.e. Rs. 1,10,481.40 in compliance of the allotment proposal by the complainant, a contract/ agreement was executed in between the complainant and the opposite party. In compliance of this contract/ agreement, the complainant deposited an amount of Rs. 1,10,481.40 with the account of opposite party No. 2 in Punjab National Bank. Thus the complainant is entitled to (illegible) in compliance of the said allotment contract/

agreement with the opposite party. In these facts, the complainant is the consumer under section 2(d) (2) of the Consumer Protection Act and he is totally entitled to file the suit/ case before this Forum. Accordingly, this point is decided in favour of the complainant and against the opposite party.

Point Nos. 3 and 4: It has been decided in point No. one that there is an allotment contract/ agreement in between the complainant and the opposite party No. 1 regarding the disputed plot, which is binding to both the parties. The opposite party has submitted that the complainant as per the terms of the allotment, was supposed to pay 1/4th amount i.e. Rs. 1,10,481.40 within a month of the allotment, which was deposited by the complainant. After paying the said

amount, the complainant was silent for 12 years and after a long gap of period, presented an application in the year 1996 to deposit the balance amount. The statement of the opposite party is true and correct that the complainant has not deposited the aforesaid balance amount for 12 years, but it was also the liability of the Opposite Party to inform the complainant during the said period of 12 years to deposit the balance amount and if the complainant would not have paid the amount despite the reminders of the opposite party, then the opposite party would have sent a notice to the complainant regarding the termination of the contract/ agreement and on getting the response from the complainant, the opposite party by considering on it, dismiss the contract/ agreement. Thus the

opposite party was also remained silent for 12 years after depositing 1/4th amount after the allotment order. The opposite party has not taken any of the action out of the aforesaid actions. The contract/ agreement could neither terminated automatically on remaining silent by the parties for 12 years nor the opposite party gets any one sided right to dismiss the contract/ agreement. As per the terms of the allotment letter, the opposite party neither sent any notice till date to the complainant reminding him to deposit the balance prescribed amount nor sent any notice to dismiss/ cancel the contract/ agreement, while the complainant kept on requesting the opposite party continuously after the year 1996, for making the balance lump sum amount. He sent the letters on

22.03.97 and 22.12.98 for paying the lump sum amount.

It was also decided in the proposal No. 81/ 38 of the Board's meeting of the Opposite Party No. 1 that by dismissing the allotment issued in favour of Smt. Karma Devi Memorial Public School vide the proposal No. 77/ 7 dated 05.08.1998, the allotment previously issued by the Authority in favour of Jawahar Vidhya Samittee vide the proposal No. 38/ 39, be continued with the prescribed terms. This proposal was passed by the Board of Opposite Party No. 1 on 05.06.98. Thus contract/ agreement effective as per the terms of the allotment letter executed in between the complainant and the opposite party No. 1, its fact and the circumstances and the said proposal of the Board are effective and are

binding to the parties. The opposite party is also binding to comply the said contract/ agreement. The opposite party by not giving any response to the letters of the complainant, the special officer of the opposite party No. 1 by sending a letter dated 22.12.2001, instructed to pay the total amount of Rs. 71,28,500.94 alongwith interest on the market value of Rs. 34,60,288.20 by 31.12.2001. This reply of the opposite party is against the terms of the allotment. Thus it is illegal and invalid in view of the law and Board's proposal.

As per the submission of the complaint, the complainant sent an application dated 22.03.1997 to the Joint Secretary of the Opposite Party holding that the 1/4th amount of the allotted plot/ land has been deposited

and wants to pay a lump sum amount of the balance amount, so by granting the permission of depositing the lump sum amount, the plot be registered in their name so that by approving the map of the school building, they can construct the building on it. Prior to this, the complainant did not send any application to the officers of the opposite party for depositing the balance amount. The parties were knowing the outstanding amount of Rs. 3,31,444.22. On 22.12.1998, the complainant sent a letter for the information of interest only. The complainant institute presented an application for depositing the lump sum amount alongwith interest. On the application dated 22.03.97 of the complainant, in case the opposite party would have informed the complainant to pay the

outstanding amount alongwith 10 percent interest as per the terms of the allotment letter, the complainant institute would have paid the same. But the officers of the opposite party due to their lethargies and ignorance did not inform the complainant institute about the outstanding amount alongwith interest in their reply dated 23.03.97. So the complainant institute did not pay the outstanding amount by 22.03.97. In such circumstances, the complainant institute is only liable to pay the outstanding amount alongwith interest to the opposite party by 23.03.97 at the interest rate prescribed in the allotment letter at the time of the allotment i.e. @ 10 percent. After 25.03.97, the complainant institute continuously tried to pay the lump sum outstanding amount alongwith

interest, but the officers of the opposite party never informed the complainant by calculating the interest amount. Thus the complainant institute could not deposit the amount alongwith the interest. Thus the complainant institute is not responsible to pay any interest amount after 22.03.97.

The opposite party No. 1 by not demanding the principal amount and the interest on it from the complainant as per the terms of the allotment letter, has on 22.11.2001, illegally demanded an amount of Rs. 71,28,500.94 from the complainant and hence has committed the service deficiency. Accordingly, by disposing of both the aforesaid points, it is hereby decided in favour of the complainant and against the opposite party.

Point No. 5: On the basis of the conclusions of the point Nos. 1, 2, 3 and 4, the consumer complaint of the complainant institute is liable to be admitted. By depositing the outstanding amount of Rs. 3,31,444.22 out of the principal amount at the time of allotment of the land, alongwith the simple interest at the rate of 10 percent from the date of land allotment i.e. 11.05.1984 till 23.03.97, the complainant is entitled to execute the registration of the plot and possess the land in its favour.

ORDER

The consumer suit of the complainant institute is hereby admitted. The opposite party No. 2 is hereby instructed that by obtaining the lump sum 3/4th outstanding amount of the disputed land of Rs.

3,31,444.22 alongwith the annual interest at the rate of 10 percent from 11.05.1984 till 23.03.97 from the complainant institute within a month, hand over the possession to the complainant by executing the registration within 2 months. In case the complainant fail to deposit the lump sum outstanding amount with the account of the opposite party within one month, the complainant will also pay the annual interest @ 21 percent on the said amount from the date of judgment. Both the parties will bear its litigation expenses.

Sd/- Kohlata Mishra, Member District Forum Kanpur Nagar	Sd/- K.K. Gill, Member District Forum Kanpur Nagar	Sd/- S.K.S. Senger, Chairman District Forum Kanpur Nagar
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Dated: 19.12.2003

ANNEXURE R-10**STATE CONSUMER DISPUTED REDRESSAL
COMMISSION, UTTAR PRADESH, LUCKNOW**

Appeal No. 165 of 2004

(Against the judgment and order dated 19.12.2003 passed by the Ld. District Consumer Disputes Redressal Forum, Kanpur Nagar in the Complaint No. 1222 of 2002)

IN THE MATTER OF: -

Kanpur Development Authority through its
Vice Chairman ... Appellant

Vs.

Jawahar Vidhya Samittee, through Shri
Bhudhar Narayan Mishra, resident of house
No. 113/ 84, Swaroop Nagar, Kanpur Nagar

...Respondent

Before:

1. Ld. Shri Chandra Bhal Srivastava,
Presiding Member
2. Ld. Smt. Bal Kumari, Member

Shri N. C. Upadhyay – Ld. Counsel for the
Appellant

Shri J. N. Shukla – Ld. Counsel for the
Respondent

Dated: 03.07.2015

Pronounced by Shri Chandra Bhal Srivastava,
Member (Judicial)

JUDGMENT

The present Appeal has been filed against the judgment and order dated 19.12.2003 passed by the Ld. District Consumer Disputes Redressal Forum, Kanpur Nagar in the

Complaint No. 1222 of 2002, wherein the Ld. District Forum by admitting the complaint of the complainant, has passed the following order: -

“The consumer suit of the complainant institute is hereby admitted. The opposite party No. 2 is hereby instructed that by obtaining the lump sum $3/4^{\text{th}}$ outstanding amount of the disputed land of Rs. 3,31,444.22 alongwith the annual interest at the rate of 10 percent from 11.05.1984 till 23.03.97 from the complainant institute within a month, hand over the possession to the complainant by executing the registration within 2 months. In case the complainant fail to deposit the

lump sum outstanding amount with the account of the opposite party within one month, the complainant will also pay the annual interest @ 21 percent on the said amount from the date of judgment. Both the parties will bear its litigation expenses."

The brief facts of the case is that the complainant Jawahar Vidhya Samittee submitted an application before the Kanpur Development Authority for opening the school. On the basis of the said application, the plot No. 10 W/ 1 admeasuring 5138.67 sq.mtr. was allotted under the block plan Juhi for 99 years at the rate of Rs. 86 per sq. mtr. with the rent of Rs. 10 per year, wherein the complainant was supposed to deposit 1 / 4th

amount of the total premium i.e. Rs. 1,10,481.40 within 30 days of the allotment or 3/4th amount alongwith 10 percent interest in 6 years in 12 half yearly installments. The complainant on 06.06.1984 i.e. within a month of receipt of the allotment letter, deposited an amount of Rs. 1,10,481.40 with the account of the Opposite Party Kanpur Development Authority in Punjab and Sindh Bank. The complainant time and again kept on enquiring the Kanpur Development Authority about depositing the balance 3/4th amount, but the complainant did not get any letter for depositing the balance amount. Finally after running for 12 years, the complainant filed a written complaint, still the balance 3/4th amount i.e. 3,31,444.22 was not taken from the complainant, rather with the departmental

conspiracy, the plot allotted to the complainant was allotted in favour of another institute viz. Smt. Karam Devi Memorial Public Girls School, against which, the complainant filed a representation, wherein by admitting the representation of the complainant, revived the earlier allotment in favour of the complainant by cancelling the allotment made in favour of Smt. Karam Devi Memorial Public Girls School. The opposite party Development Authority neither recovered the balance amount nor gave the possession of the allotted plot to the complainant, nor executed the necessary deed, rather in order to harass the complainant, sent a notice dated 20.11.2001 to deposit Rs. 31,60,288.20 and again sent a notice to deposit a sum of Rs. 71,28,500.94. Finally, the complainant filed a

complaint before the Ld. District Forum. The Ld. District Forum by considering the evidence of the parties, admitted the complaint as per the above by finding the service deficiency of the Opposite Party Kanpur Development Authority. Being aggrieved, the opposite Party Kanpur Development Authority has filed the present Appeal.

It has been primarily held in the grounds of the Appeal that as per the allotment letter, the complainant has not made the payment of 3/4th amount within the prescribed period of time and so his plot has been first cancelled, which has been revived in favour of the complainant. In such condition, the Development Authority is entitled to recover the interest alongwith the cost of the plot on the market rate and the impugned judgment

and order passed by the Ld. District Forum is erroneous.

We have heard the argument of the Ld. Counsels of both the parties and have perused the record.

On perusal of the record, it is clear that both the parties have admitted that the disputed plot was allotted in favour of the complainant and the complainant had deposited 1/4th amount i.e. 1,10,481.40 with the account of the opposite party within 30 days of the allotment. On perusal of the record, it is also clear that there is neither any correspondence amongst both the parties for 12 years of the allotment regarding the balance 3/4th amount nor the possession of the allotted plot has been given to

complainant. In this regard, it has been submitted by the complainant that complainant time and again kept on contacting the office of the opposite party, but no necessary instruction was given. It is clear from the correspondence amongst the parties in the year 1995 that possibly due to loss of the documents relating to the allotment of the complainant in the office of the opposite party Development Authority, it was not available so the complainant was asked to re-file the copies of all the documents relating to the allotment in the Department and possibly due to non-availability of the document of allotment in the interest of the complainant, the plot allotted to the complainant was allotted to another institute. On filing the representation

by the complainant in this regard, the allotment issued in favour of the complainant, revived. The Development Authority did not take any action regarding recovering the balance $3/4^{\text{th}}$ amount of the plot for 12 years of the allotment which shows the irresponsibility and service deficiency of the Kanpur Development Authority. The complainant after continuously contacting orally, took the written action in the year 1996. Allotting the plot allotted to the complainant, to any other institute shows that the Development Authority intentionally under conspiracy did not recover the balance $3/4^{\text{th}}$ amount from the complainant so that the plot allotted to the complainant can be given to any other. This act of the Kanpur Development Authority is neither only the

service deficiency, rather shows the inappropriate trade practice. In order to harass the complainant, the Kanpur Development Authority firstly issued the notice to deposit Rs. 31 lacs and later on issued the notice to deposit Rs. 71 lacs, which had no justification, because the complainant was always ready to get the possession of the plot by paying the balance amount as per the contract/ agreement. It is also relevant to point out that the complainant Jawahar Vidhya Samitte had taken the plot in question to open the school and the said plot was allotted in the year 1984. In case the complainant would have given the possession of the plot on time, the education institution would have constructed till now and the students would have got the education through the

institution, but due to the fanatic of the Development Authority, this has not been possible, while around 30 years have lapsed after the allotment. The Ld. District Forum keeping in view the entire circumstances of the case, have also charged 10 percent annual interest on the balance 3/4th outstanding amount of the land of Rs. 3,31,444.22 from 11.05.1984 till 23.03.97, which is in accordance with the terms of the allotment. The Development Authority has intentionally not recovered the amount after 22.03.97, so they are not entitled to get the interest for the said period.

On the basis of the aforesaid consideration, we reach on the conclusion that the Ld. District Forum by considering all the facts in detail, concludes on the basis of the

reliable evidence that there is a service deficiency of the Development Authority by not giving the complainant the timely possession of the plot allotted to the complainant and not recovering the balance amount, and we are also of the opinion that there is no any option of interference in the judgment and order passed by the Ld. District Forum.

Thus there is nothing in this Appeal and the present Appeal is liable to be dismissed.

ORDER

By dismissing the present Appeal, the judgment and order dated 19.12.2003 passed by the Ld. District Consumer Disputes Redressal Forum, Kanpur Nagar is hereby confirmed.

The Appellant would separately pay an amount of Rs. 5,000.00 (Rupees: Five thousand only) to the Complainant/ Respondent, as the Appeal expenses.

The certified copy of this judgment be accordingly provided to the parties free of cost.

Sd/-
(Chandra Bhal Srivastava)
Presiding Member
(Judicial)
Court -2

Sd/-
(Bal Kumari)
Member

(TRUE TRANSLATED COPY)

ANNEXURE R-11**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI****REVISION PETITION NO. 3201 OF 2015**

(Against the Order dated 03/07/2015 in Appeal No. 165/2004 of the State Commission Uttar Pradesh)

1. KANPUR DEVELOPMENT AUTHORITY

THROUGH VICE CHAIRMAN

.....Petitioner(s)

Versus

1. JAWAHAR VIDYA SAMITI

THROUGH SRI BHUDHAR NARAYAN MISHRA, 113/84,
SWARUP NAGAR, KANPUR NAGAR,

KANPUR

UTTAR PRADESH

.....Respondent(s)

BEFORE:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

For the Petitioner : Mr. Raman Yadav, Advocate

For the Respondent : Mr. Syed Mehdi Imam, Advocate

Dated : 28 Nov 2019

ORDER

1. The present revision has been filed against the order dated 3.7.2015 of the State Commission in Appeal No.165/2004 whereby the appeal filed by the petitioner against the order of the District Forum dated 19.12.2003 allowing the complaint of the respondent (hereinafter called the complainant), was allowed.

2. The brief facts of the case are that the complainant submitted an application to the petitioner for allotment of the land for starting a school thereon. A plot No.70W/1 under the Juhi Scheme, Kanpur having area of 5167

-2-

sq. meter at the rate of Rs.86/- sq. meter for 99 years lease at the rate of Rs.10/- per month rent was allotted to the complainant. The complainant had to deposit 1/4th of the amount i.e. Rs.1,10,481.40 of the total premium within 30 days of the allotment and the balance 3/4th of the amount @ 10% interest in six years in 12 biannual installments. The complainant after receiving the allotment letter deposited the 1/4th amount with the petitioner on 6.8.1984 i.e. within the stipulated period of 30 days. Since the possession of the plot was not given to the complainant and since his request to receive the lumpsum alongwith interest, if any, was not acceded to and since his communications were not replied by the petitioner, learning that the subject plot was allotted to some other person, he filed the complaint.

3. The defence of the petitioner had been that since the complainant had not complied with the terms and conditions of the allotment letter and had not deposited the money as required, he had no cause of action in his favour and the complaint was liable to be dismissed. It is further contended that a letter dated 28.11.1998 was sent to the complainant which he received on 2.12.1998 whereby it was asked to deposit a sum of Rs.30,60,228.20 towards the allotted plot but the complainant failed to deposit

the same. On these contentions, it was submitted that the complaint was liable to be dismissed. The parties led their evidences before the District Forum. After hearing the parties the District

-3-

Forum vide its detailed order rejected the contentions raised by the petitioner and allowed the complaint.

4. This order was impugned before the State Commission. Before the State Commission the plea taken was that it was the complainant who had failed to comply with the terms and conditions of the allotment letter and hence he was not entitled for any relief and that the complaint was liable to be dismissed. After hearing the arguments of the learned counsels for the parties and re-appreciating and reassessing the evidences on record, the State Commission has held as under: -

“The complainant after continuous oral contracts, taken up written proceedings in the year 1996. The allotment of plot to the other society without cancelling the allotment in favour of the complainant, denotes that the development authority, knowingly and intentionally in pursuance of conspiracy, did not realize the remaining 3/4th amount from the complainant so that by one or other manner, the plot allotted to the complainant, may be allotted to any other one. This act on behalf of Kanpur Development Authority, not only is deficiency in service but also shows illegal practices on its part. The development authority with intention to harass the complainant, first issued notice directing to deposit Rs.31 lakh and then again issued notice directing to deposit Rs.71 lakh which was fully inappropriate since the complainant continuously by depositing the remaining amount for the allotted plot as per the contract was willing to take possession of the same. It is also pertinent to mention here that the complainant Jawahat Vidya Samiti got allotted the aforesaid plot for opening up of a school and the aforesaid plot was allotted in the year 1984. If the plot would have been allotted to the complainant within time, the educational institution might have been constructed up till now and the students might get education from the school but due to the cussedness on behalf of the development authority it could not be

-4-

possible while about 30 years have been elapsed after allotment of the plot. The District Forum after considering the entire circumstances of the case directed to realize the remaining 3/4th amount of Rs.3,31,444.22 with interest of 10% for the period from 11.5.1984 to 22.3.1997 which is in accordance of the conditions of the allotment. The Development Authority intentionally did not realize the amount after 22.3.1997. Therefore, it is not entitled to realize the interest for that period.

5. The State Commission dismissed the appeal. This order is impugned before me. The contention is that since the complainant had failed to comply with the terms and conditions of the allotment letter it is not entitled for any relief. My attention is drawn to the allotment letter dated 11.5.1984 and it is argued that as per the terms and conditions mentioned therein, the complainant was to make the payment which he had failed to do. The terms and conditions of the allotment letter are reproduced as under: -

1. In the beginning the agreement to lease would be executed with the society and the time which would be fixed for construction would be two years.

2. After issuance of the allotment letter, the society will have to deposit 1/4th amount of the total premium within 30 days of issuance of allotment letter.

3. Balance 3/4th amount would be payable alongwith 10% interest in 12 fix monthly installments for a period of 6 years.

4. If the society constructs the building as per the map passed by the authority, then regular lease deed would be executed.

5. Society would not use the aforesaid land for any commercial purpose.

6. In condition of violation of the aforementioned conditions, the authority would have right to take back the allotted land. □

-5-

6. It is apparent that the first condition of this letter is that the petitioner had to execute lease deed in favour of the society and on enquiry it is admitted by learned counsel for the petitioner that no agreement to lease was executed in favour of the complainant. Therefore, it is clear that it is the petitioner itself had failed to adhere to the terms and conditions of the allotment letter. As regards other contentions relating to payment of balance money is concerned, there are concurrent findings on this issue by both the Fora below which clearly says that the complainant is not responsible for such default. These findings are based on the evidences led by the parties.

7. The jurisdiction of this Commission under Section 21 (b) of the Consumer Protection Act, 1986 is very limited. This Commission is not required to reassess or re-appreciate the evidences and substitute its opinion to the concurrent findings of fact by the Fora below. It was so held by the Hon^{ble} Supreme Court in the case of Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. (2011) 11 SCC 269 has held as under: -

Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a

-6-

different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora. □

8. Same principle has been reiterated by Hon^{ble} Supreme Court in the case of Lourdes Society Snehanjali Girls Hostel and Ors. Vs. H & R Johnson (India) Ltd. and Ors. (2016 8 SCC 286 wherein Hon^{ble} Supreme Court has held as under:

23. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has failed to exercise their jurisdiction or exercised when the same was not vested in their or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons. □

9. The petitioner has failed to point out any miscarriage of justice or that the findings are perverse i.e. not based on the evidences. I found no reason to interfere in the impugned order. The revision petition has no merit and the same is dismissed.

.....J
DEEPA SHARMA
PRESIDING MEMBER

ITEM NO.15 Court 4 (Video Conferencing) SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 24590/2020

(Arising out of impugned final judgment and order dated 28-11-2019 in RP No. 3201/2015 passed by the National Consumers Disputes Redressal Commission, New Delhi)

KANPUR DEVELOPMENT AUTHORITY

Petitioner(s)

VERSUS

JAWAHAR VIDYA SAMITI

Respondent(s)

(FOR ADMISSION and I.R. and IA No.118430/2020-CONDONATION OF DELAY IN FILING)

Date : 15-12-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE S. RAVINDRA BHATFor Petitioner(s) Mr. Raman Yadav, Adv.
Mr. Yagyawalkya Singh, Adv.
Mr. Utkarsh Sharma, AORFor Respondent(s) Mr. Manish Shukla, Adv.
Mr. Rameshwar Prasad Goyal, AORUPON hearing the counsel the Court made the following
O R D E R

As there is delay of 253 days in filing the Special Leave Petition and the explanation offered in support of the prayer for condonation is far from being satisfactory, we refuse to condone delay. Consequently, the SLP stands dismissed on the ground of delay.

(INDU MARWAH)
COURT MASTER (SH)(VIRENDER SINGH)
BRANCH OFFICER

ANNEXURE R-13

Office of Joint Secretary Zone-3,

Kanpur Development Authority, Kanpur

Letter No. D/2503/Sale Zone-3/ K.D.A./ 2020-21

Dated 11/01/2021

To,

Jawahar Vidha Samiti by Manager, Shri Gughar Narayan Mishra,

Address:- 117/461, Block-O, Geeta Nagar/ Naveen Nagar,

Kakadev, Kanpur Nagar

Subject- Regarding Plot No.- 70, Block-W/1 allotted to the school, Scheme- Pratham Juhi

Kanpur.

Sir,

Please in regard of the SLP which was filed in accordance to law for the above subjected plot was dismissed by the Hon'ble Supreme Court, New Delhi in compliance with the order number-1222/2002 Jawahar Vidya Samiti i.e. Kanpur Development Authority dated 19.12.2003 filed in the District Consumer Commission, Kanpur Nagar, the Vice Chairman has given approval for Registration on depositing the following amount on 11.01.2021:

Outstanding Amount	Rs. 3,31,444.22
10% Interest	
Dated 11.05.1984 to 22.03.1997 (154.11 Months)	Rs. 4,26,366.16
10% Pattabadha	Rs. 44,193.00
Miscellaneous expenses	Rs 1,000.00
Grand Total	Rs. 8,03,003.38 i.e. Rs
08,03,004.00	

Therefore, the above amount should be deposited in the Authority Fund immediately and a photocopy of the certified should be sent. 64,000.00 and 50.00 stamp papers and get the amount executed in favour of the institution.

Yours truly

Joint Secretary

Zone 3

Copy:- Shri Yogendra Singh Sisodia, Advocate, Court Ghagthar No. S/ ineligible Pratham tal, new building Civil Court Compound, Kanpur Nagar, with the intention that the hon'ble court may kindly inform at its level.

Ineligible

ANNEXURE R-14



उत्तर प्रदेश UTTAR PRADESH

CF 615520

1769
25-1-2021

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address-117/461, Block- O, Ganga Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated 23/1/2021 on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

Deed prepared by,





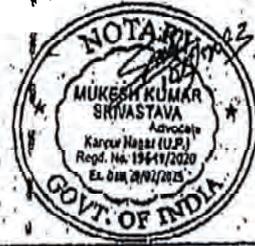
उत्तर प्रदेश UTTAR PRADESH

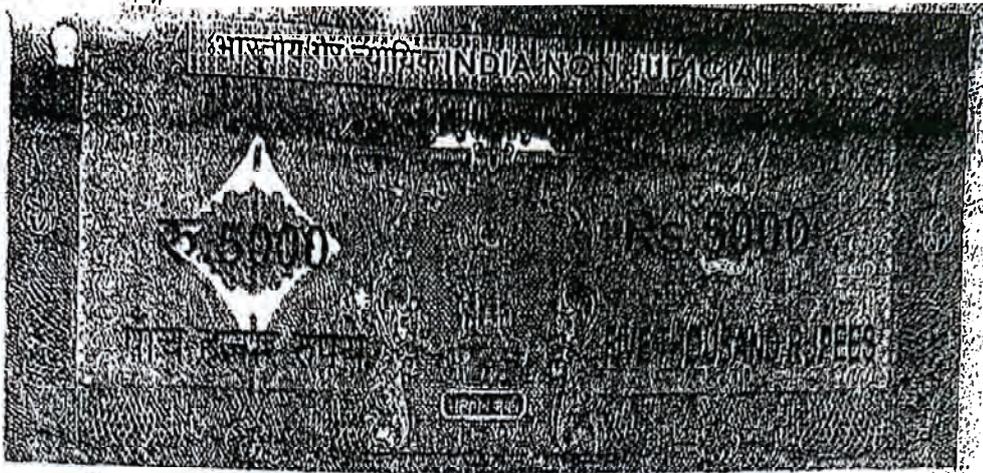
DL 577568



We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Shri. Sudhir Shukla S/o, Late S.N.P. Shukla Address 117461, Block - O, Geeta Nagar/ Naveen Nagar Kankadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

Deed prepared by.





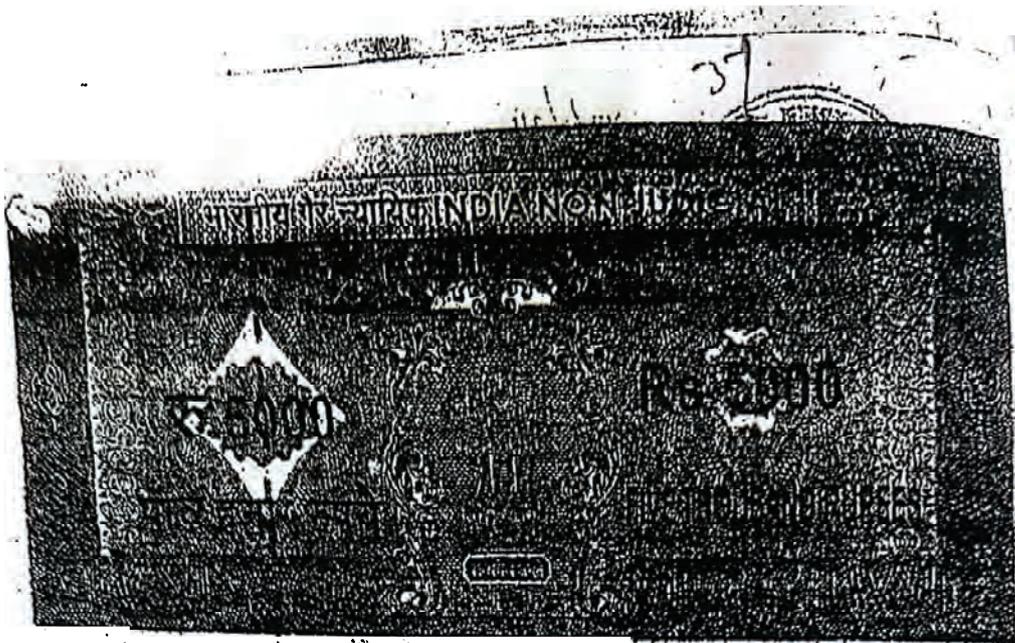
उत्तर प्रदेश UTTAR PRADESH

DL 577569

DL 577569

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117/461, Block- O, Geeta Nagar/ Naveen Nagar Kakodeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

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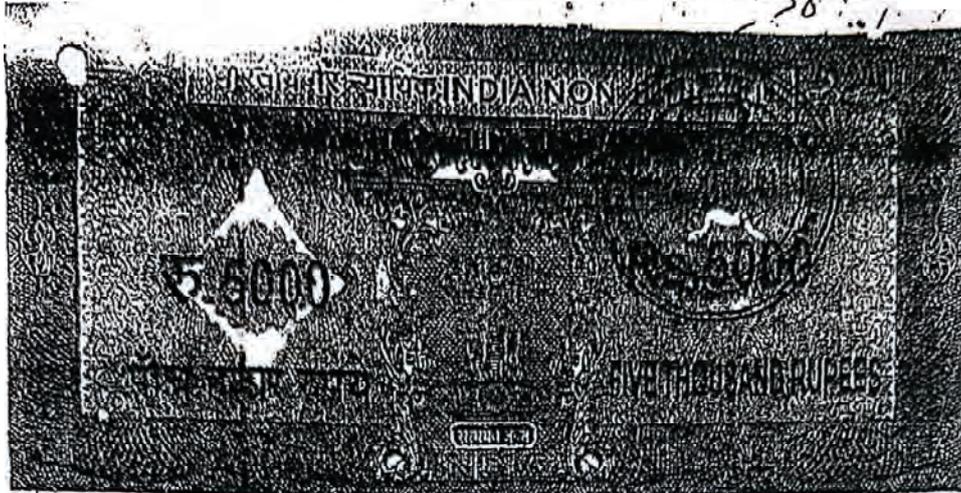
उत्तर प्रदेश UTTAR PRADESH

DL 577570 DL 577570

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR, Jawahar Vidya Samiti Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117/461, Block- O, Gasta Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

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उत्तर प्रदेश UTTAR PRADESH

DL 572739

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samith Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117/461, Block- O, Geeta Nagar/ Navcen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to this document.

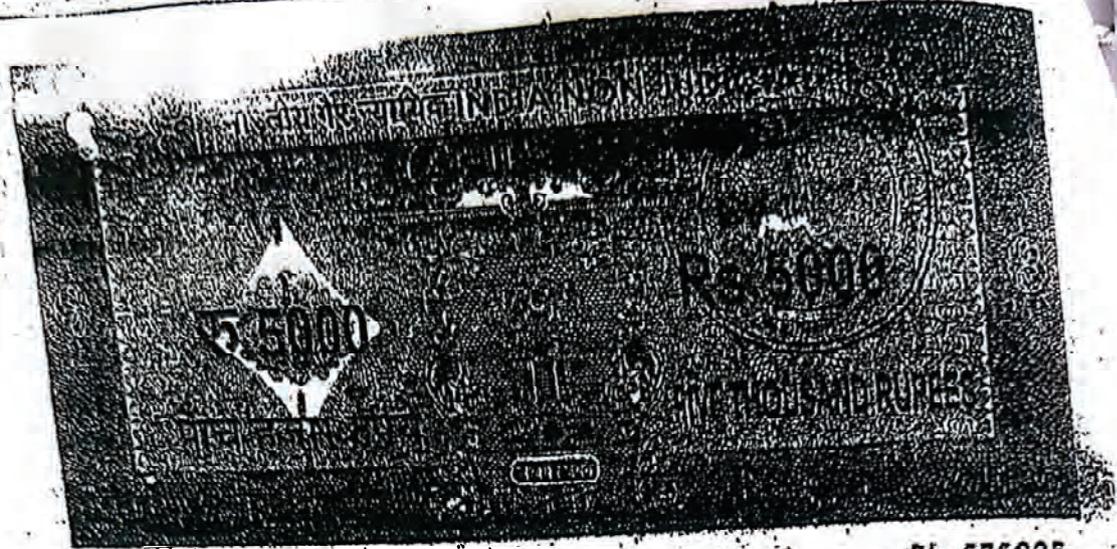
Deed prepared by.

A handwritten signature in black ink, appearing to be "Sudhir Shukla".

A handwritten signature in black ink, appearing to be "Sudhir Shukla".



39 11



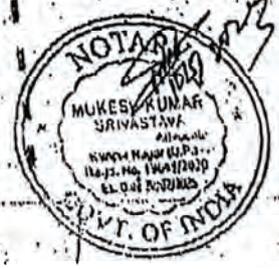
उत्तर प्रदेश UTTAR PRADESH

DL 575995

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Shri Sughr Shukla S/o, Late S.N.P. Shukla Address [1746], Block- O, Geeta Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

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Sully Blos





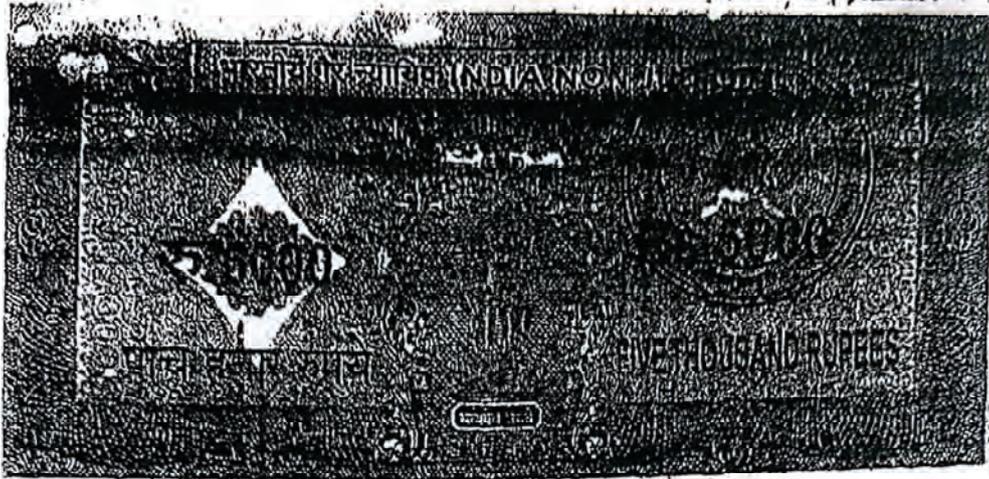
उत्तर प्रदेश UTTAR PRADESH

DL 575996

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Shri Sudhir Shukla S/o. Late S.N.P. Shukla Address 117/461, Block- O, Gaeta Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar. have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

Deed prepared by.





उत्तर प्रदेश UTTAR PRADESH

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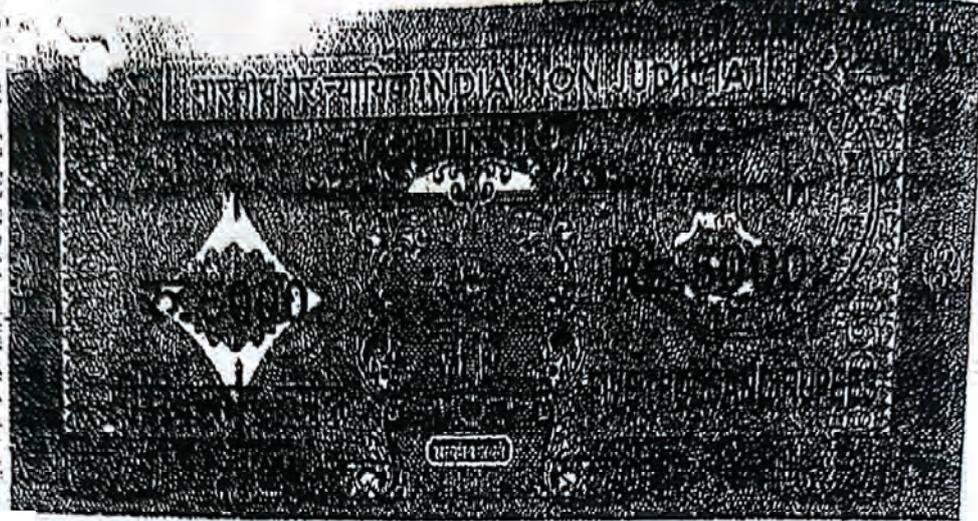
DL 572738

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jewahar Vidyā Samiti] Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117/451, Block- O, Geeta Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

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उत्तर प्रदेश UTTAR PRADESH.

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DL 564881

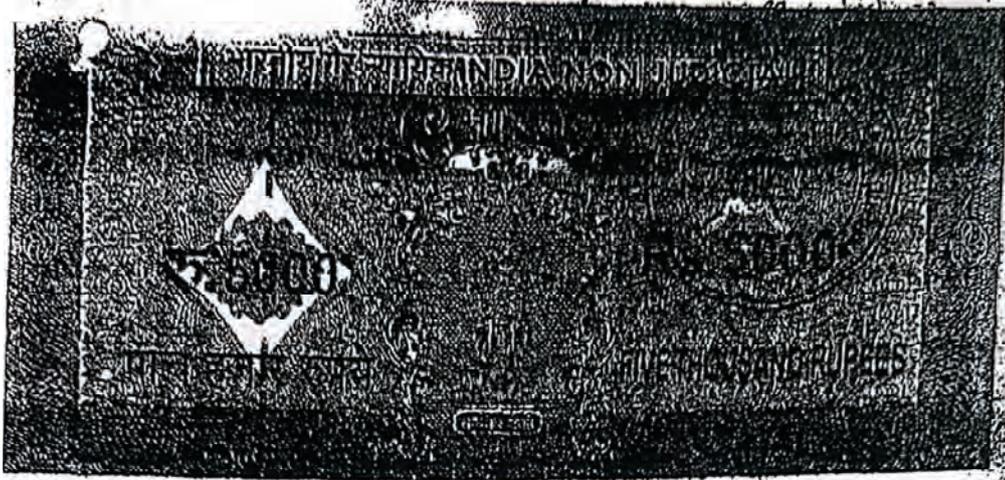
We, the KANPUR DEVELOPMENT
 AUTHORITY, KANPUR Jawahar Vidya Samiti
 Through its Director Shri Sadbir Shukla S/o, Late
 S.N.P. Shukla Address 117/461, Block- O, Geeta
 Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar
 have executed a LEASE DEED dated..... on
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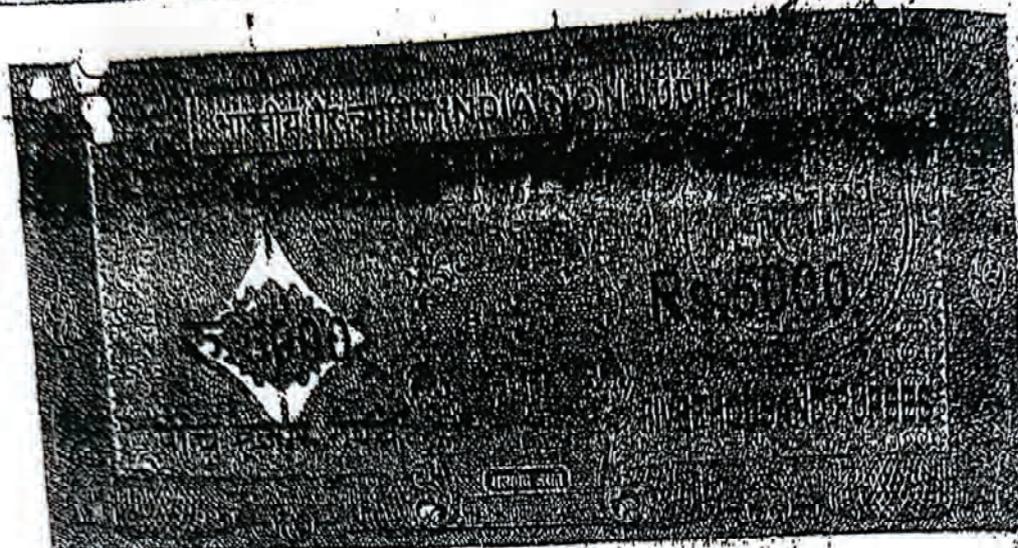
DL 564880

DL 564880

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117461, Block- O, Geeta Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

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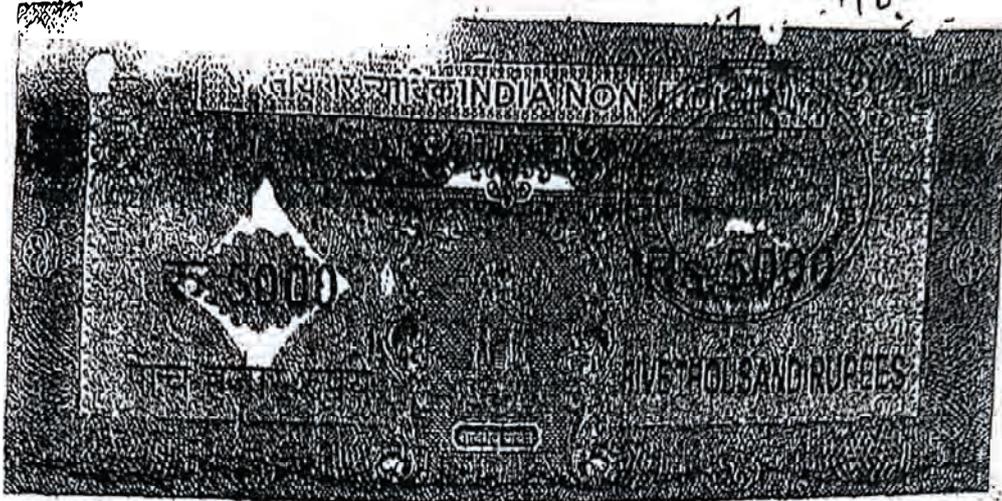
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DI ' 564879

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Sansthi Through its Director Shri. Sudhir Shukla. S/o; Late S.N.P. Shukla Address 117/461, Block- 'O', Geeta Nagar/ Navon Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated,..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000:00 by means of these stamp sheets which are attached to the document.

Deed prepared by.





उत्तर प्रदेश UTTAR PRADESH

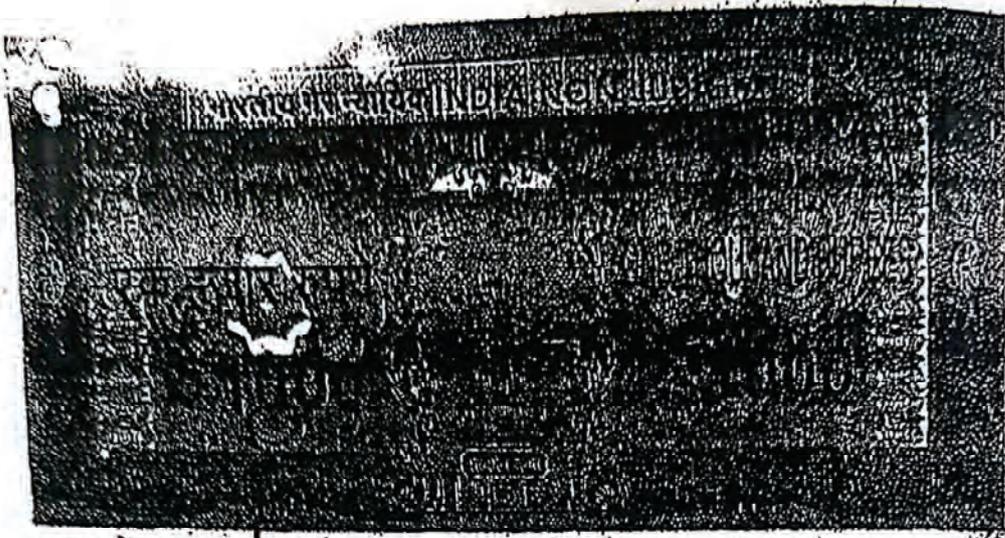
DL 572740

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address: 117/461, Block: O, Geeta Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

Deed prepared by.



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उत्तर प्रदेश UTTAR PRADESH

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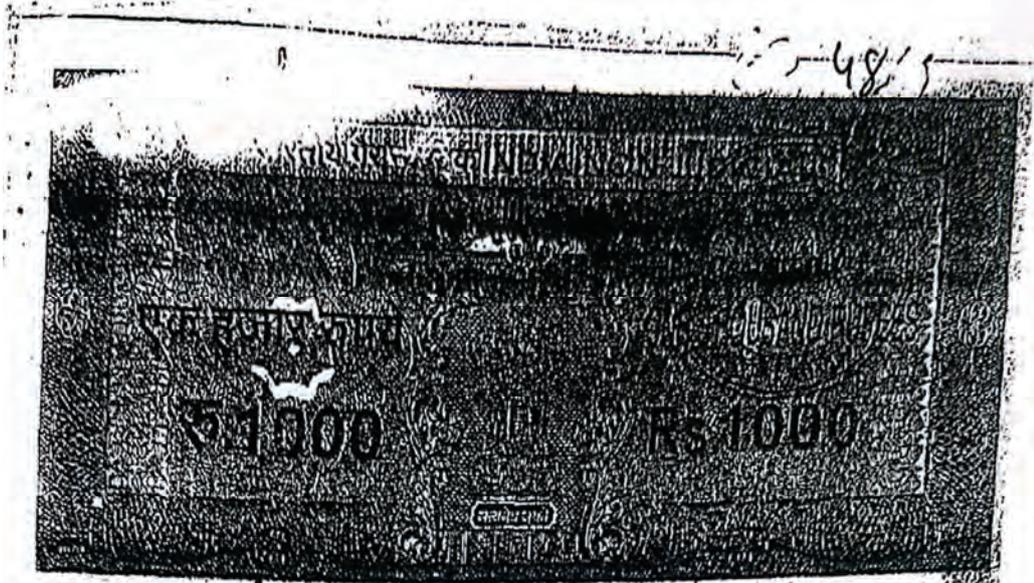
We, the KANPUR DEVELOPMENT
 AUTHORITY, KANPUR Jawahar Vidya Samiti
 Through its Director Shri Sudhir Shukla S/o, Late
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Deed prepared by.

Sudhir Shukla



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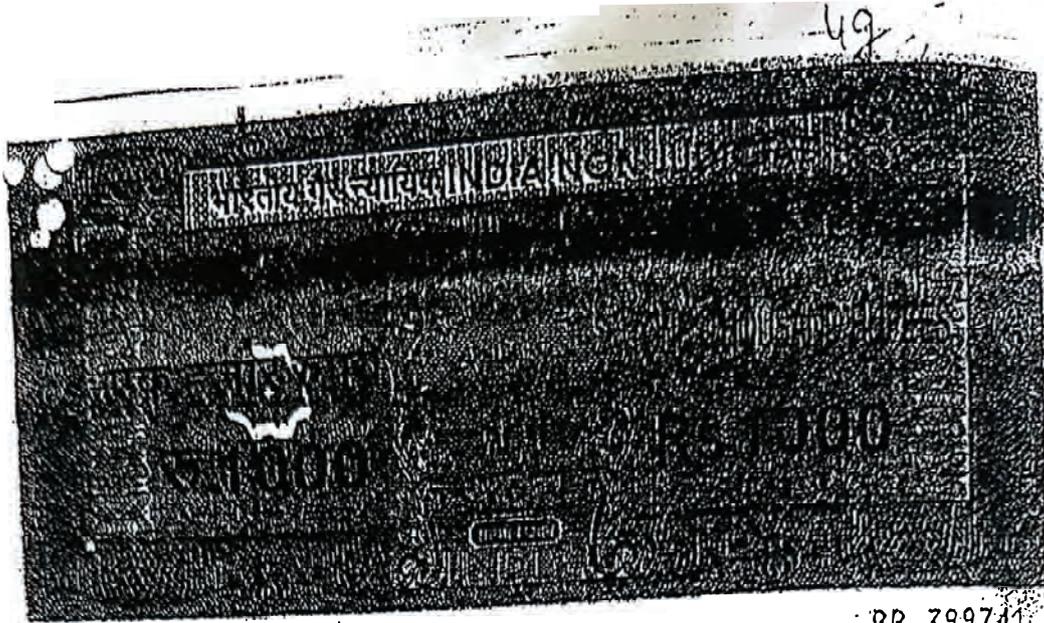
उत्तर प्रदेश UTTAR PRADESH

BR 399757

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Sri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117/461, Block- O, Geeta Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

Deed prepared by.





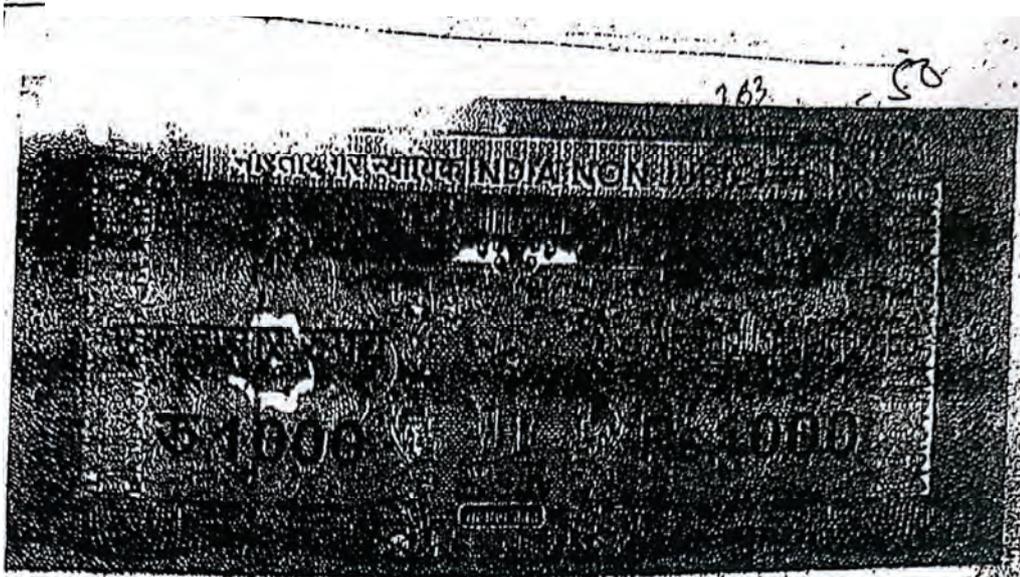
उत्तर प्रदेश UTTAR PRADESH

BR 399741

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117/451, Block - O, Geeta Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

Deed prepared by.





उत्तर प्रदेश UTTAR PRADESH

BR 399742

We, the KANPUR DEVELOPMENT AUTHORITY, KANPUR Jawahar Vidya Samiti Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117/461, Block- O, Gaeia Nagar/ Naveen Nagar Kakadeo, Kanpur Nagar have executed a LEASE DEED dated..... on the term and conditions in the print and have paid the stamp duty of Rs 64,000.00 by means of these stamp sheets which are attached to the document.

Deed prepared by.



THIS LEASE DEED made on the..... this day of..... In the year
 between Kanpur Development Authority, Kanpur here in after called the
 development Authority Which Expression shall, unless the context dose not so admit and assigns)
 of the one part and and Jawahar Vidya Samiti Through its Director Shri Sudhir Shukla S/o,
 Late S.N.P. Shukla Address 117/461, Block- O, Geeta Nagar/ Naveen Nagar Kakadeo, Kanpur
 Nagar hereinafter called the lessee (which expression shall, unless the context dose not so admit
 Includes his/her heirs executors, administrators, representatives and permitted assigns) of other part.

WHEREAS A under the provision of Uttar Pradesh urban planning & Development Act XI of
 1973 relating to the disposal of building sites the Development Authority has agreed to demise and
 lessee had agreed to take on lease, the plot of land herein after described on the terms and conditions
 herein after appearing for the purpose of constructing A Primary School Building according to the
 standard Design & Set Back And building plan to be approved by the Vice chairman of the
 development Authority and WHEREAS such as demise has been confirmed by the predecessor in
 interest of the Development Authority.

1. NOW THIS LEASE DEED WITNESSETH AS FOLLOWS:

That in consideration of the premium of Rs 4,41,925.64 (Rupees Four lacs Fourty One
 Thousand Nine Hundred Twenty Five and paise Sixty Four only) out of which whole amount
 of Rs 4,41,925.64 (Rupees Four lacs Fourty One Thousand Nine Hundred Twenty Five and
 paise Sixty Four only) have been paid by the lessee to the development Authority at the rate of
 Rs. 85.00 the receipt where of the development Authority both hereby (acknowledge) And the . .

Land Cost	Rs 4,41,925.64
Interest	Rs 4,26,356.76
Total.	Rs 8,68,282.40

साचनादेश संख्या- 17/2015/708/11 साविधिकानि-7-15-500(6)/10 दिनांक 11 जून 2015 के
 कम में कागपुर विकास प्राधिकरण के अधिकारियों एवं कर्मचारियों को बच्चों के लिये दूरस्थ फीस में 60 प्रतिशत
 एवं प्रत्येक कक्षा में नये प्रवेशों के लिये कक्षा में कुल संख्या के 8 प्रतिशत जो कम से कम 02 बच्चों का
 आवरण दिया जायेगा।
 शैक्षणिक संस्था को समाप्त के सभी बच्चों को तय की सेवा के नीचे जीवन-यापन करने वाले परिवारों के
 बच्चों को प्रवेश के लिये 10 प्रतिशत स्थान आरक्षित कर प्रवेश दिया जाना अनिवार्य होगा साथ ही कुल देय
 फीस में 60 प्रतिशत की छूट दिया जाना अनिवार्य होगा।

Deed prepared by,

[Handwritten signature]

[Handwritten signature]



8

Block- W/1 Scheme no. II Jubi Kalan

Provision and Agreements here in contained and on the part of the Lessee to be respectively paid, observed and performed the Development Authority both hereby demise and lease to the Lessee, all

That Plot of land Numbered as 70

Situated in Block W/1

At Scheme No. Scheme no. II Jubi Kalan

Containing by admeasurements 5138.67 Square meter to the same of little more or less and bounded

On the North by : 40.00 Feet Road

On the south by : Plot No. 70A

On the East by : 40.00 Feet Road

On the West by : 40.00 Feet Road

And which said plot of Land is more clearly delineated and shown in the attached plan to Hold the said plot of land premises (Hereinafter referred to as "the demised premises") with their appurtenances unto the lease for the terms of 90 (Ninety) years from the date of this Lease (hereinafter called "the said term") except and always

Reserving to the Development Authority.

- A right to lay water mains, drains, sewers or electric wires under for over the demised premises if deemed by the Vice-Chairman of the Development Authority in developing the area.
- Full rights and title to all mines and minerals in and under the demised premises or any part thereof.
- In consideration of lease rent amounting to Rs 44,193.00 (Rupees Forty Four Thousand One Hundred Ninety Three) equal to 10% of the total amount of premium having paid in advance in pursuance with G.O. No. 6795/115 80 N I- 86, dated 23-10-1986 for the entire period of lease.

यह निबन्धन मानो जिला उपमोक्ता फोरम कानपुर नगर के परिवाद सं० 1222/2002 जवाहर विद्या समिति बनाम कानपुर विकास प्राधिकरण में पारित आदेश दिनांक 19.12.2003 के परवान् मानो राज्य उपमोक्ता विवाद प्रतिरोध आयोग लखनऊ में योजित अपील सं० 185/2006. य मानो नेशनल कमीशन नई दिल्ली में योजित रिवीजन पिटीशन संख्या-3201/2016 तथा मानो उच्चतम न्यायालय नई दिल्ली में योजित एसोप्लेटोपीओ (सिविल) अपील नम्बर 24580/2020 आईओएओ नम्बर-118430/2020 स्वरिज हो जाने के फलस्वरुप मानो जिला उपमोक्ता फोरम कानपुर नगर के आदेश दिनांक 19.12.2003 के अनुपालन में उपाध्यक्ष महोदय के अनुमोदन दिनांक 11.01.2021 के आधार पर धनराशि जमा कराकर लीजडीड निष्पादन की कार्यवाही की जा रही है।

2. AND THE LESSEE DEED HEREBY COVENANT WITH THE DEVELOPMENT AUTHORITY IN THE MANNER FOLLOWING:

Deed prepared by,



Signature of the Lessee, with a circular stamp below it.

Block- W/1

Scheme no. II JuhI Kalan

~~A. That the lessee will pay to the Development Authority, the balance of premium with interest thereon at the rate of _____ percent per annum by way of _____ six monthly instalment of _____ Each on the first day of _____ First day of _____ for each year the first of such instalments to fall due on the first day of _____ and in case of any such instalments remaining in arrear, the Vice-Chairman of the Development Authority shall have the _____~~

Besides or in addition to recover the whole of the premium due on the date of such default or to recover only the instalment or instalments in respect of which the default has been made together with cost and interests at ~~_____~~ percent per annum on the instalments in arrears up to date of realization. Such dues besides other means of recovery shall also be recoverable in the manner provided under section 40 of the urban planning & Development Act XI of 1973.

- B. That the building to be constructed on the demised premises shall remain hypothecated for the payment of the yearly lease rent and the amount of dues payable to the Development Authority as provided in clause 2 (m), the balance of the premium and interest due thereon and they are hereby hypothecated by the lessee in favor of the Development Authority and the amount due as aforesaid shall constitute the first charge thereon.
- C. That the lessee will pay unto the development authority at its office or as otherwise directed, the said yearly rent clear of all deduction on the days in the manner herein appointed for payment thereof and if the said yearly lease rent or part thereof remains in arrears, the vice Chairman of the Development Authority shall duly recover the same together with _____ percent interest and costs.
- D. That the lessee will bear, pay and discharge all rates, taxes, charges and assessment of every description which may during the said term be assessed charged or impounded upon either on the land-lord or the tenant or the occupier in respect of the demised premises or the building erected thereupon.
- E. That the lessee will obey and submit to all byelaws and rules of the Kanpur Development Authority, now existing or hereafter to exist so far as the same are incidental to the possession of immovable property or so far as they effect the health safety or convenience of the other inhabitants of the place.
- F. That the lessee will at his/her own erect on the demised premises in accordance with the plan, elevation and design, and in a position to be approved by the Vice-Chairman of The Development Authority in writing and in substantial and workman like manner.

A primary School Building According to the layout design, Set back & Building plan to be approved.

With all necessary sewers, drain and other appurtenances, according to the development Authority's rules and byelaws in respect of building, drains latrines and connection with sewer and will commence the construction of such building within the period of one year and will completely finish the same fit for habitation and use within the period of two years from the date of these presents or within such extended period of time as may be allowed by Vice-Chairman of the development Authority in writing.

Docd prepared by.

S.D.C.



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Block- W/1

Scheme no. II Juhf Kalan

- G. That the lessee will demised premises and the building at all times in state of good and substantial repairs and in a sanitary condition to the satisfaction of the Vice-Chairman of the Development Authority.
- H. That the lessee will at his/her own expense enclose the demised premises by means of boundary walls to be constructed according to the plan and design to be approved by the Vice-chairman of the Development Authority and will carefully preserve such walls in good and substantial repair.
- I. That the lessee will not make, or permit to be made any alteration or addition to the said buildings or other erection for the time being on the demised premises or erect or permit to be erected any new building on the demised premises without the previous permission in writing of the terms of such permission and the plan to be approved by the Vice-chairman of the development Authority and in case of any deviation from such terms or plan, will immediately, upon receipt of notice from the Vice-chairman of the development Authority, requiring him/her so, to do correct such deviation as aforesaid, and if the lessee shall neglect to correct the deviation, for the space of one calendar month after the receipt of such notice they shall be lawful for the Vice-chairman of the development Authority to cause such deviation to be rectified by paying to the development Authority (Whose decision shall be final) shall fix in that behalf.
- J. That the lessee will provide and maintain in good repairs a properly constructed road or path to the satisfaction of the Vice-Chairman of the Development Authority leading from the public road to the building to be erected on the demised premises.
- K. That the lessee will not carry on or permit to be carried on the demised premises any Abnoxious trade or business whatsoever or use the same or permit the school to be used for any religious purpose or any purpose other than A Primary School Building As aforesaid Without the previous consent in writing of the Vice-Chairman of the development Authority and subject to such terms and conditions as the Vice-chairman of the development Authority may impose and will not do or suffer to be done. On the demised premises or any part thereof, any act or things which may be or grow to be grow or done or Damage, annoyance or inconvenience to the Development Authority or the owners or occupiers of other premises in their neighborhood.
- L. That the lessee will in no case assign, relinquish mortgage, sublet, transfer or part with possession of any portion less than whole of the premises nor cause any dub division thereof by metes and bounds or otherwise

Deed prepared by.

[Handwritten signature]

[Handwritten signature]
[Red circular stamp]



W/1

Scheme no. II Juhi Kalan

Or otherwise will not, without the previous in writing the Vice-Chairman of the development Authority transfer, sublet, relinquish mortgage or assign his/her interests in the demised premises or, the building standing thereon or both as whole; and every such transfer, sublet, RELINQUISHMENT, mortgage or subletting of the whole of the demised premises or building or both shall be subject to and the transferees, assignees or sub-lessee, shall be bound by all the covenants and condition herein contained and be answerable to the Vice-Chairman of the Development Authority in all respect therefore, PROVIDED always that if the lessee or his/her transferees or permitted assigns, as the case may be, will assign, relinquish mortgage, subject or transfer the demised premises as a whole for the residue of the said term. He/she will deliver at his/her own expense to the Development Authority at its office and attested copy of the assignment, relinquishment, mortgage or transfer deed together with notice thereof within a month after a same shall have been duly registered under the Indian registration Act or any other amending Statute.

M. THAT SUBJECT TO OTHER CONDITION HEREIN CONTAIN IN CASE SUBSEQUENT TRANSFER OR RELINQUISHMENT AS FORSAID, OF THE DEMISED PREMISES WHICH TAKES PLACE BEFORE THE COMPLETION OF THE BUILDING THEREON ACCORDING TO THE PLAN SANCTIONED BY THE Vice-Chairman of the development Authority the Vice-Chairman of the development Authority shall be entitled to realize 40 pc. (forty percent) of the difference in the premium received and paid by than transferor and where the vice-chairman of the development Authority has reason to doubt the genuineness of the premium declared as receive by the transferor. He will a premium which will be the reasonable market value on the date of the proposed transfer. The Vice-Chairman of the Development Authority will have the sole option either to allow the transfer of the premium fixed by him and claim 40 pc. (Forty percent) of the difference in the premium this fixed and the one paid by the transferor to the Development Authority or it may secure a reconveyance of the Lessee's right in the land at the premium alleged to have been obtained by the transferor minus 40 (Forty percent) of the difference between the said premium and the premium previously paid by transferor to the Development Authority No Transaction for such transfer or Relinquishment shall be entered into Completed or considered to be valid unless and until the reasonable premium mentioned above or the aforesaid option to be exercised by the Vice-Chairman of the Development Authority has been fixed or duly exercised by the Vice-Chairman of the Development Authority has been paid and permission to transfer to relinquishment has been duly given by the Vice-Chairman of the Development Authority.

Prepared by,






Scheme no. II Juhi Kalan

Block- W/1

3. AND IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES TO THESE PRESENTS AS FOLLOWING:

A. Notwithstanding anything here in before contained if there shall have been in the opinion of the Vice-Chairman of the Development Authority (whose Decision shall be final and binding) any breach by the lessee or by any person claiming through or under him/her of any one the covenants of condition here in before contained and on his/her part to be observed and performed and in particular and without prejudice to the generally of this sub-clause if the lessee transfers, relinquishes, mortgaged or assigns any part of the demised premises without the previous consent in writing of the Vice-Chairman of the Development Authority as hereinafter provided or, the lessee fails to commence and complete the building in the time and manner herein before provided or if the amounts due to the development Authority as provided in clause 2(m) or rent hereby reserved or the installment of the premium hereinafter mentioned or any part thereof are shall be in arrears and unpaid for a period of one calendar month after becoming due (whether the same shall have been demanded or not) or if the Lessee or the person in whom the term hereby created, shall be vested, shall be adjudged insolvent it shall be lawful for the Development Authority in respect of any breach of agreement) to re-enter the demised or any part thereof in the name of the whole and thereupon this demised shall absolutely cease and determine and the Lessee shall not be entitled.

Whatsoever provided always that the lessee shall be at liberty to remove and appropriate to himself/herself all building, erections and structures, if any made by him/her and all materials thereof from the demised premises after paying up all the dues, premium and lease rent up to date all other taxes, rates assessment then due and all damages and other dues accruing... Development Authority within three months from the determination of the lease and in case of failure on the lessee part to do so, the building and erection standing on the demised premises and all materials thereof shall vest in the Development Authority and the lessee shall then have no right to claim for the refund of the any money paid by him/her to the Development Authority up to that time or to claim any compensation for the structures and materials put up by him/her on the demised premises provided further that if the lessee fails to commence and complete the building in the time and manner herein before provided or if the premises are put to any use other than for which demise was made, or if any dues in arrears the vice-chairman of the Development Authority may, before taking action to re-enter the demised premises as provided in clause (A) above, recover from the lessee damages at the rate of 3% of the premium above mentioned for every month up to the maximum of twelve months during which the breach of the above condition or any one of them continues after one receipt of notice of the Vice-Chairman of the Development Authority and in case of continuance of the said breach after

Deed prepared by.

[Handwritten signature]



[Handwritten signature]



Block W/1

Scheme no.II Jūhi Kalan

- the expiry of (3) three months may then re-enter on the land and determine the lease.
- B. Any losses suffered by the development Authority on a fresh grant of the demised premises for breaches of condition aforesaid on the part lessee or any person claiming through or under him/her shall be recoverable by the Development Authority.
- C. Any notice requiring to be served here under shall be deemed to have been sufficiently served on the lessee if left on the demised premises and signed by the Anubhagya Adhikari/Sahayak Nagar Adhikari (Bikraya) of the Development Authority and a notification of any decision of the Vice-chairman of the Development authority under the head of Anubhagya Adhikari/Sahayak Nagar decision.

In witness whereof the parties here to have set their hands on the day of _____ month _____ and in the year 2021 heroin first above written.

In the presence of:

Shukla Poo
 Leasee
 Jawahar Vidya Samith
 Through its Director Anshir Shukla

Lessor
 Kanpur Development Authority
 Through its Authorized Signatory

Witness 1. Name
 F/W/D Name
 Address
 Mobile no.
 Signature



Witness 2. Name
 F/W/D Name
 Address
 Mobile no.
 Signature



8

We, the KANPUR, DEVELOPMENT AUTHORITY, KANPUR JawaharVidyaSamiti Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117/461, Block O, Geeta Nagar, Naveen Nagar Kakadeo, Kanpur Nagar have, executed a LEASE DEED dated 23.01.2021 on the term and conditions in the print and have paid the stamp duty of Rs. 64,000.00 by means of these stamp sheets which are attached to the document.

Deed Prepared by.

THIS LEASE DEED made on thethis day of.....in the year between Kanpur Development Authority, Kanpur hereinafter called the development Authority Which Expression shall, unless the context dose not so admit and assigns) of the one part and JawaharVidyaSamiti Through its Director Shri Sudhir Shukla S/o, Late S.N.P. Shukla Address 117/461, Block O, Geeta Nagar/Naveen Nagar Kakadeo, Kanpur Nagar hereinafter called the lessee (which expression shall, unless the context dose not so admitincludes his/her heirs executors, administrators, representatives and permitted, assigns) of other part.

WHEREAS A under the provision of Utter Pradesh urban planning & Development Act XI of 1973 relating to the disposal of building sites the Development Authority has agreed to demise and lessee had agreed to take on lease, the plot of land herein after described on the terms and conditions herein after appearing for the purpose of constructing A Primary School Building according to the standard Design and Set Back and building plan to be approved by the vice chairman of the development Authority and WHEREAS such as demise has been confirmed by the predecessor in Interest of the Development Authority.

1. NOW THIS LEASE DEED WITNSSETH AS FOLLOS:

That in consideration of the premium of Rs. 4,41,925,64 (Rupees Four lacs Fourty One Thousand Nine Hundred Twenty-Five and Paise Sixty Four only) out of which whole amount of Rs. 4,41,925.64 (Rupees Four lacs Fourty One Thousand Nine Hundred Twenty Five and Paise Sixty Four only) have been paid by the lessee to the development Authority at the rate of Rs. 86.00 the moeipt where of the development Authority both hereby (acknowledge) And the

Land Cost -Rs 4,41,925.64

Interest - 4,26,366.76

Total -8.68,292.40

With reference to Adm. Order No. 17/2015/708/11 S.V.K.N. -7-15-500 (8)/10 Dated 11.06.2015, there would be reservation of 60% of tuition fee for the wards of Administrative and staffs of Kanpur Administrative Authority and 5% of total admitted students and at least two students.

The education institute shall give reservation of 10% for the students of all the class of the society below poverty line and there would be 60% discount in tuition fee.

Deed Prepared by,

Provision and Agreements herein contained and on the part of the Lease to be respectively paid, observed and performed the development authority both hereby demise and lease to the lesee at

That Plot of the Land Numbered as 70

Situated in Block W/1

At Scheme No. Scheme No. Juhi Kalan

Containing by admeasurements 5138.67 Square Meter be the same of little more or less and bounded

On the North by : 40.00 Feet Road,

On the South by: Plot No. 70 A

On the East by: 40.00 Feet Road

On the West by: 40.00 Feet Road

And which said plot of Land is more clearly delineated and shown in the attached plan to hold the said plot of land premises (Herein after referred to as "the demised premises") the deemed premises} which their appurtenances unto the Lease for the terms of 90 (Ninety) Years from the date of this Lease (Herein after called "the said term") except and always.

Reserving to the Development Authority.

- A. A right to lay water mains, drains, sewers or electric wires under for over the demised premises if deemed by the Vice Chairman of the Development Authority in developing the area.
- B. Full rights and title to all mines and minerals in and under the demised premises or any part thereof.
- C. In consideration of Lease rent amounting to Rs. 44,193.00 (Rupees Forty Four Thousand One Hundred Ninety Three) equal to 10% of the total amounts of premium having paid in advance in pursuance with G.O. No. 6795/115 80 N I-86, dated 23-10-1986 for the entire period of lease.

This Deed is executed pursuant to order dated 19.12.2003 by the District Consumer Redressal Forum, Kanpur and affirmed by State Consumer Redressal

Forum and further approved by National Consumer Dispute Redressal Commission and also by approval of Vice Chairman, Kanpur Development Authority dated 11.01.2021.

2. AND THE LEASE DEED HEREBY COVENANT WITH THE DEVELOPMENT AUTHORITY IN THE MANNER FOLLOWING:

Deed prepared by,

(besides other available here under to recover the whole of the premium due on the date of such default or to recover only the installment or installments in respect of which the default has been made together with cost and interests st.....x...x-percent per annum on the installments in arrears up to date of realization. Such dues besides other means of recovery shall also be recoverable in the manner provided under Section 40 of the Urban Planning & Development Act XI of 1973.

B. That the building to be constructed on the demised premises shall remain hypothecated for payment of the yearly lease rent and the amount of dues payable to the Development Authority as provided in clause 2 (m), the balance of the premium and Interest due thereon and they are hereby hypothecated by the lessee in favor of the Development Authority and the amount due as aforesaid shall constitute the first charge thereon.

C. That the lessee will pay unto the development authority at its office or as otherwise directed, the said yearly rent clear of all deduction on the days in the manner herein appointed for payment thereof and if the said yearly lease sent or part thereof remains in arrears, the vice Chairman of the Development Authority shall duly recover the same together with ...percent interest and cost.

D. That the lessee will bear, pay and discharge all rated, taxes, charges and assessment of every description which may during the said term be assessed charged or impounded upon either on the landlord or the tenant or the occupier in respect of the demised premises or the building erected thereupon.

E. That the lessee will obey and submit to all byelaws and rules of the Kanpur Development Authority, sow existing or hereafter to exists so far as the same are incidental to the possession of Immovable property or so far as they effect the health safety or convenience of the other inhabitants of the place.

F. That the Lessee will at his/her own erect on the demised premises in accordance with the plan, elevation and design, and in position to be approved by the Vice-Chairman of The Development Authority in writing and in substantial and workman like manner.

A Primary School Building According to the layout design. Set back & Building plan to be approved.

With all necessary sewers, drain and other appurtenances, according to the development Authority's rules and bylaws in respect of building, drains latrines and connection with sewer and will commence the construction of such building within the period of one year and will completely finish the same fit for habitation and use within the period of two years from the date of these presents or within such extended period of time as may be allowed by Vice-Chairman of the development Authority in writing.

Deed prepared by,

G. That the lessee will demise premises and the building at all urges in state of good and substantial repairs and in a sanitary condition to the satisfaction of the Vice-Chairman of the Development Authority.

H. That the lessee will at his/her own expense enclose the demised premises by means of boundary walls to be constructed according to the plan and design to be approved by the Vice-chairman of the Development Authority and will carefully preserve such walls in good and substantial repair..

I. That the lessee will not make, or permit to be made any alteration or addition to the said buildings or other erection for the time being on the demised premises or treat or permit to be erected any new building on the demised premises without the previous permission in writing of the terms of such

permission and the plan to be approved. By the Vice-chairman of the development Authority and in case of any deviation from such terms or plan, will immediately, Upon receipt of notice from the Vice-chairman of the development Authority, requiring him/her so, to do correct such deviation as aforesaid, and if the lessee shall neglect to correct the deviation for the space of one calendar month after the receipt of such notice then it shall be lawful for the Vice-chairman of the development Authority to cause such deviation to be reimburse by paying to the development Authority (Whose decision shall be final) shall fix in that behalf.

J. That the lessee will provide and maintain in good repairs a properly constructed road or path to the satisfaction of the Vice Chairman of the Development Authority leading from the public road to the building to be erected on the demised premises.

K. That the Lessee will not carry on or permit to be carried on the demised premises any noxious trade and business whatsoever or use the same or permit the school to be used for the religious purpose or any purpose other than a Primary School Building as aforesaid without the previous consent in writing of the Vice Chairman of the Development Authority and subject to such terms and conditions as the Vice Chairman of the Development Authority may impose and will not do or suffer to be done. On the demised premises or any

part there of any act of things which may be or grow to be grow or done or Damages, annoyances or inconveniences to the Development Authority or the owners or occupiers of other premises in their neighbourhood.

L. That the Lease will in no case assign, relinquish, mortgage, sublet, transfer or part with possession of any portion less than whole of the premises nor cause any sub division thereof by metes and bounds or otherwise.

3. That the lessce will provide and maintain in good repairs a properly cocated road se path to the satisfaction of the Vice-Chairman of the Development Authority leading from the pubila road to the building to be eructed on the demised premlaes

K. That the Insses will no carry on or permalt to bo carried on the damlandpesmianawyAkousupdo or business whatever or uss the same or permit the school to be and for say 'refigious purpose or any purpose other than A Primary School Building As alwald Without the previous consent in writing of the Vice-Chalanan of the development Authority and subject to such terms and conditions as the Vice-chairman of the developausetAntracity may impose and will not do or ruffer to be dona. On the demised pranians or any part thanol, any act of things which may be or grow to be grow or doon or Damage, anbeyance

or laccaverience toDevelopment Authority or the owners or occuplars of other premists in their neighbuhood.

Or otherwise will not, without the previous in writing the Vice-chairman of the development Authority transfer, sublet, relinquish mortgage or assign his/her interests in the demised premises or, the building standing thereon or both as whole; and every ... transfer, sublet RELIQUISHMENT, mortgage or subletting of the whole of the damised premises or building or both shall be subject to and the transferees, assignees or sub-lessee, shall be bound by all the covenants and condition herein contained and be answerable to the Vice-chairman of the Development Authority in all respect therefore, PROVIDED always that if the lessee or his/her transferees or permitted assigns, as the case may be will assign relinquishes mortgage, subject or transfer the demised premises as a whole for the residue of the said term. He/she will deliver at his/her own expense to the Development Authority at his office and attested copy of the assignment, relinquishment, mortgage or transfer deed together with notice thereof within a month after a same shall have boon duly registered under the Indian registration Act or any other amending Status.

M. THAT SUBIBCT TO OTHER CONDITION HERBIN CONATIN IN CABE SUSEQUENT TRANSFER OR RELINQUISHMENT AS FORBSAID, OF THE DEMISES PREMISES WHICH TAKES PLACE BEFORE THE

COMPLETION OF THE BUILDING THEREON ACCORDING TO THE PLAN SANCTIONED by the Vice- Chairman of the development Authority the Vice-Chairman of the development Authority shall be entitled to realize 40 po. (forty percent) of the difference in the premium received and paid by then transferor and where the vice-chairman of the development Authority has reason to doubt the genuineness of the premium declared as receive by the transferor. He will a premium which will be the reasonable market value on the date of the proposed transfer. The Vice-Chairman of the Development Authority will have the sale option either to allow the transfer of the premium fixed by him and claim 40 % (Forty percent) of the difference in the premium this fixed and the one paid by the transferor to the Development Authority or it may secure reconveyance of the Lessee's right in the land at the premium alleged to have been obtained by the transfer minus 40(Forty percent) of the difference between the said premium and the premium previously paid by transferor to the Development Authority No Transaction for such transfer or Relinquishment shall be entered Into Completed or considered to be valid unless and until the reasonable premium mentioned above or the aforesaid option to be exercised by the Vice-Chairman of the Development Authority has been fixed or duly exercised by the Vice-Chairman of the Development

Authority has been paid and permission to transfer to relinquishment has been duly given by the Vice-Chairman of the Development Authority.

N. That the lessee will permit ne members, officers and subordinates of the development Authority and workmen and others employed by them at all reasonable time of the day during the said after three days, previous notice or enter into and upon the demised premises in order to inspect the same and carry on necessary works mentioned herein before and the lessee will give notice of the liability specified in this sub clause to his/her tenants.

O. That the lease will not make any excavation upon any part of the demised premises and Remove any stone, sand, gravel, clay earth or any other materials there from.

P. That the lessee will be jointly and severally responsible for the observation of the terms and conditions mentioned herein before for the payment of all dues, due to Development Authority and any violation of any of term and condition by any of the lessees shall be deemed to be a violation by both and it will be lawful for the Development Authority to take action under the terms of the Deed against both of the lessees.

Q. That the lessee will not erect or permit to be erected on any part of the demised premises any stables, sheds or other structure of any description what

over for keeping horses, cattle, dogs, poultry or other animals except and in so far as may be allowed by the Vice-chairman of the Development Authority in writing.

R. That the lessee will not exercise his/her option of determining the lease not hold the Development Authority responsible to make good the damage if by fire/ tempest/ flood or violence of army or a mob or other irresistible force, any, material part of the demised premises be wholly or partly destroyed or rendered substantially or permanently unfit to be used for residential purposes.

S. That the lessee shall have no easement right to work on the said property on the uphold side of the demised premises.

T. That the lessee is fully acquainted with the provision of the urban land (ceiling and regulation) Act 1976.

U. That the lessee hereby declares that the land held, by the lessee in any of the Urban agglomeration covered under the Urban Land (Ceiling and Regulation) Act 1976 in within the ceiling limit on vacant land imposed by said act in the event of the aforesaid plot of land being declared as excess vacant land by the competent Authority under the Urban Land (Ceiling and Regulation) Act 1976. He shall abide by the decision of the Competent Authority under the Act.

Deed prepared by.

3. AND IS HEREBY AGREED AND DECLARED BY AND BETWEEN
THE PARTIES TO THESE PRESENTS AS FOLLOWING:

A. Notwithstanding anything bare la better contained if there shall have been in the opinion of the Vice-Chairman of the Development Authority (whose Decision shall be final and binding) any breach by the lessee or by any person claiming through or wider him/her of any one the covenants or condition here in before contained and on his/her part to be observed and performed and in particular and without prejudice to the generally of this sub clauses if the lessen transfers, relinquishes, mortgaged or assigns any part of the demised premise without the previous consent in witting of the Vice-Chairman of the Development Authority as herein before provided or, the lessee fails to commence and complete Authority as hereinafter provided of, the lessee falls to commence and complete the building in the time and in manner hereinbefore provided or if the amounts due to the development Authority aa provided in clause 2(m) or rent hereby reserved or the installment of the premium hereinbefore mentioned of any part that shall be arrearand unpaid for a period of me calendar month after becoming due (whether the same shall have been demanded or not) or if the Lessee or the

person in whom the term hereby created shall be vested, shall be adjudged insolvent it shall be lawful for the Development Authority in respect of any breach of agreement) to re-enter the demised or any part thereof in the name of the whole and thereupon this deed shall absolutely cease and determine and the Lessee shall not be entitled.

Whatsoever provided always that the man shall be at liberty to remove and appropriate to himself/herself all building erections and structures, if any made by him/her and all materials thereof from the demised premises after paying up all due, premium or at least rent up to date all other taxes, rates, assessment then due and all damages and other dues accruing. Development Authority within three months from the determination of the Lease and in case of failure on the lessee part to do so, the building and the erection standing on the demised premises and all material shall vest in the Development Authority and the Lessee shall then have no right to claim for the refund of the money paid by him/her to the Development Authority up to the time or claim any compensation for the structures and materials put up by him/her on the demised premises provided further that if the lessee fails to commence and complete the building in the time and manner herein before provided or if the premises are put to any use other than for which demise was made or if any does or arrears the Vice Chairman of the

Development Authority may before taking action to re enter the demised premises as provided in clause A above recover from the lessee damage at the rate of 6 pc of the premium above mentioned for every month up to the maximum of twelve months during which the breach of the above condition or any one of them continues after one receipt of notice of the Vice Chairman of the Development Authority and in case of continuance of the said reach after the expiry of 3 months may then re-enter on the land and re-enter the lease.

B. Any losses suffered, by the development Authority on a fresh great of the demised premises for breaches of condition aforesaid on the part lease or any person claiming through on under him/her shall be recoverable by the Development Authority.

C. Any notice requiring to be served hers under shall be deemed to have been sufficiently served on the lessee if left on the demised premises and signed by the AnubhagiyaAdhikari/Sahayak Nagar Adhikari (Bluraya) of the Development Authority and a notification of any decision of the Vice-chairman of the Development authority under the head of AmubhagiyaAdhikari/SahayakNigar decision.

In witness whereof the partled here to have set their hands on the day of and in the year 2021 herein first above written, In the presence of:

Lessee

JawaharVidyaSamiti

LESSOR

Kanpur Development Authority

ANNEXURE R-15

Kanpur Development Authority

Office of the Deputy Secretary (Zone 3)/
World Bank

(AUTHORITY LETTER)

D/2986/J53.2021

DATED: 03.2.21

Jawahar Vidya Samiti through Director,
Shri Sudhir Shukla son of Late S.N.P. Shukla,
resident of 117/461, Block - O, Block - O,
Gita Nagar/Naveen Nagar, Kaka Dev, Kanpur
Nagar.

Subject: Regarding getting possession of Plot
No. 70, Block-W/1, Scheme - II, Juhi
Kalan.

You have got done registration/lease hold
of the above-said plot on dated 23.1.2021. It
is informed to you to get possession within one
month to receipt of this letter, otherwise,
chowkidari fee as per rules shall be payable,
you shall be totally responsible for that.

Yours faithfully

Sd/- illegible

03.2.2021

Office Superintendent

Heena

True True Copy

Copy to - Executive Engineer Zone-3 with the request to hand over possession to the allottee.

Office superintendent

Attested signatures

Verified

Signatures of allottee

Name and Rank:

.....

Heene

True Transcribe copy

ANNEXURE R-16**Office of Chief Engineer Nagar Nigam Kanpur**

Ref No.: D/113/Chief Engineer/22-23

Date: 21.05.22

Officer-in-charge (property)

Please take the reference of letter of Hon'ble MP Shri Ashok Kumar Rawat attached with the letter. In the said letter, Hon'ble MP directed for the investigation of the the land allotted by the Horticulture Officer of the Nagar Nigam on the school land of 70 W Block Juhi Kala, Kanpur Nagar from the KDA plot.

In relation to the above, it is to be informed that Kanpur's Horticulture Department, through its office letter D/876/Garden-2018-19 dated 22.09.2018, had allotted permission for maintenance of Pachvati Horticulture near Andhmuk Badhir Vidyalaya located at W-1 Saket Nagar to Mr. Bhupesh Awasthi, President, Bhagwan Parshuram Mahasabha for one year, which has been automatically cancelled after the expiry of the time limit. Hon'ble MP has informed that the said land belongs to Jawahar Vidya Samiti and has mentioned for cancellation of the said allotment from the Nagar Nigam .

Therefore, it is requested that an inquiry be conducted into the status of the land allotted by the Horticulture Department and that steps be taken to inform about its ownership.

(S/d)

Chief Engineer

Copy to:

1. Additional Municipal Commissioner (First) for information.

Chief Engineer

In-charge Officer Property

Sir,

In compliance with your order dated 31.05.2022, it is to inform you that in the matter of KDA plot number-70 W Block Juhi Kala Saket Nagar, the letter given by the Hon'ble MP along with the file, which is related to getting the unethical and illegal allotment done by the Horticulture Officer of the Nagar Nigam on the school land of KDA plot number-70 W Block Juhi Kala Kanpur Nagar investigated. On which it is mentioned in the letter D/113/Mu. Abhi./22-23 dated 21.05.2022 issued by the Chief Engineer's Office that for garden maintenance, it was allotted to Shri Bhupesh Awasthi, President, Bhagwan Parshuram Mahasana for one year, which has been automatically cancelled after the expiry of the time period. Please take the note of looking into it.

In this regard, it is to be informed that in pursuant of the order of the Hon'ble Supreme Court, the KDA has taken the action of allotment of the above mentioned plot number-70 W Block Juhi Kala in the name of Jawahar Vidya Samiti for 99 years. In such a situation, on the basis of the enclosed documents, the ownership of the above mentioned plot/land is not found to be of the Nagar Nigam. The report has been sent for information and further action.

S/d

In-charge Officer Property

Nagar Nigam Kanpur

Office of the Executive Engineer (Provisional)
Municipal Corporation Kanpur

Letter No.: D/63/Executive Engineer/2022-23

Date: 03/06/22

To,

The Manager

Jawahar Vidya Samiti

117/461, Block O, Geeta Nagar/Naveen Nagar

Kakaeo, Kanpur .

Sir,

It is to inform you the land of plot number-70 W Block Juhi Kala has been allotted by KDA in the name of Jawahar Vidya Samiti for 99 years on the orders of the Hon'ble Supreme Court. On the basis of which, as per the report of the Officer-in-Charge Property dated 02.06.2022, the ownership of the property of Kanpur Nagar Nigam is not found on the referenced plot/land.

Kindly take note of the above.

S/d
Environment/Executive Engineer
Nagar Nigam Kanpur

Copy to:-

1. Chief Engineer for information.

S/d
Environment/Executive Engineer
Nagar Nigam Kanpur

fixed in August 2022 for hearing the case so that the opponent party through Hon'ble High Court in PIL No. 518/22 get a suitable order in his favour.

It is undisputed that in execution of the decree, a registered sale deed was executed by the opposite party in favour of the complainant decree holder on 23.01.2021. It is also undisputed that a power of attorney was issued by the opposite party in favour of the decree holder, on the basis of which the complainant / decree holder could get possession of the property of the deed.

According to the opposite party in compliance with the order of the District Commission, the engineer of the opposite party went to measure the land in question to get possession of it there they found that a park has been developed there by the Nagar Nigam of Kanpur and it has been put to use for morning walks and yoga etc. It is said that when the opposite party tried to get possession of the land, the local citizens started protesting and even made a ruckus in protest. In protest of the same they filed an PIL bearing P.I.L No-518/22 before Hon'ble High Court . In this regard, the Opposite party has mentioned "The UP Parks, Play grounds and open Spaces Preservation and Regulation Act 1976." In which every city Nagar Nigam has been directed to make a list regarding Parks, Play grounds and Open Spaces and declare it in the above situation. It is

also stated in the above rule that if any person has an objection against the above scheme or list, then he can present his objection within three months. There is no dispute in the above legal situation. An objection has been presented against the above application by the Decree Holder. In which it is said that the opponent has wrongly mentioned "The UP Park, Play grounds and open Spaces Preservation and Regulation Act 1975." Whereas the above provisions are not applicable in the present case. It is said that the decree has been partially implemented by the opponent himself. In such a situation, there is no justification for implementing the above Act. The opponent himself has given the plot to the complainant for building a school by resolution no. 38/39 dated 19.01.1984. The opponent is bound to obey the order of the District Commission and a plea was made to dismiss the application. As has already been said that the opposite party has allotted the plot to the complainant/seller and as per the order of the District Commission, the letter has also been executed and the title deed has also been given. It is only a question of giving possession. While the decree is in force, possession should definitely be given to the complainant/decreed holder and in compliance with the decree, it is the responsibility of the opposite party to give possession to the complainant.

As far as the question is concerned that PIL No. 518/22 is pending before the Hon'ble High Court, it is necessary to clarify here that the copy of the PIL which has been filed as an attachment has been filed by a person Ravi Pandey and Bhagwan Parshuram Mahasabha. In which the opposition Uttar Pradesh Government, Kanpur Nagar Nigam, Kanpur Development Authority and District Magistrate Kanpur Nagar have been made parties. It is also clear that even if the said writ is accepted by the Hon'ble High Court, then what will be the effect of this writ? To which it is stated that there will be no adverse effect on the present decree, because nowhere in the said writ petition has the Decree in question passed by the District Commission been challenged nor has the complainant been made a party. In such a situation, the right of any third party will not be affected by the decision of the dispute existing between the other parties.

As far as the statement made by the opposite parties is concerned that a park has been developed on the land related to the case in question and "The UP Parks, Play grounds and open Spaces Preservation and Regulation Act 1978" has been mentioned in relation to the park, it is also necessary to clarify that the opposite parties have not challenged the implementation of the decree on the basis of the above Act. Rather, it has been said that the date of

August should be fixed so that the opposite parties can obtain the appropriate order from the Hon'ble High Court. That is, it is clear that the decree has to be executed by the opposite parties. There should not be any confusion that the decision should be taken on the basis of P.I.L. No. 518/22 pending before the Hon'ble High Court. The opposition is free to any remedy from any other courts, but on this ground the execution of the decree cannot be stopped and it is the responsibility of the opposite party that where the deed has been partly executed by executing the sale deed and issuing the power of attorney, he should also ensure execution of the remaining part under the decree.

An application has been given on behalf of the complainant under Section-27 (present Section-72) Consumer Protection Act 1986, but on the basis of the facts mentioned above, no further review is required on the above application because in compliance with the decree, the opposite party has executed the deed and also executed the authority letter in favor of the decree holder and to ensure the possession proceedings, also they have sent their engineer and staff on the spot, but due to public protest, the possession proceedings could not be done and a case [litigation] was also presented before the Hon'ble High Court. Since the proceedings under Section-72 are of criminal nature, in which the provisions of criminal trial are

applicable and from the observation of all the facts, it is clear that the possession process can be done by the opponent and There is no willful disobedience.

It is also necessary to clarify here that at present the District Commission is only executing the decree and exercising the authority of the Executing Court. Apart from the implementation of the decree, the Executing Court has no right to take any decision beyond the decree. Hence, there is no justification for reviewing other points.

Clarifying the situation in the light of all the above facts, the opposite party is ordered to ensure the action of taking possession. Since public protest has also been reported on the spot, it is possible that the opposite party may take some time or may need police force. Therefore, it is necessary that the opposite party should be given a reasonable time for action.

It is hereby ordered that in implementation of the decree, the proceedings for taking possession of the questioned property be completed and the property be handed over to the decree holder. The compliance report should be submitted on 10.08.2022.

S/d
(15/07/2022)
Rakesh Pratap Singh
Member

S/d
(15/07/2022)
Bikanu Ram


True Translated Copy

Court

District Consumer Redressal Forum,

Kanpur Nagar

Jawahar Vidya Samiti

versus Kanpur Development
Authority & Ors

Petition-04/2020

27.04.2023

The file was presented. An application for adjournment has been filed by the opposite party, but proceedings under the Consumer Protection Act under Section 72 are going on against the Opposite party. In such a situation, the personal presence of the opposite party is necessary. Therefore, there is no justification for the application for adjournment and it is rejected.

On 22.03.2023, an order was passed by this Commission that proceedings under Section-72 of the Consumer Protection Act be initiated against the opponent and the opponent was summoned to present his side on the point as to why he should not be held guilty and punished for disobeying the order of the Commission. Even after that the opponent did not appear. Since the proceedings under Section-72 are a criminal proceeding, in which there is a provision for punishment. Therefore, it is necessary that the said proceedings be conducted in the presence of the opponent, but the opponent is not appearing. Therefore, it is necessary to summon him through a

warrant. Accordingly, a non-bailable warrant should be sent to S.H.O Sawarup Nagar for execution against the Vice President of the Kanpur Development Authority for appearance before the Commission.

Presented on 27.05.2023 for hearing/order and presence of opponent for the case.

S/d

(27/04/2023)

Neelam Yadav

Member

S/d

(27/047/2023)

Bikanu Ram

ANNEXURE R-19**Court No. - 3**

Neutral Citation No. - 2023:AHC:116206-DB

Case :- WRIT - C No. - 17800 of 2023**Petitioner :-** Kanpur Development Authority**Respondent :-** District Consumer Dispute And Redressal Kanpur Nagar And Another**Counsel for Petitioner :-** Anand Prakash Paul**Counsel for Respondent :-** Sanjeev Kumar Tyagi**Hon'ble Surya Prakash Kesarwani,J.****Hon'ble Anish Kumar Gupta,J.**

1. Heard Sri Shashi Nandan, learned Senior Advocate assisted by Sri A.P. Paul, learned counsel for the petitioner and Sanjeev Kumar Tyagi, learned counsel for the respondent No.2.

2. This writ petition has been filed praying for the following relief:

"I. Issue a writ, order or direction in the nature of certiorari calling for record of the case, quash the impugned orders dated 3.2.2023 (Annexure-24 and 27.04.2023 (Annexure -26) passed Respondent No. 1.

II. Issue a writ, order or direction in the nature of mandamus commanding respondents not to give effect to and not to implement the impugned order dated 03.02.2023 (Annexure-19) and 27.04.2023 (Annexure-22) passed by Respondent No. 1.

III. Issue any other suitable writ, order or direction as this Hon'be Court may deem fit and proper in the peculiar facts and circumstances of the case, so as to meet the ends of justice."

3. The impugned order dated 03.02.2023 filed as Annexure-24 to the writ petition is an order passed on application of the respondent No.2 under Section 72 of the Consumer Protection Act, 2019 (hereinafter referred to as 'the Act, 2019') requiring the petitioner to submit his explanation within ten days and the next date was fixed for 16.02.2022. The impugned order dated 27.04.2023 has been filed as Annexure-26 to the writ petition, whereby due to non-compliance of the order, the respondent No.1 issued a warrant to require the presence of the Vice Chairman of the petitioner.

4. This case is a glaring example of high-handedness of the petitioner and

continuous harassment being caused by the petitioner to the respondent No.2. The petitioner has also not hesitated to make false statement and to file false affidavit before this court which shall be evident from the facts now being narrated below.

5. Undisputedly, the petitioner allotted to the respondent No.2 a plot No.70 W/1 Block of Scheme Juhi of Kanpur, measuring 5138.67 square meters by order dated 19.01.1984. The lease was for a period of 99 years. The respondent No.2 complied with the terms of the allotment order but since lease deed was not being executed and possession was not handed over, therefore, the respondent No.2 filed a Complaint Case No.1222 of 2002 (Jawahar Vidya Samiti vs. Kanpur Development Authority and another), which was allowed by order dated 19.12.2003 passed by the District Consumer Forum, Kanpur. The operative portion of the order is reproduced below:

“परिवादी संस्था का उपभोक्ता वाद स्वीकार किया जाता है। विपक्षी सं०-1 को आदेश दिया जाता है कि वह परिवादी संस्था से एकमुश्त विवादित भूखण्ड का अवशेष ¼ मूल्य रूपया 3,31,444.22 पैसा दिनांक 11.5.1984 से 22.3.97 तक 10 प्रतिशत वार्षिक ब्याज सहित एक माह के अंदर जमा कराकर, उसके पक्ष में भूखण्ड का अग्रिम दो माह के अंदर निबंधन करके अध्यासन प्रदान करे। यदि परिवादी एक माह के अंदर एकमुश्त अवशेष धनराशि विपक्षी के खाते में जमा नहीं करता है तो वह निर्णय के दिनांक से 21 प्रतिशत वार्षिक ब्याज भी उक्त धनराशि पर विपक्षी को भुगतान करेगा।

उभय पक्ष अपना-अपना वाद व्यय स्वयं वहन करें।”

6. Against the aforesaid order, the petitioner filed an Appeal No.165 of 2004 (Kanpur Development Authority through Vice Chairman vs. Jawahar Vidya Samiti) before the State Consumer Disputes Redressal Commission, U.P. Lucknow, which was dismissed by order dated 03.07.2015 and the judgment and order of the District Consumer Forum dated 19.12.2003 was affirmed. Against the order of the State Consumer Disputes Redressal Commission, the petitioner filed a Revision Petition No.3201 of 2015 before the National Consumer Disputes Redressal Commission, New Delhi which was also dismissed by judgment and order dated 28.11.2019. Against the aforesaid judgment and order of the National Consumer Disputes Redressal

Commission, New Delhi, the petitioner filed a Special Leave Petition (Civil) Diary No(s).24590/2020, which was dismissed by Hon'ble Supreme Court by order dated 15.12.2020. Thereafter, the petitioner executed a registered lease deed dated 23.01.2021 in favour of the respondent No.2 for the aforesaid plot No.70. However, the petitioner did not give possession of the aforesaid plot to the respondent No.2 and instead to harass the petitioner, he obtained a report from his Executive Engineer that the plot in question is being used by local residents as park. An Execution Case No.4 of 2020 was filed by the respondent No.2, which was pending before the District Consumer Disputes Redressal Commission, Kanpur Nagar for execution of the judgment and order dated 19.12.2003 which stood affirmed upto Supreme Court. Proceeding with his further approach of harassment to the respondent No.2, the petitioner has passed an order on 04.07.2022 proposing to cancel the allotment and to return the deposited amount of Rs.9,13,485.40 with simple interest @ 9% per annum. He proposed to file a case before the competent authority for cancellation of the lease deed dated 23.01.2021. Aggrieved, the respondent No.2 filed Writ-C No.23521 of 2022, which is pending. Thereafter, the petitioner herein filed Writ-C No.30250 of 2022, in which he made two statements before this court, as under:

(i) Land has been declared as Park, therefore, the order of the Consumer Forum has become inexecutable.

(ii) Petitioner may be permitted to give another piece of land.

7. The order dated 22.12.2022 passed in Writ-C No.30250 of 2022 (Kanpur Development Authority vs. District Consumer Dispute And Redressal And Another) is reproduced below:

“Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Shivam Yadav, learned counsel for the petitioner.

The case of the petitioner is that the order dated 19.12.2003 passed by the District Consumer Dispute Redressal Forum, Kanpur Nagar, Kanpur/respondent no.1 is though unimplementable, is being sought to be executed by the respondent no.2. Learned Senior Counsel Sri Anoop Trivedi assisted by Sri Shivam Yadav has stated that at the time when the order was passed by the

respondent no.1 the land could be sold but now when that land has been declared a park, the order of the Consumer Forum has become inexecutable.

Learned Senior Counsel prays that this Court may order that the petitioner may be permitted to give another piece of land instead of the land which the respondent no.1 has ordered the petitioner to sell to the respondent no.2.

In view of the above submission, we consider it appropriate that the petitioner may file an appropriate application before the District Consumer Dispute Redressal Forum. If the application is filed within one week from today, the respondent no.1-District Consumer Dispute Redressal Forum, Kanpur Nagar would pass appropriate orders within a period of two weeks thereafter in accordance with law.

With above observation, the writ petition is disposed of.”

8. Thereafter, the petitioner herein filed an application dated 06.01.2023 before the respondent No.1 praying to keep on hold the execution proceedings in view of the aforequoted order of the High Court dated 22.12.2022. Against the aforesaid application, the respondent No.2 filed objection dated 11.01.2023 praying for rejection of the application and to initiate proceedings under Section 72 of the Act, 2019. On 02.02.2023 the petitioner herein filed yet another application praying for a month's time to provide proper plot to the decree-holder, i.e. the respondent No.2. It appears that an internal correspondence took place between the Tehsildar, Kanpur Development Authority, Kanpur and Special Officer (Law) but no plot in alternative could be offered by the petitioner to the respondent No.2.

9. Under the briefly aforementioned facts of the case, proceeding under Section 72 of the Act, 2019 was sought to be initiated against the petitioner and in that connection, the respondent No.1 directed to the petitioner by order dated 03.02.2023 to submit explanation within ten days. It appears that the petitioner has submitted some application dated 16.02.2023 to which an objection dated 27.02.2023 was filed by the respondent No.2 praying to reject the application of the petitioner and pass an order under Section 72 of the Act, 2019. In these circumstances, the respondent No.1 has passed an order dated 27.04.2023, as under:

27.04.2023

पत्रावली पेश हुई। विपक्षी की ओर से स्थगन प्रार्थना पत्र दिया गया है, परन्तु विपक्षी के विरुद्ध धारा-72 उपभोक्ता संरक्षण अधिनियम की कार्यवाही चल रही है। ऐसी स्थिति में विपक्षी की व्यक्तिगत उपस्थिति आवश्यक है। अतः स्थगन प्रार्थना पत्र का कोई औचित्य नहीं है और खारिज किया जाता है।

दिनांक 22.03.2023 को इस आयोग द्वारा आदेश पारित किया गया कि विपक्षी के विरुद्ध धारा-72 उपभोक्ता संरक्षण अधिनियम की कार्यवाही अग्रसर की जाती है और विपक्षी को तलब किया गया, कि वह उपस्थित इस बिन्दु पर अपना पक्ष रखे कि क्यों न उसे आयोग के आदेश की अवहेलना के लिये दोषी मानते हुये दण्डित किया जाये। उसके बाद भी विपक्षी उपस्थित नहीं आया। चूंकि धारा-72 की कार्यवाही एक दायित्व कार्यवाही है, जिसमें सजा का प्राविधान है। अतः उक्त कार्यवाही आवश्यक है कि विपक्षी की उपस्थिति में की जाये, परन्तु विपक्षी उपस्थित नहीं हो रहा है। अतः उसे वारण्ट के द्वारा तलब किया जाना आवश्यक है। तदनुसार विपक्षी कानपुर विकास प्राधिकरण के उपाध्यक्ष के विरुद्ध आयोग के समक्ष उपस्थिति हेतु गैर जमानती वारण्ट तामीला हेतु थानाध्यक्ष स्वरूप नगर को भेजा जाये।

पत्रावली वास्ते सुनवाई/ आदेश व विपक्षी की हाजिरी हेतु दिनांक 27.05.2023 को पेश हो।

(नीलम यादव)

(बिकानू राम)

सदस्या

अध्यक्ष”

10. The aforequoted order dated 27.04.2023 has also been challenged in the present writ petition.

11. Section 72 of the Consumer Protection Act, 2019 reads, as under:

“Section 72. Penalty for non-compliance of order.

(1) *Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.*

(2) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.*

(3) *Save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.”*

12. Sub-Section (1) of Section 72 of the Act, 2019 provides that **whoever fails to comply with any order** made by the District Commission or the State

Commission or the National Commission, as the case may be, **shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.** Sub-Section (2) of Section 72 confers upon the District Commission, the State Commission or the National Commission power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.

13. It is undisputed that the petitioner has failed to comply with the order of the District Commission as briefly noted above, particularly the order dated 03.02.2023 and has also not complied with the order of the this Court dated 22.12.2022 in Writ-C No.30250 of 2022.

14. Since despite time granted to the petitioner, the petitioner failed to comply with the order of the District Consumer Disputes Redressal Commission, Kanpur Nagar as aforementioned, therefore, the respondent No.1 has lawfully exercised powers vested in it by virtue of sub-Section (2) of Section 72 of the Act, 2019 which resulted in passing of the impugned orders dated 03.02.2023 and dated 27.04.2023 passed by the respondent No.1, are well in accordance with law.

15. Apart from the above, we repeatedly asked learned counsel for the petitioner to produce before us any notification under the U.P. Parks, Playgrounds and Open Places (Preservation and Regulation) Act, 1975 declaring plot No.70 as a park. On the other hand, learned counsel for the respondent No.2 has produced before us an office note of the Officer Incharge (Assets) Nagar Nigam, Kanpur dated 02.06.2022 in which it has been mentioned that the KDA Plot No.70 W/1 Block of Scheme Juhi of Kanpur was illegally and unauthorisedly allotted for one year by the Udyan Adhikari for

maintenance to one Sri Bhupesh Awasthi, President, Bhagwan Parashuram Mahasabha which period having expired, the allotment also has to be cancelled and the aforesaid plot is not the property of the Nagar Nigam nor it is owned by Nagar Nigam.

16. We have noticed these facts in just preceding paragraph merely for the purposes to make assessments of the high-handedness and harassment attitude of the petitioner against the respondent No.2, who having contested the matter for about 21 years, is not allowed to use the plot allotted to him and also in terms of the registered lease deed. Therefore, for the continuous harassment being caused by the petitioner to the respondent No.2, and dragging in litigation for about 21 years deserves to be awarded exemplary cost which we assess at Rs.5,00,000/-.

17. For all the reasons aforestated, the writ petition is dismissed with cost of Rs.5,00,000/- which shall be paid by the petitioner to the respondent No.2 within a week by way of account payee bank-draft.

Order Date :- 24.05.2023

NLY

ITEM NO.64

COURT NO.7

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SPetition(s) for Special Leave to Appeal (C) No(s). 13906/2023

(Arising out of impugned final judgment and order dated 24-05-2023 in WC No. 17800/2023 passed by the High Court Of Judicature At Allahabad)

KANPUR DEVELOPMENT AUTHORITY

Petitioner(s)

VERSUS

DISTRICT CONSUMER DISPUTE REDRESSAL & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.125235/2023-EXEMPTION FROM FILING O.T.)

Date : 10-07-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Mr. Tushar Mehta, Solicitor General
Ms. Harshita Raghuvanshi, AOR
Mr. Shashank Kumar, Adv.

For Respondent(s) Mr. S.Nagamuthu, Sr. Adv.
Mr. Rameshwar Prasad Goyal, AOR
Mr. Manish Shukla, Adv.
Mr. Ashish Shukla, Adv.
Ms. Shweta Yadav, Adv.
Mr. C.m.angadi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Tushar Mehta, learned Solicitor General as also the learned senior counsel for the respondents. In so far as the merits of the impugned order, we see no reason to interfere. However, in the peculiar facts and circumstances of the instant case, we do not approve of the cost of Rs.5 Lakhs, which has been imposed upon the petitioner-authority. Hence, the cost imposed is waived.

The cost of Rs. 5 Lakhs, which is said to have been deposited by the petitioner-Authority, may be withdrawn by the petitioner. On execution of the order, if any action to be taken arises, to that extent, the right to proceed as per law, is left open.

Further, we make it clear that the non-interference with the impugned order herein, shall not preclude the authorities in proceeding in accordance with law after providing opportunity to the respondents herein. In that regard, all contentions of the parties urged in Writ Petition(C) No. 23521/2022 are left open to be urged and this Order shall not come in the way of the High Court considering it in accordance with law.

However, time of four weeks is granted to comply the Order before the Executing Order.

Petition is accordingly, disposed of along with the pending application(s), if any.

(NISHA KHULBEY)
SENIOR PERSONAL ASSISTANT

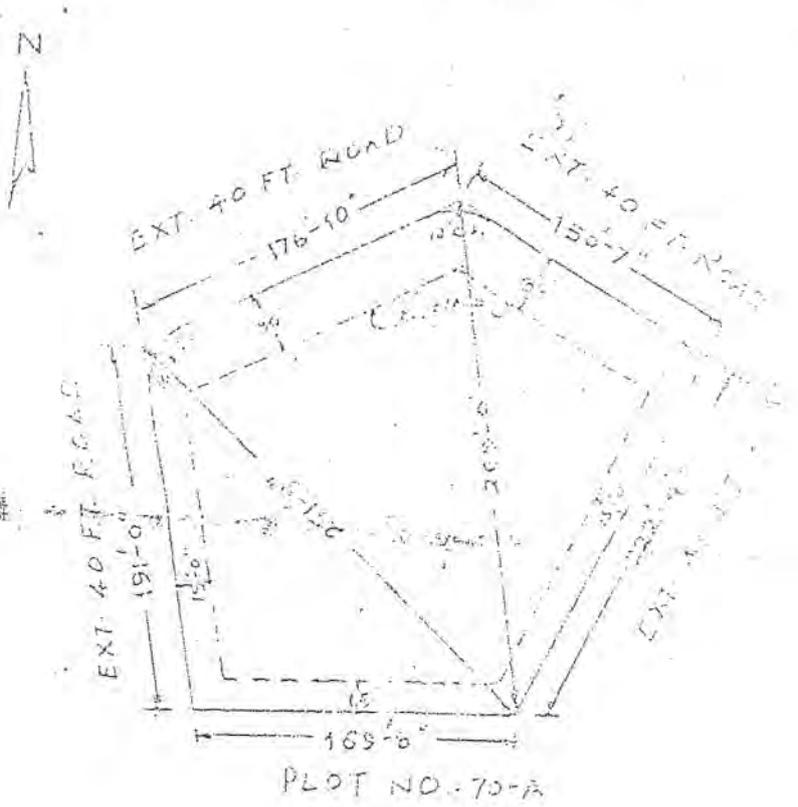
(DIPTI KHURANA)
ASSISTANT REGISTRAR

ANNEXURE-R-2 (colly)

70 JUTHI KALAN

6146 OR 5.38.670

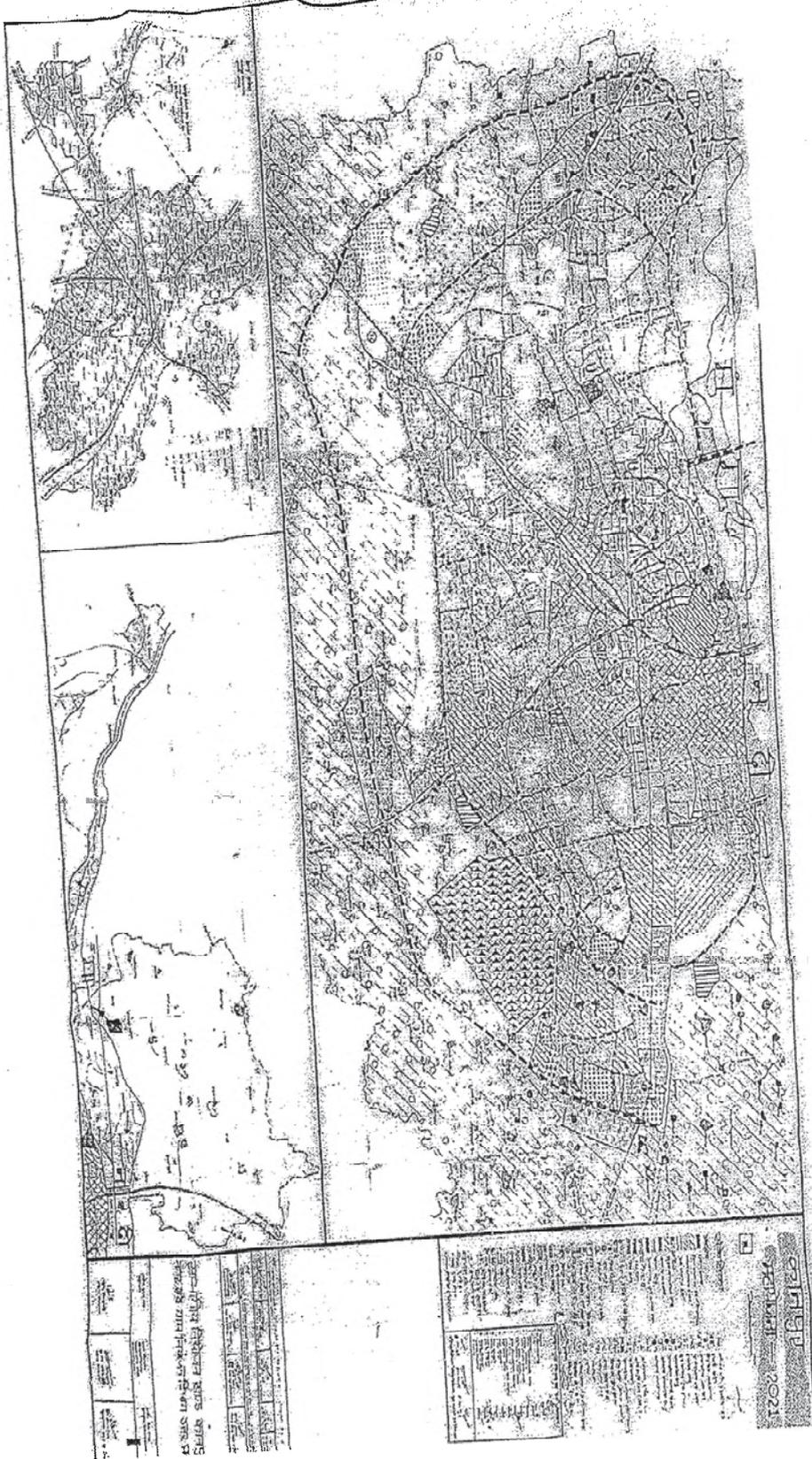
SCHOOL



PLOT NO. 70-A

Handwritten notes and signatures in Hindi, including dates like 25/7/24 and 11/5/24, and names like Juthi Kalan.

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THE UTTAR PRADESH URBAN PLANNING AND DEVELOPMENT ACT, 1973**ARRANGEMENT OF SECTIONS****SECTIONS****CHAPTER I**
(Preliminary)

1. Short title and extent
2. Definitions

CHAPTER III
(Master Plan and Zonal Development Plan)

8. Civil survey of, and master plan for the development area
9. Zonal Development plans
- 9-A In particular, contain, provisions regarding all or any of the following matters, namely
10. Submission of plans to the State Government for approval
11. Procedure to be followed in the preparation and approval Plan
12. Date of commencement of plan

CHAPTER IV
(Amendment of the Master Plan and the Zonal Development Plan)

13. Amendment of Plan

CHAPTER VI
(Acquisition and Disposal of Land)

17. Compulsory acquisition of land
18. Disposal of land by the Authority or the local Authority concerned.-
19. Nazul lands.-

CHAPTER II
(The Development Authority and its Objects)

3. Declaration of development, areas
4. The Development Authority
5. Staff of the Authority
- 5-A Creation of Centralised Services
6. Advisory Council
7. Objects of the Authority

CHAPTER III-A
(Arterial Roads In Development Area)

- 12-A. Maintenance and Improvement of facade of certain buildings abutting arterial roads.-

Explanation -In this section

CHAPTER V
(Development of Lands)

14. Development of land In the developed area.-
15. Application for permission.
- 15-A Completion Certificate
17. Uses of land and buildings in contravention of plans

CHAPTER VII
(Finance, Accounts and Audit)

20. Fund of the Authority
21. Budget of the Authority:-
22. Accounts and Audit
23. Annual Report
24. Pension and Provident Funds

CHAPTER VIII
(Supplemental and Miscellaneous Provisions)

25. Power of entry
26. Penalties
- 26-A. Encroachment or obstruction on public land
- 26-B. Claim for compensation for removal under Section 26- A.
- 26-C. Authority may without notice remove anything erected or deposited in contraventions of Act.-26-D. Penalty for not preventing encroachment
27. Order of demolition of building
28. Power to stop development;-
- 28-A. Power to seal unauthorised development
29. Conferment of other powers on the Authority.-
30. Offences by companies.-
31. Fines when realized to be paid to the Authority
32. Composition of Offences
33. Power of the Authority to provide amenity or carry out development at cost of owner in the event of his default and the levy cess In certain cases.-
34. Power of Authority to require local authority to assume responsibilities in certain cases
35. Power of Authority to levy betterment charges
36. Assessment of betterment charge by Authority
37. Finality of decision
38. Payment of betterment charge
- 38-A. Power of Authority to levy land use conversion charge and city development charge
39. Additional stamp duty on certain transfers of property 39-A. Toll for amenities 39-B, License for assembly and development of land 39-C, Power of authority to license fee
40. Recovery of moneys due to Authority
41. Control by State Government
42. Returns and Inspections
43. Services, of notices. Etc
44. Public notice how to be made known
45. Notices, etc., to flx reasonable time
46. Authentication of orders and documents of Authority
47. Members and Officers to be public servants
48. Jurisdiction of Courts
49. Sanction of prosecution
50. Protection of action taken In good faith
51. Power to delegate
52. Savings.-Nothing in this Act shall apply to
53. Exemption
54. Plans to stand modified in certain cases
55. Power to make rules
56. Power to make regulations
57. Power to make bye-laws
58. Dissolution of Authority
59. Repeal etc.and Savings
60. Repeal and savings

THE UTTAR PRADESH URBAN PLANNING AND DEVELOPMENT ACT, 1973(As amended till date)

(President's Act No. 11 of 1973)

An Act to provide for the development of certain areas of Uttar Pradesh according to plan and for matters ancillary thereto

(It is hereby enacted as follows:)

Reasons for the enactment.-

(1) The Governor of Uttar Pradesh promulgated on June 12, 1973, the Uttar Pradesh Urban Planning and Development Ordinance, 1973, which reproduced the provision of the Uttar Pradesh Urban Planning and Development Bill, 1973, as passed by the U.P. Legislative Council. The reasons for this enactment are given below.

(2) In the developing areas of the State of Uttar Pradesh, the problems of town planning and urban development need to be tackled resolutely. The existing local bodies and other authorities, in spite of their best efforts, have not been able to cope with these problems to the desired extent. In order to bring about improvement in this situation, the State Government considered it advisable that in such developing areas Development Authorities patterned on the Delhi Development Authority be established. As the State Government was of the view that the urban development and planning work in the State had already been delayed it was felt necessary to provide for early establishment of such Authorities.

(3) The present measure seeks to replace the aforesaid Ordinance by a President Act.

(4) The Committee constituted under the proviso to Sub-section (2) of Section 3 of the Uttar Pradesh State Legislature (Delegation of Powers) Act, 1973 (Act 33 of 1973), has been consulted before the enactment of this measure as a President's Act.

CHAPTER I Preliminary

1. Short title and extent.-

(1) This Act may be called the Uttar Pradesh Urban Planning and Development Act, 1973.

(2) It extends to the whole of Uttar Pradesh, excluding Cantonment areas and lands, owned, requisitioned or taken on lease by the Central Government for the purposes of defense.

2. Definitions.-

In this Act unless the context otherwise requires-

(a) 'amenity' includes road, water supply, street lighting, drainage, sewerage, public works and such other convenience as the State Government may, by notification in the Gazette, specify to be an amenity for the purposes of this Act.,

(b) 'building' includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not:

(c) 'building operations' includes rebuilding structural alterations of, or additions to, buildings operations normally undertaken in connection the construction of buildings:

(d) 'bye-law' means a bye-law made under this Act by the Development Authority:

¹[(dd) 'Chairman' and 'Vice-Chairman shall mean respectively the Chairman and Vice-Chairman of the Development Authority.]

²[(ddd) 'City development charge' means the charge levied on a private developer under section 38-A for development of land;]

(e) 'development' with its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land, and includes re-development:

(f) 'Development Area' means any area declared, development area under Section 3:

(g) 'the Development Authority' or 'the Authority', in relation to any development area, means the Development Authority constituted under Section 4 -for that area:

³[(gg) 'Development Authorities Centralised Service' means a Centralised Service created under Section 5-A):]

⁴[(ggg) 'development fee 'means the fee levied upon a person or body under Section 15 for construction of road, drain, sewer line, electric supply and water supply lines in the development area by the Development Authority):]

(h) 'engineering operation' includes the formation or laying out means of access to a road or the laying out of means of water supply:

⁵[(hh) 'Land use conversion charge' means the charge levied on a person or body under section 38-A for the change of land use in the Master Plan or Zonal Plan;]

⁶ [(hhh) 'License fee' means the fee levied on a private developer under section 39-B seeking license for assembly and development of land within the development area;]

1. Inserted by Act. No.-13 of 1975

2. Inserted by section-2 amendment act-2007 (Act n0.-1 of 2008) dated 09.01.2008

3. Inserted by section-2 of amendment act-1985 (Act no-21 of 1985) dated 21.08.1985

4. Inserted by section-2 of amendment act-1997 (Act no-3 of 1997) dated 01.05.1997

5. Inserted by section-2 amendment act-2007 (Act n0.-1 of 2008) dated 09.01.2008

6. Inserted by section-2 amendment act-2007 (Act n0.-1 of 2008) dated 09.01.2008

(i) 'means of access' includes any means of access, whether private or public for vehicles or for foot passengers, and includes a road:

²[(ii) 'mutation charges' means the charges, levied under Section 15 upon the person seeking mutation in his name of a property allotted by the Authority to another person:]

¹[(iii) 'Private developer' means an individual, company or association, body of individuals whether incorporated or not, owing or assembling or agreeing to own or assemble, whether by purchase or otherwise, land for development and to whom a license has been granted under section 39-B of this Act;]

(j) 'regulation' means a regulation made under this Act by the Development Authority.

(k) 'rule' means a rule made under this Act by the State Government:

²[(kk) 'Stacking fees' means the fees levied under Section 15 upon the person or body who keeps building materials on the land of the Authority or on a public street or public places:]

(l) 'to erect a building', with its grammatical variations, includes-any material alteration or enlargement of any building, the conversion by structural alteration of a building not originally constructed for human habitation into a place for human habitation: or

into more than one place for human habitation of a building originally constructed as one such place, or of two or more places of human habitation into a greater number of such places:

such alterations of a building as affect an alteration of its drainage or sanitary arrangements, or materially affect its security:

the addition of any rooms, buildings, houses or other structures to any building., and

the construction, in a wall adjoining any street or land not belonging to the owner of the wall, of a door opening on to such street or land.

³[(ll) 'water fees' means the fees levied under Section 15 upon a person or body for using water supplied by the Authority for building operation or construction of buildings.]

(m) 'zone' means any one of the divisions in which a development area may be divided for the purposes of development under this Act:

the expression 'land' has the meaning assigned to it in Section 3 of the land Acquisition Act, 1894.

¹ Inserted by section-2 amendment act-2007 (Act n0.-1 of 2008) dated 09.01.2008

² Inserted by section-2 of amendment act-1997 (Act no-3 of 1997) dated 01.05.1997

³ Inserted by section-2 of amendment act-1997 (Act no-3 of 1997) dated 01.05.1997

CHAPTER II

The Development Authority and its Objects

3. Declaration of development, areas.-

If in the opinion of the State Government any-area within the State requires to be developed according to plan it may, by notification in the Gazette, declare the area to be a development area.

4 The Development Authority-

(1) The State Government may, by notification in the Gazette, constitute for the purposes of this Act, an Authority to be called the Development Authority for any development area.

(2) The Authority shall be a body corporate, by the name given to it in the said notification, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall by the said name sue and be sued.

(3) The Authority in respect of a development area which includes whole or any part of a city as defined in the [Uttar Pradesh Municipal Corporation Act, 1959), shall consist of the following members namely-

a- Chairman to be appointed by the State Government:

b- Vice-Chairman to be appointed by the State Government:

¹[c- the Secretary to the State Government, in charge of the Department in which, for the time being, the business relating, to the Development Authorities is transferred, ex-officio:)]

d- the Secretary to the State Government in charge Of the Department of Finance, ex-officio.

e- the Chief Town and Country Planner, Uttar Pradesh ex-officio:

²[f- the Managing Director of the Jal Nigam established under the Uttar Pradesh Water Supply and Sewerage Act, 1975. ex-officio)]

g- the Mukhya Nagar Adhikari, ex-officio:

h- the District Magistrate of every district any part of which Included in the development area ex-officio:

i- four members to be elected by Sabhasads of the Nagar Mahapalika for the said city from amongst themselves,

Provided that any such member shall cease to hold such office as soon as he ceases to be Sabhasad of the (Municipal Corporation):

(j) such other members not exceeding three as may be nominated by the State Government.

(4) The appointment t of the Vice-Chairman shall be whole time.

(5) The Vice-Chairman shall be entitled to receive from the funds of the Authority such salaries and allowance-and be governed by such conditions of service as may be determined by general or special order of the State Government in this behalf.

1 Substituted by sub-section-3 of amendment act-1985(Act No-21 of 1985) dated 21.08.1985

2 Substituted by sub-section-2 of amendment act-1976(Act No-19 of 1976) dated 03.10.1975

(6) A member referred to in Clause (c) Clause (d) Clause (e) or Clause (f) of Sub-section (3) may instead of attending a meeting of the Authority himself depute an officer, not below the rank of Deputy secretary in the department, in the case of a member referred to In Clause (c) or Clause (d) and not below the rank of Town Planner in the case of a member referred to in Clause (e) and not below the rank of Superintending Engineer in the case of a member referred to in clause (f) to attend the meeting. The officer so deputed shall have the right to take part in the proceedings of the meeting and shall also have the right to vote.

(7) The Authority in respect of a development area other than that mentioned in Sub-Section (3) shall consist of a Chairman, a Vice Chairman and not less than five and not more than eleven such other members, including at least one member from Municipal Boards and Notified Area Committees having each jurisdiction in the development area, who shall hold office for such period and on such terms and conditions as may be determined by general or special order of the State Government in this behalf.

Provided that the Vice-Chairman or a member other than an ex-officio member of the Authority may at any time by writing under his hand addressed to the State Government resign his office and on such resignation being accepted shall be deemed to have vacated his office.

(8) No act or proceedings of the Authority shall be invalid by reason of the existence of any vacancy in, or defect in the constitution of, the Authority.

5. Staff of the Authority:

(1) The State Government may appoint two suitable persons respectively as the Secretary and the Chief Accounts Officer of the Authority who shall exercise such powers and perform such duties as may be prescribed by regulations or delegated to them by the Authority or its Vice-Chairman. Subject to such control and restrictions as may be determined by general or special order of the State Government, the Authority may appoint such number of other officer and employees as may be necessary for the efficient performance of its functions and may determine their designations and grades.

The Secretary, the Chief Accounts Officer and other Officers and employees of the Authority shall be entitled to receive from the funds of the Authority such salaries and allowances. Such salaries and allowances shall be governed by other conditions of service as may be determined by regulations made in that behalf.

1[5-A. Creation of Centralised Services:

(1) Notwithstanding anything to the contrary contained in Section 5 or in any other law for the time being in force, the State Government may at any time, by notification create one or more 'Development Authorities Centralised Services for such posts, other than the posts mentioned in Sub-

¹ Inserted by sub-section-4 of amendment act-1985 (Act no.-21 of 1985) Effective date-22.10.1984

Section (1) of Section 59, as the State Government may deem fit, common to all the Development Authorities, and may prescribe the manner and conditions of recruitment to and the terms and conditions of service of person appointed to such service.

(2) Upon creation of a Development Authorities Centralised Service, a person serving on the posts included in such service immediately before such creation, not being a person governed by the U.P. Palika (Centralised) Services Rules, 1966. or serving on deputation, shall, unless he opts otherwise, be absorbed in such service finally, if he was already confirmed in his post, and provisionally, if he was holding temporary or officiating appointment.

(3) A person referred to in Sub-section (2) may, within three months from the creation of such Development Authorities Centralised Service communicate to the Government in the Housing Department, his option not to be absorbed in such Centralised Service. failing which he shall be, deemed to have opted for final or provisional. as the case may be, absorption in such Centralised Service.

(4) Suitability of a person absorbed provisionally, for final absorption In a Development Authorities Centralised Service, shall be examined In the manner prescribed and if found suitable he shall be absorbed finally.

(5) The services of an employee who opts against absorption or who is not found suitable for final absorption, shall stand determined and he shall without prejudice to his claim to any leave, pension, provident fund or gratuity which he would have been entitled to, be entitled to receive as compensation from the Development Authority concerned, an amount equal to-

three months' salary, if he was a permanent employee:

one month's salary, if he was a temporary employee.

Explanation.-For the purposes of this sub-section the term salary includes dearness allowance, personal pay and special pay. if any.

(6) It shall be lawful for the State Government or any officer authorized by it in this behalf, to transfer any person holding any post a Development Authorities Centralised Service from one Development Authority to another.]

6. Advisory Council.-

(1) The State Government may, if it thinks fit, constitute an advisory council for the Purpose of advising Authority on the preparation of the master Plan and on such other matters relating to the planning of development or arising out of, or in connection with, the administration of this Act as may be referred to it by the Authority

(2) The Advisory Council in respect of a development area in Sub-section (3) of Section 4 shall consist of the following members namely-

(a) the Chairman of the Authority ex-officio, who shall be the President.

(b) The Chief Town and Country Planner, Uttar Pradesh, and the Chief Engineer, Local Self-Government Engineering Department, Uttar Pradesh, ex officio:

(c) The Director, Medical and Health Services, Uttar Pradesh, or his nominee who shall not be below the rank of a Deputy Director, ex officio:

(d) four representatives of the local authorities having jurisdiction within the limits of the development area, to be elected by their members from among themselves:

(e) The Transport Commissioner, Uttar Pradesh, or his nominee who shall, not be below the rank of a Deputy Transport Commissioner, ex officio:

(f) The -Chairman, State Electricity Board, Uttar Pradesh or his nominee, ex officio:

(g) All the members of the House of the People and the State Legislative Assembly whose constituencies include any part of the development area:

(h) All members of the Council of States and the State Legislative Council who have their residence in the development area:

(i) Three members to be nominated by the State Government, one of whom shall represent the interest of labour and one the interest of industry and commerce in the development area.

(3) For the purpose of Clause (h) of Sub-section (2), the place of residence of a member of the Council of States or the State Legislative Council shall be deemed to be that mentioned in the notification of his election or nomination. as the case may be. as such member.

An elected member under Clause (d) of Sub-section (2) shall hold office for a term of three years from the date of his election to the council' and shall be eligible for re-election:

Provided that such term shall come to an end as soon as the member ceases to be a member of the local body from which he was elected.

The Advisory Council, if any, in respect of a development area other than that mentioned in Sub-section (2) shall consist of such members as may be determined by the State Government by general or special order in that behalf.

The [Advisory Council), shall meet as and when called by the Chairman:

Provided that such meeting shall be held at least twice a year.

7. Objects of the Authority.-

The objects of the Authority shall be promote and secure the development of the development area according to plan and for that purpose the Authority shall have the Power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

Provided that save as provided in this Act nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force.

CHAPTER III

Master Plan and Zonal Development Plan

8. Civil survey of, and master plan for the development area:

(1) The Authority shall, as soon as may be, prepare a master plan for the development area.

(2) The master plan shall define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and serve as a basic pattern of framework within which the Zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which may be necessary for the proper development of the development area.

9. Zonal Development plans.-

(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which the development area may be divided.

(2) A zonal development plan may-

contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses;

specify the standards of population density and building density;

show every area in the zone which may, in the opinion of the Authority, be required or declared for development or re-development; and

9.A In particular, contain, provisions regarding all or any of the following matters, namely-

(i) the division of any site into plots for the erection of buildings;

(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation-grounds, schools, markets and other public purposes;

(iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out,

(iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings;

(v) the alignment of buildings of any site;

(vi) the architectural features of the elevation or frontage of any building to be erected on any site,

(vii) the number of residential buildings which may be erected on plot or site;

(viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided:
 (ix) the prohibitions or restrictions regarding erection of shops, work-shops, warehouses of factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality,
 the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained:
 the restrictions regarding the use of any site for purposes other than erection of buildings;
 any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly, in such zone or area.

10. Submission of plans to the State Government for approval.-

(1) In this section and in Sections 11, 12, 14 and 16 the word plan means the master plan as well as the zonal development plan for a zone

(2) Every plan shall, as may be after its preparation be submitted by the Authority to the State Government for approval and that Government may either approve the plan without modification or without modifications as it may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan according to such directions.

11. Procedure to be followed in the preparation and approval Plan.-

(1) Before preparing any plan finally and submitting it to the 'State Government for approval, the Authority shall prepare a plan in and publish it by making a copy thereof available for inspection publishing a notice in such form and manner as may be prescribed by regulations made in that behalf inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice.

(2) The Authority shall also give reasonable opportunity to every local authority within whose local limits an land touched by the plan is situated, to make any representation with respect to the plan.

(3) after considering all objections, suggestions and representations", that may have been received by the Authority, the Authority shall finally prepare the plan and submit it to the State Government for its approval.

(4) Subject to the foregoing provisions of this section, the State Government may direct the Authority to furnish such information as that Government may require for the purpose of approving any plan' submitted to It under this section.

12. Date of commencement of plan.-

Immediately after a plan has been approved by the State Government, the Authority shall publish in such manner as the State Government may specify, a notice stating that a plan has been approved and naming a place where a copy of the plan may be inspected at all reasonable hours and upon the date of the first publication of the aforesaid notice the plan shall come into, operation.

¹ [(CHAPTER III-A)

Arterial Roads In Development Area

12-A. Maintenance and Improvement of facade of certain buildings abutting arterial roads.-

(1) Where in any developments area, any building occupied wholly for non-residential purposes or partly for residential and partly for non-residential purposes abuts an arterial road, the occupier of such building, shall be bound to repair whitewash, colour-wash or paint the facade of such building at his own cost in accordance with any bye laws made in that behalf.

(2) Where the authority, with a view to ensuring symmetry with any' colour-scheme or other specification made in that behalf considers it necessary or expedient so to do, or where any occupier fails to repair, white-wash, colour wash or paint the facade of any building in accordance with Sub-section (1), it may by order require that the said work shall be carried out by the Authority itself or under Its direction, and may accordingly, also require the occupier to pay the cost of such work to the Authority.

(3) The cost of any work referred to in Sub-section (2) shall be calculated 'no profit no loss' basis and in case of any dispute about the reasonableness of the amount required to be deposited, the same shall be decided by the State Government, and subject thereto, the order of the Authority shall be final and shall not be called in question in any Court.

(4) In case of non-payment by an occupier of the whole or part of the cost of any work referred to in Sub-section (2), it shall, on the certificate of the Vice-Chairman, be recoverable from the occupier as arrears land revenue.

Explanation -In this section

the expression 'arterial road' shall have the meaning assigned to it in the bye-laws,

the expression occupier' in relation to a building, means the person in actual occupation or use of the building, and includes-

the owner (which expression shall include an agent or trustee or a receiver, sequestrator or manager appointed by a Court or a mortgagee with possession of the building) in occupation:

(ii) the tenant who for the time being is paying or is liable to pay' rent in respect thereof to the owner;

(iii) the rent-free grantee or licensee thereof:

(iv) the person who is liable to pay to the owner damages for unauthorised use and occupation thereof.]

¹ Inserted by sub-section-3 of amendment act-1976(Act-19 of 1976) effective from 03.10.1975

CHAPTER IV

Amendment of the Master Plan and the Zonal Development Plan

13. Amendment of Plan.-

(1) ¹[The Authority] may make any amendments in the master plan or the zonal development plan as it thinks fit, being amendments which, in its opinion do not effect important alteration in the character of the plan and which do not relate to the extent of land uses or the standards of population density.

(2) The State Government may make amendments in the master plan or the zonal development plan whether such amendments are of the nature specified in Sub-section (1) or otherwise.

(3) Before making any amendments in the plan, the Authority, or as the case may be, the State Government shall publish a notice in at least one newspaper having circulation in the development area inviting objections and suggestions from any person with respect to the proposed amendments before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the State Government.

(4) Every amendment made under this section shall be published in such manner as the Authority or the State Government, as the case may be, may specify, and the amendments shall come into operation either on the date of the first publication or on such, other date as the Authority or the State Government, as the case, may be, may fix.

(5) When the Authority makes any amendments in the plan under Sub-section (1) it shall report to the State Government the full particulars of such amendments within thirty days of the date on which such amendments come into operations.

(6) If any question arises whether the amendments proposed to be made by the authority are amendments which effect important alterations in the character of the plan or whether they relate to the extent of land-uses or, the standards of population density, it shall be referred to the State Government whose decision, thereon shall be final.

Any reference in any other Chapter, except Chapter III, to the master plan or the zonal Development plan shall be construed as a reference to the master plan or the zonal development plan as amended under this section.

CHAPTER V

Development of Lands

14. Development of land in the developed area.-

(1) After the declaration of any area as development area under Section 3, no development of land shall be undertaken or carried out or continued in that area by any person or body (including a department of Government)- unless permission for such development has been obtained in writing from

the ¹[Vice-Chairman) in accordance with the provision of this Act.

(2) After the coming into operation of any of the plans in any development area no development shall be undertaken or carried out or continued in that area unless such- development is also in accordance, with such plans.

(3) Notwithstanding anything contained In Sub-sections (1) and (2), the following provisions shall apply in relation-to development of land by any department of any State Government or the Central Government or any local authority-

(a) When any such department or local authority intends to carry out any development of land it shall inform the ¹ (Vice Chairman] in writing of its intention to do so -giving full, particulars thereof, including any plans and documents, at least 30 days before undertaking such development;

(b) In the case of a department of any State Government or the Central Government, if the ¹(Vice-Chairman) has no objections, it should inform such department of the same within three weeks from the date of receipt by it under Clause (a) of the department's intention, and if the Vice-Chairman does `not make any objection within the said period, the department shall be free to carry out the proposed development;

(c) Where the (Vice-Chairman) raises any objection to the proposed development on the ground that the development is not conformity with any Master Plan or Zonal Development Plan prepared or intended to be prepared by it, or on any other ground, such department or the local authority, as the case be, shall-

(i) either make necessary modifications in the proposal development to meet the objections raised by the ¹[Vice-Chairman] or

(ii) submit the proposals for development together with the objections raised by the ¹[Vice-Chairman] to the State Government for decision under Clause (d)

(d) The State Government, on receipt of proposals for development together with the objections of the (Vice-Chairman) may either approve the proposals with or without modifications or direct the department or the local authority, as the case may be, to make such modification as proposed by the Government and the decision of the State Government shall be final:

the development of any land begun by any such department or subject to the provisions of Section 59 by any such local authority before the declaration referred to in Sub-section (1) may be completed by that department or local authority with compliance with the requirement of Sub-sections (1) and (2).

15. Application for permission.-

(1) Every person or body (other than any department of Government or any local authority) desiring to obtain the permission referred to in Section 14 shall make an application in writing to the ²[Vice-Chairman] in such form and

1 substituted by section-4 of amendment act-1976 (Act No.-19 of 1976) effective from-03.10.1975

2 Substituted by Act No. 13 of 1975.

containing such particulars in respect of the development to which the Application relates as may be prescribed by ¹[bye-laws].

(2) Every application under Sub-section (1) shall be accompanied by such fee as may be prescribed by rules.

²[(2-A) The Authority shall be entitled to levy development fees mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed.]

Provided that the amount of stacking fees levied in respect of an area which is not being developed or has not been developed, by the Authority, shall be transferred to the local authority within whose local limits such area is situated.]

(3) On the receipt of an application for permission under Sub-section (1) the ¹[Vice-Chairman] after making such Inquiry as It considers necessary in relation to any matter specified in Clause (d) of Sub-section (2) of Section 9 or in relation, to any other matter, shall by order in writing. either grant the permission, subject to such conditions, if any. as may be specified in the order or refuse to grant such permission:

Provided that before making an order refusing such permission the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused:

Provided further that the ¹[Vice-chairman] may before passing any order on such application give an opportunity to the applicant to make any correction therein or to supply any further particulars or documents or to make good any deficiency in the requisite fee with a view to bringing it in conformity with, the relevant rules or regulations.

³[Provided also that before granting permission, referred to In Section 14, the Vice-Chairman may get the fees and the charges levied under Sub-section (2-A) deposited.

(4) Where permission is refused, the grounds of such refusal shall be recorded in writing and communicated to the applicant.

(5) Any person aggrieved by an order under Sub-section (4) may appeal to the ¹[Chairman] against that order within thirty days from the communication thereof and may after giving an opportunity of hearing to the appellant and, if necessary, also to the representative of the ¹[Vice-Chairman], either dismiss the appeal or direct the ¹[Vice-chairman] to grant the permission applied for with such modifications, or subject to such conditions, if any, as may be specified.

(6) The ¹[Vice-chairman] shall keep in such form as may be prescribed by regulations a register of applications for permission under this section.

1 Substituted by UP Act No. 13 of 1975

2 Inserted by section-3(a) of amendment act-1997 (Act No-3 of 1997) dated 02.05.1997

3 Inserted by section-3(b) of amendment act-1997 (Act No-3 of 1997) dated 02.05.1997

The said register shall contain such, particulars including information as to the manner in which applications for permission Regulations and shall be have been dealt with, as may be prescribed by regulations, and shall

be available for inspection by any member of the public at all reasonable hours on payment of such fee not exceeding rupees five as may be prescribed by regulations.

(7) Where permission is refused under this section, the applicant or any person claiming through him shall not be entitled to get refund the fee paid on the application for permission but the

(8) ¹[Vice-Chairman) may, on an application for refund being made within three months of the communication of the grounds of the refusal under Sub-section (4) direct refund of such portion of the fee as it may deem proper in the circumstances of the case.

²[(9) If at any time after the permission has been granted under Sub-section (3), the vice-Chairman is satisfied that such permission was granted in consequence of any material misrepresentation made or any fraudulent statement or information furnished, he may cancel such permission for reasons to be recorded in writing and any work done there under shall be deemed to have been done without such permission).

Provided that a permission shall not be cancelled without affording to the person or body concerned a reasonable opportunity of being heard.]

³**[15-A Completion Certificate.**-(1) Every person or body having been granted permission under sub-section (3) of section 15, shall complete the development according to the approved plan and send a notice in writing of such completion to the Authority, and obtain a completion certificate from the Authority in the manner prescribed or provided in the bye-laws of the Authority.

Provided that if completion certificate is not granted and refusal to grant it is not intimated within three months after receipt of the notice of completion, it shall be deemed that the Completion certificate has been granted by the Authority.

(2) No person shall occupy or permit to be occupied any commercial building or use are permit to be used such building or part thereof affected building or work until-

completion certificate has been issued by the Authority, or

Authority has failed for three months after the receipt of notice of completion to intimate its refusal of grant of the said certificate.

Explanation.-

For the purposes of this section, the expression 'commercial building' shall have the meaning assigned to it in the Uttar Pradesh Municipal Corporations Act. 1959.]

1 Substituted by UP Act No. 13 of 1975

2 Inserted by section-3(c) of amendment act-1997 (Act No-3 of 1997) dated 02.05.1997

3 Inserted by section-4 of amendment act-1997 (Act No-3 of 1997) dated 02.05.1997

16. Uses of land and buildings in contravention of plans.-

After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan :

Provided that it shall be lawful to continue to use, upon such terms and conditions as may be prescribed by bye-laws made in that behalf, any land or building for the purposes and to the extent for and to which it is being used upon the date on which such plan comes into force

CHAPTER VI**Acquisition and Disposal of Land****17. Compulsory acquisition of land.-**

(1) If in the opinion of the State Government any land is required for the purpose of development or for any other purpose, under this Act the State Government may acquire such land under the Provisions of the Land Acquisition Act, 1894:

Provided that any person from whom any land is so acquired may after the expiration of a period of five years from the date of such acquisition apply to the State Government for restoration of that land to him on the ground that the land has not been utilized within the period for the purpose for which it was acquired, and if the State Government is satisfied to that effect it shall order restoration of the land to him on re-payment of the charges which were incurred in connection with the acquisition together with interest at the rate of twelve percent per annum and such development charges as if any may have been incurred after acquisition.

(2) Where any land has been acquired by the State Government, that Government may, after it has taken possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by Authority or the local Authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.

18. Disposal of land by the Authority or the local Authority concerned.-

(1) Subject to any directions given by the State Government in this behalf, the Authority or, as the case may be, the local Authority concerned may dispose of

any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon; or

any such land after undertaking or carrying out such development as it thinks fit.

to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the development of the development area according to plan.

(2) Nothing in this Act shall be construed as enabling the Authority or the local Authority concerned to dispose of land by way of gift, ¹ (***) but subject thereto, references in this Act, to the disposal of land shall be construed as references to the disposal thereof in any manner, whether by way of sale,

exchange or lease or by the creation of any easement, right or privilege or otherwise.

²[(3) Notwithstanding, anything contained in Sub-section (2), the Authority or the local Authority concerned may create a mortgage or charge over such land (including any building thereon) in favour of the Life Insurance Corporation of India, the Housing and Urban Development Corporation, or a banking company as defined in the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 or any other financial institution approved by general or special order in this behalf by the State Government.]

³[(4) Where vacant land has been disposed of under this section by way of lease for making constructions within the time with right of forfeiture of the lease and re-entry upon failure to make constructions within such time, and the lessee fails without sufficient reason, to make the constructions or a substantial portion thereof, within the stipulated time or such extended time as the lessor may grant, the [lessor may subject to the provisions of Sub-section (4-A) forfeit] the lease and re-enter upon the land:

Provided that no forfeiture and re-entry shall be made unless the lessee has been allowed reasonable opportunity to show cause against the proposed action.]

⁴[(4-A) Where a lessee fails to make construction within the stipulated time, and the extended time, if any, under Sub-section (4) so that the total period from the date of lease exceeds five years, a charge at the rate of two per cent of the prevailing market value of the concerned land shall be realised every year from him by the lessor and if from the date of imposition of the said charge a further period of five years elapses the lease shall stand forfeited and the lessor shall re-enter upon the land:]

Provided that where the period of five years has expired before the commencement of the Uttar Pradesh Urban Planning and Development (Amendment) Act, 1997, or where the period of five years expires within one year after such commencement, the charge shall be realizable after a period of one year from the date of such commencement.]

1 Omitted by sub-section-5 of amendment act-1976 (Act No.-19 of 1976) Effective from 03.10.1975

2 Inserted by section-5(ii) of amendment act-1976 (Act No.-19 of 1976) effective from 03.10.1975

3 Inserted by section-5 of amendment act -1985 (Act No.-21 of 1985) effective from 2.10.1984

4 substituted/Inserted by section-5 of amendment act-1997 (Act No.-3 of 1997) dated 02.05.1997

(5) Upon such forfeiture and re-entry, the premium paid by the lessee for such land shall be refunded without any interest, after deducting- the amount, if any, due to the lessor under that lease, and a sum equivalent to 5 per cent of the premium, for administrative expenses.

(6) Any person aggrieved by an order under Sub-section (4) may, within 30 days from the date of knowledge thereof, prefer an appeal to the District Judge whose decision shall be final.

(7) The land so re-entered upon after forfeiture of lease may be disposed of in accordance with the provisions of Sub-sections (1) and (2).

19. Nazul lands.-

(1) The State Government may, by notification in the Gazette and upon such terms conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in the development area vested in the State (known and hereinafter referred to as 'nazul lands'), for the purpose of development in accordance with the provisions of the Act,

(2) After any nazul land has been placed at the disposal of the Authority under Sub-section (1), no development of any such land shall be undertaken or carried out except by or under the control an supervision of the Authority.

(3) After any such nazul land has been developed by or under the control and supervision of the Authority it shall be dealt with by the Authority in accordance with directions given by the State Government in that behalf.

(4) If any nazul land placed at the disposal of the Authority under Sub-section (1) is required at any time thereafter by the State Government, the Authority shall, by notification in the Gazette, replace it at the disposal of that Government upon such terms and conditions as may be agreed upon between that Government and the Authority.

CHAPTER VII

Finance,Accounts and Audit

20. Fund of the Authority.-

(1) The Authority shall have an maintain its own fund to which shall be credited-

(a) all moneys received by the Authority from the State Government by way of grants, loans, advances or otherwise:

(b) all moneys borrowed by the Authority from sources other than the State Government by way of loans or debentures;

(c) all ¹[fees, tolls and charges] received by the Authority under this Act:

(d) all moneys received by the Authority from the disposal of lands, buildings and other properties, movable and immovable and

(e) all moneys received by the Authority by way of rents and profits or in any other manner or from any other source,

¹ Subs. By UP Act No. 48 of 1976.

(2) The fund shall be applied towards meeting the expenses incurred by Authority in the administration of this Act and for no other purpose;

(3) Subject to any directions of the State Government, the Authority may keep in current account of any Scheduled Bank such sum of money out of its fund as it may think necessary for meeting its expected currents requirement and invest any surplus money in such manner as it thinks fit.

(4) The State Government may, after due appropriation made by Legislature by law in that behalf, make such grants, advances and loans to the Authority as that Government may deem necessary for the performance of the functions of the Authority under this Act and all grants, loans and advances made shall be on such terms and conditions as the State Government may determine.

(5) The Authority may borrow money by way of loans or, debentures from such sources (other than the State Government) and on such terms and conditions as may be approved by the State Government.

(6) The Authority shall maintain a sinking fund for the repayment of moneys borrowed under Sub-section (5) and shall pay every year into the sinking fund such sum as may be sufficient for repayment within the period fixed of all moneys so borrowed.

The sinking fund or any part thereof shall be applied in or towards, the discharge of the loan for which such fund was created, and until such loan is wholly discharged it shall not be applied for any other purpose.

21. Budget of the Authority:-

(1) The Authority shall prepare in such form and at such time every year as the State Government may specify, a budget in respect of the financial year next ensuing, showing the estimated receipts, and expenditure of the Authority.

1[22. Accounts and Audit:- 1).-The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as the State Government may specify.

(2) The accounts of the Authority shall be subject to audit annually by the Examiner, Local Fund Accounts:

Provided that in place of or in addition to the Examiner, Local Fund Accounts, the State Government may entrust and audit to the Accountant General, Uttar Pradesh or Comptroller and Auditor General of India or to any other Auditor on such terms and conditions, in such manner, for such period and at such times as may be agreed upon between him and the State Government.

(3) The rights, authority and privileges of any person conducting audit under Sub-Section (2) shall -

1 Subs. By UP Act No. 28 of 1983(w.e.f. 6.10.82).

(i) in the case of Examiner, Local Fund Accounts, be the same as he has in connection with the audit of the accounts of local authority;

(ii) in the case of the Accountant General, Uttar Pradesh or as the case may be, the Comptroller and Auditor General of India, be the same as he has in connection with the audit of Government accounts, and

(iii) in the case of any other auditor, be as prescribed;

and, in particular, he shall have the right to demand production of books, accounts, connected vouchers, papers and other documents and to inspect the office of the Authority.

(4) The accounts of the Authority, as certified by the Auditor or any person appointed by him in that behalf, together with audit report thereon shall be forwarded to the State Government annually or at such times as may be directed by it. The State Government may issue such directions to the Authority as it may deem fit and the Authority shall be bound to comply with such directions.

(5) Any expenditure, incurred by the Auditor in connection with the audit shall be payable by the Authority to the auditor.]

23. Annual Report.-

The Authority shall prepare for every year a report of its activities during that year and submit the report to the State Government in such form and on or before such date as the State Government may specify and such report shall be laid before both houses of the Legislature.

24. Pension and Provident Funds: -

(1) The Authority may constitute for the benefit of its whole time paid members and of its officers and other employees in such manner and subject to such conditions, as the State Government may specify, such pension or Provident funds as it may deem.

(2) Where any such person, or provident fund has been constituted, the State Government may declare that the provisions of the Provident Funds Act, 1925, shall apply to such fund as if it were Government Provident Fund.

CHAPTER VIII

Supplemental and Miscellaneous Provisions

25. Power of entry: -

The Vice-Chairman of the Authority may authorise any person to enter in or upon any land or building with or without assistants or workmen for the purpose of-

- a) making any inquiry, inspection, measurement or survey or taking levels of such land or building;
- b) examining works under construction and ascertaining the course of sewers and drains.
- c) digging or boring into the sub-soil;
- d) setting out boundaries and intended lines of work;
- e) making such levels, boundaries and lines by placing marks and cutting trenches;

- f) ascertaining whether any land is being or has been developed without of the master plan or zonal developed in contravention of the master plan or zonal development plan or without the permission referred to in Section 14 or in contravention of any condition subject to which such permission has been granted; or
- g) doing any other thing necessary for the efficient administration of this Act:

Provided that -

- I. no such entry shall be made except between the hours of sunrise and without giving reasonable notice to the occupier, or if there be no occupier, to the owner of the land or building;
- II. sufficient opportunity shall in every instance be given to enable woman, if any, to withdraw from such land or building;
- III. due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made to the social and religious usages of the occupants of the land-or building entered.

26. Penalties.-

(1) Any person who whether at his own instance or at the instance of any other person or any body (including a department of Government) undertakes or carries out development of any land, in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 14 or in contravention of any condition subject to which such permission approval or sanction has been granted shall be punishable with fine which may extend to ¹[Fifty thousand] rupees, and in the case of a continuing offence, with further fine which may extend to ¹[Two thousand five hundred] rupees for every day during which such offence continues after conviction for the first commission of the offence.

(2) Any person who uses any land or building in contravention of the provisions of Section 16 or in contravention of any terms and conditions prescribed by regulations under the proviso to that section shall be punishable with fine which may extend to ²[Twenty-five thousand rupees and in the case of a continuing offence, with further fine which may extend to ²[One thousand, two hundred and fifty rupees] for every day during which such offence continues after conviction for the first commission of the offence.

(3) Any person who obstructs the entry of a person authorised under Section 25 to enter into or upon any land or building or molests such person after such entry shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

¹ Substituted by section-6(a) of amendment act-1997 (Act No.-3 of 1997) dated 02.05.1997

² Substituted by section-6(b) of amendment act-1997 (Act No.-3 of 1997) dated 02.05.1997

¹[26-A. Encroachment or obstruction on public land.-

(1) Whoever makes any encroachment on any land not being private property, whether such land belongs to or vests in the authority or not in a development area, except steps over drain in any public street, shall be punishable with simple imprisonment for a term which may extend to one year and with fine which may extend to twenty thousand rupees.

(2) Any offence punishable under Sub-section (1) shall be cognizable.

(3) Whoever by placing or depositing building material or any other thing whatsoever, or otherwise makes any obstruction in any street or land not being private property, whether such street or land belongs to or vests in the Authority or not in a development area, except steps over drain in any public street. or placing of building material during such period as may be permitted on payment of stacking fees on a public street of public place, shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to two thousand rupees or with both.

(4) If there are grounds to believe that a person has made any encroachment or obstruction on a land in a development area which is not a private property, the Authority or an officer authorised by it in this behalf may serve upon the person making encroachment or obstruction, a notice requiring him to show cause why he shall not be required remove the encroachment or obstruction within such period not being less than fifteen days as may be specified in the notice, and after considering the cause, if any, shown by such person, may order removal of such encroachment or obstruction for reason to be 'recorded in writing

Provided that any encroachment made on public land by a person belonging to weaker section on or before the date of commencement of the Uttar Pradesh Urban Planning and Development (Amendment) Act, 1997 shall not be removed until alternative land or accommodation is offered to rehabilitate him in such manner and on such terms and conditions as may be prescribed:

Explanation.-For the purposes of this section, the expression

(1) a person belonging to weaker section' means a person-

(a) whose family on the date of commencement of the Uttar Pradesh Urban Planning and Development (Amendment) Act. 1997 does not hold any immovable property in any city as defined in the Uttar Pradesh Municipal Corporation Act, 1959 or any Municipal Area defined in the Uttar Pradesh Municipalities Act, 1916 and

¹ Inserted by section-7 of amendment act-1997 (Act No.-3 of 1997) dated 02.05.1997

(b) whose principal source of livelihood is manual labour including the practice of any craft. either by himself or by the members of his family and includes a rickshaw puller or scavenger, but does not include a person who has been assessed to income tax under the Income Tax Act, 1961 or trade tax under the Uttar Pradesh Trade Tax Act, 1948 or Sales Tax under the Central Sales Tax 1956.

(2) 'family', in relation to a person belonging to weaker section means the husband or wife, as the case may be, and unmarried minor children either or both of them. - :

(5) Notwithstanding anything contained in the forgoing provisions, the Authority of the officer authorised by it in this behalf shall, in addition to the action taken as provided in this section, also have power to seize or attach any property found on the land referred to in this section or, as the case may be, attached to such land or permanently fastened to anything attached to such land.

(6) Where any property is seized or attached by an officer authorised by the Authority, he shall immediately make a report of such seizure or attachment to the Authority.

(7) The Authority may make such orders as it thinks fit for proper custody of the property seized or attached, pending the conclusion of confiscation proceedings, and if the property is subject to speedy and natural decay, or it is otherwise expedient so to do the Authority may order it to be sold or otherwise disposed of.

(8) Where any property is sold as aforesaid, the sale proceeds, after deducting the expenses, if any, of such sale and other incidental expenses relating thereto, shall,

(a) where no order of confiscation is ultimately passed by the Authority, or
(b) where an order passed in appeal so requires, be paid to the owner thereof or the person from whom it is seized or attached.

(9) Where any property is seized under Sub-section (5), the Authority may order confiscation of such property.

(10) No order for confiscation of any property shall be made under Sub-section (9) unless the owner of such property or the person from whom it is seized or attached is given.

(a) a notice in writing, informing him of the grounds on which it is proposed to confiscate the property.

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) a reasonable opportunity of being heard in the matter.

(11) Any order of confiscation under this section shall not prevent the infliction of any punishment to which the person affected thereby may be liable under the Act.

(12) Any person aggrieved by an order made under Sub-section (9) may within one month from the date of the communication to him of such order, appeal against it to the District Judge.

(13) On such appeal, the District Judge may, after giving, an opportunity to the appellant and the respondent of being heard, pass such order as he may think fit confirming, modifying or setting aside the order appealed against, and pending appeal, may stay the operation of such order on such terms, if any, as he thinks fit.

¹[26-B. Claim for compensation for removal under Section 26- A. -

(1) Any person aggrieved by the removal of obstruction or encroachment under Sub-section (4) of Section 26-A may within thirty days from the date of such removal prefer a claim for compensation or restitution or both before the Tribunal against either the Authority, or the officer ordering the removal or against both, and for making such officer personally liable for the loss caused to him due to such removal.

(2) The District Judge having territorial jurisdiction over the area in which the removal -of encroachment or obstruction as provided in Sub- section (4)of Section 26-A has taken place shall be the Tribunal for the Purposes of this section.

(3) Every order of the Tribunal for payment of any compensation for the restitution of any Immovable property shall be deemed to be a decree of the Civil Court and shall be executable as such.

Provided that if the Tribunal awards any compensation again any officer personally, it shall be the duty of the Authority to realise the amount from the salary or the other dues of the officer concerned and to pay it to the claimant.

(4) The proceedings before the Tribunal shall be deemed to be judicial Proceedings within the meaning of Sections 193 and -228 of the Indian Penal Code.

(5) The Tribunal shall for the Purpose of deciding a claim under this section, have the same powers as are vested in a Civil Court under the Code of Civil Procedure,1908 while trying a suit in respect of the following matters, namely-

(a) Summoning and enforcing the attendance of any person and examining him on oath:

(b) Receiving evidence on affidavits;

(c) Inspecting any immovable Property or its locality, or issuing commission for the examination of witnesses or documents of local investigation.

(d) Requiring the discovery and production of documents.

(e) Recording a lawful agreement, compromise or satisfaction and making an order in accordance therewith:

(f) Any other matter which may be prescribed.

(6) The decision of the Tribunal shall be final.]

¹[26-C. Authority may without notice remove anything erected or deposited in contraventions of Act.-

The Authority or an officer authorised by it in this behalf may, without notice, cause to be removed-

(a) Any wall, fence, rail, post, step, booth or other structure whether fixed or movable and whether of a permanent or temporary nature or any fixture which shall be erected, or set in or upon or over any street or upon or over any open channel, drain, well or tank contrary to the provisions of this Act.

(b) Any stall, chair, bench, box, ladder, bale, board or shelf of any other thing whatever placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of this Act.]

¹[26-D. Penalty for not preventing encroachment.-

Whoever specially entrusted with the duty to stop or prevent the encroachment or obstruction under this Act or any other Act, rules or bye-laws willfully or knowingly neglects or deliberately omits to stop or prevent such encroachment or obstruction shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.]

27. Order of demolition of building.-

(1) Where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or without the permission approval or sanction referred to in Section 14 or in contravention of any conditions subject to which such permission, approval or sanction has been granted, in relation to the development area, then, without prejudice to the provisions of Section 26, [the Vice-Chairman or any officer of the Authority empowered by him in that behalf) may make an order directing that such development shall be removed by demolition, filling or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period not being less than fifteen days and more than forty days from the date on which a copy of the order of removal, with a brief statement of the reasons therefore, has been delivered to the owner or that person as may be specified in the order and on his failure to comply with the order, [the Vice-Chairman or such officer] may remove or cause to be removed the development, and the expenses of such removal as certified by ²[the Vice-Chairman or such officer) shall be recoverable from the owner of the person at whose instance the development was commenced or was being carried out or completed as arrears of land revenue and no suit shall lie in the Civil Court for recovery of such expenses:

¹ Subs. By UP Act No. 3 of 1997

² Subs. By UP Act 13 of 1975

Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.

(2) Any person aggrieved by an order under Sub-section (1) may appeal to the ¹(Chairman) against that order within thirty days from the date thereof and the ¹[Chairman) may after hearing the parties to the appeal either allow or dismiss the appeal or may reverse or vary any part of the order.

(3)The ¹[Chairman) may stay the execution of an order against which an appeal has been filed before it under Sub-section(2).

(4) The decision of the ¹(Chairman) on the appeal and, subject only to such decision, the order under Sub-section (1), shall be final and shall not be questioned in any Court.

(5) The provisions of this section shall be in addition to, and not in or derogation of, any other provision relating to demolition of buildings of contained in any other law for the time being In force.

28 Power to stop development;-

(I) Where any development in a development area has been commenced or continued in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 14 or In contravention of any conditions subject to which such permission, approval or sanction has been granted, then, without prejudice to the provisions of Sections 26 and 27, the Vice Chairman of the Authority or any officer of the Authority empowered by him in that behalf may make an order requiring the development to be discontinued on and from the date of the service of the order, and such order shall be complied with accordingly.

Where such development is not discontinued in pursuance of the order under Sub-section (1), the Vice-Chairman or the said officer of the Authority may require any police officer to remove the person by whom the development has been commenced and all his assistants and workmen from the place of development within such time as may be specified in the requisition, and such police officer shall comply with the requisition accordingly.

After the requisition under Sub-section (2) has been complied with the Vice-Chairman of the Authority may depute by a written order a police officer or an officer or employee of the Authority to watch the place in order to ensure that the development is not continued.

Any person failing to comply with an order under Sub-section (1) shall be punishable with fine which may extend to two hundred rupees, for every day during which the non-compliance continues after the service of the order.

No compensation shall be claimable by any person for any damage which he may sustain in consequence of the removal of any development under Section 27 or the discontinuance of the development under this section.

The provisions of this section shall be in addition to and not in derogation of, any other provision relating to stoppage of building operations contained in any other law for the time being in force.

¹[28-A. Power to seal unauthorised development: -

(1). It shall be lawful for the Vice-Chairman or an officer empowered by him in the behalf, as the case may be, at any time before or after making an order for the removal or discontinuance of any development under Section 27 or Section 28 to make any order

directing the sealing of such development in a development area in such manner as may be prescribed for the purposes of carrying out the provisions of this Act.

(2) Where any development has been sealed, the Vice-Chairman or the officer empowered by him in this behalf, as the case may be, for purpose of removing or discontinuing such development order the seal be removed.

(3) No person shall remove such seal except under an order made under Sub-section (2) by the Vice-Chairman, or the officer empowered by him in this behalf.

(4) Any person aggrieved by an order made under Sub-section (1) or sub-section (2) may appeal to the Chairman against that order within thirty days from the date thereof and the Chairman may after hearing the parties to the appeal, either allow or dismiss the appeal.

(5) The decision of the Chairman shall be final.]

29. Conferment of other powers on the Authority.-

After a Master Plan or Zonal Development Plan has come into operation under section 12, the Development Authority or its Vice-Chairman shall have such other powers and functions exercisable by the local authority concerned or its Chief Executive Officer, as the case may be, under the enactment constituting that local authority subject to such exceptions or modifications, as the State Government may by notification in the Gazette specify.

30. Offences by companies.-

(1) If the person committing an offence under this Act is a company, every person, who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance, of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation -For the purposes of this section-

'company' means a body corporate and includes a firm or other association of individuals; and

'director' in relation to a firm means a partner in the firm.

31. Fines when realized to be paid to the Authority.-

All fines realised in connection with prosecutions under this Act shall be paid to the Authority.

32. Composition of Offences.-

(1) Any offence made punishable by or under this Act may either before or after the institution of proceedings, be compounded-by ¹[the Vice-Chairman (or any officer authorised by him in that behalf by General or Special order)] on such terms, including any term as regards payment of a composition fee, as ²[the Vice-Chairman] (or such officer) may think fit.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded.

33. Power of the Authority to provide amenity or carry out development at cost of owner in the event of his default and the levy cess In certain cases.-

(1) If the Authority, after holding a local inquiry or upon report from any of its officers or other information in its possession, is satisfied that any amenity in relation to any land in a development area has not been provided in relation to that land which, in the opinion of the Authority, ought to have been or ought to be provided, or that any development of the land for which permission approval or sanction had been obtained under this Act or under any law, in force before the coming into force of this Act has not been carried out, it may, after affording the owner of the land or the person providing or responsible for providing the amenity a reasonable opportunity to show cause, by order require him to provide the amenity or carry out the development within such time as may be specified in the order.

¹ Substituted by section-9(a) of amendment act-1997 (Act No.-3 of 1997)dated 02.05.1997

² Substituted by section-9(b) of amendment act-1997 (Act No.-3 of 1997)dated 02.05.1997

(2) If any amenity is not provided or any such development is carried out within the time specified in the order, then the Authority may itself provide the amenity or carry out the development or have provided or carried out through such agency as it deems fit:

Provided that before taking any action under this sub-section, the Authority shall afford a reasonable opportunity to the owner of the land or to the person providing or responsible for providing the, amenity to show cause as to why such action should not be taken.

(3) All expenses incurred by the Authority or the agency employed it in providing the amenity or carrying out the development together with interest at such rate as the State Government may by order fix from, the date when a demand for the expenses is made until payment may be recovered by the Authority from the owner or the person providing or responsible for providing the amenity as arrears of land revenue, and no suit shall lie in the Civil Court for recovery of such expenses.

(4) Notwithstanding anything contained in the foregoing sub-section where the Authority on the written representation by so many of the owners of any land in a development area as represent not less than one and half of the area of that land is satisfied that any amenity in relation to such land has not been provided, which in the opinion of the Authority ought to be provided, or that any development of that land for which permission, approval or sanction had been obtained under this Act or under any law in force before the [commencement of this Act] has not been carried out, it may itself provide the amenity or carry out the development or have it provided or carried out such agency as it deems fit, and recover the expenses by levy of cess from all the owners of the said land :

Provided that if the owners making the said representation contend that the amenity had been agreed to be provided or the development had been agreed to be carried out by a coloniser or co-operative housing society through or from whom the land was acquired by them, they shall file with the Authority a copy of such agreement, or of the deed of transfer or of the bye-laws of the society incorporating such agreement, and no action shall be taken by the Authority under this sub-section unless notice has been given to the coloniser of the society, as the case may be, to show cause why such action should not be taken:

Provided further that where the Authority is satisfied that the coloniser or the society has become defunct or is not traceable, no notice under the last preceding proviso need be issued.

¹[(4-A) Where the authority provides any amenity in an area developed by it the authority shall, till the responsibility for maintenance is assumed by the local authority as provided in Section 34, be entitled to recover, in the manner prescribed, from the owner of land or building, such charges therefor as may be fixed by the State Government, by a notified order, having regard to the expenses incurred for maintaining and continuing to provide such amenity.]

(5) The cess referred to in Sub-section (4) shall be equivalent to the expenses incurred by the Authority or the agency employed by it in providing the amenity or carrying out the development, together with interest at such rate as the State Government may by order fix, from the date of completion of the work until payment, and shall be assessed land levied on all the owners of the land in proportion to the respective areas of land owned by them.

(6) The said cess shall be payable in such number of installments, and each installment shall be payable at such time and in such manner, as the Authority may fix, any arrear of cess shall be recoverable as arrears of land revenue, and no suit shall lie in the Civil Court for recovery thereof.

The expenses incurred by the Authority or the agency employed by it under this section shall be certified by the Authority; and such certificate as also the assessment of the cess, if any under Sub-section (5) shall be final.

If under any agreement between the owners of the land and the coloniser or the society referred to in Sub-section (4) the responsibility for providing the amenity or carrying out the development rested with such coloniser or society, the cess Payable under the sub-section by the owners shall be recoverable by them from the coloniser or the society, as the case may be.

34. Power of Authority to require local authority to assume responsibilities in certain cases:-

Where any area has been developed by the Authority may require the local authority within whose local limits the area so developed is situated, to assume responsibility for the maintenance of the amenities which have been provided in the area by the Authority and for the provision of the amenities which have not been provided by the Authority but which in its opinion should be provided in the area, on terms and conditions agreed upon between the Authority and that local Authority, and where such terms and conditions cannot be agreed upon, then on a reference of the matter to the State Government by the Authority, on terms and conditions settled by the Government in consultation with the local Authority.

¹ Inserted by section-10 of amendment act-1997(Act No.-3 of 1997)dated 02.05.1997

35. Power of Authority to levy betterment charges.-

(1) Where in the opinion of the Authority, as a consequence of any development scheme having been executed by the Authority in any development area, the value of any property in that area which has been benefited by the development, has increased or will increase, the Authority shall be entitled to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development:

Provided that no betterment charge shall be levied in respect lands owned by Government:

Provided further that where any land belonging to Government has been granted by way of lease or license by Government to any person, then that land and any building situate thereon shall be subject to a betterment charge under this section.

(2) Such betterment charge shall be an amount-

(i) in respect of any property situate in the township or colony if any developed or in other area developed or redeveloped, equal to one third of the amount, and

(ii) in respect of property situated outside such township, colony or other area, as aforesaid, not exceeding one-third of the amount,

by which the value of the property on the execution of the development scheme, estimated as if the property were clear of buildings exceeds the value of the property prior to such execution, estimated in like manner.

36. Assessment of betterment charge by Authority.

(1) When it appears to the ¹[Vice-Chairman) that any particular development scheme is sufficiently advanced to enable the amount of the betterment charge the determined, the ¹[Vice-Chairman) may, by an order made in that behalf, declare that for the purpose of determining the betterment charge the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to the owner of the property or person having an interest therein that the ¹[Vice-Chairman] proposes to assess the amount of the betterment charge in respect of the property under Section 34.

(2) The ¹[Vice-Chairman) shall then assess the amount of betterment charge payable by the person concerned after giving such person an opportunity to be heard and such person shall, within three months from the date of receipt of the notice in writing of such assessment from the ¹[Vice-Chairman), inform the ¹[Vice-Chairman] by a declaration in writing that he accepts the assessment or dissents from it.

(3) When the assessment proposed by the ¹[Vice-Chairman) is accepted by the person concerned within the period specified in Sub-section (2) such assessment shall be final.

(4) If the person concerned dissents from the assessment or fails to give the ¹[Vice-Chairman] the information required by Sub-section (2) within the period specified therein the matter shall be determined by the ¹[Chairman] ²[and such determination shall not be questioned in any Court].

³[(37, Finality of decision.-

⁴[Except as provided in Section 41. every decision] of the Chairman on appeal, and subject only to any decision on appeal (if It lies and is preferred), the order of the Vice-Chairman or other officer under Section 15, or Section 27, shall be final and shall not be questioned in any Court].

38. Payment of betterment charge.-

(1) The betterment charge levied under this Act shall be payable in such number of installments, and each installment shall be payable at such time and in such manner, as may be fixed by bye-laws made in that behalf.

(2) Any arrear of betterment charge shall be recoverable as an arrear of land revenue, and no suit shall lie in the civil court for recovery of such arrear.

⁵[38-A Power of Authority to levy land use conversion charge and city development charge.-

(1) where in any development area. The land use of a particular land is change as a result of amendment of Master Plan or Zonal Development Plan under section 13, the Authority shall be entitled to levy land use conversion charge on the owner of such land and in such manner and at such rates as may be prescribed;

Provided that the land use conversion charge shall be recovered from the owner of land by the Authority prior to final notification under sub-section (4) of section 13 of this Act;

Provided further that where the land use of a particular land is changed as a result of coming into operation of Master Plan or Zonal Development Plan, no land use conversion charge shall be levied upon the owner of such land.

(2) Where in any development area a license has been granted to private developer for assembly and development of land, the Authority shall be entitled to levy city development charge on the private developer of such land and in such manner and at such rates as may be prescribed.]

¹ Subs. By UP Act No. 13 of 975

² Inserted by *ibid.*

³ Subs. By UP Act No. 13 of 975

⁴ Substituted by section-6 of amendment act-1976(Act No.-19 of 1976) effective from 03.10.1975

⁵ Inserted by section-3 of amendment act-2007(Act No.-1 of 2008) dated 09.01.2008

39. Additional stamp duty on certain transfers of property.-

(1) The duty imposed by the Indian Stamp Act, 1879, on any deed of transfer of immovable property shall in the case of an immovable Property situated within a development area, be increased by two per cent on the amount or value of the consideration with reference to which the duty is calculated under the said Act:

Provided that the State Government may, by notification in the Gazette, enhance, the aforementioned percentage of the increase in stamp duty up to five.

(2) All collections resulting from the said increase shall after deduction of incidental expenses, if any, be allocated and paid by the State Government in its discretion. either to the Development Authority alone or to the Development Authority, the Uttar Pradesh Avas Evam Vikas Parishad and the ¹[Municipal Corporation] or the ²[Municipal Board], as the case may be, in such proportion as from time to time be determined, in such manner and in accordance with such principles as the State Government may by notification in the Gazette specify.

(3) For purposes of this section, Section 27 of the Indian Stamp Act, 1899, shall be read as if it specifically required the particulars referred to therein to be separately set forth in respect of property within the development area and property situated outside such area.

(4) For the purposes of this section Section 64 of the Indian Stamp Act, 1899, shall be so read and construed as if it referred to the Development Authority, as well as to the State Government.

(5) The provisions of Clause (g) of Sub-section (2) of Section 172 and Section 191 of the ¹[Uttar Pradesh Municipal Corporation Act], 1959 and of Clause (xiii-B), of Section 128 and Section 128-A of the ¹[U.P Municipalities Act, 1916] and Section 62 of the Uttar Pradesh Avas Fvam Vikas Parishad Adhiniyam, 1965 shall, to the extent of any repugnancy with the provisions of this section, cease to have effect, and the provisions of this section shall prevail.

(6) The provisions of Sections 6, 8 and 24 of the United Province General Clauses Act. 1904, shall apply in relation to such cesser as they apply in relation to repeal and re-enactment.

NOTIFICATION

Niwas Anubhag-2, Notification No. 1319/XXXVIII-3-34-HB-76, dated May 31, 1977, published in Gazette, Extra, dated 31st May, 1977

In exercise of the powers under Sub-section (2) of Section 39 of the Uttar Pradesh Urban Planning and Development Act, 1973 (President's Act No. 11 of 1973) as re-enacted by the Uttar Pradesh President's Acts (Re-enactment with Modification) Act, 1974 (U.P. Act No. 30 of 1974), the Governor is pleased to order that the two per cent increased duty realised under Sub-

¹ Subs. By UP Act No. 3 of 1997

² Now Municipality vide UP Act No. 12 of 1994

section (1) of Section 39 of the said Act shall, after deduction of incidental expenses, if any be allocated and paid to between the Uttar Pradesh Avas Evam Vikas Parishad and the Development Authority of the Development Area concerned in the proportion of fifty-fifty with effect from April 1, 1977.

¹[39-A, Toll for amenities.-

The Authority shall be entitled to charge and collect toll, for the use of approach roads and other amenities at such rate and in such manner as may be notified by the State Government, from visitors, to such places of popular resort (including any ancient and historical monuments) within its development area as may be so notified:

Provided that-

(a) the rate of toll per visitor, shall not exceed ²[(One thousand rupees)];

(b) the State Government may by notification, exempt any classes of visitors from the payment of the toll and may fix any days on which no toll shall be chargeable].

³[39-B, License for assembly and development of land.-

The Authority may grant license to private developer for assembly and development of land within its development area in such manner and for such period as may be prescribed.

39-C, Power of authority to license fee.-

The Authority shall be entitled to levy license fee for granting license to private developer for assembly and development of land within its development area at such rates and in such manner as may be prescribed.”]

⁴[40, Recovery of moneys due to Authority.-Any money due to an Authority on account of any fee; or charges, or from disposal of land, building or any other property, movable or immovable, by way of rent, premium, profit or hire purchase installment, may, without prejudice to the right of recovery by any other mode of recovery provided by or under this Act or any other law for the time being in force, be realised-

(a) either, as arrears of land revenue upon a certificate of the amount due sent by the Authority to the collector, or

(b) by attachment and sale of property in the manner provided in Sections 504,505,506,507,508,509,510,512,513 and 514 of the ⁵[Uttar Pradesh Municipal Corporation, 1959) (2 of 1959)]; and such provisions of the said ⁵[Act] shall mutatis mutandis apply to recovery of dues of an Authority as they apply to recovery of a tax due to a ⁵[Municipal Corporation], so however, that references in the aforesaid section of the said Adhiniyam to 'Mukhya Nagar Adhikari', ⁵[Corporation] and Executive Committee shall be constructed as references to 'Vice Chairman, 'Development Authority' and 'Chairman respectively:

1 Inserted by UP Act No. 48 of 1976

2 Substituted by section- 2 of amendment act-9 of 2000 dated 11 jan, 2000

3 Inserted by section- 4 of amendment act-2007(Act No-1 of 2008) dated 09.01.2008

4 substituted by section-6 of amendment act-1985(Act No.-21 of 1985) effective from 22.10.1984

5 subs. By UP Act No. 3 of 1997

Provided that no two or more modes of recovery shall be commenced or continued simultaneously.]

The old Section 40, U.P. Urban Planning and Development Act, 1973 prior to Amendment Act 21 of 1985 is given below:

"40, Mode of recovery of money due to Authority- Any money certified by the Authority as due to it on account of fees or charges, or from the disposal of lands, buildings or other properties, movable or immovable, or by way of rents and profits may, if the recovery thereof is not expressly provided for in any other provision of this Act, be recovered by the Authority as arrears of land revenue, and no suit shall lie in the Civil Court for recovery of such money.

41. Control by State Government.-

(1) The ¹[Authority, the Chairman or the Vice-Chairman] shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the [Authority, the Chairman or the Vice-Chairman) under this Act any dispute arises between the authority, the Chairman or the Vice-Chairman) and the State Government the decision of the State Government on such dispute shall be final.

(3) The State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the [Authority or the Chairman) for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

²[(4) Every order of the State Government made in exercise of the powers conferred by this Act shall be final and shall not be called in question in any court.]

42. Returns and Inspections.-

(1) The Authority shall furnish to the State Government such reports, returns and other information as that Government may from time to time require.

(2) Without prejudice to the provisions of Sub-section (1), the State Government or any officer authorised by the State Government in that behalf, may call reports, returns and other information from the Authority, or the local authority concerned in regard to the implementation of the Master Plan.

¹ Substituted by section-7(i) of amendment act-1976(Act No-19 of 1976) effective from 15.08.1975

² Substituted by section-7(ii) of amendment act-1976(Act No-19 of 1976) effective from 15.08.1975

(3) Any person authorised by the State Government or the officer referred to in Sub-section (2) may enter into or upon any land with or without assistants or workmen for ascertaining whether the provisions of the Master Plan are being or have been implemented, or whether the development is being or has been carried out in accordance with such plan.

(4) No such entry shall be made except between the hours of sunrise and sunset and without giving reasonable notice to the occupier, or if there be no occupier, to the owner of the land or building.

43, Services, of notices. etc.-

(1) All notices, orders and other documents required by this Act or any rule or regulation made and there under to be served upon any person shall save as otherwise provided in this Act or such rule or regulation be deemed to be duly served-

Where the person to be served is a company if the document is addressed to the secretary of the company at its registered Office or at its principal office or place of business and is either-

- (i) sent by registered post, or
- (ii) delivered at the registered office or at the principal office or place of business of the company,

where the person to be served is a firm, if the document is addressed to the firm at its principal place of business, identifying it by the name or style under which its business is carried on and is either-

- (i) sent by registered post, or
- (ii) delivered at the said place of business;
- (c) where the person to be served is a public body or a corporation or society or other body, if the document is addressed to the as secretary, treasurer or other chief officer of that body, corporation or society at its principal office, and is either-
 - i) sent by registered post. Or
 - ii) delivered at that office.,

(d) in any other case, if the document is addressed to the person to be served and-

- (i) is given or tendered to him, or
- (ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within the development area or is given or tendered to some adult member of his family or is affixed on some conspicuous part of land or building to which it relates, or
- (iii) Is sent by registered post to that person.

(2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be addressed 'the owner' or 'the occupier'. as the case may be of that land or building (naming, that land or building) without further name or description, and shall be deemed to be duly served-

If the document so addressed is sent or delivered in accordance with Clause (d) of Sub-section (1), or

If the document so addressed or a copy thereof so addressed, is delivered to some person on the land or building or where there is no person on the land or building to whom it can be delivered, is affixed to some conspicuous part of the land or building.

(3) Where a document is served on a firm in accordance with Clause (b) of Sub-section (1), the document shall be deemed to be served on each partner of that firm.

(4) For the purpose of enabling any document to be served on the owner of any property, the secretary to the Authority may by notice in writing require the occupier (if any) of the property to state the name and address of the owner thereof.

(5) Where the person on whom a document is to be served is a minor the service upon his guardian or any adult member of his family be deemed to be service upon the minor.

(6) A servant is not a member of the family within the meaning of this section.

44. Public notice how to be made known.-

Every public notice given under this Act shall be In writing over the signature of the secretary to the Authority and shall be widely made known in the locality to be affected thereby by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in a newspaper having circulation in the locality or by two or more of these means, and by any other means that the Secretary may think fit.

45. Notices, etc., to fix reasonable time.-

Where any notice order or other document issued or made under this Act or any rule or regulation made there under requires anything to be done for the doing of which no time is fixed in this Act or regulation, the notice, order or other document shall specify a reasonable time for doing the same.

46. Authentication of orders and documents of Authority-

All permissions, orders, decisions, notices and other documents of the Authority shall be authenticated by the signature of the Secretary to the Authority or any other officer authorised by the Authority in that behalf.

47. Members and Officers to be public servants.-

Every member and every officer and other employee of the Authority shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

48. Jurisdiction of Courts. -

No Court inferior to that Magistrate of the first class shall try an offence punishable under this Act.

49. Sanction of prosecution.-

No prosecution for any offence punishable under this Act shall be instituted except with the sanction of the Vice-Chairman of the Authority or any officer authorised by him in that behalf.

50. Protection of action taken In good faith.-

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule or regulation made there under.

51. Power to delegate.-

(1) The State Government may by general or special order, direct that any power exercisable by it under this Act except the power to make rules, may also be exercised by such officer in such cases and subject to such conditions if any, as may be specified therein.

(2) The Authority, may by general or special order, direct that any power exercisable by it under this Act except the power to make regulations or bye-laws, may also be exercised by such officer or local authority, in such cases and subject to such conditions, if any, as may be specified therein.

(3) The Vice-Chairman of the Authority may by general or special order direct that any power exercisable by him under this Act may also be exercised by such officer of the Authority in such cases and subject to such conditions, if any, as may be specified therein.

52. Savings.-Nothing in this Act shall apply to-

the carrying out of works for the maintenance, improvement or other alterations of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building;

the carrying out by any local authority or by any department of Government of any works for the purpose of inspecting repairing or renewing any drains, sewers, mains, pipes cables or other apparatus including the breaking open of any street or other land for that purpose;

the operational construction, (including maintenance, development and new construction) by or on behalf of a department of the Central Government;

the erection of building, not being a dwelling house, if such building is required for the purposes subservient to agriculture;

the excavations (including wells) made in the ordinary course of agricultural operations; and

the construction of unmetalled road intended to give access to land solely for agricultural purposes.

53.Exemption.-

Notwithstanding anything contained In this Act, the State Government may by notification in the Gazette exempt, subject to such conditions and restrictions, if any, as may be specified in such notification any land or building or class of lands or buildings from all or any of the provisions of this Act or rules or regulations made there under.

54. Plans to stand modified in certain cases.-

(1). Where any land situated in the development area is required by the Master Plan or a zonal Development Plan to be kept as an open space or unbuilt upon or is designated in any such plan as subject to compulsory acquisition, then, if at the expiration of ten years from the date of coming into operation of the Plan under Section 12 or where such land has been so required or designated by any amendment of such plan, from the date of coming into operation of such amendment, under Sub-section (4) of Section 13, the land is not compulsorily acquired the owner of land may serve on the State Government a notice requiring his interest in the land to be so acquired.

(2) If the State Government fails to acquire such land within a period of six months from the date of the notice, the Master Plan or, as the case may be, the Zonal Development Plan shall have effect after the expiration of the said six months, as if that land were not required to be kept as an open space or unbuilt upon or were not designated as subject to compulsory acquisition.

55. Power to make rules.-

(1) The State Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the force going power, such rules may provide for all or any of the following matters, namely-

¹[(a) the levy of fee on a memorandum of appeal under Sub-section (5) of Section 15 or under Sub-section (2) of Section 27)

(b) the procedure to be followed by the ²[Chairman] in the determination of betterment charge, and the powers that it shall have for that purpose;

(c) any other matter which has to be, or may be, prescribed by rules.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than thirty days, extending in its one session, or more than one successive session, and shall, unless some later date is appointed, take effect from the date of their publication in the Gazette, subject to such modifications or annulment as the two Houses of the Legislature may, during the said period, agree to make, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done there under.

1 Subs. By UP Act No. 13 of 1975

2 Substituted by section-8 of amendment act-1976(Act No-19 of 1976) effective from 15.08.1975

56. Power to make regulations.-

(1) An Authority may, with the previous approval of the State Government, make regulations not inconsistent with this Act and the rule made there under for the administration of the affairs of the Authority.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely-

(a) the summoning and holding of meetings of the Authority, the time and place where such meetings are to be held, the conduct of business at such meetings and the number of members necessary to form a quorum thereat;

(b) the powers and duties of the Secretary and Chief Accounts Officer of the Authority:

(c) the salaries, allowance and conditions of service of the Secretary, Chief Accounts Officer and other officers and employees:

(d) the procedure for carrying out the functions of the Authority under Chapter 111 and IV.

(e) the form of register of application for permission and the particulars to be contained in such register;

(f) the management of the properties of the Authority:

¹[(g) the fee to be paid on an application for permission under Sub-section (1) of Section 15;

(h) the fee to be paid for inspection or obtaining copies of documents and maps;

(i) any other matter which has to be or may be prescribed by regulations.]

(3) Until an Authority is established for an area under this Act any regulation which may be made under Sub-section (1) may be made by the State Government and any regulation so made may be altered or by rescinded by the Authority concerned in exercise of its power under Sub-section (1)

57. Power to make bye-laws.-

The Authority may, with the previous approval of the State Government, make bye-laws consistent with this Act and the rules made there under for carrying out the purposes in this Act in respect of any matter affecting the general public, and without prejudice to the generality of this power, such bye-laws may provide for-

(a) the form in which any application for permission under Sub-section(1) of Section 15 shall be made and the particulars to be furnished in such application:

(b) the terms and conditions referred to in Section 16, subject to which the user of lands and buildings in contravention of plans may be continued:

¹[(bb) the guiding principles for composition of offences under Section 32];

(c) the time and manner of payment of betterment charge under Section 30.

¹[(d) the grant of licences to architects, town planning engineers, surveyors, draftsmen for the preparation of building plans or water supply, drainage and sewerage plans and the fees to be paid for the grant of such licence;]

(e) for so long as the Zonal Development Plans are not prepared under Section 9, the matter specified in Clause (d) of Sub-section (2) of that section;]

²[(ee) the definition of an arterial road and the colour scheme and other specifications according to which the facade of buildings abutting such road shall be repaired, white-washed, colour washed or painted under Section 12-A:]

¹[(f) any other matter which has to be or may be prescribed by bye-laws.]

58. Dissolution of Authority.-

(1) Where the State Government is satisfied that the purposes for which the Authority was established under this Act have been substantially achieved so as to render the continued existence of the Authority in the opinion of the

State Government unnecessary, that Government may by notification in the Gazette, declare that the Authority shall be dissolved with effect from such date as may be specified in the notification; and the Authority shall be deemed to be dissolved accordingly.

(2) From the said date-

(a) all properties, funds and dues which are vested in or realisable by, the Authority shall vest in, or be realisable by, the State Government;

(b) all nazul lands placed at the disposal of the Authority shall revert to the State Government:

(c) all liabilities which are enforceable against the Authority shall be enforceable against the State Government: and

(d) for the purpose of carrying out any development which has not been fully carried out by the Authority and for the purposes of realising properties, funds and dues referred to in Clause (a) the functions of the Authority shall be discharged by the State Government.

59. Repeal etc.and Savings.-

(1) (a) The operation of Clause (c) of Section 5, Sections 54, 55 and 56, Clause (xxxiii) of Section 114, Sub-section (3) of Section 117, Clause (c) of Sub-section (1) of Section 119, Section 191, Sections 316, 317,318, 319, 320, 321, 322, 323, 324. 325, 326. 327, 328, 329 and 333, Clauses (a) and (b) of Sub-section (1) of Section 334, Sections 335, 336, Chapter XIV of the Uttar Pradesh ³[U.P. Municipal Corporation Act, 1959] Sections 178, 179. 180, 180-A, 18 1. 182, 183. 184, 185, 186. 203. 204. 205. 206, 207, 208,

1 Inserted by UP Act No. 13 of 1975

2 Inserted by section-9 of amendment act-1976(Act No-19 of 1976) effective from 03.10.1975

3. Subs by UP Act No. 3 of 1997

209, 210 and 222 of the ¹[U. P. Municipalities Act. 1916] (or the said sections as extended under Section 338 thereof or under Section 38 of the ²[United Provinces Town Areas Act, 1914], or as the, case may be, of Sections 162 to 171 of the ¹[U.P. Kshetra Panchayat Zila Panchayat Adhinyam, 1961] and of the Uttar Pradesh (Regulation of Building Operations) Act, 1958 and the Uttar Pradesh Avas- Evam Vikas Parishad Adhinyam. 1965, ³ [except in relation to those housing or Improvement schemes which have either been notified under Section 32 of Uttar Pradesh Avas Evam Vikas Parishad Adhinyam, 1965 before the declaration of the area comprised therein as development area or which having been notified under Section 28 of the said Adhinyam before the said declarations are by- thereafter approved by the State Government for continuance under the said Adhinyam or which are initiated after such declaration with the approval of the State Government, hereinafter in this section referred to as Special Avas Parishad Schemes] shall in respect of a development area remain suspended and Sub-section (3) of Section 139 of the Uttar Pradesh ¹[Municipal Corporation Act, 1959) shall have effect as if the requirement as to constitution of a Development Fund were suspended with effect from the date of constitution of the Authority for that area and until the dissolution of such Authority and the provisions of [Sections 6 and 24 of the United Provinces General Clauses Act 1904) shall apply, in relation to such suspension as if the suspension amounted to repeal of the said enactment by this Act, and in particular, all proceedings relating to acquisition of land and interest in land for Improvement schemes under the said enactment pending immediately before such suspension before any court, tribunal or authority may be continued and concluded in accordance with the provisions of the said enactment (which shall mutatis mutandis apply) as if those provisions were not suspended and the powers, for doing anything which could but for such suspension of the Uttar Pradesh (Regulation of Building not Operations) Act, 1958, be done by the Prescribed Authority and controlling authority and which can, after such suspension be done by virtue of the application of Section 6 of the Uttar Pradesh General Clause Act, 1904, shall vest in the Vice-Chairman and the Chairman respectively).

(b) The operation of the provisions suspended by virtue of Clause (a) shall revive upon the dissolution of the Authority under Section 58, the provisions of ¹[Sections 6 and 24 of the United Provinces General Clauses Act. 1904] shall apply in relation to the cesser of application of the corresponding provisions of this Act as if such cesser amounted to a repeal of these provisions of this Act by an Uttar Pradesh Act.

1 subs. By UP Act No. 3 of 1997

2 Repealed By UP Act No. 12 of 1994

3 subs. By UP Act No 47 of 1976 and deemed always to have been substituted.

¹[(c) Without prejudice to the generality of the provisions of Clauses (a) and (b), and bye-laws, directions or regulations under the ²[U.P. Municipalities Act, 1916] or the Uttar Pradesh (Regulation of Building Operations) Act, 1958 or the ²[U.P. Municipal Corporation Act, 1959) as the case may be, and in force on the date immediately before the date of commencement of this Act, shall, insofar as they are not inconsistent with the provisions of this Act, continue in force, until altered, repealed or amended by any competent authority under this Act).

(2) Where any area for which an Improvement Trust constituted under the United Provinces Town Improvement Act, 1919 is in existence is declared to be a development area under Section 3, the said Act as well as the Uttar Pradesh local Bodies (Appointment of Administrator) Act, 1961. If applicable, shall In relation to such area, stand repealed as from the date of the constitution of the Development Authority for that area, and the Improvement Trust shall as from that date stand dissolved.

(3) ³[On and from the constitution of the Development Authority in relation to development area which includes the whole of a city as defined in the ⁴[U.P. Municipal Corporation Act, 1959) all posts borne on the establishment of the ²[Municipal Corporation] of that city exclusively in connection with its activities under Chapter XIV of the said Adhiniyam or under the Uttar Pradesh (Regulation of Building Operations) Act, 1958, immediately before the date of the constitution of the Development Authority, not being a post governed by the Uttar Pradesh Palika (Centralised) Services Rules, 1956 (hereinafter in this, section referred to as the Centralised Services), shall on and from such date, stand transferred to the Development Authority with such designations as the Authority may determine and officers and other employees who are not members of any Centralised Services, serving under the ²[Municipal Corporation] of that City not exceeding the number of posts so transferred shall be selected in accordance with such directions as may be issued by the State Government for being appointed on the said posts and on such selection shall stand transferred to and become officers and other employees of the Development Authority and shall as such hold office by the same tenure, at the same remuneration and on the same terms and conditions of service as they would have held the same if the Authority had not been constituted and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Authority}:

Provided that any service rendered under the ²[Municipal Corporation] by any such officer or other employee before the constitution of the Authority shall be deemed to be service rendered under the Authority:

1 Inserted. By UP Act No. 13 of 1975(w.e.f. 15.08.1974)

2 subs. By UP Act No. 3 of 1997

3 Subs. By UP Act No. 13 of 1975 (w.e.f. 15.08.1974)

Provided further that the Authority may employ any such officer or other employee in the discharge of such functions under this Act as it may think proper, and every such officer or other employee shall discharge those functions accordingly.

¹[(4) On and from the date of the constitution of the Development Authority in relation to a development area which includes the whole of a city as defined in the ²[U.P. Municipal Corporation Act, 1959] all posts governed by the Centralised Services which were borne on the establishment of the ²[Municipal Corporation] of that city exclusively in connection with Its said activities immediately before the date of constitution of the Development Authority shall, on and from such date, stand transferred to the Development Authority with such designations as the State Government may determine, but all such posts shall continue to be filled by members of the Centralised Services, as they would have been filled had they not been so transferred to the Authority, and the said Adhinyam and the rules relating to the Centralised Services shall be amended accordingly.]

(5) Every officer and other employee serving under an Improvement Trust referred to in Sub-section (2) immediately before the date of the constitution of the Development Authority shall, on and from such date be transferred to and become an officer or other employee of the Development Authority with such designations as the Authority may determine and shall hold office by the same tenure, at the same remuneration and on the same terms and conditions of service as he would have held the same if the Authority had not been constituted, and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Authority:

Provided that any service rendered under the Trust by any such officer or other employee before the constitution of the Authority shall be deemed to be service rendered under the Authority:

Provided further that the Authority may employ any such officer or other employee in the discharge of such functions under this Act as it may think proper, and every such officer or other employee shall discharge those functions accordingly.

(6) Notwithstanding the provisions of Sub-sections (1) and (2)

(a) anything done or any action taken (including any notification issued or order or scheme made or permission granted) under any of the enactments referred to in Sub-sections (1) and shall, so far as It is not inconsistent with the provisions of the Act continue in force and be deemed to have been done or take under the provisions of this Act unless and until it is superseded by anything done or any action taken under the provisions this Act;

¹ Subs. By UP Act No 13 of 1975 (w.e.f. 15.08.1974)

² subs. By UP Act No. 3 of 1997

(b) all debts, obligations and liabilities incurred, all contract entered into and all matters and things engaged to be done with or for any local authority constituted under enactment referred to in Sub-sections (1) and (2) in relation exclusively to the performance of functions assigned to Development Authority by this Act shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Development Authority concerned,

(c) all properties. movable and immovable, vested in Improvement Trust referred to in Sub-section (2) shall vest the Development Authority concerned, and all properties movable and immovable vested in any other ¹[local authority) constituted under any enactment referred to in Sub-section (1)] in relation exclusively to the performance of functions assigned to the Development Authority by this Act shall vest in the Development Authority concerned,

(d) all rents, fees and other sums of money due to an improve Trust referred to in Sub-section (2) or in relation exclusively the performance of functions assigned to the Development Authority by this Act shall be deemed to be due to Development Authority concerned.

(e) all suits, prosecutions and other legal proceedings instituted which might have been instituted by, for or against ¹[any authority appointed or constituted under any enactment referred to in Sub-section (I)] or Sub-section (2) in relation the performance of functions assigned to the Development Authority by this Act may be continued or instituted by against the Development Authority.

¹[(f) all appeals under Sub-section(2) of Section 15 of the Uttar Pradesh (Regulations of Buildings Operations) Act, 1958 relation to an area declared under this Act as a Development area, pending before the Controlling Authority on the date such declaration shall stand transferred to the Chairman the decision of the Chairman shall be final and all such appeal which were addressed to the Controlling Authority and which were entertained by the Chairman after the said declaration shall be deemed to have been preferred to the Chairman and the decision of the Chairman shall be final.]

Explanation.-

For the purposes of this sub-section, the Development fund referred to in Sub-section (3) of Section 139 of ²[the Uttar Pradesh Municipal Corporation Act, 1959] and all properties created out of that fund and all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Mahapalika in relation to such properties or in relation to the functions specified in Chapter XIV of the said Adhinyam, shall be deemed to relate to the performance of functions assigned to the Development Authority by this Act and Clauses (a), (b),(c) (d) and (e) shall apply accordingly.

¹ Subs. By UP Act No 13 of 1975(w.e.f. 15-08-1974)

² subs. By UP Act No. 3 of 1997

(7) If any dispute arises between any Local Authority or a Development Authority whether for purposes of Clauses (b), (c) and (d) of Sub-section (6) any debt, obligation or liability was incurred or any contract was entered into or anything was engaged to be done by with for any local authority, or any property vested in any local authority, or any rent, fee or other sum was due to any local authority, in relation exclusively to the performance of functions assigned by this Act to the Development Authority it shall be referred to the State Government whose decision shall be final and shall not be questioned in any Court.

(8) If any question arises whether for the purpose of Sub-section (3) any officer or other employee of the [Municipal Corporation] concerned was immediately before the date of constitution of the Development Authority employed exclusively in connection with the performance of functions under Chapter XIV of the Uttar Pradesh Municipal Corporation Act, 1959 in the area for which the Development Authority is constituted, it shall be referred to the State Government, whose decision shall be final and shall not be questioned in any Court.

(9) Nothing in Sub-sections (3) and (4) shall apply to an officer or other employee of a ¹[Municipal Corporation] or an Improvement Trust, as the case may be, who within one month from the date of the constitution of the Development Authority concerned intimates the ¹[Municipal Corporation], or Trust of his option not to become an employee of the Development Authority and on receipt of such intimation by that body his post under that body shall stand abolished and he shall be entitled to receive from that body compensation.

(a) if he was employed immediately before the date of the constitution of the Development Authority, in a permanent capacity, equivalent to three month's salary;

(b) if he was employed immediately before the date of the constitution to one month's salary.

Explanation.-

In this sub-section, the expression 'salary' includes Dearness Allowance, Special Pay or any other, like periodical allowance or pay.

(10) Notwithstanding anything contained in the U.P. Industrial Disputes Act, 1947 or in any other law, for the time being in force, the transfer of services of any officer or the employee to the Development Authority under Sub-section (3) or Sub-section (5) shall not entitle him to any compensation under that Act or such other law, and no such claim shall be entertained by any court, tribunal or authority.

(11) Notwithstanding anything contained in Sub-sections (3) and (5) no appointment made or promotion, increment in salary, pension allowance or any other benefit granted to any person after the commencement of this Act and before the date of constitution of Development Authority which in the opinion of the Development Authority would not ordinarily have been made or granted or would not ordinarily have been admissible under the terms and conditions of service in force prior to the commencement of this Act shall have effect or be payable or claimable from the Development Authority or from any provident, pension or other fund or from any authority administering the fund unless the State Government has, by general or special confirmed the appointment, promotion or increment or has directed the continued grant of the pension, allowance or other benefit, as the case may be.

(12) For the persons who immediately before the date of constitution of the Development Authority were trustees of any pension, provident gratuity or other like fund constituted for, the officers and other employees referred to Sub-section (3) or Sub-section (5), other than trustees nominated by or under any law, there shall be substituted as trustees such persons as the State Government may by general or special order, specify.

(13) For the purposes of Clauses (b),(c),(d)and (e) of Sub-section (6) all the functions of a ¹[Municipal Corporation] under Chapter XIV of the ¹[U. P. Municipal Corporation Act, 1959] and all the functions of the Uttar Pradesh Avas Evam Vikas Parishad under the Uttar Pradesh Avas Evam Vikas Parishad Adhinyam, 1965. other than those related to any ²[Special Avas Parishad Schemes] shall be deemed to be functions assigned to the Development Authority by this Act.

³[(14) Notwithstanding anything contained in Section 365 of the ¹ [U.P. Municipal Corporation Act. 1959] all acquisition of land and interest in land for an improvement scheme the functions in respect of which are to be deemed as functions assigned to the Development Authority under Sub-section (13) shall be completed at least up to the stage of making awards on or before ⁴[December 31, 1982]]

60.Repeal and savings.-

(1) The Uttar Pradesh Urban Planning and Development Ordinance, 1973 (U.P. Ordinance 7 of 1973), is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had commenced on the 12th day of June, 1973.

1 subs. By UP Act No. 3 of 1997

2 subs . by UP Act no. 47 of 1976 and deemed always to have been substituted.

3 Inserted by UP Act No. 19 of 1976 and again by UP Act No. 6 of 1982.

4 Subs by UP Act No. 6 of 1982 and shall be deemed to have come in to force on 31.12.1981.

Notes.-

Section 7 of the U.P. Urban Planning and Development (Amendment and Validation) Act, 1985 is given below:

Validation.-

Anything done or any action taken under the principal Act, as amended by the Uttar Pradesh Urban Planning and Development (Amendment) (Second) Ordinance, 1983 (21 of 1983), shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by the Uttar Pradesh Planning and Development (Amendment) Act, 1983 (28 of 1983) as if the provisions of the said Act were in force at all material times.

ANNEXURE R-23

Office
Kanpur Development Authority
Section Engineer (Zone-3)

Letter No. D/185/A.A. -3/K.D.A./24-25

Date: 18/07/24

From,

Secretary,

Kanpur Development Authority,

Kanpur

To,

Police Commissioner,

Kanpur Nagar

Subject:- Regarding providing physical possession to the allottee of Plot No. 70 Block-W, Juhi, Kanpur Nagar which is under the jurisdiction of Juhi police station

Sir,

Please as per the report of Engineering Section, in the above-mentioned case, the order of District Consumer Disputes Redressal Commission Kanpur dated 15.07.2022 in writ petition number 13906/2023 filed by the Hon'ble Supreme Court was ordered to be implemented within 04 weeks. In the above-mentioned case, the order dated 01.03.2024 issued by Shri Prabhash Kumar, Deputy Secretary, Uttar Pradesh Government regarding the letter issued by Hon'ble Ankush/Investigation Committee in case number 235/8-2-24-02 meeting/2007 regarding physical possession of Jawahar Vidya Samiti allotted plot no. 70 Block W Scheme-2 Juhi Kala Kanpur and approval of the educational building map has been ordered to take a decision within one month and inform the committee.

As per the report of the Chief Engineer/Assistant Engineer, as the case in question is covered by the orders passed by the Hon'ble State Consumer Forum, Hon'ble Supreme Court and Hon'ble National Green Tribunal, it is required to provide possession to the original allottee of Kanpur Development Authority. For this, after the auction process in respect of felling of

trees planted in Mookhand No. 70 Block-W-1 Juhi, work order has been issued to M/s Aman Timber Traders by the office letter No. 180/A.A.-Zone-3/K.D.A./2024-2025 dated 16.07.2024 of the Additional District Magistrate (Photocopy attached).

Therefore, it is requested that please instruct the concerned to provide adequate PAC force, police force (including women police force) at the time of felling of trees on 25.07.2024 at 11:00 am due to the sensitive site.

Your Truly,
Secretary,
Kanpur Development Authority

Copy to: -

- 1- District Magistrate, Kanpur Nagar, Kanpur for respectful perusal and deployment of Magistrate at the site.
- 2- Joint Commissioner of Police, Police Commissionerate, Kanpur for information.
- 3- ACP Kaim, Kanpur for information.
- 4- DCP (South), Kanpur for information.
- 5- Vice Chairman, Kanpur Development Authority, Kanpur for observation.
- 6- Assistant Commissioner of Police, Banupurwa, Police Commissionerate, Kanpur for information and necessary action.
- 7- Special Executive Officer, Enforcement (Zone-3) to be present on the scheduled date.
- 8- Special Executive Officer (Law), K.V.P. to be present on the scheduled date.
- 9- Chief Medical Officer, Kanpur Nagar for information and necessary action.
- 10- Chief Fire Officer, Kanpur Nagar for information and necessary action.
- 11- Assistant Engineer (Kanthar Tanker) Kanpur Development Authority with the intention to provide electrician and pre-trained material including Jathi and helmet on the prescribed date.
- 12- Public Relations Officer with the intention to provide videographer and photographer on the prescribed date.
- 13- Inspector in charge Police Station-Kidwai Nagar for necessary action.

----sd---
Secretary

ANNEXURE R-24

KDA

Office

Kanpur Development Authority

Section- Engineering (ZONE-3)

File No. D/763/Section Engineer-3/KDA/2024-2025

Date:-11/09/2024

Secretary

Kanpur Development Authority

Kanpur.

To,

Police Commissioner,

Kanpur Nagar.

Subject:- Regarding providing physical possession of plot no. 70 block-W-1, Jhusi, Kanpur Nagar to the original allottee under Juhi police station area.

Sir,

Kindly, in the above case, the Hon'ble Supreme Court had ordered the implementation of the order dated 15.07.2022 of the District Consumer Disputes Redressal Commission Kanpur in writ petition number 13906/2023 within 04 weeks. In the above case, the order dated 01.03.2024 issued by Shri Prabhash Kumar, Deputy Secretary, Uttar Pradesh Government regarding the letter issued by Hon'ble Ankush / Inquiry Committee in case number illegibe35/8-2-24-02 meeting / 2007 regarding the allotment letter for the plot of

Jawahar Vidya Samiti plot no. 70 Block W Scheme-2 Juhi Kala Kanpur has been ordered to take a decision within one month and inform the committee.

In the above mentioned case, possession is required to be given to the original allottee of Kanpur Development Authority as it is covered by the orders passed by Hon'ble State Consumer Forum, Hon'ble Supreme Court and Hon'ble National Green Tribunal.

Hence, it is requested that in continuation of the above, please direct the concerned to provide adequate amount of PAC Force, Police Force (including Women Police Force) at the time of handing over possession to the original allottee on 18/09/27 at 11:00 AM due to the sensitive nature of the site.

Your sincerely

S/D

Kanpur Development Authority

Copy to: -

1. District Magistrate, Kanpur City, Kanpur for respectful perusal and deployment of Magistrate on the spot.
2. Joint Commissioner of Police, Police Commissionerate, Kanpur for information.
3. ACP crime, Kanpur for respectful information.
4. DCP (South), Kanpur for respectful information.

5. Vice-Chairman, Kanpur Development Authority, Kanpur.
6. Assistant Commissioner of Police, Babupurwa, Police Commissionerate, Kanpur for information and necessary action.
7. Special Executive Officer, Enforcement (Zone-3) to be present on the scheduled date.
8. Special Executive Officer (Law). K.D.A to remain present on the scheduled date.
9. Chief Medical Officer, Kanpur Nagar for information and necessary action.
10. Chief Fire Officer, Kanpur City for information and necessary action.
11. Assistant Engineer (Caretaker) Kanpur Development Authority with the intention that the area should be as per the prescribed manner. kindly make arrangements to provide electrical eng, and reserve military force with sticks and helmets.
12. Public Relations Officer with the intention to please make available the diagraphist and photographer on the prescribed date.
13. Inspector in Charge, Kidwai Nagar Police Station for necessary action



True Translated Copy

KDA

Office

Kanpur Development Authority

Section- Engineering (ZONE-3)

File No. D/855/Section Engineer-3/KDA/2024-2025

Date:08/10/2024

Secretary

Kanpur Development Authority

Kanpur.

To,

Additional Commissioner of Police (Law and Order),

Kanpur Nagar.

Subject:- Regarding providing physical possession of plot no. 70 block-W-1, Jhusi, Kanpur Nagar to the original allottee under Jhusi police station area.

Sir,

In respect to the above mentioned case, the order of District Consumer Disputes Redressal Commission Kanpur dated 15.07.2022 was ordered to be implemented within 04 weeks In the writ number 13906/2023 filed by the Hon'ble High Court. In the above case, the order dated 01.03.2024 issued by Shri Prabhash Kumar, Deputy Secretary, Uttar Pradesh Government regarding the letter issued by Hon'ble Ankush / Inquiry Committee in case number 425/8-2-24-02 meeting / 2007 regarding the allotment letter for the plot of Jawahar Vidya Samiti plot no. 70 Block W Scheme-2 Juhi Kala Kanpur has been ordered to take a decision within one month and inform the committee.

As per the above case in question, it is required to provide physical possession of the site to the original engineer of Kanpur Development Authority. Earlier, in the letter number-763/A.310-

3/K.D.A/24-25 dated 11.09.2024 issued by Engineering Section Zone-3, in the efforts of the officers of the Authority to implement the possession Process on 18.09.2024, obstruction was created by Mr. Bhupesh Awasthi and other local persons.

Therefore, it is requested that please provide adequate PAC force, police force (including women police force) in order to maintain peace and order at the time of handing over possession to the original allottee on 18.10.2024 at 11:00 am due to the site being sensitive and kindly instruct the concerned for other necessary action.

sincerely

Your

S/D

Kanpur Development Authority

Copy:-

1. Sent to the District Magistrate, Kanpur City, Kanpur for respectful perusal and deployment of Magistrate on the spot.
2. Sent to the whole police department of Kanpur , Joint Commissioner of Police, Police Commissionerate, Kanpur for information.
3. Sent to ACP crime, Kanpur for respectful information.
4. Sent to DCP (South), Kanpur for respectful information.
5. For your kind observation to the Vice-Chairman, Kanpur Development Authority, Kanpur.
6. Assistant Commissioner of Police, Babupurwa, Police Commissionerate, Kanpur for information and necessary action.
7. Special Executive Officer, Enforcement (Zone-3) to be present on the scheduled date.
8. Special Executive Officer (Law). K.D.A to remain present on the scheduled date.
9. Sent to Chief Medical Officer, Kanpur Nagar for information and necessary action.
10. Chief Fire Officer, Kanpur City for information and necessary action.

11. Assistant Engineer (Caretaker) Kanpur Development Authority with the intention that the area should be as per the prescribed manner. kindly make arrangements to provide electrical eng, and reserve military force with sticks and helmets.
12. Sent to the Public Relations Officer with the intention to please make available the diagraphist and photographer on the prescribed date.
13. Sent to Inspector in Charge, Kidwai Nagar Police Station for necessary action

ANNEXURE R-26

COURT OF LD. CIVIL JUDGE (SENIOR DIVISION), KANPUR

CITY

CIVIL SUIT NO. - 2095 YEAR - 2024

1. Harish Khatri, Adult aged approximately 45 years, son of Leelaram Khatri, resident of 127/167 W-1 Block, Saket Nagar, Kanpur Nagar.
2. Tarun Kumar Jain, adult aged approximately 55 years, son of late Pradeep Kumar Jain, resident of 127/178 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 9415040885
3. Sh. Bharatish Mishra, adult aged approximately 64 years, S/o Balchandra Mishra, resident of 127/68 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 9415043491
4. Shri Ravi Rathi, adult aged approximately 57 years, son of late Ved Prakash Rathi, resident of 127/66 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 9415724961
5. Shri Ram Prakash Kushwaha, adult aged approximately 66 years, son of Sh. Deendayal Kushwaha, resident of 127/65 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 7388478899
6. Shri Pradeep Shukla, adult aged approximately 53 years, son of Jagdish Shukla, resident of 127/74 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 983944230

7. Shri Mayank Kumar Gupta, adult aged approximately 42 years, son of Sh. Vimal Kishore Gupta, resident of 127/174 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 9005219591
8. Shri Shivkumar Maurya, adult, aged approximately 58 years, son of Sh. Ramratan Maurya, resident of 127/187 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 9005635790
9. Shri Pradeep Bhatia, adult, aged approximately 48 years, son of Sh. Rajan Bhatia, resident of 127/177 W-1 Block, Saket Nagar, Kanpur Nagar.
10. Shri Deepak Shukla, adult, aged approximately 43 years, son of Sh. Satish Chandra Shukla, resident of 127/100 W-1 Block, Saket Nagar, Kanpur Nagar.
11. Shri Madhuresh Kumar Singhal aged approximately 63 years, son of Sh. Jagdish Prasad Singhal, resident of 127/110 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 8765594510
12. Shri Avadhesh Tripathi, adult aged approximately 53 years, son of Sh. Ramkumar Tripathi, resident of 127/427 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 9369544050
13. Shri Abhinav Mishra, adult, aged approximately 42 years, son of Sh. Bharatendu Mishra, resident of 127/177 W-1 Block, Saket Nagar, Kanpur Nagar, Mobile No. 8373940868

14. Shri Vijay Bhatia, adult aged approximately 52 years, son of sh. Krishnachandra Bhatia, resident of 127/177, Saket Nagar, Kanpur Nagar, Mobile No. 9839621262

.....Plaintiffs

Versus

1. Jawahar Vidya Samiti through its Secretary Sudhir Shukla, son of Shri S.N.P. Shukla, resident of 2A/241, Azad Nagar, Kanpur Nagar and present address 117/461, Geeta Nagar, Naveen Nagar/Kakadev, Kanpur Nagar.
2. Kanpur Development Authority through its Vice-Chairman, Kanpur Development Authority, Moti Jheel, Kanpur Nagar.
3. Kanpur Development Authority through its Chairman/(Commissioner), Kanpur Development Authority, Moti Jheel, Kanpur Nagar.

....Defendants

SUBJECT: Suit for declaration and permanent injunction under Section 34 and 39 of the Specific Relief Act, and the suit is being filed in a representative capacity on behalf of the plaintiffs for the following reliefs: -

It is respectfully prayed as under:-

1. That the Plaintiffs are residents of W-1 Block, Saket Nagar, Kanpur Nagar, in the Juhi Kalan Scheme area, since the time of their ancestors, and under the rights vested by Defendant No. 2, they have been in possession of their buildings as owners, having constructed and furnished them, for the purpose of peaceful occupation, use, enjoyment, and have been existing as owners for approximately 5 decades, i.e., 50 years. The residents of the area, including all the Plaintiffs, have been using Plot No. 70 W-1 Block, Saket Nagar, for the purpose of walking for health benefits in the open air and breathing fresh oxygen from the green trees, as a right of easement, for approximately 5 decades, which has been developed with fruit-bearing, flowering, and health-related trees, and revered trees by the residents, including the Plaintiffs. That in the developed park, there is the establishment of a grand temple of gods and goddesses as a sacred temple, where the wishes of the area residents are fulfilled upon their prayers to the deity, and every year, religious programs are organized in the form of all festivals, with which the faith of Hindus is connected. The residents of the area play a role in organizing the programs and ensure

their smooth execution, and even in the present time, the programs are being executed by the residents, including the Plaintiffs, and the residents, including the Plaintiffs, are benefiting from the oxygen in the open air of the park, and their mothers and sisters worship the trees every year on the occasion of their respective festivals. Due to this, in the representative capacity, the suit is being constituted against the Defendants, considering the feelings of the families of the local residents, whose association is connected with the park for public use, as a form of benefit, and keeping in view their faith, and the cause of action for the suit, including the reliefs sought against the Defendants, has actually arisen, and the current situation of the site is being presented.

2. That the Plaintiffs, along with the residents of the area, have come to know that the park, which has been used for approximately 5 decades for the benefit of open air, breathing, and clean oxygen from green trees, for health benefits, walking, and worshipping at the temple in the park, and for the benefit of organizing other religious programs, was allotted by Defendant No. 2 to Defendant No. 1 for the purpose of opening a primary school approximately 4 decades later, leading to a dispute regarding the plot. Defendant No. 1, being shown as

the (Consumer), filed Complaint No. 1222 of 2002, Jawahar Vidya Samiti vs. Vice Chairman of Kanpur Development Authority and Chairman of Kanpur Development Authority, before the Consumer Disputes Redressal Forum, Kanpur Nagar, in which Defendant Nos. 2 and 3, in their reply on behalf of Defendant No. 2, concealed the important and valuable factual information about the park being used by the local residents, despite having complete knowledge of the current situation. That on 19.12.2003, a decision was obtained from the Consumer Forum against Defendant Nos. 2 and 3 and in favour of the complainant, and the validity of the decision in the complaint was questioned by Defendant No. 2 in Appeal No. 165 of 2004 under the appellate jurisdiction of the Consumer Commission. The decision was upheld on 03.07.2015 under the appellate jurisdiction, and when the validity of this was questioned by Defendant No. 2 in Revision Petition No. 3201/2015 before the National Commission, the orders dated 03.07.2015 and 19.12.2003 were confirmed under the Revision Order dated 28.11.2019. After this, Defendant No. 2 filed Special Leave Petition (Civil Diary No.) 2490/2020 under Section 5 of the Limitation Act along with the application before the Hon'ble Supreme Court, questioning

the validity of the decisions dated 28.11.19, 03.07.15, and 19.12.03 passed by the National Commission, the Commission, and the Consumer Forum under their respective jurisdictions. The petition was dismissed on 15.12.2020 without considering the merits, stating that the delay in presenting the petition was not a sufficient ground. This information has been obtained by the Plaintiffs and the local residents, who are presenting the present suit in a representative capacity, from the authentic evidence of the dispute.

3. That after the decision of the National Commission on the revision, Defendant No. 1 filed Execution Case No. 4 of 2020, Jawahar Vidya Samiti vs. Kanpur Development Authority, before the Consumer Disputes Redressal Forum, Kanpur Nagar, for the enforcement of the decision dated 19.12.2003 regarding the property of Plot No. 70 W-1 Block, Juhi Kala Scheme, Kanpur Nagar. On 23.01.2021, without any on-site identification of the plot or photographs, Defendant No. 2 executed the lease deed in favour of Defendant No. 1 for a period of 90 years, despite the estimated value being approximately 60 crore rupees, causing financial loss to the State of Uttar Pradesh. Defendant No. 2 did not discharge their

official duties with due diligence and integrity, and without jurisdiction, leased out the park, which had been developed with public cooperation for approximately 5 decades for the use of the local residents, in a wrong manner. That without considering the current situation of the site, the leasehold rights were transferred to Defendant No. 1 on 23.01.2021 for the primary school, and this act of misconduct by Defendant No. 2 has caused great difficulties and apprehension of deprivation to the local residents, including the present Plaintiffs, on a daily basis.

4. That in the execution case in favour of Defendant No. 1, the Consumer Disputes Redressal Forum, Kanpur Nagar, in its court proceedings of 2023, ordered Defendant No. 2 to hand over possession to Defendant No. 1 in continuation of the rights vested by Defendant No. 2. When Defendant No. 2 filed Group C Petition No. 17800 of 2023, Kanpur Development Authority vs. Jawahar Vidya Samiti, etc., before the Lucknow Bench of the Hon'ble High Court, Allahabad, the petition was finally dismissed on 24th May 2023, imposing a cost of five lakh rupees. When Defendant No. 2 questioned the validity of this dismissal after depositing the imposed cost by filing Special Leave Petition No. Civil 13906 of 2023, the Hon'ble

Supreme Court, while waiving the imposed cost of five lakh rupees, granted Defendant No. 2 the opportunity to present their case in Petition No. 23521/2022 pending before the Lucknow Bench of the Hon'ble High Court, Allahabad, and directed that the cost imposed in Petition No. 17800/2023 arising from the order of the Consumer Forum's execution court be refunded to Defendant No. 2 within four weeks. However, Defendant No. 1, misinterpreting this order, has continued to mislead the trial execution court of the Consumer Forum, and as a result, Defendant No. 2 is preparing to hand over possession of the public park to Defendant No. 1, destroying the developed park, including the large number of huge green trees standing in the park, and demolishing the established temple of gods and goddesses in the park. There is a strong possibility of this happening, causing daily fear among the local residents and the present Plaintiffs, as it would be a blatant disregard for their health benefits and the feelings and faith associated with the park and the temple. That the local residents, including the Plaintiffs, have been benefiting from the park for several decades for their health, and due to their deep attachment and connection with the park, there is an apprehension of being deprived of the feelings of faith

ingrained in their minds. Therefore, the present suit is being filed in a representative capacity, as the correct cause of action has arisen against the Defendants, because it is a principle of law that the feelings of the public prevail over individual feelings.

5. That Group C Petition No. 23521 of 2022 filed by Defendant No. 1 is pending before the Lucknow Bench of the Hon'ble High Court, Allahabad, regarding the suit property No. 70 W-1 Block, Juhi Kala Scheme, Saket Nagar, Kanpur Nagar, in a representative capacity, and Special Leave Petition No. Civil 13906/2023 of the Hon'ble Supreme Court, disposed of on 10.07.2023, is under consideration for Defendant No. 2 to present their case. Additionally, another petition of Defendant No. 2, Group C No. 7517 of 2022, is pending against Defendant No. 1, and Public Interest Litigation 5/8 of 2022 is pending before the Lucknow Bench of the Hon'ble High Court, Allahabad. Considering these current situations, in compliance with the Hon'ble Supreme Court's order dated 10.07.2023 in Defendant No. 1's pending petition, Defendant No. 2 should be given a proper opportunity to present their case, and until a decision is reached on the merits, any proceedings before the execution court should not be proceeded with. This intention,

as per the established legal principle, is extremely necessary in the interest of justice.

6. That some local residents, who have been using the site as a park for approximately 5 decades and continue to do so, also raised the dispute before the National Green Tribunal, which disposed of O.A. No. 494/2023 on 19.01.2024. The Plaintiffs are also presenting this current status based on the information received. The Plaintiffs also wish to specifically bring to the Hon'ble Court's attention that the petition sent to the National Green Tribunal via registered post and email on 29.08.2024 is currently in the screening process. There is a strong possibility of the petition being registered and heard after screening. The present Plaintiffs are reserving their rights to file an application under Order 21 Rule 97 read with Section 151 of the Civil Procedure Code in Execution Case No. 4 of 20, which has been transferred to the Consumer Forum. That according to the information received from the file of the execution case, an application under Order 1 Rule 10 read with Section 151 of the Civil Procedure Code has been filed by local residents.
7. That a suit No. 1625 of 2022 has been presented by defendant no. 2 against defendant no. 1 for the cancellation of the lease

deed dated 23.01.2021. In which, an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure for striking off the name of defendant no. 2 has been presented by defendant no. 1 vide application paper No. 14 Ga. Upon filing an objection by defendant no. 2 against the said application paper No. 14, after hearing on 25.09.2024, the order was reserved for 27.09.2024. Vide order dated 27.09.2024, the application No. 14 Ga of defendant no. 1 was dismissed, and the file for the disposal of the third-party application paper No. 44 presented under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure for being made a party, has been sent for further action to the Hon'ble Trial Court, Civil Judge, Kanpur Nagar.

8. This is to inform the concerned residents that the application submitted by Defendant No. 2 for the allotment of the pre-developed park for the purpose of a primary school by Respondent No. 1 was conditionally approved on 19.01.1984. However, due to non-payment of one-fourth of the amount at the time of allotment and non-payment of the remaining three-fourths of the amount within the stipulated period of three years from the date of allotment, i.e., by 18.01.1987, no further correspondence was made by Defendant No. 2 to keep

the claim alive. In this situation, the "park" which was developed by the local residents as a "developed park" was allotted in favour of Smt. Karam Devi Memorial Public School in the year 1996 without the consent of the local residents. It is also to be noted that Defendant No. 2 and Defendant No. 1, without any valid reason, in contravention of the allotment letter dated 19.01.1984, made a time-barred allotment on 01.11.1998 while ordering the calculation of interest on the amount since 1998 and the deposit of the remaining three-fourths of the amount, by issuing the allotment letter of Karam Devi Memorial Public School dated 05.08.1998 and acting without authority, the irregular actions of Respondent No. 2, failing to discharge their official duties with diligence and integrity, by keeping the time-barred allotment letter dated 19.01.1984 in favour of Respondent No. 1, created a situation of dispute, due to which the presentation of the case as a "time-barred" dispute before the Consumer Disputes Redressal Forum, Kanpur Nagar, by Respondent No. 1 on 25.09.1998 and the non-presentation within the period of three years on 01.11.1998, the order dated 19.12.2003, due to Respondent Nos. 2 and 3 not being entitled to any relief, falls under the

category of a "void order" from the very beginning and cannot be upheld under the provisions of execution law.

9. That we, the residents of W-1 Block, Saket Nagar, Kanpur Nagar, residing in plot number 70 and its vicinity, have been enjoying the amenity of the said park for a long time. In its healthy and natural environment, the park has been used by women for circumambulation and worship of the Peepal tree on the occasion of festivals, and the established idol in the constructed temple within the park has been worshipped by the general public along with other deities in the morning and evening. The general public has been visiting for darshan for the last 4-5 decades. The cutting of trees in the park or the removal of the established idol, which is a symbol of faith and reverence for the general public, and the destruction of the greenery of the park is a clear disregard for the sentiments of the general public. Due to the oversight of the Kanpur Development Authority in issuing a small allotment letter, the Jawahar Vidya Samiti, by bringing a consumer dispute, presented the time-barred case No. 1222/2002 with incomplete and misleading facts. The important facts and the essential and valuable point, which was in the nature of a crucial fact, were not presented, due to which, in compliance

with the order dated 19.12.2003, the execution proceedings dated 23.01.2021 in favour of Jawahar Vidya Samiti were passed without taking the photos of the property in possession and without identifying the park in the possession of the general public, for whose allotment the competent authority had not given any order. Therefore, in compliance with the judicial order dated 19.12.2003 of the Consumer Redressal Forum, Kanpur Nagar, the green trees are being uprooted and the temple built in the park for the general public is being attempted to be removed and demolished. This is being done in (...illegible..) of the Hon'ble Supreme Court's decision dated 10.07.2023, whereas the sentiments of all the local residents are being unjustly disregarded with the belief that this park, being a place of worship and providing clean and open air and natural environment, offers health benefits. This act is being carried out day by day under the pressure of Respondent No. 1 on Respondent No. 2, whereas the use of the general public is considered supreme according to the law over individual use. If any competent officer has allotted the allotment of the park in wrong manner, then the allotment order of the competent authority under the principle laid down by the Hon'ble Supreme Court in the case of Kiran Singh v. Chaman Paswan,

which was decided in 1954, is void ab initio. Under the principle of void proceedings, if any proceedings have been initiated, all such proceedings are also void. The Hon'ble Supreme Court, while reiterating this principle in the year 1994, has held that if any order or judgment, even if it is of the High Court, is not binding on the incompetent authority. Similarly, the Hon'ble Supreme Court has laid down this principle in the year 2000 that if any order has been obtained from the court by suppressing material facts and by fraud, then in that situation, the void order does not have any effective impact. Such is the provision of law.

10. That plot no. 70, W-1 Block, Juhi Kala Scheme (now Saket Nagar), Kanpur Nagar, which is in an area of 5138.67 sq. meters, is a public park being run for the benefit of the general public for about the last 4 decades with the aim of providing education to deaf and mute individuals in approximately 2000 sq. meters within this park and promoting adult education without any profit motive. The work of temporarily maintaining and beautifying the park with the aim of developing it was given to the Nagar Nigam by the Kanpur Development Authority, in which crores of rupees were invested. And in the year 2018, the Nagar Nigam improperly

handed over the operation of 2-3 parts of the park to the Bhagwan Parashuram Mahasabha, as can also be confirmed from the Kanpur Development Authority and the Nagar Nigam office. It is also clear that the park is a public place for the general public and cannot be allotted to any person or entity for profit-making purposes. Therefore, the allotment in favour of Jawahar Vidya Samiti from the preliminary stages, is erroneous allocation and the judgment passed in the proceedings initiated in continuation of the erroneous award are, under the law, void as proceedings arising without jurisdiction.

11. That the aforementioned Complaint No. 122/2002 filed by defendant no. 1 is a void proceeding. The reason for filing the complaint against the defendants is stated as being within the limitation period. However, the order passed on 19.12.2003, which is a time-barred complaint and is contrary to the factual situation, is being mentioned for the perusal of the Hon'ble Court. It states, - "The consumer complaint of the complainant institution is accepted. The consumer complaint of the complainant institution is accepted. Opponent no. 1 is directed that it should deposit the remaining 3/4th cost of the disputed plot, amounting to Rs. 3,31,444.22, along with 10%

annual interest from 11/05/1984 to 22/03/1997, within one month and get the plot registered in its favour within the next two months by providing possession. If the complainant does not deposit the remaining amount in the opponent's account within one month, then it will pay 21% annual interest on the said amount to the opponent from the date of the decision."
Both parties shall bear their own costs."

GROUNDNS

- (a) That the complaint No. 1222/02 of defendant No. 1 against defendant Nos. 2 and 3 is time barred from the time of its initiation as the cause of action for institution of the complaint has arisen. It is the duty of every court and every forum under Section 57 to raise the point of time barred which any party has the right to raise as a legal point at any time.
- (b) That as the defendant no. 1 did not amend the original complaint by amending it by stating his status in the complaint as execution suit, the erroneous action against the defendant no. 2 and 3 is being taken as a void action.
- (c) That this is an appeal challenging the validity of the order dated 19.12.2003 passed by the Consumer Forum in favour of Defendant No. 1. In the appeal, revision, and

SLP filed by Defendant No. 2, Defendant No. 3 was not made a party during the proceedings. Therefore, the execution of order dated 19.12.2003 of suit no. 01/20 is not being executed under the provisions of law. Such is the provision of law.

- (d) That the execution proceedings for a period of 90 years for the land of the "developed park" were carried out by Defendant No. 2 on January 23, 2021, in favour of Defendant No. 1, in compliance with the time-barred order dated 19.12.2003, without authority, without taking photographs of the property for identification, and without properly discharging the duties of the executing court with true diligence and integrity by adopting a legally improper course of action with full knowledge, which is against the policy of the State of Uttar Pradesh.
- (e) That the lease deed executed in favour of defendant no. 1 by defendant no. 2 on 23.01.2021 was executed in favour of defendant no. 1 after obtaining legal opinion and order no.-D-886, dated 04.07.2022 was passed to cancel the application and return the deposited amount with nine percent interest, along with the order to institute a suit for cancellation of the lease deed executed

on 23.01.2021, in compliance of which, defendant no.-2 has instituted a suit against defendant no.-1 on 16.08.2022, which is for trial in suit no.-1625/22 of law.

- (f) That the point of legality of the order passed dated 27.04.2023 in Execution Suit No. 4 of 2020 of Defendant No. 1 was questioned by Defendant No. 2 in Group (C) Petition No. 17800 of 2023 before the Hon'ble Division Bench and was finally dismissed on 24.05.2023 by imposing a sum of Rs. 5 lakhs. In such a situation, in compliance with the order of 24.05.2023, after the amount of damages was deposited by Defendant No. 2, Special Leave Petition Civil-13906 of 2023 was presented, the Special Leave Petition was disposed of on 10.07.2023 by waiving the imposed cost of Rs. 5 lakhs and giving appropriate directions. Disposed order dated 10.07.2023. 2023 is being mentioned for the perusal of the Hon'ble Court, which has been passed by the Justices of the Hon'ble Supreme Court on 10.07.2023.

"Heard Mr. Tushar Mehta, learned Solicitor General as also the learned Senior Counsel for the respondents. In so far for the merits of the impugned order. We see no reason to interfere. However, in peculiar facts and

circumstances of the instant case, we do not approve of the costs of Rs. 5 Lakhs, which has been imposed upon the petitioner - authority. Hence, the cost imposed by the Court of Rs. 5 Lakhs, which is said to have been deposited by the petitioner Authority, may be withdrawn by the petitioner. On execution of the order, if any action to be taken arises, to that extent, the right to proceed as per Law, is left open.

Further, we make it clear that the non-interference with the impugned order herein, shall not preclude the authorities in proceeding in accordance with Law after providing opportunity to the respondents herein. In that regard, all contentions of the parties urged in write Petition (c) No. 23521/2023 are left open to be urged and this order shall not come in the way of the High Court considering its in accordance with Law.

However, time of four weeks is granted to comply the order before the Executing order.

Petition is accordingly, disposed of along with the pending applications (S), if any."

From the aforementioned Hon'ble Supreme Court's order dated 10.07.2023, it is clear that in the order passed in the Special

Leave Petition no. 23521 of 2022, the Defendant No. 2 has the right to present their case, which remains open. After providing an opportunity for hearing, the order has been passed for consideration under the provisions of law by the Bench of the Hon'ble High Court, Allahabad, which is still under consideration before the Hon'ble High Court. And by misinterpreting the aforementioned order in the final paragraph of the dated 10.07.2023 order, pressure is being created on the Consumer Forum by Defendant No. 1 to expedite the dismissal proceedings. In this situation, the relevant documents have been presented before the Consumer Forum, and the date 18.10.2024 has been fixed.

(g) PIL No. 518 of 2022 titled Ravi Pandey and ors. V. State of U.P. and Group G Petition no. 7517 of 2022 titled Jawahar Vidya Samiti V. State of U.P. and ors., and Petition no. 23521 of 2022 titled Kanpur Development Authority' civil suit no. 1625 of 2022 before the Hon'ble High Court, Bench Allahabad and the petition of the plaintiffs is pending consideration for before the National Green Tribunal for screening of the Annexures. The application of the third party impleadment, namely Ravi Pandey is has been kept in the execution suit file and the

present Plaintiffs in execution case no. 4 of 2020 in order to preserve their right to produce an application under order 21 rule 97 r/w 151 CPC, keeping in view the protection of the rights of the Plaintiffs, are filing the present suit as a representation suit by providing updates regarding the status.

- (h) That the park land was wrongly allotted by the defendant no. 2 as a primary school and during the execution suit proceedings in compliance with the decision of the Consumer Forum dated 19.12.2003, the amount was deposited by the defendant no. 1 on 11.01.2021 and keeping in view the lease deed dated 23.01.2021 and respecting the decisions of the Hon'ble Courts, on 17.08.2023, for the purpose of finalizing the dispute of the case, the defendant no. 2 gave an option letter to the defendant no. 1 to choose one of the 06 plots in the form of an option letter, on which the defendant no. 1 has not chosen one plot as an option till the date of filing the claim, as informed verbally to the plaintiffs by the defendant no. 2.
- (i) That in compliance with the final order dated 19.01.2024 passed by the National Green Tribunal in the matter of

Manoj Kumar Pandey etc. versus State of UP etc. in OA No.-494/2023, after correspondence by Defendant No. 2 and Defendant No. 1 with the Social Forestry Division, Kanpur Nagar, and after publication of the notice in newspapers namely Hindustan and Amar Ujala on 16.07.2024 and 18.07.2024 respectively, an order has been passed to provide police force in connection with the cutting of green trees, due to which the rights of the plaintiffs in the present case are likely to be affected, and there is a strong possibility of this happening.

12. That the cause of action for the present suit in the representative capacity of the plaintiffs, for the protection of their rights and interests against the defendants under Sections 34 and 39 of the Specific Relief Act, arose finally on 18/07/23, accruing day by day from 23.01.2021, and the present suit is being instituted by the plaintiffs in the present suit to seek protection from the illegal actions of the defendants and to secure their rights.
13. That the rights and interests of the residents of the area be safeguarded and protected by the plaintiffs of the present suit in a representative capacity.

14. That the present suit has been instituted by the plaintiffs in their representative capacity for the protection and safeguarding of the rights of the local residents. Keeping in view the strong possibility of the local residents being deprived of the benefits of the aforementioned property acquired under the process of law, the plaintiffs are presenting the suit for declaration against the defendant, seeking the relief that the Hon'ble Court can grant in accordance with the intention of the law, based on the actual and correct facts stated in the plaint and supported by documentary evidence.

14. That the Hon'ble Court has jurisdiction to hear the present suit in its representative capacity against the defendant because the plaintiffs are local residents of Sector 70 W-1 Block, Juhi Kala Scheme, Saket Nagar, Kanpur Nagar, where the property under use and the proposed park are situated. The location of the aforementioned property in the proposed park is shown in the attached Google Map. Since the 'Karyalaya Motijheel Parisar, Kanpur Nagar' which falls under defendant Nos. 2 and 3, and the disputed park of the plaintiffs and the defendant are situated within the territorial jurisdiction of Kanpur Nagar, the Hon'ble Court has territorial jurisdiction to hear the suit.

15. That the valuation of the present suit by the plaintiffs is ₹10,00,000 under 'A' and ₹10,00,000 under 'B', on which court fee of ₹200/- and ₹500/- respectively, totalling ₹700/-, is being presented herewith to protect the rights of the plaintiffs.
16. That in the present suit in a representative capacity by the plaintiffs, the following reliefs are being sought against the defendant, which are as follows :-
- (A). That the Hon'ble Court may pass a declaratory decree in the present representative suit against the defendant to the effect that defendant No. 1 should refrain from acting in pursuance of the cancellation order dated 14.07.2022 of the allotment of plot No. 70W-1 cancelled by defendant No. 2 vide registered deed of cancellation dated 21.01.2023, and also from acting in pursuance of the option letter given by defendant No. 2 to defendant No. 1 on 17.08.2024, regarding the selection of any one plot in relation to plot No. 70 W-1 Block, Juhi Kala Scheme, Saket Nagar, Kanpur Nagar.
- (B) That a permanent injunction be issued in favour of the plaintiffs and against the defendant, restraining the defendant from creating any kind of obstruction in the religious programs being conducted by the residents in the temple situated in the park located at Plot No. 70 W-1 Block, Juhi Kala Scheme,

Saket Nagar, Kanpur Nagar, which has been used by the residents for five decades for health benefits and worship, without adopting any due process of law.

(C). That the costs of the suit be awarded to the plaintiffs from the defendant.

(D). That in the present representative suit, after the presentation of the written statement by the defendant, any other relief that this Hon'ble Court deems necessary and appropriate, keeping in view the facts and circumstances of the suit, may be granted to the plaintiffs from the defendant, and the undertaking for the payment of necessary court fees will be given by the plaintiffs at the time of the decree of the suit, which is being stated in the plaint itself by the plaintiffs.

1	Sd/- Harish Khatri Harish Khatri	2	Sd/- Tarun Kumar Jain	3	Sh. Bhartish Mishra sd/-
4	Sh. Ravi Rati sd/- Ravi Rathi	5	Sd/- Ram Prakash Kushwaha Sh. Ram Prakash Kushwaha	6.	Sd/- Pradeep Sh. Pradeep Shukla
7	Sd/- Mayank Kumar Gupta Mayank Kumar Gupta	8	Sd/- illegible Sh. Shiv Kumar Maurya	9	Sd/- illegible Sh. Pradeep Bhatia
10	Sd/- Deepak Sh. Deepak Shukla	11	Sd/- illegible Sh. Madhuresh Kumar Singhal	12	Sd/- illegible Sh. Avadhesh Tripathi
13.	Sd/- Abhinav Sh. Abhinav Misra	14	Sd/- illegible Sh. Vijay Bhatia		

Plaintiffs

Verification:

I, plaintiff No. 1 Harish Khatri, solemnly affirm and state that the contents of paragraphs 1 to 11 and its sub-paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i) of this plaint are true to the best of my personal knowledge and information received and believed to be true according to my information and based on legal advice. Nothing has been concealed therein. May God help me.

This verification of the plaint has been done today, dated 11/10/2024, in the Civil Court, Kanpur Nagar.

Sd/-Harish Khatri

Plaintiff No. 1

Court of the Ld. Civil Judge Senior Division, Kanpur**Nagar**

Civil suit No. 2095 of 2024

Harish Khatri etc. Versus Jawahar Vidya Samiti etc.

Affidavit

I, the undersigned Harish Khatri, adult son of Mr. Leelaram Khatri, resident of 127/167 W-1 Block, Saket Nagar, Kanpur Nagar,

Deponent

I, the above-mentioned deponent, do solemnly state as follows: -

1. That the deponent, in his representative capacity, has presented the present suit keeping in view the feelings of the local residents and their true attachment and faith towards the greenery and temple situated in the developed park, as mentioned in the signed plaint of the co-plaintiffs. The affiant, while reiterating all the statements in the entire plaint of this representative capacity suit, and while protecting and safeguarding all the rights under the relevant legal provisions, and having demonstrated and proved the same through due process of law, is praying for a decree against the defendants

and requests that this representative capacity suit be accepted and a decree be passed in favour of the plaintiffs.

Sd/- Harish Khatri
Deponent

Verification

I, Harish Khatri, Plaintiff No. 1, verify that paragraph 1 of this affidavit, in which the supporting statements for the plaint have been presented, is true to the best of my personal knowledge, and nothing has been concealed. May God help me.

This verification of the affidavit has been done today, dated 11/10/2024, in the Civil Court, Kanpur Nagar -

Sd/- Harish Khatri
Deponent

ANNEXURE R-27**Miscellaneous Case No.-485/74/2024**
Harish Khatri vs Jawahar Vidya Samiti**17.10.2024**

The file was presented. Learned counsel for the applicant/plaintiff was heard on application paper number- 4C2.

Disposal Application Paper No.-4C2

The applicant/plaintiff has submitted application paper number-4C under Order-1. Rule-8 read with Section-151 CPC and has stated that he should be granted permission to file a representative suit to protect the interests of representation and security of the residents of the area. The affidavit attached with the application shows that the applicants have submitted the application stating that the registration work has been done by the opponent number-2 against politics in favor of opponent number-1. The disputed site is a developed park, in which a large number of trees are planted. There is a boundary wall built all around. There is a temple built inside the park, where worship is done. The total number of applicants in the application is 14. It is not clear in the application that what is the number of plaintiffs and on behalf of which plaintiffs the request for filing a representative suit has been made. While submitting an application for representation suit under Order-1, Rule-8, it is necessary to mention the names and residences of the plaintiffs. In the present application, permission

has been requested to institute a representative suit on behalf of the residents of the area, which is an ambiguous and misleading statement. Therefore, under the application, permission to institute a representative suit can be given only if the interests of the applicant and the plaintiff are the same under Order 1. Rule 8. Since the applicants have stated that they also have an interest in the dispute in question. Therefore, as per the rules, the applicants are free to present the case in their personal capacity. No person needs permission to present a case in his personal capacity. Accordingly, the application paper number-4C is dismissed.

-----sd----

(Amar Pratap Chaudary)
Civil Judge (C.D)
Kanpur Nagar

ANNEXURE R-28

Court- District Judge, Kanpur City

Miscellaneous Case No.- 884/2024

Harish Khatri etc. ...Versus... Jawahar Vidya Samiti and ors.

21.10.2024

1. The present miscellaneous case is fixed for orders on the acceptance of the Revision.
2. The Revisionists have filed a Revision Petition against the order dated 17.10.2024 passed by the Court of Civil Judge (Senior Division), Kanpur Nagar in Miscellaneous Case No. 485/74/2024, Harish Khatri etc. versus Jawahar Vidya Samiti etc.
3. While passing the impugned order, the learned Civil Judge (Senior Division), Kanpur Nagar, dismissed the application filed by the Revisionists seeking permission to present the plaint under Section 34 and 39 of the Specific Relief Act for declaration and permanent injunction, under Order-1 Rule 8 CPC. The certified copy of the impugned order along with the formal order has not been filed with the Revision Petition. The order is mentioned in the memo of Revision Petition.
4. The urgency of the Revision Petition filed by the learned counsel for the Revisionists on 18.10.2024 was mentioned.

The matter was stated to be related to temple construction and faith. Therefore, regarding the acceptance, the learned counsel for the Revisionists, Shri Ajeet Kumar Gupta, Advocate, presented the relevant circumstances before the court. After considering the circumstances presented, an order was passed to register the Revision Petition as a miscellaneous case and to issue notice to the opposite party. The hearing was fixed for 19.10.2024, and this order was passed vide letter no. D-855/A.A.-3/Ka.Vi.Pra./2024-2025 and stay order was passed until the next date of hearing till 18.10.2024. It is noteworthy that no order has been passed on the said order by the Hon'ble Supreme Court or the Hon'ble High Court against the order. The entire matter was of recent origin, as per the information received, the said order was passed.

5. On 19.10.2024, learned counsel Shri Ajeet Kumar Gupta, Advocate, appeared on behalf of the Revisionists, learned counsel Shri Ashish Shukla, Advocate, appeared on behalf of opposite party no. 1, and learned counsel Shri Alok Shukla, Advocate, appeared on behalf of opposite parties no. 2 and 3. They presented their arguments at length, and the date 21.10.2024 was fixed for orders.

6. During the argument, the summoned lower court record was presented before the court.
7. Learned counsel for the Revisionists emphasized that documents numbered 1 to 20 filed in support of the plaint along with the separate list in the court of learned Civil Judge (Senior Division), Kanpur Nagar, and also emphasized documents numbers 7Ga to 10Ga filed along with list 6Ga filed by the Revisionists before this court. Learned counsel for opposite party no. 1 emphasized documents numbered 15Ga to 30Ga filed with list 14Ga presented by them before this court.
8. The following documents were filed by the Revisionists before this court along with the plaint, which has been further referred to as the 'separate list':-
 - 1) Photocopy of the time-barred compromise application by opposite party no. 1 dated 13.12.2020.
 - 2) Photocopy of the written statement along with preliminary objections filed on behalf of opposite party no. 2 Kanpur Development Authority in Suit No. 0-1222 of the year 2002.

- 3) Photocopy of the rejoinder filed by opposite party no. 1 in the written statement filed by opposite party no. 1 dated 21.07.2003.
- 4) Photocopy of the affidavit filed by opposite party no. 1 in Suit No. 0-1222/2002
- 5) Photocopy of the present affidavit dated 17.10.2023 by opposite party no. 2 in Suit No. 0-1222/2002
- 6) Photocopy of the order passed in Suit No. 0-1222/2002 dated 19.12.2003.
- 7) Photocopy of the judgment dated 30.07.2015 passed in Appeal No. 0-165/2004 against the judgment passed in Suit No. 0-1222/2002.
- 8) Photocopy of the Revision Petition filed against Suit No. 0-1222/2002 and Appeal No. 0-165/2004, Revision Petition No. 3201/2015, dated 28.11.2019.
- 9) Photocopy of the order passed in Special Leave Petition (Civil) No. 0-2490/2020 dated 15.12.2020.
- 10) Photocopy of the sale deed dated 21.01.2021.
- 11) Photocopy of the current status of Writ Petition No. 0-518/2022.
- 12) Photocopy of the current status of Writ Petition No. 0-7517/2022 filed in the Hon'ble High Court.

- 13) Photocopy of the current status of Writ Petition No. 0-23521/2022 filed in the Hon'ble High Court.
- 14) Photocopy of the *Vikalp Patra* given by opposite party no. 2 to opposite party no. 1 dated 17.08.2023.
- 15) Photocopy of the order dated 15.07.2022 passed in Suit No. 0-1222/2002, arising out of the Execution suit No. 0-4/2020.
- 16) Photocopy of the Writ Petition No. 0-17800/2023 presented by opposite party no. 2 dated 24.05.2023.
- 17) Photocopy of the order dated 10.07.2023 passed in Special Leave Petition No. 0-13906/2023 filed before the Hon'ble Supreme Court in connection with the order dated 24.05.2023.
- 18) Photocopies of the orders passed in National Green Tribunal Case No. 0-494/2023 dated 16.08.2023 and 19.01.2024.
- 19) Photocopy of the cancellation deed dated 04.07.2022 executed by opposite party no. 2 in favour of opposite party no. 1.
- 20) Photocopy of the cancellation deed dated 21.01.2021 executed by opposite party no. 2 in favour of

opposite party no. 1 for the cancellation deed no. 0-1625/2022.

21) Photocopy of the legal precedents of the Hon'ble Supreme Court.

9. The following documents were filed by the Revisionists before the trial court with list 6G:-

1) Photocopy of the developed park site, paper nos. 7G/1 to 7G/38.

2) Letter no. D/855 /A.O.A.-3/Ka.Vi.Pra./2024-2025 dated 08.10.2024 of Kanpur Development Authority.

3) CD of the site.

4) Photographs 10G/1 to 10G/3.

10. The following documents were filed by the Revisionists in the Revision Petition with list 14G:-

1. Photocopy of the allotment letter.

2. Photocopy of the order of the District Consumer Forum dated 19.12.2003.

3. Photocopy of the order of the State Consumer Forum dated 03.07.2015.

4. Photocopy of the order of the National Consumer Commission dated 28.11.2019.

5. Photocopy of the order in SLP No. 24590/2020 dated 28.11.2019.
 6. Photocopy of the order of the District Consumer Forum dated 15.07.2022.
 7. Photocopy of the order of the District Consumer Forum dated 27.04.2023.
 8. Photocopy of the Nagar Nigam (Municipal Corporation) investigation report dated 03.06.2022.
 9. Photocopy of the order dated 24.05.2023 passed in Writ Petition No. 17800/2023 in the Hon'ble High Court.
 10. Photocopy of the order in SLP No. 13906/2023 of the Hon'ble Supreme Court.
 11. Photocopy of the order dated 20.11.2023 and 19.01.2024 passed by the National Green Tribunal.
 12. Photocopy of the order of the District Consumer Forum dated 25.07.2024.
 13. Photocopy of the order of the District Consumer Forum dated 23.08.2024.
11. Before stating and analysing the arguments presented by both parties in this order, it would be appropriate to mention

the facts of the case as revealed by the documents presented by both parties.

12. It is not in dispute that the disputed land in the present case is Plot No. 70, W-1 Block, Juhi Kala Scheme, Saket Nagar, Kanpur Nagar.

13. On perusal of document no. 17G filed by opposite party no. 1 before this court, it appears that the said land was allotted in the name of opposite party no. 1 on 19.01.1984.

14. Complaint No. 1222/2002, which was filed by the Revisionists before the learned District Consumer Forum, Kanpur Nagar, a copy of the plaint of which has been filed as paper no. 1, paragraph 8 of which states that after considerable efforts, opposite party no. 1 received the letter sent by the Special Executive Officer, Zone-2, Kanpur Development Authority, dated 20.11.1998, after which the said suit was filed seeking the following relief, which is as follows:-

(1) That it be ordered that the opposite party be directed to execute the registered lease deed in favour of the Complainant in respect of the allotted Plot No. 70, W-1 Block, Scheme Juhi, Area 5138.67 square meters, at the rate of ₹66 per square meter, for a period of 99 years, according to the pre-determined terms, after

receiving the remaining amount of ₹3,31,444.22/- from the complainant, and get the lease deed registered.

(2) That after the execution of the lease-deed, the opposite party be directed to pass the map of the complainant's building and grant permission for construction.

15. In the context of the said Complaint, an objection was filed on behalf of the Kanpur Development Authority, a copy of which has been filed by the Revisionists as document no. 2 with the separate list before the trial court, paragraph 14 of which acknowledges the existence of the letter dated 28.11.1998, and paragraph 15 of which acknowledges that the said land was allotted in 1984, and one-fourth of the price was deposited. Thereafter, after 12 years had passed since 1984, in the year 1996, an application was presented by the allottee, and paragraph 19 states that the Complainant, i.e., opposite party no. 1, remained dormant for 12 years.

16. In the said suit, after providing sufficient opportunity to present evidence to both parties, the learned District Consumer Forum passed the judgment dated 19.12.2003, a copy of which has been filed by the Revisionists as document

no. 6 along with the separate list, and a copy of the said judgment has been filed by opposite party no. 1 as document no. 18 before this court.

The operative order passed by the learned District Consumer Forum is as follows:-

"The consumer complaint of the complainant is allowed. It is ordered that the opposite party no. 1 shall, within one month, after receiving the remaining 3/4th price of the disputed land, i.e., ₹3,31,444.22, along with interest at the rate of 10% per annum from 11.05.1984 until 22.03.97, and thereafter at the rate of 18% per annum until the date of payment, execute the registered lease deed in favour of the complainant. If the complainant deposits the aforementioned remaining amount in the account of the opposite party within one month, then the opposite party will bear interest at the rate of 21% per annum on the said remaining amount."

17. Aggrieved by the aforementioned order, the Kanpur Development Authority filed Appeal No. 165/2004 before the State Consumer Disputes Redressal Commission, Uttar Pradesh. The said appeal was decided on 03.07.2015, and the following operative order was passed:-

"The present appeal is dismissed. The order and judgment dated 19.12.2003 passed by the District Consumer Disputes Redressal Forum, Kanpur Nagar, are upheld. The appellant will pay a sum of ₹5000.00 (five thousand rupees) as costs to the respondent/opposite party."

18. Against the judgment passed by the District Consumer Forum in Complaint No. 1222/2002 and the judgment passed by the State Consumer Disputes Redressal Commission in Appeal No. 165/2004, the Kanpur Development Authority filed Revision Petition No. 3201/2015 before the National Consumer Disputes Redressal Commission. The said revision petition was decided on 28.11.2019, and the following operative order was passed:-

"The Petitioner has failed to Point out any miscarriage of Justice or that the finding are perverse i.e. not based on the evidences. I found no reason to interfere in the impugned order. The revision petition has no merit and the same is dismissed."

19. Aggrieved by the aforementioned proceedings, the Kanpur Development Authority filed Special Leave Petition No.

24590/2020 before the Hon'ble Supreme Court challenging the aforementioned order dated 28.11.2019. The said petition was dismissed by the Hon'ble Supreme Court on 15.12.2020 after delay of 253 days. Finding the reason for the delay unsatisfactory, the delay was not condoned, and the prayer for condonation of delay was rejected, and the petition was dismissed.

20. It is noteworthy that in the meantime, learned counsel on behalf of opposite party no. 1 had filed Execution Case No. 4/2020 before the learned Consumer Forum for the implementation of the said order. Against the said order of the learned Consumer Forum, the Revisionists have filed document no. 9 with the separate list before the Hon'ble Supreme Court and documents no. 20-21G in support of it before this court.
21. After the aforementioned decision dated 15.12.2020 was passed by the Hon'ble Supreme Court, the Kanpur Development Authority executed a sale deed in favour of opposite party no. 1 on 23.10.2021, a copy of which has been filed by the Revisionists as document no. 10 with the separate list before the trial court.
22. A copy of the plaint of Original Suit No. 1625/2022 filed by the Revisionists through the Kanpur Development Authority

has been filed as document no. 20 with the separate list before the trial court, paragraph 8 of which states that on 03rd February 2021, an authorization letter No. D/2906/J.S.-3/2020-21 was issued in favour of opposite party no. 1 by the Deputy Secretary, Zone-3, Kanpur Development Authority.

23. On perusal of the documents, it appears that vide letter no. D/328/Udhyan/2021-22 sent by the Garden Superintendent, Nagar Nigam (Municipal Corporation) on 05.10.2021, the land in question was included in the list of parks.

24. A copy of letter no. 886/T.H.-3 Sale/K.D.A./22-23 dated 04.07.2022 has been filed by the Revisionists with the separate list before the trial court as document no. 19, in which, citing the decisions of cases filed by the Kanpur Development Authority from the District Consumer Forum to the Hon'ble Supreme Court, it has been mentioned by the Garden Superintendent, Nagar Nigam. On the basis of the aforementioned letter of the Nigam, the previously executed sale deed dated 23.01.2021 was directed to be cancelled, and in the writ petition no. 518/2022 and in while deciding the said writ petition reference was taken from **Ravi Kumar versus State of U.P.**, passed in respect of the said order, it has also

been recorded that the nature of the parks was not changed and it remained recorded as a plot. Here, it would be appropriate to mention that in the aforementioned writ petition, Ravi Kumar is the petitioner, and no such person is mentioned as the applicant or plaintiff in the application and plaint filed by the Revisionists before the learned trial court in the list.

25. It also appears from the perusal of the documents that opposite party no. 1 had filed Writ Petition No. 7517/2022 before the Hon'ble High Court against the Kanpur Development Authority, but the said writ petition was not admitted by the Hon'ble High Court. No mention of the said writ petition has been made by either of the two counsels appearing before this court.

26. According to the document 24 Ga filed by opposite party no. 1, it shows that in accordance with the letter no. 63/3030/2022-23 issued by the Nagar Nigam (Municipal Corporation), opposite party no. 1 has been informed that the disputed park does not fall under the purview of the Nagar Nigam, Kanpur, and that the said park has been allotted to opposite party no. 1 for a period of 99 years.

27. A copy of the order dated 15.07.2022 passed by the District Consumer Forum in Execution Case No. 4/2020 has been filed by opposite party no. 1 before this court as document no. 22G, in which the following opinion has been expressed with reference to Writ Petition No. 1518/2022:-

"As far as the question is concerned that SLP No. 518/2022 is pending before the Hon'ble Supreme Court, it is clarified here that the copy of the order attached to the PIL's reply has been filed and it has been filed by Ravi Pandey and Bhagwan Parshuram Mahasabha, Kanpur Nagar, making the Nagar Nigam, Kanpur Development Authority, and District Magistrate, Kanpur Nagar, opposite parties. It is clear that even if the said writ is accepted by the Hon'ble High Court, it will not have any adverse effect on the present execution, because the writ petition has not been challenged in the execution case, and neither has the aforementioned order been challenged by the opposite party. In such a situation, the right of any third party will not be affected by the decision of the existing dispute between the other parties.

As far as the contention raised by the opposite party is concerned that a park has been developed on the

land related to the present case, and reference has been made to "The UP Parks, Play-ground and open Spaces Preservation and Regulation Act, 1975," it is necessary to clarify that the validity of the order passed by the opposite party on the basis of the aforementioned Act has not been challenged. Rather, it has been stated that an August date be fixed so that the opposite party can obtain appropriate orders from the Hon'ble High Court. That is, it is clear that the opposite party wants the execution of the decree to be stayed on the basis of SLP No. 518/22 pending before the Hon'ble Supreme Court. The opposite party is free to obtain any relief from any court, but on this basis, the execution of the decree cannot be denied, and it is the responsibility of the opposite party that wherever it has partially executed the decree by executing the sale deed and getting the possession letter issued, it should also ensure the execution of the remaining part under the decree."

28. Expressing the above opinion, the Kanpur Development Authority was provided with a suitable opportunity of 25 days to comply with the order.

29. Upon perusal of the records, it is evident that the Respondent No. 1, through the Hon'ble High Court, Allahabad, filed Writ Petition No.-23521/2022 against the order dated 04.07.2022 passed for the cancellation of the lease deed dated 23.01.2021, and thereafter, on 10.08.2022, the Kanpur Development Authority, through the Civil Judge (Senior Division), Kanpur Nagar, filed Original Suit No.-1625/2022 seeking the cancellation of the lease deed dated 23.01.2021, which was registered on 25.01.2021.
30. From the review of the documents, especially the order dated 24.05.2023 passed by the Hon'ble High Court in Writ Petition No.- 17800/2023, a copy of which has been filed by the Revisionists before the trial court along with a separate list as paper no.-16 and by respondent no.-1 before this court as paper no.-25C, it is clear that Kanpur Development Authority has filed Writ Petition No.-30250/2022 District Consumer Forum & Others before the Hon'ble High Court, in which the Hon'ble High Court vide order dated 22.12.2022, while finally disposing of the said petition, directed the Kanpur Development Authority to present an appropriate application before the District Consumer Forum regarding the alternative land.

31. It is noteworthy that a request was made by the learned advocate of Kanpur Development Authority before the Hon'ble High Court in the said Writ Petition No.-30250/2022 that the petitioner Kanpur Development Authority be allowed to sell another plot in place of the plot in question. The Hon'ble High Court had also directed in the said petition that if the said application is filed within a week from today (the date of passing the order), the District Consumer Forum, Kanpur Nagar shall pass an appropriate order according to law within two weeks.
32. In the aforementioned order dated 24.05.2023 passed by the Hon'ble High Court in Writ Petition No.-17800/2023, it is also mentioned that no application has been filed by the Kanpur Development Authority in compliance with the aforementioned order.
33. A copy of the order dated 27.04.2023 passed by the District Consumer Forum has been filed on behalf of respondent no.-1 before this court as paper no.-25G. It is worth mentioning here that the order dated 03.02.2023 passed in the execution case has also been mentioned in the order dated 24.05.2023 passed by the Hon'ble High Court, and against both these orders, proceedings under Section 72 of the

Consumer Protection Act, 2019 were directed to be initiated against the Deputy Commissioner, Kanpur Development Authority.

34. Against the orders dated 03.02.2023 and 27.04.2023 passed by the District Consumer Forum, Writ Petition No.-17800/2023 was filed by the Kanpur Development Authority, in which the Hon'ble High Court, vide order dated 24.05.2023, while imposing a cost of ₹5,00,000/- on the petitioner, dismissed the petition. In the said order, the Hon'ble High Court, along with the fact that the plot in question was allotted in the name of respondent no.-1, also took cognizance of the decision dated 19.12.2003 passed by the District Consumer Forum in Complaint No.-1222/2002, the order dated 03.07.2015 passed in Appeal No.-165/2004 filed against the Uttar Pradesh State Consumer Disputes Redressal Commission, the order dated 28.11.2019 passed in Revision Petition No.-3201/2015 filed before the National Consumer Disputes Redressal Commission, and the facts of Special Leave Petition No.-24590 of 2020 in the Hon'ble Supreme Court, the order dated 15.12.2020 passed by the Hon'ble Supreme Court, and the registered sale deed dated 23.01.2021, and in

paragraph 4 of the order, expressed the following opinion in reference to the aforementioned facts:-

"This case is a glaring example of high-handedness of the petitioner and continuous harassment being caused by the petitioner to the respondent No.2. The petitioner has also not hesitated to make false statement and to file false affidavit before this court which shall be evident from the facts now being narrated below."

35. Mentioning the aforementioned facts in addition to paragraph-4, the following observations have been recorded by the Hon'ble High Court in its order in paragraph-6:-

"Proceeding with his further approach of harassment to the respondent No-2, the petitioner has passed an order on 04-07-2022 proposing to cancel the allotment."

36. Taking cognizance of the aforementioned order dated 24.05.2023 passed by the Hon'ble High Court in Writ Petition No.-30250 of 2022, the order dated 22.12.2022, and the order dated 27.04.2023 passed by the District Consumer Forum, and other circumstances, the following findings have been recorded in paragraphs 13 to 17:-

"13. It is undisputed that the petitioner has failed to comply with the order of the District Commission as briefly noted above, particularly the order dated 03.02.2023 and has also not complied with the order of the this Court dated 22.12.2022 in Writ-C No.30250 of 2022.

14. Since despite time granted to the petitioner, the petitioner failed to comply with the order of the District Consumer Disputes Redressal Commission, Kanpur Nagar as aforementioned, therefore, the respondent No.1 has lawfully exercised powers vested in it by virtue of sub-Section (2) of Section 72 of the Act, 2019 which resulted in passing of the impugned orders dated 03.02.2023 and dated 27.04.2023 passed by the respondent No.1, are well in accordance with law.

15. Apart from the above, we repeatedly asked learned counsel for the petitioner to produce before us any notification under the U.P. Parks, Playgrounds and Open Places (Preservation and Regulation) Act, 1975 declaring plot No.70 as a park. On the other hand, learned counsel for the respondent No.2 has produced before us an office note of the Officer Incharge (Assets) Nagar Nigam,

Kanpur dated 02.06.2022 in which it has been mentioned that the KDA Plot No.70 W1 Block of Scheme Juhi of Kanpur was illegally and unauthorisedly allotted for one year by the Udyan Adhikari for maintenance to one Sri Bhupesh Awasthi, President, Bhagwan Parashuram Mahasabha which period having expired, the allotment also has to be cancelled and the aforesaid plot is not the property of the Nagar Nigam nor it is owned by Nagar Nigam.

16. We have noticed these facts in just preceding paragraph merely for the purposes to make assessments of the high-handedness and harassment attitude of the petitioner against the respondent No.2, who having contested the matter for about 21 years, is not allowed to use the plot allotted to him and also in terms of the registered lease deed. Therefore, for the continuous harassment being caused by the petitioner to the respondent No.2, and dragging in litigation for about 21 years deserves to be awarded exemplary cost which we assess at Rs.5,00,000/-.

17. For all the reasons aforestated, the writ petition is dismissed with cost of Rs.5,00,000/- which shall be paid

by the petitioner to the respondent No.2 within a week by way of account payee bank-draft."

37. Against the aforementioned order passed by the Hon'ble High Court dated 24.05.2023, a Special Leave Petition bearing number - 13906 / 2023 was filed by the Kanpur Development Authority before the Hon'ble Supreme Court, in the disposal of which the following order was passed by the Hon'ble Supreme Court on dated 10.07.2023: -

"Heard Mr. Tushar Mehta, learned Solicitor General as also the learned senior counsel for the respondents. In so far as the merits of the impugned order, we see no reason to interfere. However, in peculiar facts and circumstances of the instant case, we do not approve of the cost of Rs. 5 Lakhs, which has been imposed upon the petitioner-authority. Hence, the cost imposed is waived. The cost of Rs. 5 Lakhs, which is said to have been deposited by the petitioner-Authority, may be withdrawn by the petitioner.

On execution of the order, if any action to be taken arises, to that extent, the right to proceed as per law, is left open. Further, we make it clear that the non-interference with the impugned order herein, shall not

preclude the authorities in proceeding in accordance with law after providing opportunity to the respondents herein. In that regard, all contentions of the parties urged in Writ Petition (C) No. 23521/2022 are left open to be urged and this order shall not come in the way of the High Court considering it in accordance with law.

However, time of four weeks is granted to comply the order before the Executing Order.”

38. It is noteworthy that Original Application No.-494/2023 was filed before the National Green Tribunal by Manoj Kumar Pandey and others. Copies of the orders passed by the Tribunal in the said petition dated 16.08.2023 and 19.01.2024 have been filed by the Revision Petitioners as Paper No.-0-18. It is noteworthy that an order was also passed by the Tribunal on dated 20.11.2023, which was not filed on behalf of the Revision Petitioners but its copy was filed by the respondent No.-1 in this court as Paper No.-0-27G.

39. On the aforementioned application filed before the Tribunal, the presence of the District Magistrate, Kanpur Nagar, State Pollution Control Board, and the Divisional Director, Social Forestry Department, Kanpur was requested on dated 16.08.2023.

40. The following opinion was expressed by the Tribunal in paragraphs 5, 6 and 7 of the order dated 20.11.2023: -

"5. Before this Tribunal also though learned Counsel for the Petitioner has made the efforts but could not prima-facie demonstrate that the land in question has been earmarked for the park.

6. Second issue raised in this OA is in respect of correctness of the order dated 16-06-2023 issued by Respondent No. 6 granting permission to cut as many as 45 trees. The order does not mention about any necessity for cutting of trees and any application of mind by the concerned authority in this regard.

7. We also prima-facie find that the valuation of trees is not adequate and security of Rs. 45,000/- for compensatory plantation of ten times of the trees to be cut is on the lower side."

41. Subsequent to the aforementioned order, on dated 19.01.2024, the Tribunal, while disposing of the said application, passed the following order in paragraph 3: -

"3. Today, also the Counsel for the applicant was given an opportunity to show if any document exists earmarking the land in question as a park but he could

not do so. Hence, first plea that land in question is earmarked for park cannot be accepted."

42. A copy of letter No. - D / 1333 / OSD Cell-3 / KDA / 23-24 was filed on behalf of the Kanpur Development Authority as Paper No. 0-14 along with a separate list before the learned trial court, in which an option was provided to respondent No.-1 for the sale of land within Kanpur Nagar. It is noteworthy that this option was to be given within one week from the date of the order, i.e., by 29.12.2022, in compliance with the order dated 22.12.2022 passed by the Hon'ble High Court in Writ Petition No.-30250 of 2020, whereas the said proposal was presented with considerable delay through the said letter.
43. Copies of the order dated 25.07.2024 and 23.08.2024 passed by the District Consumer Forum in Complaint Case No.-4/2020 have been filed by respondent No.-1, in which directions for action under Section 72 of the Act of 2019 have been issued against the Kanpur Development Authority.
44. On perusal of the records, it is evident that Contempt Petition No.-39789 of 2023 has been instituted before the Hon'ble Supreme Court regarding non-compliance with the order dated 10.07.2023 passed by the Hon'ble Supreme Court."

45. From the perusal of all the aforementioned records presented before the court by the applicant for consideration, it is clearly established that the disputed plot was allotted to respondent No.-1 in the year 1984 and he is in its possession as an allottee. The existence of a temple, park, and sacred trees falls under the category of encroachment, and respondent No.-1 could not obtain the right to use that plot earlier solely due to the legal process.
46. In the context of the aforementioned facts of the case, it is necessary to discuss the arguments presented by the applicant regarding the consideration of the present monitoring.
47. On behalf of the Revision Petitioners, it was argued that even if the District Consumer Forum gave its decision in the possession matter, the appeal was granted in the possession matter. Thus, the said appeal was given by going outside the appellate jurisdiction. Apart from this, starting proceedings in the year 1998 and filing a suit in the year 2002 regarding the plot allotted in the year 1984 shows that the process of the suit was time-barred and despite the circumstances of being time-barred being mentioned by the Kanpur Development Authority in its reply, the Consumer Forum did not consider

this aspect and the order of the Consumer Forum is void because the order was obtained by fraud. In support of this argument, the Revision Petitioners have relied upon United India Insurance Company Limited vs. Rajendra Singh AIR 2000 SC 1165, in which it was stated that in the case of a decree obtained by fraud or deceit, the principle of finality of litigation cannot be applied in the suits.

48. In this context, it is worth considering that no mention of any fraud or deceit by respondent No.-1 from the District Consumer Forum to the Hon'ble Supreme Court has been shown. In the plaint, there is a clear mention of the allotment of the plot and the subsequent process, and the Kanpur Development Authority has disclosed these circumstances in its reply. Where the point of granting relief in possession even when not specifically sought is concerned, in this context, it is worth considering that the final relief sought in the plaint before the Consumer Forum was that 'any other relief that the Hon'ble Court deems appropriate. Along with this point, the appeal and monitoring have not remained in consonance with the order passed by the Hon'ble Supreme Court.

49. Apart from this, regarding the point of being time-barred, the Kanpur Development Authority could have taken this

objection in the various applications filed before the Hon'ble Supreme Court. However, while challenging the decision, the said ground was not effectively taken by the Kanpur Development Authority. It has also been argued by the learned advocate for the Revision Petitioners that the court should itself examine this ground. In this context, it is worth considering that the fact that this point was not considered from the District Consumer Forum to the State Consumer Disputes Redressal Commission shows that so far in the judicial process, this point has not been considered important.

50. It was also argued on behalf of the Revision Petitioners that respondent No.-1 had made the Deputy Chairman and Chairman/Divisional Commissioner, Kanpur Nagar, parties as opponents before the District Consumer Forum, and the appeal was filed only by the Deputy Chairman of the Kanpur Development Authority, whereas the appeal should have also been filed by its Chairman/Commissioner. Even the appeal filed was not brought to the notice of the Chairman.

51. Thus, decision in the appeal and Revision have been obtained by collusion. The aforementioned argument of the Revision Petitioners is beyond the comprehension of this court

because it is not necessary that all the parties impleaded in the original suit, against whom the decision has been passed, must file an appeal. If any party is aggrieved by the said decision, then that party will file an appeal. In the present case, the Deputy Chairman and the Chairman of the Kanpur Development Authority are essentially officers of the same department, and the appeal, revision, and Special Leave Petition have been filed by the Kanpur Development Authority itself, and the Kanpur Development Authority has been represented before the court by the Deputy Chairman. Therefore, even in the aforementioned argument of the Revision Petitioners, it does not appear that the appeal and revision have been obtained by collusion with the court.

52. It has also been argued on behalf of the Revision Petitioners that on the basis of which the disputed lease deed dated 23.01.2021 was executed, its photographs were deliberately not attached. If the photographs had been attached, it would have come on record that the park is situated on the spot.

53. In the context of the aforementioned argument of the Revision Petitioners, it is worth considering that in the entire process of execution of the lease deed and its registration, no

mention of any error was made by any competent authority regarding the non-attachment of the photograph of the disputed property. It is also worth considering that photographs are usually attached for the identification of the property. Here, it is also noteworthy that preliminary proceedings were also conducted regarding the planting of a park or trees on the disputed property, and all these facts were brought before the Hon'ble High Court in various proceedings. In the petition filed against the order of issuance of a warrant against the Deputy Chairman, Kanpur Development Authority, the Hon'ble High Court passed a detailed order dated 24.05.2023. Besides this, the aforementioned situation has also been clarified before the National Green Tribunal. Therefore, at this stage, the said basis itself becomes without merit.

54. On behalf of the Revision Petitioners, reliance has been placed on the order dated 23.01.2021 for the cancellation of the lease deed. It is noteworthy that Writ Petition No.-23521/2022 has been filed against the said order, which is still pending consideration. It is worth considering that the said writ petition has been filed by respondent No.-1. There is no possibility of the Revision Petitioners gaining any benefit from

it even if it is successful. No interim order has been passed in the said writ petition. In the said petition, the basis for the Revision Petitioners' authority has also not been clearly stated. Therefore, any opinion expressed in this context at this stage would be irrelevant.

55. It has also been argued by the Revision Petitioners that the Writ Petition No.-23521/2022 filed by the applicant is based on complete facts and is under consideration, and this consideration is being done in compliance with the order dated 10.07.2023 passed by the Hon'ble Supreme Court. Therefore, by the concerned authority, action is being taken to hand over the land of the park to respondent No.-1, whereas the residents of the said area have developed the disputed place as a park in which idols of various deities have been installed. Besides this, revered and worshiped trees have been planted, whose worship and prayer are performed by the resident women. It has also been argued that the person who has filed the instant application is instigated by others, and therefore the impugned order by which permission to file a representative suit has been dismissed is not justified in law.

56. It was also argued that in the case of Kalyan Singh vs. Chhoti and others AIR 1990 SC 396, the opinion was

expressed that permission cannot be cancelled on technical grounds. It has been argued by the learned advocate that the error on the basis of which the permission has been cancelled is actually not present in the current case. The impugned order is illegal and the revision should be accepted.

57. On behalf of respondent No.-1, while opposing the consideration of the Revision, it was primarily argued that respondent No.-1 has proven his right over the disputed plot in accordance with the entire legal process, and at various levels, from the District Consumer Forum to the State Consumer Forum, National Consumer Forum, Hon'ble High Court, and Supreme Court, the right of respondent No.-1 has been upheld. Even the National Green Tribunal has found the concept of the disputed place being a park to be not true. Thus, the Revision Petitioners does not have the right to institute a representative suit in any case regarding the said property. The learned trial court has passed the impugned order by cancelling the said permission, and the revision is not fit to be accepted. Therefore, it should be dismissed.

58. The aforementioned arguments presented by the applicant on the consideration of the revision have been

evaluated in accordance with the existing circumstances of the case.

59. It is not a disputed fact that all the decisions by the District Consumer Forum, State Consumer Forum, National Consumer Forum, and thereafter the Hon'ble Supreme Court have been passed in favour of respondent No.-1. The excerpts of the aforementioned passed decisions have already been described in this order. The Hon'ble Supreme Court has also passed orders in favour of the right of respondent No.-1, more or less, at various stages. The Municipal Corporation and the National Green Tribunal have also accepted the concept of the disputed plot not being a park. The orders passed by the Hon'ble High Court and the National Green Tribunal have also been described.

60. In light of the aforementioned decisions and orders, after the unauthorized construction of a religious structure on encroached land in any situation, permission cannot be granted to legally claim or exercise any right based on the establishment of a park and tree plantation.

61. This is also correct that while passing the impugned order, the learned trial court has observed that the application for representative suit under Order 1 Rule 8 CPC should have

mentioned the names and addresses of the original plaintiffs and the place of residence and that permission should have been obtained to institute the representative suit on behalf of the residents of the locality, which has not been done and is vague and misleading, and it has also been mentioned that under the application, the applicant and plaintiffs under Order 1 Rule 8 CPC are the same, and permission can be granted to institute the representative suit on behalf of the residents of the locality.

62. It is noteworthy that in the case of Kalyan Singh (supra), not granting permission on technical grounds was not considered correct. And if the aforementioned opinion expressed by the learned trial court is considered, then on serious consideration of the entire circumstances of the case, it is clearly evident that the Revision Petitioners has no legal right over the disputed plot, because at various levels, the ownership and right over the disputed plot are in favour of respondent No.-1. The Hon'ble Supreme Court has also upheld the order dated 24.05.2023 of the Hon'ble High Court. After that, considering the disputed plot as a park by the learned trial court and granting any kind of relief in favour of the

Revision Petitioners is neither consistent nor in accordance with justice.

63. It is also worth considering that in order to consider the relief sought in any application, prima facie similar circumstances to the facts mentioned in the said application should appear in favour of the applicant.
64. The important point is that the trial court has given the final conclusion to cancel the permission, therefore the argument of this court is that even if the basis given by the trial court is considered not legally valid, even then the Revision Petitioners has not been successful in establishing a prima facie case in its favour.
65. Apart from this, even on the basis of judicial discipline, no situation arises in the present case for prima facie interference in the order passed by the learned trial court.
66. Accordingly, the Revision is liable to be dismissed at the admission stage.

ORDER

67. The civil revision is dismissed at Admission stage.

68. The order dated 17.10.2024 passed by the Court of Civil Judge (Senior Division), Kanpur Nagar in Miscellaneous Case

No. 485/74/2024 Harish Khatri etc. vs. Jawahar Vidya Samiti etc. is upheld.

69. A copy of this order along with the record of the trial court be sent back to the trial court.

70. The parties shall appear before the trial court on dated 28.10.2024 for further proceedings.

71. The record be consigned to the record room as per rules.

Dated 21.10.2024

(Pradeep Kumar Singh II)
District Judge,
Kanpur Nagar.

**OFFICE OF DIVISIONAL DIRECTOR,
SOCIAL FORESTRY DIVISION, KANPUR**

Ref. No. 6343/ T.M. dated Kanpur 16.06.2023

To,

Engineer-in-charge,
Garden Zone – 3, Kanpur City

Subject: Regarding cutting down the standing
trees in plot No. 70 Juhi-W-1

Ref.: Your letter No. C/42/Garden/ O.D.A./
2023-24 dated 12.06.2023

In sequence of the aforesaid letter, the joint survey/ inspection of the trees have been conducted by Shri Shashikant, Park Officer, K.D.A. Kanpur and Regional Forest Officer, Vidhnu Range. In has been found in the inspection/ survey that the Kanpur

Development Authority has the entitlement on the different species of standing trees in plot No. 70 Juhi-W-1. Following are the details of the trees found:

Sr. No.	Name of species	Condition	Round (in mtr.)	Valuation (in Rs.)
1.	Banyan	Green standing tree	416	4106.66
2.	Pakad	Green standing tree	241	4106.66
3.	Kesiwa Semiya	Green standing tree	112	806.66
4	Drumstick	Green standing tree	152	1246.66 [*]
5	Drumstick	Green standing tree	60	146.66
6	Ghel	Green standing tree	46	146.66

7	Gooseberry	Green standing tree	36	146.66
8	Kachnar	Green standing tree	46	146.66
9	Agaltash	Green standing tree	43	146.66
10	Kachnaar	Green standing tree	46	146.66
11	Neem	Green standing tree	48	282.33
12	Jamun/ Blackberry	Green standing tree	46	282.33
13	Neem	Green standing tree	66	443.66
14	Aegle Marmelos	Green standing tree	94	403.33
15	Arjun	Green standing tree	64	443.66
16	Arjun	Green standing tree	43	282.33

17	Bakaim	Green standing tree	53	146.66
18	Drumstick	Green standing tree	66	443.66
19	Bottlebrush	Green standing tree	53	146.66
20	Gold Mohar	Green standing tree	74	443.66
21	Bottlebrush	Green standing tree	53	146.66
22	Drumstick	Green standing tree	74	443.66
23	Jamun/ blackberry	Green standing tree	71	443.66
24	Kadamyia	Green standing tree	130	1246.66
25	Ashoka	Green standing tree	40	146.66
26	Mango	Green standing tree	45	282.33

27	Ashoka	Green standing tree	38	146.66
28	Blackberry	Green standing tree	42	282.33
29	Blackberry	Green standing tree	38	282.33
30	Kadamba	Green standing tree	108	806.66
31	Kadamba	Green standing tree	125	806.66
32	Ashoka	Green standing tree	36	146.66
33	Ashoka	Green standing tree	39	146.66
34	Arjun	Green standing tree	87	443.66
35	Ashoka	Green standing tree	35	146.66
36	Ashoka	Green standing tree	38	146.66

37	Mulberry	Green standing tree	58	146.66
38	Blackberry	Green standing tree	33	282.33
39	Mango	Green standing tree	35	282.33
40	Neem	Green standing tree	166	2742.66
41	Ficus religiosa/ Pipal tree	Green standing tree	252	4106.66
42	Neem	Green standing tree	125	887.33
43	Banyan	Green standing tree	418	4106.66
44	Karanj tree	Green standing tree	50	146.66
45	Karanj tree	Green standing tree	38	146.66
Total				33377.40

	(Rupees: Thirty three thousand three hundred seventy seven only)
--	--

On the recommendation report of the Regional Forest Officer, Vidhnu Range and Dy. Divisional Forest Officer, Kanpur, the permission of cutting down the aforesaid trees is hereby given with the term that the aforesaid trees will be cut in the presence of the staffs of the Forest Department. If the trees are auctioned, the Regional Forest Officer, Vidhnu Range be present as a representative of the Forest Department at time of the auction.

There is a provision of plantation of 10 times plants under the provisions of the UP Protection of Trees Act, 1976 (as amended) and Government Order No. 24/ 81 -1-2020-07-93 dated 07.01.2020 of the Department of Environment, Forest and Climate Change, Government of Uttar Pradesh, Section - 5. Thus 10 plants have to be planted in place of a cut tree. After the plantation, the security

In case of not plantation, it will not be possible to consider returning the security amount. Thus for the plantation of ten times plants kindly arrange to provide the FDR of Rs. 45,000/- (Rupees: Forty five thousand only) (five years) at the rate of Rs. 1000/- per plant in the name of "Divisional Director, Social Forestry Division, Kanpur" as a security and the

demand draft of Rs. 4500/- (Rupees: Four thousand five hundred only) separately to the designation of the undersigned towards the tree cutting license at 100/- per tree under the provisions of Government Order No. 111/14-5-2010-91 dated 14.07.2010. The fallen branch of the tree should be transported. It will be necessary to get the transport pass from the Forest Department, as per the rules.

Sd/-
(Divya)
Divisional Director
Social Forestry Division,
Kanpur

Endst. No. 6343/ dated

Copy to: Dy. Divisional Forest Officer, Kanpur
- sent in sequence of the aforesaid for
necessary action.

Copy to: Regional Forest Officer, Vidhnu Range
- in sequence of the letter No. 663/ 32-1 dated

16.06.2023 for information with instructions that until and unless the aforesaid amount is not deposited, the tree be not cut in any circumstances. The illegal transportation of the said tree after the cutting of tree be not take place in any circumstances.

Sd/-
(Divya)
Divisional Director
Social Forestry Division,
Kanpur

(TRUE TRANSLATED COPY)



Office of Divisional Director, Social Forestry Forest Division, Kanpur

Letter No. 3865/TC Kanpur, Date, April/24/2024

To,

Executive Engineer, (Zone-3)
Kanpur Development Authority,
Kanpur

Subject- In respect of felling of trees in Plot No. 70, Block W, Juhi

Reference- Your letter no.-D/20/A.A.-3/K.D.A/24-24 dated
09.04.2024

In continuation of the above referenced letter, it is to be informed that a joint inspection of the felling of trees in plot number 70, Block W-1, Juhi was done with the concerned Regional Forest Officer Bidhanu and your representative Mr. Shashikant, Horticulture Officer Kanpur Development Authority, Kanpur. According to the inspection report of Regional Forest Officer Bidhanu, letter no. 063/22-1 dated 16.06.2023, a total of 45 trees of different species have been found in plot number 70. Block,W Juhi.

According to the provisions of Uttar Pradesh Tree Protection Act 1976 (as amended) (Uttar Pradesh Environment, Forest and Climate Change Section-5 Government Order Number-24/81-5-2020-07-93 January 07, 2020), *for planting 10 times the number of trees in place of 45 obstructing trees, the liability in the above case arises at the rate of Rs. 10/- per tree, falling fee and falling permission fee of Rs. 100/- per tree along with maintenance for 03 years.

At present, as per the letter number G-23/15-1 (ceiling rate) dated 26.07.2022 of the office of Chief Forest Conservator Social Forestry, Uttar Pradesh, Lucknow. and Government Order No. 02/2023/905/36-03-2023-01 (Act)/2005 dated 26.05.2023 issued by the Government of Uttar Pradesh, Labour Section-03, the all-inclusive minimum rates of wages for busy workers are Rs. 230/- per day, after determination of the estimated amount calculated for compensatory plantation, is required:

Felling of 45 trees x 10 , total 450 Iron Guard Plantation under compensatory irrigation

Estimated amount calculated including maintenance:-

Rs. 1170207.00

Administrative expenses at the rate of 02 percent

Rs. 23404.00

Total 45 tree felling rate at rate of Rs 10.00 per tree

Rs.450.00

Permission for planting of 45 trees @ Rs. 100.00 per tree

Rs 4500.00

Total Estimated Amount: Rs 1198581.00

(Rs Eleven Lakh, Ninety Eight thousand ,Five Hundred and eighty one)

For planting 450 saplings, please make available the land to the Railway Board, Divisional Director, with the appropriate amount of

bank draft in favor of Social Welfare Division the said amount can be made payable to the Bank Kanpur in the name of the post and action can be taken by this office.

Director

Divisional

Forestry Division

Social

Kanpur

Copy to the Sub-Divisional Forest Officer Kanpur for information and necessary action as above.

Copy to the Regional Forest Officer, Bidhanu Range information and necessary action as above.

Director

Divisional

Forestry Division

Social

Kanpur

ANNEXURE R-31

KDA

Office

Kanpur Development Authority

Section- Engineering (ZONE-3)

File No. D/78/Section Engineer-3/KDA/2024-2025

Date:27/05/2024

To,

Divisional Director,
Social Forestry Forest Division,
Kanpur Nagar.

Subject- Regarding the fall of trees standing in Juhi Plot number-70, Block-W-1.

Sir

Please take reference of the above mentioned letter no. 3865/TC Kanpur dated April/24/2024 on the above subject. In the above letter, in relation to felling of 45 trees standing in plot number-70, block-W-1. Juhi. Under aforesaid , a bank draft of the estimated amount of Rs. 11,98,561.00 (Rupees Eleven Lakh Ninety Eight Thousand Five Hundred Sixty One Only) for plantation with maintenance was expected to be made payable to the Divisional Director Social Forestry Division, Kanpur and made available to your office. Apart from this, it is also mentioned in the above letter that land will have to be made available to the Railway Department for planting 450 saplings in comparison to falling of 45 trees.

In relation to the falling of 45 trees, for plantation and maintenance under aforesaid , a bank draft of the desired amount of Rs. 11,98,561.00 (Rupees Eleven Lakh Ninety Eight Thousand Five Hundred Sixty One Only) is being prepared in the name of Divisional Director, Social Forestry Division, Kanpur and is being sent as attachment with this letter.

Kindly be aware of the above and direct the concerned person to take further action in the matter as per the instructions.

Office

Executive
Engineer(Zone-3)
Divisional Director Forestry Division
Kanpur

Copy:-

1. Sent to the Vice-President, K.D.A, Kanpur for respectful perusal.
2. Respectfully sent to the Secretary, K.D.A., Kanpur for information.
3. Respectfully sent to Chief Engineer, K.D.A., Kanpur for information.

Executive Engineer(Zone-3)

//TRUE TRANSLATED COPY//

ANNEXURE R-32**Office of Engineering Section Zone-3****Kanpur Development Authority, Kanpur****-: Auction Information :-**

It is informed to the general public that public auction for felling of 45 trees standing in plot no. 70, block-W-1, Juhi, whose reserve price is Rs. 33,377.40, will be conducted on 19.06.24 at 1:00 pm in the auditorium of the Authority building, whose reserve price is Rs. 33,377.40. The conditions are as follows:-

1. The highest bidder will be responsible for any kind of accident while cutting the tree or lifting the wood.
2. If any damage occurs while cutting the tree, the highest bidder will have to bear the expenses himself.
3. The roots of the tree will have to be dug out and removed from the site and it will also be mandatory to clean the site.
4. The highest bidder will be responsible for obtaining a vehicle pass as per rules to take the cut tree to another place.
5. To participate in the auction, the bidder has to deposit a bank draft of Rs. 15,000.00 payable in favour of Finance Controller, Kanpur Development Authority in the office of Engineering Zone-3 by 12:00 noon before the auction.

6. The highest bidder has to deposit the entire bid amount, adjusting the amount of the bank draft, within 3 days of the highest bid being accepted.
7. In special circumstances, the Vice President, Kanpur Development Authority will grant approval for extension of time.
8. In case the highest bidder does not deposit the remaining amount of the bid after acceptance of the auction or if the work of felling of trees is not done after issuance of work order, the deposited amount of the highest bidder will be confiscated.
9. In case of any dispute, the decision of the Vice President, Kanpur Development Authority will be final, which cannot be challenged in any court.

Executive Engineer (Zone-3)

Copy to: -

For the observation of Chief Engineer

True Translated Copy

Office of Engineering Section Zone-3

Kanpur Development Authority, Kanpur

Letter No.: D /151/ A.A.-3/K.D.A/ 2024-25

Date: 11/07/2024

M/S Aman Timber Traders,

Charpawal Muzaffarnagar,

Subject: Regarding removing of 45 Trees on Plot No. 70, Block- W, Juhi.

Sir,

The above mentioned is approved by the Vice Chairman in your favour on 02.07.24.

So please deposit the remaining amount of Rs. 18,100.00 for felling of 45 trees planted in the said site, Plot No. 70, Block-Ws-1. Juhi, in the Authority Fund within 3 days of receipt of the letter so that work order can be issued for felling of the trees.

Assistant Engineer

ANNEXURE R-34

Office of Engineering Block-3

Kanpur Development Authority, Kanpur

File No. 180/Section Engineer-3/KDA/2024-2025

Dated: -16/7/24

To,

M/s Aman Timber Traders

Charpawal Muzaffarnagar.

Subject:-Regarding felling of total 45 trees planted in Juhi Plot 70. Block-W 1

Sir,

Please participate in the public auction for the above mentioned work on 19.06.2024 in which your bid being the highest, the vice president has given approval in your favour on dated 02.07.2024 for the above mentioned work.

Approval has been given in your favor due to higher bid of your. Therefore, you are informed that the work of cutting the trees standing at the said place should be started from 20.07.2004 and ensure completion of the work by 09.08.2024.

The related terms and conditions are as follows.

1. The entire responsibility for any type of accident while cutting trees or lifting wood shall be borne by the highest bidder.
2. If any damage occurs while cutting the tree, the cost will be borne by the highest bidder himself.
3. The roots of the tree will have to be dug out and removed from the site and the site will also have to be cleaned.
4. The highest bidder will be responsible for obtaining a vehicle pass as per rules for transporting the cut tree to another place.

5. In special circumstances, approval for extension of period will be given by Vice Chairman, Kanpur Development Authority.

6. In case the highest bidder does not deposit the remaining amount of the bid after acceptance of the auction or does not carry out the felling of trees after issuance of work order, the deposited amount of the highest bidder will be confiscated.

7. In case of any dispute, the decision of the Vice Chairman, Kanpur Development Authority shall be final, which cannot be challenged in any court.

Executive Engineer(Zone-3)

copy-

1. Assistant Engineer / Junior Engineer for necessary action.

Executive Engineer(Zone-3)

//TRUE TRANSLATED COPY//

Execution Case No. 22/2024

(Execution Case No. 04/2020 District Commission, Kanpur
Nagar)

20-11-2024:-

The present execution case transferred from District Consumer Commission Kanpur Nagar appeared before District Consumer Dispute Redressal Commission Kanpur Dehat for hearing.

At the time of hearing, an application under Order 21 Rule 97 read with Section 151 Civil Procedure Code was presented on behalf of petitioners third party Mr. Harish Khatri and 13 other persons, on which written objection was submitted on behalf of complainant decree holder.

I have heard in detail both the learned advocates regarding the petitioners third party's application under Order 21 Rule 97 read with Section 151 Civil Procedure Code and the objection filed against it on behalf of the complainant and have perused the case file.

Written arguments were also filed on behalf of learned advocate of petitioners third party in which the main objection

raised was that under Section 71 of Consumer Protection Act, 2019, even a party who is not a party to the complaint has the right to file an application under Order 21 Rule 97 Civil Procedure Code and the provisions of Order 21 Civil Procedure Code would apply to Section 71 of Consumer Protection Act, 2019.

Additionally, on behalf of petitioners third party, it was also argued that in the case of Civil Appeal No. 1919/2004 Trans Mediterranean Airways vs. Universal Exports etc., the Hon'ble Supreme Court has held Consumer Forum to be valid in the definition of court, therefore provisions of Civil Procedure Code are applicable and the Hon'ble Supreme Court in the case of Jini Dhanrajgir vs. Shibu Mathew considered the application filed under Order 21 Rule 97 as maintainable and the Hon'ble Supreme Court in Review Petition No. 1025/2019 Civil Appeal No. 6567/2014 Lehna Singh vs. Gurunam Singh, while dismissing the Review Petition in the circumstances where there appeared to be an error on record, upheld the findings of the trial court.

On behalf of petitioners third party, judicial pronouncements passed by Hon'ble Supreme Court in cases 2012 (1) CAR 666 (SC) Trans Mediterranean Airways vs. Universal Exports and Civil Appeal No. 3758-3796/2023 Jini Dhanrajgir vs. Shibu Mathew and judicial pronouncement passed by Hon'ble

Supreme Court in 2024 (2) CAR 650 (SC) Lehna Singh vs. Gurunam Singh were filed.

On behalf of complainant decree holder, the following objection was filed on the application of petitioners third party Mr. Harish Khatri and others that the present matter is an execution case in which decree was passed in the case instituted between complainant Jawahar Vidya Samiti vs. V.C. Kanpur Development Authority and in which petitioners Harish Khatri etc. have never been parties, therefore there is no justification for making them parties at this stage. In this regard, in Miscellaneous Case No. 884/2024, the learned District Judge Kanpur Nagar in order dated 21.10.2024 considering petitioners third party Harish Khatri etc. as Land Encroachers and having no locus to be heard in this matter, there is no legal justification for making them parties. An application to the same effect was given by petitioners third party on 17.08.2022 which was dismissed on 12.09.2022, which was not challenged in any appellate court, therefore the order dated 12.09.2022 should be considered final. If petitioners third party Harish Khatri and others had any interest, then the judgment dated 19.12.2003 passed by District Consumer Commission Kanpur Nagar in the complaint should have been challenged in appellate court. Additionally, the order dated

15.07.2022 passed in the present execution case has already been affirmed by Hon'ble Supreme Court, therefore the application for making petitioners third party as parties is not maintainable and would amount to interference with the Hon'ble Supreme Court's order.

Additionally, on behalf of complainant decree holder, objection was also raised on the application of petitioners third party that the application for making petitioners third party Harish Khatri, Pradeep Shukla and Deepak Shukla as parties is related to the earlier application of Ravi Pandey and others under Rule 102. PIL No. 518/2022 was filed on behalf of Bhupesh Awasthi and Ravi Pandey. An affidavit was given by Ravi Pandey's brother Shri Manoj Kumar Pandey and his nephew Amod Pandey before Hon'ble National Green Tribunal on 22.07.2023. The Secretary Kanpur Development Authority in his letter dated 08.10.2024 has clearly stated that Bhupesh Awasthi is violating judicial orders and attempting to mislead the court by hiding facts and misrepresenting facts before the court.

After hearing arguments from both sides and perusing the entire case file, it is evident that complaint No. 1222/2002 filed by complainant Jawahar Vidya Samiti against Kanpur Development Authority was decided by District Consumer Dispute

Redressal Commission Kanpur Nagar on 19.12.2003 in which accepting the consumer complaint of complainant institution, respondent No. 1 Kanpur Development Authority was ordered to accept from complainant institution the balance 3/4 price of the disputed plot amounting to Rs. 3,31,444/- and 22 paise, with 10% annual interest from 11.05.1984 to 22.03.1997, within one month and execute registration of the plot in their favor within next 2 months and provide possession.

The judicial pronouncements *Trans Mediterranean Airways vs. Universal Exports* 2012 (1) CAR 666 (Supreme Court) and *Jini Dhanrajgir vs. Shibu Mathew and others* and judicial pronouncement passed in 2024 (2) CAR 650 (SC) *Lehna Singh vs. Gurunam Singh* are not applicable to this case due to different circumstances.

Hon'ble Supreme Court in *Ethiopian Airlines vs. Ganesh Narayan Sahu* (2011) 8 Supreme Court Cases 539 held that "However, provisions of CPC are applicable only to limited extent to C.P.Act. It being a later and special Act-We only certain provisions of CPC are specifically made applicable to C.P. Act."

Additionally, in the above case, Hon'ble Supreme Court also held that "Specific Statutes that come later in time supersede prior

General Statutes..... Provisions of CPC have only limited applicability to them"

Therefore, in these circumstances, the miscellaneous application filed on behalf of petitioners third party under Order 21 Rule 97 Civil Procedure Code is not maintainable and deserves to be dismissed.

ORDER

The application filed on behalf of petitioners third party Shri Harish Khatri and 13 others under Order 21 Rule 97 Civil Procedure Code is dismissed as not maintainable.

In compliance with the order dated 15.07.2022 in the present execution file, proceedings for execution of decree shall be completed within 20 days by handing over possession of the subject property to complainant decree holder, and

In continuation of order dated 27.04.2023 in said execution file, non-bailable warrant for appearance before the Commission against Vice Chairman of Kanpur Development Authority be sent to Station House Officer Swaroop Nagar, Kanpur Nagar through Police Commissioner Kanpur Nagar for service of warrant.

Case file be presented on 16.12.2024 for further hearing.

-Sd- Member

-Sd- Chairman/President

-Sd- Member

PROOF OF SERVICE



Advance Service of Reply on behalf of Respondent No. 5/Jawahar Vidya Samiti in case titled "Mr. Tarun Kumar Jain & Ors. v. Kanpur Development Authority & Ors. [OA/1284/2024]" pending before NGT, New Delhi

From AWM Legal Office <office@awmlegal.in>
Date Mon 5/19/2025 6:53 PM
To advdk.yadav79@gmail.com <advdk.yadav79@gmail.com>
Cc Gaurav Arora <gaurav@awmlegal.in>; Ujjwal Malhotra <ujjwal@awmlegal.in>

To,
The Counsel for the Original Applicant/ Petitioner,
in case titled
Mr. Tarun Kumar Jain & Ors. v. Kanpur Development Authority & Ors.
[OA/1284/2024]

Sir,

Please find attached herewith the Reply on behalf of Respondent No. 5/ Jawahar Vidya Samiti in the above captioned matter which is pending adjudication before the National Green Tribunal, Principal Bench, New Delhi.

Kindly treat this as due service and acknowledge receipt of the same.

Thank You.

 [Tarun Kumar Jain and Ors vs Kanpur Development Authority Reply on behalf R-5.pdf](#)

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Kind Regards,

Office of AWM Legal



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