2026:AHC:130962-DB

AFR
Reserved On:27.05.2026
Delivered On:02.07.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
WRIT - C No. - 9556 of 2026

M/s Knots India Carpets Private Limited

…..Petitioner(s)

Versus

State of Uttar Pradesh and 2 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Shashvat Gupta
Counsel for Respondent(s)	:	C.S.C., Vineet Sankalp

Court No. - 4

HON'BLE NEERAJ TIWARI, J.
HON'BLE SUDHANSHU CHAUHAN, J.
(Delivered by Hon'ble Sudhanshu Chauhan,J.)

1. Heard Shri Ashish Kumar Singh and Shri Tarun Agarwal, learned Senior Advocates assisted by Shri Shashwat Gupta, learned counsel for the petitioner, Shri M.C. Chaturvedi, learned Senior Counsel assisted by Shri Vineet Sankalp, learned counsel for respondent no. 2 and 3.

2. The present petition has been filed being aggrieved by the letter dated 24.01.2026, by means of which Nagar Nigam, Varanasi has refused to grant a no-objection certificate to the petitioner for the purpose of construction of a hotel essentially, on the ground that in the Fasli year 1291 (corresponding year 1884 CE), Arazi no. 2404, Mauja Rampura (Varanasi) was recorded as a pond in the revenue records.

3. The facts involved in the controversy are that the Municipal Board, Benaras, vide registered sale deed dated 19.11.1913, had transferred 2 Bighas and 7 Biswas of land situated in Mohalla Misir Pokhra, Benares to Maharaja Mahindra Chandra Nandy. The said sale deed was executed after obtaining the sanction of the Commissioner of the Benaras District, which was granted vide letter dated 31.05.1913, which was further sanctioned vide Municipal Board's resolution dated 27.09.1913, by means of which said sale deed land with structures thereon were transferred in favour of the purchaser.

4. Subsequently, by means of another registered sale deed dated 12.11.1920, Jnanendra Basu had transferred 5 biswas of land situated in Mohalla Misir Pokhra, Benaras, in favour of Maharaja Mahindra Chandra Nandy. The perusal of this sale deed further reveals that the vendor, Jnanendra Basu, had purchased the land so transferred, by means of a registered sale deed dated 04.03.1913.

5. Thus, Maharaja Mahindra Chandra Nandy became the owner of 2 bighas and 12 biswas of land, which was the total area of Arazi no. 2404. Besides, the property so transferred by means of the two registered sale deeds, came to be recorded in the name of Maharaja Mahindra Chandra Nandy in the records of the Municipal Board, Benares

6. The successors of Maharaja Mahindra Chandra Nandy, by means of a registered sale deed dated 25.09.1957, had thereafter transferred an area of 19,099 sq ft out of the total area of about 2 bighas and 12 biswas in Arazi No. 2404 to Godrej Dhunjishaw Gandhi and Shavak Dhunjishaw Gandhi. Besides Godrej Dhunjishaw Gandhi and Shavak Dhunishaw Gandhi had purchased a plot of land measuring 7,808 sq ft from Raja Ram Sahu by means of a registered sale deed dated 11.02.1958.

7. Thereafter, Godrej Dhunjishaw Gandhi and Shavak Dhunrishaw Gandhi had transferred a plot of land measuring 3605.5 sq ft out of the total land purchased from Raja Ram Sahu by registered sale deed dated 21.09.1959 in favour of Sri Shiv Dayal Khemka Charitable Trust.

8. Ultimately Godrej Dhunjishaw Gandhi and Shavak Dhunjishaw. Gandhi were having 22,571.84 sq ft of land comprised in Arazi nos. 2402 and 2404, Misir Pokhara, Varanasi and the said property was allotted property no. D-48/140-141 by the Municipal Board, Benaras. The property situated at D 48/140-141, Mazda Picture Palace, Misir Pokhra, Varanasi admeasuring 22571.84 sq ft i.e 2097.75 sq mtr is the subject matter in dispute in the present writ petition (hereinafter referred to as " the property in dispute").

9. Subsequently, Godrej Dhunjishaw Gandhi and Shavak Dhunjishaw Gandhi had constructed Mazda Cinema Hall over the aforesaid property having an area of 22,571.84 sq ft after obtaining a license and requisite permissions, including one dated 17.10.1962 from the Municipal Board, Benaras. Mazda Cinema continued to run over the property in dispute for the next fifty years to follow.

10. The successors of Godrej Dhunjishaw Gandhi and Shavak Dhunjishaw Gandhi vide registered sale deed dated 08.11.2011, had ultimately transferred the land with building bearing property no.D-48/140-141, Mazda Picture Palace, Misir Pokhara, Varanasi, having a plot area of 22571.84 sq ft to the petitioner. Subsequent thereto, the property in dispute came to be recorded in the name of the petitioner in the records of the Municipal Corporation, Varanasi, erstwhile Municipal Board, Benaras.

11. It is contended on behalf of the petitioner that out of the total area of 22871.84 sq ft of land so purchased by the petitioner, an area of 19671.83 sqft is comprised in erstwhile Arazi No. 2404, and the remaining area of 2900 sq ft is comprised in erstwhile Arazi No.2402 and also that the present dispute pertains to an area of 1,9671.83 sqft comprised in erstwhile Arazi No.2404, which said fact is not disputed by the respondents.

12. The petitioner in the meanwhile had entered into a memorandum of understanding dated 09.02.2018 with the State of U.P. through the

Secretary, Infrastructure & Industrial Development, for construction of, "Star Hotel" having a proposed investment of about Rs.100 crores. In pursuance thereto, the petitioner had applied for a no objection certificate from Nagar Nigam Varanasi, however, by means of the impugned letter dated 24.01.2026, the Additional Municipal Commissioner, Nagar Nigam-respondent no. 3 refused the no objection certificate on the ground that in the Fasli year 1291 (corresponding year 1884 CE), Arazi no.2404 was recorded as pond in the revenue records.

13. After filling of the present writ petition this court, vide order dated 20.03.2026, had directed the learned counsel for respondents no. 2 and 3 to obtain instructions in the matter. Subsequently, the instructions were placed before this court on 01.04.2026, wherein it was stated that Arazi No. 2404, measuring 2 bighas,12 biswas and 1 dhur, was entered as pond in the revenue records during the Fasli year 1291 and presently, it is recorded as abadi, in the Fasli year 1425 and has an area of 0.688 hectares. Further, it was stated that a letter dated 27.02.2026 had been issued to the concerned Sub-Divisional Magistrate to correct the revenue entries in respect thereof and also that Nagar Nigam Varanasi would carry out beautification of the pond over Arazi No. 2404, once the revenue entries stood corrected, reliance was placed upon the judgement of the Apex Court in the case of Hinch Lal Tiwari Vs State of UP.

14. This court, while keeping in view the instructions submitted vide the order dated 01.04.2026, amongst others, had directed as under:-

"*17 Under the circumstances we direct that Principal Secretary, Department of Urban Development, Government of U.P. and Municipal Commissioner, Nagar Nigam, Varanasi to file their personal affidavits in respect of the subject matter in controversy wherein amongst others they are required to elucidate that as to how land comprised in the erstwhile Arazi No. 2404 can be held to be pond land when the erstwhile Municipal Board, Banaras in the sale deed executed way back in the year 1913 had itself admitted that the same was an open land, more so when even as on date in the revenue records the land comprised in said Arazi is shown as abadi. Further they are also required to elucidate the manner in which, the respondents intend to restore the pond over Arazi No. 2404 admittedly having an area of 2 bighas and 12 biswas and 1 dhur a densely populated area of Varanasi presently being situated over the same.*

18 We further direct that the personal affidavits, detailed above shall be filed prior to the next date of hearing fixed in the present writ petition."

15. In compliance thereof, the Principal Secretary, Department of Urban Development, Government of UP, has filed his affidavit dated 29.04.2026, wherein reliance has been placed upon a report dated 15.04.2026 of IIT, BHU, Varanasi. Further perusal of the report dated 15.04.2026 reveals that the same has been submitted in pursuance to a letter dated 07.04.2026 issued by Additional Municipal Commissioner-respondent no.3. The perusal of the affidavit also makes it evident that the respondents have not undertaken any exercise for the purposes of revival/development of the alleged pond other than obtaining the said report. Hence, it is evident that the respondents sprung into action only after filing of the present writ petition and passing of the order dated 01.04.2026 and the property in dispute admittedly continues to remain recorded as abadi land, all this while.

16. The petitioner, by means of a supplementary affidavit dated 13.04.2026, has also placed on record the fact that, in pursuance to the impugned letter, proceedings under Sections 59/61 of the UP Tenancy Act, 1939 have been initiated by Sub-Divisional Magistrate, Sadar, Varanasi. The petitioner has also brought on record a show cause notice dated 10.04.2026, issued by respondent no.3, calling upon the petitioner to produce all the records in respect of the property in dispute failing which, appropriate action would be taken in view of the fact that the land is recorded as a pond in the revenue records.

17. Subsequently, when the matter was listed before this Court on 30.04.2026, the following order was passed: -

"1. In pursuance of the earlier order dated 15.04.2026, personal affidavits filed on behalf of Respondent no.1- Principal Secretary, Urban Development Department, Lucknow and Respondent No.2- Municipal Commissioner, Nagar Nigam Bhawan, Varanasi, are taken on record.

2. In compliance of the aforesaid order dated 15.04.2026, Shri Himanshu Nagpal, Municipal Commissioner, Nagar Nigam Bhawan, Varanasi is personally present before this court.

3. Learned Senior Counsel appearing on behalf of petitioner has submitted that even assuming though not admitting that there was a pond, clearly the documents revealed that there was concrete construction on the date of vesting and he also asserts that even in the Master Plan, the Development Authority had not shown the land to be in the nature of pond. He, relying on the decision in the case of ***Shiv Badan Singh and Others Vs. State of U.P. and Others (Writ Petition No. 2636 (MB) of 2006; Neutral Citation: 2011:AHC-LKO:14699-DB)*** *has further submitted that even in case, since before the date of vesting or thereafter, if the plot in question was recorded as pond, it had lost its utility and was no more in use as a pond; and now, the land is being used for development and a MoU has also been entered into with the authorities.*

4. In view of the aforesaid, since the deed was executed by the State and thereafter, the development has taken place, in case the State proceeds to restore the land into a pond, in said circumstances, the petitioner has to be compensated.

5. Shri M.C. Chaturvedi, learned Additional Advocate General, has appeared before this court and seeks accommodation for today. He submits that some time may be granted to go through the affidavits filed by the respondents.

6. Accordingly, one week's time is granted to him to prepare his brief. He shall also produce the Master Plan and apprise the court of the nature of the land on the date of vesting.

7. On his request, list this case on 11.05.2026, as fresh at 10:00 AM. On the said date, Respondent No.2 shall remain present before this court.

8. Interim order, granted earlier, shall continue till the next date of listing."

18. It is made clear that the respondents have not produced the Master Plan of Varanasi to demonstrate as to whether a pond exists over the property in dispute or not, nor the respondents have apprised this Court regarding the nature of land comprised in the property in dispute on the date of vesting.

19. On 11.05.2026, again the matter was adjourned on the request of the respondents and was listed on 15.05.2026. Thereafter, on 15.05.2026, the matter was again adjourned on the request of the respondent on the ground that there was every likelihood that the matter would be resolved, the order so passed is as under:-

"1. Learned counsel for the respondents submits that a meeting was held on 14.05.2026 and there is a likelihood that the matter would be resolved.

2. On his request, put up this case as fresh on 27.05.2026.

3. Interim order, granted earlier, shall continue till the next date of listing."

20. When the matter was next listed before this court on 27.05.2026, it was submitted by Shri M C Chaturvedi, learned Senior Counsel that no further submissions were to be made on behalf of the respondents as far as the subject matter in controversy was concerned and, the affidavits of the Principal Secretary and Municipal Commissioner may be taken into consideration while deciding the controversy involved. Hence, this court with the consent of parties proceeded to decide the present writ petition finally.

21. It is contended on behalf of the petitioner that it is no longer open for the respondents after having executed a sale deed in favour of the predecessor of the petitioner way back in the year 1913 in respect of land and structure to allege that the land over which the property in dispute is situated was a pond. It is further contended that, as per the own showing of the respondents, the land was recorded as abadi land in the revenue records since the Fasli year 1359 and continues to do so even as on today. Further, the land was included in the municipal limits prior to the date of vesting, i.e., 01.07.1952, and under the circumstances, the provisions of UP Zamindari Abolition and Land Reforms Act, 1950 as well as the provisions of UP Revenue Code, 2006 shall not be applicable to the property in dispute. It is further contended that, as the respondents themselves admit that there was land existing in the year 1913 and as such, were estopped from alleging that a pond existed over the property in dispute. It is stated that there is no question of any pond existing over the property in dispute, in view of the fact that the same is situated in a densely populated area of Varanasi, as admitted by the respondents. It is for this reason that even in the Master Plan of the Varanasi Development Authority, the land is not shown as a pond. Lastly, it is contended that the law laid down by the Apex Court in the case of *Hinch Lal Tiwari* and *Jagdeep Singh* would not be applicable to the facts and circumstances of the present case.

22. Per contra, it is contended on behalf of the respondents that a pond was situated over the property in dispute, and the controversy is duly

covered by the law laid down by the Apex Court in the case of *Hinch Lal Tiwari* and the property in dispute has incorrectly been recorded as abadi in the revenue records.

23. There is no dispute between the parties in respect of the sale deed dated 19.11.1913, executed by the erstwhile Municipal Board, Benaras in favour of the predecessor of the petitioner, Maharaja Manindra Chandra Nandy and the subsequent transfers which ultimately led to the vesting of the title and possession of the property in dispute in the petitioner.

24. It is also admitted by the parties that the property in dispute has been recorded in the records of respondent no.2 -Corporation since the year 1927, for the purposes of payment of house tax and water tax.

25. The records also reveal that the property in dispute is situated over a highly densely populated area of Varanasi. In this regard, the petitioner has relied upon images obtained from Google Earth to support his contention. Further, in the affidavit filed by the Municipal Commissioner, amongst others, it is stated ,"*That it is pertinent to mention here that, in the vicinity of this site, within a radius of approximately 500 m in a very densely populated area, the Municipal Corporation Varanasi has carried out the restoration and beautification of several ponds such as* ...." Thus, it is evident that there are buildings standing in the vicinity of the property in dispute and land was existing since the year 1913, even as per the showings of the respondents, if not prior thereto.

26. It is only after the filing of the present writ petition and the passing of the order dated 01.04.2026 by this Court that the respondent No. 3, vide the letter dated 07.04.2026, had sought a feasibility assessment report for the proposed renovation of the pond from IIT, BHU, Varanasi. Hence, it is beyond doubt that the entire exercise of renovation/ development of the pond at Arazi No. 2404 was undertaken by the respondents after the filing of the present writ petition and there is

nothing on record to demonstrate that any such exercise was undertaken by the respondents in the past. The report of IIT-BHU, dated 15.04.2026, amongst others, also states that the surrounding areas of the property in dispute are densely populated, which is typical for most of the city. Even the photographs made part of the report; dated 15.04.2026, corroborate the stance of the petitioners that the property in dispute is situated in a densely populated area of city of Varanasi.

27. The relevant portion of the report pertaining to observations and assessments as contained in paragraph C of the report dated 15.04.2026 is being reproduced herein under:-

*"C. **Observations and Assessment***

*C. 1 **Site location***

During the visual observations, the site is found to be a T-shaped plot as shown in Fig. 1.

The site has three access routes, of which prominent one sits on Godowliya-Luxa/ samapure-Luxa Road and the other two open in the alleys. The plot size is 0.688 hectare, as reported by officials at the site. While the width at main entrance is estimated as 20 m, the depth of the plot is estimated as 100 m. The surrounding areas are densely populated, which is typical for most of the city.

C.2 Topographical Observations

During the visual observations, the site is found to be mostly plain with imperceptible gradient. While the majority of the site has uneven ground with some construction debris at the top with some shrubs and grass vegetation, some portion close to main entrance has signs of concreting (pavement or P.C.C.) as shown in Figs. 2 and 3. However, the site majorly appears filled with earth, silt and debris.

C3 Condition Assessment of Boundary Wall

During the visual observations, as shown in Figs. 4 and 5, the site boundary wall was found to be severely damaged due to stresses coming from adjacent buildings which have been constructed with no offset at all. At some locations, the boundary wall has collapsed and disappeared as well.

C4 Surrounding Buildings

The site is surrounded by buildings which have been built to their respective property lines. On the eastern side, there are multiple masonry buildings with load-bearing wall systems as shown in Fig. 2. The tallest of these may be classified as G+3. These masonry buildings have undergone reasonable damage and deterioration due to environmental exposure. On the western side, there is a multi-storeyed (G+7) reinforced concrete building as shown in

Fig. 3, which is built at an offset which probably suffices the building bye-laws.

C5 Feasibility Assessment of the Pond

Based on visual observations related to site location, topography, boundary wall condition and surrounding buildings reported in previous sub-sections, following points warrant attention:

The pond appears to have been filled with silt, earth and debris over time. Therefore, the pond re-development work should follow procedures and bye-laws of new pond development.

The surrounding buildings are directly abutting the site boundary, and these buildings also show signs of environmental degradation. Therefore, in case of a water body being developed, a detailed topographical study to understand hydraulic gradient followed by implementation of filters around the water body shall be required.

Development of pond shall contribute to the groundwater recharge, which is scarce in densely populated regions given that most of the spaces are paved. Providing a good surface runoff from the surrounding regions into the pond and not vice-versa shall be critical in this regard."

(emphasis added)

28. Hence, the following conclusions can be drawn from the perusal of the report dated 15.04.2026 relied upon by the respondents:-

(i). The entire exercise of assessment for renovation/ development of pond were undertaken after the filing of the present writ petition and passing of the order dated 01.04.2026.

(ii). There is no presence of any pond or water body at site, and admittedly, the pond appears to have been filled with silt, earth and debris over time. Therefore, the pond redevelopment work should follow the procedures and bye-laws of new pond development. Thereby showing complete absence of a water body.

(iii). Although the contention of the respondents is that the pond is situated over Arazi No. 2404, having an area of 0.688 hectares, the assessment report has been prepared only with respect to a piece of land measuring 20 meters in width and 100 m in depth and apparently belonging to the petitioner, who claims to be the owner of a plot area of

22,571.84 sq ft i.e 2097.75 sq mtr comprised in Arazi No. 2404 and Arazi No. 2402.

(iv). The respondents have not undertaken any exercise regarding the manner in which they intend to restore the pond over Arazi No. 2404, having a total area of 0.688 hectares nor is there any averment to that effect in the affidavits filed by the respondents. Thus, it is only the property in dispute belonging to the petitioner that has been singled out.

(v). The property in dispute is situated in one of the densely populated areas of the city of Varanasi.

29. Now, coming to the revenue records relied upon by the respondents and the same reveal that allegedly Arazi No. 2404 was recorded as pond in Fasli year 1291,which corresponds to the year 1884 CE. Thereafter, no revenue records are available upto Fasli year 1359, and the revenue records for Fasli years 1356 to1359 Fasli are allegedly in a dilapidated condition and have neither been produced nor relied upon by the respondents. In the Khatauni for Fasli year 1361, Arazi No. 2404/1 and Arazi No. 2404/2 are recorded as abadi, in the Khatauni of Fasli year 1382, Arazi No.2404 is recorded as abadi, in the Khatauni of Fasli year 1387, Arazi No. 2404 is recorded as abadi. Admittedly, even in the current Khatauni for the Fasli year 1425, the Arazi No. 2404 is recorded as abadi. Thus, the property in dispute since the year 1954 CE, corresponding to Fasli year 1361 till date, has been recorded as abadi land and not as pond.

30 It is only in the Khasra of Fasli year 1359 that Arazi No. 2404/1 is recorded as abadi, and Arazi No. 2404/2 has been recorded as pond. Thereafter, no records of the Khasra have been produced to show that, subsequent to Fasli year 1359, the property in dispute was ever recorded as pond in the Khasra. Further, there is no explanation whatsoever at the end of the respondents as to how and why it is only in the Khasra of Fasli year 1359, corresponding to the year 1952 CE, that a part of Arazi

No. 2404 was recorded as pond, which was not so in the subsequent years till date.

31. Thus, the respondents do not dispute the fact that the property in dispute is recorded as abadi in the revenue records for the past about 74 years, commencing from the year 1954 CE till date and the records of years prior thereto, are either not available or are dilapidated.

32. Hence, it would not be out of place to mention here that even though Arazi No. 2404 was recorded as pond in the Fasli year 1291, land and structure were standing upon the same as would be evident from the sale deed dated 19.11.1913 executed by the erstwhile Municipal Board, Benaras in favour of Maharaja Mahindra Chandra Nandy, the recital of the sale deed reads as under:

"..... the transferor hereby conveys the apportioned plot of land measuring 2 Bighas 7 Biswas, as shown in the sketch referred to above, with structures thereon and the boundaries of which are given below, to the transferee absolutely, with all structures, easements, liberties, privileges..." Pursuant thereto, the property in dispute admittedly was also recorded in the registers of the respondent no. 2-Corporation, since the year 1927, for the purposes of payment of house tax and water tax.

33. As far as the revenue records are concerned, the same are not available after the Fasli year 1291, as duly admitted by the respondents. Thereafter, the revenue records for the Fasli year 1356 to Fasli year 1359 are in a dilapidated condition and have not been relied upon by the respondents. In the Khatauni of Fasli year 1361 till date, the property in dispute is recorded as abadi land. It is only in the Khasra for Fasli year 1359 that a part of Arazi No. 2404 is recorded as pond, but even in the Khasras of subsequent years it is not so. It is made clear in this regard that in the field book, the Khasra is the record of possession and the Khatauni is the record of rights. Thus, it is evident that, although a part of Arazi No. 2404 was recorded as pond in the record of possession for

one particular year, it continued to be recorded as Abadi in the record of rights.

34. Further, it is the respondent No. 1 who is the custodian of revenue records, thus, an adverse inference ought to be drawn against the respondent No. 1 for the failure to produce the relevant revenue records. It is also surprising to note that the revenue records only in respect of the Fasli year 1291 are available, and no revenue records prior thereto or subsequent thereto up to the Fasli year 1358 are available with the respondents . Hence, we are of the view that the revenue records so relied upon by the respondents in support of their case are of little assistance to them.

35. It has also been vehemently argued by the learned counsel for the petitioner that the provisions of UP Zamindari Abolition & Land Reforms Act, 1950, and that of UP Revenue Code, 2006, would not be applicable to the property in dispute. In this regard, the Learned Counsel has placed reliance upon subsection (2) of Section (1) of the U.P. Zamindari Abolition & Land Reforms Act, 1950, wherein it is provided that the Act, 1950, extends to the whole of Uttar Pradesh except the areas which on 07.07.1949 were included in a municipality or a notified area under the provisions of the United Provinces Municipalities Act, 1916. It is not disputed by the respondents that respondent no. 2 Corporation had sold the land to the predecessor of the petitioner vide registered sale deed dated 19.11.1913. Further, it is admitted in the affidavit filed by the Municipal Commissioner that the property in dispute was recorded in the register maintained by the respondent no. 3 Corporation for the years 1927-1935 and even thereafter. Thus, it is not disputed that the property in dispute was included in the erstwhile Municipal Board, Benaras, even prior to enforcement of the UP Municipalities Act, 1916.

36. As far as the applicability of the UP Revenue Code,2006 is concerned, the learned counsel has relied upon Section 2 of the Court, which relates to its applicability and reads as under:-

"2. Applicability of the Code. - The provisions of this Code, except Chapters VIII and IX shall apply to the whole of Uttar Pradesh, and Chapters VIII and IX shall apply to the areas to which any of the enactments specified at serial numbers 19 and 25 of the First Schedule was applicable on the date immediately preceding their repeal by this Code."

It is made clear that Chapter VIII of the Code, 2006 deals with management of land and other properties of Gram Panchayat or other local authorities, and Chapter IX of the Code, 2006 deals with tenures.

37. Thus, the applicability of provisions contained under Chapter VIII and Chapter IX of the Code, 2006, have been made subject to the applicability of any of the enactments specified at serial nos. 19 and 25 of the First Schedule, immediately preceding their repeal by the Code,2006. Serial no. 19 of the First Schedule of the Code, 2006 pertains to the UP Zamindari Abolition & Land Reforms Act, 1950 and serial no. 25 of the First Schedule of the Code ,2006 pertains to UP Urban Areas Zamindari Abolition & Land Reforms Act, 1950 . Hence, it is contended that as far as the provisions of the UP Zamindari Abolition & Land Reforms Act ,1950 are concerned, the same are not applicable in the present case for the reasons already assigned above.

38. Further, as far as the applicability of the UP Urban Areas Zamindari Abolition & Land Reforms Act, 1956 is concerned, it is contended that neither any exercise of demarcation under Section 5 of the Act, 1956 has ever been carried out by the State, nor any notification has been issued under Section 8 of the Act, 1956 thereby vesting the said agricultural area in the State. A specific plea in this regard has been raised in para 46 of the writ petition, however, the same remains uncontroverted by the respondents. It is further contended that, as would be evident from the records, the property in dispute would not fall in the category of an agricultural land situated in urban areas being recorded as abadi in the revenue records and also being recorded in the municipal records.

39. In view of the submissions so made, it is contended that Chapter VIII and Chapter IX of the Code, 2006 would not be applicable to the property in dispute. Chapter VIII of the Code, 2006, pertains to

management of land and other properties by Gram Panchayat or other local authority. Further clause (v) of subsection (2) of Section 59 under the said Chapter provides for entrustment of ponds to a Gram Panchayat or other local authority. Section 61 under Chapter VIII pertains to management of village tanks. Hence, it is contended that no proceedings under Sections 59 /61of the Code, 2006 could have been initiated against the petitioner by the respondents, as the provisions of Chapter VIII of the Code, 2006 shall not be applicable.

40. It is also been stated that in the proceedings so initiated against the petitioner, it has been wrongly mentioned in the notices issued by the concerned Sub-Divisional Magistrate, that the proceedings have been initiated under Section 59/61 of the U.P. Tenancy Act 1939 as there is no dispute regarding tenancy of the agricultural land, hence, the aforesaid provisions of the said Act, 1939 would not at all be attracted in the present case. In this regard, attention has also been drawn to para 6 of the affidavit filed by the Municipal Commissioner, wherein it has been stated that proceedings have been initiated under Section 59/61 of the U.P. Revenue Code, 2006 (previously U.P. ZA & LR Act, 1939), the year of enactment being wrongly mentioned as 1939 CE, and the same should have been 1950 CE.

41. It is further pointed out that Section 59 of the UP Tenancy Act, 1939 pertains to suit by tenant for declaration of right or share, and Section 61 of the UP Tenancy Act, 1939 pertains to suit as to class of tenancy, however, there is no dispute regarding tenancy of agricultural land in the present case, and as such, even otherwise, the said provisions would not be applicable.

42. We are of the view that the contention so raised on behalf of the petitioner has force, however, we find that no relief has been claimed by the petitioner in respect of the proceedings so initiated against the petitioner under the Code, 2006 or otherwise. Hence, we leave it open for the petitioner to raise such pleas in respect of the jurisdiction of the concerned Sub Divisional Magistrate to initiate proceedings under the

UP Revenue Code ,2006 or UP Tenancy Act,1939,as the case maybe, before the appropriate forum as prescribed by law.

43. Now, adverting to the case of ***Hinch Lal Tiwari Vs State of U.P, (2001)6 SCC 496,*** in this case, the Apex Court had found that the patta had been granted over pond land and in the Khatauni for the years 1387 to 1392 Fasli (corresponding to years 1980 to 1985) and for the years 1393 to 1398 Fasli (1986-92), the description of the said survey number was given as pond.Further, no patta could have been granted in respect of land having a character of a pond. It is in these circumstances that the Apex Court had directed that private respondents shall vacate the land, and a direction was issued to the State to develop and maintain the same as a recreational spot, which will undoubtedly be in the best interest of the villagers.

44. Similarly, in the case of ***Jagpal Singh Vs State of Punjab, (2011) 11 SCC 396***, the appellants were neither the owners nor the tenants of the land in question, which was recorded as a pond. They were, in fact, trespassers and unauthorized occupants of the land who had filled in the village pond and made constructions thereon. In this said case, the Apex Court, while issuing directions to all State Governments in the country to prepare a scheme for eviction of illegal /unauthorized occupants and restoring the land to the Gram Sabha /Gram Panchayat for the common use of the villagers, had further directed that regularization should only be permitted in exceptional cases.

45. Further, in the case of ***Jitendra Singh Vs Ministry of Environment and others, (2020) 20 SCC 581*** a private entity was involved in using excavators and other heavy machinery to forcibly take over possession of a common pond, further, the concerned Industrial Development Authority had acquired land, including some local ponds, and had leased the same to private parties, including the concerned private entity and the representatives of the concerned Industrial Development Authority had started filling up certain ponds and developing an alternate area as a new water body to save the allotment so made in favour of the private

entity. It is in the said circumstances that the Apex Court had held that schemes which extinguish local water bodies, albeit with alternatives as provided in the Government Order by the State of UP, are violative of Constitutional principles and are liable to be struck down. It was further directed that the allotment of all the water bodies (both ponds and canals), including to the private entity or any other similar third party in Tehsil Dadari, District Gautam Buddha Nagar, was illegal and was quashed.

46. However, when we consider the facts and circumstances of the present case in view of the law laid down by the Apex Court, we find that in the present case, the predecessors of the petitioner had a valid right, title, and interest over the property in dispute in pursuance to registered sale deeds. Further, the erstwhile Municipal Board, Benaras, way back in the year 1913 itself admitted the fact that there was land and structure existing over the property in dispute. Admittedly the revenue entries relied upon by the respondents, also do not support their case as the property in dispute continues to be recorded as abadi land for the past 72 years and there are no revenue records available prior thereto. Besides, the property in dispute is situated in a densely populated area of Varanasi. No exercise whatsoever was undertaken by the respondents for restoration of the pond in the past. It is only when the present writ petition was filed and the order dated 01.04.2026 was passed that the respondents woke up from their deep slumber and tried to justify the stand so taken by them. Even in the report dated 15.04.2026, prepared by IIT, BHU in haste at the instance of the respondents, there is nothing to demonstrate that there was a pond or any other water body existing over the property in dispute and it is for this reason that the report recommends for “new pond development”. Even during the pendency of the present writ petition, the respondents have not raised any serious dispute in respect of the pleas raised in the writ petition. Hence, we are of the view that the law so laid down by the Apex Court, discussed in the paragraphs above, would not be applicable in the present set of circumstances.

47. Here, we would also like to advert to the law laid down by the Apex Court in the case of ***State of Rajasthan and another Vs Ultra Tech Cement Limited., (2022) 19 SCC 102*** wherein, with the idea of setting up a cement plant, the respondent company had acquired land through negotiations. For executing the project, the respondent company applied to the appellant State for a grant of an adjoining mining lease for mineral limestone and the State Government had finally issued a letter of intent for mining subject to certain conditions, however, subsequently, the State Government had held that the subject land, having been recorded in the revenue records as "Johad" (pond) and as such, no allotment could be made in favour of the respondent company. The High Court had allowed the appeal so filed by the respondent company. In the aforesaid circumstances, the Apex Court had held as under :-"

"13 In Narmada Bachao Andolan v. Union of India, this Court had the occasion to discuss the Precautionary Principle and it was held that the said principle and the corresponding burden of proof on the person who wants to change the status quo, will ordinarily apply in the case of polluting or other projects or industry where the extent of damage likely to be inflicted, is not known. But when the effect of the project is known, then the principles of sustainable development would come into play which will ensure that mitigative steps can be taken to preserve the ecological balance. In the present case, there is no such uncertainty due to lack of availability of data or scientific material about the damage if any, likely to be caused to the ecological balance of the area. Instead, detailed spot inspections have been conducted by the revenue authorities from time to time that establish that there is no 'Johad' existing on the subject land. Despite that, the respondent–Company has been directed to develop an alternate 'Johad' in a planned manner at the same area, as a mitigative step which it has undertaken to execute.

14 In Lafarge Umiam Mining Private Limited, this Court has recognized the fact that the environment has different facets and universal dependence of humans for the use of environmental resources for the most basic needs, inescapably requires choices to be made at different levels on environmental protection and factor in the risks which are to be regulated, as recognized by the concept of sustainable development. Conceding that it is impossible to lay down 'across-the-board' principles and much would depend on the facts of each case, this Court opined that what was required to be seen was how much protection would be sufficient and whether ends would be served by diverting resources to other uses and at the same time, strike a fine balance between environmental protection and environmental risk. No such fine balance is required to be struck in the instant case when admittedly, the spot inspections show that there does not exist any 'Johad' on the subject land that is likely to be affected on account of the change proposed in the revenue records.

15 The directions issued in Jagpal Singh's case calling upon State Governments to prepare a scheme for eviction of illegal/unauthorized occupants of Gram Sabha land also do not come in the way of the respondent–Company. The purpose of the said direction was to prepare a scheme for removal of illegal occupants expeditiously. This does not prevent the respondent–Company from approaching the Court for correction in the revenue records when the site inspection reports prepared by the Revenue Authorities show that there is no water body or catchment area on the subject land.

16 The focus in the case of Electrotherm (India) Limited was on conducting public hearings as a mandatory requirement of the environmental clearance process and the Court has frowned upon doing away with public hearings in the course of the decisionmaking process. In the case of Common Cause, this Court was seized of the aspect of illegal/unlawful mining in the State of Odisha and it was observed that Courts cannot interfere with the Mining Policy or lay down limits on the extent of mining activity that should be permitted by the State/Central Government. The said decision does not have any application to the facts of the instant case where the appellant–State Government has already given an in-principle consent for setting up a cement plant in favour of the respondent–Company and the High Court was only required to examine the aspect of correction in the revenue records in relation to the subject land where a 'Johad' was mentioned, but none existed at site.

17 In Alembic Pharmaceuticals' case, the issue before this Court was with respect to the operation of industries without obtaining prior environmental clearance for a long time and their liability on account of such non-compliance. Noting that the industries had evaded the legally binding regime of obtaining environment clearance, it was held that penalty must be imposed on them for disobedience and non-compliance of the rules and regulations. Here, the respondent–Company has admittedly received environmental clearances and in spite of the same, its project has not taken off due to various hurdles created by the appellant–State Government. Clearly, the present case is not one of breach of any norms for imposition of penalty on the respondent–Company.

18 Even the judgment of the Division Bench of the Rajasthan High Court in the case of Abdul Rehman is being completely misread by the appellant–State Government. The focus in the said judgment was on the restoration of the catchment area to its original shape for which a plan was directed to be drawn up which included demarcation of the catchment areas, demarcation of drainage channels etc. Nowhere in the said judgment has it been observed that the description of a land as a pond in the revenue records, when no pond exists on site, cannot be corrected after conducting a spot inspection. We are inclined to accept the submission made by learned counsel for the respondent–Company that in the absence of any pond at the spot, the decision rendered in the case of Abdul Rehman cannot be an impediment for processing the application of the respondent–Company for allocation of the subject land, for setting up a cement plant. The High Court has rightly referred to the decision of this Court in Director General, Research and Development, where noting the fact that there was no 'Gair-Mumkin' Nadi existing on the spot, it was observed that the decision of the High Court in Abdul Rahman will not come in the way of allotting the land to the petitioner.

19 For the aforesaid reasons, we concur with the findings returned in the impugned judgment which is upheld. The appellant–State Government is

directed to take necessary steps to process the allotment of the subject land in favour of the respondent–Company within four weeks from today. The respondent–Company shall file a fresh undertaking with the State Government, within the same timeline, as was filed by it before the High Court, for initiating time bound activities for the benefit of the surrounding villages, as compensatory measures for the allocation of the subject land.

The appeal is dismissed while leaving the parties to bear their own expenses."

48. Besides, the petitioners have also relied upon the judgment of a Coordinate Bench of this court in ***Writ Petition No. 2636 (MB) of 2006, Shiv Badan Pandey and others vs. State of UP and others***, wherein the dispute related to a piece of land having a character of a pond, which had lost its utility, and this court, while considering the case of Hinchlal Tiwari, had held as under :-

"16. The counter affidavit filed by the Sub Divisional Magistrate does not say anywhere that Khasra Plot No. 406 was ever recorded as Talaab (pond) in the Khatauni prior to the date of vesting or thereafter. What has been stated is that, as per the entry in the Nakal Khatauni of 1356 Fasli, the said Khasra Plot No. 406 measuring 3 bigha 17 biswa, had been recorded in Ziman-5 category to be used by the Asamis for cultivation of Singhara, a crop cultivated in water bodies. The said Khasra is recorded in the name of Bhusan son of Garibe Kahar in Khata Khatauni No. 98. In the year 1359 Fasli, the name of Naumi Lal son of Thakur Deen alongwith Bhusan Kahar finds place in Khata Khatauni No. 88.

17. He has concluded that the aforesaid Khasra fell under Mohal Umrao Singh and the tenure holder was using the same for Singhara cultivation etc. The entry in the Khasra for the year 1359 Fasli in relation to Khasra Plot No. 406 also reveals the area of the said Khasra as 3 bigha 17 biswa out of which 2 bigha land had been recorded as Tal Majarua. However, in column 19 of the said Khasra, the entire area is recorded as Talaab.

18. In the supplementary affidavit filed by the same officer, a site plan and also al survey report have been given, from where it is established that over plot No. 406, thirty four houses have been constructed and people are living therein, including some of the petitioners, as informed by parties' counsel and that one bigha of land which has been allotted to the school also forms part of the same very Khasra Plot No. 406.

19. Though we are satisfied that in case revenue entry of pond in respect of certain land is recorded, may be since before the date of vesting or thereafter but since the pond has lost its utility and was no more in use as a pond and land so covered or pond so covered has been used for some public purposes or some good cause, namely, for development, it would not give a right to any party to remove all the developments and restore the pond, which, in fact, was no more in existence but even then for considering the plea of the petitioners, we have proceeded to examine the case, as if the said land was recorded as pond before the date of vesting.

20. In Hinch Lal Tiwari (supra) the apex court while holding that if a pond (talaab) has fallen into disuse because of drying up but some portion is covered by water in rainy season, then no part of it can be allotted to anyone as abadi site for purposes of building houses in paragraph 13, made an observation that 'it is important to note that material resources of the community like forests, tanks, ponds, hillocks, mountain etc. are nature's bounty they maintain delicate ecological balance. They need to be protected for a proper and health environment which enable people to enjoy a quality life which is essence of the guaranteed right under Articles 21 of the Constitution. The government, including revenue authorities, i.e. respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of public at large. Such vigil is the best protection against knavish attempt to seek allotment in non abadi sites'..

21. A plain reading of the aforesaid observation would reveal that reference has been drawn to the ponds and tanks which are community tanks or which vests in Gaon sabha. If the tenure holder is using the land for Singhara cultivation the land still would be cultivator land and would not be given the shape of color of pond, as mentioned therein."

49. Besides, there is another aspect of the subject matter in controversy, the Respondent No. 2 Corporation does not dispute the execution of the sale deed dated 19.11.1913 in respect of land measuring 2 bighas and 7 biswas comprised in Areas No. 2404 in favour of the predecessor of the petitioner, which had no character of a pond. It is a settled position of law that a registered sale deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts a high degree of sanctity to the document. Consequently, a court must not lightly or casually declare a registered instrument as a " sham". Relying upon the law and principles enunciated in the case of ***Prem Singh and others v Birbal and others, (2006) 5 SCC 353, Jamila Begum(Dead) through Lrs vs. Shami Mohd. (Dead). through Los and another (2019) 2 SCC 727, and Ratan Singh and others vs. Normal Gill and others, (2021) 15 SCC 300***, this court reiterates that the burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate that the deed was never intended to operate as a bona-fide transfer of title. However, in the present case, no such challenge has been made by the respondent no.2- Corporation, and as such it is beyond doubt that the sale deed is valid and genuine and so are it’s contents.

50. The respondent No. 2- Corporation having failed to challenge the validity and genuineness of the sale deed dated 19.11.1913 and as such, the respondent No. 2 Corporation, after a lapse of about 113 years thereafter, would be estopped from alleging otherwise that there is pond situated at the property in dispute. One of the central principles of the doctrine of promissory estoppel is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party, if the assumption is not adhered to. In this regard, we rely upon the law laid by the Apex Court in the case of ***Manualsons Hotels Pvt Ltd v State of Kerala and others, Civil Appeal no. 2480 of 2008 decided on 11.05.2016***, wherein it was held as under :-

"21. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court reported in The Commonwealth of Australia v. Verwayen, 170 C.L.R. 394, by Deane,J. in the following words:

1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

2. The central principle of the doctrine is that the law will not permit an unconscionable - or, more accurately, unconscientious - departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.

3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party: (a) has induced the assumption by express or implied representation; (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption; (c) has exercised against the other party rights which would exist only if the assumption were correct; (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so. Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of

affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed."

22. The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference – under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel – one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party."

51. Lastly we find that admittedly Arazi No. 2404 has an area of 0.668 hectares, however, the entire exercise of correction of revenue entries as well as the alleged restoration of pond is being undertaken only in respect of property in dispute belonging to the petitioner having an area of 22,571.84 sq ft i.e 2097.75 sq meters, while no such exercise has been undertaken in respect of the remaining land comprised in Arazi No. 2404. Thus, the action so resorted to by the respondents is not only arbitrary but also discriminatory and violative of Article 14 of the Constitution of India.

52. Moreover, the petitioner has a valid title and possession over the property in dispute in pursuance to the registered sale deed and as such the title and possession of the petitioner can only be disturbed by the respondents only after taking recourse to due process of law and till that point of time the petitioner is entitled to enjoy the benefits of the property in dispute being the owner thereof.

53. In the above background and the fact that respondent No. 2 -Corporation does not dispute the genuineness and validity of the sale deed dated 19.11.1913 and the property in dispute continues to be recorded as abadi in the revenue records, and there being nothing whatsoever on record to demonstrate that the character of the land was

that of a pond in the past. We are of the view that respondent number 3 could not have denied the issuance of a no-objection certificate to the petitioner solely on the ground that a pond was existing over the property in dispute way back in the Fasli year 1291, corresponding to 1884 CE.

54. Under the circumstances, the present writ petition is allowed and the letter dated 24.1.2026 issued by respondent no. 3, morefully annexed as Annexure No. 1 to the writ petition, is quashed. Further, a writ of mandamus is issued to the respondent no. 2 corporation to reconsider the case of petitioner for issuance of a No Objection Certificate to the petitioner for the purpose of construction of hotel on the property in dispute keeping in view the findings above. The exercise so to be undertaken by the respondent no. 2-Corporation shall be completed expeditiously and preferably within a period of four weeks from the production of the certified copy of this order.

55. No order as to costs.

(Sudhanshu Chauhan,J.) (Neeraj Tiwari,J.)

July 2, 2026
Nadeem