HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 30 of 2022

Ravi Shankar Joshi ..…Petitioner

Versus

Union of India and others …. Respondents

Along with

Intervention Application No. 3 of 2022
Intervention Application No. 5 of 2022
Intervention Application No. 6 of 2022
Intervention Application No. 7 of 2022
Intervention Application No. 8 of 2022
Intervention Application No. 9 of 2022
Intervention Application No. 10 of 2022
Intervention Application No. 11 of 2022
Intervention Application No. 13 of 2022
Intervention Application No. 15 of 2022

Present :

Mr. Rajeev Singh Bisht, Advocate, for the petitioner.
Mr. Ahrar Baig, Mr. Gopal K. Verma, Mr. Sanpreet Singh Ajmani, Mr. Rahul Bhatt, Mr. Piyush Garg, Mr. Sandeep Tiwari, Mr. Kurban Ali, Mr. Vinay Bhatt, Mr. M.K. Ray, Advocates, for the Interverners.
Mr. S.N. Babulkar, Advocate General, assisted by Mr. C.S. Rawat, Chief Standing Counsel, Mr. Ajay Singh Bisht, Addl. C.S.C. and Mr. Gajendra Tripathi, Brief Holder, for the State of Uttarakhand.
Mr. V.K. Kaparuwan, Mr. Rajesh Sharma, and Mr. Lalit Sharma, Standing Counsel for the Union of India.

Judgment Reserved : 01.11.2022
Judgment Delivered :20.12.2022

JUDGEMENT

Coram : Hon'ble Sharad Kumar Sharma, J.
Hon'ble Ramesh Chandra Khulbe, J.

Per Hon'ble Sharad Kumar Sharma, J.

The instant Writ Petition (PIL) deals with a very intrinsic and a sensitive issue, whereby, relief has been modulated in the PIL, for seeking writ of mandamus for removing the unauthorised occupants from the railway land,

adjoining Haldwani Railway Station, commonly called as **Gaffur Basti**. Despite of best of our efforts to be precise in adjudication, but owing to the intricate legal and factual issues involved from the following perspectives:-

i. The historical background,

ii. The individual actual rights and,

iii. The legal issues,

We are bound to have a detailed deliberation.

All would require a detailed scrutiny, before arriving at any plausible conclusion for adjudicating the various contentions, which had been agitated by the learned counsel for the parties to the PIL, as well as the various resident interveners, whose respective applications for intervention has to be dealt with individually.

2. The first aspect of historical background, its hereby summarized as under :-

3. The township of Haldwani was initially, as back as in early 1800, was geographically a non existing township. It emerged, as to be a gradually a developing township with the following historical backdrops.

i. In 1815, the then East India Company, had waged a war with the Bhotias of Nepal, which continued unabated for quite a sufficient long period.

ii. In 1816, as a consequence of settlement by way of a treaty, which was arrived at between the Nepalies and the East India Company, called as **Sagauli**

Treaty. It was executed between the King of Nepal and that with the East India Company, resulting into annexing of the territories of Garhwal and Kumaon Region, as it exists today, with the East India Company.

iii. As a consequence of the Sagauli Treaty of 1816, the East India Company, for the purposes of annexing the aforesaid territory from the Kingdom of Nepal, as it then was, had paid a sum of Rs.2 lacs for annexation of the Garhwal and Kumaon Regions, as it now stands bifurcated, in these two wider topographical divisions.

iv. The historical backdrop reveals, that the territory of Haldwani Khas, for the first time, had acquired its territorial existence, when it was brought into existence by its founder, Mr. Trail in the year 1834.

v. The basic objective of giving this territory as a nomenclature of Haldwani Khas, was then that it had a basic political intention of the East India Company, to utilize the said territory, as to be an area, which was intended to be utilized for the purposes of settling the residents of the interior hills, in the **Bhawar Region of Haldwani**, intending to give them propriety rights over the land, which included to assign a right of tilling of the soil.

vi. The aforesaid reference of the chronological historical backdrop ever since 1815 till 1882, finds its reference from the conditions, as it has been contained in the Himalayan Gazetteer, as compiled by the then E.T. Atkinson in the years 1882.

vii. With the creation of township of Haldwani in the year 1834, the history, which could be retrieved by us, it shows, that ultimately the rights over the property, lying in Haldwani Khas initially completely stood vested with its then politically reckoned owner, Mr. Thomas Gown.

viii. In 1896, the Himalayan Gazetteer refers to, that the predecessor / owner, Mr. Thomas Gown, had conveyed the property by virtue of a deed of conveyance in favour of Mr. Dan Singh, one of the most reckoned business person, hailing from District Pithoragarh.

ix. Its after the creation of rights, by the deed of conveyance in favour of Mr. Dan Singh, which is yet to be seen in the light of day, its thereafter that he started executing different sale deeds of different parts of the land in favour of different persons ever since 1896 onwards. Out of which, its admitted case that the interveners or their predecessors are not the purchasers by registered or unregistered deed of conveyance.

4. In the PIL, the question, which would be primarily revolving around the issues, as to whether, the land thus portrayed to be vested with Mr. Dan Singh Bisht, till the year 1896, whether it forms to be a **"nazul land"** or not, and if yes, then under which valid provisions of law, what would be reckoned mode of transfer of proprietary right.

5. Invariably till now, the local bodies, who have been in the helm of the affairs of local administration of the ever upcoming township of Haldwani, had basically foundationed the class of property to be a nazul land, on the basis of an official communication, which was said to have been issued by way of an Official Memorandum, in response to a communication sought for by the other authorities referred to therein, whereby, on its simplicitor reading, it had exclusively provided that for the administrative purpose, as to in what manner, the property would be managed, with the due reckoned process, as since the same was gradually coming up as a township.

6. In order to deal with the issue, in the forthcoming paragraphs, about the individual rights, which invariably all the occupants of the railways land, claim themselves to be a holder of the nazul land, by virtue of their respective leases, it becomes inevitable to extract entire contents of the said documents dated 17th May, 1907, which has been always taken by the local bodies of Haldwani Khas, as to be a principle document for the purposes of treating the land of Haldwani Khas, as to be a nazul land.

7. The Government Order / Office Memo No.1748/XI-10-1907 dated 17th May, 1907, of the Municipal Department, and the contents of it, is extracted hereunder :-

"Copy of G.O. No.1748/XI-10-1907 dated 17th May 1907, Municipal Department to Board.

1. ***With reference to the correspondences ending with your letter no.262/XI-521, dated the 16th April, 1907,*** *I am directed to say that the Lieutenant Governor is pleased to authorize the transfer to the committee of the notified area of Haldwani of the whole of mauza Haldwani Khas (including the small area of agricultural land)* ***to be managed by it and as Nazul property.*** *The only lands exempted from the transfer are those occupied by canals, guls and provincial roads. In return for this transfer the committee will take over the maintenance of all roads other than provincial roads within the limits of the notified area.*

2. *The committee will meet the cost of management of the property from the annual proceeds of it, but will pay one fourth of the total receipts into the treasury to the credit of the Bhabar Government estate in accordance with the Nazul rules*

3. ***The lands will be administered in accordance with rules 13, 14, 16, 18, 19 and 20 of the Nazul rules,*** *as amended and set out in the accompaniment to this letter.* ***No sale of land no perpetual lease will be allowed.***

4. *The transfer of the lands may have effect as from the 1st April 1907, if this is possible.*

No.5267 XI-521 dated 30.5.07

Copy forwarded to the Commissioner of the Kumaun District for information, communication and compliance with references to correspondence with his No.3645/XXIII-32, dated the 6th April 1907.

By order, etc
Sd/-
Joint Secretary"

8. On simplicitor reading of the said document, the very opening line of the Government Order/Office

Memorandum, even if it is taken, as to be the basis, to treat the property lying in Haldwani Khas, as to be a nazul land, in fact, it would not be a Government Order; in its true sense, to bring it within Article 13 of the Constitution of India, because it was an administrative communication, which was made in reference to the response to a letter of the Commissioner of Kumaon District by the Joint Secretary, as it then was, being letter No. 262/XI-521 dated 16th April, 1907, wherein, while expressing the opinion of the Lieutenant Governor, it provided, that the aforesaid land, was annexed as a consequence of Sagauli Treaty, which is now being authorised to be transferred to a Committee of a notified area of Haldwani, which included **"whole of Moza Haldwani Khas**". The said Government Order of 17th May, 1907, it specially observed, that the transfer of the land is only for the purposes of its management and would also be inclusive of small areas of agricultural land too, which was to be **"managed as nazul property"**.

9. The only land, which was then exempted from being brought within the then artificially created notified area, without any Gazette Notification, included the **Canals, Gools, and provincial roads**. If the intention of the said correspondence, is taken into consideration, it was rather exclusively only a transfer of management of land to the Committee of the notified area, for the purposes of maintenance of road and other provincial roads, which were lying within the limits of the notified area.

10. It further provided, that the Committee thus constituted would meet the cost of the administrative management, which would be based upon the annual tax receipts, after crediting the balance receipt of taxes, in the Treasury of the Bhawar Government Estates, in accordance with the provisions of the alleged nazul land rules. It further provided, that the land thus lying in Haldwani Khas would be continued to be administered in accordance with Rules 13, 14, 16, 18, 19 and 20 of the Nazul Rules. Thus, it means that the applicability of Nazul Rules, was never ousted to be applied, even after the aforesaid arrangement.

11. What is more important is, that the very basis, on which, the local bodies, as of now till date, claimed the property of Haldwani Khas, as to be a nazul land, the said mother document of 17.05.1907, itself as extracted above, had specially created a restriction to the following effect :-

> **"no sale of land, no perpetual lease, will be allowed".**

12. In that eventuality, in a summarized manner, even if this document, which has been taken as to be a solitary basis of treating the land of Haldwani Khas, as to be a nazul land, if it is taken into consideration, it was only an executive direction, not an official Gazette notification, which was at all declaring a land to be a nazul land. It was only intending to facilitating in an administration of the upcoming township and most importantly, it in its specific terms had created a specific bar, **that no sale or perpetual lease would be allowed**. Thus this document itself, if at all could be read, it

cannot be read in piecemeal, it has to be read in totality, with all its respective provisions, and restriction.

13. In a nutshell, this document had rather created a specific restriction of creating of any right of lease, over the property allegedly held by the Committee which was entrusted with the powers of regulating the township or the notified area, in that eventuality, on a simplictor reading of this document dated 17.05.1907, the following analysis could be judicially arrived at :-

i. It was not actually a nazul land;
ii. It was rather only an executive correspondence, between the two authorities and not a notification of vesting of land, as a nazul land, under the Nazul Rules.
iii. It aimed at only for the purposes of facilitating the maintenance of the infrastructure of the upcoming township.
iv. The land falling under the domain of the said executive communication had simplicitor only directed to be managed as per the Nazul Rules. Meaning thereby, conferring of a right of management in accordance with the Nazul Rules, will not itself make the land of Haldwani Khas, as to acquire status as to be a nazul land itself, based on the document dated 17.05.1907.
v. And lastly, even if it was taken as to be a nazul land, though, without any positive conclusion to be treated to be arrived at by us, it then too it had created a

specific bar, that no perpetual lease or sale would be created in relation to the land, over which, the alleged communication of 19th May, 1907, was made applicable.

14. The said arrangement continued to be operative ever since 17th May, 1907, till the Legislature on 16th December, 1939, enforced the United Provinces Tenancy Act of 1939, as the assent to which, was granted by the United Provinces Legislative Council on 24.04.1939. Thus, the United Provinces Tenancy Act of 1939, stood enforced over the areas of the land lying in Haldwani Khas w.e.f. 01.01.1940, and land thereafter, ought to have been managed as per the aforesaid legislative mandate.

15. In a previous set of litigations, which was held between the various occupants of the land, who were adversely claiming their respective rights, over the land lying in Haldwani Khas, was not treated as to be a nazul land and that is why the State itself had withdrawn the cases, which had been drawn by the State, against the occupants of those lands and the status of the land was then directed to be dealt to be governed by the provisions of the United Provinces Tenancy Act, 1939, and later on, with the enforcement of the U.P. Tenancy Act, 1959, land lying therein was said to be governed by the aforesaid provisions of the said Act of 1959, which too now stands repealed.

16. What has been observed above, it could be conclusively inferred, that the local body, which was even

then managing the administrative affairs initially as a notified committee, and then by the Municipal body, which on their own, without any lawful authority, being vested by way of any statutory notification falling within the ambit of law as defined under Article 13 of the Constitution of India, which only included a land covered by the Office Memorandum of 17th May, 1907, as to be a nazul land, though without any specific statutory authority being vested with the local body, as per law, or the Najul Rules.

17. In fact, if the records which are available with the local authorities are scrutinized, in fact, in Haldwani Khas, there happens to be no property, which could be termed as to be a "nazul land", on which, the local body, or the Commissioner, could have at all executed any of the leases, which could be said to be under law or in accordance with law, because the grant of perpetual lease itself was barred even by the Office Memorandum of 1907, which has been heavily relied by the learned counsel for the local bodies, as well as the interveners, for the purposes of treating the land of Haldwani Khas, as to be a nazul land.

18. According to the Nazul Rules referred in the document of 17.05.1907, and particularly, as per Rule 5-A to be read with Rules 13 and 14, it had specifically provided for a procedure for mutation, which was to be strictly adhered to, for the purposes of treating a land as to be a nazul land, which in the instant case, could not have been resorted to by the local body on its own by creating a nazul register, when the land of Haldwani Khas itself as detailed above, was

never classified by any competent authority, and as per law, as to be a nazul land by its declaration which had or which could be said to have been made in an official gazette.

19. The Municipality Act, as it was then made applicable in the State of Uttar Pradesh, the same came into existence with its enforcement in the year 1916. For the purposes of inclusion or exclusion of land, in order to bring it within an ambit of administrative control and within the domain of administration of municipality, which was a legally created local body, but for the aforesaid purposes too, the U.P. Municipality Act of 1916, itself provided a mandatory provisions, that there has had to be a declaration, which has to be made under Chapter II by virtue of Gazette Notification, contemplating for a transitional phase for brining a property within its managerial control by virtue of issuance of the Notification under Section 4 of the Act. It has been no one's case in the present PIL, that any such notification under Chapter II to be read with Section 4 of the Municipality Act of 1916, was ever issued, by competent legislature thereby including the land, which was allegedly covered by the Office Memorandum of 17th May, 1907, and since, the land was not being brought under the Municipal Board, in pursuance to any notification under Section 4, hence too, it cannot be treated as to be a nazul land, which is a body, which only an agency, which manages and administers the land without its vesting with the State, on behalf of Central Government, it doesn't become the land of the State or Municipal Board itself. Because the ownership of

the nazul land ever since 1857 mutiny, stood vested with the Queen, and after independent with Government of India.

20. There is another reason as to why not to treat any of the property lying in Haldwani Khas, as to be a nazul land on the basis of the Office Memorandum dated 17th May, 1907, for the reason being, that legislatively when the Municipality Act of 1916, was notified to be enforced, the provisions contained under Section 334 of the Municipalities Act, dealt with the repealing and savings provisions, which didn't make any reference to the office memorandum of 17.05.1907, in relation to Haldwani Khas, which allegedly dealt with management of nazul land of Haldwani Khas, which had been ever vested, ratified or superseded, by any subsequent gazette notification, under the Act of 1916.

21. The Act of 1916, itself only provided settlement under the provisions of United Provinces Act, which stood repealed consequentially, at the time when the Office Memorandum dated 17th May, 1907, which was alleged to have been issued under the United Provinces Municipality Act. If the case of the respondents could be sustained, then too, the office memorandum of 17.05.1907, has lost its even administrative significance, as it was not saved to be continued to be applied by Repealing and Savings Section 334 of the Municipalities Act of 1916.

22. The rights, which were being determined, by the Local Body, under the Office Memorandum of 17th May, 1907, will not fall within the definition of the "nazul land",

and under the terms of the Office Memorandum of 17th May, 1907, because it was simplicitor an official correspondence in reply to the letter of 16th April, 1907, between the two State authorities and it was simply issued in an advisory capacity and was a privileged communication, and it never intended with, or containing any definite direction to treat the land of Haldwani Khas, as to be a nazul land.

23. The another justification as per opinion of this Court would be, that the Office Memorandum of 17th May, 1907, nowhere states that the land was to be or was ever a government land prior to 1907, nor does it ever specifies, that the land had ever devolved upon the State or the Municipal Board ever since 1896 or even prior to it, and that the land was recorded in the name of Mr. Thomas Gown and thereafter, in the name of late Mr. Dan Singh, who continued to be reckoned as an owner of the land lying in Haldwani Khas.

24. At this stage, this controversy, as to whether at all, the land lying in Haldwani Khas, could be treated as to be a nazul land, it becomes inevitable for us to deal and to decide as to what does actually the term **"nazul"** means for the administrative purposes of regulating the management of the land so called and claimed as nazul land.

25. The definition of the nazul land, as it has been provided in a Glossary of Judicial and Revenue Terms of H.H. Wilson, the **"nazul"** land has been defined as under :-

> ***"in revenue language, an escheat, escheated property in gardens and houses, any property that is considered to have lapsed to the state: an office for investigating lapsed claims."***

26. This definition of nazul land uses the word **"escheat"**, which as per Oxford Dictionary means as under :-

> ***"the reversion of property to the state, or (in feudal law) to a lord, on the owner's dying without legal heirs. v. revert or cause to be reverted as an escheat."***

27. The language of the definition of **Nazul Land**, it means, that under the Revenue language, an escheat land or the property, which is to be considered to be land to have lapsed its ownership, which is to be **reversed** to the State, after investigating upon the lapsed claims of the real occupants.

28. This controversy as to what does actually Nazul means, was the issue which came up for consideration before the Division Bench of Allahabad High Court, where the issue was being considered in the context of the various Government Orders, which were then issued by the erstwhile State of U.P., from time to time by the State Government, for the purpose of conversion of the land and granting of a freehold rights to its occupants. In a judgement reported in **1998 (1) AWC 1, Satya Narain Kapoor Vs. State of U.P. and others.** The Division Bench had in its para 59, 60, 63, 64, 65, 75 and 83 had summarized the issue with the following conclusion :

"59. In a matter which was before the Allahabad High Court, a Division Bench ruled that characteristic of nazul is that nazul is at all times liable to resumption by the Government. Accepting this assertion, as was contained in the Municipal Manual, the Division Bench held that no matter what action is taken by the Municipal Board, the power of the Government to resume the nazul remains and that no limit of time applies to Government in its resumption of a grant. [Gaya Prasad v. Secretary of State, AIR 1939 All 263].

60. The origins of nazul lands, history shows, by record, were the subject of confiscated estates. These confiscated estates or confiscated landed properties became the subject matter of grants to certain selected persons, made by the British Government for "eminent service". This consideration of making grants for eminent service came as a reward from the empire. These were properties which were assigned as grants. To ensure that the British administration may not be embarrassed, a Circular Order was issued by the British administration to all the Commissioners that such a State of Affairs may not be rendered that there is no finality attached on such estates and that it must be doubly ensured that forfeiture has become final and that it will be the responsibility of the Commissioners concerned, that the authorities were dealing with finally adjudicated forfeited landed properties. The whole purpose was that while a grant may be made as a reward to one subject, such an occasion may not arise that the claimant may turn up to petition the Government with an assertion that the forfeiture was irregular and the property be returned. Thus, this long circular to all the Commissioners was issued as circular No. 5, dated 13th July, 1859 by the Government of the North Western Provinces. Every Commissioner was obliged to keep a final confiscation statement of each district and lay it before the Government for orders. [Circular No. 5 to All Commissioners, dated Allahabad, the 13th July, 1859, six pages with appendix, issued by the G. Couper, Secretary to Government, North Western Provinces].

63. Those who can afford, for their bona fide personal needs, can take care of their housing (business not excluded) to receive grants on lease or the renewal of it and there ought to be no discrimination in making such grants as long the grants are in accordance with the equity clause, exceptions not excluded, prescribed under the Constitution of India. The nazul character of the land is to be protected and preserved which the State Government is supposed to guard with strictness. Making freehoId out of nazul lands would be breach of trust. It would be subterfuge to the principles of the decision in Purshottam Das v. State (supra) case and an excuse of how not to implement the principles of the decision when the decision of the aforesaid case has even been affirmed by the Supreme Court. [1989 Suppl. (2) SCC 412]. Once a decision has been affirmed by the Supreme Court, the effort should be to set policies in accordance with the decision upheld by the highest court of the land. All subsequent orders issued in the matter relating to nazul lands respect nazul lands and ignoring the aspect of grant or renewal of leases whether residential or commercial or of nazul shops and not facilitating this aspect, and instead proceeding to make freehold, the corpus of property which are nazul in character, virtually amounts to defeating the principles which have been settled by the highest Court of land. Further, it amounts to changing the character of nazul properties, which, the Government holds in trust, and nazul property's essential attribute is that it must always be in a state to revert to the Government.

64. Freehold may be made by the State, but of lands which are other than nazul land. Of grants which are made under the Government Grants Act, 1895 all are not of lands which are nazul lands. Nazul had its origin as other people's land and no one has a better title to it, except the true owner. The State holds nazul land in trust and manages it with the aid of the local bodies and, thus, noticing the past record which the Court has referred to including references and guidelines for administrators, nazul land is to be strictly guarded as such. It can only be the subject matter of a grant as a lease. The grant can be inherited as prescribed. If there be no inheritors to inherit the

grant, nazul land can be subjected to fresh lease as the Government may please, as the Supreme Court said in the matter of R.G.S.S.B. Sangh v. State of Mysore (supra).

65. But to make nazul land freehold is an illegality. It is an anti trust measure. It is for this reason that one of the circulars had cautioned that even the declaration of a property being classified as nazul land must be taken very very carefully with complete scrutiny that the confiscation is final. The State may acquire, within its sovereign power, any land and make a grant of, it or may, set apart land as a class for being given as freehold, but this cannot be done to nazul land. It is nazul land which constitutes the character of a town or a city. It is a nazul land which requires the administration of a town or a city and the Government to take upon the obligation of establishing schools, police stations, administration block for municipalities, town halls, institutions for the preservation of the culture and heritage of the people, institutions for the advancement of performing arts, old age homes, vocational and rehabilitation centres, court houses, libraries, Municipal Markets and shopping areas. The list is not exhaustive, but in short the obligation of the city administration to build functional institutions as part of the fabric of city and civic life. Further, trusts in the nature of public charitable trusts, public educational trusts, public religious trusts, are meant to function in perpetuity. Thus, grant of teases on nazul land to working institutions, like schools, educational foundations, religious foundations can be given as long as the institutions use the grant for purpose it was given. Grants on nazul lands as leases may be given to individuals and such a grant as a lease can be inherited. If there are no heirs left, nazul land reverts into the common pool of nazul for being granted, if the occasion arises, as a fresh lease to whomsoever the State may desire to make the grant under the norms laid out.

75. Incompliance of the court's order learned chief standing counsel, U. P., placed the original file containing various Government Orders relating to

Nazul properties. The chief standing counsel also placed before the Court the photo copies of the Government Orders. No. S.R. 559/11-97, dated 19.2.1997, No. 1562(i)/9-Aa-4-92 dated 23.5. 1992, No. 3632(i)/9-Aa-4-92, dated 2.12.1992, No. 2093(i)/9-Aa-4-94-293 N/90, dated 3.10.1994, No. 1576/9-Aa-4-95-547 N/94, dated 23.9.1995, No. 201/9-Aa-4-96-547 N/94, dated 19.4.1996, No. 1396/9-Aa-4-96-547 N/94, dated 19.9.1996 and No. 9471(1)/9-Aa-4-97-16/N/97, dated 1.5. 1997. These Government Orders were utilised to convert nazul estates into 'freehold'. After noticing the law, Government instructions since more than a hundred years ago, the Nazul Manual, the Nazul Shop Rules, all in the nature of administrative instructions, it is clear even leases in perpetuity cannot be granted and the question of changing the character of nazul estates to 'freehold' does not arise. Having held that no 'freehold' rights can be granted on nazul estates, and these estates were, are and will continue to vest with the Government in trust, the court is left with no option but to quash all the Government Orders mentioned above as this would be permitting nazul estates to be converted into 'freehold'; and would amount to an anti trust measure (Amanat men Khayanat) , against the larger public interest which the law and the concept of nazul, in any case, does not permit.

83. On what has been held above and the reasons given the court summarises that:

A. Character of nazul estates cannot be changed.

B. Perpetual leases on nazul estates cannot be granted except to educational and charitable institution, recognised by law and in accordance with accepted nazul concepts that if the institutions cease to exist or the lease is misused for a purpose other than the grant, it would be resumed.

C. Freehold cannot be created out of nazul estates. It may be created from other Government properties which are not nazul, provided the law permits.

D. Every transfer, whether under Nazul Shop Rules, or the Nazul Manual, where 'freehold' was granted out of nazul estates will be the subject matter of visitation by the Principal Accountant General, Uttar Pradesh. The Principal Accountant General will be entitled to audit by visitation and the State Government will be obliged to deliver information to the Accountant General on demand.

E. The status of all 'freeholds' made out of nazul estates, repeat nazul estates only, shall continue as grants under Government Grants Act, 1895.

F. Wherever outdated Municipal Markets exist, the Government is obliged to revise the rent every five years at market rates and fresh settlement of shops are to be made by public auction and the matter reported to the Accountant General, Uttar Pradesh.

G. Whenever the original allottee or the sitting allottee dies and heirs seek substitution as their entitlement under the Nazul Shop Rules, the applicants must get reception on their request for substitution, by the administration within one month, as far as possible, provided due proof is submitted to the local administration in-charge of nazul whether by succession certificate or letters of administration or a probate from a court of competent jurisdiction certifying the right to hold the lease, in the present case under the Nazul Shop Rules or the Nazul Manual, as the case may be.

H. Where the local administration does not accept the petitioners as heirs within the meaning of Nazul Shop Rules as they are not in the line of succession under the rules nor within the rule of prima geniture (Rule 13), their prayer for receiving an allotment under the aforesaid rules does not arise.

I. In so far as fresh grants are concerned, within the meaning of the Nazul Shop Rules, any eligible person may apply and the applicant will be considered on the basis of criteria laid down, that is to say,

allotment by public auction. The right to participate in a- public auction for seeking an allotment remains.

J. As land settlements are recorded, Nazul as an estate finds mention in the Settlements (Bandobast) of each district. The Government, which includes the local administration, is obliged to keep track and monitor nazul estates and keep the nazul records upto date. Nazul estates are to be preserved and their conforming uses retained, for example, commercial for commerce, market for bazars and shops, residential for residences, institutional usages for schools, colleges, universities, hospitals, administrative blocks, town halls, greens for gardens and parks, etc., as the list is not exhaustive."

29. Invariably, in the instant case, in Haldwani Khas, the land has been recorded in the khasras and the same has been described as Bhawar-6 Khata land. The provisions of the nazul manual, even if it is taken as to be having any statutory force, it will not be applicable to the land, which has been described as to be a Bhawar area of District Nainital, over which, Mr. Trail has intended to make an effort for providing a settlement to the residents of hill area.

30. Under the Nazul Manual, it defines **"Nazul"** Chapter-I, Rule 1, which is extracted hereunder :-

"Rule 1 Definition of Nazul - For the purposes of these Rules, 'Nazul' means any land or building which, being the property of Government is not administered as a State A property under the control of the Land Reforms Commissioner or the Forest or the Irrigation Department, or is not under the control of the Military, Postal, Telegraph, Railway or other purely Central Government Department.

The Tarai and <u>Bhabar estates in the Nainital District</u>, the Garhwal Bhabar estates in the Garhwal

District, and the Kausani Soldiers' Settlement in the Almora and Garhwal Districts, are also <u>not Nazul</u> for the purpose of these Rules.

These Rules are, however, applicable to territories of late Tehri Garhwal, Rampur and Banaras States merged with this State."

31. The basic terminology which defines a nazul land or a building, which despite not being a State property is administered by the State Agency and is under the administrative control of Land Reforms Commissioner or the Forest or Irrigation Department, as the case may be, for its enjoyment and management, without creating any proprietary right over it, and the share of revenue generated, thereto has to be vested with the State as per Rule 6 of the Nazul Rules, which is extracted hereunder :-

"6. Payment of the Government share of the Income of nazul into the treasury-*It is also his duty to see that the Government share of the income of such nazul is duly paid into the treasury The demand on account of sales and leases which require outside sanction can be checked from his register, and he should require the local authorities to intimate to in him all other receipts or demands of which Government is entitled to a share under the rules referred to in Rule 3."*

32. The said definition of Nazul Land, when itself provides that Tarai and Bhawar Estates in Nainital District and Garhwal Bhawar Estate in Garhwal District and Kosani Solider Settlement in Almora and Garhwal District, are not nazul for the purposes of the Nazul Rules.

33. Owing to the aforesaid reasons, the land lying in Haldwani Khas, even as a whole, cannot be treated as to be a nazul land for the reason being, that it is not even covered by the Office Memorandum of 17th May, 1907; and further that because its not even covered under the definition of "Nazul Land' itself as provided under Rule 1 of the Nazul Rules due to exception clauses; and also in accordance to the notification of 1907, it only contemplated its management, but that itself was not actually conferring a right of treating the land as to be a nazul land.

34. That according to the provisions of Land Revenue Act of 1901, as its contained under Section 32, it makes it mandatory to "**record the rights**" of a tenure holder over the land, in view of the provisions contained under Section 34 of the Act pertaining to powers of Board. The entries thus recorded in revenue records specifying the particulars of Section 55 of L.R. Act of 1901; then in view of Section 57 of the Act a presumption of correctness of entries in favour of the person whose name is recorded in the revenue records shall be deemed to be true, until and unless contrary is proved. Admittedly the occupants are recorded in Shreni 12 as per Land Record Manual, and no such processes was ever, as provided under provision of the Land Revenue Act of 1901, to be read with Land Record Manual, was ever undertaken to change the entries as recorded in their name. The class of Shreni 12 as described in para 124 of Chapter VIII of Land Record Manual read as under :-

> *"(12) Land held by grove-holder as such –*
>
> *(a) qalmi;*

(b) others.
Note. – Groves-holders of the enclaves absorbed in the Uttar Pradesh shall be recorded in this class.”

35. That the question would be whether occupants of Nazul land, held for agriculture purpose, can acquire tenurial rights (whatever the nature) in land. This needs close scrutiny, Section 157 of Oudh Rent Act, 1886, which had expressly excluded accrual of statutory rights on Nazul land. Section 157 of Oudh Rent Act is extracted hereunder :-

*“**157. Exclusion of specified areas from certain provisions of the Act.** The provisions of Sections 4, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 48 shall not extend to the areas specified in Schedule D of this Act, or to any other area which the Governor-in-Council may from time to time, by notification in the official Gazette, and to that schedule, but the Governor-in-Council may from time to time, by like notification, extend those provisions, or any of them, to any of those areas.”*

36. Schedule D of the Oudh Rent Act, 1886, is extracted hereunder :-

“SCHEDULE D

(See Section 157)

(1) Parganas Nighasan, Palia and Khairagarh in the district of Kheri ;

(2) Alluvial mahals for the time being registered as such under the rules made under clause (k) Section 234 of the United Provinces Land Revenue Act, 1901;

(3) Lands heretofore or hereafter granted under the waste-land rules for the time being in force in Oudh;

(4) Land at present or which may hereafter be set apart from military encamping grounds;

(5) Land situated within the limits of any cantonment;

(6) Land included within railway boundaries;

(7) Lands acquired by Town Improvement Trust, in accordance with a scheme sanctioned under Section 42 of the United Provinces Town Improvement Act, 1919; and

(8) Nazul lands."

37. Similarly, also Section 16 of Agra Tenancy Act, 1926, barred creation of occupancy rights on Nazul land, no such express provision in U.P. Tenancy Act, 1939, as it was enforced on 1.1.1940, created right of title over nazul land. Section 16 of the Agra Tenancy Act is extracted hereunder :-

*"**16. Occupancy tenants.** – Every tenant, who at the commencement of this Act has acquire a right of occupancy under the Agra Tenancy Act, 1901 or **under any previous Act,** and*

*every person on whom a right of occupancy is conferred in accordance with the provision of Section 17 of this Act, and every person except in Bundelkhand who is at or after the commencement of this Act a tenant of Government estates **other than nazul land,**"*

shall be called an occupancy tenant and shall have all the rights and be subject to all the liabilities conferred and imposed on occupancy tenants by this Act."

38. There are two respectable precedents of High Court of Judicature at Allahabad, holding that hereditary rights will accrue over Nazul land, lease, given only for

agriculture purpose, under provisions of UP. Tenancy Act 1939. The first is that of **Ram Anand Murao V/s State of U.P. 1956 A.L.J. 112**, which was based upon while relying on a privy council case of **Thakur Jagannath Baksh Singh V/s United Provinces 1946 ALJ 339: 1946 FAC III (PC)** the observation are:-

> *"The UP. Legislature was competent to enact UP. Tenancy Act and to lay down the rights which Zamindars and the tenants would enjoy against each other. The power in the legislature was clearly there to do so and the power having been exercised, the Act could not be held to be and the power having been exercised, the Act could not be held to be invalid because of the general provision of Section 3 of the Crown Grants Act.* ***It was not necessary for the legislature to specifically mention that the provisions of the UP Tenancy Act would have preference over the terms of the lease granted by the Government in respect of the land belonging to it.*** *The legislature clearly says in Section 1 (2) of the UP. Tenancy Act that this Act extends to the whole of the United Provinces excepting the areas specified therein. If the land is situated in United Provinces it does not make any difference where the land is owned by a Zamindar or a Taluqdar or the Government, itself where the petitioners were lessees for the purpose of cultivation of land belonging to Government they would be entitled to the rights* ***conferred upon them by the UP. Tenancy Act and the term of leases would not have preference over the provisions of U.P. Tenancy Act because of Section 3 of the Crown Grants Act."***

39. Another important feature, which essentially requires consideration for the purposes of dealing with the instant controversy, as to whether at all, the occupants could be said to have authorizedly enjoying the property under the terms of the lease deed, in relation to a nazul land, and

particularly, in relation to a land, which adjoins the Railway Station. This fact has already been dealt by this Court, that in view of the notification of vesting of land with the Railways, as issued way back in 1959, it has also been a case of one of the interveners, that the railway lines in Haldwani stood established as back as on 1834, and at point of time, it was being operated by a private Railway Agency, and it was later on subsequently to the enforcement of the Railways Act, the management, control and establishment of the Railways of the North Eastern Region was vested with the Government of India.

40. This aspect would be elaborately dealt with, when one of the Intervention Applications, would be dealt by this Court in subsequent paragraphs.

41. What is important is, that for the purposes of a nazul land to be recorded, its recording in the revenue records has had to be as per the provisions contained under Rule 5A of the Nazul Manual, which provides that every transfer by succession, sale, assignment or otherwise, the lessee and the person to whom, the lease rights are so transferred shall get themselves recorded by filing an application in writing to the Collector or the Nazul Officer, appointed by the Collector for the said purposes.

42. Rule 5A was added by Government Order No. 32/5-C/IXA-226/N-953 dated 15th November 1956. In none of the cases of the interveners, it is a case, that they under the strength of the respective lease deeds, in relation to the nazul

land, were ever recorded in accordance with the provisions of Rule 5-A of the Nazul Manual, which prescribed the procedure for mutation. The reference to Rule 5-A is necessary, because the claim of the interveners over the property, is based upon the fact, that they were mutated by the Municipal Board. This mutation in itself will be contrary to the provisions of Rule 5-A, to which, the intervener would be bound, because they claimed their rights over the nazul land, based upon their respective lease deeds, which were executed even prior to the enforcement of the Municipalities Act.

43. The land, in question, which has been respectively occupied by the interveners, which they claim so, to be under the lease deed of a nazul land, it cannot be treated as to be a nazul land, because of the provisions contained under Rule 6 of the said Rules. Rule 6 of the Nazul Rule, which is extracted hereunder, had provided that the nazul land is only vested with the local authority for its management. All revenue accruing to the nazul land under the nazul leases has had to be partially deposited into the coffers of the State, which herein would mean, the Union of India, with whom, the property would be deemed to have been vested after the same being evacuated by the occupants as lessor of 1857 Mutiny. Rule 6 is extracted hereunder :-

> *"6. **Payment of the Government share of the Income of nazul into the treasury.-** It is also his duty to see that the Government share of the income of such nazul is duly paid into the treasury The demand on account of sales and leases which require outside*

> *sanction can be checked from his register, and he should require the local authorities to intimate to in him all other receipts or demands of which Government is entitled to a share under the rules referred to in Rule 3.”*

44. In none of the leases, and the subsequent renewal or alleged claim of transfers made by the occupants, it happens to be in accordance with the Rule 16. Rule 16 of the Nazul Rules, it provided that in all cases of sale (When there is a saleable right vested) or new leases or renewal of leases, there has had to be a prior approval of the State Government before any such sanction is granted for sale or renewal of the lease. It is no one’s case, that the so-called claim by them to have acquired their rights by renewal of lease, the period of which, though has already expired or by its subsequent transfers, there was a prior sanction granted by the State Government for executing the renewed lease or for execution of respective sale deeds.

45. The aforesaid provisions was substituted by the UO No. 853/IK-MPCL(A)-2125-54 dated 22nd April, 1955, which mandated under Rule 16, that for the aforesaid mode of conveyance of right has had to be with the prior approval of the State Government, which in the instant case, in each of the cases, is lacking.

46. Hence too also, in view of the apparent violation of Rule 16, no right whatsoever even based on their alleged claim of renewal of lease or a transfer could at all be sustained.

47. It is not in dispute that the entire controversy, which has been subject matter of the PIL, is in relation to the acclaimed land, which the petitioner and the railways contend, that it is a land, which stood vested with the Railways, being adjoining to the Haldwani Railway Station. In that eventuality, what effect would such land have for the purposes of execution of its leases by the State or the local body has had to be visualized in the context of the provisions contained under Rule 59 and 61 of the Nazul Rules itself, which is extracted hereunder :-

> ***"59. Sales or lease of nazul near a Railway Station.-When it is pro- posed to sell or lease any nazul land in the vicinity of a railway station, the railway administration shall be consulted before sanction is applied for.***
>
> ***61. Sale or lease of nazul near the land owned by Railway Administration-No person shall ordinarily construct a building on any nazul land adjacent to land owned by the Railway administration except as provided hereinafter:***
>
> ***(i) That an intimation of the proposed construction of a building shall be given to the Railway Administration concerned thirty days before the commencement of work.***
>
> ***(ii) That an open space of 100 feet shall be left between the Railway boundary and such a building or as may be determined by the local conditions and agreed upon by the authorities concerned."***

48. Rule 59 provides, that the sale or leases of a nazul land, which is adjoining or which is located near the railway station, could only be done, when the railway administration is consulted before the sanction is applied with. In the present

case, none of the leases, none of the deeds of the subsequent renewal at all, at any point of time, observes that the lease or its renewal or its alleged claim by conveyance was made by the alleged lease holders, with a prior permission or consultation with the Railway Administration, before any sanction for the grant of lease was even applied for.

49. In that eventuality, the claim of the occupants, on the basis of the lease, would yet again be bad in the eyes of law in the absence of there being any prior consultation / sanction granted by the Railway Administration in relation to the railway land, which adjoins the Railway Station,

50. Rule 61, which is extracted above, it further elaborates the stipulation to be adhered to for sale or lease of nazul land near the land owned by the Railway Administration. The Rule itself provides that no person would ordinarily construct or build any construction on any so-called claimed nazul land, which is adjacent to the Railway Station, except with a prior sanction / approval from the Railway Administration.

51. Hence also, the so-called claim of the construction having been made by the lease holders on the basis of the claimed leases granted by the State, in the absence of there being a prior consultation/ sanction / approval, as per Rule 59 and 61, even prior applying for sanction from Railway Administration, and in the absence of there being any prior consultation or approval granted by the Railway Administration, prior to raising of the construction, no

adverse claim contrary to the Rules 59 and 61, could at all be made out by the present applicants / interveners, who are occupying the land, which is admittedly adjoining the land of the Railway Station Haldwani, and which, as per the revenue records, is land recorded with the Railways as per the revenue entries already placed on record.

52. Thus on a harmonious reading of the Nazul Manual along with the provisions of Tenancy Act, as well as the history of conveyanceing, the property in question it is established beyond doubt, that after the separation of the area of the land in dispute in pursuance to the treaty of 1815 the Haldwani Village, was founded, as back as in 1834 by Mr. Trail and ever since then the land in question continued to be used and recorded as 'Baghdari" i.e. Shreni 12 land, and the said entry in the revenue records remains undisturbed till date.

53. That the Baghdari in accordance with Regulation 124 of the Land Record Manual, has been recorded in Shreni 12, if this be so, if the land is part and parcel of Revenue Act proceedings, it cannot be brought within the ambit of definition of the 'public premises' as contained under the State Act of 1972, or even the Central Act of 1971.

54. If the definition of nazul land is considered in the context of its Urdu terminology, which is normally in common parlance is used to describe the land, as to be a land, which was left over by the inhabitants or the occupants over it, it was that owing to the rebellion after 1857 Mutiny, and

that is why, it is also alternatively defined under the Urdu Law and terms governing it, as to be a **"Jaijad Munjapata"**, which means a land, which was confiscated by the Queen, as a consequence of its evacuation by the occupants, after the Mutiny of 1857, due to its voluntarily evacuation by occupants, and its those evacuated land, which consequently stood vested with the Queen, which had alternatively placed the land under the administrative control of the Commissionary of Kumaon or Garhwal, as the case may be.

55. Since no act or action of Rebellion of Mutiny of 1857, has ever taken place, within any area Mauza Haldwani Khas, it will not be a nazul land, on the basis of which, rights have been claimed by the occupants of the property.

56. Looking to the controversy, in the context of the issue, which has now been agitated by the petitioner in public interests, the genesis of the present controversy emanates from the institution of an earlier PIL, being **Writ Petition (PIL) No. 178 of 2013**, which was instituted by the same petitioner before High Court of Uttarakhand on 30th December, 2013, whereby, the common petitioner, therein, Mr. Ravi Shankar Joshi, had instituted the PIL, owing to the fact that, the RCC Gola Bridge at Haldwani, had later further collapsed on 25th July, 2008, and another part of it, had further later collapsed on 20th September, 2008, and the reason for it was alleged owing to unabated illegal mining activities, which were being carried by the adjoining residents, who had unauthorisedly occupied the State land, including the land lying in the river bed of river Gola, as well

as upon the railways land, due to which, the pillars, which were supporting the bridge had weakened, resulting into its collapse and a consequential loss of the State exchequer.

57. The said PIL, since had marginally dealt with the issue about, that the persons, who were unauthorised occupants, over the State or Railway land, who were said to be engaged in the activity of an illegal mining, so were the unauthorised occupants of the land lying in river bed, as well as, that of the adjoining land belonging to the North Eastern Railways, which fell under the administrative control of the Divisional Zone, the Head Office of which, was located at Bareilly.

58. According to the petitioner of the said Writ Petition No. 178 of 2013, the petitioner had modulated the relief in the following manner :-

> *"(i) To issue a writ, order or direction in the nature of mandamus, commanding the respondents to immediately ban the mining activities near the Gaula Bridge at Haldwani;*
>
> *(ii) To issue a writ, order or direction in the nature of mandamus, commanding the respondents or any other independent agency to enquire into the real reasons for the falling of the erstwhile Gaula Bridge, calculating the exact loss on public exchequer, and also fixing the accountability of the persons responsible for the aforesaid loss;*
>
> *(iii) To issue a writ, order or direction in the nature of mandamus, commanding the respondents to punish the persons who are responsible for the aforesaid public loss and also to take measures to*

recover the loss caused on the public exchequer from the persons so found responsible;

(iv) To issue any other order or direction that this Hon'ble Court thinks fit in the facts and circumstances of the case.

(v) To award the costs in favour of the Petitioner."

59. The matter continued under judicial scrutiny for a considerable long time, and it was dealt with by the earlier Division Benches, at various stages, and the stage which, may have a bearing, if the present PIL is to be considered, which was preferred at a later stage, where the issue was being dealt with by us, would be that the Division Bench of this Court on 1st September, 2014, had passed an order directing to appoint an Advocate Commissioner to inspect the site and to submit the report of inspection, regarding the alleged aspect of illegal mining activities and illegal encroachments over State and Railway land. The relevant part of the order of the Division Bench dated 1st September, 2014, is extracted hereunder :-

"2. In such circumstances, we are of the view that an Advocate Commissioner must be appointed, who will make surprise inspections, as also inspections with notice, and make reports for a period of two months. We, accordingly, appoint Mr. H.M. Bhatia, Advocate, as the Advocate Commissioner, who will conduct the inspections and make reports regarding the aspect of alleged mining going on in the teeth of the law in the place. We fix Rs. 10,000/- towards his preliminary remuneration and incidental expenses. This will be paid by the first respondent within a week.

3. List this case on 3rd November, 2014. Petitioner is given a week's time to file supplementary rejoinder affidavit. If the Advocate Commissioner makes a request for police protection before S.S.P., Nainital, he shall be given prompt and effective protection."

60. The matter proceeded further and certain directives were issued from time to time, by various orders passed by the Division Bench, aiming for the purposes of regulating the illegal mining activities, in and around the area of Gola Bridge, which had collapsed and certain remedial measures were also laid down by the Division Bench vide its order dated 22nd June, 2015, which is extracted hereunder:

"2. We deem it appropriate to pass the following order:

(i) The fourth respondent will personally conduct an inspection of the bridge in question and he will file an affidavit before this Court by 29th June, 2015 in regard to the complaint that the bridge is in a condition that it requires urgent repairs. He will make his stand clear in the affidavit as to, if the repairs are required, the nature of the repairs and also the time within which the repairs will be carried out.

(ii) The learned Additional Advocate General will, on the next date of hearing, get instructions and submit as to the establishment of police picket in the area so as to check the illegal mining going on.

(iii) The learned Additional Advocate General will also get definite instructions as to what action has been taken or proposed to be taken in regard to the construction of the faulty bridge on the basis of the report submitted by the IIT."

61. Ultimately, the PIL was decided by the Division Bench of this Court vide its judgment dated 9th November, 2016.

62. While disposing of the Writ Petition (PIL) on 09.11.2016, the Division Bench, had issued a specific directions to the Divisional Railway Manager, North Eastern Railway to remove the encroachments which were made on the Railway Line and the surrounding areas of the railway land, within a period of ten weeks from the date of the order and the local administration was further directed to facilitate in providing the assistance to the railways authorities, in getting the illegal encroachment removed. The relevant part of the judgement of disposal dated 09.11.2016 of the Writ Petition is extracted hereunder :-

> *"However, the fact of the matter is that till 04.01.2016, no concrete steps were taken for removal of the encroachments from the public land.*
>
> *Accordingly, present petition is disposed of with the direction to the Divisional Railway Manager, North Eastern Railways to remove the encroachments within a period of ten weeks from today.*
>
> *The Senior Superintendent of Police, Nainital is directed to render every assistance to the Railway Administration, for removal of encroachments, by providing sufficient force and if necessary, by deploying the armed constables.*
>
> *It is made clear that if the encroachments are not removed, the officer concerned may be put under suspension for non compliance of the order."*

63. Owing to the certain most reckoned political shield, which was then being provided by the then Ruling party for its political gains to the unauthorised occupants, just to secure its vote bank, the State itself has filed a Review

Petition, for no subsisting and valid reasons, being **Review Petition No. 6 of 2017**, seeking review of the judgment dated 9th November, 2016, which too was dismissed by the Division Bench vide its judgment dated 10th January, 2017, and while dismissing the Review Petition, the Court considered the Misc. Application No. 243 of 2017, therein, about the glaring revelation which were placed on record pertaining to the inaction on the part of the State machinery for not providing an adequate assistance for removing the unauthorised occupants, despite of the orders of the Court to execute the orders by removing the unauthorised occupants.

64. The matter remained pending after the decision taken on the Review Petition on 10.01.2017, against which, several SLPs were preferred before the Hon'ble Apex Court, with leading **SLP No. 2051-2053 / 2017, along with 1533-1535 of 2017,** wherein, both the judgments direction given in the PIL on 9th November, 2016, as well the as the order passed on the Review Petition on 10th January, 2017, was put to challenge.

65. The Hon'ble Apex Court had decided the SLP vide its judgment of 18th January, 2017, whereby, in para 9 of the judgement, it was left open that all the individual persons, who were affected by the judgment of 9th November, 2016, may file an appropriate application before the Division Bench of the High Court on or before 13th February, 2017, which was the last cut off date prescribed by the Hon'ble Apex Court, as no application by any of the probable affected parties was permitted to be filed to be considered after the

aforesaid cut off date and for the said period i.e. till 13.02.2017, the status quo was directed to be maintained. The relevant part of the Hon'ble Apex Court judgement, as contained in para 9 is extracted hereunder :-

> *"9. In the above view of the matter, we permit the petitioners to move appropriate applications before the High Court, as indicated above, on or before f13.02.2017. All such applications, as are filed by the affected parties, shall be taken into consideration by the High Court. We would expect the High Court to dispose of all such applications, within a period of three months, with effect from 13.02.2017. Accordingly, the directions issued by the High Court through the impugned orders, are hereby stayed with immediate effect for a period of three months commencing from 13.02.2017. In case, the applications filed by the petitioners are not disposed of within the time stipulated hereinabove, it shall be open to the petitioners, to move appropriate applications before the High Court, for extension of the interim direction."*

66. In pursuance to which, various applications, which were preferred before the Division Bench of this Court, and the same were considered by the Division Bench and were disposed of by the judgment of 22nd November, 2019 (which remained unchallenged), and the Division Bench, then was of the view, that with regard to the subject, which was initially the subject matter of the Writ Petition (PIL) No. 178 of 2013, since it widely dealt with the aspect of illegal occupancy over the railway land, coupled with the allegation of an act of illegal mining and with regard to the placent aptitude of the authority, who were then turning blind eyes and deaf ears, to the orders of this Court, by not providing any assistance to the Railway Authorities, which

was ultimately resulting into a loss of public exchequer, the Court thought vide its judgment of 23rd November, 2019, that instead of considering the various applications independently, which were filed in pursuance to the judgment of the Hon'ble Apex Court dated 18th January, 2019, had proceeded to decide all the applications together without expressing any opinion on its merits of the application, but with the liberty left open to the petitioner to file a fresh Writ Petition (PIL), raising all such contentions, as were raised in the earlier Writ Petition (PIL) No. 178 of 2013, and which was not dealt with in the order under review. The relevant observations made in para 11 and 12 of the said judgment are extracted hereunder:-

> *"11. While seeking modification of the order dated 09.11.2016, Mr. Rajeev Singh Bisht, learned counsel for the petitioner, would submit that illegal mining operations continue unabated even till date; mining activities, within one Km. on either side of the bridge, is prohibited; despite the prohibition, illegal mining activities continue, and the authorities are turning a blind eye to these illegal mining activities; such mindless mining operations would endanger this bridge, like that of the bridge which collapsed earlier; unlike the earlier collapse, any future collapse may result in loss of life; the order dated 09.11.2016 should be recalled, and the Writ Petition restored; and this Court should direct the respondents to ensure that no illegal mining activity takes place within the prohibited zone of the bridge.*
>
> *12. The order, recall of which is sought, is dated 09.11.2016 and was passed more than three years ago. Several subsequent events have taken place. Instead of recalling the earlier order, restoring the Writ Petition to file, and permitting the petitioner to file additional affidavits, we consider it appropriate, instead, to grant the petitioner liberty to file a Writ Petition afresh raising all such contentions as were raised in the earlier Writ Petition, and which were not dealt with in*

the order under review, besides events subsequent thereto till date."

67. But because of the subsequent applications, the matter still remained pending before the Division Bench of this Court, and particularly, upon the subject of controversy with regard to the aspect of **"survey and demarcation"**, owing to the report which was submitted by the Advocate Commissioner, Mr. Hari Mohan Bhatia, wherein, he had made a statement, that he had surveyed the land along with the officials of both the Railways and the Revenue Authorities, and on a joint inspection, in presence of occupation, which was conducted by him in the presence of occupants, it was observed in the report the land was measured in a joint inspection, in the presence of occpants, which was made by the competent Authorities. The relevant observation made by the Division Bench in its order of 24th March, 2021, is extracted hereunder, which too would be a subject matter of relevant consideration in the present PIL, to decide the present PIL, because the major issue, which has been argued by the interveners was epicentred on the ground that in the absence of there being a demarcation being conducted, no relief in the present PIL too, could have been considered to be granted.

"Although on an earlier occasion, an impression was created that the subject land was neither surveyed, nor demarcated, Mr. Hari Mohan Bhatia, the learned Advocate Commissioner, informs this Court that in 2017, the subject land was surveyed by both the Railways and the Revenue Department. However, according to him, while the subject land was surveyed, it was never demarcated.

> *On the other hand, Mr. G.K. Verma, the learned counsel for the Railways, **submits that the subject land was both surveyed and demarcated. According to the learned counsel, the Survey Report is in the possession of the Revenue Department.***
>
> *Therefore, this Court directs Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand, to produce the said Report dated 07.04.2021."*

68. But the records reveal otherwise, because the extract of the order dated 24th March, 2021, reveals that on the basis of the joint inspection, which was conducted by the Advocate Commissioner, appointed by the High Court, alongwith the Revenue Department Officials and the Railway Officials, a joint report was said to have been submitted, which was then in the possession of the Office of the Chief Standing Counsel, being report dated 7th April, 2021 / 05.04.2021. This part of the report is quoted hereunder :-

> "प्रेषक,
>
> जिलाधिकारी,
> नैनीताल।
>
> सेवा में,
>
> मुख्य स्थायी अधिवक्ता,
> मा० उच्च न्यायालय. उत्तराखण्ड नैनीताल।
>
> पत्रांक 1395/20- न्या०सहा० (पी०आई०एल० 178/2013) दिनांक 5 अप्रैल 2021
> विषय:- रिट पिटीशन संख्या 178 / 2013 (पी०आई०एल०) श्री रविशंकर बनाम अन्य के सम्बन्ध में।
>
> महोदय,
>
> उपरोक्त विष यक रिट पिटीशन संख्या 178 / 2021 (पी०आई०एल०) श्री रविशंकर बनाम अन्य के सम्बन्ध में मा 0 उच्च न्यायालय उत्तराखण्ड के आदेश दिनांक 24-3-2021 के सम्बन्ध में अपने पत्र दिनांक 25-3-2021 का संदर्भ ग्रहण करने का कष्ट करे।
>
> इस क्रम में कार्यालय जिलाधिकारी नैनीताल पत्रां क 1284 / 20-न्या०सहा० / रिट पिटीशन /2021 दिनॉक 4-4-2021 के माध्यम से सूचना मण्डल रेलवे प्रबन्धक इज्जतनगर से चाही गयी। जिसके क्रम में रेलवे द्वारा अपने कार्यालय पत्रोंक इ / 2012 / अतिक्रमण / 4415 दिनॉक 5-4-2021 द्वारा मा ०उच्च न्यायालय के आदेश दिनॉक 9-11-2016 के क्रम मे प्रश्नगत स्थल / भूमि के रेलवे

द्वारा कराये गये हस्तलिखित स्थलीय सर्वेक्षण रजिस्टर , हस्तलिखित स्थलीय सर्वेक्षण रजिस्टर में उल्लिखित नामों (चिन्हित अवैद्य अध्यासियों) की टाईप्ड सत्यापित कापी रेलवे के भू-अभिलेखों / आरेखों के सत्यापित सेट विभिन्न तिथियों में सर्वे / सीमांकन सम्बन्धित की गयी कार्यवाही एवं प्रश्नगत स्थल का रेलवे भूमि प्लान की सत्यापित प्रतिमा ०उच्च न्यायालय उत्तराखण्ड नैनीताल के आदेश दिनॉक 25-3-2021 के क्रम में रेलवे द्वारा कराये गये हस्तलिखित स्थलीय सर्वेक्षण रजिस्टर, हस्तलिखित स्थलीय सर्वेक्षण रजिस्टर में उल्लिखित नामों (चिन्हित अवैध अध्यासियों) की टाईप्ड सत्यापित कापी , रेलवे के भू -अभिलेखों / आरेखों के सत्यापित सेट विभिन्न तिथियों में सर्वे / सीमांकन सम्बन्धित की गयी कार्यवाही एवं प्रश्नगत स्थल का रेलवे भूमि प्लान की सत्यापित प्रति प्रेषित की जा रही है।

सलंग्नः–उपरोक्तानुसार

भवदीय,

(धीराज सिंह गर्ब्याल)
जिलाधिकारी नैनीताल ।"

69. Subsequently, when the matter was once again dealt with before the Division Bench of this Court, and lastly the PIL No. 178 of 2013, was ultimately disposed of on 16th March, 2022, thereby, the Division Bench of this Court vide its final adjudication made on 16th March, 2022, had disposed of the Writ Petition with the liberty left open for the petitioner to file a fresh PIL, with better particulars raising all the contentions and on any additional issues, which had remained unsettled in the earlier PIL. This direction of 16th March, 2022, has attained finality.

70. It would be relevant to point out, that in view of the order passed by the Division Bench on 24th March, 2021, directing the State to place the joint survey report on record, showing the demarcation of the land belonging to the Railways, the same was filed before this Court in the aforesaid Writ Petition (PIL) No. 178 of 2013, by placing the said inspection report on record

> *"Although on an earlier occasion, an impression was created that the subject land was neither surveyed, nor demarcated, Mr. Hari Mohan Bhatia, the learned Advocate Commissioner, informs this Court that in 2017, the subject land was surveyed by both the Railways and the Revenue Department. However, according to him, while the subject land was surveyed, it was never demarcated.*
>
> *On the other hand, Mr. G.K. Verma, the learned counsel for the Railways, submits that the subject land was both surveyed and demarcated. According to the learned counsel, the Survey Report is in the possession of the Revenue Department.*
>
> *Therefore, this Court directs Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand, to produce the said Report on 07.04.2021."*

71. The ordersheet of PIL No. 178 of 2013, observes that in compliance of the order dated 24th March, 2021, as extracted hereinabove, the State did complied the order and the joint demarcation report, referred in the order of the Division Bench dated 24th March, 2021, and 7th April, 2021, was directed to be placed on record and as observed in the order of 7th April, 2021, the joint survey report was submitted and the same was taken on record. **None of the parties to the proceedings, or even the interveners of the present PIL, who were the applicants to earlier PIL No. 178 of 2013, too had ever filed any objection to the report dated 07.04.2021, which has been placed on record.** Thus the joint survey/demarcation report remained un-objected till date.

> *"In compliance of the order dated 24.03.2021, Mr. C.S. Rawat, the learned Chief Standing Counsel for the State, has submitted a report. The same shall be taken on record."*

72. The record shows a joint survey was conducted by the joint Team of Revenue Officials and the Official of the Railway Department and they have identified the unauthorised occupants, after demarcating the land which was found unauthorisedly occupied by them, and each and every unauthorised occupants, were duly heard by the said Joint Inspection Team, and the statement of as many as 1049 occupants, were recorded by the joint inspection team, and the respective areas, which was occupied by them were also demarcated (by the supporting map) and the respective areas in their occupancy was also recorded in the Joint Inspection Report, which was submitted in support thereto, the competent Railway officials, it did provided with the details of the respective cases which stood instituted against each of the occupants, which were being instituted under the provisions of Public Premises Act of 1971, as against the respective occupants, along with the map identifying the railways line, and their respective areas of land under their illegal occupancy.

73. The said map becomes relevant to be made as a part of the record, because it had ever been a bone of contention by the interveners, taking this plea as a escape goat, that the land was not identified nor it was ever demarcated in a joint survey. The map of joint survey of 18th March, 2020, as submitted on 07.04.2021, based on which, the report of 17th April, 2021, was submitted is inevitably required to be made as a part of the record of the present judgment. The same is extracted hereunder :-

TO LALKUA

TO KATHGODAM

N.E. RLY BOUNDARY

℄ OF TRACK

HALDWANI STATION

पूर्वोत्तर रेलवे
इज्जतनगर मण्डल
(रामपुर-काठगोदाम)

PLAN No- IZN/KGM-BP/SHEET No. 12

74. These historical backdrops and the procedural steps which were taken in the Writ Petition (PIL) No. 178 of 2013, which were essentially required to be refer to in the judgment, in order to deal with the instant Writ Petition (PIL), which has been preferred on the basis of the liberty which stood granted by the judgments rendered in Writ Petition (PIL) No. 178 of 2013, which had ultimately resulted into institution of the present Writ Petition (PIL) No. 30 of 2022, Ravi Shankar Joshi Vs. Union of India and others, as instituted on 21st March, 2022.

75. In the PIL, which was instituted on 21st March, 2022, being Writ Petition (PIL) No. 30 of 2022, the petitioner had come up with the case, that adjoining to the Haldwani Railway Station, there happens to be a very vast area of land, which is belonging to the Railways, which had been demarcated by the report of 17th April, 2021, refer to hereinabove, which has been unauthorisedly occupied by the number of unauthorised occupants by raising illegal constructions, which was immediately required by the Railways for their purposes of its expansion and to be utilized by the Railway Authority, for their own purposes and projects, for which, it was vested with them in 1959 A.D..

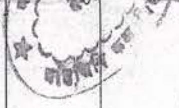
76. The aforesaid theory of vesting of the land, apart from the fact that it stood fortified by the report submitted on 17th May, 2021, it also stood fortified by the documents which were submitted by the Railway Authorities by way of **Sarvekshan Praptra,** preferred under Rule 30, which is Punarikshit Khasra pertaining to 1430 fasli, which had defined the various khasra numbers, which were the land, which stood vested with the Railway Authorities. The relevant extract of the khasras of the land vested with the Railway Department, as recorded in the revenue records is extracted hereunder, which has to be read in support of the joint survey report of 17th April, 2021.

साफ खसरा

मौजा हल्द्वानी टप्पापरगना भा० ढा० (मा०) तहसील हल्द्वानी जिला नैनीताल।

संवत् सन् १३६७

नम्बरहाल	नम्बर साबिक	रकबा बहिसाब एकड़	रकबा बहिसाब बीघा	नाम महाल मय नम्बर खाता खेवट	नम्बर खाता खतौनी	किस्म जमीन	रकबा हर किस्म की जमीनका	बन्दोबस्त की किस्मजमीन	कैफियत
1.	2.	3.	4.	5.	6.	7.	8.	9.	
११ क	९९ १०१ २ कि. १०० कि. ३ कि.		५८।)३	३	१३८	रेलवे लाइन	५८।)३		
११ ब	१०८ कि.		५६)२	३	१३८	रेलवे लाइन	५६)२		
६४१	१६७/२		)२	२	१३०	रास्ता (रेलवे)	)२		
६४४ क	१०२ १०४ ब' क. १११ कि. ११३ क ११५ ११८ १८७ कि. १६६ कि.		१३॥)२	२	१३१	रेलवे सड़क	१३॥)२		
६४५	१०४		३॥।)१	२	१३१	रेलवे सड़क	३॥।)१		
६४६	१०४ ब		७)४	२	१०	रेलवे आबादी	७)४		
६४७ क	१०३		५॥।)३	२	१३१	रेलवे लाइन व सड़क	५॥।)३		
६८५ क	११० १६८ १६९ १६७/२		५८।)२	३	१३६	आबादी रेलवे	५८।)२		
ब	११६ क.		१६।)१	२	१२९	आबादी (रेलवे)	१६।)१		



६८९ अ	१३१ कि.		३)३	३	१३७	पार्क (रेल्वे, आबादी	३)३		
ब	१५३ कि. १५२ कि. १५४ कि.								
६९०	१३१ क १५४ क १५५ क		११)३	३	१३७	(स्टेशन) आबादी	११)३		
६९१	१३१ क		११)४	३	१३६	(स्टेशन) आबादी	११)४		
६९४ अ	१३५ कि. १३७ कि.		२११)१	३	१३६	स्टेशन (गाडीतळ) आबादी	२११)१		
६९५	१३५ कि. १३६ कि.		११)	३	१३५	(गाडीतळ) स्टेशन आबादी	११)		
६९६ अ	१३३ १३४ १३५ कि. १३८		५५।।।)	३	१३५	बगीचा (रेल्वे	५५।।।)		
६९६ ब	१३१ कि.		७)१	३	१३१	रेल्वे आबादी	७)१		
६९७	१४३ कि.		११)२	३	१३५	रेल्वे बंगला	११)२		
ब	१४४ कि.		१३।।।)/२	२	१३१	रेल्वे सडक	१३।।।)/२		
७२१	३५१ कि.		२५१)३	२	१३१	रेल्वे सडक	२५१)३		
७२३	१३८ कि.		)१	३	१३६	आबादी (रेल्वे)	)१		
७२५	१३० १३२ क १३३ १२८		५)२	३	१३८	रेल्वे (सडक)	५)२		

१३६ क	३२८ कि ३७ ३२३ कि. १३१ १४१ (संलग्न) २२२ कि.		८१॥)	३	१३५	बंजर (रेलवे)	८१॥)		
१३१	१४१ कि.		)४	३	१३५	बंजर रेलवे	)४		
१४० क	१४१ कि १४३ कि. ३६२ कि ३६३ कि. ३६४ कि.		२५)४	३	१३६	रेलवे लाइन सड़क	२५)४		
ख	३५१ कि.		४४१)३	२	१३१	रेलवे लाइन सड़क	४४१)३		
८१०	३५१/१ कि.		८)४	३	१३५	रेलवे बंजर	८)४		
८१४ क	३५०/१ कि.		२०)	२	१२२	बंजर	२०)		
ख	३५२ कि.		३८)	३	१३६	रेलवे लाइन (सड़क)	३८)		

आवेदक का नाम [illegible]
पंजिका क्रमांक 218
प्रार्थना पत्र की तिथि 29/10/22
सूचना पट की तिथि 29/10/22
प्रतिलिपि देने की तिथि 29/10/22
नकल वाले बाबू का नाम [illegible]

[illegible]
पन्नों की संख्या [illegible]

सत्य-प्रतिलिपि

29/10/2022
संरक्षक
माल अभिलेखागार
जिला कार्यालय, नैनीताल

साफ खसरा

मौजा [illegible] टप्पापरगना [illegible] तहसील [illegible] जिला नैनीताल।

वत् सन् १३६८

नम्बरहाल	नम्बर साबिक	रकबा बहिसाब एकड़	रकबा बहिसाब बीघा	नाम महाल मय नम्बर खाता खेवट	नम्बर खाता खतौनी	किस्म जमीन	रकबा हर किस्म की जमीनका	बन्दोबस्त की किस्मजमीन	कैफियत
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
३६१	१११/२ · २६८/२ २६०· [illegible] २८५/१ · २६६/१ २८५/२ वि० ७०		६३॥)		४५	रेलवे लाईन	६३॥)		

[illegible] कास की बाबत [illegible]
[illegible] पंजिका क्रमांक 218
प्रार्थना पत्र की तिथि 29/10/22
[illegible] पट की तिथि 29/10/22
प्रतिलिपि देने की तिथि 29/10/22
[illegible] पाने वाले का नाम [illegible]

[illegible] कर्ता [illegible]
[illegible] कर्ता [illegible]
[illegible] की संख्या [illegible]

सत्य-प्रतिलिपि

29/10/2022
संरक्षक
माल अभिलेखागार
[illegible] कार्यालय नैनीताल

77. In the PIL, in question, the petitioner has prayed for the following reliefs :-

> *"i) Issue a writ, order or direction, in the nature of mandamus, commanding the Respondents Authorities of the Railways and the State Government to immediately take appropriate action for removing the encroachment over the precious property belonging to the Railways and other Government Departments at the earliest, by following the guidelines given by the Hon'ble Apex Court in the matter of SLP(C) diary no.19714 of 2021, vide order dt. 16-12-2021.*
>
> *ii) Issue an appropriate writ, order or direction, to the Respondent no.2 to ensure the use of the provisions of Section 147 of the Railways Act, 1989, and other. appropriate instructions of the Railway Board, to tackle the menace of encroachment over the Railway property.*
>
> *iii) Issue an appropriate writ, order or direction, to the Respondent authorities to immediately arrange for the rehabilitation of the affected persons, who have been found eligible in strict terms of the rehabilitation/housing schemes, in terms of the directions given by the Hon'ble Apex Court vide aforesaid directions dt.16-12-2021, in SLP(C) diary no. 19714 of 2021.*
>
> *iv) Issue an appropriate writ, order or direction, to the Respondent Authorities, to fix the responsibility of stopping the encroachment and removal of the same, upon the concerned Railway Officials, as well as Civil Officials, and to ensure that no Railway land, or other civil land belonging to the Government, is encroached upon due to Official negligence.*
>
> *v) Pass such further and other orders and directions as this Hon'ble Court may deem fit and proper in the interest of public at large."*

78. During the intervening period, when the PIL was pending consideration, almost an identical issue came up for

consideration before the Hon'ble Apex Court in the matters of **Utran Se Besthan Railway Jhopadpatti Vikas Mandal Vs. Government of India and others**, the Hon'ble Supreme Court Judgement, it too was a case, in which, the railway property was being occupied by the unauthorised occupants and a similar issue was agitated before the High Court of Gujrat, which stood adjudicated by the judgment of 19th August, 2021, as rendered in PIL No. 222 of 2014, which was later made as a subject matter of consideration before the Hon'ble Apex Court in **SLP (Civil) Diary No. 19714 of 2021.**

79. The Hon'ble Apex Court, vide its order of 16th December, 2021, had laid down certain wider parameters and principles which were to be adhered for the purposes of taking an action against the encroachers in any property belonging to the State, Local Bodies or the railways. The Hon'ble Apex Court has laid down the prescribed wider guidelines, based on the earlier judgment of Hon'ble Apex Court, as reported in **(1997) 11 SCC 121,** in the matter of **Ahemadabad Municipal Corporation Vs. Nawab Khan Gulab Khan,** and certain basic pre-conditions were required to be satisfied before any action was to be taken for resorting to any steps to evict the unauthorised occupants.

80. The guideline, which was laid down in the judgement of **Utran Se Besthan Railway Jhopadpatti Vikas Mandal (Supra),** of which, the reference was made by the Hon'ble Apex Court is extracted hereunder :-

> *(i) The respondent - Western Railways do immediately issue notices to the occupants of the concerned structures which are falling within the belt which is required immediately for commencing the remaining project work by giving two weeks! time to the concerned occupant (s) to vacate the respective premises:*
>
> *(ii) In respect of the remaining land owned by Railways, even though it may not be immediately required for the project, similar notice be given to the occupants of structures standing thereon by giving six weeks' time to vacate the respective premises;*
>
> *(iii) In either case (i) and (ii) above, the notices be issued within one week from today and if the occupants fail to vacate the unauthorized structure, it will be open to the respondent-Western Railways to initiate appropriate action to forcibly dispossess them and to demolish or remove the unauthorized structure (s) by taking assistance of the local police force. The Superintendent/Commissioner of Police of the concerned area shall ensure that adequate police force is deployed on the site and surrounding areas including to provide protection to the officials/staff engaged in the demolition of unauthorised structures and to facilitate them to commence the eviction process and demolition of the unauthorised structures, referred to in the eviction notices on the specified date and time;*
>
> *(iv) .....*

81. The foundation of the observation and the basis of it was made by the Hon'ble Apex Court was, that the Railway was required to issue notices to occupants of the concerned structures or occupants of land of railways, which were falling within the belt, which was immediately required by the Railways for completing their various development projects, by giving them two weeks' notice, to the concerned occupants in order to vacate the premises.

82. It further provided, that if any further land is required, which is owned by the Railways for the expansion of their projects in future, similar notice may be given to the occupants of the structure standing on the land of the Railways to vacate the same. The guidelines, which have been given therein, which has been extracted above, were identically required to be complied with in relation to the present case.

83. Hence, this Court felt it necessary, that owing to the guidelines issued therein, whereby, the Railways report has submitted, that as many as 4365 occupants, who were found to be unauthorised occupants over the State and railways land and the eviction process was immediately required to be initiated against them. This Court before passing any final order, felt it necessary, that the occupants of the land are required to be heard and hence by the order of 18th May, 2022, a publication was issued in two local newspapers of wide circulation, inviting the intervention by any of the person, who may be effected by any order, which could be passed in the PIL. The relevant part of the order is extracted hereunder :-

> *"In that eventuality, the Registry is directed to issue a paper publication in two newspapers of wide circulation in District Nainital, inviting the interventions by any of the persons, who are or who may be effected and the publication should specify, that with the respective applications, they will place all the material on record, on which they claimed their rights, which has to be filed in two weeks from date of publication.*

After the submission of the objections, the Bench will be reconstituted to hear the respective intervention applications."

84. In pursuance to the order passed by this Court in the light of the parameters of the Hon'ble Apex Court's judgment, enunciating parting with the information to the occupants for the purposes of taking an action for eviction from the land, which has been unauthorizedly occupied, and which belongs to the Railways. The Court had passed an order for issuing paper publications, inviting objections /Intervention Applications.

85. The following publications were made by the Registry of this Court. One of them is being extracted hereunder, as an exemplar, is a publication as made in the Daily Edition of The Amar Ujala on 22nd May, 2022, which was simultaneously published in the Edition of same day of Local Daily Jagran. The publication made in The Amar Ujala dated 22.05.2022, is extracted hereunder :-

"NOTICE FOR PUBLICATION
HIGH COURT OF UTTARAKHAND, NAINITAL

Writ Petition (PIL) No:30 of 2022

Ravi Shankar Joshi .... Petitioner

Versus

Union of India & Others ..... Respondents

Notice To:-

PUBLIC AT LARGE

Whereas, the present PIL has been filed regarding alleged encroachments upon the Railway Land, Haldwani, District-Nainital, the Hon'ble High Court vide its order dated 18-05-2022 bas directed to issue a public notice inviting, from any of the persons who are or who may be effected, to file intervention applications and with respective applications to place all the material on record, on which they claimed their rights, within two weeks from date of publication.

It is therefore, informed to all concerned that if any of the persons, who are or who may be effected regarding aforesaid Writ Petition (PIL), may file intervention applications alongwith all material on record, on which they claim their rights, before the Hon'ble Court within two weeks from the date of publication, in-person or through the counsel.

Given under my hand and the seal of the Court on this 21st May, 2022

By Order of the Court

Deputy Registrar (Judicial)
High Court of Uttarakhand, Nainital"

86. Apart from the aforesaid publication, even during the course of the proceedings, when the PIL was being argued earlier on number of occasions, there had been a wide circulation of the news items of the proceedings of the PIL itself in various daily newspapers, the details of which are given hereunder,

For example that of the publication made in:-

(i) The Times of India in its Uttarakhand Region, which was published on 19th May, 2022;

(ii) in the publication made in The Amar Ujala of 19th May, 2022;

(iii) In the publication made on 19th May, 2022, in The Hindustan Times;

(iv) In the publication made in The Dainik Jagran on 19th May, 2022.

All these publications in itself would amount to be a knowledge to the occupants, with regard to the issue, which was being judicially considered by this Court.

87. This Court is of the view, that apart from the fact that the occupants were noticed by a specific publication as extracted above. The news items with regard to the day-to-day proceedings of the PIL, will too in itself be treated as to be a knowledge imparted to the occupants through the process of media.

88. In that eventuality, now at this stage, none of the occupants, except for those, who had responded to the publication, inviting their Intervention Applications, could at all, have their grievances, that they were not provided with an opportunity of hearing by the Court, as it was not availed by them, despite opportunity being provided.

89. Another important aspect, which is required to be addressed by us, is with regard to the controversial issues about the applicability of the provisions of the Public Premises Act of 1971, which would rather be an identical question, which is required to be necessarily dealt with in the present case.

90. In order to answer the aforesaid question, a reference which is required to be made is to the order, which we had considered and passed on **MCC Application No.**

14477 of 2022, as it was filed by one of the occupants in Writ **Petition (PIL) No. 178 of 2013, Ravi Shankar Joshi Vs. State of Uttarakhand and others**, wherein a modification was sought by the applicants, therein, in the context that the observation, which was made by this Court in the judgment rendered earlier, ousting the applicability of the provisions of the Public Premises Act of 1971, which was interpreted in the context of the judgment of **22nd November, 2019**, as rendered in Writ Petition (PIL) No. 178 of 2013, that may be clarified.

91. At the stage of considering the issue, which was pressed by the learned Senior Counsel, while pressing upon his Modification Application, seeking clarification of the order of **22nd November, 2019,** as it was observed in the aforesaid PIL about the implications with regard to the applicability of the provisions of the Public Premises Act.

92. This Bench after a detailed deliberation on the said question, the clarification of which, was sought by one of the applicants, namely Shamim Bano, had decided the application in the context of, as to what would be the **"public premises"** as per the provisions contained under the Public Premises Act of 1971, and also with regard to the aspect of applicability of the provisions of the Public Premises Act of 1971, in the light of the judgment of the Hon'ble Apex Court as reported in **(2014) 4 SCC 657, Suhas H. Pophale Vs. Oriental Insurance Company Ltd. and its Estate Officer.**

93. In order to shorten the controversy on the debate agitated, as to whether the provisions of the Public Premises Act of 1971, would be applicable or not.

94. We are at this stage are refraining to dwell the said issue afresh in the present PIL, because that has already been deliberated upon by us, while deciding the Modification Application by our judgment / order dated 31st October 2022. So far as known to this Division Bench, the said issue as decided by us on 31st October, 2022, is still holds good since having not been subjected to challenge before any Superior Court.

95. In that eventuality, it could be conclusively held that the provisions of Public Premises Act of 1971, would not be applicable in the light of the ratio of the Hon'ble Apex Court judgment. This part of the judgment dated **31st October 2022**, as rendered in **MCC No. 14477 of 2022**, which is hereby extracted to be made as part of this judgment. The same is extracted hereunder :-

"HIGH COURT OF UTTARAKHAND AT NAINITAL

MCC No. 14477 of 2022
In
Writ Petition (PIL) No. 178 of 2013

Ravi Shankar Joshi .....Petitioner.

Versus

State of Uttarakhand and others .... Respondents

Present :

Mr. Rajeev Singh Bisht, Advocate, for the petitioner.
Mr. T.A. Khan, Senior Advocate, assisted by Mr. Vinay Bhatt and Mr. Mohd. Shafy, Advocates, for the applicant.

ORDER

Hon'ble Sharad Kumar Sharma, J.
Hon'ble Ramesh Chandra Khulbe, J.

The Writ Petition (PIL) No. 178 of 2013, as it stood instituted by the petitioner in 2013, was alleged to be in public interest by interblending of the reliefs, which were then sought therein. But, however, while considering the controversy, the matter stood adjudicated finally by the Coordinate Division Bench, vide its judgment of 9th November, 2016, and later on, certain Review Applications were preferred, which too were decided by the Coordinate Division Bench of this Court by the judgement of 10th January, 2017.

2. It is as against, these two judgments, i.e. 09.11.2016 and 10.01.2017, the matter was carried before the Hon'ble Apex Court, in number of Special Leave to Appeals, being SLP (C) Nos. 2051-2053 of 2017, 1533-1535 of 2017, 2054-2055 of 2017, 1561-1562 of 2017, 2056-2057 of 2017 and henceforth.

3. The aforesaid SLPs preferred before the Hon'ble Apex Court, were decided by the judgment of 18th January, 2017, whereby, while granting certain latitude as observed therein, in the judgment, the Hon'ble Apex Court, has left it open, that any person, who is aggrieved by the orders of Division Bench, or contemplated action, may file application before the High Court for clarification of the final adjudication made by the Division Bench, as it has been observed in para 9 of the said judgment of the Hon'ble Apex Court, which is extracted hereunder :-

> *"9. In the above view of the matter, we permit the petitioners to move appropriate applications before the High Court, as indicated above, on or before f13.02.2017. All such applications, as are filed by the affected parties, shall be taken into consideration by the High Court. We would expect the High Court to dispose of all such applications, within a period of three months, with effect from 13.02.2017.*

Accordingly, the directions issued by the High Court through the impugned orders, are hereby stayed with immediate effect for a period of three months commencing from 13.02.2017. In case, the applications filed by the petitioners are not disposed of within the time stipulated hereinabove, it shall be open to the petitioners, to move appropriate applications before the High Court, for extension of the interim direction."

4. The Cut-off period provided therein, by the Hon'ble Apex Court, for the purposes of filing Modification Application, was limited to 13th February, 2017. It is not in dispute, that the present applicant Shamim Bano, did earlier prefer a Modification Application No. 1118 of 2017, by filing the same before the Registry of this Court on 13th February, 2017, obviously, after the date of the judgement of the Hon'ble Apex Court.

5. The said application was considered by the Division Bench of this Court, along with other similar applications, which were preferred in compliance of the judgment of the Hon'ble Apex Court dated 18th January, 2017, which included the Modification Application No. 1118 of 2017, preferred by the present applicant.

6. The Division Bench of this Court, vide its judgment dated 22nd November, 2019, had consolidated all the applications and has decided the matter together, which is being sought to be modified by the present applicant by filing the Modification Application No. 14477 of 2022, by preferring the same only on 19.09.2022, at a much belated stage, and after final decision of the Writ Petition (PIL) on 16.03.2022.

7. In the Modification Application thus preferred, the modification, which has been sought by the present applicants, who were party to the principal proceedings, is in the context, as to whether over the property, which was a subject matter of consideration in the earlier Writ Petition (PIL) No. 178 of 2013, whether the provisions of Public Premises Act of 1971, would

be applicable over the property, which was alleged to be unauthorisedly occupied by the various residents.

8. In case, if the earlier application is taken into consideration, i.e. an Application No. 1118 of 2017, in fact, there was no such plea ever raised by the applicant in relation to having any bearing about the applicability of the Public Premises Act of 1971, which was the first available opportunity for her, but however, a distinction is being drawn by the learned Senior Counsel for the applicant in the context of the pleadings, which were raised in para 19 and 20 of the earlier Modification Application No. 1118 of 2017. But with all due reverence at our command, the said pleadings raised in para 19 and 20, no logical inference could be arrived at, to come to a conclusion, that it at all had intention to decipher or call upon the Court to answer the question about the applicability of the Public Premises Act of 1971, over the controversy which then engaged consideration, because it was their own admitted case as referred in para 9 of the judgment dated 22.11.2019.

9. Be that as it may. The distinction, which has been attempted to be carved out by the learned counsel for the applicant is in the context of para 9 and 10 of the judgment dated 22nd November, 2019, which is extracted hereunder :-

> ***"9. While the contention in these applications, now filed before us, is that some of those, in possession of the land, have been in long standing possession for more than a half a century, and the 1971 Act would not apply to them; some others claim that they were allotted the land by the State Government; a few others state that they had purchased the land in a public auction; and a few others contend that they were owners of the land, and the land does not belong to the Railways.***
>
> *10. As noted hereinabove, the relief sought in the Writ Petition was confined to the collapse of a bridge in Haldwani, and the illegal mining activities being carried on thereat. Encroachment*

of railway land was not put in issue, by the petitioner, in the said Writ Petition. Be that as it may, since proceedings under the 1971 Act are still pending before the Estates Officer, suffice it to dispose of all these applications directing the Estates Officer (the competent authority under the Act) to hear and decide the applications in accordance with law with utmost expedition and, in any event, before 31.03.2020. It is made clear that we have not expressed any opinion on the genuineness or otherwise of the claim made, by those in possession of the land, in the applications now filed before us, for these are all matters which the competent authority is required to examine in accordance with law."

10. The learned Senior Counsel, contends that when the Coordinate Bench while deciding the Applications had left all the aspects opened to be argued before the Estate Officer, who was ceased with the proceedings under the Public Premises Act of 1971. In fact, his interpretation is, that the said observation made by the Division Bench, will in itself entail and cause prejudice in deciding of an aspect of applicability of the Public Premises Act of 1971.

11. In order to answer the Modification Application preferred by the applicant, firstly, it has been argued by the learned Senior Counsel for the applicant, which though has been marginally dealt with above aspect, and that the said plea though was taken by him in earlier Application No. 1118 of 2017, which is a fact, not apparent from the application itself, owing to a very specific pleading raised therein, and even if the said plea which is alleged to have been raised in para 19 and 20 of the Application is read in context of para 9 and 10 of the judgment dated 22nd November, 2019, the interpretation given by the learned Senior Counsel for the applicant, would not be acceptable by us, for the reasons that para 9 deals with their own admission and case, which the applicant has projected in their pleadings before the Division Bench, where they have contended that since they have been in possession of the property for more than ½ century,

prior to the enforcement of the Act, the provisions of the Act of 1971, itself would not be applicable. In that eventuality, the presumption goes, that it was rather their own admitted case of the applicant before the Division Bench, as it was argued on 22nd November, 2019, that the Public Premises Act of 1971, would not apply over the property, which was under their occupation prior to the enforcement of the Act.

12. In that eventuality, under the garb of a Modification Application, the applicant cannot be permitted to resile away now from the admitted stand, which the applicant has taken before the Division Bench while she was addressing upon her earlier Modification Application and had solicited the judgment of 22nd November, 2019.

13. The learned counsel for the applicant has further argued, that if the observations which were made by the Division Bench in para 10 of the judgment dated 22.11.2019, where it has been left open, that all the issues could be considered to be decided by the Estate Officer, who has issued notices under the Public Premises Act of 1971, quite obviously and as per the judgment of the Hon'ble Apex Court as reported in **(2014) 4 SCC 657, Suhas H. Pophale Vs. Oriental Insurance Company Limited and its Estate Officer,** therein, it has been observed by His Lordship, that the question of applicability of the Act, will not fall for a domain of consideration by the Prescribed Authority or the Estate Officer in the instant case, for the premises, which were constructed prior to the enforcement of the Public Premises Act of 1971, who has issued notices under Sections 4 and 5 of the Act, because it is a subject, which ought to have been raised before the Constitutional Courts, where applicability of the Act, is a subject to be considered. Thus the interpretation given to para 10, that it was initially to be decided by the Estate Officer, is a misnomer at the hands of the applicant and apart from contrary to their own case, which has been considered in para 9, and per incuriam as per judgment of the Hon'ble Apex Court in the matter of **Suhas H. Pophale (Supra)**.

14. The Hon'ble Apex Court in the aforesaid judgment of **Suhas H. Pophale (Supra),** particularly in the light of the observations which were made in para 59, 60, 64 and 65 has dealt with the above aspect, as to what would be the ambit of an applicability of the Act over the premises, which is said to have been occupied by the occupants prior to the enforceability of the Act, which is the case of the present applicant in his application preferred earlier, being Application No. 1118 of 2017. The same is quoted hereunder :-

> 59. In Ashoka Marketing (supra), this Court was concerned with the premises of two Nationalised Banks and the Life Insurance Corporation. As far as Life Insurance Corporation is concerned, the life insurance business was nationalised under the Life Insurance Corporation Act, 1956. Therefore, as far as the premises of LIC are concerned, they will come under the ambit of the Public Premises Act from 16.9.1958, i.e the date from which the Act is brought into force. As far as Nationalised Banks are concerned, their nationalization is governed by The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and therefore, the application of Public Premises Act to the premises of the Nationalised Banks will be from the particular date in the year 1970 or thereafter. For any premises to become public premises, the relevant date will be 16.9.1958 or whichever is the later date on which the concerned premises become the public premises as belonging to or taken on lease by LIC or the Nationalised Banks or the concerned General Insurance Companies like the first respondent. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act and cannot therefore, be said to be persons in "unauthorised occupation". Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra

Rent Control Act, 1999. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Act or Maharashtra Rent Control Act, 1999. If person concerned has come in occupation subsequent to such date, then of course the Public Premises Act, 1971 will apply.

60. It is true that Section 15 of the Public Premises Act creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. However, as far as the relationship between the respondent No. 1, the other General Insurance Companies, LIC, Nationalised Banks and such other Government Companies or Corporations, on the one hand and their occupants/licencees/tenants on the other hand is concerned, such persons who are in occupation prior to the premises belonging to or taken on lease by such entities, will continue to be governed by the State Rent Control Act for all purposes. The Public Premises Act will apply only to those who come in such occupation after such date. Thus, there is no occasion to have a dual procedure which is ruled out in paragraph 66 of Ashoka Marketing. We must remember that the occupants of these properties were earlier tenants of the erstwhile Insurance Companies which were the private landlords. They have not chosen to be the tenants of the Government Companies. Their status as occupants of the Public Insurance Companies has been thrust upon them by the Public Premises Act.

64. As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act, but it is so covered from 16.9.1958, or from the later date when the concerned premises become public premises by virtue of the concerned premises vesting into a Government company or a corporation like LIC or the Nationalised Banks or the General Insurance

Companies like the respondent no.1. Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16.9.1958, i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the concerned premises belonging to a Government Corporation or a Company, and are covered under a protective provision of the State Rent Act, like the appellant herein, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedings.

65. Learned senior counsel for the respondents Mr. Raval submitted that the judgment of the Constitution Bench in Ashoka Marketing had clarified the legal position with respect to the relationship between the Public Premises Act and the Rent Control Act. However, as noted above, the issue concerning retrospective application of the Public Premises Act was not placed for the consideration of the Court, and naturally it has not been gone into it. It was

submitted by Mr. Raval that for maintenance of judicial discipline this bench ought to refer the issue involved in the present matter to a bench of three Judges, and thereafter that bench should refer it to a bench of five Judges. He relied upon the judgment of this Court in the case of Pradip Chandra Parija Vs. Pramod Chandra reported in 2002 (1) SCC 1 in this behalf. He also referred to a judgment of this Court in Sundarjas Kanyalal Bhatija Vs. Collector, Thane, Maharashtra and Ors. reported in 1989 (3) SCC 396 and particularly paragraph 18 thereof for that purpose. What is however, material to note is that this paragraph also permits discretion to be exercised when there is no declared position in law. The Bombay Rent Act exempted from its application only the premises belonging to the government or a local authority. The premises belonging to the Government Companies or Statutory Corporations were however covered under the Bombay Rent Act. This position was altered from 16.9.1958 when the Public Premises (Eviction of Unauthorised Occupation) Act, 1958 came in force which applied thereafter to the Government Companies and Statutory Corporations, and that position has been reiterated under the Public Premises Act of 1971 which replaced the 1958 Act. Under these Acts of 1958 and 1971, the Premises belonging to the Government Companies or Statutory Corporations are declared to be Public Premises. Thus, the Parliament took away these premises from the coverage of the Bombay Rent Act under Article 254(1) of the Constitution of India. This was, however, in the matter of the subjects covered under the Public Premises Act, viz. eviction of unauthorised occupants and recovery of arrears of rent etc. as stated above. Thereafter, if the State Legislature wanted to cover these subjects viz. a viz. the premises of the Government Companies and Public Corporations under the Maharashtra Rent Control Act, 1999, it had to specifically state that notwithstanding anything in the Public Premises Act of 1971, the Government Companies and

> Public Corporations would be covered under the Maharashtra Rent Control Act, 1999. If that was so done, and if the President was to give assent to such a legislation, then the Government Companies and Public Corporation would have continued to be covered under the Maharashtra Rent Control Act, 1999 in view of the provision of Article 254(2). That has not happened. Thus, the Government Companies and Public Corporations are taken out of the coverage of the Bombay Rent Act, and they are covered under Public Premises Act, 1971, though from the date specified therein i.e. 16.9.1958. After that date, the Government Companies and Public Corporations will be entitled to claim the application of the Public Premises Act, 1971 (and not of the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999), but from the date on which premises belong to these companies or corporations and with respect to the subjects specified under the Public Premises Act. In that also the public companies and corporations are expected to follow the earlier mentioned guidelines.

15. The Hon'ble Apex Court has observed, that if the occupants claim to be in possession of the property, which was in existence prior to the enforcement of an Act of 1971, in that eventuality, the provisions of the Public Premises Act, would not be applicable. The reference to para 64 and 65 (as extracted above) becomes relevant for consideration before this Court, which has been extracted above.

16. Simultaneously, this Court is further of the view, that if the provision of the Public Premises Act of 1971, is taken into consideration, the applicability of this Act has been made applicable to the public premises, which has been defined therein, and it would include the property, which has been occupied by the local authority or public corporation. The said Act will not be applicable to the property, which belong to the Railways, as they would not be falling within any of the

definition of the public premises, as provided under the Public Premise Act of 1971, and further for ready reference, the definition of **“public premises”** could be extracted from Sub-section (e) of Section 2 of the Act of 1971, as to which of the property would fall for consideration under the Act of 1971. Sub-section (e) of Section 2 of the Public Premise Act of 1971, is extracted hereunder :-

> “2 [(e) **"public premises"** means -
>
> (1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980) under the control of the Secretariat of either Houseof Parliament for providing residential accommodation to any member of the staff of that Secretariat;
>
> (2) any premises belonging to, or taken on lease by, or on behalf of,--
>
> (i) any company as defined in section 3of the 3 [the Companies Act, 2013 (18 of 2013)], in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;
>
> (ii) any corporation (not being a company as defined in section 3 of the 3 [the Companies Act, 2013 (18 of 2013)], or a local authority) established by or under a Central Act and owned or controlled by the Central Government;

[(iii) any company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent. of the paid up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first-mentioned company and which carries on the business of public transport including metro railway.

Explanation.-For the purposes of this item, "metro railway" shall have the same meaning as assigned to it in clause (i) of sub-section (1) of section 2 of the Metro Railway (Operation and Maintenance) Act, 2002 (60 of 2002);

(iiia) any University established or incorporated by any Central Act,];

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);

[(v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);]

(vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section(6) of section 80 of that Act,

[(vii) any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory,

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and]”

17. There is another reason, not to keep the Railways under an Act of public premises, as provided

under Sub-section (e) of Section 2 of the Public Premises Act of 1971, for the reason being, that the Legislature by virtue of the powers vested with it under Article 246 of the Constitution of India, has independently dealt with the Railways and had included it in List 1 Entry 22, which happens to be an independent body, which is directly under the control of the Government of India and it is neither a local body or public corporation to be covered by the definition provided under Section 2 (e) of the Act of 1971.

18. There is another reason for not to accept the argument, extended by the learned Senior Counsel for the applicant about the applicability of the provisions of the Act of 1971. The Government of India, Ministry of Railway, has issued a Circular, being **Circular No. 2001/LML/14/1 dated 5th April, 2004**, whereby, in pursuance to the directives of the Secretariat to the Ministry of Urban Development, it has been provided, that the guidelines issued by the Urban Development and the Gazettes of India, it prevents an arbitrary use of power to evict a genuine tenants from the public premises under the Act of 1971. Hence, it applies only to public sector undertaking and financial institution, but it would not apply to the Railways. The relevant provisions as laid down by the aforesaid directives of Government of India dated 5th April, 2004, is extracted hereunder:-

"... It is clarified that the Guidelines issued by M/o Urban Development vide Resolution dt. 08.06.02 in the Gazette of India, to prevent arbitrary use of the powers to evict genuine tenants from public premises using PPE Act, 1971, applies only to the Public Sector Undertakings / Financial Institutions, ***and do not apply to the Railways.****"*

19. In that eventuality, since the Railways itself has got a different legal entity under the Constitutional mandate as provided under Article 246 of the Constitution of India, and since it will not fall within the domain of being a public premises, as defined under Section 2 (e) of the Act of 1971, the property, which is

unauthorisedly occupied and belonging to the Railways, the provisions of the Public Premises Act of 1971, would not be applicable, and that is why, it was admittedly a rightful case which was argued by the learned counsel for the applicant as observed in the judgment of 22nd November, 2019, that the provisions of the Act of 1971, would not apply over the property, which they were occupying more than a decade prior to 1971.

20. In that eventuality, this Court is of the considered view, that there cannot be a modification as prayed for to an admitted case, which was projected before the Division Bench.

21. Hence, the Modification Application, lacks merits and the same is accordingly rejected.

(Ramesh Chandra Khulbe, J.) 31.10.2022 **(Sharad Kumar Sharma, J.)** 31.10.2022"

96. Reverting back to the principal issue. In compliance thereto, two paper publication of wide circulation in Haldwani were made in this Writ Petition (PIL), and the Court was thereafter in receipt of the following Intervention Applications, which are detailed hereunder:-

"**Office Report.**

Most respectfully, it is submitted that in compliance of the oral directions of your goodself with regard to furnishing the details of applications pending in Writ Petition (PIL) No. 30 of 2022 titled as "Ravi Shankar Joshi v/s UOI and others, the desired information is as under :-

S. No.	List of Intervention Application No.	Name of counsel	Intervener's name	Volume	Page No.

1.	I.A.3/2022 dt 05.04.2022	Sri Sandeep Tiwari (Ad.)	Sri Sharafat Khan & Ors.	Vol-I	79-193
2.	I.A.5/2022 dt 10.05.2022	Sri Vinay Bhatt (Ad.)	Sri Murslin Ahmed & Ors.	Vol-II	194-349
3.	I.A.6/2022 dt 06.06.2022	Sri Kurban Ali (Ad.)	Ziarat Committee	Vol-II	350-377
4.	I.A.7/2022 dt 06.06.2022	Sri Kurban Ali (Ad.)	Sri Atik Shah	Vol-II	378-423
5.	I.A.8/2022 dt 06.06.2022	Sri Kurban Ali (Ad.)	Sri Rehmat Khan	Vol-III	426-473
6.	I.A.9/2022 dt 06.06.2022	Sri Ahrar Baig (Ad.)	Sri Nazakt Hussain	Vol-III	374-679
7.	I.A.10/2022 dt 09.06.2022	Sri M.K. Ray (Ad.)	Ms. Noorjahan	Vol-III	680-723
8.	I.A.11/2022 dt 10.06.2022	Sri Sanpreet Singh Ajmani (Ad.)	Sri Jubaida Begum & Ors.	Vol-IV	724-821
9.	I.A.13/2022 dt 10.06.2022	Sri Piyush Garg (Ad.)	Sri Abdul Mateen Siddiqui	Vol-IV	944-1129
10.	I.A.15/2022 dt 14.06.2022	Sri Mohammad Umar (Ad.)	Sri Aftab Alam & Ors.	Vol-IV	822-943”

97. We have reached to a stage, where in compliance of the spirit of the judgment of the Hon’ble Apex Court, that the occupants are required to be heard prior to taking any coercive action to oust them from their illegal occupancy from the railway land, we have to deliberate upon the second question, which we have formulated in the introductory paragraph of today’s judgment, i.e. **“individual rights of the applicants / interveners”**.

98. In continuation thereto, this Court has been in receipt of various Intervention Applications, the details of which, have been given in the aforesaid paragraph, and are now being dealt by this Court individually.

99. **Intervention Application No. 3 of 2022**

This Application has been preferred by as many as 11 occupants. Almost all the occupants have contended, that out of 11 occupants, the applicant Nos.1 to 7, are under

in an Appeal before the District Judge, under the provisions of the Public Premises Act of 1971, against the orders of the Prescribed Authority.

100. The fact, which has been revealed therein is, that the applicant Nos. 8 to 11 of the said Intervention Application have accepted the propriety of the orders of the Prescribed Authority, directing their eviction from the Railways land, as they have not preferred any Appeal against the said respective order of eviction.

101. In that eventuality, apart from the fact for the reasons recorded earlier, that we are of the view, that the provisions of the Public Premises Act of 1971, would not apply, but even then if remotely, if it is taken otherwise, than too, no defence is available atleast to applicant Nos. 8 to 11 of Intervention Application No. 3 of 2022, because they are not the appellants before the Superior Court, and they have already been determined as to be unauthorised occupant, which has been accepted by them.

102. Invariably, all the applicants to this Intervention Application, which has been filed by them under the affidavit of Mr. Sarafat Khan, they had come up with the case, that they are occupying the land which is in their respective possession for last over 50 years. Merely being in an uninterrupted possession for last over 50 years, as claimed, that in itself, will not mature their legal rights to continue with possession, owing to the legal bar created by the Government's Order / Office Memorandum of 17th May

1907, as well as by the provisions of Nazul Manual itself as contained under Rule 1 to be read with Rule 59 and 61.

103. The applicants have contended by filing the intervention application, along with the lease deed, which was said to have been executed in their favour in relation to the nazul land. They claimed that the lease which was thus executed in favour of one Mr. Abdul Hameed on 22nd July, 1940. It was contended, that under the strength of the lease deed of 22nd July, 1940, the principal lessee, Abdul Hameed, had further divided the property by an acclaimed oral partition, which took place between Mr. Hussain Baksh and Mr. Abdul Hameed, and as a consequence of death of Mr. Hussain Baksh, it is contended, that the land so later stood vested with Mr. Irshad Hussain.

104. This question about the respective rights claimed by the interveners under the strength of the lease deed of 22nd July, 1940, is not sustainable for the following reasons :

i) For the reasons already recorded above, that the land thus leased is not a nazul land;

ii) The said document of claimed right has been mentioned by the applicants as to be a lease, admittedly, which was not registered, as per its terms.

iii) It was in violation of the Nazul Rules itself.

vi) It was never remained after expiry of its terms.

105. The lease in all its legal textual implications, will have its implications from the lease as it has been defined under Chapter V, Section 105 of Transfer of Property Act of 1882. The relevant provisions is extracted hereunder :-

> *"105. Lease defined.—A lease of immoveable property is a transfer of a* ***right to enjoy*** *such property, made for a* ***certain time****, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*
>
> *Lessor, lessee,* ***premium and rent defined.****—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."*

106. On a simplicitor reading of the definition of the "lease", in relation to an immovable property, it is limited to a transfer of right to enjoy a property, for such specified time as expressed in the deed of lease itself. The Legislature, when in its wisdom, it has used the word **"right to enjoy",** it specifically limits the rights to enjoy the occupancy given under the strength of the terms of lease, in lieu of the rent settled to be paid, which would be termed as **premium**, it would never be a deed of transfer of title or ownership, but, Section 105 of the Transfer of Property Act, in relation to the land covered under lease itself, does not grant a title or ownership of the immovable property, which is the subject matter of lease.

107. Hence too, because of the provisions contained under Section 105 of the Transfer of Property Act, the applicants, who claim their right by lease of 22nd July, 1940, the rights, if at all is sustainable, would be limited to a right of enjoyment only, limited by the terms of deeds.

108. The dichotomy of the lease, which is invariably the basis of the claim of the applicants to the Intervention Application, as well as, to the other Intervention Applications, which would be discussed hereinafter, it becomes necessary to extract second part of the lease itself, which is extracted hereunder :-

> ***"TO HOLD*** *(which would not be a transfer of title or ownership) the said premises unto the lessee for the term of Thirty (30) years (i.e. for fixed terms) from the day of Registration (which was a mandatory condition) RENDERING THEREFOR during the said term the yearly rent (i.e. its a fixed regular amount to be paid is not transfer) of Rs. 1/8/-clear of all deductions by equal half-yearly payments on the 1st day of April and the 1st day of October in each year at the office of the President N.A.C. Haldwani or at such other place President N.A.C. may from time to time appoint in this behalf the first of such payments to be made on the day 1st day of April/ October next AND the leasee doth hereby covenant with the Governor during the said term he will pay the yearly rent hereby reserved on the days and in the manner hereinbefore appointed AND ALSO will pay and discharge all rates taxes charges and assessments of every description which are now or may at any time hereafter be assessed charged or imposed upon the said premises or the buildings to be erected thereon or the landlord or tenant in respect thereof AND ALSO will within 12 calendar months next after the date of these presents at his expense and to the satisfaction of the President N.A.C. Haldwani in a good substantial and*

> *workmanlike manner erect and complete on such parts of the said premises as are marked out on the plan hereto annexed a dwelling-house and out-buildings according to a plan and elevation to be approved by such President N.A.C. which dwelling-house and out-buildings shall be of value of the Rs. 500/- at least AND ALSO that no part of the NA.C external elevation or plan of such dwelling-house and out-buildings shall at any time be altered or varied from the original elevation or plan thereof without the written consent of such President /Board and no other building shall be erected on the said premises without the like consent.***"**

109. The lease deed, which was executed under Form-B, its language in itself, would have a contextual implication and binding too between the executors, that the premises was handed over for a fixed period specified therein, and the determination of the length of the period of occupancy, would be as provided under the terms of the lease, was subjected to a rider attached to it, that the lease would come into effect only **"from the date of registration"**. Meaning thereby, to bring the lease deed in existence, to have its legal reckoning, the condition precedent was its "registration". The applicants to the present Intervention Application, its' no one's case, ever pleaded or argued, that the aforesaid lease of 22nd July, 1940, was ever got registered by the principal lessee, in whose favour, the deed was said to have been executed.

110. In that eventuality, this Court is of the view, that in fact, no legally sustainable document of creation of right took its birth and that too in relation to an immovable property in the absence of its mandatory registration, which was a condition precedent accepted by the principal lessee for

the transfer of right of enjoyment of an immovable property, given under the term of lease. No where in the Intervention Application, there is a pleading to the said effect, that the lease of the nazul land allegedly executed on 22nd of July, 1940, was ever got registered, even by the principal lessee.

111. Another important aspect is that, on scrutiny of the lease deed, it would show, that this document, which has been filed by the applicants is in-part, because the property, which was said to have been divested to them under the said terms of the lease deed was a property, which was demarcated by the respective maps, which was appended to the said lease deed itself, which was part of the lease deed itself, where the delineated property was shown by the red colour.

112. In fact, the Intervention Application, where the lease deed has been filed, there is no such map, which was filed, which was otherwise the part of the lease deed, which has been appended which could have been facilitated to determine, upto what extent, they were given the right of enjoyment of the alleged leased property, and in that eventuality, their extent of right of enjoyment cannot be determined, though being none, by this Court, and the applicants, for the reason best known to them, would have to answer themselves, as to what was their intention of not annexing the map, which was the part of the lease deed, which could thereby have facilitated the determination of extent of rights of enjoyment created in their favour.

113. There is another important aspect, that the part of the lease deed, which has been extracted above, it was legally required to take its birth from the date of it's registration and was directed to continue for a period of 30 years. The very inception of right for determining the cut-off period of 30 years would have commenced, had the lessee got the deed registered. In that eventuality, since the very inception of right of enjoyment of property was lacking in the absence of registration, the length of right of enjoyment for 30 years cannot be determined, when the document itself was not having any legal existence in the eyes of law.

114. Be that as it may. There would be another aspect, which requires to be considered. That even let us for the time being presume, that the lease hold right was if at all created for a period of 30 years, commencing from, according to the perception of the applicants from 22nd July, 1940, but the life of the same was to continue only for the specified period of 30 years, which has admittedly expired much earlier, and it is not the case of the applicants in their Intervention Application, that they had ever applied for the renewal, as no supporting renewal deed has been placed on record.

115. The interveners have also come up with the case, that one Mr. Mohd. Arif, who was said to have been residing over the land for more than 50 years, had transferred his rights to one Mr. Sarafat Hussain, whose wife Nazma Pareen had yet again transferred the land to one Mr. Mohd. Shafiq, and thereafter, Mohd. Shafiq, is said to have sold the land to

Mr. Mohd. Arif, who transferred the land to his wife Shayda Parveen.

116. In fact, all these conveyances, which have been referred to in the Intervention Application in para 6, cannot be accepted, owing to the fact, that there are no supporting documents to substantiate the validity of the transfer, as claimed by the interveners. There is no specific date pleaded, on which, the alleged conveyance was made, and in what manner and with what conditions, and furthermore, by way of repetition, when the applicants' case is, that they were the lessee under the lease deed of 22nd July, 1940, which would fall to be within an ambit of Section 105 of the Transfer of Property Act, whether at all, any right of conveyance of the property ever vested with the applicants to the Intervention Application or even to their predecessors.

117. In the PIL, when the aspect of demarcation of land was debated upon by the parties, the Court had appointed an Advocate Commissioner, who had submitted his report on 24th November, 2014. The said report and the Joint Survey Report of demarcation, as it has been referred to in above paragraphs, which has been placed on record in Volume-26 of the PIL No. 178 of 2013, none of the applicants have ever filed any objection, either to the principal report of the Advocate Commissioner or to the Joint Inspection Report, as submitted by the joint team of Railways and the Revenue Authorities on 7th April, 2021.

118. In that eventuality, and these circumstances, in the absence of there being any objection submitted by the applicants to the two inspection reports, when the propriety of which, was not disputed by the applicants, the presumption would be, that they would be estopped from raising any contention to the contrary, that there was no demarcation made, which could have at all created any obstacle in proceeding with for taking of an action under Section 147 of the Railways Act.

119. The provisions contained under Section 147 of the Railway Act, will have precedence over general law since being a Special Statute, having a self-contained provisions of eviction and to deal with the unauthorized occupants of the railway land, which already stands established by the revenue entries and also, by Joint Inspection Report, there cannot be a borrowing of the provisions for proceeding to evict unauthorized occupants by resort to the proceedings under the general law of Public Premises Act of 1971.

120. In that view of the matter, and coupled with the decision rendered by this Court on the Modification Application, which has been made as part of this judgment, the Intervention Application preferred by Mr. Sarafat Khan, along with ten others is not sustainable.

121. There is, yet another important aspect, which too has to be considered, that the interveners to this Application even before the application itself, could have been heard or considered on its merit are said to have filed their written

statement in support of their Intervention Application. The question, would be, as to whether their written submission, in support of the Intervention Application, could at all be considered until and unless, the intervention application itself was addressed by the parties or their counsel on its merit, and until and unless, the Court itself calls upon the applicants to file the written submission, because otherwise the language of the provisions contained under Order 18 Rule 2 of the CPC, the provision which, is extracted here under :-

> *"**2. Statement and production of evidence.-** (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.*
>
> *(2) The other party shall then state his case and produce his evidence (if any) and may then address the court generally on the whole case.*
>
> *(3) The party beginning may then reply generally on the whole case.*
>
> ***(3A) Any party may address oral arguments in a case, and shall before he concludes the oral arguments, if any, submit if the Court so permit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record."***

122. The submission of the written arguments on 27th April, 2022, by the applicants, could not have been taken into consideration by us in the absence of there being a prior leave granted by the Court to the applicants to file written arguments. Thus, for the reasons assigned above, while dealing with the Intervention Application No. 3 of 2022, coupled with the totality of controversy already discussed

above, the applicants do not have any existing sustainable legal right to continue to occupy the land, of which, no title ever stood vested with them in accordance with law, which could have conferred them with a right to deal with the property, because it is a settled principle of law, that the successors in possession of the immovable property will not derive or acquire any additional right, than what their predecessors were having.

123. The respective right, which has been claimed by the interveners, apart from the present interveners, is almost similar to the other Intervention Applications, which are being dealt hereinafter.

124. It had been no one's case at any point of time from the perspective, as to what impact would be the provisions contained under Rules 59 and 61 of the Nazul Rules, will have in relation to the respective lease deeds, which were said to have been executed in relation to the nazul land prior to the enforcement of the Public Premises Act of 1971.

125. Apart from all intricacies, which has already been dealt with, this Court is of opinion, that the lease in relation to even of a nazul land, adjoining the Railway Station, cannot be said to have been validly executed in the absence of there being a strict compliance of Rules 59 and 61 of the Nazul Rules, because the Nazul Rules itself, which finds its reference in the Office Memorandum of 19th May, 1907, refers to the application of certain Rules, as provided therein.

The reference of those Rules in the Office Memorandum of 19th May, 1907, will itself make the Nazul Rules, applicable according to the case of the interveners themselves.

126. In that eventuality, the implications of Rules 59 and 61 of the Nazul Rules, cannot be eradicated to be applied in relation to the respective leases, which are subject matter of consideration in each of the Intervention Application, when neither it is a case pleaded, nor it is a case reflected from the interpretation of the lease deeds, that ever prior to its respective execution, at any point of time, Rule 59 of the Nazul Rules, which provided a restriction, that no sale or lease of a nazul property, adjoining to the Railway Station could be made without a prior consultation, sanction and permission of the railway authorities.

127. Beside it, the restraint of construction amongst such nazul land adjoining to the railway station too required a prior permission / sanction from the Railway Authorities. In none of the leases or not even a case pleaded by the interveners, it is their case, that ever the intention of Rules 59 and 61 of the Nazul Rules, was ever met with by the applicants / interveners at the stage, when the principal lease deed (though barred by law) was ever taken by them from the competent authorities of the Railways. Hence too, the lease will not give any life to the present applicants.

128. Thus, all the conveyances, the philosophy of oral partition are not legally sustainable, and admittedly when, the applicants have not controverted, to the contents of the report

of demarcation, it would be deemed, that they have accepted its propriety, which they cannot dispute as of now. Thus, the Intervention Application, being based upon a misconceived principle, cannot be read as a document which would be at all creating their rights

129. One of the aspects, while dealing with the Intervention Application, which is required to be considered, is that when as against the rejection of the Review Application, which was surprisingly preferred by the State was decided by the judgment of 10th January, 2017, when the matter was carried before the Hon'ble Apex Court in **SLP (Civil) No. 1533 – 1535 of 2017**, and when the matter thereafter was adjudicated by the Hon'ble Apex Court by the judgment of 18th January, 2017, the Hon'ble Apex Court, has left it open that any person who is aggrieved can file an appropriate application in the then pending earlier Writ Petition (PIL) No. 178 of 2013. The present Intervention Application is silent, as to whether the applicants to the present Intervention Application, had at all, moved any application in pursuance to the said judgment of the Hon'ble Apex Court, prior to the cut-off provided therein as 13th February, 2017.

130. Another important question, which the interveners have attempted to venture into to denounce their right and title over the railway land, in question, apart from the fact, that it stands negated by the inspection report and the joint demarcation made by the Revenue and Railway Authorities, and the revenues entries, which has been made as part of the

record of the present judgment itself shows, that the land did stood recorded in the name of Railways since having vested with the Railways as per the bandobasti of 1959-1960.

131. **Intervention Application No. 5 of 2022**

This Intervention Application has been preferred by as many as five applicants, is yet again almost based on an akin right. However, this intervention application would be marginally distinguishable because they have raised an objection, qua the report of the Advocate Commissioner in the present Intervention Application filed in the Writ Petition (PIL) No. 30 of 2022.

132. The question would be here, as to whether the interveners of this Application, could at all now, at this belated stage, can at all raise objection to the Advocate Commissioner Report and the Joint Inspection Report already submitted and accepted in the earlier Writ Petition (PIL), which was closed by the orders of this Court. The appropriate stage for the interveners, when they could have filed their objection, would have been at the stage when the Writ Petition (PIL) No. 178 of 2013 was pending. The closure of the earlier PIL, would rather be a closure of their opportunity to object to the Advocate Commission or Joint Commission Report of demarcation, which were already made part of judicial proceedings, as their liberty stood closed, when the PIL itself was decided on 16th March 2022.

133. The advantage, which the applicants to the present Intervention Application, are attempting to derive is from the

dismissal of Review of the State, by the judgment dated 27th January 2019. In fact, since the applicants were not the review applicants, which was preferred in the earlier PIL, they cannot under the shadow of the review preferred by the State claim any right to the contrary over the land in question.

134. The applicants have primarily concentrated for substantiating their rights on the premises, that there was no inspection and no demarcation of the land. In fact, this plea of theirs' is contrary to the earlier order passed in the PIL No. 178 of 2013 on 24th March, 2021 and 7th April, 2021, when the learned Chief Standing Counsel, was directed by the Division Bench, to place the report on record, and in compliance thereto, the demarcation report, which was placed on record was taken on record, neither the demarcation report nor the order passed by the Division Bench on 24th of March, 2021 and 7th April, 2021, was ever put to challenge by the applicants or for that matter by any one, before the Hon'ble Apex Court and thus, at this stage, they cannot be permitted to take the liberty to raise the plea by way of an objection about the effect of non demarcation, which otherwise is contrary to the records.

135. The interveners to this application have attempted to argue their Intervention Application from the perspective, that as to whether, the subsequent PIL, i.e. PIL at hand, was at all tenable. In fact, this Court is not required to venture into that aspect, particularly in the light of the fact when the earlier Division Bench had already granted the liberty to the

petitioners to file fresh Writ Petition (PIL) on the similar question, with better facts, on the aspect of unauthorized occupancy of the applicants over the land, in question, as would be apparent from the judgment of 16th March, 2022.

136. In this Intervention Application too, the contention of the applicants, that it was not a land, which belongs to the Railways, apart from the fact, that the reasons already discussed above, is a fact which is not accepted by the Court. But in this application too, the applicants have yet again had made reference to a similar nature of lease deed, which was alleged to have been executed, on the basis of its renewal, as executed in **"Form-C"** on 27th January, 1975. If paragraph **"one"** of the said renewal deed is taken into consideration, the terms of renewal were specifically remarked to be under the same terms and conditions of the principal lease deed, which was executed earlier in favor of one Mr. Rafiq Siddiqui and Mr. Siddiqui Hussain, both sons of Mr. Haji Abdullah. This renewal deed would too, have no relevance for the reason being, that as per para-1 of the said lease deed, the renewal deed itself was directed to be governed by the same terms and conditions of the principal lease and was made effective w.e.f. 9th October, 1971, the extended period for which, the renewal was made has already expired, and it was not renewed nor its a case that it was renewed. In that eventuality, the life of the said deed has also met with its legal death. Apart from it, no valid right over the leased land of the railways could have been conferred, for the reason discussed earlier while interpreting the lease deed,

while dealing with the Intervention Application No. 3 of 2022.

137. Another limb of argument of the present applicants in the present Intervention Application, has been on the basis of the alleged sale certificate dated 18th July, 2003, which they contend, that it was a freehold certificate issued under Rule 19 (16), under the Rules as framed under Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act of 1954. If this sale certificate itself is taken into consideration, which would be obviously for nazul land, where the property has been marginally defined under the Schedule of property as given therein, the precincts of which, describes the property as to be adjoining to the Railway Line, and not even this, the sale certificate in itself will not confer a right or a title, because the said sale certificate too contained a stipulation, that in relation to the land, for which, deed has been executed, the same was required to be registered, which was never got registered, nor its the case of interveners, it was ever registered.

138. In support of the aspect of registration, the learned Counsel has annexed as Annexure-12 to the Intervention Application, without annexing the registered original sale deed on record. The said sale deed, which was said to have been executed by one Mr. Damodar Das, has observed, that the right was created in his favour by virtue of the sale certificate, which was executed in favour of the seller of the property on 18th July, 1963. The deed, which the applicants are referring to, as to be a sale deed, if the said document

Annexure-12 to the Intervention Application, is considered, in fact, it is nothing but only an understanding, which was arrived at between Mr. Damodar Das, in whose favour the sale certificate was said to have been executed, who has expressed to sell the property for the consideration referred to therein, and had intended to transfer it on the basis of the registration. It is not a case of the applicants, that in pursuance to the Annexure-12 to the Intervention Application, ever sale deed was executed and registered, and further it is not the case of the present applicants, that the sales certificate, which contained a condition of its mandatory registration was ever got registered as per the provisions of the Act No. 44 of 1951.

139. Apart from it, the said document will in itself be a deed of conveyance, because it specifically makes an observation, that out of the total sale consideration of Rs.3,500/-, only Rs.500/- was transferred as an earnest money, and as per the terms of the agreement, which the applicants are reading it as to be a deed of conveyance, the balance of Rs.3,000/- was yet required to be transferred at the stage of execution of the sale deed. If this be the condition of the document, which the applicants refer it as to be a sale deed, it cannot be treated as to be a sale deed, until and unless, according to them only there is a complete transfer of consideration, and particularly once the deed refers that the balance sale consideration will be transferred at the time of registration of the deed, the said document cannot be treated as to be a deed of conveyance transferring a right, even according to their own case, because it was only an

expression to execute a sale deed in future, after fulfilment of certain preconditions given in the deed, Annexure-12 to the Intervention Application.

140. It is not the case pleaded of the interveners, that ever in pursuance to the Annexure-12 to the Intervention Application, the sale deed was ever got executed. Besides this, when the title of the seller itself was defective, it is not a case pleaded that the sale certificate was ever registered, as allegedly executed under any Act of 1954, particularly, when the original sale deed has not been placed on record, as argued in the light of Annexure-12 to the Intervention Application, which for all practical purposes, would be only an understanding to transfer in future, and would not be a transfer itself as defined under Transfer of Property Act, under its Section 5 to be read with Section 6 of the Act of 1882.

141. If the Intervention Application is considered itself, it is observed by the applicants that Mr. Damodar Das, the alleged executor of agreement of sale, (Annexure-12) to the Intervention Application, is said to have executed the deed in favour of one Smt. Shahjahan Begum on 20th August, 1963. Smt. Shahjahan Begum, admittedly has met with the sad demise. Thereafter, she was succeeded by two sons, Mr. Mohd. Ilyas and Mr. Mohd. Hussain. Unfortunately, the divesting of rights, if any, by succession in favour of the successors of late Smt. Shahjahan Hussain, in who’s favour the agreement of sale Annexure-12 was executed, are not the interveners to the present application.

142. Another important aspect, which has to be referred is that the applicants would have no right over the property, in question, because the manner in which, they are interpreting (Annexure-15) to their Intervention Application, as to be a copy of the record of the Nazul Department of Nagar Nigam Haldwani, in fact, is a misnomer and a wrongful interpretation to the said document for an ulterior motive, because if the title of Annexure-15, which the applicants claim to be a record of rights in the nazul register is considered, its bad because the said document itself is titled as, **"application for lease of a plot of nazul land in Haldwani notified area"**.

143. In that eventuality, this document cannot be said to be a record of rights of nazul land in the Nagar Nigam, but rather an application only for a grant of future lease.

144. Lastly, the applicants have submitted, that they had a right over the property on the basis of the revenues, and other taxes, which they have been depositing with the Municipal Board, as well as the Revenue Department, in relation to the house tax and water taxes and the mutation order, in itself, is a settled law, that merely recording of a name of the person in the revenue records or payment of revenues by the occupants of the land, does not confer title. This has what has been consistently settled by the judgment of the Hon'ble Apex Court, as reported in **1997 (1) ACJ 435, Sankalchan Jay Chand Bhai Patel and others Vs.**

Vithalbhai Jay Chand Bhai Patel and others. Para 7 of the said judgment is extracted hereunder :-

> *"7.It is settled law that mutation entries are only to enable the State to collect revenues from the persons in possession and enjoyment of the property and that the right, title and interest as to the property should be established de hors the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein. Therefore, the view taken by the learned single Judge, with due respect, is not correct in law. The civil suit is clearly maintainable. The High Court rightly granted injunction restraining the appellants from alienating the land. Even otherwise, section 52 of the Transfer of property Act lis pendence always stands in the way of purchaser of the land subject to the result in revision."*

145. In yet another judgment as reported in **1998 (1) ACJ 43, Balwant Singh and another Vs. Daulat Singh (Dead) by Lrs. and others,** the Hon'ble Apex Court has held in para 21 and 27 as under :-

> *"21. We have considered the rival submissions and we are of the view that Mr. Sanyal is right in his contention that the courts were not correct in assuming that as a result of mutation no. 1311 dated 19.7.54, Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In Smt. Sawarni's case, Pattanaik J., speaking for the Bench has clearly held as follows:-*
>
>> *"7....Mutation of a property in the revenue record does not create or extinguish title nor has it nay presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This*

erroneous conclusion has vitiated the entire judgment."

27. In the circumstance, we are of the opinion that the trial court erred in assuming that by Mutation No. 1311, the widow divested herself of the title to the suit property by treating the mutation as gift and conveying title. Further it has not applied uniform test in appreciating the mutation entries. In one place, the trial court has accepted mutation entries in toto even for conveying title but in the other place, the trial court was no prepared to accept the mutation entries by expressing some doubt about it. It is to be state that this court in Gurbaksh Singh v. Nikka Singh (1963 Supp. (1) SCR 55) has held that entries in mutation must be taken as correct unless the contrary is established. Here the trial court has shifted the burden on the appellants to prove the entries as correct. The trial court has failed to apply the same yardstick that it has applied to Mutation No. 1311 to Mutation No. 1348. Assuming for the sake of arguments, that Mutation No. 1348 was on the basis of misunderstanding of the judgment in the earlier proceedings, that having been allowed to remain unaltered without challenge, cannot be brushed aside as worth nothing. Anybody affected by such entries should have challenged the same as provide under the law. In the absence of that, the entries cannot be ignored. Be that as it may, we have already noticed that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. That being the position. Mutation No. 1311 cannot be construed as conveying title in favour of Balwant Singh and Kartar Singh or extinguishing the title of Durga Devi in the suit property. Consequently, the title to the suit property always vested with the widow notwithstanding the Mutation No. 1311. Viewed in this manner, the decision in the earlier proceedings namely, decree in Suit No. 194/55 even assuming operates as res judicata, will not be of any avail to the contesting respondents, (plaintiffs) in the present suit because the reliefs sought in the prior proceeding was for a simple declaration that the `mutation gift' of 1954 would not affect the reversionary rights of reversioners. As noticed already,

> *mutation entries will not convey or extinguish title in the property. Therefore, under Mutation No. 1311 neither Balwant Singh and Kartar Singh acquired title nor Durga Devi's title in the property got extinguished. The earlier court proceedings did not and could not convey title in favour of reversioner, as the relief sought was for a simple declaration as mentioned above. If no title as such was passed on under the alleged `mutation gift', the limited right of the widow in the property would get enlarged on the coming into force of the Hindu Succession Act, 1956."*

146. That merely recording of name in the revenue record is not a document of title, but rather it would be read only for the purposes, as to who is the occupant, and who would be liable to pay revenues to the State.

147. The contention of the applicants in the present Intervention Application is in relation to the applicant No. 3, who claims that his grandmother Smt. Abida, was a purchaser from one Mr. Sardar Hukam Singh, by virtue of the sale deed dated 3rd May, 1960. The devolvement of right to the predecessors seller of Smt. Abida, was flowing from the right, which was given to Mr. Sardar Harnam Singh by the Custodian Department of Government of India, by the sale deed of 12th December, 1959.

148. If Annexure-17, which is the said document placed on record is taken into consideration, i.e. deed of 3rd May, 1960, in fact, it is a simpliciter narration of a fact not on a stamp paper nor being a registered document, which cannot be read in evidence for the purposes of treating it as to be a document of title.

149. Once again the claim of right from Mr. Sardar Harnam Singh, is based upon the alleged proceedings of Case No. 83 of 2017, it was yet again a case for the purposes of getting the name recorded in the municipal records, which will not thereafter confer a right.

150. **Intervention Application No. 6 of 2022**

This Application has been filed by Ziarat Committee, through its President Mr. Aatik Shah, wherein, he has submitted to claim his rights on the basis of being an Office bearer of the alleged Ziarat Committee. The said application would be of no relevance, because as per the provisions contained under Societies of Registration Act, where the applicant claims his status as to be that of the Society, in relation to an immovable property, the provisions contained under Section 6 of the Societies Registration Act, would come into play, which is extracted hereunder :-

> *"6. **Suits by and against societies**.—Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:*
>
> *Provided that it shall be competent for any person having a claim, or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant."*

151. Section 6 of the Societies Registration Act of 1860, specifically provides and rather makes it mandatory, that a judicial proceeding before a Court claiming a right over the immovable property by a Society or against it, can only be contested subject to the conditions, that the Society itself was a registered body as per provisions of Societies Registration Act of 1860. The Intervention Application No. 6 of 2022, as filed by Ziarat Committee, they have contended to claim that in the capacity of being a Society, represented through its alleged President, Mr Aatik Shah, who has referred, that he was managing the affairs of a graveyard vested with the Society. On this ground, as to whether the Society, at all, had any vested right to manage the affairs of the graveyard, which was contended by the applicant of the Ziarat Committee, to be existing on Shreni 15 (3) Land, as recorded in the revenue records, could have only been legally agitated by him subject to the conditions, that the Committee itself was a registered body and hence in the absence of any registration, their Intervention Application, qua their rights claimed over the land lying in Khata No. 729, on which, they contend that there is a graveyard, and they contend that it is not a land of railways, and the same cannot be ventured by this Court on its own merit, because in the absence of there being any pleading, that the Ziarat Committee is a registered body, it will not have a legal status and would not be a legal entity and a juristic person.

152. Apart from it, the said Committee has come up with the case, that it was a Muslim graveyard, which was being managed on a nazul land, and that they have been in

possession over the said land for last more than 50 years. In support of their contention, they have made reference to the entries made in **Pa Ka 11.** If the entries therein are even taken into consideration, in fact, Pa Ka 11 itself, is a Mushtarka entry, which is recorded in every Partali year, as per the para A-82-A of the Nazul Manual, and Paaka 11, itself cannot be treated to be a document of title and that too, when the document itself runs contrary to the Intervention Application, where even Paaka 11, on which, the said reliance has been placed by the counsel for the interveners, records their name as to be in Khewat No.3, the ownership of which, has been shown to be of Railways.

153. This in itself explicitly shows, that when Pa Ka 11 entry, apart from being a Partali entry, is not relevant for the purposes to confer a title. But their own document shows, that the two khasra Nos. 738 and 739, on which, the society was claiming its right, though without any authority of law, was a land which belongs to the railways, even as per their own records. The intervener society, apart from placing reliance on Paaka 11, have contended that the railways has got no jurisdiction over graveyard being a public land, lying in Shreni 15 (iii), as per Chapter-7 para 124 of the Land Record Manual, their claim of right, the land to be a graveyard, and hence, they have got their right to continue their occupancy. In the absence of there being any evidence of divesting of the land to the society in accordance with law, they would have no right over the land, which otherwise, in accordance with their own document, is a railways land.

154. **Intervention Application No. 7 of 2022**

This Application has been preferred by Mr. Aatik Shah, in his individual capacity, who had earlier filed an Intervention Application No. 6 of 2022, though in the capacity of being a President of the Ziarat Committee. Yet again, this application which has been filed by Mr. Aatik Shah, claiming his right over the property allegedly occupied by him, is rather based upon a fact, that the house is existing on khasra No. 1454, Line No. 17, Banbhulpura. He claims his right by way of devolvement of right to him by way of succession.

155. This right, which was claimed, was yet again, on the basis of the certificate of sale No. 82 of 1961, which was said to be issued under Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Even this sale certificate, if it is considered, in the East it records to be **"a Utpadan Land and Railway Land in the East"**. If said challan of 7th February, 1961, is taken into consideration, it is with a rider, that the sale certificate in respect of the property described therein, lying in khasra No. 1454 / NV, which was said to have been purchased in auction, the said certificate would have got its legal and evidentiary existence subject to the conditions, as provided therein, that the said sale certificate was forwarded to the Registrar for its registration, and with the direction to get it registered. Its not the case of the applicant that it was ever got registered.

156. It is not the case of the applicant, that in pursuance to the said sale certificate of 7th February, 1961, ever the sale deed was ever got registered except for the fact, that they have placed on record the so-called receipt issued in their favour, allegedly depositing the amount for the purposes of registration of the sale deed, its only an offer for sale not the sale itself, as directed by the sale certificate of 7th February, 1961. We are of the view that, first of all, the condition precedent for conferment of right by sale certificate, would have been subject to the condition of consequential registration of the deed. Merely because of deposit of the amount, as it has been portrayed by the receipt book No. 24781, it does not show, that it ever stood correlated with the actual execution of the deed, and rather if that receipt is read in its precision, it is only an expression of deposit of earnest money.

157. In the absence of the principal deed having been registered or even placed on record, in pursuance to the certificate of sale dated 7th February, 1961, the applicant cannot be said to be the owner of the property, until and unless, the deed was conveyed and same was placed on record for its consideration.

158. Another aspect, which requires deliberation is, at this stage of the present PIL, is that the applicant has tried to make reference to the counter affidavit, which was filed by the State in PIL No. 178 of 2013. This Court is of the view, that the counter affidavit filed in the PIL No. 178 of 2013, since the Writ Petition (PIL) No. 178 of 2013, has been

closed without its adjudication on merits, leaving it open to the petitioner to file a fresh Writ Petition, the part of the pleading of the counter affidavit filed by the State in the said PIL cannot be extracted to be relied in the present case, as it would be a response to the pleadings of that Writ Petition only.

159. A very peculiar feature, which is essentially required to be referred is, that the applicant to the Intervention Application No. 7 of 2022, in para 14 to para 26, had claimed his right as to be a owner of the property, which was the subject matter of the sale certificate, as already discussed above, but no reliance could be placed on the contents of the para 14 to para 26, which is merely a factual narration of right by the applicants when the aforesaid paragraph has been sworn in the affidavit by the applicant on the basis of **"legal advice"**. Legal advice cannot be a substitute to a right. An individual claimed right over the immovable property, which could have only be vested by a deed of title, which the applicant has failed to establish and merely the interpretation given to the sale certificate and the length of occupancy will not exclusively grant them an indefeasible right to continue to occupy the premise, over which they don't have any title as such.

160. **<u>Intervention Application No. 8 of 2022</u>**

This Intervention Application has been preferred by one of the applicant, Mr. Rehmat Khan. He contends that the land, over which, he claims his possessory title was purchased by his predecessor owner Lachman Das, in an

auction proceedings made by the Government of India, as back as on 14th September, 1956. In fact, if the said document is taken into consideration, the possession given to Mr. Lachman Das, in the auction, is yet again with the condition, that there is a likelihood of delay in finalizing the auction and the right could have only been created, once it is decided to transfer the possession over the land. Further, in its Clause 3, it contained certain restrictions, which is extracted hereunder:-

> *"3. As this transfer is made on a provisional basis, sale, mortgage or lease of the property will not be permissible until full and final rights of ownership are transferred to you and a certificate of sale is issued. That will be done when your / your associate's compensation cases have been finally scrutinized."*

161. It has been specifically observed, that the transfer made to his predecessor is on provisional basis, and future right of sale, mortgage or lease of the property would not be permissible unless the final right is created of ownership and are transferred to the auction purchaser, Mr. Lachman Dass. Meaning thereby, the memorandum executed on 1st October, 1956, was only a tentative proposal and was not a final creation of right in favour of Lachman Dass, over an immovable property.

162. Another important aspect, which is to considered and could be culled out from the said document, is that if clause 2 (a) and clause 2 (b) (iii) are taken into consideration, those clauses have been struck-off in the original documents, by the Officer concerned, who has executed the

memorandum. In fact, those clauses itself created a restraint, that the property is unoccupied by Lachman Dass, and he was yet required to take possession. Meaning thereby, by that document, Mr Lachman Dass, was never placed in possession.

163. Further in the Intervention Application, it is the case of the applicant, that Lachman Dass, whose possessory right was only tentative in nature, is said to have by the deed of 14th September, 1956, sold the property to one Mr. Hukum Khan in 1966, by the sale deed, which is claimed to have been executed on 9th February, 1966. But however, if the said document, which has been placed by the applicant on record, it shows that since the seller was not the recorded owner nor was in possession. The relevant excerpts of the said document is extracted hereunder :-

> "लाईन नम्बर 17 में फूंस कच्चा मकान नम्ब री 9/58 महदूदा जैल मेरे नाम कागजात सरकारी में दर्ज है मैं उपरोक्त मकान का विलाशिरकन **(गैर मालिक काबिज देखील हूॅ** जो इस वन तक हर किस्म बार से बरी पाक साफ है मुझे उपरोक्त जायदाद को फरोख्त करने का हक है लिहाजा मैं मुकिर वाके वनभूलपुरा हल्द्वानी लाइन नम्बर 17 के अपने हिस्से व कब्जे के अपने नाम दर्ज शुदा अपने एक किता मकान फूस छाया नम्बरी 9/50."

164. So far as the present applicant is concerned, he contends to claim that he had purchased the property from one Mr. Hukum Khan by deed of 9th of February, 1966, but under law, he could not derived a better right by the sale deed of 1966, than what his seller was possessing from his predecessor / owner from Mr. Laxman Dass, at the time of alleged sale to the intervener.

165. Another distinguishable feature, which specifically required reference by us, while considering the present Intervention Application, filed by Mr. Rehmat Khan, is that he has contended in his affidavit, filed along with the Intervention Application, that the assessment committee of the Municipality vide its Resolution No. 18 dated 18th April, 1976, had accepted the transfer of the land, which claimed to have made in his favour by the sale deed of 9th February, 1966. But, this Court fails to understand as to when the applicant has claimed to have purchased the property from Mr. Hukum Khan on 9th February, 1966, then why the resolution of Nagar Palika, being Resolution No. 18 dated 18th April, 1976, was passed for recording of the name of the present applicant in the municipal records, then how could there be a permission of construction in favour of the applicant given by the Nagar Nigam, allegedly claimed to be of 25th February, 1969, as by that the intervener was not recorded, i.e. even prior to his name being recorded under the alleged sale deed of 9th February, 1966. Thus the entire theory of succession of rights from date of the execution of the sale deed till the recording of the name by the resolution of 18th April 1976 is belied from the records itself, and does not repose trust.

166. The present applicant too in a similar manner as that of the earlier applicants has pleaded that the Zonal Engineer, when he had issued notices, has not considered the relevant document pertaining to title, which he has claimed on the basis of the sale deed of 9th February, 1966.

167. At the risk of repetition, we are constrained to observe, that in fact, no ownership right was ever validlty transferred, because it was only a possessory right, which was given and that too subject to satisfying the condition, as it was laid down in the auction proceeding of 14th September, 1956, with regard to the implications of clause 2 (a) & 2 (b) (iii) of the said document of 14th September, 1956, which was never proved to have been satisfied at any point of time thereafter.

168. This Court, at this stage is not dealing with the argument raised by the applicant in para 21 of the Intervention Application, pertaining to the theory of demarcation as the said aspect has quite elaborately been discussed, while dealing with the Intervention Application No. 3 of 2022, as well as in the initial body of the judgment in the light of the orders passed by the Division Bench on 24th March, 2021 and 7th April, 2021.

169. **Intervention Application No. 9 of 2022**

This Application has been preferred by as many as 17 applicants, raising various contentions with regard to their right of possession over the property, which they claimed to have been respectively occupied by them, the same is not required to be ventured into by us for the reason being, that the learned counsel appearing on their behalf, had withdrawn the application, as not pressed, as it has been recorded in the order of 1st November, 2022, which was passed by us.

170. **<u>Intervention Application No. 10 of 2022</u>**

This Application has been preferred by Mrs. Noor Jahan, which happens to be peculiar in its own nature. When the applicant herself has come up with the case, that no writ of mandamus by way of PIL would lie for seeking an eviction of unauthorized occupants from the railway land, particularly when, the Hon'ble Apex Court in SLP (C) Diary No. 19714 of 2021, vide its ordered dated 6th December, 2021, had issued direction to the respondent No. 2, to invoke the provisions contained under Section 147 of the Railways Act, it would automatically have an effect of eradication of the applicability of Public Premises Act of 1971.

171. In that eventuality, the applicant had reckoned that the proceedings under Section 147 of the Railways Act, which could have been taken against her for her alleged occupancy over the alleged land, which she claims to have been occupied by her without a valid title being vested to her, and as already discussed above, since Section 147 being a provision under a Special Act, it will have precedence for resorting to the process of eviction of unauthorized occupants from the land of the railways, over and above the general law governing the field.

172. The applicant herein, has once again, is to be dealt with almost under the similar set of facts and circumstances, and the reasons, which this Court has already dealt with while deciding Intervention Application No. 3 of 2022, with regard to the implication of Form-B, i.e. lease of nazul land,

particularly the stipulation related to the period, for which, it was executed, the nature of possession, which was given thereunder and the effect of its non registration.

173. Hence, for the purposes of brevity, the contention for the aforesaid document of leases in this case, which happens to be of 7th December, 1937, is not being reiterated because the principal genesis of the same can be derived from the observations which has already made above, while dealing with the above effect of lease as the pari materia provisions contained in this lease deed happens to be similar.

174. One peculiar aspect, which requires an observation is that, when the alleged lease of 7th December, 1937, was executed, and the occupancy right was given, which was subject to the registration of a document for a specified period, apart from the fact, that in the absence of registration, the deed cannot be read as a document, which would be creating a right, but what is required to be added is that the said lease deed reserves the rights of the executor, i.e. lessor, a right of recovery and re-entry over the land, subject to the condition of payment of compensation, if any, claimed by the lessee. These conditions itself in the lease deed, where the right of enjoyment has been given with the right reserved to lessor to reoccupy the land, subject to the payment of compensation will not be creating an absolute right or title and ownership for the occupants in relation to the property in question.

175. Apart from it, when the proceedings was held against the present applicants under the Public Premises Act of 1971, which was decided on 20th March, 2021 by the Estate officer observing thereof;

i.. That in the proceedings under the Public Premises Act, there has been no evidence of ownership, which was brought by the applicants on record.

ii. The lease allegedly executed on 7th December 1937, was with its restricted rights, was never renewed.

iii. That the report of encroachment was given by the SSE-W-KGM, thereof, that the applicants were unauthorized occupants over the land in question.

176. One of the most important and distinguishable features in this particular Intervention Application, is to the effect that in para 13 of the Intervention Application, the applicant admits the fact, that the Joint Inspection Team of the Railways Authority and the Revenue Authority, did held door to door survey and had conducted an inspection w.e.f. 22nd March, 2017 to 4th April, 2017, in relation to which, the report was also submitted before this Court in compliance of the earlier order passed by the Division Bench, whereby, the report of 17th April, 2021, was placed on record holding thereof, that the demarcation of the land did take place, and which is a fact admitted by the present applicant. Hence, the said aspect of non demarcation is not required to be dealt with in the present Intervention Application, which could be a fact, which could be read for other applications too. Hence, the Intervention Application lacks merit and deserves to be dismissed.

177. **Intervention Application No. 11 of 2022**

This Application has been preferred by as many as three applicants, who have claimed their rights over the land occupied by them on the basis of the respective lease deeds, which have been appended thereto as Annexure-6.

178. It needs no reiteration of fact, for the purposes of scrutinizing the propriety of lease, as it has already been dealt with by this Court, while dealing with the **Intervention Application No. 3 of 2022**, where this Court has already dealt with the restrictions and limitations of the leases, pertaining to the leases of nazul land, in the context of the provisions contained under Rules 59 and 61 of the Nazul Rules, to be read with Section 105 of the Transfer of Property Act, and with regard to its effect of its non registration, which was a condition precedent as per the lease deed itself, which was claimed by the occupants to be a document creating their right, and particularly, in the context, when the said document of lease itself was protecting the rights of the lessor of re-entry over the land by the lessor, as and when in future, the land, which was thus leased, was required for the purposes of the State or for the purposes of public at large.

179. What is important herein is, that when as against the order rendered by the Division Bench on 9th November, 2016, in PIL No. 178 of 2013, which was also preferred by Ravi Shankar Joshi, which was later on decided by the Hon'ble Apex Court, leaving it open for the applicants, who are likely to be affected, to file an application. It is not the

case of the applicant, that they have ever preferred any application before the Division Bench, in pursuance to which, their claim could have been considered. If the present Intervention Application is taken into consideration, in this application too, the interveners have only confined their contention, without a pleading to the effect, that they have not pleaded in the proceedings under Section 4 of the Public Premises Act, that the leases allegedly claimed by them, to have created their right, was ever in accordance with the then existing policy of the State. Merely, because of the fact that the State had issued various Government Orders for conversion of the freehold rights, that in itself, the conversion would be bad, particularly when, even if their claim of the land as to be a nazul land, is taken into consideration, it would be in violation of the provisions contained under the Nazul Manual and the Rules framed thereunder, as none of the activities of the execution of the so-called lease for 30 years on 9th August, 1940, would be sustainable in the absence of there being a prior sanction from the Railway Administration, as contemplated under Nazul Rules 59 and 61.

180. Besides this, the life of the lease, as executed on 9th August, 1940, was only 30 years, which has already expired and thus, in the absence of there being any renewal after 1970, and even that being not the case in the Intervention Application, the right reserved of the lessor to enter the land under the lease of 9th August, 1940, would be revived back.

181. So far as the reference made by the applicants to the judgment reported in **(1982) 2 SCC 134, Government of Andhra Pradesh Vs. Thummal Krishna Rao and another**, it will not have any effect, because the management and the regulation of the lease land, which is adjoining to the Railway Station, since being a State subject and governed by the various policies under the Nazul Rules, the ratio of the said judgment will not be a ratio, which could be made applicable *in rem*, without considering the terms and conditions and the restrictions of the right created by the lease deed itself.

182. The applicants have come forward with a case in their Intervention Application, that the house standing on plot No. 383 since 2013, and the same since being a lease executed in favour of their forefathers, though without giving a specific reference to the date of creation of the lease. In the absence of there being any specific date of execution of lease given in the Intervention Application, and owing to the cessation of period of its execution of lease, no right will subsist in the eyes of law in favour of the applicants.

183. The interveners to the present intervention application have given a historical backdrop, which runs contrary to their own claim, as pleaded in their Intervention Application, where they have contended, that the railway lines, which was laid down in the areas of Haldwani and adjoining areas to it, it was laid down by a private Company named as Rohailkhand and Kumaon Railway Company, as constituted on 6th October, 1882. The applicants have come

up with the case, that the aforesaid railway line, which was laid down by the Private Company in 1884, was ultimately transferred to the Government of India in 1943, by Notification issued on 1st January, to the said effect.

184. The contention of the applicants for raising their claim in relation to plot No. 383, have alleged that it was never acquired for the railway purposes since 1943, is contrary to their own pleadings, because in 1913 map, the reference of which, has been made, it would relate back to the year 1321 fasli, where as per the revenue records, it was a land, which was adjoining to the railway property, because it describes the precincts of the same, that on the East, there lies a railway line and then a forest.

185. They have contended in their pleadings that in Khewat No.3, the railway line was shown to be existing on plot No.129, which was later on renumbered as plot No. 684, and it would not be a plot, on which, their house is existing, i.e. as claimed by them in plot No. 384. But they do not deny the fact, that in the Khewat No.3 and the registered copy of Khewat itself shows, that the plot No. 683 and the adjoining land of an area of 8.461 hectare is a railway land, which has been recorded in Khatoni of 1367 fasli.

186. A very peculiar case, which has been developed by the applicants to this Intervention Application, that owing to the flood in river Gola, which had chanced as back as in 1950, the land was washed away, due to which, the railway line was diverted and the diversion has been shown in the

revenue map of 1959- 1960, but what they have questioned, by virtue of Intervention Application, without filing any independent claim, that since the land, on which, the railway line was existing was never diverted from the railways, they contended that their claim based upon the lease of 1940, would still continue to operate, but they have not been able to substantiate the said contention by any document on record, as to how, the land could be said to be a nazul land, on which, the lease could have been granted in contravention to the provisions contained under the Nazul Manual.

187. The applicants to the Intervention Application No. 11 of 2022, had heavily relied upon an application for lease of nazul in Haldwani land, which finds place in the Intervention Application, as filed by them on 10th January, 2022. It will not have any effect, particularly when, there couldn't have been any legal nazul lease, as per law already discussed above.

188. **Intervention Application No. 13 of 2022**

This Application has been preferred by one Mr. Abdul Mateen Siddiqui, primarily he has objected the present PIL from the perspective, that the present PIL would not be maintainable, as the issue, which was being sought to be raised in the present PIL, it already stood concluded in the previous round of litigation in a decision in the PIL, which would be treated as to be a judgment *in rem*.

189. He further submits, that there had been another earlier Writ Petition, being **Writ Petition (M/B) No.1619 of**

2007, High Court Bar Association of Uttaranchal Vs. Union of India and others. Its institution and decision taken on it, as back as 30th April, 2007, would rather create a bar in filing the subsequent PIL. This argument of the learned counsel for the applicant is not acceptable by us, for the reason being, that according to his own Intervention Application, particularly, the pleadings raised in para 4, the said Writ Petition, it was on the subject prayed for, for introducing new trains from Kathgodam Railway Station to different other destinations. They contended that during the course of the said Writ Petition, since the railway has expressed its limitation, that since the railway land has been encroached upon, there would not be a possibility of expansion of the railway facilities as claimed in the said Writ Petition.

190. He contends, that in the said Writ Petition, since there was a report called upon by the Court from the SSP on 26th March, 2007, to get the encroachment removed from the railway land within a period of one month, in compliance to which, it was alleged that about 24,000 square meters of land has been vacated, and handed over to the railways. That vacation of land and handing over to the railways, would be confined to the compliance of the order dated 26th March, 2007, which has to be read in context of the principal subject of the Writ Petition No. 1619 or 2007, which was a claim raised for facilitating of establishment of providing new train facilities to the public at large, for different places.

191. A reference of encroachment in the said Writ Petition has got nothing to do with regard to the act of encroachment, which has been complained of in the present PIL, and so the eviction made by the District Magistrate from 2400 square meters of land, will not meet the objective of the relief sought in the present PIL for seeking an eviction of the unauthorized occupant on the railway land and the said closure of the Writ Petition by the judgment of 30th April, 2007, since it was standing on different pedestal altogether, the claim of the present applicant, that the PIL would not be maintainable, is absolutely not sustainable rather it's a malicious intent to confuse the Court, since being based upon a different question altogether.

192. The applicant has further made reference to the PIL No. 178 of 2013, and the order, which has been passed on it, as well as on Review Application, which was preferred by the State. This Court is not required to deal with the aforesaid references, because subsequently owing to the subsequent judgment, which was rendered by the Hon'ble Apex Court 10th January, 2017, where the challenge was given to the rejection of Review Application by the State, the Hon'ble Apex Court has rather left it open, that all the persons, who are likely to be affected, may file an appropriate application before the High Court. The said issue qua the review also stood closed, with the closure of the earlier proceedings. Apart from it, principle of res judicate will not apply over proceedings of PIL, which is for issue of public at large and not a dispute for enforcing personal rights.

193. Those applications were filed and they were considered by the Division Bench, and was ultimately decided by the Division Bench of this Court by leaving it open for the petitioner with the liberty to file a subsequent PIL raising all contentions, which had already been a subject matter of PIL No. 178 of 2013.

194. In that eventuality, the argument extended by the learned counsel for the applicants, about the sustainability of the PIL, on the ground that since the issue already remained a subject matter in PIL No. 178 of 2013, which was ultimately decided by the Division Bench by the judgment of 22nd November, 2019, it will not create a bar to file a present PIL, particularly when, the said judgment of 22th November, 2019, was not put to challenge. The relevant observation made by the Division Bench, while giving liberty to the petitioner to file a fresh, is extracted hereunder :-

> *"12. The order, recall of which is sought, is dated 09.11.2016 and was passed more than three years ago. Several subsequent events have taken place. Instead of recalling the earlier order, restoring the Writ Petition to file, and permitting the petitioner to file additional affidavits, we consider it appropriate, instead, to grant the petitioner liberty to file a Writ Petition afresh raising all such contentions as were raised in the earlier Writ Petition, and which were not dealt with in the order under review, besides events subsequent thereto till date."*

195. Another limb of argument of the learned counsel for the applicant is, that after the decision of the Division Bench dated 22nd November, 2019, leaving it open for the

petitioner to file a fresh Writ Petition and simultaneously proceeding to decide the applications, which were filed in pursuance to the judgment of the Hon'ble Apex Court, the argument extended by the learned counsel for the applicant, that the Court became *functus officio,* and the Court could not have entertained the application thereafter is not sustainable to be accepted by the Court, for the reason being, that it is not the case of the applicant that at any stage, that the liberty granted on 22nd November, 2019, and ultimately on 16th March, 2022, was ever put to challenge by the applicant at any stage of the proceedings.

196. The argument of the applicant, as pleaded in para 16 to the effect, that the present PIL would be barred by *res judicata*, this Court feels it apt to observe, that in the PIL, which is for the relief and an issue for the benefit of the public at large, the principles of *res judicata* would not be applicable, because of the changed circumstances and facts, and also more particularly because of the liberty granted by the Court to file a fresh Writ Petition by the judgment of 22nd November, 2019, as well as that of 16th March, 2022. The present applicant for the reason best known to him and his counsel, has deliberately not referred to the order of 16th March, 2022, granting liberty to file a fresh PIL, for the reason best known to him.

197. Hence owing to the two orders of 22nd November, 2019 and 16th March, 2022, the present PIL would not be barred by principles of res judicata, which will not be applicable over the PIL proceedings.

198. The learned counsel for the applicant had argued the matter from the perspective that the only proceedings, which could be sustainable, as observed by the Division Bench, would be under the Public Premises Act of 1971. This aspect, since was not dealt with by the earlier judgment of Division Benches, and coupled with the fact, that since this observation made was *per incuriam* and contrary to the judgment as reported in **(2014) 4 SCC 657, Suhas H. Pophale Vs. Oriental Insurance Company Limited and its Estate Officer** (as discussed earlier).

199. In that eventuality, where the Hon'ble Apex Court has already provided, that the provisions of the Public Premises Act of 1971, would not be applicable to the said construction, which has been raised prior to the enforcement of the Act itself, as claimed by the interveners, the reference made to the judgment of 16th March, 2022, will not apply, and particularly when, if the aforesaid orders are taken into consideration, from two perspectives, that it was the own case of the applicant, that Public Premises Act too is not applicable, when particularly, it was their own case, that the State had earlier drawn the proceedings for eviction, which was later on withdrawn, and particularly, because of the fact, that the judgment of 2014, was not considered by the Division Bench, the liberty granted for initiation of the proceedings under the Public Premises Act, would be *per incuriam*, and that too in the light of the judgment rendered by us in **MCC No. 14477 of 2022 in Writ Petition (PIL) No. 178 of 2013.**

200. The learned counsel for the applicant to the instant Intervention Application does admit the fact, that subsequent to the orders passed in the PIL, the notices were issued to as many as 4365 occupants, including the petitioner, but yet again, his argument is confined to, that there was no demarcation, and since no limits were fixed with regard to the land lying in Line Nos.17 and 18, it cannot be concluded that the land belonged to the railways, because the applicant has claimed that he has got the land in Line No.17, khasra Nos. 729 and 730.

201. This tenacity of argument is yet again not acceptable by us, in view of the observation already made in the light of the orders passed by Division Bench and the placement of the Joint demarcation report on record, which has already been referred to, which is not hereby refuted by the applicant.

202. Few aspects, which is necessarily required to be added while answering to the Intervention Application, that no document whatsoever has been filed by the present applicant to substantiate his possession or to show that he is in recorded possession over the land, as per the revenue records. Thus, it is not clear from the pleadings, in which, status the applicant claims his alleged possession over the property lying in Line No.17, Khasra Nos. 729 and 730. Merely because of the fact, that it is continuation of the contention of the applicant, that several buildings are standing in and around the adjoining land, that in itself, will

not suffice the purpose to draw an inference, that the title of the land was validly vested with the applicant, because the admitted nomenclature of the property itself as to be Line Nos. 17 and 18, shows that it was land, which was vested with the railways vide its notification of Government of India made in 1959, and as recorded in the revenue records, which has already been placed on record.

203. Another apparent attempt, which has been made, without its sustainability as per the document to the effect, that the railway land of the Halwani Railway Station is not a straight line, rather it is curved, could not be a subject matter in order to denounce the claim of eviction of unauthorized occupants in the light of the fact, that the railway track and the abutting land adjoining the railways, as it has been identified by the demarcation report belongs to the railways, coupled with the fact, that the applicant has not filed any document nor has pleaded as to on what basis, he has got a title over the property allegedly claimed by him to be on khasra Nos. 729 and 730. It cannot be accepted by this Court. Hence, the claim is not sustainable and it cannot be accepted.

204. The applicant in order to confuse the issue further has made reference to Suit No. 59 of 1985, which was filed by one Moti Ram, for the grant of decree of permanent prohibitory injunction, against the State and Nagar Palika. The institution of the said Suit for grant of a decree of permanent injunction, in fact, has got no co-relation with the pleadings raised in the Intervention Application, because it was a Suit in persona by Mr. Moti Ram, as against the State

and that too, in relation to a land, which was claimed by the State to be lying in khasra No. 749. Thus the degree rendered on 8th September, 1995, as placed on record with the Intervention Application, as an Annexure-12, is a decree *in persona* and not a decree *in rem*, as applicant was not the party to the said Suit, the decree will not bind him.

205. In that eventuality, the fraction number of khasra No. 749-A, as alleged in the Suit, it cannot be treated as to bekhasra No. 749, as to be its fraction number. Apart from it, since the applicant not being a party to the said Suit, he cannot claim any benefit out of the said decree of 8th September, 1995, because the decree would be binding *inter se* between the parties and that too, more importantly, when in the said Suit, which was decided on 8th September, 1995, which was exclusively between Mr. Moti Ram and the State, where railways was not a party, and hence, it will have no bearing over the issue, in question. This plea of the learned counsel for the applicant has also to be considered from the perspective that, it was not an interpleader suit.

206. Apart from it, the applicant has not pleaded, the fact, that as against the judgment and decree of 8th September, 1995, whether any Appeal was filed, and if filed, what were the consequences to it. Hence, this vague assertion trying to be drawn from the effect of the Suit instituted by one Moti Ram, for grant of decree of permanent prohibitory injunction, the applicant cannot derive any capital out of it, as he has claimed his possession on Khasra Nos.729 and 730, which he contends is not a railway land.

207. The learned counsel for the applicant has made reference to a document filed as an Annexure-14 to the application. It was in relation to khasra No. 729-M, having an area of 0.003 hectares, which shows to be in possession of one Mr. Mohd. Nazim S/o Mohammad Yunus, whose name was deleted from the records and in his place, the purchaser, Mr. Abdul Wajid was said to have been recorded on the basis of the sale deed dated 28th October, 2015. This document will not confer any right, for the reasons, which will be by way of repetition of pleadings already observed above;

i.. The document Annexure-14 is not a Khatuni and rather a partali entry recorded in Paaka-11, which is a mushtarka entries under revenue law.

ii. Since being a leased property, over the nazul land, which restricts its sale as per Nazul Rules, the sale deed itself as claimed to have been executed on 28th October, 2015, would be a void document, contrary to the law.

iii. Since under the Rule 1 of the Nazul Rules to be read with the Rules 57 and 60, it does not strictly depicts the compliance of the provisions of the aforesaid Nazul Rules, no right could be claimed by the applicant on the basis of the aforesaid document, which cannot be treated as to be khatauni, a document of title.

208. The learned counsel for the applicant craftly, in order to confuse the issue further, and for all clever devices adopted by the applicant, has made reference to the

proceedings of yet another Suit No. 43 of 1994, Ganga Singh Vs. Union of India, which was filed by the plaintiff therein, in relation to khasra No. 91. The applicant, herein, is trying to derive a statement of J.E. Mr. K.N. Pandey, from it, which was recorded in those proceedings of Suit No. 43 of 1994, for the purposes to contend, that the land, in question, was not a railway land. The effect of the judgment rendered in Suit No. 43 of 1994 Ganga Singh Vs. Union of India, will not at all sustain the right of the interveners for the reasons :

i.. That the said Suit of Mr. Ganga Ram was dismissed by the Trial Court on 31st March, 1999.

ii. The statement recorded by J.E. Mr. K.N. Pandey, may it be having whatsoever implication, it would be confined to the said suit itself and the statement recorded therein cannot be borrowed for the purposes of adjudication of the present PIL.

iii. The statement recorded in the said Suit, will have an *inter se* binding effect qua between the parties.

iv. There is nothing on record pleaded by the intervener, that after the dismissal of the Suit on 31st March, 1999, whether at all Ganga Singh, the plaintiff, had filed any Appeal, and if filed, what was the judicial consequences to it.

v. Since the said Suit No. 43 of 1994, which was filed by Ganga Singh, was exclusively preferred for the grant of degree of permanent injunction, it will not at all effect or create any bar in deciding the present PIL for establishment of any title in favour of the applicant.

vi. In the said Suit, since it was a Suit for grant of degree of simplicitor permanent injunction, no issue of title or possession was ever framed by the Trial Court.

vii. Since, the decree itself will be binding inter se between the parties and since it was not determining the right of the present applicant, it will be a judgment *in persona* not *in rem*.

viii. Apart from it, the grant of degree or denial, decree for the permanent injunction will only attract the principle of *res judicata*, as amongst the parties to the Suit.

209. The applicant principally in para 35 of the Intervention Application had come up with the case, that it was a nazul property, which was leased out to his predecessors. This concept of lease, which is claimed by the applicant, which was alleged to have been executed about decades ago, will not be applicable in the instant case for the reasons being that :

i.. It is not a case of the applicant that he is an applicant for the grant of lease.

ii. There is no such lease deed on record.

iii. The reference of which has been made in the pleadings is that of 1937, which has been executed in favor of one Mr. Abdul Washid Khan.

iv. The said lease will have no effect, as it does not disclose, that under which provisions of law, it has been executed

v. What are the limits of power and rights, emerging from the lease deed, which has been divested by the said lease

vi. How the land could be said to be nazul land for which the lease of 1937 was executed.

vii. No scrutiny of the same could be made, when the lease of 1937 itself has not been placed on record.

210. The applicant had submitted, the lease which was executed in 1937 with Abdul Washid Khan, he had transferred the land to one Mr. Amir Khan on 19th September, 1943. This plea is yet again not acceptable for the reasons,

i.. There is no such document of transfer on record

ii. The transfer of the lease land is restricted under Rule-1 of the Nazul Rules, and under the covenant of the office memorandum of 1907, by virtue of which, invariably all the applicants claim, that the land lying in Haldwani Khas is a nazul land, which is contrary to the covonents of the document itself, because the said document of 1907, had created a bar, that no lease or sale could have been made.

211. In that eventuality, the transfer of land to Mr. Abdul Washid Khan, then to Mr. Amir Khan, and subsequently to Mr. Sarver Khan, as claimed by the applicant to have been executed on 17th March, 1944, would still be a

document, which are not to be accepted in the absence of the same being placed on record to be considered by this Court.

212. The argument of the learned counsel for the applicant, that this execution of the said leases either in 1937 or the transfer made thereafter on 19th September, 1943, and 17th March, 1944, to the named persons as aforesaid, they contend that on the basis of the aforesaid deed, they have been recorded in the revenue register, but this aspect is yet again could not be considered in the absence of the validated the nazul register and by placing the same on record to be considered by this Court.

213. The applicant claims his right that Mr. Sarver Khan, who was the purchaser of land on 17th March, 1944, from one Mr. Aamir Khan, has transferred the property to Mr. Ahmed Khan. There are no detail of such transfer ? The date of transfer ? The deed of transfer ? and what was the nature of transfer ? Which is said to have been later on succeeded by Smt. Sayyad, Smt. Syeden and Smt. Amiran, which the applicant claims, that it was succeeded by him by the registered will of 24th March, 1992, which is a document yet again not filed on record.

214. In view of the aforesaid vague pleadings, and in the absence of there being a document on record, it cannot be ruled out, that a deliberate effort has been made by the applicant was to confuse the proceedings, claiming his right on the basis of the leases, without placing the same on record, and that too, when in the light of the fact, the leases for the

reasons already recorded above, are not a valid document of conveyance or creation of any right, which was absolutely restricted to be executed as per law.

215. Lastly, one important aspect, which requires a reference is that the entire Intervention Application lacks the plea, that the nazul deed principally executed on 13th February, 1937, which was for a period of 30 years, whether it was ever registered or whether it was ever renewed. In that eventuality, even after the expiry of period of 30 years of lease, whatsoever claim of exchange of rights has been claimed by the applicant is not acceptable to have perfected their right over the land, as claimed by him, since being contrary to the then applicable law, and conditions of the lease deed.

216. **Intervention Application No. 15 of 2022**

Lastly, this Application has been preferred by as many as 13 persons, which was filed on 10th June, 2022, at a belated stage, along with Delay Condonation Application No. 14 of 2022. Taking a lenient view, the delay was condoned and the Intervention Application was directed to be considered on its own merits.

217. The applicant contends, that the building exists on Plot No. 383, ever since 2013, on the basis of the lease, which was executed in favour of their forefathers, namely Mr. Rahaman Tulla Banjara. If the said deed is considered, which has been filed with the Intervention Application, the same is said to have been executed on 2nd August, 1940 for a

period of 30 years, and its legal existence would have been only after its registration. There is nothing on record, though pleaded, that the lease thus executed on 2nd August, 1940, that it was ever registered.

218. The applicants, herein, admit to the fact, that the railway line was laid down by a Company in the year 1884, and it was later on transferred to Government of India in 1943. The vesting of the land, which they contend, that it was Railway land, which was laid down on plot No. 129, which was thereafter renumbered as Plot No. 684. Even register of Khewat shows that the land to be recorded as railway land, which could be apparent from the revenue records of 1959-1960. The applicants had utterly failed to show;

i.. How the land was divested to the applicants.

ii. As to how, the lease deed was executed and to what extent the right was created, and what were its limits.

iii. As to how, there could be a lease in relation to a land, which as per law cannot be a nazul land.

iv. Even if it is a nazul land, then as per the document of 1907, and Nazul Rules, it cannot be a nazul, lying in the area of Haldwani Khas.

219. There is no such plea on record, that the so-called nazul was ever renewed after the expiry of the principal tenure and in that eventuality, the present applicants too stand on the same pedestal as that of other interveners, except for the fact, that lastly, they have contended, that there was no

demarcation, which was a question already answered by this Court in the preceding paragraphs.

220. In order to deal with the controversy, the learned counsel for the Railways, had made reference to, that in the exercise of powers for the management of the land belonging to the railways, the process of verification and prevention of removal of encroachment, apart from the fact, it has been prescribed under Section 147 of the Railways Act, it has also been provided under the Indian Railways Works Manual, as it was revised by the Railway Board's vide its Letter No. 82/W/1/M/W/2 dated 30th March, 1987, which was consisting of the Chief Planning and Designing by the Board of Engineers of five Zonal Divisions of the Railways, with the Director IRICAEN, heading the Committee, which constituted the Indian Railways Code for Engineering Department 1993.

221. In accordance with the aforesaid, the Board's resolution and with the formulation of the Indian Railways Works Manual, it would be a platform, which independently deals with, as to how would the authorities of the Railways would govern the activities of an illegal trespass on the railway land by taking an action under Section 147 of the Railways Act, which is a Central Legislation, and being a Special Act, which contains the said provisions to particularly deal with the aspect and act of encroachment on the railway lands, whether it will be ousting the applicability of the General Rules of removal of unauthorized occupants from the public land, when the land has already been

classified as railway's land, which is an aspect, which has been dealt with by this Court already, while considering the Modification Application, which was filed by Shamim Banu in the earlier Wit Petition (PIL) No. 178 of 2013.

222. Coming down to the covenants provided in the Indian Railways Works Manual, as promulgated by the Governments of India, Ministry of Railways, in pursuance to the decision of the Railway Board, a reference to the provisions contained, and which has been relied by the learned counsel for the Railways, it specifically deals with the parameters as contained in para 814 and 815 of the aforesaid Manual, which would be having a statutory blend, because apart from the fact, that it happens to be a decision taken by a Statutory Body, created under the Act and under the provisions of General Clauses Act, and since the aforesaid Indian Railways Works Manual, regulates the functioning of the statutory bodies and authorities, created under the Railways Act, and since it governs the exercise of the official discharge of authority, the Indian Railways Works Manual will have a statutory force, and more particularly, when para 814 of the aforesaid Manual, it provides with, that it intends to promptly remove the encroachments from and over the railway land, as per the provisions contained under Section 147 of the Railways Act.

223. In that eventuality, when para 814 of the Indian Railways Works Manual itself, is a self-contained provisions, the action of eviction from the railway land already demarcated and identified, the action is to be taken under

para 814 to be read with Section 147 of the Indian Railways Act. Para 814 of Indian Railways Works Manual is extracted hereunder :-

> *"**814 Prevention and Removal of Encroachments** - a) New encroachments shall be got removed promptly under provisions of section 147 of Railways Act of 1989. For old encroachments where party is not amenable to persuasion for removal of such encroachments, action should be taken under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971. Encroachment of railway land by railway staff also constitutes grave misconduct on their part and is 'good and sufficient reason' for imposition of major penalty after following the procedure laid down in the Discipline and Appeal Rules.*
>
> *b) When an encroachment is in the process of building up, it should be removed then and there. In case the new encroachment is sought to be built by force, the Section Engineer will immediately contact his AEN and DEN, the Security Officers (RPF) of the Railway, the Civil and Police officers of the District (directly or through AEN/DEN) in writing as well as by personal contacts without loss of time to ensure that the new encroachment is not allowed to come. The Station Master, Chief Goods Clerk, RPF Inspector, and other Section Engineers also will be equally responsible for taking similar action in their areas of responsibility as per para 815 of the Manual. Headquarters Office should also be contacted without loss of time if necessary.*
>
> *The Section Engineer/Section Engineer of workshop concerned/Station Master/Chief Goods Clerk will call on the gangmen, khalasis to dismantle and remove the encroachment as soon as noticed. If during such process of removal of the encroachment the official(s) as stated above is (are) threatened, an FIR should be lodged with the RPF and simultaneously assistance of RPF Inspector be sought. The RPF Inspector will provide the manpower and other*

required assistance to the officials for immediate removal of the encroachments, and simultaneously lodge FIR with GRP, Civil Police as the case may be.

Senior officers of the Divisions as mentioned above should guide the subordinate officials in doing their best to deal with the situation. Simultaneously, if the ground situation so requires the senior officers should contact their counterparts of similar rank/ authority in the Civil and Police Departments of the State Govt. and seek their help to deal with the situation. The senior officers of the Division should also contact the concerned officers in the Headquarters and seek their intervention in the matter as necessary.

The officers in the Headquarters should contact their counterparts in the Civil and Police Depts. of the State Govt. and request that required civil assistance be made available by them to the Railway officials.

As specified above, a well-coordinated efforts should be made by officers/officials of different capacities and jurisdiction to achieve the ultimate objective that the encroachments are removed/dismantled within the shortest possible time.

c) Where the encroachments are of a temporary nature in the shape of jhuggies, jhopries and squatters and where it may be difficult to take action under PPE Act the same may be got removed in consultation and with the assistance of local civil authorities.

d) Every year, at the close of financial year, detailed survey of encroachments must be made under the following categories :-

i) CATEGORY - A Encroachments by outsiders removal of which requires actionunder Public Premises Eviction (PPE) Act.

ii) CATEGORY - B) Encroachments by outsiders which do not require action under PPE Act (e.g. temporary occupation of land by hawkers, using Railway land for cattle, cowdung, refuse etc.)

iii)CATEGORY- C) Encroachment by Railway staff in the form of temporary huts etc.

iv)CATEGORY - D) Encroachment by Railway staff who have been allotted railway accommodation, by way of additions to the structures, unauthorised use of land for cultivation etc.

Note: Category "A" encroachment is of the hard type and Category "B", "C" & "D" encroachments are of the soft types.

e) The Section Engineer (Works/P. Way) should maintain details of encroachments in a register showing their incidence and removal with necessary details as given in Annexure 8.2 (Encroachment Inspection Register).

One page of this register shall be allotted to each encroachment . A scale plan of the encroachment shall be provided on the facing side.

Once a case is opened the entries should not be discontinued unless and until the encroachment is removed. A note to that effect should be made in the register. The frequency of inspection of encroachment shall be at least once in 3 months.

Section Engineer (Works/P. Way) shall give a certificate in the following proforma, once in three months which shall be verified and countersigned by the AEN.

"I.., Section Engineer (Works/P. Way) certify that I have inspected the Railway land in my section during the quarter ending ....and there have been no encroachments except at the locations shown in this register, that have been reported upon vide references given against each."

sd/-

Section Engineer (Works/P. Way)

AEN should submit every month the summary of the status of removal of encroachments to the Divisional Engineer.

Monthly progress regarding additions and removal of encroachments, filing eviction cases and their progress in court of Estate Officer, in Civil Courts etc. should be submitted by Divisions to Head Quarter.

Encroachment plans to scale shall be made for every encroachment. These encroachment plans alongwith details of encroachment as per Annexure 8.2 should be checked and signed by Section Engineer (Works/P. Way)/AEN. Records of such encroachment plans should be kept in the Divisional office and these encroachment plans should be handed over and taken

over by Section Engineer (Works/P. Way)/AENs at the time of change of charge.

A copy of encroachment plan should be available with Section Engineer (Works/ P. Way) /AEN/DEN/Sr.DEN. Any encroachment added or removed should be reflected in the encroachment plan.

A copy of encroachment plan should be handed over by the Section Engineer (Works/ P. Way) to SMs/RPF inspectors/Workshops Supervisors in charge etc.

(f) ***Steps to control the unauthorised use of Railway land****.*

Following further steps should be adopted to control the unauthorised use of railway land:-

(i) For any addition/alteration of a pucca structure, written sanction of the Divisional Engineer should be necessary. Any structure in which cement is used may be classified as pucca structure.

(ii) For alteration /addition of any temporary structure, written sanction of AEN should be necessary.

(iii) Plans for commercial plots at various stations should be approved jointly by Divl. Engineering and Commercial Officers and at site demarcation of the plots should be done with rail posts by Engineering Deptt. Whenever any commercial plot is licensed the Commercial Department should give a copy of the allotment letter to the Engineering Deptt. so that Section Engineer (Works) can ensure against any unauthorised use. The station Master should also have a copy of the approved plan of commercial plots at the station. Station staff, including Commercial staff posted in Goods Sheds should firstly ensure that commercial plots are not misused and secondly, in case of any misuse and/or encroachment should immediately report it to the Engineering Deptt. for eviction and other action that may be necessary. This will also apply to the cases of any licensing for shops, tehbazari etc. in the circulating area and goods shed premises.

(iv) To prevent imminent encroachments on vacant railway land, planting of suitable trees/ shurbs including quick growing thorny trees like Prosopis Juliflora (Vilayati Babul) should be adopted.

(g) Eviction process shall include inter alia:-

(i) Identification of the existing encroachments.

(ii) Ensuring that all the cases under the PPE Act have been filed.

(iii) Estate Officers should expedite finalisation of the cases pending with them.

(iv) Action for possession in accordance with the extant orders where eviction orders are received.

(v) Mobilisation of help of Civil Authorities by formal/informal requests at different levels till the required assistance is forthcoming.

(vi) Cases directed to the courts to be pursued for early finalisation with the help of the Railway Advocates."

224. If para 814 of the Railways Works Manual itself is taken into consideration, it rather deals with the aspect, which we have decided, while deciding the Modification Application of Shamim Banu, wherein, the Indian Railways Works Manual, in its para 814 has provided that, for the purposes of regulating the activities of removal of old encroachment from the railways land, where the parties is not amenable for pursuing the removal under the provisions of Railways Works Manual, it could be removed by the Railways Authorities for a good and sufficient reason, and in an event of failure on their part to promptly remove the encroachment from the railway lands, a panel action is also contemplated by way of taking a disciplinary action against the Railway Authorities itself.

225. In that eventuality, where any provision of law, may it be by virtue of a Subordinate Legislation, if an inaction or exercise of powers by the authority, it contemplates a penal action to be taken, it will have its' statutory force in the eyes of law, and that is why, the Indian Railways Works Manual, under para 815, in order to meet up

the basic objective of prevention and removal of the encroachment from the railway land, had specifically levied a responsibility by division of the responsibility, on the Railway Authorities, in order to facilitate to make an organized endeavor to desist any attempt of encroachment on the railway land. Para 815 of the Indian Railways Works Manual, is extracted hereunder :-

> ***815 Division of Responsibility***
>
> *The following division of responsibility between the station staff and the engineering staff should be observed in regard to encroachments within the station areas :*
>
> *a) At stations, the Station Master, jointly with nominated/senior RPF Inspector, will be reponsible for preventing encroachments and for driving out trespassers by obtaining help also from RPF, Police and Section Engineer (Works/P.Way) as necessary.*
>
> *b) In the goods shed, the Chief Goods Clerk wherever available and at other places the Station Master, jointly with RPF Inspector, will be responsible for preventing encroachments and for driving out trespassers also with the help of RPF, Police and Section Engineer (Works) as necessary.*
>
> *c) The responsibility for preventing encroachments and for driving out trespassers in circulating areas of the stations and goods sheds, will rest with the 'Station Manager/Station Master/SS/CGC for their respective areas. They can take the assistance from Engineering and RPF staff, as may be found necessary.*
>
> *d) Whenever an encroachment incipient or otherwise is noticed in the station area, the Station Master/Chief Goods Clerk should take immediate action to have it removed. Assistance from the RPF and Engineering staff should be taken as necessary.*
>
> *e) At station, where Section Engg. (Works) is not posted, but Inspector/RPF is there, then the Inspector/RPF is responsible for checking fresh encroachments.*

f) In case of locosheds/workshops, concerned (nominated) departmental supervisor (e.g. Section Engineer (C&W) for coach manufacture depots etc.) along with RPF Inspector shall be jointly responsible.

g) While instructions contained in this para (a) to (d) would generally apply, it would be desirable to nominate Traffic, Commercial, Engineering officials as incharges of specified areas at medium and large sized stations to keep a watch on encroachments and take appropriate action for immediate removal.

h) Whenever encroachments are taken up under PPE Act, the concerned officials from Engineering (including workshops Supervisors), Commercial, Traffic or Security departments, as the case may be, would act as the Presenting Officer, and proactively help in expeditious finalisation of the proceedings. Adequate training may be provided by IRICEN/ Pune to the Estate Officers to make them well conversant with the provsions of the PPE Act, 1971 and also various avenues available to them while dealing with cases of encroachments. Course contents may include case histories and various relevant court judgements on the appeals against the orders of Estate Officers.

i) RPF should play a proactive role in removal of soft encroachments as and when existence of such encroachments is brought to their notice. They should also provide assistance in co-operation with State Police/GRP where cases have been decided by the Estate Officers.

815-A Action to be taken while handing/taking over of charge by Supervisors.

(a) A joint field check on the existing encroachments will be mandatory part of the Handing over/Taking over of the Section Engineer(Works/P. Way)s' charge. This should be followed by a joint signing at the end of the Encroachments Register on the number of encroachments in the jurisdiction. The fact that these steps have been completed, should be an item required to be specifically mentioned in the Handing over Note of the outgoing Supervisor.

Similar procedure should be followed by the concerned officials from Commercial, Traffic, Mechanical, Electrical, and Security departments.

(b) In the event of fresh encroachments having taken place being noticed at the stage of handing over of charge, and which were not specifically brought out in writing to the notice of the officers/authorities as specified in paragraph 814 (b) suitable adverse entries shall be made in the Confidential Records of the official(s) concerned, and he (they) will also be liable for DAR action.

815-B Liability for D&AR action

It is imperative on the part of concerned Branch officer that for any new encroachments that come up on railway land, officials responsible for safeguarding the railway land are taken up under Railway Servants(D&A) Rules"

226. There are various sets of authorities, which deal with the rampant and unabated issue of removal of encroachment from a public land. But there are very few authorities, which deals with the aspect as to in what manner, the unauthorized occupants could be removed from the railway land, apart from its statutory intention to meet the legislative purpose provided under Section 147 of the Railways Act, as well as under the Indian Railways Works Manual

227. In a case reported in **(1982) 2 SCC 134, Government of A.P. Vs. Thummala Krishna Rao and another,** as decided by the Hon'ble Apex Court on 16th March, 1982, though it was dealing with the subject, which is slightly divergent in relation to the implications of removal of the unauthorized occupants, from the land encroached upon by them, being the land belonging to, in that case of Nawab Habibuddin, as it was in the said case, it was land, which was acquired for the purposes of Osmania University. But then

too, while in the said case, while dealing with the aspect of Land Encroachment Act of 1905, in its para 7 and 8, had laid down, that any person, who is unauthorizedly occupying the land, even for which, he is liable to pay assessment tax under Section 3 of the said Act, can still be summarily evicted by the Collector. In fact, this is a case, which also developed by the interveners of this case, who have contended their right, that since because of their occupancy of the land under the alleged terms of the lease, they had been paying the taxes to the Collector, and in that eventuality, their unauthorized occupancy because of the implication of the lease deed and restrictions imposed thereof by the Nazul Rules, would still permit the unauthorized occupants to be summarily removed from their occupancy of the land by the action of the revenue authorities (as it was in the said case, but in the instant case by the Railways Authority). The spirit and objective in the said case, about the summarily removal of the unauthorized occupants was in relation to those persons, who were occupying the property of the State under the terms of the lease, which was made permissible by the competent authority. Para 8 of the said judgment is extracted hereunder:-

> *"8. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". In regard to properly described in sub- sections (I) and (2) of section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take*

recourse to the summary remedy of eviction provided for in section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorised occupation of property which is declared by section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously which can only be done by resorting to the summary remedy provided by the Act. But section 6 (1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under section 3". Section 3, in turn, refers to unauthorised occupation of any land "which is the property of Government" If there is a bond dispute regarding the title of the Government to any property the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between The State Government and the respondents as to whether The three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the osmania University. for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the properly more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having tailed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of

title. That procedure is, therefore, not the due process of law for evicting the respondents."

228. Para 8 of the said judgment, it did propagate and had permitted that the summary power of eviction could be resorted to though in that case in the context of the Land Encroachment Act of 1905. In those cases, where the Government or any of its Instrumentality of the Government, comes to a plausible conclusion, based upon the appraisal of the documents of right, that a person against whom, the action of eviction is proposed to be taken could be ordinarily culled out to be in case of an unauthorized occupation, and where it is established, that it is a property of the Government, the summary remedy of eviction of the occupants of the public land would be permissible, because the said act of removal of the unauthorized occupant has been held in the said case, that since it is being in the public interest to evict them expeditiously, it could be done even by resorting to the summary remedy provided under the Act, i.e. the Railways Act, which is to be read with in consonance to the provisions contained under Section 147 of the Railways Act, to be read with para 814 of the Indian Railways Works Manual.

229. In the said judgment, if para 10 is also taken into consideration, the necessity of immediate removal of the land unauthorizedly occupied, without title being held by them, in relation to a land, which belongs to the Government, as a result of its vesting of the land of the State agency, which in the instant case would be the Railways, there could not be

any perfection of title, even by an adverse possession under the eyes of law over a State land. The logic behind it is, when a land is vested with a public agency, which is to be utilized for the purposes of a public project or it is reserved for a public utility, it is not expected, that the State Agency would be available, at all point of time and place to athwart any act of illegal occupancy. In that eventuality, any occupation of public land, which in the instant case, happens to be that of the railways land, would also amount to be brought within the ambit of a 'theft of a land', as it has been dealt by the Hon'ble Apex Court, where an occupant, who claims his right over a land occupied by him, on the basis of adverse possession. Adverse possession, herein, would mean a possession over a land with the knowledge of the principal owner, meaning thereby, it should be adverse to his knowledge, which is lacking in the instant case, as the initial occupancy on the railway land, which admittedly adjoins to the Railway Station in accordance with Rule 59 and 61 of the Nazul Rules, it could not have been permitted to be occupied by the private interveners, claiming their rights even by way of an adverse possession, which have now mushroomed and has expanded to manifolds.

230. The summary eviction though in the said case, it was in relation of the land, which was belonging to Nawab Habibbuddin, which was occupied by the unauthorized occupants was an act, which was upheld by the Hon'ble Apex Court, for resorting to a summary proceedings of eviction, as it engaged consideration in the context of the

provisions contained under the Railways Act to be read with the Indian Railways Works Manual.

231. In yet another judgment, and which would be of much relevance in the context of the present case, is that as rendered by the Hon'ble Apex Court in the matters of **Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others,** as delivered by Hon'ble Apex Court on 11th October, 1996.

232. Though factually, the said case was marginally based on a different aspect entailing removal of the unauthorized occupants, who have constructed their hutments on the pathway, which was obstructing free flow of the pedestrians, it was in that case, that the Hon'ble Apex Court, has dealt with the aspect from the perspective of the provisions, which was dealt with by the Constitution Bench of the Hon'ble Apex Court in the matter of **Sadan Singh Vs. New Delhi Municipal Committee & another** as reported in **(1989) 2 SCR 1038,** which was being confronted with the situation, whether at all, there could be a fundamental right of a citizen to occupy a particular place on a pavement or a public place, where he can start his business or construct place of residence. The said Constitution Bench of the Hon'ble Apex Court in **Sadan Singh (Supra),** did observe that the occupants do have a fundamental right to carry a trade or a business of their choice, but they can particularly do the said business on a specified place, which either belongs to them or which is allotted to them in accordance with law, which has to be exclusively to be utilized for the

purposes of hawking. Carrying out of a business or utilizing a public land or for the residential purposes, cannot be shielded by the right reserved by the constitutions mandate about the right of residence, shelter or carrying out of a business, because the said judgment of the Hon'ble Apex Court, has deprecated, that one cannot be allowed to carry trade or business or reside on any land belonging to the public, to be used for public purpose or public object, which creates an obstruction in the public projects, movement of the railway, as the case at hand is, and in the said case, where the public pathway was being hampered due to unauthorized occupancy by construction of hutments, which was held to be illegal.

233. The Hon'ble Apex Court in the said case of **Ahmedabad Municipal Corporation** (Supra), while dealing with in the context of **Sadan Singh's** judgment of Constitutional Bench, has observed, that in order to minimize the hardship faced by the public utility or public object or public project, hawking in the said case, cannot be permitted from a public land. So would be the case at hand and the principles, which could be applied in the instant case, where occupancy of a land vested with the railways, adjoining to the Railway Station, can at all be permitted to be occupied by the unauthorized occupants for their personal needs of residence. This Court has been even told that if the unauthorized occupancy over a disputed land is removed, the surveyors can also find even railway lines, lying beneath the land, on which, the unauthorized occupants have created their residence.

234. In fact, this principle was also considered by the Hon'ble Apex Court in the judgment reported in **(1965) 3 SCC 545, Olga Tellis Vs. Municipal Corporation of Greater Bombay,** which was yet another Constitution Bench judgment, that for removing an encroachment in the said case, it was in the context of the powers to be exercised by the Municipal Corporation under Section 314 of the Bombay Municipal Corporation Act, for removal of encroachment from the footpath, over which, the public have right to passage, the use of it for a public passage was held to be reasonable and fair and for the interest of public at large, to meet public objective.

235. The aforesaid Constitution Bench has observed, that there is no static measures of reasonableness, which can be applied invariably, without any deviation in all cases, with change of time, and in all situation. But only precaution, which is to be taken, is with regard to the procedure, which is to be resorted to. Since in the instant case, when the matter was earlier decided by the Division Bench in the Writ Petition (PIL) No. 178 of 2013, and when the matter travelled upto the Hon'ble Apex Court, the Hon'ble Apex Court, has only provided, that the proposed occupants are required to be heard, and this protection we have taken by inviting objections from the interveners, who were heard elaborately, which has already been dealt with above individually, and since owing to the various laws, as considered by this Court, the procedure adopted by giving them notice, can under no circumstances be held to be unreasonable, as it goes in league

with the provisions contained under Section 147 of the Railways Act, and as such, the basic intention of the Constitutional Bench's judgment of **Olga Tellis (Supra)** has been met with.

236. In fact, the judgment of **Ahmedabad Municipal Corporation (Supra)**, it has been held, that while deciding the controversy of unauthorized occupancy, while exercising the constitutional powers of judicial review, whether there could be a deprivation of personal life or liberty, and in a given case, whether the procedure is resorted to for removal is unreasonable, fair and unjust. On the basis of the principle of **Olga Tellis (Supra),** the Hon'ble Apex Court in the matter of **Ahmedabad Municipal Corporation** (Supra), has held that though one has a right to make use of public property for private purpose, but the said right of use is not permanent in nature. It has had to be with requisite authorization, restrictions and control from the competent authority for same being used unscrupulously, the authorization has had to be in accordance with law, and it would be an authority, which would be vested with the competent authority, created under law to remove encroachment from a public land, which is demarcated to be utilized for the public purposes. The basic principles, which has been dealt with by the said judgment of **Ahmedabad Municipal Corporation (Supra),** is in order to facilitate immediate removal of encroachment has been dealt with in the following paragraphs, which are extracted hereunder :-

"The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic one to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or foot-paths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no not has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tardious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time fore reasons best known to them, and reasons are not far to see, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the

appellant-Corporation is not violative of the principal of natural justice.

It is not in dispute that Rakhial Road is one of the important main road in the city of appellant-Corporation and it needs removal of encroachment for free passing and re- passing of the pedestrians on the pavements/footpaths. But the question is ; whether the respondents are entitled to alternative settlement before ejectment of them ?

Article 19(1) (e) accords right to residence and settlement in any part of India as a fundamental right. Right to life has been assured as a basic human right under Article 21 of the Constitution of India. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to standard of living adequate for the health and well-being of himself and his family; it includes food, clothing, housing, medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights lays down that State parties to the Convenat recognise that everyone has the right to standard of living for himself and his family including food, clothing, housing and to the continuous improvement of living conditions. In Chameli Singh & Ors. v. State of U.P. & Anr. [(1996) 2 SCC 549], a Bench of three Judges of this Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful. In paragraph 8 it has been held thus :

"In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object.

Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the

> *Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually an spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with right to dignity of person and equality of status is to enable him to develop himself into residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself."*

237. In fact, this judgment has envisaged, that the removal of the encroachment is necessitated, in order to meet out the urgent needs, which is required to be done by the competent authority, who is otherwise expected to maintain a constant vigil on an act of encroachment over the public premises, and where a prolonged delayed process will be danger for public by permitting the encroacher, claiming

semblance of the right to obstruct the removal of encroachment. The need of immediate removal particularly is in the context of Section 147 of the Railways Act could be resorted to.

238. The ultimate analysis of the judgment of **Ahmedabad Municipal Corporation** (Supra), it has provided, that on an empirical study of the socio psychology of the urban and rural population of the country, it has been observed, that due to inability of the Government to provide due civic facilities, means of livelihood to the people, and failure in order to maintain a constant vigil on migrant to the urban areas, it has often resulted into mushrooming of the growth of slums and encroachment.

239. In order to restrain it, it would be expedient, that the agencies of the State are equipped with sufficient powers, avoiding unnecessary procedural delay caused due to the procedural law to be followed, a direction to remove encroachment from a land, which is specifically demarcated for to be utilized for the public projects, which intends to meet out the general public benefits at large, and particularly also, to avoid a constant threat of unhygienic ecology, traffic hazards and the risk of prone to live on public land unauthorizedly occupied, it cannot rather it should not prevent the public authority to remove the encroachment from the public land by exercise of their powers, which had been vested with them under the statute, which in the instant case happens to be in the light of the provisions contained under the Railways Act itself.

240. The Division Bench of Hon'ble High Court of Jharkhand in the matter of **Bajrang Hard Coke Manufacturing Corporation Vs. Ramesh Prasad,** in its decision rendered on 14th August, 2002, the Division Bench of Jharkhand High Court had opined in its para 14, that the authority vested with the statutory public authority under law to remove an unauthorised encroachment, where there is no factual dispute about the right and title of the occupants, which has already been analyzed in detail by us, based on the material placed by the interveners before this Court, and that too, in the light of the earlier judgment of the this Court, as rendered in the matter of Writ Petition (PIL) No. 178 of 2013. In order to dispel any remotest possibility of not hearing the persons, who are likely to be affected, the said precaution has been taken by us, and then on the basis of the ultimate analysis made by this Court after appreciating the each case developed by the interveners, it could be ultimately analyzed, that they don't have any right and title vested with them in accordance with law, and hence, they would for all practical purposes would be treated to be an unauthorized occupants, and in that eventuality, for the reasons already given, they are for all practical purposes, to be held to be the unauthorized occupants, who could be removed by the railway authority after the assistance being provided by the local administration, as per the provisions contained under Section 147 of the Railways Act, which is independent to the provisions of the Public Premises Act of 1971.

241. Though, this Court has already dealt with the applicability of the provisions of the Public Premises Act of 1971, over the Railways Act, while extracting the part of the judgment deciding a Modification Application, preferred by Shamim Bano, but the said aspect of the applicability of the General Law of eviction from a public land of an unauthorized occupant was under consideration before the Hon'ble Apex Court as decided in **Civil Appeal No. 3910 of 2013, Board of Trustees for the Port of Kolkata and others Vs. APL (India) Pvt. Ltd. and others**. The Hon'ble Apex Court in the said matter, while dealing with the controversy in the context of the provisions contained under Section 6 of the Public Premises Act of 1971, the Hon'ble Apex Court has observed that the provisions of the Public Premises Act, as defined under the Public Premises Act of 1971, will not bar a Port Trust Authority, which is a creation of a statute, which is independent to the provisions of the Public Premises Act, to institute an action, as against the unauthorized occupants from the public premises or to dispose of the goods or articles, which were lying in the public premises, which may not be necessarily belonging to the alleged occupants.

242. The aforesaid principle has been laid down by the Hon'ble Apex Court in para 12 and 16 of the said judgment, when the matter was being considered in the context of unauthorized occupants in the context of the definition given under Section 2G of Act of 1971. Para 12 and 16 are extracted hereunder :-

> *"12. Appearing for the appellants, Shri Parag P. Tripathi, learned senior counsel, submits that the premises in question is a "public premises" as defined under the PP Act. There is no bar for the Port Trust to initiate action for eviction of unauthorized occupant from the premises or to dispose of goods and materials lying in public premises which may not necessarily belonging to the erstwhile tenant/licensee of the said premises. The Port Trust has initiated action for the eviction of the unauthorized occupant under the PP Act. The Port Trust has not initiated any action under the MPT Act. Section 6 of the PP Act must be read and interpreted on its own. It is not dependent upon Sections 59 and 61 of the MPT Act. It is argued that the judgment of the Division Bench of the High Court in Indian Rayon has no application to the facts of the present case. It is unnecessary for the Court to conjointly read Sections 59 and 61 of the MPT Act and Sections 5 and 6 of the PP Act for the purpose of evicting an unauthorized occupant. It is further argued that the Full Bench ought to have held that the proceedings initiated by the Port Trust also covers the respondents/writ petitioners and that they are bound by the order of the Estate Officer passed under Sections 5 and 6 of the PP Act.*
>
> *16. The PP Act provides for eviction of occupants from public premises and for certain incidental matters. This Act was enacted to provide for a speedy machinery for the eviction of unauthorized occupants of the public premises. It is clear from the statement of object and reasons of the PP Act that it has become impossible for government to take expeditious action even in flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation."*

243. The said judgment of **Board of Trustees for the Port of Kolkata and others (Supra)**, the Hon'ble Apex Court has further observed, that the provisions enacted under

the Act of 1971, has been for the obvious purpose, for enabling the statutory authorities to take all consequential steps for receiving possession from a public premises and for the recovery of the dues payable on its illegal user. The Hon'ble Apex Court has said, that the provisions of the said Act of 1971, has not to be interpreted in a way, which defeats the very purpose of its enactment to remove the unauthorized occupants from a public land, which is immediately required for the public purposes. Same would be a situation in the present case, which relates to the Railways, regulated by self contained independent Act.

244. The Hon'ble Apex Court in the said case has observed that Section 6 of the Public Premises Act of 1971, would only apply, where a person is a tenant or a licensee of a public land. Since that being not the case at hand, as the applicants are unauthorized occupants, over a land belonging to the State, herein, i.e. the Railways, their resort to eviction process under the provisions of the Railways Act, cannot be diluted in its applicability, under the applicability of the procedural law of eviction provided under Public Premises Act of 1971, particularly when, the Railways Act, since being Special Act, will have its precedence.

245. The Division Bench of Allahabad High Court in a judgment delivered on 20th January, 2022, in the matter of **Anoop Kumar Mishra Vs. State of U.P. and eight others,** it was dealing with almost a similar situation, where the process of eviction was being intended to be taken from the plots or the property, which were belonging to the Railways,

which in the said case was depicted by the photographs, which here, in the instant case, is depicted by the land records and by the joint survey report of demarcation submitted by the Committee of Revenue and Railway Authorities, in pursuance to the earlier order passed by the Division Bench.

246. The Division Bench of Allahabad High Court, has observed, that inaction on part of the Railway Authorities, to remove the unauthorized occupants from the railway land is rather an inaction on their part and is a misconduct on part of its officials, and that the encroachment on the railway land has become a menace, as it creates hindrances in the development of the future projects of the Railways, which basically aims at to meet the future requirements of the transportation facilities to the public at large, and particularly, to the middle strata of the citizens of the country.

247. The Division Bench of Allahabad High Court, while dealing with the aspect about the menace of encroachment, thereby depriving the public facilities to the citizens has made reference to a judgment of the Hon'ble Apex Court as reported in **2011 (11) SCC 396, Jagpal Singh and others Vs. State of Punjab and others**. The said judgment of the Hon'ble Apex Court, has observed therein that, that even prior to the independence, and thereafter, the act of encroachment on a public land has been unabated in larger part of the country. It has observed that unscrupulous persons, who are under a political cover or who have been backed by money power or who are backed with the muscle

power, they have been systematically, in a planned manner, are approaching upon the land belonging to the public utility, and this Court will not be hesitant to observe that in the instant case too, the present encroachers over the railway land were sheltered by the political heads of the State Government and were having political patronage, which at the relevant time, when the earlier Division Bench decided the matter, it was in the helm of the affairs, and particularly, the shelter provided by the then sitting M.L.A., who was also enjoying a status of being a Cabinet Minister, in order to secure her vote bank, have been irrationally resisting any act of removal of the unauthorized occupants from the land, in order to protect her vote banks. Relevant paragraph of the said judgment is extracted hereunder :-

> *"This Court is saddened by the attitude of indifference adopted by the officials of the Indian Railways, some of whom are under a direct mandate to keep encroachments under check. There is a special enactment which enables the Railways to protect its property i.e. its statutory and public trust obligation. It was open to the concerned authority to invoke the provisions of the special enactment including the Public Premises Act. For that, the Estate Officers should have moved into action in right earnest at the earliest opportunity. Even that option is not being invoked for reasons best known to the authorities. Besides, the Railways maintains a Railway Police Force whose services could be utilized to safeguard the railway property wherever it is situated. The Court has been apprised that the railways has issued the Indian Railways Works Manual. Chapter VIII of the IRWM deals with acquisition, management and disposal of land. Clause 813 deals with the verification of land boundaries. Clause 813(b) of the IRWM casts a duty on every Section Engineer to prevent or remove any encroachment that might have taken place. Further, Clause 813 (d) provides that the Section Engineer is*

also required to maintain a land boundaries verification register where details of encroachments are to be entered and the register itself is to be verified and countersigned by an Assistant Engineer. Clause 814 of the IRWM lays down elaborate procedure for removal of encroachments. The Clauses 813 and 814 (814 already referred in paragraph 223 of the judgment) of the IRWM is being reproduced here under:-

"813 Verification of Land Boundaries

a) Vide Para 1048 of the Indian Railway Code for the Engg. Deptt. (1993 Edition) every Zonal. Railway Administration is responsible for the demarcation and periodical verification of the boundaries and maintenance of proper records in connection with land in the possession of that Railway.

b) The Section Engineer (Works/P.Way) is responsible for maintaining railway land without any encroachments or development of easement rights. He should endeavour to prevent and remove encroachments, as and when they arise and where removal of encroachment is possible without referring to PPE act. In case where he is not able to remove them, he should report the cases to the Assistant Engineer, who will on receipt of such reports take immediate measures to remove the encroachments. Particular care is required to prevent encroachment on railway land situated above tunnels and below bridges especially Road over/Under bridges.

c) The Section Engineer (Works/P.Way) shall inspect and maintain the Railway land boundaries between stations and at unimportant stations. The Section Engineer (Works) shall inspect and maintain the land boundaries at important stations and staff colonies.

d) Maintenance of land boundaries verification Register-

Railways should maintain printed registers on the lines of Bridge Registers as at Annexure 8.1 (a) & (b) in the attached format showing "Details of Encroachments" and "Details of the Missing Boundary Stones" and action taken thereon. The entries in the register should be certified by the Section Engineer/(Works/P.Way) of the respective sections and verified/inspected by the Asstt. Engineer./DEN/Sr.DEN

or other higher officers from time to time. The registers should have adequate pages so that record of inspection and verification of land boundaries for a period of 15 years can be accommodated in the register. Separate registers should be maintained for each Section Engineer (Works/P.Way)'s jurisdiction.

A certificate on the following proforma should be given by the Section Engineer once a year which is to be verified and countersigned by AEN with regard to correct demarcation of land boundaries.

Certificate for Land Boundaries verification is given below:

LAND BOUNDARIES VERIFICATION CERTIFICATE

Year-------------------Section-------------------Kms. ----------------to------PWI/IOW ----------------------- Sub Division--------------- Division ---------- I,------------ PWI/IOW certify that I have inspected the railway land fencings and boundary stones on my section during the year ending ----------------------- and that they are in accordance with certified the/land plans. There have been no encroachments except at the following kilometerages that have been reported upon vide reference given against each.

DETAILS OF ENCROACHMENTS.

Date of Inspection	*Location*	*Description of encroachment*	*Action taken*	*Reference*	*Initial of Inspection officer*	*Remarks*
1	*2*	*3*	*4*	*5*	*6*	*7*

I further certify that wire fencing and/or boundary stones are available at all locations except at the Kilometerages shown below for which action to replace the same is indicated against each location.

DETAILS OF MISSING BOUNDARY STONES

Date of Inspection	*Location*	*Description of encroachment*	*Action taken*	*Reference*	*Initial of Inspection officer*	*Remarks*
1	*2*	*3*	*4*	*5*	*6*	*7*

1. I certify that railway boundaries are demarcated correctly and that there are no encroachments, except those listed above.

2. Certified that land plans pertaining to the above mentioned PWI/IOW ---------------------------are available with him except the following.

Asstt. Engineer/ DE.'/Sr.DEN/

Chief Engineer/General

e) During his inspections, the Assistant Engineer should ensure that Railway boundaries are demarcated correctly and that there are no encroachments. In cases where he cannot prevail on the parties to remove the encroachments, he must report the facts with particulars to the Divisional Engineer who will take up the matter with local authorities."

248. In the matters of **Jaspal Singh and others (Supra),** the Hon'ble Apex Court has observed, that the encroachment on a public land has often been done in active connivance with the public authority and the local political powers. This was an act, which was deprecated by the Hon'ble Apex Court.

249. In yet another judgment, which was relied by the Division Bench of Allahabad High Court was rendered in the matter **M.I. Builders (P) Ltd. Vs. Radhey Shyam Sahu,** as reported in **1999 (6) SCC 464,** which was based upon the identical principles, which necessitated the removal of encroachment from a public park.

250. The Division Bench of Patna High Court, in a decision rendered in **C.W.J.C. No. 3754 of 2009, Deepak Kumar Vs. The State of Bihar and others,** as decided on 27th January, 2010, has issued directions for removal of the encroachment from the railway land, thereby directing the railway authorities to take a concrete step to free the railway land from any kind of encroachment and, if any

encroachment takes place, it shall be immediately informed to the Police Authorities and other District Authorities and the authorities will work cohesively in coordination with one another to see that the encroachment are removed, which is the need of the instant case and of present time too.

251. Owing to the aforesaid analysis, the following conclusions could be arrived at based on the respective pleadings as pleaded and also as argued by the interveners, as well as by the counsel representing the Railways and the petitioner of the Public Interest litigation. Owing to the aforesaid reasons, this Court could judicially analyze as under :-

i.. The rights claimed by the interveners or the occupants is based upon the Office Memorandum dated 17th May, 1907, which would not confer any right even according to the case of the respondents, as it is only a document, which is only for the purposes of executive management of the property, and it refers only that the management of the property, would be in accordance to the Nazul Rules.

ii. Further since the said Memorandum of 17th May, 1907, itself restraints any execution of deed of sale or lease of the nazul property, all lease deeds, according to the own case of the respondents would be in violation of the Office Memorandum dated 17th May, 1907, as relied by them.

iii. The Office Memorandum of 17th May, 1907, since, in fact, it being only an official communication, it will not have a statutory force, but rather, it would only

be a document to facilitate the administration of the land.

iv. The Nazul Rules, which also finds reference in the document of 17th May, 1907, in it's opening paragraph has observed, that no part of land lying in Bhawar Estates of Nainital District, would be a nazul land for the purposes of Nazul Rules. Meaning thereby, as per Nazul Rules itself, no part of the District Nainital was or is a nazul land.

v. Under Section 157 of the Oudh Rent Act, 1886, which is to be read with Section 16 of Agra Tenancy Act of 1926, it created a bar for creation of an occupancy right on a nazul land.

vi. As per definition of nazul provided under Revenue Law, the nazul land is treated as to be an escheat property, and being an escheat property, it would always vest with State, over which, no propriety right could at all under law be created because of the bar created by the Nazul Rules or because of the bar created by even Office Memorandum of 17th May, 1907.

vii. Under Rule 59 of the Nazul Rules, it is provided, that any nazul land, which is lying adjoining to the Railway Station, if it is ever proposed to be sold or leased, it requires a prior sanction / approval from the Railway Authorities, which invariably in all the lease deeds, which had been relied by the interveners, was lacking, as no lease deed finds any such reference, that any such prior sanction was ever obtained from the

Railway Authorities, was taken prior to execution of any deeds relied.

viii. The interveners will have no right, even over the structure raised by them over the nazul land, in view of Rule 61 of the Nazul Rules, which provided, that no construction even on a nazul land, which is adjoining to the Railway Station, could be made except with a prior permission of the railway administration, which is not the case of the interveners / occupiers, they had been either granted in favour of any of the so-called interveners, claiming their rights over the land as to be a nazul land.

ix. As per the principles, which govern the ratio of nazul land, as discussed by the judgment of the Division Bench of Allahabad High Court, nazul land would mean a land, which was left by its occupiers by an act of rebellion, which had chanced due to the Mutiny of 1857. Since no such act of mutiny had ever taken place within the area of Haldwani Khas, which was for the first time created in 1834, thereby it will not be a nazul land, which could be said to be an escheat property, as per the definition of the nazul land.

x. Under the Urdu terminology, the nazul land means a land, which is commonly called as **"jaayajaad munjaapaata"**, which means a land, which was left by the principal occupier, as an act of rebellion of Mutiny of 1857, which was later on vested with the Queen. Since no act of Mutiny of 1857, had ever taken place in the Haldwani Khas, so created in 1834, no part of the

land of Haldwani Khas, would be said to be “jaayajaad munjaapaata”, to be termed as a najul land.

xi. The respective leases, on the basis of which, the interveners / occupiers claimed their rights of occupancy and a right of transfer, will at all have a right of sale or transfer for the reason, that it is a lease only, which will be exclusively only a lease for enjoyment, if any as per law, under Section 105 of the Transfer of Property Act.

xii. The lease of a nazul land as claimed, which is only confined to a right of enjoyment, it could not be further dealt with by transfer or by a lease or a sale deed, which was restricted under the Office Memorandum of 17th May, 1907, and also under the Nazul Rules itself.

xiii. In the leases, which has been relied by the interveners, it shows, that some of the amount was transferred as an earnest money, and the balance was yet to be transferred. There is nothing on record brought by the interveners, at any stage of the proceedings, that at the stage of execution of respective sale deeds, as claimed by them, the balance amount was ever paid, and in that eventuality, where balance consideration was not proved to have been transferred, it cannot be treated as a complete transfer of the property, and it was merely an expression to transfer the property in future.

xiv The applicants have submitted, that they had a right over the property thus leased to them, as they have been depositing the revenue in the Municipality.

The deposition of revenue in the Revenue Department, its only for the purposes of discharging their tax liability to the local body, and merely recording of their name by the Municipal Board, is for the purposes of tax, does not confer a title and that too, in the context of their respective leases.

xv. On a speculation of the lease deeds, as it referred to by the interveners, it was simply a narration of fact, but not a document, which could be read in evidence, since being in an express violation of the conditions of the deed itself, which has been claimed by the interveners to be creating a right in their favour. When such deeds cannot read as a document of title in evidence, as no right can be claimed on that basis.

xvi. The pleadings raised in some of the Intervention Applications, with regard to the expression or contention by the interveners about the conferment of right and title over the property, since it is based upon an affidavit sworn by them on the basis of a legal advice, which cannot be a substitute to read as a right of ownership.

xvii. If the lease deed itself is considered, it was granted for a specific period of time mentioned in the specific lease deed. The said prescribed period of time had already expired, hence, with the prescribed expiry of time period, then even too, the right of enjoyment of lease property, has also been extinguished as per law, since it is no one's case, that after the expiry of the terms of the lease, it was ever renewed.

xviii. The operation of the lease, which has been invariably relied by the lease holder / occupants, contained a specific stipulation, that it would only come into existence after its **“registration”**. It is no one’s case by the interveners / occupiers, that even after the respective execution of the lease deed, (though which was contrary to the law) was ever got **“registered”** as per its own terms and conditions.

xix. None of the leases confer a right to sale and any transfer, and if it has been made, it would be contrary to the terms of lease, which itself had not given a right to the occupants, to transfer, hence it would not create any right, once the lease itself has not taken a legal birth.

xx. The respective leases have reserved the right of the lessor to reoccupy the land, under any lease, when the lease reserves the right of a lessor to reoccupy the land after the lapse of time, it cannot be treated to be a perpetual lease, which is otherwise contrary to the Office Memorandum of 17th May, 1907, and contrary to the Nazul Rules.

xxi. No right would have been validly conferred in the absence of compliance of the provisions contained under Rules 59 and 61 of the Nazul Rules, which were mandatory.

xxii. Invariably, all the interveners have raised an objection, that there was no demarcation. But the said plea cannot be accepted by us, after the order of the Division Bench. When the demarcation report, itself was placed on record, and it was never objected by any

of the intervener at any point of time during pendency of Writ Petition (PIL) N. 178 of 2013.

xxiii. Except for the interveners, who have responded to the publication issued by the Registry of this Court, in compliance of the orders passed by us, it would be deemed, that the non-applicants to the present Writ Petition (PIL) have no grievance as such in taking of any act of removal of their encroachment by the competent authority.

xxiv. No right even by virtue of the respective lease could at all be granted or they could obstruct the action of their eviction, once they enjoy their occupancy rights under the political patronage, without any authority of law.

xxv. The action taken by the Railway Authorities, since being under Section 147 of the Railways Act, being a Special Act, i.e. Railways Act of 1989, and as per the provisions contained under Section 147, to be read with **Indian Railways Works Manual**, the said action will itself eradicate the applicability of the Public Premises Act of 1971, since the Railways Act, being a Special Central Legislation and as it is having an inbuilt mechanism to deal with the unauthorized occupants over the railway land, and its criterion for eviction.

xxvi. As per Para 1048 of the Indian Railways Code, it is the Engineering Department of the Railway, which is responsible for demarcation, which, in fact, it was done in the presence of the Revenue authorities, the occupiers and the interveners, and the records thereof was maintained by them, the action of eviction after

determination of their rights cannot be said to be bad in the eyes of law.

252. To conclude with the aforesaid reasoning, which has been assigned by us in the body of the judgment while dealing with the issue of unauthorised occupancy over the railways land, based upon the claim of leases, and primarily the issue, as to what would be the modalities to be ultimately adopted for resorting to the process of eviction, we would prefer to conclude this judgment with a note, that a time has come now, that with a change of social psychology, the human perception, the human bent of mind, to have something in excess to what an individual is actually entitled to under law or under a document of title, has had to be read with a modulated form of law, and which could be rationally remarked in a meaningful manner on the basis of an excerpt of **Alfred, Lord Tennyson**, who in his very renowned poetry called as **"The Passing of Arthur"** had remarked, that with the passage of time, the law too is required to be rationally construed to meet the wider public purpose, and that is why he has observed as under :

> **"And slowly answer'd Arthur from the barge:**
> **"The old order changeth, yielding place to new,**
> **And God fulfils himself in many ways,**
> **Lest one good custom should corrupt the world.**
> **Comfort theyself: what comfort is in me?"**

253. The very objective, which was analysed by the Alfred, Lord Tennyson, it was that one old good system, which has been consistently followed, which might have

become a precedence with the growth of time, that need not to be irrationally followed for all times to come. It has had to be rationally modulated to be applied in a practical life in order to meet the ever increasing need of socio economic development, and which would be inclusive too of the need of development of the Railway projects in the instant case, aimed to cater the increasing public need.

254. The development of the railways projects was already a preconceived notion in the plans of the Railway Department, when they have principally visualized the necessity to lay down the railway lines, way back in early 17th century, when the entire plan lay out was provided by the then private company, which was then engaged in operating the railway lines between Bareilly to Kathgodam (the reference of which, has already been made in the earlier).

255. Looking to the geographical constraints of the location of Haldwani Railway Station, since it adjoins the river-bed area of River Gola, the engineering lay out has had to be planned in a fashion in order to meet any future untoward contingency, which may be caused due to flood or any other geographical calamites, which cannot be perceived at a given moment of time, but there could be only a preparedness, and that preparedness in the present case, would require an availability of a land for the future development of the Railways. In such an eventuality or otherwise to meet the need of the growing township of Haldawni, where there is a regular and ever going on population explosion. Owing to the aforesaid reasons, we are

of the view, that since by the documents, which had been placed on record before us and which had been analysed by us, it could be ultimately concluded, that no private need, even though it may not be existing in the instant case, in relation to the interveners, could have a precedence over and above a public need and that too, on a property, which has been otherwise vested with the Railways as per the Khewat pertaining to 1959.

256. Since, we have after giving a thoughtful consideration to the respective claims, have ultimately come to the conclusion, that the interveners / occupiers don't have any existing legal right, which could at all be enforced in a Court of law.

257. In that eventuality, and particularly from the perspective of the need of the public requirement, a writ of mandamus is required to be issued, thereby directing the following Authorities to ensure the compliance of the judgment by resorting to take an immediate steps to remove the unauthorised occupants from the railways land, which has already been determined by us, by use of force, which would be including the assistance to be provided by the local Police, as well as the Railway Protection Force or any other Para Military Force, if at all, it is required to meet any an assessed public rebellion, when the judgment is actually enforced.

258. Thus, the Secretary, Home, to the State of Uttarakhand, the Director General of Police, to the State of Uttarakhand, the Head of the Railway Protection Force, the

District Magistrate, Nainital, the Senior Superintendent of Police, Nainital, and all his subordinate Administrative Executives, are hereby directed to use the forces to any extent determining upon need, to evict forthwith the unauthorised occupants after giving them a week's time to vacate the premises, because otherwise by way of a publication, which directed to be made by us, that itself would suffice of giving them advance notice of the probable action to be taken against them.

259. The following actions for eviction of unauthorised occupants, from the railway land, are required to be taken :

i.. The Railway Authorities in coordination with the District Administration, and if need be, with any other Para Military Forces, shall immediately, after giving a week's notice to the occupants over the railways land, ask them to vacate the land within the aforesaid period -.

ii. The service of notice for the purposes of the enforcement of this judgment within the time period as provided aforesaid is to be intimated by paper publication, and by beats of drum in the area of giving message to the local residents, of the probable action to be taken after the expiry of one week's period as given above.

iii. If the occupants / encroachers, fail to vacate the premises, and land in dispute of the Railways, after being noticed, it will be open for the Railway Authorities, that they in joint coordination with the local Police, District Magistrate, Senior Superintendent

of Police and other Para Military Forces, as referred to above, will initiate an immediate action and take a forceful possession of the occupied land from such occupants / encroachers.

iv. The statutory authorities as referred to above, will demolish or remove the unauthorised structures, which have been raised by the encroachers on the railways land, as identified in the body of this judgment, and would forthwith take possession after the expiry of a period of one week as granted above.

v. It will be open for the Railway Authority, that in case, if they are forced to utilize any Force to demolish the structure and to take in possession the property of the railways, unauthorisedly occupied by the encroachers, the cost, which is invested by them in removing the unauthorised occupants, would be recovered from them as an arrear of land revenue.

vi. The Secretary, Home, to the State of Uttarakhand, the Director General of Police, State of Uttarakhand, the Head of the Railway Protection Force, the District Magistrate, Nainital, the Senior Superintendent of Police, Nainital, are expected to ensure to provide full Police Force, to be deployed at the site, after assessing the requirement of Force, to meet any probable contingency by surrounding the area by Armed Forces, including taking care and the protection to the Police Officials and the Staff of the Railways, who would be engaged in the demolition process of illegal structures, standing on the railways land.

vii. The Railway Administration is further directed to initiate an appropriate proceedings as against the erring persons, including the Official of the concerned establishments for not cooperating in the process of eviction, as directed above, and they would also be taken to task for establishment or allowing the encroachers by occupying the land belonging to the Railways, which itself is contemplated under the Indian Railways Works Manual, as provided under its Para 815.

viii. The Railways Administration is directed to initiate an inquiry in order to check the extent of the land boundaries and its verification, and after the encroachers being removed after the aforesaid action, the Railway Administration, would ensure that a proper fencing of the railway property is made by the Railway Administration, and would also ensure by deployment of necessary Forces to resist any future act of encroachment to be made on the railways land, from which, the eviction process as directed above is to be resorted to by the respondents.

260. We hope and trust, that the directions given by us after a detailed analysis of the respective rights, would facilitate in ensuring the future railway development, and to curb the menace of the encroachment, on the land of the Railways, may be ultimately laid to rest and would be restrained to reoccur in future by the Railways Authorities.

261. The Administrative Agencies are directed to take action, complete the direction, and report back compliance to us, within a week thereafter.

(Ramesh Chandra Khulbe, J.)	**(Sharad Kumar Sharma, J.)**
20.12.2022	20.12.2022

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