

A COLLECTOR, DISTT. GWALIOR AND ANOTHER  
v.  
CINE EXHIBITORS P. LTD. AND ANOTHER  
(Civil Appeal Nos.281-282 of 2012 )

B JANUARY 11, 2012  
[DALVEER BHANDARI AND DIPAK MISRA, JJ.]

C *Town Planning – Nazul land – Leased by Gwalior Development Authority (GDA) in public auction – Subsequent termination of the lease by lessor-GDA and lessee-first respondent asked to hand over possession of the land – Writ petition by first respondent dismissed by Single Judge of High Court – Division Bench of High Court, however, held that cancellation of the lease was unsustainable – Plea raised by*  
D *State that there was no transfer of the land by the State in favour of GDA, hence, the grant of lease by GDA in favour of first respondent was ab initio void and, therefore, there was no right in favour of the respondent to retain possession rejected by Division Bench on ground that since the GDA had*  
E *granted lease in auction conducted with the knowledge of the State, the State was estopped from raising the plea that the land had not been transferred to the GDA – Held: Nazul land, unless notified, does not automatically get vested in any authority or trust – Unless affirmative steps are taken by the*  
F *State Government by issuing a notification changing the character of the land and transferring it in favour of any authority, corporation or municipality, it maintains its own character, i.e., nazul land – In the case at hand, nothing on record that the nazul land in question had ever been notified for transfer in favour of the GDA – GDA never became the*  
G *owner of the land or had the authority to deal with the land and, therefore, it could not have put the land to auction for any purpose whatsoever – First respondent cannot assert any right or advance any claim to remain in possession and run the*

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*cinema hall thereon and that too after cancellation of the licence for running the cinema hall, solely on the basis of a lease granted by its lessor-GDA, a statutory authority, which had no right on the land as the ownership still remained with the State Government – GDA could not have granted the lease of the property belonging to the State Government as it was Nazul land meant for the Public Works Department – The State Government and its functionaries are at liberty to proceed against the first respondent for its eviction – First respondent may take recourse to arbitration against the GDA for any other relief as entitled in law – M.P. Town Improvement Trust Act, 1960 – Chapters IV and V – Madhya Pradesh Nagar Tatha Gramin Adhiniyam, 1973 – ss. 38 and 87.*

*Doctrines – Doctrine of Promissory Estoppel – Inapplicability of – Held: The doctrine/principle cannot be soundly embedded or treated to be sacrosanct when a public authority carries out a representation or a promise which is prohibited by law or is devoid of the authority of law – Administrative Law.*

*Doctrines – Doctrine of public policy – Invocation of – Grant of lease by Gwalior Development Authority (GDA) in respect of property belonging to the State Government – Challenge to – Held: The doctrine of public policy becomes enforceable when an action affects or offends public interest or where injury to the public at large is manifest – On facts, the collective interest in the property could not have been jeopardised by usurpation of power/authority by GDA – Such assumption of power by the GDA made the whole action sans substratum and thereby a nullity.*

**The Gwalior Development Authority (GDA) had granted lease of land in public auction. The land in question was recorded as nazul land meant for the Public Works Department. The lease was granted to first respondent-company for the purpose of construction of a cinema hall. After execution of the lease deed, the first**

A respondent-company constructed a cinema hall and commenced business. However, as certain disputes arose between the Directors of the company, it was eventually resolved by it that the licence for running the cinema should be surrendered and pursuant thereto, the Collector cancelled the licence for running the cinema hall. After closure of the cinema hall, the lessor-GDA terminated the lease and directed the first respondent-lessee to hand over possession of the land in question.

C The writ petition filed by the first respondent-lessee was dismissed by a Single Judge of the High Court on the ground that as there was cancellation of the licence of the cinema hall, the order of termination of the lease was valid and the first respondent would have an opportunity of hearing before steps are taken for its dispossession. Dissatisfied with the order, the first respondent preferred writ appeal before the Division Bench. The Division Bench held that since no notice of termination of lease was given despite the same being imperative and also since there was no commission of breach of the express conditions of the lease deed, the cancellation of the lease was totally unsustainable. With regard to taking over possession, the Division Bench opined that the authority cannot assume the jurisdiction of taking possession without taking recourse to law. The plea raised by the State that there was no transfer of the land by the State in favour of the GDA, hence, the grant of lease by the GDA in favour of the first respondent-company was *ab initio void* and, therefore, there was no right in favour of the said respondent to retain the possession, was rejected by the Division Bench on the ground that since the GDA had granted lease in auction that was conducted with the knowledge of the State, it was estopped from raising the plea that the land had not been transferred to the GDA.

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The question which arose for consideration in the instant appeal was whether the Division Bench was justified in holding that when the GDA had granted the lease of the land in auction within the knowledge of the State, the State was estopped from raising any such ground that the land had not been transferred to the GDA.

Allowing the appeals, the Court

HELD: 1. It is settled in law that the doctrine of promissory estoppel is founded on the principles of equity and to avoid injustice. However, the said principle cannot be soundly embedded or treated to be sacrosanct when a public authority carries out a representation or a promise which is prohibited by law or is devoid of the authority of law. [Para 10] [944-B-C]

*Union of India and others vs. Godfrey Philips India Ltd.* AIR 1986 SC 806; 1985 (3) Suppl. SCR 123; *Dr. Ashok Kumar Maheshwari vs. State of U.P. and another* AIR 1998 SC 966; 1998 (1) SCR 147; *Rishabh Kumar vs. State of U.P.* AIR 1987 SC1576; 1987 Suppl. SCC 306; *M/s. Sharma Transport vs. Government of A.P. and others* AIR 2002 SC 322; 2001 (5) Suppl. SCR 390; *S. Sethuraman v. R. Venkataraman and others* AIR 2007 SC 2499; *Rajendra Agricultural University vs. Ashok Kumar Prasad and others* (2010) 1 SCC 730; 2009 (15) SCR 1168 – relied on.

2.1. In the case at hand, admittedly, the land in question is nazul land meant for the Public Works Department. In regard to the submission made by respondent no.1 that the land had vested with the Town Improvement Trust, Gwalior constituted under the M.P. Town Improvement Trust Act, 1960 and the said vesting continued under the Madhya Pradesh Nagar Tatha Gramin Adhiniyam, 1973, on a closer scrutiny of the schematic conception of the 1960 Act, especially the provisions contained in Chapter 5 of the 1960 Act dealing

A with the acquisition of land belonging to private persons,  
it is demonstrable that the various provisions deal with  
the acquisition and improvement of the area under the  
planned schemes. It is seemly to note that the type of  
improvement schemes being delineated under Section 31  
B of the 1960 Act are fundamentally general improvement  
schemes, re-building scheme, re-housing schemes, a  
street scheme, deferred street scheme, development  
scheme, housing accommodation scheme, town  
expansion scheme, drainage or drainage including  
C sewage disposal scheme; and playground, stadium and  
recreation ground scheme. The aforesaid has nothing to  
do with the land belonging to the State Government. Any  
land coming under the scheme or covered under it has  
to be governed by the procedure and guidelines for  
improvement. It is a different concept altogether. [Paras  
D 12, 15] [946-B-C; 949-C-F]

2.2. The lands belonging to the State Government are  
dealt with in the Revenue Book Circular and nazul lands  
are specifically adverted to in Part IV of the said Circular.  
E It deals with management and disposal of nazul lands  
within the limits of Municipal Corporation, municipal  
towns and notified areas. The Revenue Book Circular  
also stipulates that the classification of land is done at  
the time of settlement. The Collector of the district has  
F been bestowed with the power to make alterations in the  
settlement classifications on the ground that they have  
been incorrectly made or that the purpose for which the  
land was used had changed in the settlement. In such  
type of cases, 'Abadi' lands are recorded as nazul lands  
and, accordingly, the vacant spaces are administered as  
G nazul lands. The aforesaid schematic concept read with  
the language employed in the 1960 Act and the 1973 Act  
would clearly reveal that nazul land, unless notified, does  
not automatically get vested in any authority or trust. The  
H State Government, from time to time, has been issuing

notifications to the effect of vesting or transferring of nazul land to be part of improvement trust and giving advance possession to the Town Improvement Trust. That apart, the State Government has issued notifications framing guidelines for distribution of the Nazul plots. [Paras 18, 19] [954-A-B; 956-F-H; 957-A-B]

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2.3. Unless affirmative steps are taken by the State Government by issuing a notification changing the character of the land and transferring it in favour of any authority, corporation or municipality, it maintains its own character, i.e., nazul land. In the case at hand, the land is recorded as nazul land for the Public Works Department. Nothing has been brought on record that it had ever been notified for transfer in favour of the GDA. Thus analysed, the GDA never became the owner of the land or had the authority to deal with the land and, therefore, it could not have put the land to auction for any purpose whatsoever. Ergo, the first respondent cannot assert any right or advance any claim to remain in possession and run the cinema hall and that too after cancellation of the licence, solely on the basis of a lease granted by its lessor, a statutory authority, who had no right on the land for the simple reason that the ownership still remained with the State Government. When no right lies with the GDA in respect of the land in view of the conditions precedent as stipulated in the Revenue Book Circular not having been satisfied and the nature of the land has remained in a sustained state, no legal sanctity can be attached to the lease executed by it in favour of the 1st respondent. The grant is fundamentally ultra vires and hence, the respondent-company has to meet its Waterloo. [Para 21] [957-E-H; 958-A-B]

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*Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh and Ors* AIR 2011 SC 1834 – relied on.

3. Quite apart from the above, it is condign to note

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A that in a case of the present nature, the common law doctrine of public policy can be invoked. The said doctrine becomes enforceable when an action affects or offends public interest or where injury to the public at large is manifest. As is perceptible, the GDA could not have granted the lease of the property belonging to the State Government as it was Nazul land meant for the Public Works Department. The collective interest in the property could not have been jeopardised by usurpation of power/authority by the GDA. Such assumption of power by the GDA makes the whole action sans substratum and thereby a nullity. Needless to say, any grant has to have legal sanctity and legitimacy. [Para 22] [958-C-E]

D 4. The State Government and its functionaries are at liberty to proceed against the first respondent for its eviction. It is open to the first respondent to take recourse to the arbitration clause against the GDA for any other relief as advised in law. [Para 23] [958-F-G]

E Case Law Reference:

	1985 (3) Suppl. SCR 123	relied on	Para 10
	1998 (1) SCR 147	relied on	Para 11
F	1987 Suppl. SCC 306	relied on	Para 11
	2001 (5) Suppl. SCR 390	relied on	Para 11
	AIR 2007 SC 2499	relied on	Para 11
	2009 (15) SCR 1168	relied on	Para 11
G	AIR 2011 SC 1834	relied on	Para 20

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H From the Judgment & Order dated 28.03.2008 in Writ

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Appeal No. 234 of 2007 and order dated 22.09.2010 of the High Court of Madhya Pradesh, Bench at Gwalior in Review Petition No. 83 of 2010. A

B.S. Banthia, Vikas Upadhyay for the Appellants.

Dhruv Mehta, Divyakant Lahoti, Sameer Abhyankar, R.K. Agarwal, Veena Minocha, Arvind Minocha, Randhir Singh, Niraj Sharma, Neeraj Srivastav for the Respondents. B

The Judgment of the Court was delivered by

**DIPAK MISRA, J.** 1. Special leave granted in both the petitions. C

2. In these two appeals, the defensibility and legal pregnability of the judgment and order dated 28th March, 2010 passed by the Division Bench of High Court of Judicature of Madhya Pradesh, Jabalpur, Bench at Gwalior in Writ Appeal No. 234 of 2007 and the order dated 22nd September, 2010 in R.P. No. 83 of 2010 whereby the Division Bench has dislodged the order passed by the learned Single Judge in Writ Petition No. 1718 of 2002 wherein the writ court had declined to interfere with the order dated 9.8.2002 passed by the Chief Executive Officer, Gwalior Development Authority (for short "the GDA"), who, by the said order, had terminated the lease of the first respondent herein and directed it to surrender the possession of the property within seven days, failing which appropriate action to be taken against it in accordance with law, is called in question. D E F

3. The succinct expose' of facts are that the GDA issued an advertisement for allotment of plot No. 1 admeasuring 40160 sq. feet situated in the locality known as Mayur Market for the purpose of construction of a cinema house and, in the public auction, the respondent-company, the first respondent herein, became the highest bidder and accordingly, a lease agreement was executed on 27.5.1978 between the GDA and the respondent company. The said lease agreement was for a G H

A period of thirty years with the stipulation of a right of renewal subject to certain conditions. It was asserted in the writ petition that after execution of the lease deed, the respondent company constructed a cinema hall and commenced the business. As certain disputes arose between the directors of the company, B it was eventually resolved that the licence for running the cinema should be surrendered and in consonance with the resolution, a letter was issued to the Collector concerned, who cancelled the licence for running the cinema hall. After closure of the cinema hall, the GDA, by communication dated 2.8.2002, C terminated the lease and directed for handing over possession of the land in question.

4. It was contended before the learned Single Judge that the notice for cancellation of lease was not served on it and the allegations that there had been violation of the terms and D conditions of the agreement were absolutely unsustainable and, therefore, the eventual act of termination was sensitively susceptible. It was also urged that as permission was granted for raising permanent construction, the lease had the character of a permanent lease and could not have been terminated by E the GDA. The GDA combated the aforesaid stand put forth by the respondent-company and countered the same by contending, inter alia, that there had been violation of the terms and conditions of the agreement; that the stance of putting the lease on the pedestal of a permanent lease was sans F substance; that the plea that the notice for cancellation of lease was not served was contrary to the documents brought on record; that reminders were served on the respondent-company; that the lease was granted for a specific purpose and when the said purpose had totally melted into extinction, it was G within the legal province of the GDA to cancel the lease and take appropriate steps for eviction.

5. The learned Single Judge took note of the H proponements canvassed by the learned counsel for the parties and posed the question whether the GDA had the right to terminate the lease of the petitioner and, thereafter, scanning

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the terms and conditions of the lease deed, expressed the view that as there has been cancellation of the licence of the cinema hall, the order of termination of the lease was valid and the petitioner would have an opportunity of hearing before steps are taken for its dispossession. Being of this view, he dismissed the writ petition. Be it noted, a contention was raised before the learned Single Judge that the land in question is owned by the State but the same was granted on lease by the GDA, which is absolutely impermissible, however, the learned Single Judge did not think it appropriate to dwell upon the same on the foundation that the said question will be decided when the State Government takes any action against the petitioner by the respondent GDA.

6. Being dissatisfied with the aforesaid order, the first respondent preferred a writ appeal and the Division Bench in the intra-court appeal expressed the opinion that no notice of termination of lease was given despite the same being imperative and secondly, there was no commission of breach of the express conditions of the lease deed and hence, the cancellation was totally unsustainable. With regard to taking over possession, the Division Bench opined that the authority cannot assume the jurisdiction of taking possession without taking recourse to law. It is apt to note that on behalf of the State, a stand was vigorously canvassed that when there has been no transfer of the land by the State in favour of the GDA, the grant of lease by the GDA in favour of the first respondent-company is *ab initio void* and, therefore, no right flows in favour of the said respondent to retain the possession. The learned Judges repelled the said stand on the base that when the GDA had granted lease in the auction that was conducted with the knowledge of the State, it is estopped from raising the plea that the land had not been transferred to the GDA. Expressing this view, the appeal was dismissed in the ultimate eventuality.

7. Mr. B.S. Banthia, learned counsel appearing for the appellants, questioning the sustainability of the impugned orders, has raised the following contentions: -

- A (a) When an issue was raised before the High Court that the State had not transferred the land in favour of the GDA and, therefore, the GDA had no authority to deal with the land in any manner whatsoever, the said facet should have been dealt with in proper perspective and not brushed aside on the ground of estoppel.
- B
- C (b) The concept of promissory estoppel does not have any play when no competent authority of the Government had transferred the land in favour of the GDA as per the requisite procedure and as a sequitur, any step taken by the GDA even in the presence of an officer will not debar the State to raise the plea as regards its right, title and interest within the period of limitation.
- D
- E (c) The grant of lease being *per se* wholly vulnerable, the basic infrastructure collapses and once the infrastructure is foundered, the super structure is bound to be razed to the ground. To put it differently, when the GDA had no right to lease the land in question, the respondent-company cannot claim a better right as a lessee than that of a lessor.
- F (d) It has become a common phenomenon to grab public property by adopting maladroit methodology and, therefore, the Division Bench should not have scuttled the right of the State and its authorities on the ground of estoppel which, in fact, does not arise remotely.
- G (e) The GDA has unequivocally admitted before this Court that the land in question was not transferred in its favour. The action taken by the State Government should be given the stamp of approval.

H 8. Mr. Dhruv Mehta, learned senior counsel appearing for

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the respondent No. 1, countering the aforesaid submissions, submitted that the approach of the High Court in the writ appeal cannot be found fault with inasmuch as the scope of the writ petition out of which the writ appeal emerged was limited, i.e., whether the lease could be cancelled by the GDA. It is canvassed by him that there may be a cavil between the GDA and the State Government but by any stretch of imagination, the same cannot create any kind of concavity or dent in the right of the first respondent to enjoy the benefit of the lease. It is his further submission that when the State Government has become totally oblivious of its right, if any, it cannot rise like a phoenix and put forth its claim to the property. It is highlighted by him that under the M.P. Town Improvement Trust Act, 1960 (for short "the 1960 Act"), and Madhya Pradesh Nagar Tatha Gramin Adhiniyam, 1973 (for brevity "the 1973 Act") the schemes having come into existence, the property had vested in the GDA and, therefore, the State Government has no right to interfere and in that backdrop, the finding recorded in the intra-court appeal that there has been lack of notice prior to the cancellation of the lease and further no violation of any of the postulates of the lease agreement cannot be flawed.

9. Mr. Neeraj Sharma, learned counsel appearing for the 2nd respondent, the GDA, contended that the land was recorded as 'Nazul' meant for the Public Works Department and was never transferred to the GDA and in that background, the question of estoppel or acquiescence by the State Government does not arise. In fact, submits the learned counsel, by a total mistaken impression, the land was put to auction and the lease deed was executed in favour of the first respondent. Additionally, it is propounded by him that if any dispute has arisen, there is an arbitration clause which would enable the respondent- company to agitate its grievances barring eviction especially when the grant of lease is a void one.

10. The seminal issue that emanates for consideration is whether the Division Bench is justified in stating in a sweeping

A manner that when the GDA had granted the lease of the land  
in auction within the knowledge of the State, the State is  
estopped from raising any such ground that the land had not  
been transferred to the GDA after lapse of thirty years. It is not  
disputed before us that the first respondent had not perfected  
B its right, title and interest by way of adverse possession as it  
could not have been. Evidently, the High Court has proceeded  
on the basis of the doctrine of promissory estoppel. It is settled  
in law that the said doctrine is founded on the principles of  
equity and to avoid injustice. The said principle cannot be  
C soundly embedded or treated to be sacrosanct when a public  
authority carries out a representation or a promise which is  
prohibited by law or is devoid of the authority of law. In *Union  
of India and others vs. Godfrey Philips India Ltd.*,<sup>1</sup> a three  
Judge Bench of this Court has crystallised the principle thus:-

D “....that there can be no promissory estoppel against the  
legislature in the exercise of its legislative functions nor can  
the Government or public authority be debarred by  
promissory estoppel from enforcing a statutory prohibition.  
E It is equally true that promissory estoppel cannot be used  
to compel the Government or a public authority to carry out  
a representation or promise which is contrary to law or  
which was outside the authority or power of the officer of  
the Government or of the public authority to make”

F 11. In *Dr. Ashok Kumar Maheshwari vs. State of U.P. and  
another*<sup>2</sup>, a two-Judge Bench of this Court, after referring to the  
decision in *Rishabh Kumar vs. State of U.P.*<sup>3</sup>, proceeded to  
state as follows: -

G “21. This principle was reiterated in *Union of India v. R.C.  
D’Souza* AIR 1987 SC 1172 : (1987) 2 SCC 211, where  
a retired army officer was recruited as Assistant

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1. AIR 1986 SC 806.

2. AIR 1998 SC 966.

H 3. AIR 1987 SC 1576.

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Commandant on temporary basis and was called upon to exercise his option for regularisation contrary to the statutory rules. It was held that it would not amount to estoppel against the Department.

22. Whether a Promissory Estoppel, which is based on a 'promise' contrary to law can be invoked has already been considered by this Court in *Kasinka Trading v. Union of India*, (1995) 1 SCC 274 : (1995 AIR SCW 680) as also in *Shabi Construction Co. Ltd. v. City & Industrial Development Corporation* (1995) 4 SCC 301 wherein it is laid down that the Rules of "Promissory Estoppel" cannot be invoked for the enforcement of a 'promise' or a 'declaration' which is contrary to law or outside the authority or power of the Government or the person making that promise."

In this context, we may profitably refer to the decision of this Court in *M/s. Sharma Transport vs. Government of A.P. and others*<sup>4</sup>, wherein a three-Judge Bench opined that it is equally settled law that promissory estoppel cannot be used compelling the Government or a public authority to carry out a representation or promise which is prohibited by law or which is devoid of the authority or power of the officer of the Government or the public authority to make. In this regard, we may also usefully refer to the observations made in *S. Sethuraman vs. R. Venkataraman and others*<sup>5</sup> which is to the effect that if jurisdiction cannot be conferred by consent, it cannot clothe the authority to exercise the same in an illegal manner. Recently, in *Rajendra Agricultural University vs. Ashok Kumar Prasad and others*,<sup>6</sup> it has been laid down that non-compliance with the mandatory statutory requirement will make the act invalid and cannot be regarded as a representation held out by the Government creating any right

4. AIR 2002 SC 322.

5. AIR 2007 SC 2499.

6. (2010) 1 SCC 730

A to seek the benefit by inviting the doctrine of promissory estoppel against the government.

B 12. In the case at hand, admittedly, the land is nazul land meant for the Public Works Department. It had been urged before the High Court that the land in question was not transferred in favour of the GDA. The submission of Mr. Mehta, learned senior counsel for the respondent No. 1, is that the land had vested with the Town Improvement Trust, Gwalior constituted under the 1960 Act and the said vesting continued under the 1973 Act. To appreciate the said submission, we may analyse the scheme of the 1960 Act. The said Act was enacted to consolidate and amend the law relating to the establishment of improvement trust for the purpose of making and executing town improvement scheme in certain towns of Madhya Pradesh. Chapter II of the Act deals with the Constitution of the Trust. Chapter III provides for conduct of business. Chapter IV deals with improvement schemes. Various schemes are being enumerated under various provisions in the said chapter. Section 52 which occurs in Chapter IV provides for issuance of notification of sanction of improvement schemes and order regarding vesting a property in the Trust. The said provision being relevant is reproduced below : -

F "52. *Notification of sanction of improvement scheme and order regarding vesting of property in the Trust.* – (1) Whenever the State Government sanctions an improvement scheme, it –

G (a) shall announce the fact by notification and except in the case of a deferred street scheme, development scheme, or town expansion scheme, the Trust shall forthwith proceed to execute the same; and

H (b) may order that any street, square, park, open space or other land, or any other part thereof,

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which is the property of the Government and managed by the Central Government or the State Government shall, subject to such condition as it may impose, vest in the Trust for the purpose of the scheme.

(2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned."

On scanning of the aforesaid provision, it is luminous that sub-Section (2) of Section 52 postulates that publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

13. Chapter V of the Act deals with acquisition and disposal of land. Section 67 empowers the Trust to acquire by purchase, lease or exchange any land within the area comprised in a sanctioned scheme for many persons under an agreement with such person. Section 68 provides for notice of acquisition of land. As the learned senior counsel for the respondent has placed heavy reliance on the said provision, the same is reproduced below :-

*"68. Notice acquisition of land-* (1) If in the opinion of the Trust any land is required for the purposes of any scheme sanctioned by the State Government under Section 51, the Trust shall by a notice published in the Gazette and in such other manner may be prescribed, signify its intention to acquire such land. Such notice shall specify the place where and the hours during with the maps and specifications of the land proposed to be acquired may be inspected.

(2) The owner of the land which has been notified under sub-section (1) or any other person interested therein may object to the acquisition of such land within 80 days after

A the publication of the notice in the Gazette.

(3) Every objection under sub-section (2) shall be made to the Trust in writing and the Trust shall give the objector an opportunity of being heard in person or by a duly authorised agent or pleader and shall after hearing all such objections and making such further inquiry, if may, as may be necessary," take such decision as it may deem fit."

On a plain reading of the aforesaid provision, it is clear as noon day that if in the opinion of the Trust any land is required for the purpose of any scheme sanctioned by the State Government under Section 51, the Trust shall by notice published in the Gazette and by any such other manner as may be prescribed, signify its intention to acquire such land. Such notice, as stipulated therein, shall specify the place etc. The rest of the provision is, in a way, procedural in nature. Section 69 makes a provision whereunder the Trust may apply to the State Government for sanction to acquire the land. Section 70 provides for procedure for sanction of acquisition. Section 71 provides for notification of acquisition and vesting of land in the Trust.

14. Mr. Mehta has drawn immense inspiration from Section 71 which is as follows:-

*"71. Notification of acquisition and vesting of land in Trust – (1) After the acquisition of land is sanctioned by the State Government under Section 70 the Trust may acquire such land by publishing in the Gazette a notice stating that it had decided to acquire the land and has obtained the sanction of the State Government for the acquisition thereof.*

*(2) When a notice under sub-section (1) is published in the Gazette the land shall, on and from the date of such publication, vest absolutely in the Trust free from all encumbrance.*

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(3) Where any land is vested in the Trust under sub-section (2), the Trust may by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the Trust or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(4) If any person refuses or fails to comply with an order made under sub-section (3), the Trust may take possession of the land and may for that purpose cause to be sued such force as may be necessary."

15. On a closer scrutiny of the schematic conception of the Act, especially the provisions contained in Chapter 5 of the 1960 Act dealing with the acquisition of land belonging to private persons, it is demonstrable that the various provisions deal with the acquisition and improvement of the area under the planned schemes. It is seemly to note that the type of improvement schemes being delineated under Section 31 of the 1960 Act are fundamentally general improvement schemes, re-building scheme, re-housing schemes, a street scheme, deferred street scheme, development scheme, housing accommodation scheme, town expansion scheme, drainage or drainage including sewage disposal scheme; and playground, stadium and recreation ground scheme. The aforesaid has nothing to do with the land belonging to the State Government. Any land coming under the scheme or covered under it has to be governed by the procedure and guidelines for improvement. It is a different concept altogether.

16. We will be failing in our duty if we do not refer to certain provisions, namely, Sections 38 and 87 of the 1973 Act as our attention has been drawn by Mr. Mehta, learned counsel for the respondent No. 1. They read as follows:

"38. *Establishment of Town and Country Development Authority.* – (1) The State Government may, by notification, establish a Town and Country Development Authority by

A such name and for such area as may be specified in the notification.

B (2) The duty of implementing the proposal in the development plan, preparing one or more town development schemes and acquisition and development of land for the purpose of expansion or improvement of the area specified in the notification under sub-section (1) shall, subject to the provision of this Act vest in the Town and Country Development Authority established for the said area.

C Provided that the duty imposed on the Town and Country Development Authority shall, till that authority is established for any area under sub-section (1), be performed by the local authority having jurisdiction over such area as if it were a Town and Country Development Authority established under this Act.

D (3) On the establishment of the Town and Country Development Authority for the area to which the proviso to sub-section (2) applies, the following consequences shall ensue in relation to that area, namely : -

E (i) all assets and liabilities acquired and incurred by the local authority in the discharge of the duty under the proviso to sub-section (2) shall belong to and be demand to be the assets and liabilities of the Town and Country Development Authority established in place of such local authority;

F (ii) all records and papers belonging to the local authority referred to in clause (i) shall vest in and be transferred to the Town and Country Development Authority established in its place.

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H 87. *Repeal, Savings and construction of references.* (1)

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As from the date of, -

A

(a) the coming into force of the provisions of Chapter II the reference to Chief Town Planner in any enactment for the time being in force, shall be construed as a reference to the Director;

B

(b) the Constitution of a planning area, the following consequences shall ensue, namely -

(i) The Madhya Pradesh Town Planning Act, 1948 (No. 17 of 1948), shall stand repealed in such area;

C

(ii) any land use map, draft development or development plan prepared under the said Act, shall be deemed to have been prepared under this Act and all papers relating thereto shall stand transferred to the Director;

D

(C) the establishment of the Town and Country Development Authority for any area the following consequences shall ensue in relation to that, area, namely -

E

(i) the Madhya Pradesh Town Improvement Trust Act, 1960 (No. 14 of 1961), shall stand repealed in its application to the said area,

F

(ii) the Town Improvement Trust functioning within the jurisdiction of the Town and Country Development Authority so established shall stand dissolved and any Town Improvement Scheme prepared under the said Act, shall in so far as it is not inconsistent with the provisions of this Act be deemed to have been prepared under this Act,

G

(iii) all assets and liabilities of the Town Improvement Trusts shall belong to and be deemed to be the assets and liabilities of the Town and Country Development Authority

H

A established in place of such Town Improvement Trust under Section 38;

B iii-a) grants and contributions payable to the Town Improvement Trust shall continue to be payable to the Town and Country Development Authority established in place of such Town Improvement Trust under Section 38;

C (iv) all employees belonging to or under the control of the Town Improvement Trust referred to in sub-clause (ii) immediately before the date aforesaid shall be deemed to be the employees of the Town and Country Development Authority established for such area under Section 38;

D Provided that the terms and conditions of service of such employees shall be the same until altered by the Town and Country Development Authority with the previous sanction of the State Government :

E Provided further that no sanction under the foregoing proviso shall be accorded by the State Government until the person affected thereby is given a reasonable opportunity of being heard;

F (v) all records and papers belonging to the Town Improvement Trusts referred to in sub-clause (ii) shall vest in and be transferred to the Town and Country Development Authority established in its place under Section 38.

G (2) Notwithstanding the repeal of the Madhya Pradesh Town Improvement Trusts Act, 1960 (No. 14 of 1961) (hereinafter referred to as the repealed Act), undersub-clause (i) of clause (c) of sub-section (1),

H (a) all cases relating to compensation in respect of acquisition and vesting of land in the Town Improvement Trust under Section 71 of the

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repealed Act and pending before the Town Improvement Trust or the Tribunal or the Court of the District Judge or the High Court immediately before the date of such repeal shall be dealt with and disposed of by --

A

(i) the Town and Country Development Authority established in place of such Town Improvement Trust under Section 38;

B

(ii) the Tribunal to be constituted under Section 73 of the repealed Act after the commencement of the Madhya Pradesh Nagar Tatha Gram Nivesh (Sanshodhan) Adhiniyam, 1979;

C

(iii) the Court of the District Judge;

(iv) the High Court;

D

As the case may be, in accordance with the provisions of the repealed Act, as if this Act had not been passed;

(b) the Town and Country Development Authority, the Tribunal, the Court of the District Judge or the High Court, as the case may be, may proceed to deal with and disposed of the same from the stage at which such cases were left over at the time of repeal."

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17. If we have correctly understood the submission of Mr. Mehta, learned senior counsel, he has placed reliance on the said provisions solely for the purpose that the right created in favour of the GDA remained unaffected and, in fact, was protected under the 1973 Act. There is no cavil over the said proposition of law. But, a pregnant one, the crux of the matter is whether the land that was recorded as Nazul land meant for the Public Works Department got transferred to the GDA so that its right got concretized.

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A 18. It is apt to note that the lands belonging to the State Government are dealt with in the Revenue Book Circular and nazul lands are specifically adverted to in Part IV of the said Circular. It deals with management and disposal of nazul lands within the limits of Municipal Corporation, municipal towns and notified areas. Under the heading 'What is Nazul', it has been stated thus: -

"Nazul' and 'Milkiyat Sarkar' Land which is the property of Government and which -

- C (a) is not included in a holding in a village;
- 21 (b) is not recorded as Banjar, scrub jungle, hills and rocks, rivers, village-forest or Government-forest;
- D (c) is not recorded as village roads, Gothan, grazing land Abadi and pastures;
- 17 (d) is not reserved for any communal purpose for the Nistar of the village; and
- E (e) is not service land;

F falls under two classes viz. "Nazul" and "Milkiyat Sarkar". Nazul includes such Government land as is used either for building purposes or purposes of public convenience such as markets, or recreation grounds or which is likely to be used for such purposes in future.

G Government land in the occupation or on the books of a department of the State Government or of the Central Government are not to be excluded from the classification and will be recorded as "Nazul" or "Milkiyat Sarkar", as the case may be. In brief, it may be stated that "Nazul" is that land which has a site value as opposed to an agricultural value."

H Clause 12 of Section IV provides how nazul land can be disposed of. It reads as follows: -

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"12. Nazul land can be disposed of in the following ways:- A

- (1) by permanent lease;
- (2) by temporary lease;
- (3) on no-claim agreement; B
- (4) on annual licence; and
- (5) transfer in favour of a department of the State Government or other State Governments or the Government of India and vesting in favour of a local body." C

Clause 13 deals with the manner in which permanent leases are granted and Clause 14 deals with reservation of special plots. For the sake of completeness, both the Clauses are reproduced below: - D

"13. **Permanent leases** – (i) Permanent leases are granted either through auction or without auction.

(ii) Permanent lease may be granted without auction in the following cases: - E

- (1) When the land in question is adjacent to the land of the applicant and will not be of any use to any person other than the applicant.
- (2) When it is decided to condone the encroachment of an encroacher and to grant the encroached area to the encroacher on permanent lease. F
- (3) When the land in question will be used for religious charitable, educational, co-operative, public or social purposes. G
- (4) Plots given to very poor persons in a locality where only poor persons live. H

A (5) Any other land for which there are adequate reasons for foregoing auction, e.g., land required by the Madhya Pradesh Electricity Board, State Road Transport Corporation, etc.

B 14. *Reservation of special plots.* – At regular settlement all Government plots or sites which are likely to be valuable for any special reason, such as their situation near a line of railway or the like, or which in any scheme of development have been set aside as specially valuable or as being required for a public purpose are marked off by the Settlement Officer in consultation with the Collector as reserved and the disposal of all such plots will be subject to the sanction of the State Government upon such special terms as may be decided for each plot.

D All land within a radius of 100 yards of a railway station and all land within 40 yards of a railway station boundary should be reserved.

E There will necessarily be exceptions such as for instance where there is a lay out already sanctioned by Government the Collector will maintain a list of these plots and with the approval of the State Government will alter it as the changing circumstances of the town may demand.”

F 19. The Revenue Book Circular also stipulates that the classification of land is done at the time of settlement. The Collector of the district has been bestowed with the power to make alterations in the settlement classifications on the ground that they have been incorrectly made or that the purpose for which the land was used had changed in the settlement. In such type of cases, ‘Abadi’ lands are recorded as nazul lands and, accordingly, the vacant spaces are administered as nazul lands. The aforesaid schematic concept read with the language employed in the 1960 Act and the 1973 Act would clearly reveal that nazul land, unless notified, does not automatically get vested in any authority or trust. The State Government, from time

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to time, has been issuing notifications to the effect of vesting or transferring of nazul land to be part of improvement trust and giving advance possession to the Town Improvement Trust. That apart, the State Government has issued notifications framing guidelines for distribution of the Nazul plots.

20. It is not out of place to mention here that this Court in *Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh and Ors.*<sup>7</sup> had not approved the manner in which the State Government had granted the land belonging to the State in favour of the appellant therein. After referring to the Revenue Book Circular, this Court decried the action of the State Authorities in allotment of Nazul land without following the criteria and by treating it as State largesse wherein the public has an interest. After the said decision was rendered on 06.04.2011, the State of Madhya Pradesh, Department of Revenue, has issued Circular No. 6-53/2011-Nazul dated 8.8.2011 describing certain guidelines in the distribution of Nazul land. In the said circular, it has been stated that the said circular shall be treated as a part of Section 1 of the Revenue Book Circular.

21. We have referred to these aspects singularly to highlight that unless affirmative steps are taken by the State Government by issuing a notification changing the character of the land and transferring it in favour of any authority, corporation or municipality, it maintains its own character, i.e., nazul land. In the case at hand, the land is recorded as nazul land for the Public Works Department. Nothing has been brought on record that it had ever been notified for transfer in favour of the GDA. Thus analysed, the GDA never became the owner of the land or had the authority to deal with the land and, therefore, it could not have put the land to auction for any purpose whatsoever. Ergo, the first respondent cannot assert any right or advance any claim to remain in possession and run the cinema hall and that too after cancellation of the licence, solely on the basis of a lease granted by its lessor, a statutory authority, who had no

7. AIR 2011 SC 1834.

A right on the land for the simon pure reason that the ownership still remained with the State Government. When no right lies with the GDA in respect of the land in view of the conditions precedent as stipulated in the Revenue Book Circular not having been satisfied and the nature of the land has remained  
B in a sustained state, no legal sanctity can be attached to the lease executed by it in favour of the 1st respondent. The grant is fundamentally ultra vires and hence, the respondent-company has to meet its Waterloo.

C 22. Quite apart from the above, it is condign to note that in a case of the present nature, the common law doctrine of public policy can be invoked. The said doctrine becomes enforceable when an action affects or offends public interest or where injury to the public at large is manifest. As is  
D perceptible, the GDA could not have granted the lease of the property belonging to the State Government as it was Nazul land meant for the Public Works Department. The collective interest in the property could not have been jeopardised by usurpation of power/authority by the GDA. Such assumption of power by  
E the GDA makes the whole action sans substratum and thereby a nullity. Needless to say, any grant has to have legal sanctity and legitimacy.

F 23. For the reasons aforementioned, the appeals are allowed and the orders passed in the writ appeal and the application for review, being unsustainable, are set aside. The State Government and its functionaries are at liberty to proceed against the first respondent for its eviction. It is open to the first respondent to take recourse to the arbitration clause against the GDA for any other relief as advised in law. There shall be  
G no order as to costs.

B.B.B.

Appeals allowed.