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STATE OF U.P. & ORS.

v.

MAHARAJA DHARMANDER PRASAD SINGH ETC.

JANUARY 17, 1989

B [RANGANATH MISRA AND M.N. VENKATACHALIAH, JJ.]

Uttar Pradesh Urban Planning and Development Act, 1973: Ss 14, 15, 37 & 41: Lucknow Development Authority—Permission for development of land by private party—Cancellation/revocation of—Validity of.

C

Constitution of India, Article 226: Forfeiture and cancellation of lease—Whether can be agitated in writ proceedings—Judicial review—Scope and nature of.

Transfer of Property Act, 1882: Ss. 108, 111 & 114A—Lessee—
D *Nature of possession after expiry/forfeiture of lease—Forcible dispossession prohibited.*

Section 3 of the Uttar Pradesh Urban Planning and Development Act, 1973 provides for declaration of an area to be a 'development area' by gazette notification. Section 14(1) of the Act interdicts development
E **of land in such an area by any person or body unless permission has been obtained from the Vice-Chairman of the Development Authority. Section 15(1) requires every person or body desirous of obtaining permission to make an application in the manner prescribed. Section 15(3) empowers the Vice-Chairman, after making such an enquiry as he considers necessary, either to grant the permission subject to such con-**
F **ditions as he may specify, or refuse the permission. Section 15(5) provides for an appeal to the Chairman against an order made by the Vice-Chairman refusing permission. Section 37 *inter alia* makes an order of the Vice-Chairman made under s. 15 final. Section 41(1) makes it incumbent on the Authority (the Chairman or the Vice-Chairman) to carry out such directions as may be issued to it from time to time by the**
G **State Government for the efficient administration of the Act. Section 41(3) confers revisional powers on the State Government.**

The respondent-lessees applied to the appellant-Development Authority under s. 15(1) of the Act for permission to put up a multi-storeyed building on the demised plot. The Vice-Chairman of the
H **Authority sanctioned the permission by his order dated January 31,**

1985. However, on July 24, 1985 the State Government issued directions purporting to be under s. 41(1) of the Act interdicting the progress of construction on ground of violation of the conditions of the lease. The High Court allowed the writ petition preferred by the respondents and quashed the said directions. A

Thereafter, on August 12, 1985 the State Government brought to the notice of the Vice-Chairman serious illegalities in the building sanction and indicated that the same be reviewed and revoked, to which he did not agree. Finally, by its communication dated October 15, 1985 addressed to the Chairman of the Authority the State Government directed him to initiate immediate proceedings against the respondents for making misrepresentations, fraudulent statements and concealing material facts in obtaining building permission. To that letter was annexed a notice for service on the lessees and the builder associated with construction to show cause for cancellation of the lease and demolition of unauthorised construction. The respondents filed their objections against the proposed cancellation, but the Government by its order dated November 19, 1985 found the explanation unacceptable and proceeded to terminate the lease. This order was challenged by the respondent-lessees in a writ petition before the High Court. B C D

Subsequently, the Vice-Chairman of the Authority in a separate action issued notice dated January 9, 1986 to the respondents to show cause why the building permission granted on January 31, 1985 should not be cancelled. Respondents objected to the proposed action but the Authority found the objections unacceptable and proceeded by its order dated April 19, 1986 to cancel the permission. The two lessees challenged this cancellation in writ petitions before the High Court. E

The High Court found that the proceedings initiated and the action taken by the Government and the Vice-Chairman of the Authority in the matter, respectively, of forfeiture of the lease and the cancellation of the permission to build were both infirm in law and required to be quashed. It took the view that a reasonable opportunity of being heard had been denied to the lessee-respondents, and that the grounds for forfeiture of the lease were irrelevant and illusory; that there was no provision in the Development Act conferring powers on the Vice-Chairman to review the decision in the matter of sanctioning a plan to build after the same was acted upon and constructions were being made only in accordance with it; that s. 41(1) of the Act could authorise the Vice-Chairman to review the earlier permission but that there being no such directive from the Government the Vice-Chairman acting as a F G H

A statutory authority had no power to revoke or cancel the permission once granted, and that there was no casual connection between the Government's directive dated October 15, 1985, which had confined itself to the cancellation of the lease, and the proceedings initiated by the Vice-Chairman on January 9, 1986. It further found that as personal hearing has not been given to the petitioners the order passed B by the Vice-Chairman violates the principles of natural justice and that the grounds alleged were not sufficient to sustain the cancellation of the permission.

In the appeals by special leave preferred by the State Government in the matter of forfeiture of lease, it was contended for the appellants that the High Court fell into an error in allowing a matter, which should C properly have been the subject matter of a civil suit, to be agitated in proceedings under Article 226 of the Constitution. The submission was that the question whether there were breaches of covenants on the part of the lessees involved the construction of the terms of the lease deed which required evidence on the matter and such a dispute could not be D resolved on mere affidavits, and that the relationship between the parties being one of lessor and lessee the dispute between them pertained to a private law situation. It was also submitted that no hearing could be contemplated in the context for forfeiture of a lease of this nature. For the respondents it was contended that the State, even as a lessor, could not act arbitrarily either in the grant or premature E termination of the leases of public property and disputes arising in such context cannot always be reckoned as private law situations, and that at all events, the threatened exercise of extra-judicial re-entry by the State, being violative both of the limitations of the powers of the State as lessor under the law of landlord and tenant and of its actions as State, was a matter which required to be mandated against.

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In the appeals by special leave by the Development Authority in the matter of cancellation of permission to build, it was contended for it that the order dated April 19, 1986 itself disclosed the extent of opportunities afforded to the lessees and there could, therefore, be no question of failure of natural justice, that if permission had been G obtained by the lessees by misrepresentation or fraud or, if after obtaining the permission there had been violation of the terms and conditions of the grant, as in the instant case, the statutory authority granting the permission has itself the inherent and incidental and supplemental powers to revoke the permission, and that no express grant of power in this behalf was necessary. For the respondents it was contended that the H proceedings for cancellation of the permission having been initiated at

the instance of and compelled by the directions issued by the Government purporting to act under s. 41(1) of the Act there was a surrender of statutory discretion on the part of the Vice-Chairman thereby vitiating the decision; that the Vice-Chairman had no authority in law to cancel the permission, that the power to cancel or revoke a licence or permission, even assuming that the statute enables such cancellation, was clearly distinguishable from the power of refusal of an initial grant and that the exercise of power of cancellation which prejudicially affects vested rights partakes predominantly of quasi-judicial complexion; and that as there was denial of a reasonable opportunity of being heard the order passed by the Vice-Chairman violates the principles of natural justice.

Allowing appeals by the State,

HELD: 1. The question whether the purported forfeiture and cancellation of the lease were valid or not should not have been allowed by the High Court to be agitated under Article 226 of the Constitution since it involved resolution of disputes on questions of fact as well. [191C]

Express Newspapers v. *Union of India,* [1985] Suppl. 3 SCR 382, referred to.

2. A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression 're-entry' in the lease-deed does not authorise extra-judicial methods to resume possession. Under law the possession of a lessee, even after the expiry or its earlier termination is judicial possession and forcible dispossession is prohibited. He cannot, therefore, be dispossessed otherwise than in due course of law. [191F-G]

In the instant case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and governmental authorities should have a 'legal pedigree'. The State Government is, accordingly, prohibited from taking possession otherwise than in accordance with law. [192C]

Bishandas v. *State of Punjab,* [1962] 2 SCR 69, referred to.

The question of the legality and validity of the purported cancella-

A tion of the lease and the defence of the lessees is left open to be urged in appropriate legal proceedings, whenever and wherever Government proceeds to initiate action in accordance with law for resumption of possession. [192D-E]

Partly allowing the appeals by the Development Authority,

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HELD: 1.1 The Vice-Chairman, for purposes of s. 15(3) of the Act is a distinct statutory authority with statutory powers of his own distinct from Development Authority, which under s. 4(2) is a body corporate having perpetual succession and common seal. [197C-D]

C 1.2 An order made by him under s. 15(3) of the Act granting permission is not one of the orders revisable by Government under s. 41(3). Such an order, under the scheme of the Act, is not also appealable but assumes a finality contemplated by s. 37. [197F-G]

1.3 The power of control of the State Government under s. 41(1)
D consistent with the scheme of the Act, cannot be construed as a source of power to authorise any authority or functionary under the Act to do or carry out something which that authority or functionary is not, otherwise, competent to do or carrying under the Act. The section is not a Super Henry VIII clause for the supply or source of additional provisions and powers not already obtaining under the Act. [198A-B]

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2.1 The view of the High Court that in the absence of a directive or authorisation from the Government under s. 41(1), the Vice-Chairman, acting as the statutory authority dispensing permissions for development under the Act, cannot revoke or cancel a permission once granted is clearly erroneous. [198F]

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2.2 The grant of permission is part of or incidental to the statutory power to regulate orderly development of the 'development area' under the Act under regulatory laws. The power to regulate with the obligations and functions that go with and are incidental to it, are not spent or exhausted with the grant of permission. The power of regula-
G tion which stretches beyond the mere grant of permission, takes within its sweep the power, in appropriate cases, to revoke or cancel the permission as incidental or supplemental to the power to grant. Otherwise, the planitude of the power to regulate would be whittled down or even frustrated. [198F-H]

H 2.3 The power to grant, where the grant is itself vitiated by fraud

or misrepresentation on the part of the grantee at the time of obtaining the grant, or where the grantee, after the grant violates the essential terms and conditions subject to which grant is made, must therefore, be held to include the power to revoke or cancel the permit, even in the absence of any other express statutory provisions in that behalf. The grounds must, of course, be such as would justify such drastic action. This cancellation is a preventive step. There may, however, be cases of the third kind where the grant may be voidable at the instance of the Development Authority or otherwise entitling the Development Authority to initiate appropriate declaratory or other action to get rid of the effect of the permission. [199G-H; 200A-B]

2.4 It is erroneous to equate the powers under ss. 14 and 15 of the Act with judicial power which, in the absence of express provisions, could not enable the review of a judicial order after its exercise on the principle of *functus officio*. [198H; 199A]

Sardul Singh v. *The District Food and Supplies Controller, Patiala and Ors.*, W.P. No. 126 of 1962 decided on December 19, 1962 referred to.

3. The power of revocation or cancellation of the permission is akin to and partakes of a quasi-judicial complexion. In exercising the power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the direction of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority hands over its discretion to another body it acts *ultra vires*. Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. [200B-D]

Judicial Review of Administrative Action by S.A. de Smith referred to.

In the instant case, however, there was no such surrender of discretion by the Authority. The directive from the Government dated August 12, 1985 had spent itself out with the then the Vice-Chairman declining to act in accordance with it. The directive dated October 15, 1985 confined itself only to the cancellation of the lease and as incidental thereto, required the stoppage of work pending decision whether the lease should be cancelled or not. [201B-D]

A **4.1 It not unoften happens that what appears to be a judicial review for breach of natural justice is, in reality, a review for abuse of discretion.** [201H]

4.2 Judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is con-
B **fined to the examination of the decision-making process.** [202B]

4.3 When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could
C **reasonably have made such a decision, the judicial review of the decision making process includes examination as a matter of law, of the relevance of the factors. In the instant case, it is, however, not necessary to go into the marits and relevance of the grounds.** [202F-H]

Chief Constable of the North Wales Police v. *Evans,* [1982] 1
D **WLR 1155 referred to.**

5. There has been a denial of natural justice in the proceedings culminating in the order of cancellation. The show cause notice itself is an impalpable congeries of suspicions and fears, of relevant or irrelevant matter and has included some trivia. On a matter of such import-
E **ance where the stakes are heavy for the lessees who claim to have made large investments on the project and where a number of grounds require the determination of factual matters of some complexity, the statutory authority should, in the facts of the case, have afforded a personal hearing to the lessees. Both the show cause notice dated January 9, 1986 and the subsequent order dated April 19, 1986 cannot,**
F **therefore, be sustained.** [203B-D]

It is left open to the statutory authority, should it consider it necessary, to issue a fresh show cause notice setting out the precise grounds, and afford a reasonable opportunity, including an opportunity of personal hearing and of adducing evidence wherever necessary to
G **the respondent-lessees. In view of this liberty, reserved to the authority, the finding recorded by the High Court on the merits of the grounds is set aside.** [203D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 165-166 of 1989.

H From the Judgment and Order dated 8.12.1986 of the Allahabad

High Court in W.P. Nos. 6819 of 1985 and 367 of 1986. A

AND

Civil Appeal Nos. 167 to 171 of 1989.

From the Judgment and Order dated 8.12.1986 of the Allahabad B High Court in W.P. Nos. 3463, 367 of 1986, 5521, 5699 and 6819 of 1985.

Yogeshwar Prasad, D.D. Thakur, Soli J. Sorabjee and S.N. Kacker, Mrs. Shobha Dikshit, C.P. Lal, Umesh Chandra, Krishan Chandra, R.K. Mehta, R.C. Verma, Dr. Roxma Swamy, Dilip Tandon, Harish N. Salve, Rajiv Shakdher for the appearing parties. C

The Judgment of the Court was delivered by

VENKATACHALIAH, J. Special Leave Petitions (Civil) 4761 and 4762 of 1985 are by the State of Uttar Pradesh and its officers and D SLPs 13298 and 11498 of 1987 by the Lucknow Development Authority, (LDA for short) a statutory body constituted under Sec. 4(1) of the Uttar Pradesh Urban Planning & Development Act, 1973 (Act for short) and its Authorities. Seeking special leave to appeal from the common judgment dated 8.12.1986 of the High Court of Judicature, Allahabad, in Writ Petition Nos. 6819 of 1985 and 367 of 1986 which E were heard and decided along with three other writ-petitions i.e. WP 5521 & 5699 of 1985 and 3463 of 1986.

Special leave petitions 11515 of 1987 and SLP 11499 of 1987 are by the LDA and its Authorities directed against the said common judgment dated 8.12.1986 in so far as it pertains respectively to W.P. F 5699 of 1985 and 5521 of 1985. Special leave petition 11220 of 1987 is by the LDA and its Authorities seeking leave to appeal from the Order in W.P. 3463 of 1986.

2. The Writ-petitions before the High Court were preferred by the Respondent Lessees Sri D.P. Singh and his mother Smt. Raj G Lakshmi Devi, the heirs of Maharaja Pateshwari Prasad Singh in respect of Nazool land in Plot No. 10, Ashok Marg, Hasratganj, Lucknow, under deed dated 7.10.1961 commencing from 15.11.1961 and stated to expire on 31.3.1991. The proceedings arose out of two matters. The first pertained to the legality of the Notice dated 19.11.1985 issued by the State Government in cancelling the lease. The cancella- H

A tion was challenged in two writ-petitions filed separately by Sri D.P. Singh and Smt. Raj Lakshmi Devi in W.P. 6819 of 1985 and WP 367 of 1986 respectively. The High Court by its common order dated 8.12.1986 allowing the said two writ-petitions quashed the said cancellation. In SLPs 4761 and 4762 of 1987 and in SLPs 13298 and 11498 of 1987 the Lucknow Development Authority have assailed this part of B the common order.

The second area of the controversy arises out of the order dated 19.4.1986 of the Vice-Chairman, Lucknow Development Authority, (LDA for short) cancelling the earlier order dated 31.1.1985 granting permission under Sec. 15 of the Act in favour of the Respondent Lessees to develop the lease-hold property by errecting thereon a C multi-storeyed building called "Balarampur Towers" comprising of flats etc. This cancellation was challenged by the two Lessees in the joint writ-petition No 3463 of 1986. The High Court allowed this Writ-Petition also and has quashed the impugned order dated 19.4.1986 by which the permission to build earlier granted was sought to be D revoked. In SLP 11220 of 1987 the LDA seeks leave to appeal against this part of the order.

WPs 5699 of 1985 and 5521 of 1985 from which the LDA has preferred SLP 11515 of 1987 and SLP 11499 of 1987 respectively do not relate to or bear upon the substantial points of controversy between E the parties. They relate to certain incidental matters. Accordingly SLPs 11515 of 1987 and SLP 11499 of 1987 would be governed by the order made in the main SLPs.

3. Special leave is granted in all the petitions. We have heard Sri D.D. Thakur, learned Senior Counsel for the LDA and its authorities; F Sri Yogeshwar Prasad, learned senior counsel for the State of Uttar Pradesh and its officers and Sri Soli J. Sorabjee for the respondent-Lessees.

The subject matter of the lease is stated to be an extent of about 9885 Sq. Metres of Nazool land, which was comprised in the lease in G favour of a certain Mr. Edwards, granted in the year 1901 for a period of 30 years in the first-instance, with provision for renewal for two more terms of 30 years each. On 6.11.1936, there was the first renewal for 30 years effective from 1.4.1931 in favour of a certain Sri Syed Ali Zahir, a transferee from Mr. Edwards. Sri Syed Ali Zaheer assigned his interest under the lease in favour of Maharaja Pateshwari Prasad H Singh of Balrampur. On 7.10.1961, there was a second renewal in

favour of the present respondents, as the heirs of the said Maharaja Sri Pateshwari Prasad Singh. A

4. On 11.8.1981, Respondent-lessees, in collaboration with M/s Ambar Builders (P) Limited applied to the LDA under Sec. 15(1) of the Act for permission to put up a multi-storeyed building on the demised property. The permission was refused on the ground, *inter alia*, that the proposed construction would bring about a change in the user permitted under the lease. The lessees preferred an appeal before the Appellate Authority who dismissed their appeal. The Revision-Petition filed by the lessees before the Government under Sec. 41(1) of the Act was partly allowed and the Government by its order dated 15.10.1984, remitted the matter to the appropriate authority under the Act for a fresh consideration. On 31.3.1984, during the pendency of the revision-petition respondents submitted a modified plan, styling the construction as consisting of "residential-flats". After remand, the Nazool Officer is said to have given his "No objection Certificate" dated 2.12.1984 for the grant of permission. The power of attorney holder of respondents, a certain Sri Pawan Kumar Aggarwal, filed an affidavit dated 28.12.1984 before the appropriate authority of the LDA in regard to their being no impediment under Urban Ceiling Laws and the manner in which the Lessees propose to comply with any order that may eventually be made in that behalf. Finally on 23.1.1985, the Vice-Chairman of LDA sanctioned the permission. This was formally communicated to the Respondents on 31.1.1985. The lessees were required to, and did, deposit Rs. 53,440 with the LDA towards what was called 'Malba' charges. This marked one stage of the proceedings. B C D E

5. The next stage of the matter opened on 24.7.1985 with the issue of directions from Government purporting to be under sec. 41(1) of the Act interdicting the progress of the construction as, in the view of the Government, the lessees had violated the conditions of the lease; that the matter would require further examination and that any further construction in the meanwhile would create avoidable hardship to themselves. In W.P. 3732 of 1985 Respondent-Lessees challenged this direction of the Government before the High Court, which allowed the petition and quashed those directions. F G

Thereafter, on 12.8.1985, the Government brought to the notice of the then Vice-Chairman of the LDA what, according to Government, were serious illegalities in the sanction of the permission dated 31.1.1985 and indicated to the Vice-Chairman that sanction earlier H

granted on 31.1.1985 be reviewed and revoked. The Vice-Chairman, however, did not appear to share the view of Government either as to the existence of any legal infirmities in the grant of permission or as to the availability and the justifiability of review of the permission suggested by Government. The disinclination of the Vice-Chairman in this behalf was communicated to the Government by letter dated 12.9.1985. This marked yet another stage of the proceedings.

6. The State Government, apparently, was in no mood to relent. By communication No. 5062-37-37-3-1985 dated 15.10.1985 Shri Kamal Pandey, the then Secretary to Government of Uttar Pradesh, wrote to the Chairman, LDA recapitulating therein the previous proceedings in the matter of grant of permission for the "Balrampur-Towers" on the lease-land and enumerating what, according to Government, were serious infirmities in, and illegalities resulting from, the permission and as to how the construction violated the terms and conditions of the lease and directed the Chairman, LDA, to initiate immediate proceedings as directed in the said communication. To that letter was annexed, a show-cause notice which the Chairman was asked to serve on the Lessees and the Builders associated with the construction. It is necessary to excerpt some portion of that communication.

> "It has come to the notice of the Govt. that in obtaining the said permission the following illegalities, irregularities, material misrepresentation, fraudulent statements, concealments of material facts etc. appear to have been committed."

Referring to the various alleged illegalities, and breaches of covenants and of violations of law which, according to Government, vitiated the grant of permission to build and also render the lease liable to forfeiture. The communication proceeded to direct the Chairman.

> "Therefore, the Governor is pleased to direct you to serve the enclosed show cause notice in the Maharani, Sri Singh and Builders and obtain their explanation within three days of the service of the notice, give them an opportunity of hearing on the fourth day and submit your comments on the explanation along with your recommendations in the light of the above mentioned circumstances along with your report fixing the responsibility on the Vice-Chairman of the Lucknow Development Authority and

Officers/Officials of the Nazul and building section latest by 28th October, 1985." A

The relevant portions of the show cause notice annexed to the said letter and intended to be, and was later, served on the respondents-Lessees said:

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"Therefore, in compliance with the instructions of the Govt. Maharani Raj Laxmi Kumari Devi Sahiba and Sri Singh and M/s Ambar Builders (P) Ltd. are hereby given the show cause notice and an opportunity of hearing and they are required to explain within three days of the receipt of this notice as to why the Nazul lease granted in their favour be not cancelled and the unauthorised construction be not demolished for breach of the lease conditions and violation of the provisions of Urban Land and Ceiling Act and for making fraudulent statement and misrepresentation in respect of the land use in Lucknow Master Plan and on account of continuing constructions on the basis of fraudulently obtained building permission." C D

"If the desired explanation is not received within three days of the service of this notice by the undersigned, it will be presumed that they have nothing to say in their defence and thereafter action for cancellation of nazul lease and building permit and the removal of the unauthorised constructions will be taken along with their prosecution for fraudulent statement and misrepresentation as contained in the affidavit." E

8. The respondents filed their objections and representations against the proposed cancellation. But Government, by its order No. 5496/37-3/85 dated 19.11.1985, found the explanation unacceptable to it and proceeded to terminate the lease. The operative part of the "notice" terminating the lease reads: F

"Now therefore on account of the aforesaid breach of the lease conditions the Governor of U.P. does hereby terminate the lease. You are required to hand over possession of the land and building standing thereon to Collector, Lucknow, within 30 days of the receipt of this notice otherwise action for eviction will be taken against you at your cost." G H

This order was, as stated earlier, challenged by the respondent-lessees in WP No. 3463 of 1986 before the High Court.

9. So far as the permission for development of the property earlier granted on 31.1.1985 was concerned, separate action was taken by the Vice-Chairman of the LDA who issued the notice dated 9.1.1986 to the respondents requiring them to show-cause why the permission should not be cancelled. Respondents objected to the proposed action; but the Vice Chairman found the objections unacceptable and proceeded, by his order No. 363/VC/RBO/86 dated 19.4.1986, to cancel the permission.

The operative portion of the said order dated 19.4.1986 reads:

> "From the above it is clear that the above irregularities, material mis-representation and fradulent statements have been made along with the building map-plan and other documents submitted by Sri D.P. Singh and he has deliberately concealed material facts and mislead the Authority. Therefore, the permission dated 31.1.1985 granted to him is being cancelled."

The two Lessees challenged this cancellation before the High Court in two separate writ petitions filed by each of them in WP 6819 of 1985 and WP 367 of 1986 respectively.

10. The High Court was persuaded to the view that the proceedings initiated and the action taken by the Government and the Vice-Chairman of the LDA in the matter, respectively, of forfeiture of the lease and the cancellation of the permission to build were both infirm in law and required to be quashed. Accordingly, writ petitions 6819 of 1985 and WP 367 of 1986 were allowed and the order dated 19.11.1985 of the Government purporting to cancel the lease was quashed.

Likewise, WP 3463 of 1986 filed jointly by the Lessees was allowed and the show cause notice dated 9.1.1986 as well as the order dated 19.4.1986 of the Vice-Chairman cancelling the permission were quashed.

11. We may first take up the appeals of the State Government and of the LDA assailing the order of the High Court quashing the cancellation of the lease. Sri Yogeshwar Prasad for the appellants

submitted that the High Court fell into an error in allowing a matter, which should properly have been the subject-matter of a civil-suit, to be agitated in proceedings under Article 226 of the Constitution. Learned counsel submitted that the relationship between the parties was one of the Lessor and Lessee; the dispute between them pertained to the question whether there were breaches and non-performance of the covenants and conditions of the lease justifying the forfeiture of the lease, and that these matters, pertained to a private law situation and were not appropriately matters for enforcement of public law remedies. Learned Counsel further submitted that the question whether there were breaches of covenants on the part of the lessee involved the construction of the terms of the lease-deed and required evidence on the matter. Disputes of this nature, learned counsel submitted, could not be resolved on mere affidavits. Thirdly, Sri Yogeshwar Prasad submitted that on the merits of the contentions, the High Court should have noticed that even on the facts admitted, there were clear violations of the covenants and conditions of the lease. Learned counsel also submitted that the view of the High Court that a reasonable opportunity of being heard had been denied to the respondents was erroneous and that, at all events, no hearing could be contemplated in the context for forfeiture of a lease of this nature.

Sri Sorabjee for the respondents contended that the State, even as a lessor, could not act arbitrarily either in the grant or premature termination of the leases of public property and disputes arising in such contexts cannot always be reckoned as private law situations and that, at all events, the threatened exercise of extra-judicial re-entry by the State, being violative both of the limitations of the powers of the State as lessor under the law of landlord and tenant and of its actions as State, is a matter which requires to be mandated against.

12. The show-cause notice preceding the cancellation of the lease and the decision dated 19.11.1985 to cancel the lease, refer to and rely upon 10 grounds. Grounds 1 to 7 pertain to what the Government consider to be violations and breaches of the terms and conditions of the lease. They pertain to an alleged change of user, to subletting and sub-division of the leasehold property. The grounds also refer to the alleged non disclosure of the terms and conditions of the Memorandum dated 7.7.1984 between the Lessees on the one hand and Messrs Amar Builders Private Limited on the other. The grounds for forfeiture also refer to the likelihood of fraud being practised on the prospective purchasers of the flats as to the nature and extent of the lessees' subsisting interest under the lease and the limitations thereon.

A We do not propose to go into the merits of these grounds and their sufficiency in law to support the purported forfeiture as, in our view, this exercise, having regard to the disputed questions of fact that are required to be gone into in that behalf, are extraneous to proceedings under Article 226 of the Constitution.

B 13. In regard to the merits of the grounds for forfeiture of the lease, the High Court after an elaborate discussion of the relevance and tenability of each of the grounds, the learned judge held:

> "From the comments made by me on the above nine grounds it would be seen that some of the grounds are irrelevant or illusory or based on irrelevant material or on
C non-existent facts and some require serious consideration which has not been given. It has also been seen that while under the lease-deed the right of re-entry could be exercised only for a breach of the term of the lease in presenti, the lease has been cancelled for a breach in future. In this
D view of the matter the impugned order of the State Government cannot be sustained."

Shri Yogeshwar Prasad says that this exercise was extraneous to a proceeding under Article 226 as the question whether the construction with 39 flats would be one unit or multiplicity of units; whether if
E third party rights were created by the transfer, or use, of the flat, that would amount to sub-letting or assignment; or would, in any other way, violate the terms and conditions of the lease and the like, would not be matters that admit of being satisfactorily resolved on mere affidavits. Learned counsel submitted that even according to the learned judges there were serious questions to be examined.

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14. On a consideration of the matter, we think, in the facts and circumstances of this case, the High Court should have abstained from the examination of the legality or correctness of the purported cancellation of the lease which involved resolution of disputes on questions of fact as well. In *Express News Papers* v. *Union of India,* [1985] Supp. 3
G SCR 382 Venkataramiah, J. in a somewhat analogous situation observed:

> "The rest of the questions relate truly to the civil rights of the parties flowing from the lease deed. Those questions cannot be effectively disposed of in this petition under Article
H 32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the convenants

under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an Officer or a Minister or a Lt. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands."

Accordingly, we hold that the question whether the purported forfeiture and cancellation of the lease were valid or not should not have been allowed to be agitated in proceedings under Article 226.

15. Sri Sorabjee submitted that great hardship and injustice would be occasioned to the respondents if the State Government, on the self-assumed and self-assessed validity of its own action of cancellation of the lease, attempts at and succeeds in, a resumption of possession extra-judicially by physical force. Sri Sorabjee referred to the notice dated 19.11.1985 in which the Government, according to Sri Sorabjee, had left no-one in doubt as to its intentions of resorting to an extra-judicial resumption of possession. Sri Sorabjee referred to paras 3.10 and 4 of the order dated 19.11.1985.

A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression 're-entry' in the lease-deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal pedigree'. In *Bishandas* v. *State of Punjab*, [1962] 2 SCR 69 this Court said:

"We must, therefore, repel the argument based on the contention that the petitioners were trespassers and

A could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order."

"Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State B and its officers is destructive of the basic principle of the rule of law."

Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession C otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law.

In the result, the appeals of the State of Uttar Pradesh (SLPs 4761 and 4762 of 1987) and of the LDA (SLPs 13298 and 11498 of D 1987) directed against the common Judgment dated 8.12.1986 in so far as it pertains to WP 6819 of 1985 and WP 367 of 1986 are allowed and the said two writ petitions are dismissed, leaving the question of the legality and validity of the purported cancellation of the lease and the defence of the lessees open to be urged in appropriate legal proceedings, whenever and wherever Government proceeds to initiate action E in accordance with law for resumption of possession on the basis of the alleged cancellation or forfeiture of the lease. Any developmental work that may be made by the lessees or at their instance would, of course, be at their own risk and shall be subject to the result of such proceedings.

F 17. We may now turn to the controversy of the cancellation or revocation dated 19.4.1986 of the permission earlier granted under section 15 of the "Act", which was the subject matter of writ petition No. 3463 of 1986. The order of revocation was passed by the successor Vice-Chairman, Shri Govindan Nair, IAS. The earlier permission was granted by the then Vice-Chairman, Shri Babu Ram.

G

A show cause notice dated 9.1.1986 preceding the cancellation was issued by Vice-Chairman, Shri Govindan Nair himself. The order dated 19.4.1986 revoking the permission was challenged before the High Court on four grounds, viz., (a) that the lessees had had no reasonable opportunity of showing cause against the action proposed in the H notice dated 9.1.1986 and that an opportunity of an oral hearing had

been denied; (b) that the Vice-Chairman, under the provisions of the Act had no authority or power to revoke a permission once granted; (c) that, at all events, the lessees having incurred enormous expenditure on the development work, and having, on the strength of the permission granted earlier on 31.1.1985, altered their position substantially to their disadvantage, the Vice-Chairman was estopped from revoking the permission on principles of promissory estoppel; and (d) that the grounds on which cancellation rested were themselves irrelevant and insufficient in law to support the cancellation. The High Court accepted grounds at (a), (b) and (d). It did not find it necessary to go into ground (c) in regard to which the High Court observed:

> "The petitioners also contended that the Vice-Chairman of Lucknow Development Authority was estopped from cancelling the sanction to build, more so when it was acted upon ..... In the instant case this question need not be gone into detail inasmuch as sanction to build was sought to be cancelled on the ground of suppression of material facts, fraud and misrepresentation etc."

In regard to the Lessees', grievance at (a) supra of denial of natural justice, the High Court said:

> "He even did not give any opportunity of hearing to the petitioner on the said question and passed an order some 2½ months thereafter without even touching the objection of the petitioner regarding the competence and jurisdiction of the Vice-Chairman. Some new facts which found place in para 3 of the show cause notice also found place in the order. The Vice-Chairman did not make any enquiry into those facts including construction of three buildings in the city itself and as such it became still more necessary on him to give atleast a personal hearing to the petitioner. As hearing has not been given to the petitioner although there was enough time for the same, the order passed by the Vice-Chairman violates the principles of natural justice and cannot be sustained.

On the contention (b), the High Court held that the Vice-Chairman had no power to review the earlier order. The High Court was of the view—and this is exactly the opposite of Sri Sorabjee's contention before us—that the Vice-Chairman could derive power to

review only if he had been empowered by Government by a direction under section 41(1) of the Act. The High Court said:

> "It has not been pleaded by opposite parties that on 9.1.1986 when the new Vice-Chairman took over charge or on any date thereafter the state Government issued any direction to him to issue any show cause notice to the petitioners. There is no other provision in the Development Act conferring powers on the Vice-Chairman to review the decision in the matter of sanctioning a plan to build. In the absence of any provision in the Act or any direction issued by the State Government, the Vice-Chairman had no jurisdiction or authority to reconsider the decision granting sanction to a plan i.e. permit to build after the same was acted upon and constructions were being made only in accordance with it."

As to ground (d), the High Court examined the merits of each of the grounds and, in substance, came to the conclusion that the grounds were either irrelevant or, otherwise, insufficient in law to support the purported cancellation. The High Court held:

> "The above discussion shows that even though fraud, misrepresentation and concealment of facts etc. on the part of the petitioners having not been made out, yet such conclusions have been arrived at. The matter essentially hinged on the meaning and interpretation of the word 'Building' and instead of doing it in the right and correct perspectives, suspicion 'and presumptions have been made in arriving at the conclusions so arrived at."

19. Shri Thakur assailed the conclusions reached by the High Court on all the three questions. Learned counsel urged that the order dated 19.4.1986 itself discloses the extent of the opportunities afforded to the Lessees and there could, therefore, be no question of failure of natural justice in this case. As to the Vice-Chairman's power to cancel or to revoke a permission earlier granted, Sri Thakur submitted that if the permission had been obtained by the lessees by misrepresentation or fraud or, if after obtaining the permission there had been violation of the terms and conditions of the grant, the statutory authority granting the permission has itself the inherent and incidental and supplemental powers to revoke the permission, and that no express grant of power in this behalf was necessary. Shri Thakur submitted that the

grounds in this case related not only to fraud and misrepresentation practised at the time of securing the permission but also violation of the terms and conditions of the grant itself. He further submitted that there was material on record to show that the officers and the authorities of the LDA concerned with the grant of the permission under section 15 had betrayed the trust reposed in them by the statute and were disloyal to the Development Authority and on that ground also the successor Vice-Chairman could revoke and rescind the sanction so vitiated by fraud. Shri Thakur relied upon Sec. 21 of General Clauses Act for the exercise of the power to revoke.

20. Shri Sorabjee for the Lessees, however, maintained that the Vice-Chairman, having regard to the nature of the allegations on which the revocation is purported and which fell in the last category mentioned by Sri Thakur, had no authority in law to cancel the permission. He submitted that the view of the High Court as to the irrelevance and insufficiency in law of the grounds on which the purported cancellation was based were correct as they were well known administrative law tests of administrative or statutory discretion, and that appeal to Section 21 of the General Clauses Act to sustain the review was wholly inapposite in this case. Sri Sorabjee submitted that the power to cancel or revoke a licence or permission, even assuming that the Statute enabled such cancellation, was clearly distinguishable from a power of refusal of an initial grant and that the exercise of the power of cancellation which prejudically affects vested rights partake predominently of quasi-judicial complexion and where, as here, such power is resorted to at the behest of some-body extraneous to the power, there would be an abdication and surrender of the statutory discretion vitiating the decision. Sri Sorabjee said that the Vice-Chairman, even granting that he had power to cancel, acted at the behest of the Government which purported to Act under Section 41(1) issued directives on 12.8.1985 and on 15.10.1985 overriding the discretion of the Vice-Chairman.

21. To appreciate these contentions in their proper perspective it is necessary to notice the scheme of the Act in relation to the Regulation of Development in the "Development Area" under the Act. The preamble of the Act says:

> "In the developing areas of the State of Uttar Pradesh the problems of town planning and urban development need to be tackled resolutely. The existing local bodies and other authorities in spite of their best efforts have not been able

A to cope with these problems to the desired extent. In order to bring about improvement in this situation, the State Government considered it advisable that in such developing areas, Development Authorities patterned on the Delhi Development Authority be established. As the State Government was of the view that the urban development and
B planning work in the State had already been delayed it was felt necessary to provide for early establishment of such Authorities."

Sec. 2(b), (e) and (f) defines "building" "Development" and "Development Area":

C "2(b) 'building' includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial or other purposes whether in actual use or not."

D "2(e) 'development', with its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on over or under land, or the making of any material change in any building or land, and includes re-development."

E "2(f) 'development area' means any area declared to be development area under Section 3."

Section 3 provides:

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

Section 14(1) provides:

G Development of land in the developed area.—After the declaration of any area as development area under Section 3, no development of land shall be undertaken or carried out or continued in that area by any person or body (including a department of Government) unless permission for such development has been obtained in writing from the
H (Vice-Chairman) in accordance with the provisions of this Act."

Section 15(1) provides:

> "Application for permission—Every person or body (other than any department of Government or any local authority) desiring to obtain the permission referred to in Section 14 shall make an application in writing to the (Vice-Chairman) in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by (bye laws)."

Section 15(3) provides that on receipt of an application for permission for development, the Vice-Chairman, after making such enquiry as he considers necessary in relation to matters specified in Sec. 9(2)(d) or any other matter by order in writing either grant the permission subject to such conditions as he may specify or refuse the permission. The Vice-Chairman, for purposes of Section 15(3) is a distinct statutory authority with statutory powers of his own distinct from the "Development Authority" which under section 4(2) is a body corporate having perpetual succession and common seal.

Section 15(5) contemplates and enables an appeal to the Chairman against an order made by the Vice-Chairman refusing permission.

Section 37, *inter alia*, makes an order of the Vice-Chairman made under Sec. 15 final.

22. Section 41(3) enables the State Government either on its own motion or on an application made to it in this behalf to call for the records of any case disposed of or order passed by the Authority or the Chairman for purposes of satisfying itself as to its legality or propriety and may pass such orders or issue such directionns in relation thereto as it may think fit. It is relevant to note that an order made by an Vice-Chairman under Sec. 15(3) of the Act granting permission is not one of the orders revisable by Government under section 41(3). Such an order, under the scheme of the Act, is not also appealable but assumes a finality contemplated by Sec. 37.

23. Sec. 41(1) of the Act provides:

> "Control by State Government—The (Authority, the Chairman or the Vice-Chairman) shall carry out such directions as may be issued to it from time to time by the State

A Government for the efficient administration of this Act."

This power of the State Government consistent with the scheme of the Act, cannot be construed as a source of power to authorise any authority or functionary under the Act to do or carry out something which that authority or functionary is not, otherwise, competent to do
B or carryout under the Act. Section 41(1) is not a Super Henry VIII clause for the supply or source of additional provisions and powers not already obtaining under the 'Act'.

Sri Sorabjee for the Lessees says that the proceedings for cancellation were initiated at the instance of and compelled by the directives
C issued by Government under Section 41(1) and that therefore there was a surrender of discretion by the statutory Authority viz., the Vice-Chairman. Here is a piquant situation. The High Court says that section 41(1) could authorise the Vice-Chairman to review the earlier permission but that there being no such directive, the Vice-Chairman had no power to review. The High Court was in effect, held that the
D earlier directive dated 15.10.1985 under Sec. 41(1) was limited to the cancellation of the lease and for suspension of the building work in the interrugnam as incidental thereto and that the show cause notice dated 9.1.1986 for cancellation of the permission was not pursuant to any directive under Sec. 41(1). Thus, the legal position which the High Court assumes as to the scope of Sec. 41(1) is precisely what Shri
E Sorabjee contends against.

22. It appears to us that view of the High Court that in the absence of a directive or authorisation from the Government under Section 41(1), the Vice-Chairman, acting as the statutory authority dispensing permissions for development under the Act, cannot revoke
F or cancel a permission once granted is clearly erroneous. In this case the grant of permission is part of or incidental to the statutory power to regulate orderly development of the "Development Area" under the Act under Regulatory Laws. The power to regulate with the obligations and functions that go with and are incidental to it, are not spent or exhausted with the grant of permission. The power of regulation
G which stretches beyond the mere grant of permission, takes within its sweep the power, in appropriate cases, to revoke or cancel the permission as incidental or supplemental to the power to grant. Otherwise the planitude of the power to regulate would be whittled down or even frustrated.

H It is erroneous to equate the powers under sections 14 and 15 of

the Act with Judicial power which, in the absence of express provisions, could not enable the review of a judicial order after its exercise on the principle of Functus-Officio. In *Sardul Singh* v. *The District Food and Supplies Controller, Patiala and Ors.*, in writ petition 126/1962 DD 19.12.1962 a statutory order, promulgated under sec 3 of the Essential Commodities Act, 1955, contained a provision enabling the cancellation of a 'permit' under certain circumstances. The contention was that section 3 of the parent 'Act' itself did not delegate to the subordinate legislative authority to make such a provision for cancellation and, therefore, the provision for cancellation in the subordinate legislature was *ultra vires*. There was no provision in the Act expressly conferring the power to make a provision for cancellation of the permit. Section 3(2)(d) of the parent Act merely enabled the government to make orders "for Regulating by licences, permits or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity" and Section 3(2)(j) merely enabled Government to make orders for *incidental and supplementary matters* (emphasis supplied). The question arose whether provisions for cancellation of the permits envisaged in para 10 of the particular statutory order could be said to be relatable to or justified as a matter *incidental* or *supplementary* to Regulation. This Court held that the power to cancel was an "incidental and supplementary" matter. It was held:

> "If a trade in an essential commodity like coal is to be regulated by licenses or permits, it is obvious that the power to grant licenses or permits must include the power to cancel or suspend such licenses or permits as an "incidental or supplementary matter"; otherwise, the very purpose of S. 3 of the Act would be frustrated."

23. Indeed, the submissions of Sri Thakur on the point contemplate the exercise of the power to cancel or revoke the permission in three distinct situations. The first is where the grant is itself vitiated by fraud or misrepresentation on the part of the grantee at the time of obtaining the grant. To the second situation belong the class of cases where the grantee, after the grant violates the essential terms and conditions subject to which the grant is made. In these two areas, the power to grant must be held to include the power to revoke or cancel the permit, even in the absence of any other express statutory provisions in that behalf. There must, of course be the compliance with the requirements of natural justice and the grounds must be such as would justify such drastic action. This cancellation is a preventive step. The

A one aspect of the remedial measures is set-out in Section 27 of the Act. There may be cases of third kind where the grant may be voidable at the instance of the Development Authority or otherwise entitling the Development Authority to initiate appropriate declaratory or other action to get rid of the effect of the permission.

B It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdica-
C tion and surrender of its discretion. It would then not be the Authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts *ultra vires*". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the
D authority. De Smith sums up the position thus:

> "The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular man-
E ner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it
F has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act
G arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two
H classes are not, however, mutually exclusive."

25. But the question is whether the issue of the show cause notice or the subsequent decision to cancel could be said to have been made at the behest or compulsion of Government. Shri Sorabjee refers to paragraphs 17 and 18 of Shri Kamal Pandey's letter dated 15.10.1985. We are not sure that this is a correct understanding of the position. The High Court did not see any casual connection between the Government's directive dated 15.10.1985 and the proceedings initiated by the Vice-Chairman on 9.1.1986. The High Court was of the view that directive confined itself to the cancellation of the lease and as incidental thereto, required the stoppage of work pending decision whether the lease should be cancelled or not. This infact, was the basis for holding that the Vice-Chairman had no power to cancel. Lessees do not rely upon any subsequent directive to the Vice-Chairman from the Government in the matter of revocation of the permission. The earlier directive dated 12.8.1985 from the Government to the Vice-Chairman spent itself out with the then Vice-Chairman declining to act in accordance with it. There is no material to hold that Sri Govardhan Nair felt himself bound by that directive. Sri Sorabjee's contention based on an alleged surrender of discretion cannot, therefore, be upheld.

26. It has, therefore, to be held that the finding of the High Court that the Vice-Chairman had no competence to initiate proceedings to revoke the permission on the ground that the permission itself had been obtained by misrepresentation and fraud and on the ground that there were violations of the conditions of the grant, appear to us to be unsupportable. The contention of the Respondent-Lessees that the show cause notice, dated 9.1.1986 and the cancellation order, dated 19.4.1986, are vitiated by a surrender of a discretion on the part of the Vice-Chairman cannot also be held to be well-founded. Sri Thakur's contention to the contrary on both these points would require to be accepted.

27. Now in the end, two more findings of the High Court remain to be considered, viz., on the Lessees' grievance of denial of reasonable opportunity of being heard and the validity and sufficiency of the alleged grounds to sustain the cancellation. We may consider the latter, first:

28. It not unoften happens that what appears to be a judicial review for breach of natural justice is, in reality, a review for abuse of discretion. It is true that amongst the many grounds put forward in the show cause notice dated 19.1.1986, quite a few overlap each other and

A are distinguishable from those urged for the cancellation of the lease itself. Some of the grounds might, perhaps, be somewhat premature. Some of them even if true are so trivial that no authority could reasonably be expected to cancel the permission on that basis. For instance the ground that the permission was applied for and granted in the name of one only of the two lessees would be one such.

B

However, Judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision making-process. In *Chief Constable of the North Wales Police* v. *Evans,* [1982] 1 WLR 1155 refers to the merits-legality distinction in judicial review. Lord Hailsham said:

C

> "The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a
D conclusion which is correct in the eyes of the court."

Lord Brightman observed:

> ". . . . . Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the
E decision was made . . . . ."

And held that it would be an error to think:

> ". . . . . that the court sits in judgment not only on the correctness of the decision-making process but also on the
F correctness of the decision itself."

When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could
G reasonably have made such a decision, the judicial review of the decision making process includes examination, as a matter of law, of the relevance of the factors. In the present case, it is, however, not necessary to go into the merits and relevance of the grounds having regard to the view we propose to take on the point on natural justice.

H It would, however, be appropriate for the statutory authority, if

it proposes to initiate action afresh, to classify the grounds pointing out which grounds, in its opinion, support the allegation of fraud or misrepresentation and which, in its view constitute subsequent violations of the terms and conditions of the grant. The grounds must be specific so as to afford the Lessees an effective opportunity of showing cause.

29. On the point of denial of natural justice, we agree with conclusion of the High Court, though not for the same reasons, that there has been such a denial in the proceedings culminating in the order of cancellation. The show cause notice itself is an impalpable congeries of suspicions and fears, of relevant or irrelevant matter and has included some trivia. On a matter of such importance where the stakes are heavy for the Lessees who claim to have made large investments on the project and where a number of grounds require the determination of factual matters of some complexity, the statutory authority should, in the facts of this case, have afforded a personal hearing to the lessees. We, therefore, agree with the conclusion of the High Court that both the show cause notice dated 9.1.1986 and the subsequent order dated 19.4.1986 would require to be quashed, however, leaving it open to the statutory authority, should it consider it necessary, to issue a fresh show cause notice setting out the precise grounds, and afford a reasonable opportunity including an opportunity of personal hearing and of adducing evidence wherever necessary to the Respondent-Lessees. In view of this liberty, reserved to the authority, it is necessary to set-aside the findings recorded by the High Court on the merits of the grounds. The appeal of the Lucknow Development Authority arising out of SLP 11220 of 1987 is partly allowed and the order of the High Court in WP 3463/1986 modified accordingly. Appeals arising out of SLPs 11515 of 1987 and 11499 of 1987 of the LDA directed against the common judgment of the High Court in so far as it relates to WP 5699 of 1985 and WP 5521 of 1985 also disposed of in the light of the order is made in the appeals arising out of SLPs 4761, 4762, 13298, 11498 and 11220 of 1987.

30. In the circumstances, we leave the parties to bear and pay their own costs.

P.S.S. Appeals allowed partly.