

(2013) 09 AHC CK 0164

Allahabad High Court (Lucknow Bench)

Case No: Civil Misc. Writ Petition No. 11669 (M/B) of 2011

S.G.S. Construction and
Developers Pvt. Ltd.

APPELLANT

Vs

U.P. Avas Evam Vikas Parishad

RESPONDENT

Date of Decision: Sept. 25, 2013

Citation: (2013) 11 ADJ 114

Hon'ble Judges: Uma Nath Singh, J; Devendra Kumar Arora, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Uma Nath Singh, J.

This writ petition has been filed mainly with two prayers, namely: (i) to issue a writ in the nature of mandamus commanding respondent/opposite party No. 1 namely U.P. Avas Evam Vikas Parishad to demarcate lands measuring 42.45 acres out of 63.45 acres, which are mortgaged so that if at a later date the properties at serial No. 6 as mentioned in Annexure P/1 were to be sold by respondent No. 3, there would be no ambiguity in identifying such properties, and (ii) to command respondent No. 2 to implement his order dated 6th September 2011 within a time frame, preferably, within a period of three months in order to sell the properties at serial Nos. 1 to 5 which are also contained in Annexure P/1, and to restrain him from proceeding with the application filed on 20.10.2011 (Annexure P/7) by respondent No. 3 till the properties at serial Nos. 1 to 5 are not sold. Besides, the petitioner company has also made a general prayer for issuance of any other writ, direction, or order(s) as may be deemed fit and proper in the facts and circumstances of the case.

2. Sri Aarohi Bhalla, learned counsel, appearing for the petitioner company during the course of hearing gave up prayer No. 2. Thus, the area of consideration on the petition shall now be confined only to prayer No. 1.

3. The brief facts giving rise to filing of this petition are that respondent No. 3 had taken a loan of Rs. 75.07 crores between December 1995 to 1998 from the Housing and Urban Development Corporation Limited, (for short "the HUDCO"), respondent No. 4, a Public Financial Institution. Respondent No. 3 mortgaged its properties with the HUDCO-respondent No. 4 in order to secure the loan sanctioned by that financial institution. However, respondent No. 3 failed to return/repay the loan amount, therefore, respondent No. 4 was compelled to initiate the recovery proceedings before various fora.

4. The details of properties/lands under the mortgage are as follows:

(i) Multi-storied Building/Hospital Complex on Plot No. 1-2, Ambedkar Road, opposite Bus Depot, Ghaziabad, (U.P.) measuring 6009.36 sq. mts. together with the super structure constructed thereon in terms of the Sale-deed dated 14.10.1996;

(ii) Land measuring 20234.25 sq. mts. (5 Acres) in Block No. K-Pratap Vihar, Sector-12, Ghaziabad (U.P.) together with the super structure constructed thereon in terms of the Lease Deed dated 15.9.1995 and the Conveyance Deed dated 3.2.1996;

(iii) Land measuring 20234.25 sq. mts. (5 Acres) in Block No. J-Pratap Vihar, Sector 12, Ghaziabad, U.P. together with the super structure constructed thereon in terms of the Lease Deed dated 15.9.1995 and the Conveyance Deed dated 3.2.1996;

(iv) Land measuring 5.766 acres in Pratap Vihar, Sector-12, Ghaziabad (U.P.) together with the super structure constructed thereon in terms of the Sale-deed dated 11.4.1997;

(v) Land measuring 2784.27 sq. mts. at 16, HIG Houses, bearing No. HI-H16 in H-Block, Pratap Vihar, Sector 12, Ghaziabad, (U.P.) together with the super structure constructed thereon in terms of the Lease Deed dated 15.9.1995 and the Conveyance Deed dated 3.2.1996, and

(vi) Land measuring 108 Bighas, 01 Biswas, 14 Biswancies and 13 Kachwancies within the revenue limits of village Akbarpur, Village Behrampur and Village Mirzapur, Pargana-Loni, district Ghaziabad (U.P.) purchased by respondent No. 1 vide 136, the separate Sale-deeds.

5. When the proceedings for recovery of loan initiated by respondent No. 4 went in appeal before the Debt Recovery Appellate Tribunal, Delhi (in short "the DRAT"), respondent No. 3, the trust approached the petitioner proposing to sell the contiguous pieces of land measuring 63.45 acres, situated at village Akbarpur and Bherampur, Mirzapur and Mitepur, Tehsil and District Ghaziabad, U.P. The offer was made by the Trust because of being in the urgent need of money required to be deposited within an stipulated time, under the directions of the DRAT. Thus, it entered into an Agreement to Sell on 26.8.2010 with the petitioner for the sale of properties/lands as mentioned at serial No. 6.

6. It appears that during the pendency of proceedings before the DRAT, respondent No. 3 got the said lands as mentioned at serial No. 6 exchanged under the orders of respondent No. 1-the U.P. Avas Evam Vikas Parishad and the Secretary, Urban Development, Government of U.P.

7. Insofar as the properties/lands at serial No. 6 are concerned, the same are the subject-matter of the Agreement to Sell between the petitioner and respondent No. 3. The lands in question at serial No. 6 are said to reflect only Khasra numbers as existing prior to the exchange. It is averred in the petition that the mortgage had never been executed in respect of the lands under exchange entered into under the orders of Secretary, Urban Development, Government of U.P. vide notification dated 25.4.2007. Moreover, in the Agreement to Sell between the petitioner and respondent No. 3, the lands as mentioned therein are such lands which are owned and possessed by respondent No. 3 out of which only 42.45 acres of the total land of the properties at serial No. 6 were mortgaged with respondent No. 4 and the remaining land of approx. 21 acres is unencumbered being not mortgaged with respondent No. 4. Thus, it could not be the subject-matter of the sale proceedings pending before respondent No. 2-the Recovery Officer. Learned counsel for respondent No. 4 in his communication to the petitioner is said to have also stated that an area about 21 acres of the land of respondent No. 3, out of the lands at serial No. 6, is free from mortgage.

8. The main justification to enter into the said Agreement to Sell was that respondent No. 3 was unable to make the payment and deposit the loan liabilities as per the directions of the DRAT. Respondent No. 3 took an advance of Rs. 2.1 crores from the petitioner to deposit with respondent No. 4 the amount as directed in the order of the DRAT.

9. In terms of the Agreement to Sell, no further money out of the consideration amount of Rs. 154 crores was payable by the petitioner to respondent No. 3, till various permissions from the concerned authorities like the one to develop the land which is the subject-matter of the Agreement to Sell between the petitioner and respondent No. 3 were granted. Respondent No. 3 also informed the petitioner that necessary permissions had been granted by the authorities but the copies of the same were not readily available with it. With such assurances, respondent No. 3 got the plans for construction of building on the said land submitted to respondent No. 1 i.e. Town Planner, U.P. Avas Evam Vikas Parishad, Unit-6, being the competent authority for the approval of plan in favour of the petitioner. To accomplish and complete the entire process, respondent No. 3 took a further amount of Rs. 7 crores from the petitioner to pay to M/s. UP Town Ship Private Limited with which also, it had earlier entered into Agreement to Sell the lands, which was later cancelled. The money thus asked for from the petitioner was utilized to return the amount to M/s. UP Town Ship Private Limited on account of cancellation of the Agreement to Sell entered into by respondent No. 3 with the said company.

10. In this background, the petitioner having come to know about the pending recovery proceedings before the Recovery Officer filed its objection in terms of Income Tax Certificate Proceeding Rules, said to apply also in respect of the recovery proceedings. The grounds pleaded therein, inter alia, were that a part of the properties in question is the subject-matter of the Agreement to Sell between the petitioner and respondent No. 3 and that on the basis of the Agreement to Sell, respondent No. 3 paid a part of the dues to respondent No. 4 from the advance given by the petitioner; and that the petitioner also paid a substantial amount to M/s. UP Town Ship Private Limited required to be returned upon cancellation of the Agreement to Sell between respondent No. 3 and the said Company. The petitioner also brought to the notice of the Recovery Officer the fact that other mortgaged properties/lands, namely, at serial Nos. 1 to 5 are sufficient to liquidate the entire dues of respondent No. 3 as per the valuation done by the HUDCO, respondent No. 4, itself. It is also mentioned that the advance money which had been received earlier from M/s. UP Town Ship Private Limited and had been paid to respondent No. 4 was returned from the payments made by the petitioner. Thus, the entire amount of advance paid by the petitioner went directly or indirectly towards liquidation of the dues of respondent No. 3.

11. The matter was listed before the Recovery Officer on 6.9.2011 with objection of the petitioner. The certificate holder, namely, the HUDCO, respondent No. 4, requested that the properties at serial Nos. 1 to 5 be sold in the first instance and that the decision regarding sale of properties at serial No. 6 be taken later after adjudication of the objections filed by the petitioner. The Recovery Officer, respondent No. 2, thus, passed order accordingly on 6.9.2011. It is mentioned that respondent No. 3 did not file any reply to the objection of the petitioner, meaning thereby, that the said objection of the petitioner with regard to properties at serial No. 6 was admitted. To orders from respondent No. 2 was felt necessary also for the fact that respondent No. 3 is a compulsive litigant and would use the judicial process to any extreme in order to somehow delay the payment of dues of respondent No. 4. And thus, it could block the recovery of money due to a public financial institution.

12. Respondent No. 3, the judgment debtor Trust, having no locus standi in the matter, filed an application on 20.10.2011 before respondent No. 2 seeking modification of the order dated 6.9.2011 to the effect that instead of properties at serial Nos. 1 to 5, the property at serial No. 6 which is the subject-matter of the Agreement to Sell with the petitioner, be sold first. The entire purpose of filing the said application was to delay the recovery of money of a public financial institution by an adventurous process of litigation. The application by respondent No. 3 was not bona fide and also not maintainable as the Recovery Officer has no power to review its order. Moreover, respondent No. 3 had admitted the objections filed by the petitioner by not filing any reply thereto.

13. The application of respondent No. 3 was clearly meant to obstruct the recovery proceedings because in the list of lands mortgaged with respondent No. 4, about 21 acres already stand exchanged under the order of respondent No. 1, and no enquiry has been done to demarcate the remaining land of the area at serial No. 6 mortgaged with respondent No. 4. Hence, any effort by respondent No. 2 to sell the lands at serial No. 6 would have been a non-starter due to the exchange done in between. The application was motivated and filed as a strategy to defeat the claim of the petitioner as well as that of respondent No. 4.

14. Respondent No. 4 has already got the valuation of the mortgaged properties done. As per the same, the properties at serial Nos. 1 to 5 are enough to liquidate the dues of the company. Thus, the order of learned Recovery Officer dated 6.9.2011 is a just and appropriate order and any attempt to get the same varied would cause serious prejudice. It is so because the judgment-debtor has no right to decide as to which property is to be sold first, after the Recovery Officer has already done the exercise upon taking into account the possibility of the complications likely to arise due to sale of the properties/lands at serial No. 6. Hence, he decided to proceed with the sale of properties at serial Nos. 1 to 5 at the first instance.

15. Having said so as hereinabove, it is also averred in the petition that the dispute between the petitioner and respondent No. 3 is already pending in arbitration before Hon"ble Mr. Justice B.A. Khan (retired Chief Justice of J & K High Court). The learned Arbitrator had also granted an interim order in favour of the petitioner against respondent No. 3 while directing to maintain status quo qua the properties in question at serial No. 6. It is obviously for the reason that the same is the subject-matter of Agreement to Sell between the petitioner and respondent No. 3.

16. It is also clarified that the petitioner upon coming to know about the filing of application before the Recovery Officer, immediately filed an application before the learned Arbitrator u/s 27(5) of the Arbitration and Conciliation Act, 1996 to seek initiation of contempt proceedings against respondent No. 3. Respondent No. 3, according to the petitioner company, deliberately and intentionally violated the order of maintaining status quo passed by the learned Arbitrator. Respondent No. 2, the Recovery Officer, had already passed an order for the sale of other mortgaged properties. As such, the application filed by respondent No. 3 on 20.10.2011 to seek the sale of the properties/lands at serial No. 6 being the subject-matter of Agreement to Sell inspite of the status quo order passed by the learned Arbitrator amounted to committing a gross contempt of that order.

17. The arbitration matter was listed on 21.10.2011. On that date, an application was moved for seeking initiation of contempt proceedings against respondent No. 3. The learned Arbitrator issued notice on the said application and also directed respondent No. 3 to seek adjournment before respondent No. 2 on the next date of hearing i.e. 1.11.2011. However, respondent No. 3 did not move any application to seek adjournment. As the Recovery Officer did not sit on 1.11.2011, therefore, the

matter stood adjourned for 29.11.2011.

18. It has been emphatically averred that the lands in question which are the subject-matter of Agreement to Sell is in the State of Uttar Pradesh and the permission for exchange in respect of 21 acres has been granted to respondent No. 3 by respondent No. 5, Secretary, Department of Urban Development, Government of Uttar Pradesh, on processing of the file by the U.P. Avas Evam Vikas Parishad at Lucknow, respondent No. 1. It is thus not possible and justified to put the mortgaged properties at serial No. 6 on sale. Hence, an enquiry would be required to determine as to which properties have remained the subject-matter of mortgage after the execution of Exchange Deed. Such properties could be put on sale only after a proper enquiry. In fact, even the Recovery Officer in Delhi has no jurisdiction to proceed with the recovery proceedings because the mortgaged properties are situated in Uttar Pradesh.

19. It is also a stand of the petitioner that since the loan of the HUDCO, respondent No. 4, is due since 1995, and for the last 16 years, from the date of loan, respondent No. 3 has delayed the repayment by instituting proceedings before different fora including the one filed by way of application on 20.10.2011 to sell the properties at serial No. 6, filing of the instant petition was felt necessary. The properties at serial No. 6 are also the subject-matter of an interim order granted by the learned Arbitrator. Besides, the properties in question are not mortgaged in its entirety due to the execution of exchange in between. Hence, there could be no effective order by the Recovery Officer to sell the set of properties at serial No. 6 first. Besides, the said application is also bound to generate multiple litigation, and may cause unnecessary delay in repayment of dues of the HUDCO, respondent No. 3. The present application by respondent No. 3 is also an attempt to frustrate the arbitration proceedings pending before Hon"ble Mr. Justice B.A. Khan (Retd.) and to defeat the claim of petitioner.

20. Thus, according to the petitioner, its bona fide is clearly established by the fact that the petitioner in his objections filed before respondent No. 2 had clearly undertaken to pay the short fall, if any, of the recovery amount due to respondent No. 4 towards the repayment of its dues. In case the recovery amount is not realized from sale of the properties at serial Nos. 1 to 5, the petitioner has given the aforesaid undertaking to make good the short fall out of the balance payable by it under the Agreement to Sell dated 26.8.2010 with respondent No. 3.

21. On the contrary, it is submitted by way of preliminary objections that a mandamus cannot be issued to respondent No. 1 for demarcation of the land in question, nor is there any statutory duty cast upon it which it has failed to perform. It is also submitted that the Agreement to Sell is un-registered, therefore, no right as such has accrued in favour of the petitioner only on the basis of this document to seek the relief prayed for. It is also a submission that the petitioner company has no locus standi to maintain this petition before this Court because the lands in question

of Maharaji Educational Trust (respondent No. 3) are situated at Ghaziabad; because the proceedings instituted by respondent No. 4 are pending before the DRT/DART at Delhi, in which the petitioner is actively participating, and because the registered office of the HUDCO is situated at Delhi. It is also an argument that the contractual right to immoveable property, arising from the instrument, namely, "the Agreement to Sell" cannot be enforceable by this Court in exercise of powers under Article 226 of the Constitution. It is also a contention that no part, much less to say the integral part of cause of action would arise within the territorial jurisdiction of the Lucknow Bench, for, the petitioner never submitted any application for demarcation to the competent authority, which was refused, nor is any such plea taken in the writ petition. It is also urged that while exercising powers under Article 226 of the Constitution, this Court cannot intervene and force the parties to settle the dispute. The petitioner-company has got an equally efficacious alternative remedy before the DRT/DRAT, therefore, there is no occasion to approach this Court by way of the writ petition. It is also an argument that if demarcation is carried out, it would not give any title in favour of the petitioner-company. The petitioner does not even have right to seek specific performance on the basis of the Agreement to Sell.

22. In the submissions on behalf of respondent No. 1 it is urged that in any event it has already provided the detailed maps which have also been placed on record, wherein the lands given in exchange to respondent No. 3 by respondent No. 1 and vice versa have been clearly and unambiguously identified. Now, thus, nothing further remains to be done by respondent No. 1.

23. There is no statutory duty imposed on respondent No. 1 to carry out any demarcation activities as prayed for/demanded in the present writ petition qua properties/lands at serial No. 6 which are owned by respondent No. 3 and the duty pertaining to adjudicating/resolving demarcation/boundary dispute is that of the Sub Divisional Officer concerned who can pass orders in accordance with the provisions of Section 24 of the Uttar Pradesh Revenue Code Act, 2006.

24. Prior to the filing of this petition, no demand was ever made by the petitioner on respondent No. 1 for demarcation of the lands at serial No. 6, and hence, there was no refusal by the respondent to demand made by the petitioner.

25. The petitioner has no legal right to demand the performance of any duty by respondent No. 1 qua the lands in question as the petitioner has no right, whatsoever, in respect of thereof.

26. Respondent No. 1 has been arrayed as a party and a direction sought against it in the petition is only with the sole purpose of conferring jurisdiction on this Court as the head office of respondent No. 1 is situated at Lucknow.

27. It is also noteworthy that the Exchange Deed dated 4.5.2007 was executed pursuant to a Government order dated 25.4.2007 for the benefit of the public at large namely for the development of "Group Housing Society" and providing

accommodation facilities to the public at large in Ghaziabad. Respondent No. 1 accepts the execution and registration of the Exchange Deed dated 4.5.2007.

28. The petitioner to demonstrate its right, title and interest in the properties at serial No. 6, has placed reliance upon an Agreement to Sell, which is required to be registered u/s 54 of the Transfer of Property Act, 1882.

29. The petitioner is trying to mislead this Court by alluding to the fact that respondent No. 1 has the jurisdiction over properties at serial No. 6, and is consequently, in a position to identify the mortgaged and non-mortgaged lands. Moreover, an application was made for the limited purposes of approval of site plan of a "Group Housing Society" as respondent No. 1 is the nodal authority in the State of Uttar Pradesh for the development of residential colonies and township in accordance with the provisions of Section 15 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (for short "the Adhiniyam of 1965").

30. Respondent No. 1 neither has the statutory duty nor the competence/power to demarcate any portion of properties/lands at serial No. 6 which may or may not be mortgaged in favour of any person.

31. Furthermore, the prayer pertaining to demarcation by respondent No. 1 is in itself infructuous as it has already provided detailed maps with measurements which have also been placed on record by respondent No. 3 in its counter-affidavit, wherein the lands being given in exchange to respondent No. 3 on 7.5.2011 by respondent No. 1 and vice versa have been clearly and unambiguously identified. Therefore, now in case the petitioner has a dispute in relation to the actual identification of the parcel of land obtained in exchange or qua identification of any parcels of land comprised in properties at serial No. 6, then the said demarcation and/or determination of disputed boundaries should be done as per the provisions of Section 24 of the Uttar Pradesh Revenue Code Act, 2006.

32. Learned counsel for respondent No. 3 also raised preliminary objections to the maintainability of writ petition before this Court in his submissions inter alia on the grounds that the jurisdiction can be determined u/s 16(d) of the CPC as per the sites of properties and Section 20 of the CPC would be inapplicable in case of immovable property; that an unregistered Agreement to Sell for an Immoveable Property Situated in Uttar Pradesh cannot be enforceable; that an insufficiently stamped agreement/instrument cannot be looked into for any purpose at all; that reliance by the petitioner on the marshalling provisions u/s 56 of the Transfer of Property Act would also not be acceptable, and that merely by situation of head office/residence of respondent No. 1 at Lucknow, the jurisdiction of this Court would not be attracted as the property in question is situated at Ghaziabad, and if the demarcation is at all required to be carried out, the same has to be done by the Tehsildar concerned at Ghaziabad and not by respondent No. 1 herein.

33. Similarly, respondent No. 4 has also raised objections to the jurisdiction of this Court while arguing that the loan was granted by respondent No. 4 to respondent No. 3 at Delhi. Respondent No. 4, the HUDCO filed application for recovery of loan at the DRT, Delhi. Interim order on request of the HUDCO was passed at Delhi by the DRT-II, Delhi. All appeals were filed by respondent No. 3 or by respondent No. 4 before the DRAT Delhi. All writs were filed by respondent No. 3 or by respondent No. 4 before the Delhi High Court. The petitioner company has its office at Delhi. Respondent No. 4, the HUDCO also has its office at Delhi. The DRT-II Delhi issued the Certificate for recovery of loan of the HUDCO. The DRAT, Delhi, dismissed the appeal of respondent No. 3, and allowed the appeal of respondent No. 4. Respondent No. 4 moved the Recovery Officer attached to the DRT-II at Delhi. Any order passed by the Recovery Officer is appealable before the DRT at Delhi, and thereafter, to the DRAT at Delhi. The DRT and the DRAT, Delhi, are under the supervisory jurisdiction of the Delhi High Court. Alleged "Agreement to Sell" was executed in Delhi. It also provides that the competent Courts at Delhi shall alone have exclusive jurisdiction. The petitioner filed objections before the Recovery Officer-II at Delhi. According to respondent No. 4, the aforesaid facts coupled with perusal of the writ petition would show that the alleged cause of action has arisen only at Delhi, and this Court has no jurisdiction to entertain the present petition. As such, the petition is liable to be dismissed with costs. The aforesaid facts would also show that the petitioner submitted to the jurisdiction of Delhi Courts.

34. It is also a submission that the alleged Agreement to Sell is hit by the provisions of Section 35 of the Indian Stamp Act, 1899. According to respondent No. 4, the alleged Agreement to Sell purporting to transfer the right in an immovable property is not a registered document, and as such, is not admissible. It is thus hit by Section 17 and 49 of the Registration Act, 1908. It has also been contended that the Agreement to Sell in itself does not create any right in favour of the purchaser u/s 54 of the Transfer of Property Act, 1882.

35. It is urged that the alleged Agreement to Sell was executed during the pendency of proceedings before the DRAT and this fact was well within the knowledge of the petitioner as is evident from the contents of the Agreement to Sell itself. It is, thus, hit by the rule of Lis pendens, as provided in Section 52 of the Transfer of Property Act, 1882, and thus, no right has accrued in favour of the petitioner and, it is not entitled to claim any benefit out of that document.

36. It is also submitted that the alleged Agreement to Sell was executed during the operation of stay order granted by the Tribunal as contained in that covenant. The same was entered into to defraud the creditors namely the HUDCO. The alleged amount of transaction towards sale consideration is Rs. 154 Crores as provided in the Agreement to Sell for a property which was worth more than Rs. 400 Crores at the relevant point of time. Only an amount of Rs. 2.1 Crore is stated to have been paid as the earnest money which is against the general practice prevailing in respect

of such transactions. Besides, no permission was taken from the DRAT or the HUDCO prior to entering into the alleged Agreement to Sell.

37. It is also submitted that the HUDCO had already started proceedings under the SARFAESI Act before the instant proceedings were instituted by the petitioner. The alleged Agreement to Sell is also subject to ratification by respondent No. 4, which was not a party to the covenant. Thus, it is not a case of concluded Agreement. Hence, the present petition is liable to be dismissed for the reason that an equally efficacious alternative remedy is available to the petitioner. The petitioner has not come with clean hands and it is not entitled to claim any discretionary relief. Further the land received in exchange is a part of the mortgaged property, u/s 70 of the Transfer of Property Act, 1882.

38. On the other hand, in reply to the preliminary objections as also to the submissions of respondents on merit, it is contended on behalf of the petitioner that a loan of Rs. 75.07 crores was sanctioned and disbursed by the HUDCO in favour of the Maharaji Educational Trust (respondent No. 3) between 20.12.1995 and 17.9.1998. In lieu of the loan so sanctioned, respondent No. 3 mortgaged six properties in favour of the HUDCO. Properties at serial No. 6, measuring 63.45 acres, located in Ghaziabad District is the subject-matter of the present writ petition. It is urged by learned counsel for the petitioner that since respondent No. 3 Trust failed to discharge its liability, the HUDCO initiated proceedings before the DRT, Delhi by preferring OA No. 160 of 2002. It is also a contention of the petitioner that a deed of exchange dated 4.5.2007 was executed between the Maharaji Educational Trust (respondent No. 3) and the U.P. Avas Evam Vikas Parishad (respondent No. 1). By virtue of the said exchange deed, respondent No. 3 Trust obtained approx. 21 (8.242 hectares) acres of land belonging to the U.P. Avas Evam Vikas Parishad in village Shahbad, Mirzapur and Akbarpur, and the land so exchanged was admittedly not mortgaged in favour of the HUDCO.

39. Further contention of the petitioner is that the exchanged land of about 21 acres is not mortgaged with the HUDCO. This fact is also admitted by the said party in SLP (C) Nos. 2648 and 2569 of 2012.

40. Besides, it is also argued that the deed of exchange in question has already been mentioned in the Agreement to Sell dated 26.8.2010. A perusal of the relevant clauses in the agreement would show that some part of the total land is not mortgaged in favour of the HUDCO. Respondent No. 3 Trust has a clear marketable title over the said land without any sort of encumbrances.

41. It is also submitted that the original exchange deed was deposited by the Trust with the HUDCO only in July 2011 after the execution of the Agreement to Sell dated 26.8.2010. Thus, in effect, the Agreement to Sell was very much in operation qua the lands at serial No. 6. Moreover, there was an interim order dated 15.1.2011 in operation passed by the learned Arbitrator restraining respondent No. 3 from

creating third party rights with respect to lands at serial No. 6 in view of the agreement dated 26.8.2010. It is stated that learned counsel for the HUDCO during the course of arguments has categorically admitted before this Court that no prior permission was taken by respondent No. 3 Trust for execution of the deed of exchange dated 4.5.2007. It is further clarified that O.A. No. 160 of 2002 was allowed in favour of the HUDCO by the DRT vide its judgment and decree dated 3.6.2008 and a sum of Rs. 1,48,08,06,453.00 alongwith pendente lite and future interest @ 9% per annum was awarded.

42. As regards the jurisdiction of this Court, it is urged on behalf of the petitioner that on 26.8.2010 an Agreement to Sell (with respect to properties at serial No. 6) was executed between the petitioner and Maharaji Educational Trust in respect of agricultural land measuring 63.45 acres, situated at village Akbarpur, Behrampur, and Mirzapur, Tehsil and District Ghaziabad. Out of the said lands of 63.45 acres, about 42.45 acres were mortgaged with the HUDCO while the remaining approx. 21 acres was free from encumbrances. The total consideration amount of the agreement was Rs. 154 crores in view of the fact that the decree passed by the DRT against the respondent Trust was of approximately Rs. 148 crores.

43. At the time of execution of the present agreement, respondent No. 3 assured the petitioner that the said respondent is about to settle the matter with the HUDCO, and it shall be its sole obligation to arrange the compromise with respect to the claims of the HUDCO.

44. The modus operandi of the Trust (respondent No. 3) is that to satisfy the debt of the HUDCO, it enters into Agreement to Sell with various parties, takes a complete u-turn and makes every possible effort to wriggle out of the said agreement as being done in the present case also.

45. Similar agreements to sell have been executed by the Trust with M/s. Nagesh Infratech Pvt. Ltd. and M/s. U.P. Town Ship Pvt. Ltd. The details of the said agreements are also set out in the Agreement to Sell dated 26.8.2010.

46. It is also pointed out that the Trust had executed an Agreement to Sell dated 13.1.2006 with M/s. Nagesh Infratech Pvt. Ltd. for Rs. 103 crores and then with M/s. U.P. Town Ship Pvt. Ltd. on 3rd June 2007 for a consideration amount of Rs. 126 crores. The said agreements with M/s. Nagesh Infratech Pvt. Ltd. and M/s. U.P. Town Ship Pvt. Ltd. were cancelled and then the Trust executed the present agreement dated 26.8.2010 for a consideration amount of Rs. 154 crores. It is alleged that the conduct of respondent No. 3 Trust is highly questionable as is obvious from the Agreements to Sell executed by the Trust in favour of three different parties, and every time, when a new Agreement to Sell was executed, it resulted in fetching a higher consideration amount in favour of the Trust-respondent No. 3. However, out of the said three Agreements to Sell, only the one executed with the petitioner Company is said to be surviving. Besides, inspite of having Agreement to Sell with

the petitioner and even during the pendency of present petition, respondent No. 2 is negotiating with M/s. K.M. Realcon Pvt. Ltd. with an object to frustrate the Agreement to Sell dated 26.8.2010 with the petitioner.

47. The present agreement dated 26.8.2010 was executed by the respondent Trust with ulterior motive. A sum of Rs. 2.1 crores was given by the petitioner to the Trust at the time of execution of the agreement when the Trust was in urgent need of the said amount for complying with the order passed by the DRAT directing it to deposit certain amount by 27.8.2010. Clause "N" of the Agreement to Sell that contains the details is reproduced as:

N. The VENDOR has further represented that during the pendency of the aforesaid matters before DRAT, Delhi, DRAT Delhi by order dated 17.2.2009 was pleased to direct the VENDOR to deposit a further amount of Rs. 5 crores in addition to the said amount of Rs. 20 crores already deposited. Out of the amount of Rs. 5 crores as directed by DRAT Delhi, the VENDOR has since deposited a total amount of Rs. 3 crores with the HUDCO leaving a deficient amount of Rs. 2 crores to comply with the said order which shall be deposited by the Vendor on 27th August 2010

2. At the time of signing of this Agreement to Sell, the VENDEE has paid a sum of Rs. 2,01,00,000/- (Rupees Two Crores and One Lac) i.e. 2,01,00,000/- vide Pay Order 620413 dated 28.8.2010 favouring the Mahraji Educational Trust as part consideration out of aforesaid agreed consideration of Rs. 154,00,00,000/- (Rupees One Hundred Fifty Four Crores only) receipt of which the VENDOR hereby admits and acknowledges

48. Respondent No. 3 has also agreed vide the agreement dated 26.8.2010 that it would be in a position to obtain all necessary permissions and clearances on its own expenses so that the petitioner Company does not have to face any problem. The relevant clause of the Agreement to Sell reads as:

BB. The VENDOR has further represented that in particular it would be in a position to obtain all necessary permissions and clearances on its own expenses.

I. The Vendor further declares that the Clearance/Exemption u/s 154(2) of Uttar Pradesh Zamindari Abolition and Land Reforms Act from the Government of U.P. has already been taken alongwith sale permission from U.P. Government.

II. The Vendor further declares that the Government Conversion Charges whatsoever for getting the drawings/NOC"s approved from the competent authorities will be paid by the Vendor".

49. According to the petitioner, it is only because of the aforesaid bona fide necessities shown by respondent No. 3 that the petitioner agreed to accept the offer to purchase the properties in question upon such terms and conditions as mentioned in the agreement and also subject to performance of the part of obligations that rested upon the VENDEE. The said terms and conditions, containing

the obligations of respondent No. 3, are reproduced as:

2. At the time of signing of this Agreement to Sell, the VENDEE has paid a sum of Rs. 2,01,00,000/- (Rupees Two Crores and One Lac only) i.e. Rs. 2,01,00,000/- vide pay Order 620413 dated 28.8.2010) favouring the Maharaji Educational Trust as part consideration out of aforesaid agreed consideration of Rs. 154,00,00,000/- (Rupees One Hundred Fifty Four Crores only) receipt of which the VENDOR hereby admits and acknowledges. That subject to the outcome of the appeal No. 120 of 2008, 124 of 2008 as well as 35 of 2010 and also Misc. Applications 476 of 2009 and 477 of 2009 which were reserved for orders/judgment by DRAT Delhi on 19th August 2010, it is further agreed that out of the balance sale consideration of Rs. 151,99,00,000/- (Rupees One Hundred Fifty One Crore and Ninety Nine Lacs only), a further amount upto Rs. 13,00,00,000/- (Rupees Thirteen Crores only) shall be paid to the VENDOR by the VENDEE immediately upon the VENDOR furnishing the copies of the original clearance, sanctioned plans and permissions as detailed in clause BB. I to XV above so as to enable the Vendor to liquidate the settlement amount of U.P. Township Pvt. Ltd. Further amount will be paid 15 days before the expiry date of payment to be made to the HUDCO as per the HUDCO's settlement offer. This amount shall be paid directly to the HUDCO towards settlement of its dues as per settlement/compromise with the HUDCO and simultaneous executor of the Sale-deed/Conveyance Deed by the VENDOR in the favour of the VENDEE and/or its nominee(s) and the delivery of physical possession of the "said lands". It is agreed between the parties that the obligations and responsibilities to secure the offer of final settlement from the HUDCO is exclusively that of the VENDOR to clear their liability towards the HUDCO and/or any other creditor for discharging the equitable mortgage with regard to the "said lands" and for getting the original title deeds from their possession. In the event of final settlement with the HUDCO exceeds Rs. 134,00,000/- (Rupees One Hundred Fifty Four Crores only), then in that event the VENDOR shall first arrange to deposit such excess amount with the HUDCO and only thereafter the VENDEE shall immediately deposit the balance sale consideration amount. The VENDOR on receipt of such settlement offer from the HUDCO shall immediately communicate the same to the VENDEE for the said purpose.....

5. It is also agreed that VENDOR shall perform its entire obligations within a period of thirty days, and by performing shall intimate to the VENDEE, so that the VENDEE shall simultaneously execute the conveyance deed/sale-deed with marketable title, and delivery of documents of title and possession.....

19. The VENDEE has submitted a proposed construction plan for the construction of a residential as well as commercial complex on an area admeasuring approximately 70 lacs square feet (Carpet Area) to the VENDOR and the VENDOR has assured the VENDEE to get all the necessary clearance from the requisite authorities within a period of 30 days from the signing of the present agreement. The vendor has assured the vendee that the said land comes under R-Zone and the 25 storeys are

permitted excluding the basement and the same can be developed in ratio of 90:10 in Residential: Commercial Pattern

50. The petitioner also paid a sum of Rs. 7 crores on 7.9.2010 by way of pay orders in the name of U.P. Town Ship Pvt. Ltd. Towards the dues, respondent No. 3 had been asked to clear by 30.9.2010. The amount of Rs. 7 crores paid by the petitioner was to be adjusted against the total sale consideration as stipulated in the Agreement to Sell.

51. The DRAT dismissed the appeal of respondent No. 3-Trust which was filed against the judgment and decree dated 3.6.2008.

52. It is further submitted that the petitioner has invoked the arbitration clause under the agreement dated 26.8.2010 and has filed a claim against respondent No. 3 for specific performance of the said Agreement to Sell. The claim petition was listed before the learned Arbitrator on 15.1.2011 and vide interim order passed on the said date, respondent was also restrained from creating any third party rights with respect to the lands which are the subject-matter of the agreement. The said interim order in favour of the petitioner is still continuing.

53. The petitioner filed its objections before respondent No. 2 and objected to the sale of lands at serial No. 6 on the ground that the said properties are the subject-matter of Agreement to Sell between the petitioner and respondent No. 3.

54. Respondent No. 2 vide the order dated 6.9.2011 had directed for the sale of other 5 properties in the first instance in pursuance to the Recovery Certificate No. 39/11 and the decision regarding the sale of lands at serial No. 6 was deferred pending adjudication of objections filed by the petitioner.

55. The Assistant Collector, Stamps, Ghaziabad on 1.7.2013 endorsed the Agreement to Sell dated 26.8.2010 as duly stamped u/s 42 of the Indian Stamps Act. A total amount of Rs. 4,86,63,410/- has been paid by the petitioner on account of stamp duty, interest and penalty.

56. The Sub-Registrar-V, Ghaziabad, on 9.7.2013 registered the Agreement to Sell dated 26.8.2010 executed between the petitioner and respondent No. 3 Trust. Feeling aggrieved by the registration of the document, respondent No. 3-Trust filed Writ Petition No. 39596 of 2013 before the High Court Bench at Allahabad and vide the order dated 23.7.2013, the registration of the agreement done by the Sub-Registrar on 9.7.2013 was stayed. It appears that the petitioner herein had filed a caveat before the High Court but as per averment, inspite of the same, the respondent Trust knowingly chose not to serve the petitioner with the copy of writ petition. It is stated that the petitioner would be filing an appropriate application for vacation of stay order before the High Court at Allahabad.

57. It is also a submission that the prayer sought by the petitioner shall not prejudice or affect the rights of respondent Nos. 3 and 4.

58. It is also submitted that respondent No. 1 alone is in a position to demarcate and identify the land, as it was this respondent which had executed a deed of exchange dated 4.5.2007 with respondent No. 3. The land which formed part of the deed of exchange was under the ownership and possession of the U.P. Avas Evam Vikas Parishad, and hence, the said authority is in the best position to demarcate and identify the land in question. Respondent No. 1 is not in a position to submit that since it exercises no jurisdiction over the land, it is not in a position to carry out the demarcation process. It is asserted by the petitioner that insofar as the stand taken in the counter-affidavit filed by respondent No. 1 is concerned, there is no other plea against the obligation to carry out the demarcation except that it has no jurisdiction over the lands in question. It only goes to show that this respondent wants to deviate from the issue at hand, and since it has no defence under the facts of the present case, it has come out with a sham defence that it exercises no jurisdiction over the lands. It is submitted that respondent No. 1 is the only authority which is in a position to demarcate the land. It is so because there is an admission by the said respondent that the deed of exchange has been executed and approx. 21 acres of land which were in its possession have been exchanged under the deed of exchange with respondent No. 3. Further, the petitioner has also submitted an appropriate application before respondent No. 1 dated 7.9.2010 for approval of the construction drawings, and on the said application, the land has also to be demarcated. That application has been accepted by respondent No. 1 alongwith the processing fee of Rs. 10,000 which clearly goes to show that it is only the Housing Board namely respondent No. 1 which can exercise jurisdiction over the land, and hence, is the appropriate authority to demarcate the land and identify 21 acres of land which is not mortgaged with the HUDCO.

59. It is also a contention on behalf of the petitioner that u/s 15(m) of the Adhiniyam of 1965, it is the statutory duty of respondent No. 1 to make investigation, examination or survey of any property.

60. According to respondent No. 1, detailed maps have been placed on record by respondent No. 3 as annexure CA-1 of its counter-affidavit wherein the lands given in exchange to respondent No. 3 by respondent No. 1 and vice-versa had been clearly identified. Such stand of respondent No. 1 would show that it exercises jurisdiction over the land and is also duty bound by the statute to demarcate the same. The petitioner submits that the physical verification of lands at serial No. 6 as of date is necessary and the instant writ petition has been filed to ascertain the location of approx. 21 acres of unencumbered land in view of the deed of exchange dated 4.5.2007.

61. Further, according to the petitioner, Section 24 of the Uttar Pradesh Revenue Code Act, 2006 is not applicable to the present case as admittedly there is no dispute regarding the boundaries of the land which is the subject-matter of present writ petition. The dispute in the present writ petition is only about the area and

extent of land being approx. 21 acres which is admittedly not mortgaged in favour of the HUDCO. The prayer of the petitioner is for demarcation of unencumbered and encumbered lands, and therefore, Section 24 has no application.

62. It is argued on behalf of the petitioner that respondent No. 3-Trust has always admitted the execution of Agreement to Sell dated 26.8.2010 between the petitioner and the Trust and at no point of time has ever denied the existence of said agreement. In view of the admission, the submission of respondent No. 3 that the agreement could not have been entered or it has been wrongly entered is devoid of any merit and is just an afterthought. The Trust only wants to wriggle out of its liability as set out in the agreement. Thus, respondent No. 3 is estopped from raising any such contention. Admittedly, it has executed the Agreement to Sell dated 26.8.2010 and has taken a consideration amount of Rs. 9.01 crores from the petitioner. For that reason, the principle of estoppel will be fully applicable to the present case. After executing an agreement, respondent No. 3 can't raise frivolous plea that the agreement could not have been entered between the parties. Since the agreement is not denied by the Trust, the contents of the agreement stand admitted.

63. Since the contents of the agreement are admitted between the parties, the petitioner has a legitimate expectation that the Agreement to Sell will fructify into a sale-deed. The petitioner has been and is ever willing and ready to perform its part of the agreement. But to the contrary, respondent No. 3 inspite of accepting a huge amount from the petitioner now wants to frustrate the intent and purpose of the Agreement to Sell. Respondent No. 3 is also liable to be estopped from submitting that the Agreement to Sell dated 26.8.2010 could not have been entered.

64. The Agreement to Sell dated 26.8.2010 is duly stamped and has been endorsed u/s 42 of the Indian Stamp Act, 1899, on 1.7.2013, and hence, Section 35 of the said Act is not applicable to the present case.

65. It also goes to show that the document is fully admissible in evidence for the purpose of Indian Stamp Act, and therefore, Section 35 of the Act is not applicable. The petitioner has paid a total sum of Rs. 4,86,63,410/- (Rupees Four Crores Eighty Six Lacs Sixty Three Thousand Four Hundred and Ten Only) on account of stamp duty, interest and penalty. Since a huge amount has already been spent by the petitioner on account of Stamp Duty, it has shown its bona fides as a responsible assessee and its conduct also shows that it has due respect for the statutory provisions and by depositing the huge stamp duty amount it has taken a step which is beneficial to the interest of the Revenue.

66. It is urged that the Agreement to Sell dated 26.8.2010 has also been registered by the Registration Authorities on 9.7.2013, and hence, the said document is also admissible in evidence for the purposes of specific performance of the agreement. It is pertinent to mention that for the purposes of the present writ proceedings it is

not necessary that the document namely the Agreement to Sell dated 26.8.2010 needs compulsory registration u/s 17 of the Registration Act, 1908. The said registration would be compulsory only if the document is to be produced as evidence in a proceeding of specific performance of the agreement. Admittedly, the present proceedings have nothing to do with the specific performance of the agreement, and it is only limited to the question of demarcation of land. Hence, even if the document is not registered, the same can be looked into by this Court for collateral purposes.

67. Admittedly, the present proceeding is not for specific performance of the agreement and is in the nature of writ proceeding. The Agreement to Sell is registered but for the present proceeding even if the said agreement is not registered, it can be looked into by this Court for a collateral purpose in view of the proviso of Section 49 of the Registration Act, 1908.

68. Aggrieved by the registration of the document, respondent No. 3 Trust filed writ petition No. 39596 of 2013 before the High Court at Allahabad and vide order dated 23.7.2013 the Court has stayed the registration of the agreement carried out by the Sub-Registrar on 9.7.2013. However, it is urged on behalf of the petitioner that even after the petitioner had filed a caveat before the High Court, the respondent-Trust knowingly avoided to serve the petitioner with the copy of writ petition. It is submitted that the petitioner is also filing an appropriate application for vacation of stay before the Court.

69. According to the petitioner, Section 54 of the Transfer of the Property Act would not be applicable to the present proceedings. Such arguments are without any merits, for, the issue at hand relates to the demarcation of land, and filing of the present writ petition should not be understood to mean that the petitioner has approached the Court for specific performance of the Agreement to Sell dated 26.8.2010. The entire defence of the respondents is wholly irrelevant and the core issue has never been addressed to. The present proceedings have nothing to do with the specific performance of the agreement, and therefore, the provisions of Section 54 of the Transfer of Property Act, 1882, are not applicable to the present case. The contentions of the respondents that as per Section 54 of the Transfer of Property Act, 1882, the petitioner has no right to the property in question as the sale-deed is yet to be executed in favour of the petitioner, are not sustainable.

70. It is also contended that such a submission is totally devoid of substance. It is only upon an Agreement to Sell that rights flow in favour of a party, and subsequently, a sale-deed is executed in order to give a final effect to the agreement entered. In the present case, the petitioner is ever willing to perform its part under the agreement. On the contrary, it is respondent No. 3 who after receiving a huge amount from the petitioner wants to wriggle out of its obligations and duties under the agreement. It is a settled legal position that a suit for specific performance is always filed on the basis of an Agreement to Sell, and in the absence of an

Agreement to Sell, such suit would not be maintainable under law. Therefore, the rights of a party flow through the Agreement to Sell, and relying upon the said document, it is always open for the party concerned to initiate appropriate proceedings for specific performance, however, the only requirement would be that the said party who is approaching the Court for specific performance should be ever willing to perform its part under the agreement. Hence, the contention raised by respondent No. 3 is devoid of merits, and moreover, the said submission cannot be raised in the present writ petition which relates to the issue of demarcation and identification of land.

71. Section 70 of the Transfer of Property Act, 1882, is also not applicable to the present proceedings as the nature of relief claimed in the present writ petition is to identify approx. 21 acres of land which is free from encumbrances and is not mortgaged with respondent No. 4, the HUDCO. Section 70 of the Act only provides that if there is some increase of property or land in a mortgaged property then the mortgagee shall be entitled to such increase in property. In the present case, there is no such increase of property, and as per the deed of exchange, only approx. 21 acres of land have been exchanged between respondent No. 1 and respondent No. 3. Hence, Section 70 is not applicable to the present case.

72. It is further submitted that property No. 6 which forms the subject-matter of the Agreement to Sell dated 26.8.2010 has been mortgaged by respondent No. 3 in favour of respondent No. 4. Yet inspite of that, a decree of specific performance can be passed in favour of the petitioner by the appropriate Court/forum subject to the mortgage.

73. It is asserted that approx. 21 acres of land is not mortgaged with the HUDCO, and thus, does not form the part of decree certificate, and therefore, the petitioner has full claim over the said extent of land in question. Regarding the remaining 42.45 acres of land, the petitioner is entitled to a decree of specific performance subject to the mortgage.

74. It is further submitted that respondent No. 3-Trust has never argued that the entire land is mortgaged in favour of the HUDCO and Section 70 of the Transfer of Property Act, 1882, is applicable.

75. Further, according to the petitioner, it is also entitled to get the benefits of Section 56 of the Transfer of Property Act, 1882, which provides that if two or more properties are mortgaged by any person in favour of a financial institution the subsequent purchaser of any one of the properties is entitled to say that the dues of the financial institution may be recovered from the other property/properties, and the property which he has purchased should not be sold first for recovery of dues.

76. It is asserted that this Court has the territorial jurisdiction to entertain the present writ petition in view of the judgment of the Hon"ble the Apex Court in the case of [Sri Nasiruddin Vs. State Transport Appellate Tribunal](#),

77. According to learned Senior Counsel appearing for the petitioner, the said judgment clearly provides that if a part of cause of action arises within the jurisdiction of Lucknow, this Court will have jurisdiction to entertain the petition. The petitioner is seeking demarcation of land which has to be carried out by respondent No. 1 and since the said respondent is based at Lucknow, in view of the ratio of judgment in Naseeruddin's case, this Court has the territorial jurisdiction to entertain the present writ petition. This writ petition is not for specific performance of the agreement, and hence, the provisions of Section 16 CPC are not applicable to the present case. The provisions of the CPC can only be applicable when a suit for specific performance is filed, and in that situation, the territorial jurisdiction would vest with that Court in whose jurisdiction the property is situated.

78. It is submitted that the HUDCO cannot raise the issue of territorial jurisdiction as it has filed Transfer Petition No. 96 of 2012 before Hon"ble the Apex Court for transfer of the present writ petition primarily on the ground that this Court does not have the territorial jurisdiction to entertain the present petition. However, the company withdrew the transfer petition from Hon"ble the Apex Court on 3.2.2012. In view of the withdrawal, it is not open for the HUDCO to submit that this Court lacks territorial jurisdiction. Rather, this Court has inherent jurisdiction to entertain the present writ petition as the nature of relief prayed is not barred by any Law.

79. It is also a submission on behalf of the petitioner that the contention of respondent No. 3 that the issue of lack of inherent/territorial jurisdiction should have been decided at the threshold is devoid of merit as Hon"ble the Apex Court while remanding the matter in SLP. Nos. 2648 of 2012 and 1587 of 2012 vide the order dated 15.1.2013 has categorically observed that all contentions therein can be raised by either of the parties before this Court in the instant proceedings. Thus, all the issues and submissions were kept open and there was no occasion to decide the issue of jurisdiction first.

80. It is also pertinent to mention that though the aforesaid issue forms part of the written submissions of the respondents, but the same was never argued before this Court.

81. It is further submitted that no attempt has been made by the petitioner to create jurisdiction of this Court. The petitioner has approached this Court only with the prayer of demarcation and identification of lands measuring approx. 21 acres which are not mortgaged with the HUDCO and 42.45 acres, said to be encumbered. Since the approx. 21 acres area of land was in possession of respondent No. 1, it is in the best position to demarcate and identify the said land. Thus, this Court has jurisdiction to entertain the present petition.

82. The aforesaid submission has never been effectively countered by respondent No. 3 during the course of the proceedings.

83. Further according to learned Senior Counsel for the petitioner, it is an admitted position that approx. 21 acres area of land is free from encumbrance and this fact has been admitted by the HUDCO on affidavit before the Hon"ble Supreme Court. In view of the said position, it is clear that no disputed question of facts exists/arises in this case. The petitioner has approached this Court for a writ of mandamus against respondent No. 1 and no relief is sought against private respondent No. 3.

84. It is also submitted that the pleadings in the writ petition clearly show that there is a close relationship between the submissions of petitioner and the prayer pressed in service. Learned senior counsel has referred to para 5 of the writ petition in this regard, which is reproduced as:

5. That the land which is the subject-matter of the Agreement to Sell is within the State of U.P. And permission for sale has been granted to respondent No. 3 by respondent No. 5 i.e. Principal Secretary, Department of Urban Development, Government of U.P. and the exchange of the mortgaged land to the extent of approx. 21 acres has also been granted by respondent No. 1 i.e. U.P. Avas Evam Vikas Parishad at Lucknow. Because of this it is not possible for the mortgaged property at Sl. No. 6 as mentioned in Annexure P/1 to be put to sale and an enquiry would have been ordered to determine which property remain for mortgage after the exchange and only the said property could be put up for sale after due enquiry in this behalf. In fact, even the recovery officer in Delhi has no jurisdiction to proceed with the recovery proceedings because the mortgaged property is situated in U.P.

85. In view of the above averments it can be seen that the relief as prayed in the writ petition also has a nexus with its pleadings.

86. We have carefully considered the rival submissions and examined the pleadings and documents on record. As noticed earlier, the area of our consideration is now limited to prayer No. 1 alone. However, before we proceed to consider and decide the case on merits for the purpose of granting relief(s) as prayed for, it would be necessary to deal with the issues raised by the respondents in the preliminary objections. One of the main issues as urged in the preliminary objections is the question of jurisdiction of this Court. The second one relates to the locus of the petitioner to maintain this petition at Lucknow and the third centres around the competence/statutory duty of respondent No. 1 to demarcate the lands as mentioned at serial No. 6 of the list of properties. Irrespective of the arguments that this writ petition is based on the disputed facts, this petition is also found to contain several admitted facts which need to be enumerated and considered carefully for deciding the controversy in question. There is no dispute that the properties in question are situated at Ghaziabad in U.P. within the territorial jurisdiction of the Allahabad High Court. There is also no dispute that respondent No. 3 entered into an Agreement to Sell dated 26.8.2010 in respect of the properties as mentioned at serial No. 6, being one of the items in the list of properties mortgaged with

respondent No. 4 by respondent No. 3. It is also not in dispute that the said properties were exchanged with the lands of respondent No. 1, vide the exchange deed dated 4.5.2007 under the order passed by the Secretary, Department of Urban Development, Government of U.P. vide the letter No. 842/Aath&2&2007&15 Bhu.Aa@2003 dated 25.4.2007. The said letter being in Hindi, is reproduced as:

87. This is also undisputed that respondent No. 1 has statutory duty to examine, investigate and survey any property or contribute towards the cost of any such investigation, examination or survey made by any local authority or the State Government.

88. Section 15 of the Adhiniyam of 1965 being the relevant provisions in this regard details and enumerates the powers and functions of the Board as under:

Functions of the Board.--(1) Subject to the provisions of this Act and the rules and regulations, the functions of the Board shall be-

- (a) to frame and execute housing and improvement schemes and other projects;
- (b) to plan and co-ordinate various housing activities in the State and to ensure expeditious and efficient implementation of housing and improvement schemes in the State;
- (c) to provide technical advice for and scrutinise various projects under housing and improvement schemes sponsored or assisted by Central Government or the State Government;
- (d) to assume management of such immovable properties belonging to the State Government as may be transferred or entrusted to it for this purpose;
- (e) to maintain, use, allot, lease, or otherwise transfer plots, buildings and other properties of the Board or of the State Government placed under the control and management of the Board;
- (f) to organise and run workshops and stores for the manufacture and stockpiling of building materials;
- (g) on such terms and conditions as may be agreed upon between the Board and the State Government, to declare houses constructed by it in execution of any scheme to be houses subject to the U.P. Industrial Housing Act, 1955 (U.P. Act XXIII of 1955);
- (h) to regulate building operations;
- (i) to improve and clear slums;
- (j) to provide roads, electricity, sanitation, water supply and other civic amenities and essential services in areas developed by it;

(k) to acquire movable and immovable properties for any of the purposes before mentioned;

(l) to raise loans from the market, to obtain grants and loans from the State Government, the Central Government, local authorities and other public corporations, and to give grants and loans to local authorities, other public corporations, housing co-operatives societies and other persons for any of the purposes before mentioned;

(m) to make investigation, examination or survey of any property or contribute towards the cost of any such investigation, examination or survey made by any local authorities or the State Government;

(emphasis supplied)

(n) to levy betterment fees;

(o) to fulfil any other obligation imposed by or under this Act or any other law for the time being in force; and

(p) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned;

(2) Subject to the provisions of this Act and the rules and regulations, the Board may undertake, where it deems necessary, any of the following functions, namely-

(a) to promote research for the purpose of expediting the construction of any reducing the cost of building;

(b) to execute works in the State on behalf of public institutions, local authorities and other public corporations, and departments of the Central Government and the State Government;

(c) to supply and sell building materials;

(d) to co-ordinate, simplify and standardise the production of building materials and to encourage and organise the prefabrication and mass production of structural components;

(e) with a view to facilitating the movement of the population in and around any city, municipality, town area or notified area, to establish, maintain and operate any transport service, to construct widen, strengthen or otherwise improve roads and bridges and to give financial help to others for such purpose;

(f) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned.

89. Clause "(m)" of Section 15(1), in particular, is relevant for the purpose of deciding the question of competence of respondent No. 1.

90. It is admitted that after the execution of Agreement to Sell as mentioned hereinabove on 26.8.2010, respondent No. 3 has taken 9.01 crores from the petitioner, and that apart, the petitioner has also paid a sum of Rs. 4,86,63,410/- on stamp duty, interest and penalty for registration of the Agreement to Sell on 9.7.2013. It is also not disputed that soon after entering into the Agreement to Sell, the petitioner submitted proper application dated 7.9.2010 before respondent No. 1 and paid Rs. 10,000/- towards processing fee for approval of the construction drawings, and in the said application, a request for demarcation was made. That application with requisite fee was accepted to initiate the process.

Besides, it is also an admission of the HUDCO in SLP (Civil) No. 2648 of 2012 and SLP (C) No. 2569 of 2012 that a parcel of approximately 21 acres of land which is in question was un-encumbered. The said admissions are reproduced as:

(a) SLP (C) No. 2648 of 2012 (Housing and Urban Development Corporation v. S.G.S. Construction and Developers Pvt. Ltd. and others)

"The effect of the exchange deed was that respondent No. 2 became owner of 8.232 hectares (approx. 21 acres) of unencumbered land out of the total 63.45 acres that were earlier mortgaged with the petitioner."

"28. As a matter of fact, the exchange deed dated 4.5.2007 clearly specifies the Khasra Nos. that were received by respondent No. 2 from respondent No. 3, and these are the Khasras that are not mortgaged with the petitioner."

"It is clear from the averment in the exchange deed that the Trust's land is encumbrance free.

(b) SLP (C) No. 2569 of 2012 (V.P. Baligar and others v. S.G.S. Construction and Developers Pvt. Ltd.)

"Thus, it is very clear from the above that Respondent No. 1 was well aware of the fact that the property of respondent No. 2 (except for land measuring 8.232 hectares in Village Shahbad) was mortgaged with HUDCO."

In para 11 of the rejoinder-affidavit in the aforesaid SLP, the above mentioned position has been reiterated as:

"It is respectfully submitted that only 8.242 acres (approx. 21 acres) out of title total 64 acres is not mortgaged with HUDCO free from encumbrances.

91. There is also no dispute that Hon"ble the Apex Court vide the order dated 15.1.2013 in Special Leave to Appeal (Civil) No(s). 1587/2012 and two connected petitions, namely, Special Leave to Appeal (Civil) No. 2569 of 2012 and Special Leave to Appeal (Civil) No. 2648 of 2012, while disposing of the Petitions after quashing the contempt proceedings vide the order dated 5.11.2012 asked this Court to dispose of the pending writ petition within a time frame. The parties were granted liberty to raise all their contentions before this Court, therefore, it would be appropriate not

only to decide the preliminary objection but also the merit of the case. The relevant portion of the order passed by Hon"ble the Apex Court is reproduced as:

.....SLP(C) No. 1587 of 2012 arises from an order dated 22.11.2011 passed by the High Court of Judicature at Allahabad in Misc. Bench No. 11669 of 2011. The High Court issued notice in the writ petition and ordered that the exchange of property No. 6, ordered by the UP Avas Evam Vikas Parishad on permission granted by the State Government be kept in abeyance till the next date of hearing. Court then listed the matter on 15.12.2011.

This Court issued notice on SLP (C) No. 1587 of 2012 on 17.1.2012 and stayed the operation of the impugned order dated 22.11.2011. Another SLP(C) No. 2648 of 2012 was filed by Housing and Urban Development Corporation (HUDCO) on 13.1.2012 challenging the very same order dated 22.11.2011 and this Court passed an order on 24.2.2012 staying the operation of the impugned order and tagged that SLP alongwith SLP(C) NO. 1587 of 2012.

Challenging the interim order dated 6.1.2012 in Writ Petition NO. 11669 of 2011 directing the Chairman, HUDCO and Deputy General Manager (Law) to remain present before the Court on 18.1.2012, SLP(C) No. 2569 of 2012 was filed on 12.1.2012. All the special leave petitions came up for further hearing on 5.11.2012 and this Court took the view that there are no sufficient reasons to initiate contempt of Court proceedings against HUDCO and that part of the order initiating contempt of proceedings was quashed. On 9.11.2012 this Court passed an order directing that the interim order granted by this Court on 24.2.2012 shall continue till the next date of hearing.

Subsequently this Court extended the interim order granted on 24.2.2012.

We are of the view that since the main matter is seized before the High Court there is no justification in keeping all these special leave petitions pending before this Court, especially when this Court in its order dated 5.11.2012 quashed the contempt of Court proceedings initiated against HUDCO. We are, therefore, inclined to dispose of all the SLPs with a request to the High Court to dispose of the main writ petition within a period of two months from the receipt of this order. Parties are at liberty to raise all their contentions before the High Court. Till the matter is disposed of finally by the High Court, the interim orders passed by this Court will continue. We make it clear that we have not expressed any opinion on the merits of this case and it is for the High Court to decide the matter in accordance with law. All the special leave petitions are disposed of accordingly.

92. That apart, the Transfer Petition No. 96 of 2012 filed before Hon"ble the Apex Court for transfer of present writ petition primarily on the ground that this Court does not have territorial jurisdiction to entertain the matter was dismissed as withdrawn on 3.2.2012.

Besides, a request to seek transfer of this petition from Lucknow to Allahabad Bench by way of filing Civil Misc. Application No. 6304 of 2013 by respondent No. 3 under Clause 14 of United Provinces High Court (Amalgamation) Order, 1948, was also rejected vide the order dated 8.3.2013 passed by the Hon"ble Chief Justice. The operative portion of order would read as:

.....After hearing the parties at length, it is found that there is merit in the contentions advanced on behalf of writ petitioner, opposite party in the application under consideration. When the writ petition has been directed to be finally disposed of within two months by the Apex Court and the parties have been given opportunity to raise all contentions before the Writ Court, it will neither be proper nor just to decide the issue of territorial jurisdiction in course of the present proceeding under Clause 14 of 1948 Order. Till such issue is decided one way or the other on account of final decision in the writ petition, it would not be proper to hold that the writ petition lies within the jurisdiction of Lucknow Bench merely on the conditional concession given on behalf of the applicant. It is also evident that an order of transfer, at this stage, would cause dislocation and delay in the hearing of writ petition, which has already commenced at Lucknow. It is also evident that the issue raised by the writ petitioner against or in respect of the U.P. Avas Evam Vikas Parishad, is not an issue in the writ petitions at Allahabad. No doubt, learned Senior Counsel appearing for the applicant made a suggestion that he would persuade the writ petitioners at Allahabad to agree for expeditious hearing of their writ petitions together with present writ petition, but such offer cannot be taken seriously because the writ petitioners at Allahabad are not before this Court, nor party to the instant proceeding.

In view of aforesaid discussions and for the reasons indicated earlier, the prayer for transfer of writ petition from Lucknow Bench to Allahabad is rejected. The Civil Misc. Application shall stand dismissed, accordingly.

93. It is also noticeable that during the mortgage of properties in question namely properties Nos. 1 to 5 and also a part of the properties/lands at serial No. 6 (excluding about 21 acres) various agreements to sell entered into with different parties namely with M/s. Nagesh Infra Tech Pvt. Ltd. dated 13.1.2006 for Rs. 103 crores; with U.P. Township Pvt. Ltd. dated 3.6.2007 for Rs. 126 crores and also with the petitioner dated 26.8.2010 for Rs. 154 crores were never questioned by the HUDCO by instituting independent proceedings before any appropriate Forum. The HUDCO did not even register any objection after documents connected with the deed of exchange were deposited by respondent No. 3 with it after a long delay, only in 2011 whereas the Agreement to Sell between respondent No. 3 and the petitioner had already become operative. The maximum that the HUDCO can claim to get from the transactions of mortgage, is recovery of its dues in terms of the orders ruled in its favour by competent forums, be it the DRT/DRAT or the Arbitrator or any other appropriate forum as the case may be. It being a public financial

institution, is expected to encourage the settlement of disputes inside and outside the Courts and ensure timely recovery of its dues.

94. In this context, we may also notice that during the course of hearing, the petitioner company has already made the offer to liquidate the entire dues of the HUDCO if the properties mortgaged with the financial company (respondent No. 4) are released in its favour subject to discharge of obligations by respondent No. 3 as stipulated in the Agreement to Sell. It also assured that the Medical College being run on the mortgaged lands shall be run smoothly without any disturbance to the study of students pursuing their courses.

95. In view of the aforesaid admitted facts, without adverting to the disputed questions of facts, we find sufficient grounds to grant our indulgence for exercise of powers under Article 226. We thus decline to entertain the preliminary objections raised by the respondents to the territorial jurisdiction of this Court and hold that the Lucknow Bench of the High Court of Judicature at Allahabad has the jurisdiction to entertain and decide the matter. Now coming to the locus standi of the petitioner to file this petition, for the discussions made hereinabove, it is held to be fully established. Our view gets further support from the facts that so far the petitioner has advanced about Rs. 9.1 crores out of the consideration amount of Rs. 154 crores, as stipulated in the Agreement to Sell. Out of the said amount, a sum of Rs. 2.1 crores was deposited to satisfy the demand by 27.8.2010 cast upon respondent No. 3 vide the order passed by DRAT. The amount of 7 crores was paid to M/s. U.P. Township Pvt. Ltd. to return the advance amount upon cancellation of the Agreement to Sell with it. That apart, the petitioner has spent Rs. 4,86,63,410/- on the stamp duty for registration of that Agreement to Sell. The Agreement to Sell was registered by the Sub Registrar, Ghaziabad on 9.7.2013 u/s 42 of the Indian Stamps Act. However, it appears that respondent No. 3, the Trust, filed a writ petition (No. 39596 of 2013) before the Bench at Allahabad and vide the order dated 23.7.2013 the registration of agreement has been stayed. The petitioner claims that it had filed a caveat but was not given a notice of listing and supplied the copy of petition.

96. The statutory duties of respondent No. 1 to carry out the demarcation by itself or through the revenue authorities are also found to be established in view of (i) provisions of Section 15(1)(m) of the Adhiniyam of 1965 as mentioned earlier; (ii) the deed of exchange executed under the order of Secretary, Urban Development, Government of U.P. (respondent No. 5) even without verifying the original sale-deeds to establish the title of respondent No. 3 and calling for the mortgage deeds executed in favour of respondent No. 4 by respondent No. 3, and (iii) acceptance of the application for drawings of building etc. with processing fee of Rs. 10,000/-. It would also be relevant to refer to the meaning of survey as contained in Law Lexicon is reproduced hereinbelow:

To survey has several significations. It may mean to inspect, or take a view of; to view with attention; to view with a scrutinizing eye; to examine with reference to

condition, situation and value; to measure, as land; and may other, "Survey" as a noun may mean an attentive or particular view or examination, with the design to ascertain the condition, quantity or value.

97. Besides, in its affidavit, respondent No. 1 has taken the stand that respondent No. 3 has placed on record the detailed maps of the properties/lands in question at serial No. 6 but in view of the affidavit of HUDCO before Hon'ble the Apex Court stating that the area of 21 acres of land is unencumbered, which also finds mention in the deed of exchange, it would be necessary for respondent No. 1 to physically verify the location of such lands so that if they are put on sale under the orders of DRT/DRAT or any other forum, the unencumbered area of 21 acres remains available to protect petitioner's rights under the Agreement to Sell, which is now said to be registered. The detailed maps as submitted by respondent No. 3 with its counter-affidavit must also have been supplied by or prepared only with the help of respondent No. 1, and therefore, only respondent No. 1 being the statutory authority which exchanged the lands in question would be in a position to identify the location of mortgaged (42.45 acres) and unencumbered area (approx. 21 acres) of the lands at serial No. 6, and demarcate them.

98. So far as the conduct of respondent No. 3 is concerned, it cannot be said to be above board. It entered into different Agreements to Sell with different parties for different amounts (out of which, now only the agreement with petitioner survives and all others have been cancelled); it has delayed the repayment of dues of the HUDCO by instituting litigations before different forums, and it has failed to show its bona fide in any of the aforesaid transactions. Thus, the stand taken in order to defeat the claim of petitioner cannot be said to be bona fide. The DRAT Delhi has also noticed such conduct of respondent No. 3 Trust in its order dated 6.10.2010 as follows:

74. From the above said facts and circumstances the following points emerge:

(b) Before HUDCO they moved OTS for Rs. 240 crores whereas HUDCO was claiming Rs. 250 crores or more. However, the Court was informed that OTS was for Rs. 75.07 crores only. The earlier OTS moved for Rs. 80 to 90 crores had found no favour with the HUDCO authorities. How it could have agreed to the proposal of Rs. 75.07 crores only. Even after I heard the final arguments, the borrowers moved yet one more application for not announcing the judgment as they wanted to settle the matter with the HUDCO. I gave them 15 days more time. It transpires that they had again made proposal in the sum of Rs. 75.07 crores. It is apparent that the borrowers want to bid for time on one pretext or the other. In this respect mala fides are writ large on them.

(e) At best, it can be said that the borrowers had no intention to apply for OTS at Rs. 240 crores. The authorities were, however, misled. Meeting the minds is the sine qua non of an agreement coercion, force, misrepresentation, fraud or anything of

the like have no place at all. Although, the action of the borrowers borders the contempt of Court, yet due to lack of mens rea, lack of proper and direct evidence not touching the heart of the problem, it would not be worthwhile to initiate action under the Contempt of Courts Act or u/s 340 Cr.P.C.

(f) However, at the same time, the conduct, misrepresentation and bizarre behaviour of the borrowers cannot be swept under the carpet. It is very easy to gauge into antecedents of borrowers particulars that of Dr. Mahalingam who is responsible and liable for admitted interpolations and alterations. Can allegations against Mr. Naresh Chandra and two/three officers of the HUDCO without being substantiated by any cogent and plausible evidence come to the rescue of the borrowers? All these facts and circumstances will be put in the scales of justice and their pros and cons would be evaluated as per law. One fact is clear that the borrowers deserve no sympathy at all. Since all this drama was created to take a few dates, therefore, instead of taking action under the Contempt of Court Act and Section 340 Cr.P.C. it would be worthwhile to come to the main point and action be initiated accordingly.

99. In the premises discussed hereinabove, we are of the considered view that the relief as sought in prayer No. 1 can be granted by directing respondent No. 1 to demarcate 42.45 acres, said to be mortgaged, and 21 acres as unencumbered, out of the total area of 63.45 acres, as mentioned at serial No. 6, in the list of properties as detailed in the foregoing paragraphs. Thus, we allow this petition and direct respondent No. 1 to carry out the aforesaid exercise of demarcation either itself or being an instrumentality of the State, and having statutory duties as extracted and reproduced hereinabove, with the help of revenue authorities concerned. Moreover, in view of the chequered background of the litigation in respect of the lands/properties in question, and the conduct of respondent No. 3, as noticed above, we also deem it expedient in the interest of justice to direct and thus it is ordered that the parties shall maintain status quo qua the lands, namely, 21 acres out of the total area of 63.45 acres as mentioned at serial No. 6. We also direct that the said area of 21 acres of the land at serial No. 6 shall not be alienated and/or transferred in any manner till the exercise of demarcation is fully carried out in accordance with law. Additionally, it is further directed that the area of 42.45 acres, said to be encumbered and 21 acres, as unencumbered shall be clearly identified and segregated in the presence of the parties.

100. Before parting with the judgment, it may not be out of place to refer to the interim order dated 15.1.2011 passed by Hon"ble Mr. Justice B.A. Khan (Retd.), former Chief Justice of J & K High Court and former Acting Chief Justice of Delhi High Court, the sole arbitrator, in the arbitration proceedings in respect of the properties/lands which are also the subject-matter of this petition. The relevant portion of the said order on reproduction would read as:

.....In the interim application u/s 17 claimant's counsel alleges that there was change of mind by Respondent after receiving Rs. 9.00 crores consideration for the sale of the land in question due to escalation in prices and that the Respondent is now resiling from the position and is negotiating deals with some other buyers, which would cause irreparable loss to claimant and lead to third party intervention and even defeat the Claimant's cause. There is a grave urgency in protecting the subject-matter in dispute till Arbitrator decided on other issues.

Learned counsel for Respondent, however, submits on instruction that no restraint order be passed as Respondent through Dr. P. Mahalingam, Chairman & Managing Trustee of M/s. Maharaji Educational Trust would execute and submit an undertaking that Respondent would not alienate the disputed land measuring 63.45 acres in any manner whatsoever for four weeks or till the next date before the Arbitrator which ever is later. (Undertaking is submitted and placed on record supported by Rs. 100 non-judicial stamp paper). This undertaking shall accordingly form part of record and Respondents shall remain bound by its terms to maintain status quo on spot.....

101. Thus, it would be necessary for us to clarify that our order and directions contained herein shall not in any manner affect the operation of the interim order passed by the sole arbitrator granting status quo on spot in respect of the lands impugned therein, being an independent proceeding under the Arbitration and Conciliation Act, 1996. With the aforesaid directions, the writ petition is disposed of.