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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27th May, 2024.

Date of decision: 30th August, 2024

\+ **CS(OS) 2480/1987 & I.As. 9332/1987, 106/1988, 1252/1988, 2161/1988, 20139/2014**

UNION OF INDIA ..... Plaintiffs

Through: Mr Kirtiman Singh, CGSC with Mr Aryan Agrawal, Adv.
Mr. A. Subba Rao (*since deceased*) A.T. Rao & Ms. Meera Bhatia, Advs

versus

EXPRESS NEWSPAPERS LTD. AND ORS. ..... Defendants

Through: Dr. Salman Khurshid, Senior Advocate, Mr. Sandeep Sethi, Senior Advocate with Mr. Amit Agarwal, Advocate. Ms Bhawani Gupta, Adv.

AND

\+ **CS(OS) 52/1988**

EXPRESS NEWSPAPERS LTD. AND ORS. ..... Plaintiffs

Through: Dr. Salman Khurshid, Senior Advocate, Mr. Sandeep Sethi, Senior Advocate with Mr. Amit Agarwal, Advocate. Ms Bhawani Gupta, Adv.

Versus

UNION OF INDIA AND ANOTHER ..... Plaintiffs

Through: Mr Kirtiman Singh, CGSC with Mr Aryan Agrawal, Adv.
Mr. A. Subba Rao (*since deceased*), Mr. A.T. Rao & Ms. Meera Bhatia, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

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BRIEF FACTS

"A free press is one of the pillars of Democracy"

- Nelson Mandela[1]

1. In the judicial history of a nation, the impact of some cases is beyond their own facts, with larger ramifications for institutions, citizens and their Rights. The present dispute between a well-known media house and the Government has spanned over five decades, witnessing critical historical events such as the Emergency and its aftermath. The dispute erupted as a result of action taken by the then Government in 1977-79, against a media house, for its fair and independent role during the Emergency imposed between the years 1975-1977[2]. Ultimately, the Rights enshrined in the Constitution of India have emerged more powerful and stronger with the seminal decision rendered early on by the Supreme Court[3] in exercise of its jurisdiction under Art.32 of the Constitution.

2. The present two suits *i.e.,* ***CS(OS) 2480/1987*** and ***CS(OS) 52/1988*** are related to a premises leased to Express Newspapers Ltd. *i.e.*, Plot Nos. 9-10, Bahadur Shah Zafar Marg, New Delhi-110002 (hereinafter '*suit property*') which is a publisher of various Newspapers and magazines including Indian Express. Broadly, there are only two parties involved in the present dispute *i.e.,* the media house and the UOI. However, certain tenants

[1] Nelson Mandela, Address by Nelson Mandela to the International Press Institute Congress, Mandela.gov.za,February14, 1994, http://www.mandela.gov.za/mandela_speeches/1994/940214_press.htm
[2] Emergency period from 25th June, 1975 to 21st March, 1977.
[3] Express Newspapers Pvt. Ltd. and Others v. Union of India and Others, 1986 1 SCC 133.

of the media house as also the promoters were impleaded. For reference purposes, the parties arrayed are set out below:

CS(OS) 2480/1987	
Plaintiff	**Defendant**
The Union of India, represented by the Land & Development Officer	Express Newspapers Pvt. Ltd.
	M/s. Greaves & Cotton Ltd., Express Building, Ground Floor
	M/s. Shri Ram Fibres Ltd., Express Building
	M/s. Steel Authority of India Ltd., Express Building
	National Bank for Agriculture and Rural Development, Express Building
	Hindustan Lever Ltd., Express Building
	Punjab National Bank, Express Building
	Minerals and Metals Trading Corporation of India Ltd., Express Building

CS(OS) 52/1988	
Plaintiff	**Defendant**
Union of India	Express Newspapers Ltd. & Ors. *(hereinafter collectively referred as 'Express Newspapers')*
Land & Development Officer *(hereinafter collectively referred as 'UoI')*	Indian Express Newspapers (Bombay) Pvt. Ltd.
	Ramnath Goenka, Chairman, Indian Express Newspapers (Bombay) Pvt. Ltd.
	Ms. Ritu Goenka, Joint Managing Director, Express Newspapers Ltd.

3. The details of the proceedings which have been heard and in which the present judgment is being pronounced are as follows:

CS(OS) 2480/1987 – UoI v. Express Newspapers Ltd. & Ors.

4. This suit has been filed by the Union of India seeking possession of the suit property as also other ancillary reliefs including damages and mesne profits. The prayer also sought interest at the rate of 18% p.a. for the amount pending, rent, occupation charges, damages and misuser charges *etc.*, to the Land and Development Officer from 9th November, 1987.

CS(OS) 52/1988 -Express Newspapers Ltd. & Ors. v. UoI & Anr.

5. A subsequent suit was filed being *'M/s. Express Newspapers Ltd. & Others v. Union of India & Anr.'* seeking relief against notice of re-entry and ejection dated 2nd November, 1987 issued by Land & Development Officer to M/s. Express Newspapers Ltd. & Others, declaring them as illegal.

BACKGROUND

6. By way of background, it deserves to be noticed that initially, Express Newspapers were allotted plot nos. 1 and 2 which were close to the Tilak Bridge, ITO, New Delhi. These plots were part of the ten plots which were earmarked for the press/publications and were loosely termed as the Press Enclave. It is averred that due to a specific request made on behalf of the then Prime Minister – Pandit Nehru, as per the record, the founder of the Express Newspapers, Mr. Ram Nath Goenka surrendered plot nos. 1 and 2 and as an alternative, present plot nos. 9 and 10 were allotted, as the said plot nos. 1 and 2 were to be allotted for the establishment of the Gandhi Memorial Hall *(Pyare Lal Bhawan).* The intended lease agreement for Plot nos. 9 and 10, was executed on 17th November, 1952 and the agreement for

lease was entered on 26th May, 1954. During construction, an underground sewer pipe line was discovered. This resulted in a change in the construction, which was planned for the building and a revised allotment was made. The terms of the revised allotment dated 11th April, 1956 were that the building line should be 25ft. away from the east side of the Central line of the sewer and excavation of foundation shall not be less than 20 ft. away from the central line of the sewer.

7. Consensus was arrived at to undertake construction only east of the drain until the drain is shifted. The revision was made accordingly and the allotment took place by which the two plots were divided diagonally. As per this revised lease deed dated 11th April, 1956 read with 14th May, 1956 and 19th May, 1956, the allotment of land to the Indian Express was on the following basis:

- 2965 sq. yds. to the east of the pipeline was marked for construction of the building and;
- 2740 sq. yds. to the west of the pipeline was to be maintained as open space.

8. A perpetual lease deed was then executed, after the construction of the building, in terms of the revised allotment on 17th March, 1958 wherein clauses 2(7) and 2(13) stipulated certain restrictions *i.e.*, the suit premises will not be used for any other purposes apart from Newspaper press and certain residential flats. However, by then, permission was sought by Express Newspapers for using the building and the surplus area for non-Newspapers purposes *i.e.,* for general commercial purpose. Correspondence ensued between the parties, in this regard.

9. Finally, on 15th January, 1960 and 23rd February, 1960, permanent change of purpose was permitted in respect of 1 lakh sq. ft. out of the total 1.50 lakhs, subject to payment of additional premium at Rs.3,75,000/- per acre. Pursuant to this understanding which was arrived at between the parties, various commercial lessees/tenants were inducted by Express Newspapers.

10. According to the L&DO, however, formal permission was still required from the Ministry, which as per Express Newspapers, was not required. Various demands were raised by L&DO in the year 1962 which according to the Defendants stood paid. The supplemental lease deed was then executed on 17th November, 1964 which recognized the use of 1 lakh sq. ft. for a non-newspaper purpose *i.e.*, general commercial purpose.

11. Express Newspapers on 25th October, 1977 applied to the Ministry for Works & Housing for shifting of the sewer pipe line to enable the land located west of the drain to be made usable as they wanted to start a Hindi Newspaper and inter-connect the proposed building with the existing one. Thereafter, vide letter dated 7th December, 1977, it was acknowledged that DDA has permitted 300% Floor Area Ratio(hereinafter '*FAR*') and so the new construction should not exceed the same. Thus it was requested that the plot should only be treated as a commercial complex vide letter dated 31st December, 1977. Express Newspapers had also approached the Delhi Water Supply and Sewage Disposal (hereinafter '*DWSSB*') and upon the feasibility of shifting being confirmed by DWSSB and MCD, Express Newspapers agreed to reimburse both these authorities the actual cost of reconstruction of the drainage and the shifting thereof. Subsequently, the DWSSB gave its

approval to shift the existing trunk barrel vide letter dated 30th December, 1977.

12. Express Newspapers again sought approval for construction of a five storied building which was the original plan. A three-member committee from the Ministry inspected the land and on 9th June, 1978 and the construction was permitted, subject to the sewer line being diverted. The Urban Arts Commission also permitted the approval for the additional construction. On 11th September, 1978, the Ministry of Works & Housing, Land & Development Office directed Express Newspapers to pay damages with respect to unauthorised construction on the suit premises.

13. The DDA on 4th November, 1978 sanctioned FAR of 360 and the printing machinery was permitted to be installed in the basement. The Ministry of Works and Housing on 24th November, 1978 and 1st December, 1978 wrote to the DDA confirming that FAR 360 would be allowed and the same would be excluding the basement area. Additional construction was also permitted and plans for reconstruction were approved by the MCD. After construction, the area west to the sewer line was to be converted for commercial purposes and permission to change the user of the said area was also sought.

14. It is the stand of Express Newspapers that during this entire period, the L&DO and the Ministry of Works and Housing were kept duly informed. The letter dated 25th October, 1977, by which Express Newspapers had applied to the Ministry of Works and Housing for diversion of the sewer and change of user was sent to the L&DO. In January, 1980, however, after the general elections when a new government took over, an attempt to re-enter the building was made by the then Government vide re-

entry notices dated 7th March, 1980 and 10th March, 1980 respectively, which is stated to be in contravention of the clauses 2(14) and 2(5) of the lease deed. The said notices were challenged before the Supreme Court in a petition under Article 32 of the Constitution of India, resulting in the decision which is discussed herein below.

THE BACKDROP OF THE EMERGENCY AND THE DECISION OF THE SUPREME COURT –

Express Newspapers Pvt. Ltd. and Others v. Union of India and Others, 1986 1 SCC 133

15. It is the case of Express Newspapers that during the dark days of the Emergency, Express Newspapers and its owner at that time- Mr. Ram Nath Goenka had stood up to the excesses of the then Government.

16. This had saddled them with the consequences of a notice of re-entry dated 10th March, 1980 to the land where Express building is situated in the Bahadur Shah Zafar Marg, New Delhi. It was alleged in the said Notice that Express Newspapers did not take approval from the Land and Development Officer or Ministry of Works and Housing regarding construction on the open portion of the plot. This re-entry was directed by virtue of a notice issued on 10th March, 1980, which was dealt by the Supreme Court in its historic and seminal judgment titled ***Express Newspapers Pvt. Ltd. and Others v. Union of India and Others, 1986 1 SCC 133***. The notices of re-entry and demolition were held to be impinging upon the Fundamental Rights guaranteed under Article 19 (1)(a) and (g) of the Constitution of India. The relevant observations of the Supreme court are set out below:

> ***"73.*** *Here, the very threat is to the existence of a free and independent press. It is now firmly established by*

a series of decisions of this Court and is a rule written into the Constitution that freedom of the press is comprehended within the right to freedom of speech and expression guaranteed under Article 19(1)(a) and I do not wish to traverse the familiar ground over again except to touch upon certain landmark decisions. In Romesh Thappar v. State of Madras [1950 SCC 436 : AIR 1950 SC 124 : 1950 SCR 594] the Court observed that the Founding Fathers realized that freedoms of speech and of the press are at the foundation of all democratic organizations, for without free political discussion no public education, so essential for proper functioning of the processes of popular Government, is possible. In Sakal Papers (P) Ltd. v. Union of India [AIR 1962 SC 305 : (1962) 3 SCR 842] (sic), the Court reiterated:

"Our Government set-up being elected, limited and responsible, we need requisite freedom of any animadversion for our social interest which ordinarily demands free propagation of views. Freedom to think as one likes and to speak as one thinks are as a rule indispensable to the discovery and separate of truth and without free speech, discussion may be futile."

74.……

75. *I would only like to stress that the freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that problems of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation. It is necessary to emphasize and one must not forget that the vital importance of freedom of speech and expression involves the freedom to dissent to a free democracy like ours. Democracy relies on the freedom of the press. It is the inalienable right of everyone to comment freely upon any matter of public importance. This right is one of the pillars of*

individual liberty—freedom of speech, which our Court has always unfailingly guarded. I wish to add that however precious and cherished the freedom of speech is under Article 19(1)(a), this freedom is not absolute and unlimited at all times and under all circumstances but is subject to the restrictions contained in Article 19(2). That must be so because unrestricted freedom of speech and expression which includes the freedom of the press and is wholly free from restraints, amounts to uncontrolled licence which would lead to disorder and anarchy and it would be hazardous to ignore the vital importance of our social and national interest in public order and security of the State.

76. In Bennett Coleman case [(1972) 2 SCC 788 : AIR 1973 SC 106 : (1973) 2 SCR 757] the Court indicated that the extent of permissible limitations on this freedom are indicated by the fundamental law of the land itself viz. Article 19(2) of the Constitution. It was laid down that permissible restrictions on any fundamental right guaranteed under Part III of the Constitution have to be imposed by a duly enacted law and must not be excessive i.e. they must not go beyond what is necessary to achieve the object of the law under which they are sought to be imposed*. "The power to impose restrictions on fundamental rights is essentially a power to 'regulate' the exercise of these rights. In fact, 'regulation' and not extinction of that which is to be regulated is, generally speaking, the extent to which permissible restrictions may go in order to satisfy the test of reasonableness". The Court also dealt with the extent of permissible limitations on the freedom of speech and expression guaranteed under Article 19(1)(a). The test laid down by the Court in Bennett Coleman case [(1972) 2 SCC 788 : AIR 1973 SC 106 : (1973) 2 SCR 757] is whether the direct and immediate impact of the impugned action is on the freedom of speech and expression guaranteed under Article 19(1)(a) which includes the freedom of the*

press. It was observed that the restriction on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental right under Article 19(1)(a) on the aspects of propagation, publication and circulation of a newspaper. In repelling the contention of the learned Additional Solicitor-General that the newsprint policy did not violate Article 19(1)(a) as it does not directly and immediately deal with the right mentioned in Article 19(1)(a), the Court held that the tests of pith and substance of the subject-matter and of direct and incidental effect of legislation are relevant to questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights. ***The true test, according to the Court, is whether the effect of the impugned action is to take away or abridge fundamental rights. It was stated that the word "direct" would go to the quality or character of the effect and not the subject-matter and the restriction sought to be imposed by the impugned newsprint policy was, in substance, a newspaper control i.e. to control the number of pages or circulation of dailies or newspapers and such restrictions were clearly outside the ambit of Article 19(2) of the Constitution and therefore were in abridgement of the right of freedom of speech and expression guaranteed under Article 19(1)(a), and it added:***

"The Newsprint Control Policy is found to be newspaper control order in the guise of framing an Import Control Policy for newsprint.

This Court in the Bank Nationalisation case [R.C. Cooper v. Union of India, (1970) 1 SCC 248] laid down two tests. First it is not the object of the authority making the law impairing the right of the citizen nor the form of action that determines the invasion of the right. Secondly, it is the effect of the law and the action upon the right which attracts the jurisdiction of the

court to grant relief. The direct operation of the Act upon the rights forms the real test.

... No law or action would state in words that rights of freedom of speech and expression are abridged or taken away. That is why courts have to protect and guard fundamental rights by considering the scope and provisions of the Act and its effect upon the fundamental rights."

We have only to substitute the word "executive" for the word "law" and the result is obvious. Here, the impugned notices of re-entry upon forfeiture of lease and of the threatened demolition of the Express Buildings are intended and meant to silence the voice of the Indian Express. It must logically follow that the impugned notices constitute a direct and immediate threat to the freedom of the press and are thus violative of Article 19(1)(a) read with Article 14 of the Constitution. It must accordingly be held that these petitions under Article 32 of the Constitution are maintainable.*"*

17. This decision in ***Express Newspapers Pvt. Ltd. (supra)*** was rendered by a three Judge Bench of the Supreme Court. Vide the said decision, the Supreme Court held that the action taken by the then Government against Express Newspapers, was *mala fide* and politically motivated. The observations of the Court are set out below:

"Whether the impugned Executive action was malafide and politically motivated?

114. *The principal point in controversy between the parties is whether the notice of re-entry upon forfeiture of lease issued by the Engineer Officer, Land & Development Office dated March 10, 1980 purporting to be on behalf of the lessor i.e. the Union of India, Ministry of Works & Housing, and that of March 1,*

1980 issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi were wholly mala fide and politically motivated. ***It is a sad reflection on the state of affairs brought about during the period of Emergency which brought into existence a totalitarian trend in administration and I do not wish to aggravate any of its features by unnecessary allusions. In the process, the country witnessed misuse of mass media totally inconceivable and unheard of in a democratic form of Government by ruthless suppression of the press by exercise of pre-censorship powers, enactment of a set of draconian laws which reduced freedom of the press to a naught.***

115. The petitioners have pleaded the facts with sufficient degree of particularity tending to show that the impugned notices were wholly mala fide and politically motivated*; mala fide, because the impugned notice of re-entry upon forfeiture of lease dated March 10, 1980 issued by the Engineer Officer, Land & Development Office under clause 5 of the indenture of lease dated March 17, 1958 for alleged breach of clauses 2(14) and 2(5)—which in fact were never committed—and the notice dated March 1, 1980 by the Zonal Engineer (Buildings), City Zone, Municipal Corporation for demolition of new Express Building where the printing press is installed under Sections 343 and 344 of the Delhi Municipal Corporation Act were really intended and meant to bring about the stoppage of the publication of Indian Express which has throughout been critical of the Government in power whenever it went wrong on a matter of policy or in principle. Also, mala fide because they constitute misuse of powers in bad faith. Use of power for a purpose other than the one for which the power is conferred is mala fide use of power. Same is the position when an order is made for a purpose other than that which finds place in the order.*

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> ***136.*** *In the facts and circumstances, I am constrained to hold that the impugned notices dated March 1, 1980 and March 10, 1980 were not issued bona fide in the ordinary course of official business for implementation of the law or for securing justice but were actuated with an ulterior and extraneous purpose and thus were wholly mala fide and politically motivated."*

18. The Supreme Court in its decision, upheld the role of the Press and observed that during the emergency period there was misuse of power which led to press censorship. The Supreme Court then quashed the re-entry notice dated 10th March, 1980, as also other actions contemplated by the then Government. The decision also restrained the Union of India from taking any steps for termination of lease, for non-payment of conversion charges or otherwise for the construction of the building till the final determination of the amount payable by a Civil Court. Three separate judgements were authored by the three-Hon'ble Judges on the Bench. The operative portions of each of the said judgments are set out below:

Justice A.P. Sen

> *"**194**. We cannot possibly in these proceedings under Article 32 undertake an adjudication of this kind but I am quite clear that Respondent 5 the Land & Development Officer having already indicated his mind that the amount of conversion charges would be more than Rs 3.30 crores, it would not subserve the interests of justice to leave the adjudication of a question of such magnitude to the arbitrary decision of the Land & Development Officer who is a minor functionary of the Ministry of Works & Housing. We were informed by Shri Sinha, learned counsel for Respondent 1, the Union of India that the Central Government were contemplating to undertake a legislation and to provide for a forum for adjudication of such disputes.*

As stated earlier, we had suggested that the dispute as to the quantum of conversion charges payable be referred to the arbitration of an impartial person like a retired Judge of the Supreme Court of India, but this was not acceptable to the respondents. The Union of India may in the contemplated legislation provide for the setting up of a tribunal with a right of appeal, may be to the District Judge or the High Court, to the aggrieved party. If such a course is not feasible, ***the only other alternative for the lessor i.e. the Union of India, Ministry of Works & Housing would be to realize the conversion charges and additional ground rent, whatever be recoverable, by a duly constituted suit.*** *Till then I would restrain the Union of India, Ministry of Works & Housing and the Land & Development Officer or any other officer of the Ministry from taking any steps for termination of the lease held by Petitioner 1, Express Newspapers Pvt. Ltd. for non-payment of conversion charges or otherwise for the construction of the Express Building* ***till the final determination of such amount to be realized*** *by a statutory tribunal or* ***by a civil court.***

195. *For these reasons, I would, therefore, for my part, quash the impugned notices.*

196. *The result therefore is that these petitions under Article 32 of the Constitution must succeed and are allowed with costs. The notice issued by the Engineer Officer, Land & Development Office dated March 10, 1980 purporting to act on behalf of the Government of India, Ministry of Works & Housing requiring the Express Newspapers Pvt. Ltd. to show cause why the lessor i.e. the Union of India, Ministry of Works & Housing should not re-enter upon and take possession of plots Nos. 9 and 10, Bahadurshah Zafar Marg, New Delhi together with the Express Buildings built thereon, under clause 5 of the indenture of lease dated March 17, 1958 for alleged breaches of Clauses 2(5) and 2(14) thereof, and the earlier notice dated March*

1, 1980 issued by the Zonal Engineer (Buildings), City Zone, Municipal Corporation, Delhi requiring them to show cause why the aforesaid buildings should not be demolished under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957, are quashed. ***It is declared that the construction of the new Express Building on the residual portion of 2740 square yards on the western side of plots Nos. 9 and 10, Bahadurshah Zafar Marg with an increased FAR of 360 with a double basement for installation of a printing press for publication of a Hindi daily newspaper was with the permission of the lessor i.e. the Union of India, Ministry of Works & Housing and did not constitute a breach of clauses 2(5) and 2(14) of the lease-deed.***

197. *It is directed that the respondents, particularly the Union of India, Ministry of Works & Housing, the Delhi Development Authority, and the Municipal Corporation of Delhi, shall forbear from giving effect to the impugned notices in the manner threatened or in any other manner whatsoever. It is further directed that the Union of India, Ministry of Works & Housing shall enforce its claim for recovery of conversion charges by a duly constituted suit or by making a law prescribing a forum for adjudication of its claim. It is also directed that the Municipal Corporation of Delhi shall compound the construction of the double basement of the new Express Building, the excess basement beyond the plinth limit and the underground passage on payment of the usual composition fee."*

19. Two concurring decisions were rendered by the other two Judges who also quashed the impugned show cause notices dated 1st March, 1980 and 10th March, 1980 on the ground that the notices were arbitrary and violate Article 14 of the Constitution of India. The operative portion in the decisions of the other two Judges on the Bench are set out below:

Per Justice Venkataraman

> *"201. The material available in this case is sufficient to hold that the* ***impugned notices suffer from arbitrariness and non—application of mind. They are violative of Article 14 of the Constitution, Hence they are liable to be quashed.*** *It is not necessary therefore to express any opinion on the contentions based on Article 19(I)(a) of the Constitution.*
>
> *202. 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 32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the covenants 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.*
>
> *203.* ***I, therefore, quash the impugned notices and direct the respondents not to take any further action against the petitioners pursuant to them. I express no opinion on the rights of the parties under the lease and all other questions argued in this case. They are left open to be decided in an appropriate proceeding****. It is, however, open to both the parties if they are so advised to take such fresh action as may be open to*

them in law on the basis of all the relevant facts including those which existed before the impugned notice dated March 10, 1980 was issued by the Engineer Officer of the Land and Development Office to vindicate their respective rights in accordance with law. This order is made without prejudice to the right of the Union Government to compound the breaches, If any, committed by the lessee and to regularize the lease by receiving adequate premium therefor from the lessee, if it is permissible to do so."

xxx xxx xxx

Per Justice R.B. Mishra

"206. I have perused the judgment prepared by brother Justice A.P. Sen as also: the judgment of brother Justice E.S. Venkataramiah. ***While I agree that the impugned notices threatening re-entry. and demolition of the construction are invalid and have no legal value and must be quashed for reasons detailed in the two judgments, which I do not propose to repeat over again. I am of the view that the other question involved in the case are based upon contractual obligations between the parties. These questions can bel satisfactorily and effectively dealt with in a properly instituted proceeding or suit and not by a writ petition on the basis of affidavits which are so discrepant and contradictory in this case.***

207. The right to the land and to construct buildings thereon for running a business is not derived from Article 19(1)(a) or 19(1)(g) of the Constitution but springs from the terms of contract between the parties regulated by other laws governing the subject, viz., the Delhi Development Act, 1957, the Master Plan, the Zonal Development Plan framed under the Delhi Municipal Corporation Act and the Delhi Municipal Bye-laws, 1959 irrespective of the purpose for which the buildings are constructed. Whether there has been

> *a breach of the contract of lease or whether there has been a breach of the other statutes regulating the construction of buildings are the questions which can be properly decided by taking detailed evidence involving examination and cross-examination of witnesses.*
> *208. I accordingly allow the writ petitions with costs against the Union Government and the Lt. Governor of Delhi and quash the impugned notices"*

20. As per the decision of the Supreme Court, the UOI could file a civil suit, which then led to the filing of the present suit by the UOI and thereafter a counter suit by Express Newspapers.

Developments post the judgment of the Supreme Court dated 7th October, 1985

21. A show cause notice was issued on 1st August, 1986 by the Ministry of Urban Development (L&DO) after the decision of the Supreme Court. The said notice was based on the premise that Justice Sen's opinion in the Supreme Court's decision was a minority view. Paragraph 12 of the show cause notice reads as under:

> *"12. The Writ Petitions were heard by a Bench of 3 Hon'ble Judges of the Supreme Court consisting of Hon'ble Mr. Justice .P. Sen, Hon'ble Mr.Justice E.S. Venkataramiah and Hon'ble Mr.Justice R.B. Misra. Their Lordships Hon'ble Mr. Justice E.S. Venkataramiah and Hon'ble Mr.Justice. R. P. Misra held that notices dated 1.3.1930 and 10.3.1980 were invalid on the ground that the said notices were arbitrary and for non-application of mind. The learned Judges did not express any opinion on the rights of the parties under the lease deed and all the other questions argued in the case and left them open observing that it was open to the Lessor and to the Delhi Municipal Corporation to take appropriate steps in accordance*

with the law for the breaches committed by you. However, his Lordship' Hon'ble Mr. Justice A.P. Sen expressed his opinion in regard to the contentions urged on behalf of you, His Lordship Hon'ble Mr. Justice A.P. Sen observed that the Lessor is entitled to enforce his claim for recovery of conversion charges by a duly constituted suit or making a law prescribing a forum for adjudication of its claims. The judgement of his Lordships.

Hon'ble Mr. Justice A.P. Sen is a minority judgement. The majority judgment of the two other learned Hon'ble Judges constituting the Ranch has not expressed any opinion in regard to the breaches and violations of the terms of lease committed by you*."*

22. On this premise, the show cause notice dated 1st August, 1986, listed out various alleged violations by Express Newspapers, which are set out below:

i) induction of non-Newspapers tenants;

ii) earning of rental income of more than Rs.1 crore per year;

iii) permission to occupy the new building without necessary completion certificate by the MCD was given by the Supreme Court at the risk of Express Newspapers;

iv) since the plot was allotted only for the purposes of Newspapers, so by letting out of for commercial purpose there was unjust enrichment to the tune of Rs.1 crore per year, on which, the Ministry is entitled to 18% per annum;

v) construction of more than FAR 360 is in excess of the sanctioned plan by MCD;

vi) no permission was taken from the L&DO to regularise the misuse created by using the building for purposes other than a newspaper. Hence L&DO is entitled to re-enter the property as there were violations of the lease deed dated 17th March, 1958;

vii) sanction plans of the MCD have not been submitted to the L&DO which is in contravention of the lease deed. Despite the Ministry's letters dated 24th November, 1978, 1st December, 1978 and 25th December, 1978 which permitted additional construction with FAR 360, no construction could be done until clauses 2(14) and 3 of the perpetual lease deed dated 17th March, 1958 are varied. A supplemental lease deed was required and no construction could have been commenced till the said lease deed was executed. Thus, there is a violation of perpetual lease permitting the Government to re-enter the premises;

viii) there is a misuse of 65,139 sq. ft. Thus, the L&DO was entitled to collect misuse charges, penalty and interest at 18% p.a. till the day the misuse was stopped, failing which L&DO would re-enter the property;

ix) drawings and plans which are sanctioned by the MCD should be submitted and any excess construction ought to be removed beyond the sanction plans;

x) the basement was sanctioned only for the purposes of storage by the MCD but the same is being used for the purpose of Newspapers press office which was contrary to the MCD's sanction plan and is also a breach of the terms of the lease;

xi) that there are breaches in the old building of unauthorized construction and misuse for which notices dated 11th September, 1978 and 16th April, 1979 have been issued;

xii) the details of the rent payable and the amounts recoverable were set out in the notice;

xiii) misuse of the basement is to the tune of 28,082 sq. ft. for which misuse charges are payable;

xiv) damages for unauthorized construction and misuse based on the land rate works out to Rs.2.08/- per sq. mtrs. Unauthorized construction's damages are therefore liable to be paid;

xv) total charges claimed by the Union of India is Rs.2,12,82,473/- on various counts;

xvi) temporary regularization of misuse has not been sought and hence the said charges are payable;

xvii) six months were granted to remove the breaches and for payment of all the damages, failing which, the said amount would be recoverable;

xviii) the conclusion of notice reads as under:

> *"32. This is also further to give you notice that if you fail to comply with this notice and remedy the breaches committed by you, as more fully set out in detail hereinabove in this notice, the Land & Development Officer on behalf of the Lessor will institute proceedings before appropriate forum to enforce the terms of the 'lease including the right of re-entry upon the premises as provided under the lease deed dated 17.3.1958."*

23. This notice was replied to by Express Newspapers on 30th September, 1986. In its reply, Express Newspapers took the position that the stand of the L&DO, that Justice Sen's opinion is the minority opinion, is baseless and a clarification is liable to be issued as to how such a claim could be enforced without filing of a suit. Express Newspapers also sought the details of the rules, regulations and guidelines regarding the norms for determination of breach of lease provisions, compoundability, computation of charges *etc*. A request to inspect the files related to all properties in Press Enclave was also made.

24. In response thereto, on 17th December, 1986, the L&DO informed Express Newspapers that it would file a suit to enforce rights under the lease deed. Further correspondence took place between the parties and letters were addressed by Express Newspapers seeking clarification. Vide letter dated 23rd June, 1987, Express Newspapers asked a few queries, pertaining to the show cause notice dated 1st August, 1986 by the L&DO. The questions raised are as under:

> *"(a) Is the L & DO a functionary under the Ministry of Works and Housing or not,*
> *(b) Does the Chief Commissioner of Delhi continue to be an authority under the Lease Deed between the President of India and the Company,*
> *(c) Is the Lt Governor of Delhi a successor in office of the Chief Commissioner of Delhi,*
> *(d) Is the Lt Governor entitled to exercise the powers of the Chief Commissioner of Delhi under the provisions of the Lease Deed and in particular can he exercise the powers of the Chief Commissioner under Clauses 2(9) and 2(14) of the Lease Deed,*
> *(o) Does the Ministry of Works & Housing represent the lessor or not*

(f) Does the L&DO maintain that the orders of the then Minister for Works & Housing, Mr. Sikhandar Bakht, illegal, improper and irregular

(g) Does the L & D 0 maintain that the grants made by the Ministry of Works &. Housing vide its letter of June 9, 1978, illegal, improper and irregular and if so what are the reasons,

(h) Does the L& DO maintain that the grant made by the Ministry of Works & Housing vide letter dated 24.11.78 was illegal, improper and irregular and for what reasons

(i) Does the L & DO maintain that the grant made by the Ministry of Works & Housing vide letter dated 1.12.78 is illegal, improper and irregular and for what reasons,

(j) Does the L&DO maintain that no permission for shifting of the sewer line was maintained under Clause 2(14) of the Lease Deed,

(k) Does the L &DO maintain that the orders communicated by the industry of Works & Housing are illegal because they are not expressly in the name of the President of India,

(1) Is the L & DO empowered to authenticate documents under the Authentication of Documents Rules issued under Art, 77 of the Constitution of India,

(m) Is the Power to sign contracts on behalf of the Central Government under Art, 299 of the Constitution of India not available to Secretary, Joint Secretary or Deputy Secretary to Govt,

(n) Was the permission of the lessor to let granted in 1963 given by the Ministry, of Works & Housing or the L &DO,

(o) What is the legal effect of the letter of the Ministry of Works & Housing to L &DO dt 17/18 Feb 1970 on the policy of liberalisat on in the administration of nazul land in Delhi

(p) Is the land lessed to the Company a nazul land or not,

(q) How did the three-member Committee arrive at the figure of conversion charges at Rs.30 lakhs,
r) What is the basis for the claim of conversion charges,
(s) What is the formula for claiming conversion charges,
(t) What is the statutory rule or contractual obligation in the deed authorising the levy of conversion charges,
(u) Is not the lease deed and every grant made by the govt, a govt, grant under the Govt, Grantst Act 1895,
(v) What were the reasons for the issue of the show cause notices dt. 7.3.80 and 10.3.80,
(w) What is the meaning of the terms "conversion charges" and additional premium and where do we find them in the grants made by the govt, to the company."

25. A press report then appeared in the Times of India, New Delhi, dated 15th November, 1987 stating that the Union Government has taken over the Express building in Bahadur Shah Zafar Marg, after issuing a notice. The said press article from TOI dated 15th November 1987, is extracted below:

Govt. takes over Express building in Delhi

The Times of India News Service

NEW DELHI, November 14.

THE Union government has taken over the Express building on Bahadur Shah Zafar Marg in New Delhi and the plot in which it is located.

It has also directed the tenants in the building premises to pay to the land development officer of the Government of India "whatever rent you have been paying" in the past.

The government has taken action on the ground of "misuse of a major portion of the additional building, for a purpose other than use of newspapers." This has been construed "as a breach of perpetual lease."

The other charges are "subletting, unauthorised construction and failure to remedy the breaches of the law."

The notice to the Express newspapers reads: "Your are hereby informed that in consequence of your failure to remedy the breaches, the lessor (government) has been pleased to determine the lease and re-enter the premises with effect from 29.9.1987." From that date, "all your rights and title in the leasehold property in question have ceased."

The tenants are: Greaves Cotton Ltd., Shri Ram Fibres Ltd., Steel Authority of India Ltd., the National Bank for Agriculture and Rural Development, Hindustan Lever Ltd., the Punjab National Bank, Minerals and Metals Trading Corporation.

The notice served on the tenants reads: "Your are hereby informed that the President, acting under the terms and conditions contained in the perpetual lease of the abovesaid premises, has re-entered upon the above-mentioned premises on 29.9.1987 and, in accordance with the provisions of the lease conditions, the plot, along with the building on it, now vests in the President of India and that M/s Express Newspapers Pvt. Ltd., ex-lessee, have no rights in the abovesaid premises.

"You, being a tenant in the said premises, are hereby informed that in future, whatever rent you were paying to the ex-lessee and to the heirs and executors should be paid in the office of the land and development officer, New Delhi, by the seventh of every month against a proper receipt, together with interest at 18 per cent in case of delay up to the actual date of payment.

"Any payment made by you after the receipt of this letter to M/s Express Newspapers Pvt. Ltd., ex-lessee, towards the rent of the premises occupied by you, will not be legal and, if you do so, it will be at your risk."

The notice served on the Express managements reads:

Dear Sir

The under-mentioned breaches existing on the premises cited as subject have neither been removed nor regularised by you, despite a notice given to you in this behalf on behalf of the lessor vide land and development officer letter No. LII-10(2)/86 dated 1-8-86:

— Misuse of the major portion of the additional building for a purpose other than the newspaper use, which is a breach of clause 2(7) of the perpetual lease dated 17.3.1958.

— Subletting of the additional building constructed on this plot to third parties without approval of the lessor, which is a breach of clause 2(13) of the perpetual lease.

— Misuse of a portion of the basement for newspaper use instead of permitted use as storage, which is a breach of clause 2(4) of the perpetual lease.

— Unauthorised construction in the additional building built in 1979-82, in excess of areas approved in the plots sanctioned by the Municipal Corporation of Delhi, which is a breach of clause 2(4) of the perpetual lease.

— The construction of the additional building in the portion of the plot required to be kept vacant under clause 2(14) of the lease deed, without submitting the building plans sanctioned by the Municipal Corporation of Delhi to the lessor for consideration and approval by the lessor on such terms and conditions such as additional premium and additional ground rent etc., as the lessor may impose, as advised by the under-secretary, lands, on 14.11.1977. This is a breach of clauses 2(5), 2(14) and 3 of the perpetual lease.

— The construction of the additional building in the portion of the plot required to be kept open under clause 2(14), without executing any supplementary lease deed amending clauses 2(14) and 3, which is a breach of the lease deed.

— You did not remove the breaches of clauses 2(14) and 2(5) in the old building, in spite of the notice dated 1.8.1986.

The various breaches were set out in detail in the notice dated 1.8.1986.

You are hereby informed that in consequence of your failure to remedy the aforesaid breaches, the lessor has been pleased to determine the lease and re-enter upon the premises with effect from 29.9.1987, on and from which date all your rights and title in the leasehold property in question have ceased.

The entire plot of land forming the subject matter of relevant lease (perpetual lease dated 17.3.1958 and supplementary lease dated 17.11.1964) and all the buildings standing thereupon, including all structures, erections and fittings, vest now in the President of India and have become public premises. You and your sublessees are in unauthorised occupation of the above premises and buildings. Your are liable to pay misuse charges, damages etc. up to 29.9.1987 and damages for unauthorised use and occupation of the premises and structure standing thereon from 30.9.1987.

Please take notice that a civil suit for recovery of possession of the above public premises and recovery of various dues is being filed against you in the Delhi high court at New Delhi.

26. Upon publication of the above report, vide letter dated 15th November, 1987, Express Newspapers informed the Government that no letter was served upon it where the takeover of Express building was stated. In response to all these letters, the Government informed Express Newspapers that vide letter dated 18th November, 1987 it has filed the present suit bearing no. ***CS(OS) 2480/1987*** titled ***UoI v. M/s. Express Papers (Pvt.) Ltd. & Ors***. before this Court. The tenants also called upon Express Newspapers to seek clarifications which then led to the filing of the present two suits.

27. The stand of the Union of India is that it could, after the Supreme Court decision take steps in accordance with law for terminating the lease and also for claiming recovery of other charges including misuse charges, *etc.*

28. As per Union of India, Express Newspapers have misused the additional building by sub-letting the building for commercial purposes. Thus, vide letter dated 2nd November, 1987, the Union of India had issued notice expressing its intent to re-enter the premises. Vide letter dated 2nd November, 1987, the L&DO had informed the tenants of Express Newspapers that it has re-entered the premises in view of the various alleged breaches, with effect from 29th September, 1987 and further asked them to pay the rent in the Office of the Land & Development Officer.

29. In the suits, the UOI sought to recover misuse charges/damages/*mesne* profits from 28th April, 1982 till 29th September, 1987 with interest of 18% till date of payment. Express Newspapers, in its suit, on the other hand sought relief against the said notices dated 2nd November 1987, by the Union of India.

Proceedings in the Suits:

CS(OS) 2480/1987

30. This is a suit filed by the Union of India on the basis of the stand taken in the Show Cause Notice dated 1st August, 1986. The prayers in the suit are as under:

> *"(a) to grant a decree for recovery of possession of Plot No.9-10, Bahadur Shah Zafar Marg, New Delhi, admeasuring 1,179 acres or 5700 sq: yards = 4771.4 sq. metres, bounded on the North by Road, bounded on the South by the Service Road, bounded on the East by Service Road and bounded on the West by the approach Road, including all buildings standing thereon from the first defendant, consequent on determination of the lease on 29.9.1987 and re-entry by the plaintiff in exercise of the rights under Clause 5 and 6 of the lease deed;*
> *(b) grant a decree against the first defendant for a sum of Rs.3,16,54,831/- (Rupees three crores sixteen lakhs fifty four thousand eight hundred and thirty one only) towards misuse and other charges/mesne profits from 29.4.1982 till 29.9.1987 with interest upto 8.11.1987;*
> *(c) to grant a decree against the first defendant for a sum of Rs.54,85,160/- (Rupees fifty four lakhs eighty five thousand one hundred and sixty only) towards damages/mesne profits from 30.9.1987 to 8.11.1987 for unauthorized occupation of buildings by defendants 1 to 8 after determination of the lease;*
> *(d) to grant a decree against the first defendant for payment of Rs.14,40,335/- (Rupees Fourteen lakhs forty thousand three hundred and thirty five only) per month payable on 7th of each month from 9.11.1987 onwards for damages/mesne profits towards unauthorized occupation of the portion of the premises for Newspaper press;*

(e) to grant a decree against Defendants 1 to 8 for payment of Rs.27,29,794/- (Rupees twenty seven lakhs twenty nine thousand seven hundred and ninety four only) per month payable on the 7 of each month for damages/mesne profits towards unauthorized occupation of the portion of the premises for the office use of Defendants 2 to 8.*

(f) to grant interest at the rate of 18% per annum during the pendency of the suit on the amounts claimed;

(g) to grant a decree with interest at the rate of 18% per annum on the amount due pending the disposal of the suit accrued to the plaintiff during the pendency of the suit;

(h) to pass orders directing Defendants 2 to 8 to pay the rent for use and occupation to the Land and Development Officer from 9.11.1987;

i) to award costs of the suit; and

j) to grant such further relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case."

31. The said suit *i.e.*, ***CS (OS) 2480/1987*** was filed on 9th November, 1987. Immediately thereafter, on 4th January, 1988, Express Newspapers filed ***CS (OS) No.52/1988*** titled '*Express Newspapers &Ors. v. UoI'* on the premise that the notice dated 2nd November, 1987 issued by the Union of India are barred and void. The reliefs sought to challenge the re-entry notices. The reliefs sought are as under:

"1. That the purported termination of the lease dated 17th March, 1958, by the impugned notice dated 2nd November, 1987 effective from 29th September, 1987, is illegal and invalid.

2. That the notice dated 2nd November, 1987 to all the sub-tenants in the building calling upon them to pay the rent and other dues with effect from 29th September 1987 to the Land and Development Officer

and not to the plaintiff No. 1 is also illegal, invalid and contrary to law.

3. That the defendants, their officers, servants and agents be restrained by a permanent injunction from acting in pursuance of, or in furtherance to, the impugned notices respectively dated 2nd November, 1987, and from in any manner seeking to disturb the possession, actual and constructive, of the plaintiffs in and in respect of the lease terms or any part thereof.

4. That the following orders of the Government of India viz.:
Order No.
Order No. J 22011/1/75-LII(1) dt. 25.6.79,
Order No. J 22011/3/80-LD(DOI)dt. 21.10.81,
Order No. J 22011/3/80-LD dt. 27.7.83,
Order No. J 22011/2/84-LD dt. 24.10.84,
Order No. J 22012/1/86-LD(DOI) dt.25.4.86,
Order No. J 22011/4/86-LD(DOI) dt. 1.6.87, prescribing the market rates for the land allotments by the Government in Delhi from time to time and the office orders or directions issued in pursuance thereof by the defendants, are inapplicable to the plaintiffs and cannot be enforced against them.

5. In the alternative, that said orders, office orders and directions are illegal, Ultra vires and unconstitutional under section 14 and 265 of the Constitution of India.
6. That the defendants, their officers and servants and agents be restrained by a permanent injunction from in any way enforcing the said impugned orders, office orders or directions and/or from recovering or seeking to recover from the Plaintiffs the alleged charges mentioned therein or any other charges for, by way of, or in respect of, the composition for the alleged breaches.

7. Any other order that this Hon'ble Court may deem and proper in the facts of this case.

8. Cost of the suit."

32. The suit filed by the Union of India was registered and summons ware issued on 20th November, 1987. In the suit filed by Express Newspapers, summons was issued on 7th January, 1988. The interim application filed by Express Newspapers was considered on 18th December, 1989 and vide a detailed order, a ld. Single Judge of this Court, observed that the main question raised is as to whether the judgment of Justice Sen is a minority judgment or would constitute the ratio of the Supreme Court. The said question, as per the ld. Single Judge was a serious legal issue which required to be considered. The Court also observed that most of the grounds in the impugned notice were repeated after the Supreme Court judgement. Accordingly, relief was granted in the following terms:

> *"xxx xxx xxx*
> *Thus, the main question, involved in the present case, is as to whether the judgment of Mr. Justice A. P. Sen, is a minority judgment, or it constitutes the ratio of the Supreme Court. In other words, the question, which has arisen for decision, is, as to whether, the Union of India was precluded from issuing the impugned notices, to terminate the lease and to take constructive possession of the building, by directing tenants to pay rent to Union of India, as, according to plaintiffs, there was an injunction, issued by Mr. Justice A.P. Sen.*
>
> *This is purely a legal question. No-doubt, at the time of deciding an application for temporary injunction, this Court is to take only a prima facie view. But, the decision on this legal question, is likely to dispose off the present suit, filed by plaintiffs, as well as, the suit No.2480 of 1987, filed by Union of India.*

I, therefore, do not consider proper to express any opinion, at this stage. As, there are issues of law, involved in the present suit, as well as, the suit filed by Union of India, proper issues can be framed and tried, as preliminary issues, as provided under Order 14 Rule 2 of Civil Procedure Code.

It is thus evident that there are serious questions, which are to be tried in the suit.

Defendants, have alleged that, subsequent to the judgment of the Supreme Court in Express Newspapers Pvt. Ltd. and others (supra), there had been new grounds, on the basis of which, the impugned termination had been effected and, therefore, the grounds for the termination were not subject matter of dispute, before the Supreme Court. Mr. Nariman has controverted these allegations.

After going through the show cause notice and the documents, prima facie, it appears that in substance, most of the grounds, prior to the judgment, were repeated in the impugned show cause notice, which was issued after the judgment of the Supreme Court. However, this question has to be decided on merits, after trial.

In addition, plaintiffs have filed various documents to show that huge expenses are incurred by plaintiffs, for maintaining the building, payment of property taxes and other charges. Moreover, plaintiff no.1 has been the lessee, under the lease-deed and constructed the building, at its Own expense. Plaintiff No.1 cannot be denied the benefits, as lessee. Thus, in my view, plaintiffs have got a good prima facie case.

Plaintiffs are in possession of the premises and have been enjoying all the benefits as lessees for the last several years. Thus, the balance of convenience, also lies in their favour. For this reason, it can be safely said that in case, plaintiffs are denied the benefits as a lessee., then, they will suffer an irreparable loss and injury.

> ***Under the facts and circumstances of the case. and till the decision of the suit, the operation of the impugned notice dated November 2,1987, is stayed.***
> *C.A.145 of 1988, stands disposed off."*

33. As can be seen from the above order dated 18th December, 1989, the Court was of the opinion that proper issues would require to be framed and there are serious questions to be tried. As per the Union of India, the impugned termination was based on new grounds after the judgment of the Supreme Court. However, considering the fact that Express Newspapers was in possession as a lessee and constructed the building at its own expense, the Court felt that the benefits of a lessee for the last several years cannot be denied. The Court then stayed the impugned notice dated 2nd November, 1987. Thus, presently, the notice terminating the lease and re-entering the premises, is not in operation.

34. On the same date *i.e.*, 18th December, 1989, in a bunch of applications filed by the sub-tenants, in ***I.A. 9332/1987*** and other similar applications, it was directed as under:

> *"For the reasons stated, in my order in I.A.145 of 1988, the present applications, being I.A.Nos.9332/87,106/88,107/88,261/88,407/88 and 1252/88 stand disposed off, with directions that* ***the applicants tenants shall continue to pay rent and other charges to their landlord, namely, Express Newspapers Private Ltd., defendant NO.1.*** *C.As.9332/87, 106/88, 107/88, 261/88, 407/88 and 1252/88 stand disposed off."*

35. A perusal of the above order would show that the tenants were permitted to continue paying the rent to their landlord, namely, Express Newspapers and the applications were disposed of. Both the orders dated

18th December, 1989 were challenged before the ld. Division Bench. The ld. Division Bench considered the entire matter and vide order dated 24th August, 1994, disposed of the appeals. The findings of the ld. Division Bench were that the ld. Division Bench need not go into the question as to whether Justice Sen's view is a minority view. The matter was left to be decided by the Trial Court even as a preliminary issue. The injunction granted ought to have had imposed certain conditions in regard to the rents which were being paid by the sub-tenants. The ld. Single Judge had not considered the imposition of certain conditions and hence ***I.A. 148/1988*** and other similar applications were remanded in the following terms:

> *"xxx xxx xxx*
>
> *We feel that we need not decide the question whether the Judgment of A.P. Sen. J is a minority judgment or whether it is impliedly concurred with by the two other learned Judges and that therefore the notice dated 2.11.1987 is in the teeth of the said directions. In fact, learned Single Judge in the order in I.A.145/88 did not decide the question whether the Judgment of A.P. Sen, J was a minority Judgment and whether the other two learned Judges must be deemed to have accepted or concurred in the injunction. If he had in fact decided the said issue, it would have been necessary for us to go into the question as to whether the decision of A.P. Sen, J was a minority Judgment and whether his view was accepted impliedly by the other two learned Judges. We are, however, relieved of this necessity inasmuch as the learned Single Judge did not decide this issue at all in the impugned judgment.*
>
> *xxxx*
>
> ***We leave the said question open, but for that reason we consider it necessary to remand I.A. 145/88 as well as other I.As to the learned Trial Judge to enable him to consider whether any further directions***

in regard to the rents are necessary so as to safeguard the interests of the Union of India are necessary and if so, what should be those conditions.

We allow the appeals only to the limited extent indicated above. We should not be understood as having expressed any opinion on either as to the binding nature of the judgment of A.P. Sen, J in Express Newspapers Private Ltd and Others vs. Union of India and Others (supra) or as to whether it is a fit case in which any conditions are to be imposed in relation to the rents pending suit. It would be for the learned Trial Judge to pass orders whether it is a fit case where condition. are to be imposed and f so, what should be those conditions. Appeals are disposed of accordingly."

36. Thereafter, issues were framed in the matter on 5th November, 2001. The two suits were consolidated on 3rd May, 2007 and the issues were recast in the following terms:

"1. Whether the plaint in Suit No. 2480/1987 has been signed and verified and the suit is instituted by a duly authorised person? OPP
2. Whether the defendant has breached any term of the lease deed dated 17th March, 1958 and supplementary lease deed dated 17th November, 1964? If so, to what effect? OPP
3. Whether the termination of the lease dated 17th March, 1958 by a notice dated 29th September, 1987 or 2nd November, 1987 is in accordance with the terms of the lease and is not arbitrary, discriminatory, malafide or in violation of the applicable law? OPP
4. Whether the construction carried out by the defendant on the area of 2740 sq. yards on the western side of the plot nos. 9 & 10, Bahadur Shah Zafar Marg is in accordance with law? If not, to what effect ? OPD

5. Whether the action of the plaintiff in issuing the notice dated 29th September, 1987 or 2nd November, 1987 is barred by res judicata? OPD

6. Whether the action of the Union of India in terminating the lease dated 17th March, 1958 and filing the present suit is barred by estoppel? OPD

7. Whether the notice dated 29th September, 1987 or 2nd November, 1987 have been issued by a duly authorised and competent authority? OPP

8. Whether the construction raised by the defendant on the suit property is in terms of a valid and binding grant by the Union of India? If not to what effect? OPD

9. Whether the defendant is using the suit property for a purpose and use permissible under the lease deed and in terms of a valid and binding grant by the Union of India? If so, to what OPD effect?

10. Whether the plaint in Suit No. 52/1988 has been signed and verified and the suit is instituted by a duly authorised person? OPP

11. Whether the Suit No. 52/1988 is maintainable without compliance of Section 80 of the Code of Civil Procedure? OPP

12. Whether the Suit No. 52/1988 has been valued for the purposes of court fee and jurisdiction? OPP

13. Whether the plaintiff is entitled to recovery for possession of the suit property i.e. Plot Nos. 9 & 10, Bahadur Shah Zafar Marg? OPP

14. Whether the plaintiff is entitled to a decree for the recovery of Rs.3,16,54,831/- towards misuse and mesne profits for the period 29th April, 1982 till 29th September, 1987? OPP

15. Whether the plaintiff is entitled to a decree for recovery of Rs.54,85,160/- towards the damages for the period 30th September, 1987 to 8th November, 1987? OPP

16. Whether the plaintiff is entitled to mesne profits at the rate of Rs.14,40,335/- per month with effect from 9th November, 1987?

17. Whether the plaintiff is entitled to mesne profits against defendant nos. 2 to 8 at the rate of Rs. 27,29,794/- per month for unauthorised occupation of the premises for the office use of defendant nos. 2 to 8 from 9th November, 1987? OPP

18. Whether the plaintiff is entitled for interest on the amounts found due and payable from the defendants? If so, at what rate, on what amount and for what period? OPP

19. Whether the plaintiff is entitled to mesne profits with effect from when the suit was filed on 9th November, 1987 till the date of vacation by the defendants? If so, at what rate?

20. Relief"

37. Parties led the evidence of the following witnesses:

PLAINTIFF'S EVIDENCE:

S. No.	NAME	DESIGNATION
PW 1	H.K. Beniwal	Deputy, L&DO
PW 2	Biri Singh	Surveyor, L&DO

DEFENDANT'S EVIDENCE:

S. No.	NAME	DESIGNATION
DW 1	S.N. Bajpai	CEO, Express Newspapers

38. The evidence commenced on 18th July, 2007 and concluded on 21st August, 2014 and the matters were listed in the final category.

39. Submissions were made in this matter by Mr. A. Subba Rao, ld. Counsel *(since expired)* and thereafter by ld. Senior Counsels- Mr. Sandeep Sethi and Mr. Salman Khurshid on behalf of Express Newspapers.

SUBMISSIONS ON MERITS:

Submissions on behalf of Express Newspapers

40. Mr. Sethi, ld. Sr. Counsel and Mr. Khurshid, ld. Sr. Counsel on behalf of Express Newspapers have made the following submissions:

i. Firstly, they recalled the various facts leading to the decision of the Supreme Court. According to ld. Senior Counsels, Express Newspapers was targeted by the then Government for its anti-emergency stance during the years 1977 to 1979;

ii. Once the new Government was elected, actions were taken by the then Lieutenant Governor and the MCD *etc.*, seeking to demolish and re-enter the property. This was despite the fact that all the steps undertaken by Express Newspapers *i.e.*, of the initial construction of the building on the east side due to the existence of the drain/sewer line, the shifting of the sewer line, the construction on the west side, change of user of some portions to general commercial purpose, the use of the basement for a Hindi newspaper, *etc.*, were all done with the approval of the concerned authorities;

iii. Show Cause notice issued on 10th March, 1980 was, thus, an act of vendetta. The same was challenged before the Supreme Court, and in terms of the said judgment the Union of India could enforce its rights only by way of a civil suit;

iv. Express Newspapers applied for conversion in the year 2007, however, the same was not accepted. The termination which was issued with effect from 29th September, 1987 was stayed;

v. According to ld. Sr. Counsels, various allegations were raised by the Union of India, however, the clear direction of the Supreme Court was that the Union of India could file a suit for recovery of the conversion charges and the MCD was to compound the construction which was already made. Ld. Sr. Counsels have relied upon the following decisions:

   i. R. K. Mittal v. State of U.P.& Ors., AIR 2012 SC 389

   ii. Munshi Ram v. Union of India 2000 7 SCC 22

   iii. Prem Prakash Gupta v. Union of India & Ors., AIR 1977 Allahabad 482 paragraph 10

   iv. V. Padmanabha Ravi Varma Raja and Ors. v. The Deputy Tahsildar Chittur and Ors. AIR 1963 Kerala 155.

   v. Mahendra Bahawanji Thakar v. S.P. Pande AIR 1964 Bom 170

   vi. State of Tamil Nadu v. State of Kerala and Anr., 2014 12 SCC 696 at 798 paragraph 168- a judgment on the writ petition is also res judicata.

vi. The questions which have been raised by the L&DO are breach of clause 2(5) and 2(14) of the lease deed. On each of the issues, it is his submission that the Supreme Court's decision has already been rendered;

vii. According to Mr. Sethi, ld. Sr. Counsel even if there is misuse, only a recovery suit can be filed by the Union of India and no termination can be resorted to;

viii. The misuse is also based on non-newspaper use which is already recognized and permitted by the Government. The order dated 29th April, 1982 permitting the sub-letting to tenants, though, subject to the outcome of the writ petition, tenants could take possession. The said possession was subject to the final order. There is no mention of the tenants in the final order;

ix. In view thereof, the Union of India filed a review petition which was also dismissed. Insofar as the misuse of basement is concerned, the Supreme Court holds that the construction of double basement is not illegal. On unauthorized construction, the Supreme Court directed that the Corporation will compound the deviation;

x. According to Mr. Sethi, ld. Sr. Counsel, the termination of the lease is in the teeth of the restraint order passed by the Supreme Court. It is his submission that the impugned notices are nothing but a fraud on power. He relied on the decision of the Madras High Court in ***M/s. Park View Enterprises v. State Government of Tamil Nadu, AIR 1990 Mad 251*** to argue that the perpetual lease granted *qua* the land and mere letting out cannot lead to termination.

Submissions on behalf of L&DO

41. Mr. Subba Rao, ld. Counsel, on the other hand, submitted that -

i. in paragraph 185 of the Supreme Court judgment, the clear undertaking was recorded to the effect that Express Newspapers would approach the Government of India since the said undertaking

was made by the counsels before the Court, Express Newspapers was bound by the said undertaking;

ii. Express Newspapers ought to have applied to the Union of India for permission for change of user and for payment of necessary additional ground rent and conversion charges. This obligation according to Mr. Rao is of a binding nature, but they did not approach the Union of India for permission for change of user and for payment of ground rent and conversion charges;

iii. the only common order in the Supreme Court judgment was the quashing of the show cause notice. In a subsequent decision of the Supreme Court, it is not open to a two Judge Bench to decide as to what the three judges had said in the Express Newspapers' decision;

iv. there ought to have been some morality on the part of Express Newspapers to approach the Government to seek regularization and conversion. For a period of six months, it did not approach. Once the lease was terminated, the building vests in the Union of India;

v. in this case, there is no issue of freedom of press that is involved. The land being public land, it is the bounden duty of the lessor to terminate the lease. The Union of India has merely followed the law;

vi. the Constitutional issues relating to Article 14 would not apply once the termination takes place. He submitted that, in fact, Express Newspapers has agreed to reimburse the costs of shifting of the sewer line. Since the sub-letting was done as per the interim order of the Supreme Court, if no regularization is sought, the tenants cannot remain.

Computation on damages:

42. On 15th July, 2019, it was directed that a computation chart be brought by UoI in respect of the amounts due from Express Newspapers. The relevant portion of the order is as under:

> *"Ld. Senior Counsel on behalf of Express Newspapers Ltd. has partly made his submissions.*
> *Mr. Amit Kataria, (M:9958482545) Land and Development Officer is present in Court along with Mr. A. Subba Rao, Id. counsel. On the next the L&D.O, shall bring charts of computation of the ground rent, the charges for conversion and the misuse charges and the existing provisions which form the basis of which the said charges are computed. The said computation shall be brought in respect of amounts due on the date of the suit as also the current date. The same shall be without prejudice to the stand of the respective parties on merits.*
>
> *List for further submissions on 2nd August, 2019 at 2: 15 p.m."*

43. The officials from the L&DO had also appeared before the Court from time to time and the computation was initially filed computing the dues at a whopping Rs.17,684/- crores! An affidavit was then sought which was filed by the L&DO. The computations from both sides were finally handed over on 27th May, 2024. The computation on behalf of the UOI has been brought on record.

44. Mr. Sethi, ld. Senior Counsel has made the following broad points:

i) that in terms of the judgment of the Supreme Court, the Union of India could have filed a suit seeking conversion charges from Green Usage to Commercial Usage. This observation of the Supreme Court in Justice Sen's opinion is taken as a minority view by the Union of

India, which then chose to terminate the lease and seek eviction/possession which was impermissible. The question as to whether Justice Sen's opinion was merely a minority view has been clarified by the Supreme Court in the subsequent decision ***Kaikhosrou (Chick) Kavasji Framji and Anr. v. Union of India and Anr., AIR 2019 SC 1692***. Thus, the said opinion of the Justice Sen cannot be read as a minority decision;

ii) the termination was itself illegal after the judgment of the Supreme Court on any of the grounds and the only right of the Union of India was to seek conversion from Green Usage to Commercial Usage.

45. On the other hand, Mr. Kirtiman Singh, ld. CGSC has placed on record his written submissions along with a chart and affidavit deposed by Mr. Dinesh Kumar Lakhumna, Deputy L&DO. In the said chart, ld. CGSC has compared the demand in the year 1987 versus the demand as on 30th September, 2023 and submits that the Plaintiff is liable to pay for changing the usage from Green to Commercial, additional premium and additional ground rent. According to him, the benefits of all the subsequent policies have also been given to the Plaintiff. Going by these conservative estimates and if compound interest is calculated on the basis of 18% per annum and not 18% per annum on monthly rent, the total dues would be Rs.765.60 crores. The Court heard the submissions and how the computations were calculated, and reserved judgement.

ANALYSIS OF EVIDENCE

46. Evidence commenced between the parties on 18th July, 2007, and were concluded on 21st August, 2014. On behalf of the Union of India, there

were two witnesses *viz*., Mr. H. K. Beniwal, Deputy Land and Development Officer and Mr. Biri Singh, PW-2, Surveyor, Land and Development Office. On behalf of Express Newspapers, Mr. S. N. Bajpai, CEO of Express Newspapers gave evidence.

Evidence on behalf of Union of India

Evidence of PW-1

47. PW-1-Mr. H.K. Beniwal has exhibited most of the documents filed on record. Broadly, his stand is as under:

i. that Mr. R.P.S. Pawar was the authorized representative on behalf of the Union of India, as he was appointed by way of a notification dated 1st February, 1996, issued by the Government for the purposes of executing contracts and assurance of property relating matter. In support of the said statement *Exhibits. P-14*[4]*, 15*[5]*, 16*[6] *& 17*[7] were relied upon;

ii. that the permissible FAR for the said property is 300 as per Bye Laws 25 (2) (IV-B) which provides FAR in commercial and retail zones as 300. Reliance is placed upon Zonal Development Plan for Zone-D, Press Enclave situated at Mathura Road which was declared as a commercial area, to show the applicable FAR;

iii. Express Newspapers has not submitted its sanctioned plan for the building and thus the construction is unauthorized;

iv. for the purposes of construction, Express Newspapers approached the local authorities for shifting of sewer lines and for sanction of plans,

[4] Exhibit. P-14 titled Notification dated 1st February, 1966, issued by the Ministry of Law.
[5] Exhibit. P-15 titled Notification dated 27th January, 1968 issued by the Ministry of Law with respect to execution of contracts.
[6] Exhibit. P-16 titled Notification dated 26th October, 1968, issued by the Ministry of Law.

however, after the plans were sanctioned, no permission was taken from the L&DO. As per him, the Supreme Court judgment permitted issuance of a fresh notice and action in accordance with the lease deed;

v. the permissible FAR at the relevant point in time was 300 and he, thereafter, explained the manner in which the same was changed to 360;

vi. he also tries to interpret the decision of the Supreme Court. According to him non-obtaining of permission for construction, even though the MCD may have sanctioned the plans, was in violation of clause 2(4) of the lease deed. Sub-letting of the premises as also use for commercial purpose is contrary to the lease deed;

vii. in view of the violations of the lease deed, notice dated 1st August, 1986 was issued but the breaches were not remedied. As per the lease deed if there is any violations of the terms and conditions, the penalty provided is for forfeiture or termination of the lease. Post the termination of the lease, the ex-lessee and all tenants become unauthorized occupants and misuse charges and damages are liable to be paid. The total claim which is deposed by the witness is to the tune of Rs.3,16,54,831/- on the basis of misuse, damages for unauthorized construction and arrears;

viii. alternatively, the witness claims that the Union of India is entitled to profits based on actual rentals recovered for the months, rent plus 18% interest p.a. from the date due and payable which according to him works out to Rs. 8.7 crores. The formula for calculation of misuse charges is also relied upon which comes to approximately Rs.26.18 crores;

[7] Exhibit. P-17 titled Notification dated 1st March, 1971, issued by the Ministry of Law.

ix. according to the witness, damages/*mesne* profits at Rs.5 crores p.a. for unauthorized occupation after re-entry is also liable to be paid. Further, an amount of Rs. 54,85,160/- is claimed as damages for the period from 30th September, 1987 to 8th November, 1987. In his cross-examination, PW-1 was unable to show any authorization in favour of Mr. RPS Pawar who has signed the plaint but according to the witness as per notification dated 1st February, 1966, Mr. Rajinder Prasad Singh Pawar having been appointed as the L&DO Officer, while *Exhibit.* P-66[8] was duly authorized to sign the suit and the appointment of Mr. Pawar was from 20th July, 1987;

x. PW-1, further, states in his cross-examination as under:

- that the FAR of the buildings in question is 300, as per MCD building Bye laws 1959 as revised in 1964 - Bye-law no. 25(2)(iv)(B);
- that the press enclave situated at Mathura Road has been declared as fully commercial area. He denied the suggestion that the maximum permissible FAR is 400 and reiterated that the same is 300;
- that the lessor *i.e.*, the Union of India is empowered to take action against unauthorized construction;
- that the plans sanctioned by the MCD ought to be submitted to the L&DO;
- the witness was unable to point out any document issued by the MCD showing that there is any unauthorized construction;
- the witness could not answer as to how construction was permitted in the Western wing up to 360 FAR, if there is any unauthorized

[8] Exhibit. P-66 titled Notification dated 23rd July, 1987 issued by Ministry of Urban Development.

construction, earlier to which the witness responded that this was a recommendation of the Government to the DDA;

- the DDA acted upon the recommendation given by the Government;
- there are no documents pertaining to the transfer of control of the office of the L&DO to the Ministry of Works and Housing;
- that as per the original allotment letter dated 24th September, 1952, the Defendant could not construct on the entire plot, however, due to the discovery of the sewer line, a revised allotment was issued dated 11th April;
- that Express Newspapers was only permitted to construct a four-storey building for the purpose of newspaper and printing press on the ground floor and staff quarters on the remaining floors as per the original allotment letter. The issues of FAR are governed by other building norms;
- the original and the revised allotment letter together in pith and substance mean that a four-storey building could be constructed on East of the sewer line and the land, West of the sewer line was to be kept vacant;
- that notice for unauthorized construction even *qua* the old building constructed on the East of the sewer line has been issued and one such notice is *Exhibit.* P-37[9];
- if the sewer line was not discovered even the area left to the sewer line could have been constructed. But in view of the discovery of sewer line, the premium was also changed for the land West to the

[9] Exhibit. P-37 titled Show Cause Notice dated 1st August, 1986.

sewer line and reduced to Rs.36,000/- per acre instead of Rs.1.25 lakhs per acre;

- that the President had allowed the building to be used for commercial purpose at Rs.3.75 lakhs per acre in respect of one lakh sq. feet out of the total accommodation of 1.5 lakhs sq. feet;
- the supplemental lease deed was executed to enable Express Newspapers to put the building to commercial use;
- by *Exhibit*s. P-26[10], 28[11] and 30[12], DDA has given no objection in allowing the overall FAR 360. But this according to the witness is not permissible as per the master plan 1977 which only permitted FAR 300 but Ministry had allowed 360 FAR;
- that the matter when discussed with DDA, Ministry of Works and Housing and Express Newspapers, recommendation for FAR 360 was given. The building to the West side of the sewer line was constructed after obtaining permission from the Supreme Court;
- that since the construction at the West side of the sewer line happened after orders of the Supreme Court, the question whether L&DO permission was required for the same is a matter of judicial record;
- renting out of new building, West side of the sewer line was done as per the permission granted by the Supreme Court which was a conditional permission.

[10] Exhibit P. 26 titled 'Permitting sanction of FAR 360 for plot nos. 9 and 10' dated 4th November, 1978.
[11] Exhibit P. 28 titled 'Express Newspapers allowed to construct on residual plot on basis of FAR' dated 25th November, 1978.
[12] Exhibit P. 30 titled

Evidence of PW-2

48. Mr. Biri Singh, Surveyor with the L&DO, in his affidavit by way of evidence states -

i. that he had inspected Indian Express building at plot Nos. 9 to 10 at Bahadur Shah Zafar Marg, New Delhi. According to him, he had found certain breaches under the terms of lease including construction of new building on the Western side of the land.

ii. that an inspection report dated 13th June, 1986 elaborating the breaches including misuse and unauthorized construction. As per the report, basement and ground floor was rented to M/s. Greeves Cotton Ltd. whereas first floor was rented out to M/s. Shri Ram Fibres Ltd. and the 2nd, 3rd floor was rented out to Steel Authority of India and National Bank for Agricultural Rural Development respectively.

iii. that as per PW-2 his report was then forwarded to the competent authority at L&DO and his inspection report resulted in issuance of notice dated 1st August, 1986. The cross-examination of PW-2 was very short and the same has been extracted below:

> *i. "The breaches mentioned in para no.2 of my affidavit are already mentioned in the records. It is correct that as per Ex. P24, the then Ministry of Works and Housing had granted permission to construct the defendant on the vacant plot. I do not know if in Ex. P28, an extended FAR of 360 was allowed. I do not know if the notices dated 01-3-1980 and 10-3-1980 were quashed by the Supreme Court."*

Evidence of Express Newspapers

49. Sh. S.N. Bajpai – DW1, CEO of Express Newspapers gave the entire background in his affidavit by way of evidence and exhibited various documents -

i. He identified the signatures of Mr. Ramnath Goenka on various letters. The entire case of Express Newspapers as per the plaint has been reiterated by this witness. According to him, sub-letting took place on 1st February, 1960 but the supplemental lease deed was only executed on 17th November, 1964 for the purposes of collecting premium and not for the purpose of granting any permission;

ii. As per him a supplemental agreement is not a condition precedent or an event anterior to the actual letting out. Since the only reason was that the area West of the sewer line could not be constructed upon, after the deviations of the said line, construction was not prohibited, Express Newspapers could not be blamed;

iii. Permission for changing of the use of the area was sought on 25th October, 1977. Express Newspapers had agreed to reimburse the cost of the reconstruction of the new drainage outside its plot;

iv. In fact, pursuant to a letter dated 6th March, 1978 where permission was sought for building five storey building, the Ministry of Works and Housing, inspected the premises on 31st March, 1978 and on 9th June, 1978. This letter written by the Deputy Secretary was conveyed to the L&DO. All requisite approvals were obtained. It was the DDA which sanctioned the FAR of 360 on 4th November, 1978;

v. He also stated that the L&DO was fully informed from 1977 onwards of all the approvals which were being received by it relating to diversion of sewer line change of user West of the sewer line and the construction, sanction of building plans. He further averred that no misrepresentation was committed to obtain the additional area moreover there was no intention to let out the portions for commercial purposes;

vi. However, surprisingly, in January,1980 an attempt was made to re-enter the building, despite Express Newspapers having made efforts to keep the L&DO informed at every stage;

vii. Allegations were made by the said witness against the Lieutenant Governor at that time. Allegation was that a demand of Rs. 35 lakhs for converting into a commercial building was also raised on the basis of the report of a three-member committee. As per the Committee, the basement area which is to be used for press purposes is already permitted for commercial use as per the Master Plan. The Committee report further noted that there is unauthorized construction to the extent of 18000 sq. ft. in the basement area. Therefore, the unauthorized construction for a space of 73448 sq. ft. leads to annual rental income of more than Rs. 61 Lakhs.- *Exhibit.* B -54[13]

viii. Express Newspapers then filed a writ petition under Article 32 of the Constitution of India on 1st April, 1980 and on 7th April, 1980 a stay was granted which was confirmed on 9th May, 1980;

[13] Exhibit B-54 titled 'Appointment of three member enquiry committee'.

ix. Various issues were raised before the Supreme Court which led to the quashing of the Show Cause Notice. The Supreme Court decision was exhibited as *DW-1/57*;

x. Thereafter, the notice dated 1st August, 1986 was received raising various contentions on behalf of the L&DO;

xi. A show cause notice was issued on 1st August, 1986 wherein it was threatened that proceedings for re-entry would be taken. All the correspondence thereafter is also summarized by the witness;

xii. Finally, the witness exhibited the news report in the TOI, re-entry notice and the recovery notice dated 2nd November, 1987 as *DW-1/63, DW-1/64 and DW-1/65* respectively. According to the witness the impugned notices were misconceived as there was no misuse and permission was granted for additional construction;

xiii. Sub-letting was not prohibited and commercial use was also not prohibited. The use of the basement for newspaper purposes were also permitted;

xiv. Reliance is placed upon the decision of the Supreme Court and various other grounds on which the notices for re-entry are challenged. The witness deposed that the said notices are void and are unenforceable;

xv. That the letters of the Government giving permission for additional construction were on record. Union of India was stopped from going back on the said permissions. Even in the letter dated 1st August, 1986, the Union of India stated that it would institute proceedings to enforce the terms of the lease including the right of re-entry but vide notice dated 2nd November, 1987 it has exercised

the right of re-entry without recourse to any civil proceedings. This was contrary to the representations made by the L&DO in its own letters dated 30th September, 1986 and 17th September, 1986;

xvi. According to the witness in other plots of the press enclave, sub-letting has been permitted in 1964, 1970 and 1971 and examples of the same have been set out in the affidavit. The impugned notices terminating lease are in contempt of the specific directions of the Supreme Court. That the only pending issue was the payment of conversion charges;

xvii. Even in the past sub-letting has taken place prior to the execution of the supplemental lease deed. Hence the execution of a supplemental lease deed is merely a procedural requirement and not a condition precedent. That all the requisite permissions were obtained from the concerned Ministry;

xviii. The witness specifically agrees that if any conversion charges are payable on fair and reasonable basis as to mode of computation the same would be paid in terms of the decision in ***Sunil Vasudeva v. DDA***. No additional premium was payable in view of the official instructions in letter dated 18/19th February, 1970. Only additional ground rent is recoverable. This particular communication dated 18/19th February, 1970 from the Under Secretary of the Ministry to the L&DO which according to the L&DO did not apply to Express Newspapers but the case of the witness was that the same was fully applicable;

xix. Further, the grant contained in the letters issued by the Ministry on 9th June, 1978, 12th November, 1978 and 24th November, 1978 did

not put any conditions except the diversion of the sewer line and permission was given to construct without any stipulation of payment;

xx. According to the witness under Clause 2(13), only transfer is not permitted. Sub-letting was not barred and so there is no violation of the condition of the lease;

xxi. In any event, the lessor cannot withhold consent to sub-letting unreasonably. The change of user and charges for sub-letting are mere duplication which is not permissible. Change of user had been obtained in 1957 and was confirmed in 1959. The later change of user was merely in view of Clause 2(14) and not Clause 2(7);

xxii. In 1957-60, a clear understanding is arrived at with the Government and, therefore, the charges for change of user were not tenable. Any charges which are unreasonable or arbitrary would be contrary to law;

xxiii. The misuse charges of Rs.5 crores are totally unreasonable as the net rental income after taking into account expenses was less than Rs. 40 lakhs as against the claim of Rs. 5 crores, thus, the linking of change of user to value of the land was deposed as being irrational and arbitrary;

xxiv. Since Express Newspapers was permitted to use the area which was to the West of the sewer line for commercial purpose only subject to conversion charges, there cannot be any misuse which is alleged and no charges for misuse can be collected. Such charges

also cannot be penal in nature. Any revision on refixing of land rate in the area and demands made thereupon are contrary to law;

xxv. *At the end, the witness set forth the case of Express Newspapers that due to various independent stories which were published by Express Newspapers it has been the target from the then highest functionaries of the Government and has been treated with extreme hostility;*

xxvi. *The direction by L&DO to the tenants to pay the rent directly to L&DO was meant to starve Express Newspapers of its funds. Various attacks have been made through agencies of the Government against Express Newspapers including by the DRI, litigation by the company law department in Madras, non-clearance of equipment leading to payment of huge demurrage to the customs, modernization of Express Newspapers which was delayed, non grant of credit limit to Express Newspapers, investigations directed by the Company Law Board etc.,. It is thus argued by the witness that the arbitrary actions of the Union of India were unconstitutional which led to sub-tenants stopping payment of rent and even air conditioning charges to the Defendant. Various grounds have been given for the claim of damages against the Union of India;*

xxvii. In his cross-examination, DW-1 was not sure as to whether after the Supreme Court judgment on 7th October, 1985, Express Newspapers approached Union of India for remedying of the breaches which was pointed out by the L&DO;

xxviii. On the question as to whether there is any concurrence between the Judges of the Supreme Court, DW-1 stated that it is a matter of interpretation and not within his competence. He denied the suggestion that Express Newspapers had deliberately avoided to address the questions of violations;

xxix. On the question of whether complete coverage edge to edge in the two plots were permissible and by which document, DW-1 relied upon the agreement for lease dated 26th May, 1954 which allowed construction over 100% of the ground area of the said two plots;

xxx. As per DW-1, the construction of the new building commenced around 1978. He denied the suggestion that two basements were contrary to the municipal by-laws but he still confirmed that the plans were approved when the construction started. He relied upon *Exhibit. B-48*[14] which is letter dated 9th January, 1979 by which the plans were sanctioned;

xxxi. DW-1 stated that he could not trace the sanction plans, though, the letter of sanction has been filed. The suggestion that there is no sanction plan was denied. He denied the suggestion that the L&DO was not approached prior to diverting the sewer line. According to him vide letter dated 25th October, 1977, the L&DO was approached;

xxxii. Vide letter dated 4th November, 1978, the DDA had informed that there is no objection in the FAR 360 excluding the basement. Conversion charges in respect of the said construction was not paid

[14] Exhibit B. 48 titled 'Delhi Municipal Corporation approved plans for construction' dated 9th January, 1979.

as no demand was raised. He, further, confirmed that no representation was given to the L&DO for the purposes of letting out the property and directly Express Newspapers had approached the Supreme Court in respect of the new construction;

xxxiii. However, in respect of the original construction permission was sought from the L&DO. The suggestion that the intention of Express Newspapers since inception was to let out portions for commercial purpose was denied. As per *Exhibit*. B-35[15], he confirmed that for the purposes of newspaper no space is required;

xxxiv. On the question of whether Union of India complied with due process of law as per paragraph 86 and paragraph 115, the witness commented *"I cannot say".* The witness justified the filing of the suit by Express Newspapers on the ground that the action of Union of India was based on breaches which was not committed by the Defendant. The witness denied any suggestion to the effect that Express Newspapers had played a fraud on the Government in the guise of obtaining land for a Hindi Newspaper and, thereafter, for commercially letting it out;

xxxv. The witness also confirmed that Express Newspapers had not approached the MCD in view of the observations of the Supreme Court for the purpose of compounding. According to DW-1, non-payment of any conversion charges would not be a breach as no charges for conversion were ever claimed by the L&DO, however, DW-1 did agree that in terms of *Exhibit.* B-55[16] *i.e.,* the letter

[15] Exhibit. B-35 titled representation by Union of India to Express Newspapers.
[16] Exhibit. B-55 titled Show Cause Notice dated 1st August, 1986.

dated 1st August, 1986, L&DO had raised a demand for conversion charges. DW-1 stated that as per B-41 *i.e.*, letter dated 9th June, 1978, permission was granted by the Ministry to raise construction, though, the said letter is addressed to the DDA;

xxxvi. He then relied upon B-43 which was a letter by the DDA giving permission to construct. He also relied upon B-44 and B-45 as the letters written to the DDA with copies marked to Express Newspapers on the basis of FAR 360 excluding the entire of the basement. DW-1 confirmed that Hindi newspaper '*Jansatta'* is printed from the suit premises and not the Indian Express Newspaper;

Findings:

50. Before going into the issues that are to be adjudicated in these suits, it is essential to resolve the issue which has been continuously raised by the L&DO, as to the nature of the decision of the Supreme Court – whether it was a unanimous judgement or was it a decision rendered 2:1. After considering this issue, the Court would proceed with consideration of the issues framed in the suit.

Whether the decision of Justice Sen in Express Newspapers is the minority view?

51. Mr. Subbarao, ld. Counsel *(who has since deceased)*, made his submissions before the Court that the judgment rendered by Justice Sen is the minority view and the other two Judges did not agree with the opinion of Justice Sen, except insofar as the quashing of the Show Cause Notices were concerned, as they did not express their opinion on the violations of the terms of lease that were committed, and held that the same needed to be

decided in appropriate proceedings. It was his stand that the Union of India, therefore, could terminate the lease and take action in accordance with law.

52. On the other hand, the stand on behalf of Express Newspapers was that the decision of the Supreme Court is a three Judge Bench decision and that there is no majority or minority view as all the three Judges agree with each other and there is no dissenting opinion in this judgment. Justice Sen's judgment was the lead judgment and thus no action for terminating the lease could have been taken by the then Government. It was further averred that under Article 141 of the Constitution of India, the judgment of the Supreme Court would be binding on all the Courts as also on the parties. It was further argued that the Supreme Court's decision is clear and categorical as to what the Union of India could do after its judgment was rendered.

53. The decision of the Supreme Court in ***Kaikhosrou (Chick) Kavasji Framji and Another v. Union of India & Anr., AIR 2019 Supreme Court 1692*** throws light on this aspect. In the said case, while dealing with an issue relating to public land, the same question as to the nature of the decision in Express Newspapers had arisen. In the said context, the Supreme Court in 2019 observed as under:

> *"Keeping in view the reasoning of Lord Esher M.R., when we examine- the statement of law laid down in Express Newspaper decision (supra) we are of the considered view that the reasoning of A.P. Sen J. contained in Para 86-87 is the law laid down on behalf of all the three Judges. It is a law by majority and is thus a law laid down by the Court under Article 141 of the Constitution.*
>
> ***45.** It is for the reason that first, though **the lead judgment was authored by A.P. Sen, J., the other two Judges concurred with the view and the reasoning of***

> ***A.P. Sen, J. Second, both the concurring Judges also expressed their individual views on the question on the same lines on which A.P. Sen, J. expressed his view and the third, there is no dissent inter se their Lordships on any issue much less on the issue with which we are concerned in this appeal.***
>
> ***46.*** *It is for these reasons, we are of the considered view that law laid down in the lead judgment in Express Newspapers [Express Newspapers (P) Ltd. v. Union of India, (1986) 1 SCC 133]* ***is the law by three Hon'ble Judges who constituted the Bench and thus binds all the courts in the country under Article 141 of the Constitution. It satisfies the test laid down by Lord Esher M.R. in The Guardians [Guardians of Poor of West Derby Union v. Guardians of Poor of Atcham Union, (1889) LR 24 QBD 117 (CA)] .***
>
> ***47.*** *The question involved in Express Newspapers case [Express Newspapers (P) Ltd. v. Union of India, (1986) 1 SCC 133] in relation to remedy of the State qua person in possession of the land was again considered by a Bench consisting of three Judges in State of Rajasthan v. Padmavati Devi [State of Rajasthan v. Padmavati Devi, 1995 Supp (2) SCC 290]. In that case also, the question arose as to whether the State Government can take recourse to a summary remedy of eviction of a person under the State Revenue laws from the land when such person raises a bona fide dispute about his right to remain in occupation over such land. Their Lordship held that in such a situation, the summary remedy to evict such person under the Act could not be resorted to.*

54. Even otherwise, it is the settled legal position that High Courts are not to go into the question as to the majority or minority view, as both views would be binding, under certain circumstances. In ***Prem Prakash Gupta v. Union of India and Another, AIR 1977 Allahabad 482***, it is clearly held

that if the majority of the Judges of the Supreme Court do not examine a particular issue and decide a case on certain grounds, then on that issue, if the minority expresses an opinion, the same would have a binding force on Courts in India. The relevant portion from the said decision is extracted herein below:

> *"The majority opinion did not express any opinion on this issue but the minority opinion, as expressed by Mahajan J., did examine this issue and answered it in the negative.* ***In my view, in a situation where the majority of the Judges of the Supreme Court expressly chose not to examine a particular issue and decided the suit on certain other grounds, then the expression by the minority on such an issue can be said to have a binding force on the courts in India****. In this view of the matter, I think the observations made by Mahajan J., are binding on me. That learned judge laid down as follows:-*
>
> *"Section 80 does not define the rights of parties or confer any rights on the parties. It only provides a mode of procedure for getting the relief in respect of a cause of action. It is a part of the machinery for obtaining legal rights, i.e, machinery as distinguished from its products. Vide Poyser v. Minors."*

55. Similar was the view taken by the Kerala High Court in ***V. Padmanabha Ravi Varma Raja and Ors. v. The Deputy Tahsildar, Chittur and Ors., 1963 KER LT 15*** where the Court held that on a particular issue when the dissenting judgment had referred to an aspect, the same would be binding. The relevant portion of the said decision is extracted herein below:

> *"168. I may also state that there was a contention raised on behalf of the petitioners that the Act, though it purports to levy a tax on land, is really a law relating to forests in the possession of the petitioners and would*

not come within the purview of Entry 18 read by itself or in conjunction with Entry 45 of list Il; and that it is really a law relating to Forests under Entry 19.

169. No doubt, this contention has been noted by his Lordship the Chief Justice of the Supreme Court in the earlier decision, but ***the majority have not expresses any view on this aspect and they have assumed that the State Legislature had the necessary competence to enact the Land Tax Act, 1955.***

170. But Mr. Justice Sarkar, in his dissenting judgment, has refered to this aspect and has ultimately held that under Entry 49 taxation of land on which a forest stands is permissible and legal. Inasmuch as there has been no adjudication by the majority on this aspect, I am bound by the decision of Mr. Justice Sarkar on this aspect *and I have to hold that the contention of the petitioners regarding the competency of the legislature to enact the measure in question, if the Act is otherwise valid, has to be rejected."*

56. In ***Mahendra Bhawaniji Thakar v. S.P. Pande and Anr., AIR 1964 Bombay 170*** the Bombay High Court held that the law declared by the Supreme Court under Article 141 could be both in the majority judgment or even in dissenting judgment. The observations of the Court are extracted herein below:

"23. We do not think that we can accede to the contention of Mr. Natu having regard to the provisions of Article 145(5) read with Article 141 of the Constitution. Article 141 says that "The law declared by the Supreme Court shall be binding on all courts within the territory of-India." It is the law declared by the Supreme Court that binds this Court and not the judgments. This is made clearer when we consider Article 145(5). In Article 145(5) the words used are,

"No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion."

It is clear from Article 145(5) that a judgment delivered by the Supreme Court is the one delivered by a majority of the Judges where there is a difference of opinion, but in that case the Judge who does not concur also delivers a judgment albeit a dissenting judgment. Article 145(5) therefore uses the word 'judgment' both with regard to the final pronouncement of the Court itself as well as for the dissenting pronouncement of an individual judge who does not concur. *There does not appear to be any warrant for reading the provision of Article 145(5) into the provisions of Article 141, and we do not think that the "law declared" can be approximated to the judgment delivered by the Supreme Court.* ***On the other hand, having regard to the provisions of Article 145(5) that a Judge who does not concur may also deliver a judgment, it is clear that the law declared may as well be in a dissenting judgment as in a majority judgment****. The argument, therefore, that the three judges whose decision resulted in the allowing of the appeal in Purshottam's case did not form a majority of those holding that Article 14 applied to the second proviso to S. 34(3) does not make that the law declared. On the other hand, as we have already shown three Judges out of the five who decided Civil Appeal No. 705 of 57 : (AIR 1963 SC 1356) had clearly agreed that Article 14 applied and the proviso was ultra vires and we think that for the purposes of this Court that was "the law declared by the Supreme Court". We hold that "the law declared" referred to in Article 141 is the law to be gathered from any judgment in a case decided by the Supreme Court,*

whether it is the judgment of a judge forming the majority or of a Judge in a minority and dissenting. The contention must, therefore, be negatived. In that view, therefore, it is clear that the Department cannot rely upon the provisions of the second proviso to Section 34(3) as that proviso has been by law declared void as infringing Article 14 of the Constitution."

57. Further, in ***Sudha Tiwari v. Union of India and Ors., 2011 SCC OnLine All 253***, the Court observed that the Supreme Court being the highest Court of the country, it's decisions are binding on all Courts. On the point of minority view, the Court held that even if the majority did not express their view, the decision of the minority and the reasons given will be binding on all the High Courts under Article 141 of the Constitution of India. Moreover, a bare reading of Article 141 shows that all Courts in India are bound to follow the decision of the Supreme Court. The relevant observations are as under:

"23. <u>The Supreme Court under Constitution of India is the highest court of the country, and the final court of appeal. The opinion of the Supreme Court is the law of the land, and its decisions are binding on all courts</u>*. The Supreme Court is the ultimate arbiter and the adjudicator of the laws. The interpretations given by the Supreme Court to the constitutional and other statutory provisions, if they are clear and unambiguous, have to be truthfully followed by the High Courts. The decisions of the Supreme Court cannot be ignored and bypassed even on the ground of equity or on the ground that any review or clarificatory application is pending.*

24. *A ruling is generally considered to be binding on lower courts and the courts having smaller bench*

structure. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and accepts an organic development of the law besides providing assurance to the individual and certainty in the transactions vide M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 and also State of Punjab v. Devans Modern Brewans Limited, (2004) 11 SCC 26.

25.** When the Court is divided, the judgment of majority constitutes the law declared and not the view or observance of the Judges in the minority vide John Martin v. State of West Bengal, (1975) 3 SCC 836.* ***Where the majority has not expressed any opinion, the decision of the minority in strength, even if by a single Judge amongst five, has the effect, if the reasons are given of the judgment of the Supreme Court to be binding upon the High Court under Article 141 of the Constitution of India. *The principle underlying the decision is binding on the High Courts. In Ashoka Kumar Thakur's case, the question answered by Hon'ble Justice Dalveer Bhandari, namely whether the Ninety Third Amendment violates the basic structure of the Constitution by imposing reservation on unaided institutions, did arise in the case, and was apparently argued by the counsels appearing for the parties. The Hon'ble Judge posed the question and answered it by elaborate reasoning citing the entire case law on the subject on the touchstone of I.R. Coelho's case. He has not only answered the question but has also, in adopting the principles of severability of the offending party, consciously, declared the Ninety-Third Amendment as it refers only to the unaided institutions, as ultra vires the basic structure of the Constitution of India. The ratio of the decision is*

a binding precedent, and thus once the Constitution (Ninety-Third Amendment) Act 2005, to the extent that it refers to unaided institutions, has been held to be ultra vires, the High Courts are bound with the ratio, as to under Article 141 of the Constitution has to follow it and on the same analogy on which Article 15(5) as has been declared to be violative of the basic feature of the Constitution of India, of the right to occupation and its abridgment, the provisions of Section 4 of the UP Act No. 23 of 2006 cannot be saved, to that extent."

Decision in Express Newspapers (supra) is binding

58. In the opinion of this Court, the decision delivered by the three Judge Bench of the Supreme Court in ***Express Newspapers (supra)*** is a binding decision under Article 141 of the Constitution of India. The said decision is not only binding on this Court but also on all the other governmental authorities. The Supreme Court spoke in one voice and quashed the Show Cause Notices threatening re-entry. There was no dissenting view in the said decision. As per the leading judgment of Justice Sen, the then Government had contemplated a legislation to provide a forum for adjudication of such disputes, which did not materialise. Thus, the Supreme Court relegated the parties to a civil suit for adjudication of the disputes in respect of conversion charges and occupation charges *etc.*

59. The Court further suggested arbitration for resolving the disputes between the parties, which was also contemplated for determining the quantum of conversion charges payable, which was not acceptable to the Government. Failing all of these options for providing a forum or resorting to arbitration, the Government had the option to file a duly constituted suit

to realize the conversion charges and additional ground rent whatever may be recoverable. No other liberty was given to the Union of India. In fact, a mandatory injunction was passed restraining the Union of India from taking any steps with respect to termination of lease for non-payment of conversion charges or otherwise for construction of Express building till the amount recoverable is decided by a Civil Court.

60. In addition, the Supreme Court quashed the Show Cause Notice dated 10th March, 1980 and declared that the construction of Express Building on the portion of 2740 sq. yds. on the west side with an increased FAR 360 with double basement was with permission of the Union of India and there was no breach of the lease deed [clause 2(5) and 2(14)].

61. The Supreme Court also directed the Union of India, Delhi Development Authority (DDA) and Municipal Corporation of Delhi (MCD), forbearance and from issuing any threats in any manner whatsoever. Union of India was only permitted to enforce its claim for recovery of conversion charges and additional ground rent, if any, by a duly constituted suit. The MCD was directed to compound the construction of double basement, the excess basement beyond the plinth limit and the underground passage on payment of usual composition fee.

62. Apart from Justice Sen, the other two Judges had read the leading judgment of Justice Sen and had directed the quashing of the impugned notices and permitted fresh action as may be available in law. The Union of India was also permitted to compound the breaches as also regularize lease by receiving adequate premium. Any questions arising out of contractual obligations could be agitated in a suit.

63. This Court is of the view that the stand of the Union of India that the decision of Justice Sen is merely a minority view, is not tenable. This is because of the following two reasons:

i) that the decision was of a three Judges Bench which had three concurring opinions. Justice Sen wrote the leading judgment. The other two Judges did not state that they had any difference of opinion with Justice Sen and neither their opinions were dissenting opinions. The decision in ***Express Newspapers*** is a binding decision of the Supreme Court rendered by a three Judge Bench. The concurring opinions which permitted the Union of India to proceed in accordance with law can only mean that the Government could have proceeded in terms of the directions issued in the lead judgment and nothing more. There was a clear embargo upon taking steps for termination of lease and claiming any other amounts except conversion charges and additional ground rent. Compounding was also permitted. The MCD was given a direction to compound the construction of the double basement and other constructions.

ii) the later decision of the Supreme Court in ***Kaikhosrou (supra)*** has also categorically held, following the opinions of Lord Esher MR in the ***Guardian of Poor judgment*** where the Judges do not give differing opinions explicitly, it must be taken that each of them agrees with the judgment of the other. In ***Kaikhosrou (supra)***, the Supreme Court has clearly held that the reasoning of Justice Sen is the law laid down on behalf of all three Judges and on behalf of the Court. Since there is no dissenting opinion, the directions given in

paragraphs 194 to 197 is binding on both the parties and would operate as *res judicata*. A reading of all the above judgements also establishes that even if Justice Sen's judgment is a minority opinion it has a binding force on all the High Courts as per Article 141 of the Constitution of India. Thus, no notice of termination of lease and re-entry could have been issued by the Union of India. Even the amount recoverable by the Union of India was only in terms of paragraph 194 of the judgment delivered by the Supreme Court, where only conversion charges and additional ground rent would be liable to be recovered and the same may be carried out by a duly constituted suit. The basis of the L&D.O's impugned action that Justice Sen's judgment is of a minority view is thus completely untenable.

Issue-wise Findings

Issue No. 1: Whether the plaint in suit no. 2480/1987 has been filed and verified and the suit is instituted by duly authorized person.

64. The suit of the Union of India, has been filed by Sh. R.P.S. Pawar. He was the Land and Development Officer at the concerned time and to support this position, PW-1 has relied upon the notification dated 1st February, 1966. PW-1 also relies upon the appointment letter exhibited as *Exhibit*. P-66[17]. In his cross-examination, PW-1 states as under:

> *"**Ques:** Please show the authorization in favour of Mr. R P S Pawar by UOI on the judicial file record to institute the present suit.*

[17] Exhibit. P-66 titled Appointment letter of Rajinder Singh Pawar as L&DO dated 23rd July, 1987.

***Ans**: (witness has been shown the judicial file record). Govt. of India, Ministry of Law, vide its notification dated 1.2.1966 as amended from time to time, empowered Land and Development Officer, Deputy Land and Development Officer, Assistant Settlement Commissioner, Asst. Legal Advisor, and Engineer Officer to execute all contracts and assurances of property relating to matters falling within the jurisdiction of Land and Development officers, and to execute all contracts, deeds or other instruments relating to or for the purpose of enforcement of the terms and conditions of the sale/ lease deeds of the govt. property in Delhi/ New Delhi and documents in this regard are Ex P- 14, 15, 16 & 17 on the judicial file record. Sh. R P S Pawar was appointed as Land and Development officer vide Ex P-66.*

***Ques**; By this answer you mean that there is no specific authorization in favour of Mr. R P S Power to file end institute the present suit.*
***Ans**: I do not mean this.*
By way of notifications, cited in reply to question above, end notification issued by the Govt. of India appointing Sh. R P S Power, as Land and Development Officer, he is fully authorized to institute the plaint.

***Quest**: Is there any specific empowerment in document Ex.P- 14 in favour of Mr. R. P. S. Power or Lend end Development officer to institute and file suits?*
***Ans**. The answer given above in this respect fully answers the query. This issue being of legal nature can be replied to during arguments.*

***Q**. Please show me any document from the court record*

which mentions the name of Mr. R. P. S. Pawar and also authorizes him to file a suit against Express Newspapers Pvt. Ltd.?
***Ans**. There is not such document on record.*

***Q**. Please show me any document from the court record which mentions the name of Mr. B. L. Nimesh and also authorizes him to file replication in the present suit against Express Newspapers Pvt. Ltd.?*
***Ans**. This question cannot be answered. However, there is not such document on the file."- need to confirm if the extraction correct or not*

65. A perusal of Exhibit P-14 would show that it is a notification dated 1st February, 1966 issued by the Ministry of Law, Department of Legal Affairs wherein, the manner in which contracts can be executed on behalf of the President of India has been specified. Clause 7 of the said notification clearly specifies that all contracts in respect of sale and lease deeds are to be executed by the Land and Development Officer, Deputy Land and Development Officer and Assistant Settlement Commissioner. Ex.P-66 is a notification dated 23rd July, 1987 appointing Mr. R.P.S. Pawar, IAS as the Land and Development Officer. A conjoint reading of the said notifications clearly shows that Sh. R.P.S. Pawar, who filed the suit was duly authorized and competent person to file the plaint on behalf of the Union of India.

ISSUE NO.1 IS ACCORDINGLY ANSWERED IN FAVOUR OF THE UNION OF INDIA.

Issue No 2: ***Whether the defendant has breached any term of the lease deed dated 17th March, 1958 and supplementary lease deed dated 17th November, 1964? If so, to what effect? OPP***

Issue No. 3: ***Whether the termination of the lease dated 17th March, 1958 by a notice dated 29th September, 1987 or 2nd November, 1987 is in accordance with the terms of the lease and is not arbitrary, discriminatory, mala fide or in violation of the applicable law? OPP***

Issue No. 4: ***Whether the construction carried out by the defendant on the area of 2740 sq. yards on the western side of the plot nos. 9 & 10, Bahadur Shah Zafar Marg is in accordance with law? If not, to what effect ? OPD***

Issue No. 7: ***Whether the notice dated 29th September, 1987 or 2nd November, 1987 have been issued by a duly authorised and competent authority? OPP***

Issue No. 8: ***Whether the construction raised by the defendant on the suit property is in terms of a valid and binding grant by the Union of India? If not to what effect? OPD***

Issue No. 9: ***Whether the defendant is using the suit property for a purpose and use permissible under the lease deed and in terms of a valid and binding grant by the Union of India? If so, to what OPD effect?***

66. Issue Nos. 2, 3, 4, 7, 8 and 9 relate to the question as to whether there has been any breach of the perpetual lease deed dated 17th March, 1958 and supplementary lease deed dated 17th November, 1964 by Express Newspapers. In addition, the question that arises in these issues is whether the notices issued by the Union of India are valid in law. Both these aspects would have to be dealt with on the basis of an analysis of the events leading up to the show cause notices in 1980, various approvals obtained and the decision rendered by the Supreme Court which was rendered on 7th October, 1985.

67. Broadly, the allegations raised by the UOI as being violations by Express Newspapers, are categorized and dealt with below:

i) Misuse of a portion of the basement in the old building for Newspapers use instead of the permitted use as storage.

On this issue, it is relevant to point out that vide letter dated 25th October, 1977, Express Newspapers had sought permission for additional construction in the open space which was initially permitted due to the sewer line. The additional basement space was needed for the purpose of starting a Hindi Newspaper. Express Newspapers had sought permission for additional construction after the sewer line was shifted by the Municipal Corporation and permission was given to inter-connect the new and the old building. The Delhi Municipal Corporation (Water Sewage and Disposal Board) confirmed the possibility of diverting the sewer line. The same was also permitted by the DDA on 4th November, 1978 wherein, it is stated that installation of press machinery and other service machinery in the basement is permitted. The relevant extract of the said letter of the DDA to Express Newspapers reads as under:

> *"The plans submitted by you have been examined. I am directed to inform you that there is no objection to amalgamation of Plot No,9 and 10 and allowing an overall FAR of 3.6 taking into account the existing FAR in that case the existing building line of the adjoining plot shall have to be maintained. The basement has been excluded from the calculation of the FAR and the installation of Press Machinery like any other service machinery is permitted. The parking on the service road is permitted in the same manner as it is for other buildings in this line. However, adequate parking facility shall have to be provided in the open*

area which may be so planned to make use-able for parking purposes.
2. On the detailed examination of the layout plan, the following observations have also been made :-
3. You may submit the plans to the concerned authorities for favour of approval. A set of plans as submitted by you and examined as per norms mentioned above is enclosed."

68. The fact that the basement is excluded from the sanctioned FAR of 360 was also confirmed by two letters dated 24th November, 1978 and 1st December, 1978 both addressed by the Ministry of Works and Housing to the DDA with copies marked to Express Newspapers. The relevant text from the said letter is set out below:

Letter dated 24th November, 1978 – Exhibit No. 44:

"With reference to your d.o. letter No. PA/VC/78/874 dated 17.11.78 and in supersession of this Ministry's letter of even number dated 9.6.1978, I am directed to say that, as proposed by you, the ***Express Newspapers Limited may be allowed to construct on the residual plot on the basis of an FAR of 360 for the whole plot****."*

Letter dated 1st December, 1978 – Exhibit No 45:

"In continuation of this Ministry's letter of even number dated 25.11.78, ***I am directed to clarify that the FAR of 360 allowed ex-cludes the entire area of basement as per the provisions of the Master Plan****."*

69. These two letters were put to DW-1 in cross-examination that they were marked only to the DDA and not to Express Newspapers, which was duly refuted by DW-1, that copies of these letters were issued to Express Newspapers. The said letters are not adverted to by PW-1 at all which

clearly proves the mala fides of the L&D.O. In the opinion of this Court, these communications are sufficient to hold that the construction and use of the basement for Newspaper and machinery use, was fully permissible.

ii) Unauthorized construction in excess of the area approved by the MCD – allegation that Clause 2(4) of the lease has been violated.

Clause 2(4) of the perpetual lease reads as under:

> *"2 (4) The Lessee will in all respects comply with and be bound by the building drainage and other bye-laws for the time being in force in the New Capital of Delhi."*

70. On the question of unauthorized construction, it is relevant to note that the entire construction was carried out after obtaining the requisite permissions. Vide letter dated 7th December, 1977, written by Mr. Ram Nath Goenka to the then Minister of Works and Housing, it has been clearly stated in the said letter that a rough plan was submitted by Express Newspapers to the MCD, and it was informed that FAR of 300% is permissible by the DDA in the area after taking into account the existing building. The background of the allotment in the press area and the manner in which Express Newspapers was initially allotted plot nos. 1 and 2 which was thereafter changed to plot nos. 9 and 10 is set out in the said communication. In the said letter, a request is made that the plots in the press area ought to be treated as commercial complexes, so that buildings may be constructed over the entire area of the plot subject only to the height stipulation. This letter was thereafter followed up with another letter dated 22nd December, 1977 wherein again the stand was taken that the press area was in fact was not covered by the DDA's Master Plans, and no specific

rules for construction existed. Vide letters dated 2nd February, 1978, exhibited as *Exhibit.* P-30[18], the Ministry clarified that the FAR of 360 would exclude the basement. The said clarification is set out below:

> *"In continuation of this Ministry's letter of even number dated 25.11.78,* ***I am directed to clarify that the FAR of 360 allowed excludes the entire area of basement as per the provisions of the Master Plan****."*

71. Further, vide letter dated 9th June, 1978 exhibited as *Exhibit.B-41*[19], it was clarified that FAR beyond 300 would not be permissible but once the sewer line is diverted, Express Newspapers would get an additional area of 54,000 sq. ft. in the basement, ground, first, second and third floor on the new plot. The DDA, finally, vide letter dated 4th November, 1978, *Exhibit.B-43*[20] allowed an overall FAR of 360 and called for the sanction plan. This was also confirmed by the Ministry on 24th November, 1978 and 1st December, 1978. These documents would clearly show that so long as the plans were sanctioned, FAR beyond 300 was permissible in the area. FAR 360 was confirmed by both the DDA and the Ministry. The allegation that no construction could take place in the western side of the plot, is thus completely not tenable.

iii. Construction of additional building in the area which was to be kept vacant.

72. The documents on record clearly show that the requisite approvals for construction were obtained from the MCD. The stand of the L&DO was that

[18] Exhibit. P-30 titled letter dated 2nd December, 1978 addressed by Ministry of Works and Housing to DDA.
[19] Exhibit B-41 titled Request for additional coverage dated 9th June, 1978.
[20] Exhibit B-43 titled building plans on Plot Nos. 9 and 10 dated 14th November, 1978.

the plans which were sanctioned by the MCD were not submitted to L&DO/Ministry and the construction was carried out without payment of additional premium and additional ground rent. Thus, there is violation of clauses 2(5), 2(14) and 3 of the Perpetual lease deed. The same are extracted below for read reference:

> "2(5). *The Lessee will not without the previous consent in writing of the Chief Commissioner of Delhi or of such officer or body as the Lessor or the Chief Commissioner of Delhi may authorise in this behalf "make any alterations in or additions to the buildings" erected on the said demised premises so as to affect any of the architectural or structural features thereof or erect or suffer to be erected on any part of the said demised premises any buildings other than and except the buildings erected thereon at the date of these presents.*
> 2(14). *The Lessee shall keep to the entire satisfaction of the said Chief Commissioner the area to the West of the Pipeline admeasuring 2740 sq. yds. as an open space, that is as lawns, paths or parking grounds.*
> *Provided also that the Lessor shall be entitled to claim and recover a portion of the unearned increase (i.e., the difference between the premium already paid and current market value) in the value of land at the time of transfer (whether such transfer is an entire site or only a part thereof), the amount to be covered being 50 percent of the unearned increase.*
> *The Lessor shall have a pre-emptive right to purchase the property after deducting 50percent of the unearned increase as aforesaid.*
> 3. *If there shall at-any time have been in the opinion of the Lessor or the Chief Commissioner of Delhi whose decision shall be final, any breach by the Lessee or by any person claiming- through or under him of any of*

the covenants or conditions contained in sub-clauses(5),(9) and (10) of Clause 2 and if the said intended Lessee shall neglect or fail to remedy any such breach to the satisfaction of the Chief Commissioner of Delhi within seven days from the receipt of a notice signed by the Chief Commissioner of Delhi requiring him to remedy such breach it shall be lawfull for the officers and workmen. acting, under the authority and direction of the Chief Commissioner of Delhi to enter upon the premises hereby demised and (a) to remove or demolish any alterations in or additions to the buildings erected on the said premises (b) to remove or demolish any buildings erected on the said premises without the previous consent in writing of the Chief Commissioner of Delhi or duly authorised officer as aforesaid (c) to fill any excavation or carry out any repairs that may be necessary and all such moneys, and expenses as may be laid out and incurred by the Chief Commissioner of Delhi or by his order shall be paid by the said lessee; and it is hereby expressly declared that the liberty hereinbefore given is not to prejudice in any way the power given to the President of India by clauses 4 and 5 hereof."

73. In this regard, the record reveals that right from 1977, Express Newspapers has been in touch with the Government/Ministry for construction of the entire area of plot nos. 9 and 10 *ad measuring* 1.179 acres. In fact, initially, the lease contemplated such construction and it was only upon the sewer line being discovered that the original proposal had to be changed and construction was permitted only on the east portion and not on the west portion. After the old building on the east portion was constructed, Express Newspapers sought permission and in fact volunteered to contribute the cost of the diversion of the sewer line and it was only thereafter that the sanction was given. The allegation that though the plans

were sanctioned by the MCD since the plans were not submitted to L&DO, the same is contrary to the lease deed, is now examined.

74. As per PW-1, Express Newspapers did not approach the L&DO after the sanction of the plans which renders the entire construction unauthorized. This is not a tenable stand as the fact that the construction was taking place was well within the knowledge of the L&DO, which never raised any objection. Clause 2(14) stipulated that the western side of the pipe line was to be maintained as a green area. This Clause did not require permission for construction in terms of sanction plans of the MCD. The maintenance of green area was due to the sewer line and nothing more. The stand of the L&DO that after MCD had sanctioned the plan on 9th January, 1979, the same had to be submitted to the L&DO again for approval is bereft of any merit as the authority for sanctioning of plans was MCD. The sanctioning of plans and FAR was known to the Ministry as the concerned agencies had informed the Ministry. Moreover, since the Ministry and L&DO were fully within the knowledge of the construction and thus if any charges were to be paid, a demand could have been raised contemporaneously. According to Express Newspapers, even the conversion charges of Rs.50,425/- was deposited. Insofar as the notice by the MCD for demolition is concerned, a perusal of the said notice would reveal that the only ground raised therein is that there is excess construction in the basement beyond the sanction including the construction of an upper basement. No other ground was raised by the MCD.

75. Thus, it cannot be said that the construction on the vacant space was unauthorized and was in violation of the perpetual lease deed.

76. A perusal of the notice and the challenge dated 1st August, 1986 followed by the termination of lease shows that the grounds alleged therein are as under:

a) Use of the premises for commercial purpose other than newspaper.
b) Unauthorized construction on the western side of the drain without seeking permission of L&DO.
c) MCD's notice of demolition of unauthorized construction.
d) Sub-letting of the premises.
e) Construction of more than FAR 360 and hence non-issuance of the complete certificate by the MCD.
f) Non execution of supplemental lease deed and construction prior to such execution.
g) Misuse of the basement apart from storage purposes.

77. The above alleged breaches are in fact not made out from the record. The documents discussed hereinabove would show that the use of the basement for putting of printing machinery was permitted by the DDA. The FAR of 360 was duly sanctioned by the Ministry which was communicated to the DDA as also to Express Newspapers. The construction in the additional space was carried out after the diversion in the sewer line. The construction was also carried out after obtaining sanction from the MCD, which was well within the knowledge of L&DO and the Ministry. The use of the said premises for commercial purpose was duly authorized as were other buildings in the vicinity. The same was permitted subject to payment of conversion charges.

78. Vide the supplemental lease dated 17th November, 1964, the prohibition was from carrying out any manufacturing trade which would in the opinion of the Chief Commissioner of Delhi be considered as noisy, noxious or offensive. The surplus accommodation was permitted to be let out for general office use, commercial or otherwise excluding commercial ventures like hotel, cinemas, restaurant, *etc*. Thus, it cannot be argued that there was any misuse and that the premises could only be used for newspaper purpose. Clearly, the stand of the Ministry and the L&DO in the impugned notices of termination preceding the termination and the termination letter is in the face of the admitted documents and the documentary evidence.

79. Moreover, a very disturbing feature in these suits, is also that all the issues which were considered and decided in the judgment of the Supreme Court dated 7th October, 1985 in Express Newspapers are again being reiterated and raised in the impugned notices. A perusal of the Show Cause Notice dated 10th March, 1980 which was quashed would show that the said notice was also based upon similar grounds raised by the Union of India. Press release dated 4th March, 1980, letters dated 7th and 10th March, 1980 of the L&DO, all of which led to the appointment of the three-member Committee by the then Lieutenant Governor, was frowned upon by the Supreme Court. The Supreme Court judgment has dealt with each of the alleged violations in the impugned notices. A perusal of paragraph 187, 190 and 194 of the judgment of the Supreme Court shows that it is exactly these very issues which are discussed by the Supreme Court and the final directions were issued to the Union of India, only to realize conversion charges and additional ground rent and nothing more.

80. To re-agitate already adjudicated issues in the manner as is sought to be done by issuing fresh notices of termination would in the opinion of this Court be in total disregard of the painstaking judgment of the Supreme Court which had already gone into all these issues. Post the decision of the Supreme Court, there were only two courses of action for the Union of India *i.e.*, to raise a demand for the conversion charges and for the additional ground rent along with any reasonable interest and upon failure to pay the same, to file a suit. In fact from a reading of the order of the Supreme Court only the latter could have been resorted to *i.e.*, filing of the suit by the Union of India. According to Express Newspapers, it had deposited some conversion charges in 1982 and if anything, more is to be paid a demand could have been raised. In paragraph 196, the Supreme Court clearly holds that there are no breaches under clause 2, 5 and 14 of the lease deed and that the construction on the Western side of plots 9 and 10 with an increased FAR of 360 with a double basement was with the permission of the Union of India.

81. The two issues whether the construction in the suit property by Express Newspapers is valid and binding and whether it was used for a permissible purpose, are decided by the Supreme Court in paragraph 85 of the judgment as under:

> *"The Express Newspapers Pvt. Ltd. having acted upon the grant of permission by the lessor i.e. the Union of India. Ministry of Works & Housing to construct the new Express Building with an increased FAR of 360 together with a double basement was clearly not an unauthorized occupant within the meaning of Section 2(g) of the Act"*

82. The use from green space to commercial space was also permitted as per *Exhibit*. B-71 dated 2nd April, 1983 which is an affidavit filed by the Union of India by Shri H.R. Goel, Dy. Secretary in the Ministry of Works and Housing which granted permission for additional construction with respect to commercial use and there is no prohibition against sub-letting for commercial purposes.

83. In the light of such categorical findings, raising these very issues in a fresh notice and thereafter issuing notices of termination and seeking to re-enter is clearly in the face of the judgment of the Supreme Court. The MCD was clearly given a mandatory direction by the Supreme Court to compound the construction of the double basement beyond the plinth limited and the underground passage. Thus, the allegation that there is unauthorized construction contrary to the building plans of MCD is also not liable to be entertained. The notices dated 29th September, 1987 followed by the letters dated 2nd November, 1987 are, therefore, lacking any basis on facts as also in law. In fact, the Supreme Court concludes that the notices dated 1st March, 1980 and 10th March, 1980 was not issued *bona fide*. The relevant observations of the Supreme Court reads as under:

> *"In the facts and circumstances, I am constrained to held that the impugned notices dated March 1, 1980 and March 10, 1980 were not issued bona fide in the ordinary course of official business for implementation of the law or for securing justice but were actuated with an ulterior and extraneous purposed and thus were wholly mala fide and politically motivated."*

84. The above observations of the Supreme Court would squarely be applicable even to the notice dated 2nd November, 1987, which is w.e.f 29th

September, 1987. The issuance of notices to tenants with a direction to them to deposit the rent with the L&DO is a completely malicious act on behalf of the then Government. It was only meant to muzzle Express Newspapers and also dry up its sources of income and nothing more. Thus, the said notices are held to be arbitrary and *mala fide*. In fact, the notice dated 2nd November, 1987 by which the lease was terminated was never been served upon Express Newspapers and a copy was procured, thereafter. Express Newspapers came to know of the same from the news item in Times of India dated 15th November, 1987. Such conduct of the Government of the day is nothing but motivated to say the least.

ISSUE NOS. 2, 3, 4, 7, 8 AND 9 ARE ACCORDINGLY DECIDED IN FAVOUR OF EXPRESS NEWSPAPERS.

Issue no. 5: ***Whether the action of the plaintiff in issuing the notice dated 29th September, 1987 or 2nd November, 1987 is barred by res judicata? OPD***

85. As discussed earlier, the notices issued in March, 1980 had raised similar allegations against Express Newspapers in respect of which the judgment of the Supreme Court has already been rendered. The mere fact that permission was granted by the Supreme Court to the Union of India for filing of a civil suit for the purpose of conversion charges and additional ground rent cannot mean that the Union of India was permitted to raise all the issues once again by way of a civil suit. The entire evidence consisting of letters, the perpetual lease deeds, the letters, approvals, *etc*., have all been discussed in detail in the decisions of the Supreme Court. The decision in ***Daryao and Others v. State of U.P., 1961 SCC OnLine SC 21*** holds that decisions in writ petitions would also bind the parties as *res judicata* though

evidence may not have been led. The relevant extracts of the said decision are set out below:

> ***"19.*** *This Court had occasion to consider the application of the rule of res judicata to a petition filed under Article 32 in M.S.M. Sharma v. Dr Shree Krishna Sinha [AIR 1960 SC 1186] . In that case the petitioner had moved this Court under Article 32 and claimed an appropriate writ against the Chairman and the Members of the Committee of Privileges of the State Legislative Assembly. The said petition was dismissed. Subsequently he filed another petition substantially for the same relief and substantially on the same allegations. One of the points which then arose for the decision of this Court was whether the second petition was competent, and this Court held that it was not because of the rule of res judicata. It is true that the earlier decision on which res judicata was pleaded was a decision of this Court in a petition filed under Article 32 and in that sense the background of the dispute was different, because the judgment on which the plea was based was a judgment of this Court and not of any High Court. Even so, this decision affords assistance in determining the point before us. In upholding the plea of res judicata this Court observed that the question determined by the previous decision of this Court cannot be reopened in the present case and must govern the rights and obligations of the parties which are substantially the same. In support of this decision Sinha, C.J., who spoke for the Court, referred to the earlier decision of this Court in Raj Lakshmi Dasi v. Banamali Sen [(1952) 2 SCC 219 : (1953) SCR 154] and observed that the principle underlying res judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though*

the subject-matter of the dispute was not exactly the same in the two proceedings. We may add incidentally that the Court which tried the earlier proceedings in the case of Raj Lakshmi Dasi [(1952) 2 SCC 219 : (1953) SCR 154] was a court of exclusive jurisdiction. Thus this decision establishes the principle that the rule of res judicata can be invoked even against a petition filed under Article 32.

xxxxx

26. *We must now proceed to state our conclusion on the preliminary objection raised by the respondents.* ***We hold that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution.*** *It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine*

without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Article 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other. It is in the light of this decision that we will now proceed to examine the position in the six petitions before us."

86. The decision in ***State of Tamil Nadu v. State of Kerala and Anr., (2014) 12 SCC 696***, also relies on ***Daryao and Ors. (Supra)*** and observes that the rule of res judicata is based upon the principle of public policy and is an essential part of the rule of law. The Court further observed that a question decided via prior decision in writ petitions either under Article 32 or 226 of the Constitution of India with respect to an issue which is directly and substantially present in the previous matter operates as res judicata. The observations of the Court read:

"162. *The rule of res judicata is not merely a technical rule but it is based on high public policy. The rule embodies a principle of public policy, which in turn, is an essential part of the rule of law. In Duchess of Kingston [(1776) 2 Smith LC 644 at p. 645 (13 Edn.)] ,*

the House of Lords (in the opinion of Sir William de Grey) has observed:

"From the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true : first, that the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive, between the same parties, upon the same matter, directly in question in another court; secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is, in like manner, conclusive upon the same matter, between the same parties, coming incidentally in question in another court, for a different purpose."

163.*Corpus Juris explains that res judicata is a rule of universal law pervading every well-regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation; and the other, the hardship on the individual that he should be vexed twice for the same cause.*

164. *In Sheoparsan Singh [Sheoparsan Singh v. Ramnandan Singh, (1915-16) 43 IA 91 : (1916) 3 LW 544 : AIR 1916 PC 78] , Sir Lawrence Jenkins noted the statement of law declared by Lord Coke, interest reipublicae ut sit finis litium, otherwise great oppression might be done under colour and pretence of law. (6 Coke, 9a.)*

165. *In Daryao [Daryao v. State of U.P., AIR 1961 SC 1457] , P.B. Gajendragadkar, J. while explaining the rule of res judicata stated that on general considerations of public policy there seems to be no reason why rule of res judicata should be treated as inadmissible or irrelevant while dealing with the petitions filed under Article 32 of the Constitution. P.B. Gajendragadkar, J. referred to earlier decision of this Court in M.S.M. Sharma [M.S.M. Sharma v. Shree*

Krishna Sinha, AIR 1960 SC 1186] wherein the application of the rule of res judicata to a petition filed under Article 32 was considered and it was observed that the question determined by the previous decision of this Court cannot be reopened and must govern the rights and obligations of the parties which are subsequently the same.

166. *In Gulabchand Chhotalal Parikh [Gulabchand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153 : (1965) 2 SCR 547] , this Court stated that a decision in a writ petition is res judicata in a subsequent suit.*

167. *In Nanak Singh [Union of India v. Nanak Singh, AIR 1968 SC 1370 : (1968) 2 SCR 887] the question whether the decision in a writ petition operates as res judicata in a subsequent suit filed on the same cause of action has been settled. In Nanak Singh [Union of India v. Nanak Singh, AIR 1968 SC 1370 : (1968) 2 SCR 887] , this Court observed that there is no good reason to preclude decisions on matters in controversy in writ proceedings under Article 226 or Article 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and, thus, to give limited effect to the principle of finality of decision after full contest.*

168.*Nanak Singh [Union of India v. Nanak Singh, AIR 1968 SC 1370 : (1968) 2 SCR 887] has been followed by a three-Judge Bench of this Court in Bua Das Kaushal [State of Punjab v. Bua Das Kaushal, (1970) 3 SCC 656] . In our view, the rule of res judicata which is founded on public policy prevents not only a new decision in the subsequent suit but also prevents new investigation. It prevents the defendant from setting up a plea in a subsequent suit which was decided between the parties in the previous proceedings. The legal position with regard to rule of res judicata is fairly well settled that the decision on a*

matter in controversy in writ proceeding (Article 226 or Article 32 of the Constitution) operates as res judicata in subsequent suit on the same matters in controversy between the same parties. For the applicability of rule of res judicata it is not necessary that the decision in the previous suit must be the decision in the suit so as to operate as res judicata in a subsequent suit. A decision in previous proceeding, like under Article 32 or Article 226 of the Constitution, which is not a suit, will be binding on the parties in the subsequent suit on the principle of res judicata.

169. *For the applicability of rule of res judicata, the important thing that must be seen is that the matter was directly and substantially in issue in the previous proceeding and a decision has been given by the Court on that issue. A decision on issue of fact in the previous proceeding — such proceeding may not be in the nature of suit — constitutes res judicata in the subsequent suit."*

87. In view of the above settled legal position, the UOI cannot be permitted to re-agitate issues already raised and decided by the Supreme Court in its 1985 decision. The said issues which were decided by a conjoint reading of the orders of all three judges are:

i. Construction of the new building was with permission;

ii. FAR 360 of the new building was with permission and no violation of the lease-deed;

iii. Construction of double basement compounded;

iv. Excess basement beyond plinth limit and underground passage compounded;

v. Regularisation of lease by receiving premium was permitted.

ON THE ABOVE ISSUES THEREFORE THE DECISION IN EXPRESS NEWSPAPERS & ORS. V. UOI IS FINAL, IRRESPECTIVE OF WHICH OF THE THREE JUDGES RENDERED THE FINDINGS.

Issue no. 6: Whether the action of the Union of India in terminating the lease dated 17th March, 1958 and filing the present suit is barred by estoppel? OPD

88. The action of termination of the lease on the ground that there was unauthorized construction or misuse was clearly barred in view of the various permissions which were given by the Ministry and subsequently by the DDA. The mere fact that a supplementary lease deed was not entered into cannot mean that the Union of India is not bound by its decisions. DW1 has deposed that on several occasions the construction is carried out and, thereafter, the supplementary lease deed is executed. This is a fact of which judicial notice can also be taken by this Court. The relevant extract of DW-1's testimony is set out below:

> *"Is there any document evidencing the fact that the defendant was allowed to construct the structure from edge to edge of the two plots as has been claimed in the said Para/portion- of your affidavit?*
> *Ans. It was on the basis of the lease agreement dated 26.05.1954 that the defendant no. 1 was allowed to raise the constructions over 100% of the ground area of the said two plots.*
> *It is correct that the said document was merely an agreement for lease.*
> *It is correct that subsequently on 17.03.1958 a perpetual lease was executed by the plaintiff in favour of the defendant. It is also correct that as per the stipulations therein, the defendant was to be governed by the municipal bye laws and other laws prevailing at that relevant time.*

It is correct that the construction of the new building was initiated some time in the year 1978. It is also correct that the municipal bye laws continues to be applicable. It is incorrect to suggest that the two basements constructed in the new building complex are in the violation of the municipal bye laws. It is incorrect to suggest that as per bye law 54 of the Building Bye laws of MCD in the year 1959 and amended from time to time till 1964, no basement could have been constructed for any purpose other than those specified in the bye laws itself. It is correct that the sanctioned plan has not been placed by the defendant on the record of this case. (Vol. the plans of construction were duly approved by the municipal body. Again said, while the construction had started).”

89. A perusal of the affidavit filed by the Union of India dated 2nd April, 1983 in the Supreme Court would show that the stand of the Union of India therein was as under:

“9. With reference to para 5, it is denied that any fundamental right of the Petitioners is affected in any manner whatsoever. It is, however, admitted that plot Nos. 9 & 10 in the Prese Enclave, were allotted to the Petitioners and a building was constructed on a plot measuring 2965 sq.yds. to the east of a sewer line and the area measuring 2740 sq.yds. to the west of the sewer line was to be maintained as a ‘green’ area (lawns, paths and parking). It is denied that necessary permission/approval under the lease deed had been obtained by the Petitioners before undertaking the construction on the residual portion of plot Nos,9 & 10. It is also denied that the Ministry of Works and Housing, Government of India, had addressed any communication in this behalf to the Petitioners. ***Only copies of letters dt. 24.11.1978 and 1.12.1978, addressed to the Vice-Chairman, Delhi Development Authority, were endorsed to Shri RM. Mishra Express***

> ***Building, New Delhi, with reference to his letter dated 21.11.1978 and 1.12.78, respectively. Both these Letters were issued under the Orders of the Government and signed by Joint Secretary to the Government of India****. It is submitted that the intention in* ***forwarding copies of these letters to the party as well as informing the Land and Development Officer was that other procedural requirements like those under the lease deed etc. be processed further.*** *As stated elsewhere the work relating to administration of lease deeds is primarily looked after in the Office of the Land and Development Officer. The Petitioners did not obtain any approval/sanction from the Office of the Land and Development Officer in terms of the lease deed. It is denied that Respondent No. 1 sanctioned the plan of the New Building.*
>
> ***Under clause 2(14) of the Lease Deed, it is to the entire satisfaction of the Chief Commissioner that the Lessee is required to keep the area to the west of the pipeline admeasuring 2740 sq.yds. as open space i.e., as lawn, paths or parking grounds****."*

90. A perusal of the above extracted affidavit would show that the L&D.O. admits having issued letters dated 24th November, 1978 and 1st December, 1978. Subsequently, the above stand was sought to be withdrawn by another affidavit. Be that as it may the contemporaneous letters dated 9th June, 1978, 4th November, 1978, 24th November, 1978 and 1st December, 1978 would show that the permission was given by the Union of India. Whenever permission is accorded by the Government, irrespective of whoever is in power, the same would bind even subsequent Governments. The plea that the formal Supplementary lease deed was not executed is a specious plea.

91. The doctrine of promissory estoppel also known as equitable estoppel would also be applicable in such cases, where Government of India makes a promise to any person/organization and such a promise is not contrary to public interest or in violation of any law, then they cannot refuse to abide by its promise. This was categorically held by the Supreme Court in ***Kasinka Trading v. Union of India, (1995) 1 SCC 274*** wherein it observed that the doctrine will be applicable even against the Government where there is a need to prevent fraud or injustice. The relevant portion of the judgement has been extracted below:

> ***"12. <u>It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make".</u>*** *There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court,*

> *while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation."*

92. A similar case is of ***Statesman Ltd. & Anr. v. Union of India, 1989 SCC OnLine Del 185*** where the building plan sanctions were pending for a considerably long time on behalf of the N.D.M.C. Thereafter in the year 1989 the Supreme Court in ***N.D.M.C. v. Statesman Ltd., 1989 Supp (2) SCC 547***, decided in favour of Statesman Ltd. and directed them to continue their construction according to the plans submitted by them as they already incurred financial loss due to the delay caused in sanctioning the plan. This clearly shows that the then Government was delaying and revoking these promises contrary to public interest and by violating the law. This was clearly a *mala fide* step taken against all the newspapers to implement press censorship.

93. In the case of ***Gujarat State Financial Corpn. V. Lotus Hotels (P) Ltd., (1983) 3 SCC 379***, the Corporation agreed to sanction a loan to the Respondent company for setting up a hotel, on which the Respondent company acted and incurred expenditures and liabilities to execute the project. Later the corporation refused to disburse the said loan to the Respondent. The Court in this case observed that the Corporation is an instrumentality of the Government and is acting in an unreasonable manner and cannot ignore his promise in the following manner:

> ***"10.*** *Thus the principle of promissory estoppel would certainly estop the Corporation from backing out of its*

obligation arising from a solemn promise made by it to the respondent.

11. *Jit Ram Shiv Kumar v. State of Haryana [(1981) 1 SCC 11 : AIR 1980 SC 1285 : (1980) 3 SCR 689] which slightly differs from the view taken by this court in the aforementioned decision at any rate would not help the appellant because it only lays down that the principle of promissory estoppel cannot be invoked for preventing the Government from discharging its functions under the law. Even then, it was held that when the officer authorised under a scheme enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the court is entitled to regulate the officer to act according to the scheme and the agreement or the representation. The officer cannot arbitrarily on his mere whim ignore his promise on some undefined and undisclosed grounds of necessity or changed the conditions to the prejudice of a person which had acted upon such representation and put himself in a disadvantageous position. On this point, both the decisions concur and the ratio would govern the decision in this appeal. The respondent acting upon the solemn promise made by the appellant incurred huge expenditure and if the appellant is not held to its promise, the respondent would be put in a very disadvantageous position and therefore also the principle of promissory estoppel can be invoked in this case.*

12. *Viewing the matter from a slightly different angle altogether, it would appear that the appellant is acting in a very unreasonable manner. It is not in dispute that the appellant is an instrumentality of the Government and would be "other authority" under Article 12 of the Constitution. If it be so, as held by this court in R.D. Shetty v. International Airport Authority of India [(1979) 3 SCC 489, 511 : AIR 1979 SC 1628 : (1979) 3 SCR 1014, 1041] the rule inhibiting arbitrary*

action by the Government would equally apply where such corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and its action must be in conformity with some principle which meets the test of reason and relevance."

94. In ***State of Bihar and Others v. Bihar Rajya M.S.E.S.K.K., (2005) 9 SCC 129***, the subsequent government changed the decision of the previous government which made certain affiliated colleges as constituent colleges of respective Universities which led to creation of teaching and non-teaching posts in colleges. As a result more absorption of teachers were done which were against the sanctioned posts. The subsequent government overturned this decision and these people lost their jobs. In light of this the hon'ble Supreme Court observed that mere change of government does not justify overturning the decisions taken by the previous government. The relevant portion is as under:

"64. *So far as the order dated 18-12-1989 is concerned,* ***the State being the author of that decision, merely because it is formally not expressed in the name of the Governor in terms of Article 166 of the Constitution, the State itself cannot be allowed to resile or go back on that decision. Mere change of the elected Government does not justify dishonouring the decisions of previous elected Government.*** *If at all the two decisions contained in the orders dated 1-2-1988 and 18-12-1989 were not acceptable to the newly elected Government, it was open to it to withdraw or rescind the same formally. In the absence of such withdrawal or rescission of the two orders dated 1-2-1988 and 18-12-1989, it is not open to the State of Bihar and State of Jharkhand (which has been created*

after reorganisation of the State of Bihar) to contend that those decisions do not bind them."

95. Further, the mere fact that the letters were issued by DDA and copies were marked to Express Newspapers would not make the said documents less binding on the Government. Merely because the L&DO may not have executed the supplementary lease deed also does not render said construction illegal or unauthorized.

THIS ISSUE IS, ACCORDINGLY, DECIDED IN FAVOUR OF EXPRESS NEWSPAPERS AGAINST THE GOVERNMENT.

Issue no. 10: Whether the plaint in Suit No. 52/1988 has been signed and verified and the suit is instituted by a duly authorized person? OPP

96. No oral submissions have been addressed on this issue. A board resolution in favour of Mr. P.C. Jain has already been placed on record. Thus, the suit is held to have been signed by a duly authorized person.

THIS ISSUE IS ANSWERED IN FAVOUR OF THE PLAINTIFF-EXPRESS NEWSPAPERS

Issue no.11: Whether the Suit No. 52/1988 is maintainable without compliance of Section 80 of the Code of Civil Procedure? OPP

97. Vide order dated 7th January, 1988, the leave to institute a suit has been granted by the court and, thus, no further compliance of section 80 is required.

Issue no. 12: Whether the Suit No. 52/1988 has been valued for the purposes of court fee and jurisdiction? OPP

98. The valuation paragraph in suit no. 52 of 1988 is as under:

> *"That the valuation of the suit for the relief of Declaration in prayers (1) and (2) is valued at Rupees Five Lakhs each and for Relief in prayers (3), (4), (5) and (6) are valued at Rs.200/- each-. The value for Jurisdiction is Rs.10,00,800/- on which the court fee due has been paid."*

99. From the above valuation, the prayers for declaration are valued at Rs. 5 lakhs and the remaining reliefs for injunction are valued at Rs. 200/- each. Prayer 1 and 2 for declaration are primarily in the nature of seeking setting aside of the two notices of the termination and the notices dated 2nd November, 1987 issued to the Express Newspapers and its sub-tenants are illegal and invalid. Declaratory reliefs, especially when the possession is with Express Newspapers, has been rightly valued under Section 17(1)(3) of the Court Fee Act. Thus, no additional court fee would be liable to be paid. Under Section 17(3) Express Newspapers has only sought a declaratory decree and since it is already in possession of the plots, no consequential relief has been sought. Thus, fixed fee would be liable to be paid.

THIS ISSUE IS DECIDED IN FAVOUR OF EXPRESS NEWSPAPERS.

Issue no. 13: Whether the plaintiff is entitled to recovery for possession of the suit property i.e. Plot Nos. 9 & 10, Bahadur Shah Zafar Marg? OPP

100. In view of the fact that the Court has held that the notices by which the lease are terminated are contrary to law as also contrary to the decision of the Supreme Court, the Union of India is not entitled to possession of the plot nos. 9 and 10.

THIS ISSUE IS DECIDED IN FAVOUR OF EXPRESS NESWPAPERS.

Issue no. 14: ***Whether the plaintiff is entitled to a decree for the recovery of Rs.3,16,54,831/- towards misuse and mesne profits for the period 29th April, 1982 till 29th September, 1987? OPP***

Issue no.15: ***Whether the plaintiff is entitled to a decree for recovery of Rs.54,85,160/- towards the damages for the period 30th September, 1987 to 8th November, 1987? OPP***

Issue no.16: ***Whether the plaintiff is entitled to mesne profits at the rate of Rs.14,40,335/- per month with effect from 9th November, 1987?***

Issue no.17: ***Whether the plaintiff is entitled to mesne profits against defendant nos. 2 to 8 at the rate of Rs.27,29,794/- per month for unauthorised occupation of the premises for, the office use of defendant nos. 2 to 8 from 9th November, 1987? OPP***

101. These issues relate to the amounts claimed by the Union of India under various heads.

COMPUTATION

102. As per the plaint of UOI, the following charges are recoverable from Express Newspapers:

i. Towards misuse and other charges/mesne profits;

ii. Towards damages/mesne profits for unauthorized occupation by the tenants *i.e.*, Defendant Nos. 2 to 8, after determination of the lease;

iii. Towards damages/mesne profits towards unauthorized occupation of the premises for newspaper press;

iv. Towards damages/mesne profits towards unauthorized occupation of the premises for the office use of tenants *i.e.*, Defendant Nos. 2 to 8;

103. However, after a reading of the judgement of the Supreme Court, it is clear that the only amounts payable by Express Newspapers would be Conversion and Additional Ground Rent. The relevant portion of the Supreme Court Judgment dated 7th October, 1980 in '***Express Newspapers Pvt. Ltd. and Others v. Union of India and Others, 1986 1 SCC 133'*** has been extracted below:

> *"**194**. We cannot possibly in these proceedings under Article 32 undertake an adjudication of this kind but I am quite clear that Respondent 5 the Land & Development Officer having already indicated his mind that the amount of conversion charges would be more than Rs 3.30 crores, it would not subserve the interests of justice to leave the adjudication of a question of such magnitude to the arbitrary decision of the Land & Development Officer who is a minor functionary of the Ministry of Works & Housing. We were informed by Shri Sinha, learned counsel for Respondent 1, the Union of India that the Central Government were contemplating to undertake a legislation and to provide for a forum for adjudication of such disputes. As stated earlier, we had suggested that the dispute as to the quantum of conversion charges payable be referred to the arbitration of an impartial person like a retired Judge of the Supreme Court of India, but this was not acceptable to the respondents. The Union of India may in the contemplated legislation provide for the setting up of a tribunal with a right of appeal, may be to the District Judge or the High Court, to the aggrieved party. If such a course is not feasible, **the only other alternative for the lessor i.e. the Union of India, Ministry of Works & Housing would be to***

realize the conversion charges and additional ground rent, whatever be recoverable, by a duly constituted suit. *Till then I would restrain the Union of India, Ministry of Works & Housing and the Land & Development Officer or any other officer of the Ministry from taking any steps for termination of the lease held by Petitioner 1, Express Newspapers Pvt. Ltd. for non-payment of conversion charges or otherwise for the construction of the Express Building* ***till the final determination of such amount to be realized*** *by a statutory tribunal or* ***by a civil court.”***

104. Apart from the same, Express Newspapers would also be liable to pay the Ground Rent for occupying the premises since the last several years.

105. Ld. Counsels were repeatedly given an opportunity to file their respective computations of amounts payable. Initially, UoI submitted a calculation that it is liable to recover **Rs. 17,504 crores**! On the other hand Express Newspapers submitted a computation claiming that it is liable to pay a sum of **Rs. 14,23,201/-**.

106. In the opinion of the Court the computation filed by the UOI is far-fetched, unreasonable and aggravated to say the least. Despite repeated opportunities given, the amounts claimed are Rs. 1,75,04,71,31,664/- *i.e.*, approx., Rs.17,504 crores. After repeatedly being queried and after change of various counsels, the amount has been reduced to Rs. 765 crores.

107. In the opinion of this Court, proper computation as per the claim made in the Plaint and the evidence is not forthcoming from the UOI, this Court is of the opinion that the various monetary amounts payable would have to be computed broadly on the basis of the claims made in the Plaint of the Union of India itself.

A. Conversion Charges

108. As per schedule B of the plaint, the amount demanded by the Union of India as conversion charges is as under:

"

A. i)	*Additional premium and additional ground rent payable for changing the use of 2740 sq. yards of open area from green to buildable area for Newspaper use.*	
	Total area to be kept vacant as per perpetual lease (Cl. 2(14))	*= 2740 sq. yds. 0.566 acres*
	Concessional rate at which the plots were allotted for Newspaper Press in Mathura Road Press area	*Rs.1,25,000/- per acre*
	Reduced rate charged for the open area Development cost	*Rs.36,000/-*
	Charges now to be recovered for construction of additional building on the open area for starting in Hindi Newspaper	
	Area of vacant land now permitted to be built up X	*(Concessional rate for newspaper press – (minus) rate for land to be kept open already charged)*
		= 0.566 acres x (Rs.1,25,000 – Rs.36,000/-)
		= Rs.50,385/-

		plus 18% interest.

”

109. This amount is being charged as conversion charges for the change of use of 2740 sq. feet open area from open/green area to buildable area for newspaper use. The Court has already held that proper permissions were obtained by Express Newspapers for re-locating the drain and for construction in the said green area. The discussion in paragraphs 9-11 and 74 above would show that initially the building was to be located in the said green area itself. It was only due to location of the drain that the area was shown as green area in the supplemental lease deed dated 17th November, 1964. The said area is not notified green area and was agreed to be kept as green due to compelling circumstances only. Accordingly, the conversion charge as demanded by the Union of India for the said area is allowed but with simple interest @ 18% per annum for a period of approximately 46 years. The amounts payable under this head is, therefore, determined as under:

A. CONVERSION CHARGES			
Principal Amount	**Period**	**Interest @ 18% p.a.**	**Total**
Rs.50385/-	January 1979 to 2025	Rs. 9,069.3 x 46	Rs.4,67,572.8/-

B. Additional Ground Rent

110. Additional Ground Rent (hereinafter '*AGR*') initially in the plaint for the construction on the green space is sought in terms of Schedule B of the Plaint filed by Union of India @ Rs.1260 p.a. as under:

> *"2. Additional ground rent/AGR payable per annum on this amount*
> *= conversion charges for green space x 2 ½%*
> *= Rs.50,385/- x 2 ½% = Rs.1259.6 p. or Rs.1260/- P.A."*

111. The above stated amount is payable from 9th January, 1979. In addition, the Court has today held that the construction of the basements was authorized and there was no misuse. However, Additional Ground Rent would be liable to be paid for the said space. No demand was raised by the time the suit was filed. In view thereof, the Court relies upon the chart which has been handed over by the L&DO wherein Additional Ground Rent is sought for the second basement/mezzanine in the new building @Rs. 2993/- p.a. for 10426 sq. ft. from 29th April, 1982 to 14th January, 2024.

112. Further, Additional Ground Rent would also be payable for the basement area in the new building as claimed by the Union of India @ Rs.2080/- p.a. for14,440 sq. ft. from 29th April, 1982 to 14th January, 2024. Thus, Additional Ground Rent would be liable to be paid for the following three components:

i. for the green space @ Rs.1260/- p.a. from 9th January, 1979 ;
ii. for the second mezzanine/basement @ Rs.2993/- p.a. from 29th April, 1982 along with,
iii. the basement of the new building @ Rs.2080/- p. a. with effect from 29th April, 1982.

113. The amount payable is determined as under:

B1. AGR for Green Space

Principal Amount	Year	Total
Rs.1260/- p.a. along with simple interest at 18% per annum on total amount for 46 years	9th January, 1979 to 9th January, 2025	Rs.5,37,868/-

B2. AGR for Second mezzanine/basement in New Building

Principal Amount	Year	Total
Rs.2993/- p.a. along with simple interest at 18% per annum on total amount for 43 years (approx.)	29th April, 1982 to 9th January, 2025	Rs.11,24,829/-

B3. AGR for basement of the new building

Principal Amount	Year	Total
Rs.2080/- p.a. along with simple interest at 18% per annum on total amount for 43 years (approx.)	29th April, 1982 to 9th January, 2025	Rs.7,81,705/-

114. Thus, the total amount payable towards Additional Ground Rent for all three areas, in terms of the charts filed by the UOI, including the principal amount and simple interest @ 18% per annum is Rs.24,44,402/-

C. Ground Rent

115. Ground rent for the old building, in terms of schedule B of the plaint, as demanded by the L&DO is to the tune of Rs.8177.88/- p.a. The L&DO has calculated the rent payable with compound interest, which in the opinion of this Curt is not liable to be allowed. In addition, in the computation chart, which has been filed by the Union of India, the ground rent is sought to be increased in terms of 2011 Press Plot Policy, which again would not be

applicable in the present case as the old building has always been in the possession of the Express Newspapers and there is no irregularity, unauthorized construction or misuse in the said building. All the issues relating to the old building stand settled by the decision of the Supreme Court on 7th October, 1985 as also adjudicated by way of this judgment. In view therefore, the ground rent that would be liable to be paid, is computed as under:

Principal Amount	**Year**	**Total**
Rs.8178/- along with simple interest at 18% per annum on total amount for 46 years	15th July, 1979 to 9th January, 2025	Rs.34,91,032.64/-

116. The Ground Rent for the building in occupation of Express Newspapers, would have been liable to be paid only on an year to year basis. Hence the UOI has compounded the interest. However, this Court is of the opinion that since all the issues are being re-agitated and were pending adjudication in these two suits for almost 40 years, it would be reasonable, to award interest @18% on the total amount payable for the 46 years. This Court, has accordingly awarded simple interest to the L&DO @ 18% p.a. for 46 years. The gross amount thus payable is Rs.64,03,007.44/-

117. The above amounts have been calculated for ease till January, 2025 and, therefore, the interest has been calculated for approximately 46 years and 43 years. In the opinion of this Court, due to the long period during which the litigation remained pending, awarding of compound interest would be unjust. If the above amounts are paid by 31st December, 2024 by Express Newspapers, no further interest would be liable to be paid. In addition, Express Newspapers may, within four weeks of delivery of this

judgment, apply for conversion of the land from lease-hold to free-hold, which shall be processed and a decision shall be taken by the government by 31st December, 2024. The suit is therefore decreed in the sums as under:

TOTAL AMOUNT PAYABLE BY EXPRESS NEWSPAPERS		
S. No.	**Particulars**	**Amount**
A.	Conversion Charges	Rs.4,67,572.8/-
B.	Additional Ground Rent	Rs.24,44,402/-
C.	Ground Rent	Rs.34,91,032.64/-
Total		Rs.64,03,007.44/-

CONCLUSIONS

118. In terms of the discussion above, the conclusions arrived at in these two suits are summarized, and set out below:

i. the decision delivered by the three Judges Bench of the Supreme Court in ***Express Newspapers (supra)*** is binding on this Court under Article 141 of the Constitution of India. The said decision is not only binding on this Court, but also on all the other government authorities;

ii. the distinction sought to be raised between the judgements authored by Hon'ble Mr. Justice Sen on the one hand and the other two Judges on the other hand, is untenable. The judgement is to be read as a whole;

iii. the stand of the Union of India, that the decision of Justice Sen is merely a minority view, is not tenable;

iv. In the opinion of this Court, to re-agitate already adjudicated issues in the manner as is sought to be done by issuing fresh notices of

termination is in total disregard of the painstaking judgment of the Supreme Court which had already addressed all these issues;

v. post the decision of the Supreme Court, there were only two courses of action available for the Union of India *i.e.*, to raise a demand for conversion charges and additional ground rent along with any reasonable interest or upon failure, to file a suit;

vi. the observations of the Supreme Court are squarely applicable to the notice dated 2nd November, 1987;

vii. The notices dated 2nd November, 1987 to Express Newspapers as also to the tenants were nothing but an attempt by the then Government to muzzle the press and dry up its source of income. The said re-entry notice to Express Newspapers as also the notices to the tenants – both dated 2nd November, 1987 are declared unlawful and illegal. The same are accordingly quashed and set-aside;

viii. Issue wise decision-

Issue No. 1: ***Whether the plaint in suit no. 2480/1987 has been filed and verified and the suit is instituted by duly authorized person. OPP***

The suit *i.e.*, ***CS(OS) 2480/1987*** has been filed by Mr. R.P.S. Pawar, Land & Development Officer, who is the authorized person to file the present suit as per notification dated 1st February, 1996, on behalf of Union of India. [See Paragraphs 64 to 65]

ISSUE NO.1 IS ACCORDINGLY ANSWERED IN FAVOUR OF THE UNION OF INDIA.

Issue No 2: ***Whether the defendant has breached any term of the lease deed dated 17th March, 1958 and supplementary lease deed dated 17th November, 1964? If so, to what effect? OPP***

Issue No. 3: ***Whether the termination of the lease dated 17th March, 1958 by a notice dated 29th September, 1987 or 2nd November, 1987 is in accordance with the terms of the lease and is not arbitrary, discriminatory, mala fide or in violation of the applicable law? OPP***

Issue No. 4: ***Whether the construction carried out by the defendant on the area of 2740 sq. yards on the western side of the plot nos. 9 & 10, Bahadur Shah Zafar Marg is in accordance with law? If not, to what effect ? OPD***

Issue No. 7: ***Whether the notice dated 29th September, 1987 or 2nd November, 1987 have been issued by a duly authorised and competent authority? OPP***

Issue No. 8: ***Whether the construction raised by the defendant on the suit property is in terms of a valid and binding grant by the Union of India? If not to what effect? OPD***

Issue No. 9: ***Whether the defendant is using the suit property for a purpose and use permissible under the lease deed and in terms of a valid and binding grant by the Union of India? If so, to what OPD effect?***

These issues have been decided conjointly by the Court and the conclusions are as under:

i. *Misuse of a portion of the basement in the old building for Newspapers use instead of the permitted use as storage:*

The communications exchanged between the parties as also the concerned authorities are sufficient to hold that the construction and use of basement for Newspaper and machinery use, was fully permissible.

ii. *Unauthorized construction in excess of the area approved by the MCD- allegation that Clause 2(4) of the lease has been violated*

The documents given clearly show that the plans were sanctioned and FAR beyond 300 was permissible in the area. FAR 360 was also confirmed by both the DDA and the Ministry. The allegation that no construction could take place in the western side of the plot, is thus completely not tenable.

iii. *Construction of additional building in the area which was to be kept vacant*

The allegation that there is unauthorised construction contrary to the building plans of MCD is not liable to be entertained, when the same is well within the knowledge of L& D.O and the Ministry.

iv. The Defendant has not breached the lease deed dated 17th March 1958 and supplementary lease deed dated 17th November, 1964, as additional construction was carried out after obtaining requisite permission from the concerned authority

v. The termination of the lease dated 17th March, 1958 by notice dated 29th September, 1987 and 2nd November, 1987 are arbitrary and *mala fide*.

vi. The construction on the western side of the plot nos. 9 & 10 is in accordance with law as it was well withing the knowledge of Ministry and L&DO as Express Newspapers volunteered to contribute the cost.

vii. The notice dated 29th September, 1987 and 2nd November, 1987 were *mala fide* and arbitrary and was never served upon Express Newspapers.

viii. Construction raised by the Defendant on the suit property is valid and binding as the same has been carried out after due permission from the MCD.

ix. The suit property is being used by the Defendant for a permissible purpose, the same has been established through necessary correspondences exchanged between the parties and the concerned authorities to that extent. *[See Paragraphs 66 to 84]*

THIS ABOVE STATED ISSUES ARE, ACCORDINGLY, DECIDED IN FAVOUR OF EXPRESS NEWSPAPERS AGAINST THE GOVERNMENT.

Issue no. 5: ***Whether the action of the plaintiff in issuing the notice dated 29th September, 1987 or 2nd November, 1987 is barred by res judicata? OPD***

The UOI cannot be permitted to re-agitate issues already raised and decided by the Supreme Court in its 1985 decision. Thus, the notice dated 29th September, 1987 and 2nd November, 1987 are barred by *res judicata*. *[See Paragraphs 83 to 85]*

ON THE ABOVE ISSUE, THE DECISION IN EXPRESS NEWSPAPERS & ORS. V. UOI,1986 1 SCC 133 IS FINAL, IRRESPECTIVE OF WHICH OF THE THREE JUDGES RENDERED THE FINDINGS.

Issue no. 6: ***Whether the action of the Union of India in terminating the lease dated 17th March, 1958 and filing the present suit is barred by estoppel? OPD***

The action of termination of the lease is barred in view of the various permissions given by the Ministry and subsequently by the DDA. Whenever permission is accorded by the Government, irrespective of whoever is in power, the same

would bind even subsequent Governments; *[See Paragraphs 86 to 93]*

THIS ISSUE IS, ACCORDINGLY, DECIDED IN FAVOUR OF EXPRESS NEWSPAPERS AGAINST THE GOVERNMENT.

Issue no. 10: ***Whether the plaint in Suit No. 52/1988 has been signed and verified and the suit is instituted by a duly authorized person? OPP***

Suit No. 52/1988 has been duly verified and signed, as board resolution in favour of Mr. P.C. Jain has already been placed on record. *[See Paragraph 97]*

THIS ISSUE IS ANSWERED IN FAVOUR OF THE PLAINTIFF-EXPRESS NEWSPAPERS

Issue no.11: ***Whether the Suit No. 52/1988 is maintainable without compliance of Section 80 of the Code of Civil Procedure? OPP***

Leave to institute a suit has already been granted by the court vide order dated 7th January, 1988. *[See Paragraph 98]*

THIS ISSUE IS DECIDED IN FAVOUR OF EXPRESS NEWSPAPERS.

Issue no. 12: ***Whether the Suit No. 52/1988 has been valued for the purposes of court fee and jurisdiction? OPP***

No additional court fee would be liable to be paid, as Express Newspapers has only sought a declaratory decree and since it is already in possession of the plots, no consequential relief has been sought. *[See Paragraphs 99 & 100]*

THIS ISSUE IS DECIDED IN FAVOUR OF EXPRESS NEWSPAPERS.

Issue no. 13: ***Whether the plaintiff is entitled to recovery for possession of the suit property i.e., Plot Nos. 9 & 10, Bahadur Shah Zafar Marg? OPP***

Union of India is not entitled to possession of the plot nos. 9 and 10 as the two notices by which the lease is terminated are contrary to law as also contrary to the decision of the Supreme Court. [See Paragraph 101]

THIS ISSUE IS DECIDED IN FAVOUR OF EXPRESS NEWSPAPERS.

Issue no. 14: ***Whether the plaintiff is entitled to a decree for the recovery of Rs.3,16,54,831/- towards misuse and mesne profits for the period 29th April, 1982 till 29th September, 1987? OPP***

Issue no.15: ***Whether the plaintiff is entitled to a decree for recovery of Rs.54,85,160/- towards the damages***

for the period 30th September, 1987 to 8th November, 1987? OPP

Issue no.16: ***Whether the plaintiff is entitled to mesne profits at the rate of Rs.14,40,335/- per month with effect from 9th November, 1987?***

Issue no.17: ***Whether the plaintiff is entitled to mesne profits against defendant nos. 2 to 8 at the rate of Rs.27,29,794/- per month for unauthorised occupation of the premises for, the office use of defendant nos. 2 to 8 from 9th November, 1987? OPP***

As per the judgment of the Supreme Court, the only amounts payable by Express Newspapers would be Conversion Charges and Additional Ground Rent. There is no unauthorized construction or misuse and hence no damages for misuse or mesne profits is recoverable by the UOI. Apart from this, Ground Rent is payable for occupying the premises for the last several years when the same was not paid due to pendency of this litigation. *[See Paragraph 102 to 117]*

THIS ISSUE IS DECIDED IN FAVOUR OF EXPRESS NESWPAPERS.

ix. The only charges that are to be paid are conversion charges, additional ground rent and ground rent which is determined as a total sum of Rs.64,03,007.44/- inclusive of interest @18% p.a. for the years when they became due. In the opinion of this Court, due to the long period

during which the litigation remained pending, awarding of compound interest would be unjust.

x. no other charges, damages, *mesne* profits or misuse charges would be liable to be paid as Express Newspapers is not in unauthorized occupation of the property in question and there has also not been any misuse;

xi. The above charges would be in accordance with the judgment of the Supreme Court as observed in paragraph 194.

xii. if the above stated amount is paid by 31st December, 2024 by Express Newspapers, no further interest would be liable to be paid;

xiii. Express Newspapers may, within four weeks, apply for conversion of the land from lease hold to free hold, which shall be processed and a decision shall be taken by the government by 31st December, 2024.

119. Both the suits *i.e.,* ***CS (OS)2480/1987*** and ***CS(OS) 52/1988*** are accordingly liable to be decreed in terms of the decision rendered above and summarized in paragraph 118 as per issues decided and computation determined. Decree sheet be accordingly drawn in terms of paragraph 118. Applications, if any are also disposed of in terms of this judgement.

120. Considering the fact that this litigation has been so long drawn even after the decision of the Supreme Court and the Government sought to again terminate the lease and issue notices for re-entry which are illegal and invalid, costs of Rs. 5 lakhs are awarded to Express Newspapers. The same be paid within one month. Decree sheet be drawn accordingly.

PRATHIBA M. SINGH
JUDGE

AUGUST 30, 2024/*Rahul/dj/ks*