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

Reserved on: 18th February, 2019
Pronounced on: 28th February, 2019

\+ **LPA 10/2019 & CM Nos. 566/2019 & 649/2019**

THE ASSOCIATED JOURNALS LTD & ANR ..... Appellants

Through: Dr.Abhishek Manu Singhvi, Sr. Adv. and Mr.Vivek Tankha, Sr. Adv. with Mr. Devdatt Kamat, Mr. Sunil Fernandes, Mr. Rajesh Inamdar, Ms. Priyansha Indra Sharma, Mr. Arnav Vidyarthi, Ms. Madhavi Khanna, Mr. Nikhil Bhalla, Mr.Prashant, Mr. Ashwin G. Raj, Mr. Varun Chopra and Mr. Nishanth Patil, Advs.

Versus

LAND & DEVELOPMENT OFFICE ..... Respondent

Through: Mr. Tushar Mehta, SG with Mr.Rajesh Gogna, CGSC

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

JUDGMENT

: Rajendra Menon, Chief Justice

1. Seeking exception to a judgment dated 21st December, 2018 passed in W.P.(C) No.12133/2018 by the learned writ Court, this appeal is filed by the petitioner/appellant herein under Clause 10 of the Letters Patent Act read with Section 10 of the Delhi High Courts Act, 1966.

2. The appellant No.1, the Associated Journals Ltd. (hereinafter referred to as 'AJL') is a company which was incorporated on 20th November, 1937 for the purpose of publication of newspapers in different languages, the

main aim for the publications were to propagate the principles and ideologies of the Indian National Congress ('INC'). The appellant No.2, Sh.Nalin Kumar Asthana is the Company Secretary and it is said that he had been authorized by the Board of Directors vide resolution dated 2nd April, 2018 to file this appeal.

3. Facts as have come on record reveal that on 2nd August, 1962 an agreement for lease/memorandum of agreement was entered into between the President of India (hereinafter referred to as 'the lessor') and the appellant company herein (hereinafter referred to as 'the lessee') whereby the lessor agreed to demise the suit land for the purpose of construction on certain terms and conditions as is mentioned therein. Clause XIX of the agreement provide for forfeiture and re-enter upon the premises in case the lessee breeches or commits any default in performance of the agreement. However, Clause XX imposes certain restrictions on the lessor in exercising this right of forfeiture of re-entry inasmuch as the lessee is entitled to a notice in writing specifying the breach complained of and in case the breach can be of remedy, to do so. Facts further reveal that the premises in question was leased @Rs.1,25,000/- per acre for a specific purpose, that is, construction of a 5 storeyed building to enable the appellant company to establish its press and office for publication of the newspaper. It is said that vide letter dated 19th February, 1964, the appellant company expressed its desire for subletting certain portion of the building which according to the appellant was in excess of their requirements for newspaper publication and, therefore, after paying an additional premium of Rs.4,46,536/- sanction for subletting was granted and a perpetual lease in this regard was also executed on 10th January, 1967. Various other terms and conditions were also

incorporated which would be referred to as and when required in the subsequent parts of this judgment.

4. It is further the case of the appellant that Clause III(7) of the perpetual lease dated 10th January, 1967 stipulate the manner in which different floors of the building were to be used and it was agreed to between the parties that the premises shall be used in the following manner:-

(i) Basement and anyone floor of the building shall be used for the purpose of housing the members and the first floor of the building for the press and offices of the lessee for the publication of the newspaper.

(ii) The remaining four floors of the building can be let out to other commercial concerns for housing their office accommodation but cannot be used for the purpose of hotels, cinemas and restaurants etc.

5. It is said that the AJL, even though it was incorporated on 20th November, 1937 but in the year 2002 its Chairman-cum-Managing Director was one Sh.Motilal Vora who also happens to be the Treasurer of All India Congress Committee (hereinafter referred to as 'AICC'). Facts that have come on record further reveal that the AJL was an unlisted publishing company having 1057 shareholders as in the year 2010. The total land allotted to the company was 0.3365 acres and the same was situated on the Delhi – Mathura Road, bearing No.5A, Bahadur Shah Zafar Marg, New Delhi. It is said that sometimes in the year 2009 and, thereafter in the year 2016 it came to the notice of the competent authority, particularly, the

technical team in Land and Development Office that the premises in question was being used mainly for commercial purpose through subletting to various organizations and the premises was not being used for any press or newspaper publication activity. Accordingly, it is said that on 6th September, 2016 a letter was addressed to the appellant company notifying that the premises of the company would be inspected by the officers of the Department on 13th September, 2016. In pursuance to the aforesaid communication, inspection was carried out by the technical team on 13th September, 2016/26th September, 2016 and it is the case of the respondents that on inspection, the team did not find any press activity in the premises. The basement was lying vacant, ground floor and first floor were rented to Passport Office, i.e., Seva Kendra, second floor and third floor were used by Tata Consultancy Services and fourth floor by the appellant company. Annexure-P/9 at page 392 of the paper book is the notice of the inspection dated 6th September, 2016. Annexure-P/10 is the communication dated 9th September, 2016 made to the Land & Development Officer on behalf of the appellant company by Sh.Motilal Vora expressing his inability to be available at the time of inspection on 13th September, 2016 and, therefore, on 9th September, 2016 an intimation is sent by the department to the appellant with regard to inspection of the premises on 14th September, 2016. Further, records indicate that certain communications were made for production of certain documents, like, certified copy of sanction plan, completion plan of the local bodies etc. and finally records indicate that inspections were carried out in the premises in question on 26th September, 2016 and a breach notice was issued on 10th October, 2016 pointing out certain breaches. In the meanwhile on 26th September, 2016 vide Annexure-

P/12, Sh.Motilal Vora is said to have made a communication to the departmental authorities in response to the notice issued on 15th September, 2016 wherein he communicated that the basement and fourth floor of the building are being used for press and offices of the lessee and he was pleased to inform that the appellant has taken steps to resume newspaper publication and with this objective in mind, a Editor-in-Chief has been appointed in August, 2016 and preparations are in full swing to resume publication of the newspaper in the financial year 2016-17.

6. Be that as it may, after the breach notice was issued as indicated hereinabove on 10th October, 2016, the appellant is said to have replied to the same on 19th October, 2016 vide Annexure-P/14. In the communication, the breaches pointed out in the breach notice were referred to and finally a request was made to consider the submissions made in the reply and grant sufficient and reasonable time to study the breaches so as to enable them to file a satisfactory reply.

7. According to the appellant, after this, nothing happened. The departmental authorities slept over the matter for a considerable period of time, that is, about 2 years and all of a sudden on 5th April, 2018 constituted a three-member Committee consisting of Sh.K.K.Acharya, Under Secretary (Vigilance), Ministry of Housing and Urban Affiars; Sh.G.P.Sarkar, Dy. Director, Directorate of Estates and Sh.Rajanish Kumar Jha, Dy. Land and Development Officer to confirm the status of the breach and to inspect the premises on 9th April, 2018 at 11 A.M. It is alleged that on 9th April, 2018, the Committee inspected the premises and in its inspection made the following notings:-

"The floor wise report is as under:-

(A) Basement: The basement was lying more or less vacant. Some scrap materials and an old printing machine, not in working condition, were found lying there. However, front side mezzanine in Basement is being used by Akash Gift Gallery in an area of 84 sq.ft. This comes under misuse category.

(B) Ground Floor: The floor is rented out to Passport Seva Kendra. Apart from this, unauthorised pucca construction used as panel room in rear in an area measuring 1010.03 sq.ft.

(C) First Floor: The floor is rented out to Passport Seva Kendra.

(D) Second and Third Floor: The floors are rented out to Tata Consultancy Services.

(E) Fourth Floor: The floor is being used by the Lessee for its office.

Photographs taken at the premises are also enclosed. "

8. On 7th April, 2018 vide Annexure P/17, the appellant replied to the department with reference to the inspection to be carried out on 9th April, 2018 and made certain submissions. It was their case in the reply that the breaches pointed out in the year 2016 have been rectified, National Herald newspaper is being published from the premises now, unauthorized construction is being studied in detail, efforts are being made to vacate the unauthorized occupants M/s Akash Gift Gallery etc.. It is said that thereafter on 18th June, 2018 a show cause notice was issued to the appellant vide Annexure-P/19 and in this notice various factors with regard to the

breaches which was found by the inspecting team on 9th April, 2018 were pointed out and in this notice it was indicated that the Committee observed that no printing press was functioning anywhere in the premises, no paper stocks were found anywhere and various other factors noted by the inspecting team were communicated to the appellant. The appellant is said to have replied to this notice on 16th July, 2018 vide Annexure-P/20 and communicated that because of financial crisis which was beyond the appellant's control and court decreed VRS, press operation had to be temporarily suspended. The intention was to revive the newspaper and all efforts are being made to revive publication of the newspaper. It was said that the three-member Committee did not visit the area in the basement where the printing press was installed where stocks of paper were also available. It was also communicated in this reply that another press has been installed near the basement now and application for license has been submitted to the competent authority. The fourth floor is being used for publishing activities, namely, print and digital. Thereafter on 24th September, 2018 another show cause notice was issued to the appellant vide Annexure-P/21 and the appellant was directed to show cause as to why premises should not be re-entered by the lessor in exercise of various powers conferred on it by the lease deed. The appellant replied to the same on 9th October, 2018 vide Annexure-P/23 and pointed out that the notice for cancellation of allotment or resumption of the land and re-entry is in violation of the terms of the perpetual lease deed dated 10th January, 1967. Legal proceedings against Akash Gift Gallery are pending, all other rectification and construction has been completed, issues raised with regard to a show cause notice issued by the income tax authorities were also

referred to in the reply and certain legal issues with regard to transfer of the lease by the appellant to another company/entity were addressed in this reply.

9. Be that as it may, it is the case of the appellant that in an arbitrary and illegal manner vide impugned order dated 30th October, 2018, the lease was determined and the primary considerations for doing so as is made out from the order dated 30th October, 2018 are:-

(a) no press or press related activity has been carried out from the premises for the last 10 years,

(b) misuse of land outside the primary purpose for which the lease was granted,

(c) 100% transfer of shares of AJL to another company, namely, Young India which violates Clause III(13).

10. Aggrieved by this order passed by the Land and Development Officer (hereinafter referred to as 'L&DO') on 30th October, 2018 the writ petition in question was filed and the learned writ Court having dismissed the same by the impugned order dated 21st December, 2018, this appeal now by the appellant challenging both the orders dated 30th October, 2018 passed by the L&DO and the order passed by the learned writ Court.

11. Dr.Abhishek Manu Singhvi, the learned Senior Counsel along with Sh.Vivek Tankha, the learned Senior Counsel argued at length and pointed out that the entire action taken by the departmental authorities in passing the impugned order dated 30th October, 2018 and the consequential dismissal of writ petition is contrary to settled principles of law and is unsustainable and is liable to be interfered with.

12. Dr.A.M.Singhvi pointed out that primarily the reason for determination of the lease and the order for re-entry, as is evident from the order passed on 30th October, 2018 are:-

i) No press activity is being carried out in the premises in question.

ii) Total silence or inability of the appellant to point out the extent of circulation of the newspaper published by them.

iii) Transfer of shareholding (100%) from AJL to Young India.

iv) Appellant's failure to demonstrate or to substantiate their contention in the writ petition that the impugned action was vitiated by malafides or ulterior motive, and

v) The writ petition was not maintainable and the remedy if any available to the appellant was to take recourse to the statutory remedy available under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

13. With regard to the first reason enumerated by the learned writ Court, that is, holding that there is no press activity in the demised premises, Dr.Singhvi argued that this finding is totally perverse, contrary to the material and evidence available on record and not at all tenable. He argued that in the first show cause notice issued on 10th October, 2016, based on the inspection conducted on 26th September, 2016, there was no whisper or any allegation made to the effect, no printing/press activity being operational in the premises in question. He referred to the show cause notice dated 10th October, 2016, the reply thereof submitted by the appellant on 19th November, 2016 and emphasized that in the show cause notice such an allegation was never levelled and in fact the allegations levelled pointing out

the breach were entirely different, namely, misuse of the premises to the effect that the basement is rented to one Aakash Gift Gallery and certain unauthorized construction in the ground floor to the extent of 86 sq. ft. and 1010 sq. ft., it is stated that after this notice was issued there was total silence for about two years upto 5th April, 2018 and when the second show cause notice was issued after inspection carried out by a Committee on 9th April, 2018, there was again no whisper about absence of printing activities in the premises. On the contrary, by referring to the inspection report Dr.Singhvi pointed out that the same speaks about existence of vacant space in the basement, availability of scrap material and a old printing machine not in a working condition, existence of an establishment named Aakash Gift Gallery occupying 84 sq. ft. in the front side of the basement, ground floor being rented out to Passport Seva Kendra, unauthorized construction, permanent in nature, used as a panel room in front of the ground floor measuring about 1010.03 sq. ft., the first floor rented out to Passport Seva Kendra, the second and third floors rented out to Tata Consultancy Service and the fourth floor being used for use of the appellant's office. It is emphasized that both in the first and the second show cause notices it was never a case that no printing activity is being carried out. That being the position, it is said that the finding recorded to the effect that there is no printing activity, is totally unsustainable in law and as it was not the foundation for taking action in the show cause notice, therefore, it could not be a ground for determination of the lease. It is said that it was only after on 18th June, 2018, when the fourth show cause notice was issued on 24th September, 2018 that this allegation was made which is also not substantiated on the basis of the material on record. It was emphasized by

him that the allegation of no printing activity being carried out is an afterthought and could not be a ground for determination of the lease.

14. That apart, he took us through various documents and made detailed submissions about the voluminous material produced by the appellants before the authorities concerned indicating the factum about a web edition being published, publication of a weekly newspaper for which printing activities are being undertaken in a press in Noida. Digital version of the newspaper having commenced on 14th November, 2016, on 12th August, 2017 the digital version of "Qaumi Awaaz" in Urdu commenced and digital version of "NavJivan" in Hindi with effect from 28th August, 2017. The weekly newspaper National Herald on Sunday also resumed publication on 24th September, 2017, it was said that it was printed from a press in Noida. Further pointing out instances of 8 similar allottees or lessees being given land on the same street for the purpose of newspaper publication also not actually printing the newspaper in the premises but printing them either in Noida or Shalimar Bagh, it was argued that the newspaper published by the appellant every Sunday was printed from a press in Noida and, therefore, the contention that there is no printing activity in the premises in question is totally perverse and an uncalled for finding. It was argued that merely by getting the printing work done at Noida, the terms and conditions of the lease is not violated, as in the demised premises various newspaper publications related work are being carried out by the editorial staff, reporters etc.

15. He emphasized that when the impugned order was passed on 30th October, 2018 by the L&DO, printing activities and publication of the newspaper both digital and print version as a weekly newspaper had already

commenced and, therefore, on the date when the impugned order was passed, as printing and newspaper publication activities had already commenced there was no occasion to hold that this amounts to a breach of the terms and conditions of the lease. Placing reliance on the judgments in, ***S.Sundaram Pillai vs. V.R.Pattabiraman*** **(1985) 1 SCC 591** and ***Swami Parmatmanand Saraswati & Anr. vs. Ramji Tripathi & Anr.*** **(1975) 1 SCC 790** and Clause VI of the Perpetual Lease, he argued that no forfeiture or re-entry could be effected if the breach is capable of remedy or that remedial steps have already been taken and the breach remedied when the impugned order was passed. Accordingly, it is appellant's case that the ground on which the lease is terminated, that is, not carrying out printing activity or newspaper publication from the premises in question, is wholly unsustainable. He argued that the term 'press' has to be understood *contemporanea expositio* in line with the latest development of technology which includes digital publication and a press cannot be construed in the modern digital era by referring to the conventional or traditional method of printing of a publication. It was emphasized by the learned Senior Counsel that the activity of a press as on date would also include a digital publication and when the overall material on record shows that the digital publication is in progress, a finding recorded with regard to there being no printing activity is unsustainable and perverse.

16. Learned Senior Counsel for the appellant further argued that even if for a moment it is accepted that there was no printing for some time but on the date when the impugned action is taken, publication and printing in the form of digital newspaper having commenced, the finding is unsustainable. He referred to the material available on record to show that in the year 2017,

the company had re-launched its newspaper and in two widely published inaugural ceremonies, one in Bangalore on 12th June, 2017 and another held in New Delhi on 1st July, 2017, the publication of the newspapers had commenced. Accordingly, the first ground alleged was that the finding with regard to no printing activities in the premises in question recorded by the competent authority and approved by the learned writ Court is unsustainable, perverse and a misconceived finding.

17. The learned Senior Counsel then invited our attention to the second ground that weighed with the learned writ Court for holding there to be breach of the terms and conditions of lease, that is, total silence with regard to the extent of circulation of the newspaper published by the appellant company and there being no material to show that any circulation or data are available to indicate the extent of circulation. He took us through various reports available on record to canvass his contention that there are documents to show circulation figures of the newspaper. He referred to the certificates available on record in this regard issued by the Audit Bureau of Circulation's communication dated 7th September, 2018 to indicate that these documents were available and the fact about circulation were brought to the notice of the authorities concerned and in total disregard to these documents action has been taken by holding that there is no circulation or no record or material to show circulation. It was argued that even these documents are totally ignored and given a go-bye and consequently as material available on record has not been considered in its right perspective, the finding in this regard are perverse.

18. The third ground which resulted in the determination of the lease was a finding recorded to say that there has been transfer of shareholding from

the original lessee, AJL to another company, namely, Young India and as it is found that more than 99% of the shares belonging to the appellant company stand transferred to this new company, the appellant company has, in fact, been taken over or hijacked by Young India and this amounts to transfer of the lease for the premises in question coming within the purview of prohibited transfer by any manner otherwise than the mode stipulated in Clause III(13) of the Lease Deed. Dr. Singhvi argued that the said Clause prohibits transfer of the demised premises by sale, mortgage, gift or otherwise. Admittedly, in the present case, there is no sale, mortgage or gift to transfer the premises in question but it has been held that by transferring 99% of the shares of the appellant company to Young India, Young India has become the owner of the premises in question and, therefore, this amounts to transfer of the premises in a manner otherwise than provided in the Clause and the term 'otherwise' being capable of wide imputation, the transfer is hit by the said Clause III(13). At length, detailed arguments were advanced by Dr.Singhvi to say that a company as a juristic person owns property in its name, the property stands in the name of the company, a juristic person and its shareholders have only a right to seek dividends or bonus on their shares, they have no right on the property of the company. It was argued that even if Young India or any other person purchased the share of the appellant company, the appellant company continues to be a company incorporated under the Companies Act and the change in the shareholding pattern would not change the ownership or right to property of the company. Inviting our attention to the judgments in ***Bacha F. Guzdar, Bombay vs. Commissioner of Income Tax- Bombay***, **AIR (1955) SC 74**; ***Vodafone International Holdings B.V. vs. Union of India***, **(2012) 6 SCC 613** **and**

U.P. State Industrial Development Corporation Ltd. vs. Monsanto Manufacturers Pvt. Ltd.*, (2015) 12 SCC 501**, the learned Senior Counsel argued that mere change in the shareholding pattern of the appellant company, if evaluated in the backdrop of a well settled doctrine of *contra proferentem*, would not change the right to ownership of the property by the appellant company and the finding recorded by the authorities and the learned Single Judge to say that change in the shareholding results in change of ownership of the company, according to Dr.Singhvi, is a perverse and illegal finding. He argued by placing heavy reliance on the judgment of ***Bacha F. Guzdar *(supra)* to canvass the legal proposition, that is, a shareholder has got no interest in the property of the company even though he has a right to participate in the profits of the company and to the dividends decided by the company, the interest of the shareholders either individually or collectively does not amount to anything more than a right to profit of the company. A company is a juristic person distinct from the shareholders. It is the company which owns the property and not the shareholders. Referring to the law laid down by the Supreme Court in the case of ***Bacha F. Guzdar*** *(supra)*, the learned Senior Counsel argued that there is nothing in the Indian Law to warrant the assumption that a shareholder who buys share, acquires any interest in the property of a company, a juristic person thereby becoming owner of the property of the company. The acquisition of shares by the shareholders only makes him or gives him a right to share the profits of the company as and when dividends are declared and it does not amount to the shareholder becoming owner of the property of the company. The property of the company still remains with the company, a juristic person, and if such a principle as laid down in

the cases referred to hereinabove are accepted, then the finding to the effect that there is transfer of the lease property and its interest by the appellant company to Young India is an illegal finding unsustainable in law.

19. He also invited our attention to Clause III(13) of the lease, the wordings of the same and by referring to the judgment of ***Monsanto Manufacturers*** *(supra)*, the wordings of the lease agreement contained in the said case prohibiting transfer of the lease referred to in paras-23 and 24 of the judgment and argued that in the absence of there being any specific prohibition in the matter of altering or in any manner changing the shareholding or constitution of the company, there cannot be violation of the condition of the lease and by giving an incorrect interpretation to the words 'otherwise' appearing in the lease agreement, the learned writ Court, according to him, has committed an error.

20. Even though certain grounds were tried to be submitted with regard to malafides or ulterior political motive in taking the impugned action but in fact no substantive or substantial objections were raised in this regard.

21. Finally, it was argued that the impugned action which was subject matter of challenge before the writ Court, namely, the order dated 30th October, 2018 passed by the departmental authorities determining the lease could be challenged only by way of a writ petition, there was no other remedy by which this order could be challenged. Dr.Singhvi argued that under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as 'the PP Act') the impugned order could not be and cannot be challenged. By placing reliance on a judgment of the Supreme Court in the case of ***Express Newspaper Pvt. Ltd.& Ors. vs. Union of India & Ors.,*** **(1986) 1 SCC 133** Dr.Singhvi argued that in Paras-85 and 86 of the

said judgment, Hon'ble Supreme Court has clearly held that for challenging such an order, the remedy available under the PP Act is not applicable and by holding to the contrary the learned writ Court has committed an error. In support of the aforesaid contentions, he invites our attention to the following judgments to say that there was no alternate remedy available and the writ petition was maintainable. The judgments are:-

(i) ***Dwarkadas Marfatia vs. Board of Trustees,*** **(1989) 3 SCC 293**

(ii) ***Whirlpool Corporation vs. Registrar of Trademarks, Mumbai & Ors.,*** **(1998) 8 SCC 1,**

(iii) ***ABL International Ltd. vs. Export Credit Guarantee Corporation of India,*** **(2004) 3 SCC 55**; and

(iv) ***Noble Resources Ltd. vs. State of Orissa,*** **(2006) 10 SCC 236**

22. It was his contention that the learned writ Court by placing reliance on a judgment of the Supreme Court in the case of ***Ashoka Marketing Ltd. & Anr. vs. Punjab National Bank & Ors***., **(1990) 4 SCC 406** has held that the judgment in the case of ***Express Newspaper Ltd.*** *(supra)* will not apply. This, according to Dr. Singhvi, is an incorrect and improper finding and he further argued that the judgments of this Court relied upon by the learned Single Judge to say that the PP Act is applicable, namely, judgments in the case of ***Escort Heart Institute & Research Center Ltd. vs. DDA & Anr.,*** **2007 SCC Online Delhi 1180**; **LPA 970/2004** titled ***DDA vs. Ambitious Gold Nim Manufacturing*** etc. do not lay down the correct proposition. They do not consider the law laid down in the case of ***Express Newspaper Ltd.*** *(supra)* properly and as the law laid down in the case of ***Express Newspaper Ltd.*** *(supra)* applies to the present case, it is argued that the

findings recorded with regard to availability of efficacious remedy under the PP Act is unsustainable. Dr.Singhvi also referred to various factors pertaining to the demised premises, the action taken for evicting Aakash Gift Gallery, reliance placed by the authorities and the learned Single Judge to certain action taken by the Income Tax authorities against the appellant company and tried to argue that none of these factors are relevant for determining the issues, that is, the question of breach or violation of the perpetual lease and by going beyond the issue and various factors which were not at all relevant, the impugned action was taken. He had further argued that in this petition the learned Solicitor General has referred to various facts, particularly, with regard to proceedings initiated by the Income Tax Department in pursuance to a show cause notice issued on 18th June, 2018, the fact about transfer of shares to Young India and various other persons and argued that these factors have not been properly pleaded by filing a detailed counter affidavit. No counter affidavit has been filed and by merely referring to all these factors without filing a detailed counter affidavit, the objections raised by the learned Solicitor General, according to Dr.Singhvi, is unsustainable.

23. It was argued by him that the reference made to most of the facts pertaining to transfer of shares, action taken by the Income Tax authorities and even certain reference made to a judgment of a co-ordinate Bench of this Court in petitions filed being **W.P.(C) 8482/2018** and other connected cases are not at all relevant and should not be taken note of as they have been made without any counter affidavit or relevant material being brought on record. He had also argued that Young India, the company which has purchased the so-called maximum shares of the appellant company is a

company incorporated and having the benefit of Section 25 of the Companies Act and, therefore, the issue of the said company acquiring ownership or transfer of lease to said company is of no consequence and all these factors could not be considered for holding there to be transfer of the premises in question to a different entity. He argued that the authorities concerned while determining the lease on 30th October, 2018 and the learned writ Court while dismissing the writ petition on 21st December, 2018, misdirected itself, did not consider relevant facts and material and in a perverse manner, without application of mind, has proceeded to dismiss the writ petition which is unsustainable.

24. Apart from making oral submissions, the same has been reiterated again in the form of a written submissions submitted by Dr.Abhishek Manu Singhvi wherein following submissions have been made.

25. It is emphasized by Dr.Singhvi that certain facts stated in the list of dates and brief note submitted by the learned Solicitor General with regard to observations made by the Inspecting Committee on 13th September, 2018 is not correct. As the note speaks about inspection on 13th September, 2016 and the show cause notice dated 10th October, 2016 speaks about inspection on 26th September, 2016. In fact, it is emphasized that no inspection had taken place on 13th September, 2016. Strong objections were raised to the fact about the allegation of "No Press Activity" being made only in the fourth show cause notice issued in September, 2018 and total silence about the same in the three prior show cause notices issued on 10th October, 2016, 5th April, 2018 and 18th June, 2018, it is argued that this allegation is nothing but an afterthought.

26. In continuation to this argument Clause VI of the perpetual lease

dated 10th January, 1967 is referred to and it is said that before termination of the lease it was incumbent upon the lessor to give an opportunity of remedying the breach. It was argued that even if it is assumed that for eight years between 2008 – 2016, there was no press activity but when the orders were passed by the authorities on 30th October, 2018 and by the writ Court 21st December, 2018, as the appellant was carrying out full-fledged publication of three newspaper online as well as a print one, that is, the weekly Sunday newspaper. The breach having been rectified in view of Clause XII (6), the forfeiture is unsustainable.

27. Placing reliance on the judgment in the case of ***Bacha F. Guzdar*** *(supra)* and ***Vodafone International Holdings*** *(Supra)*, learned senior counsel emphasized that mere transfer of shares of the company cannot change the ownership of the company and as the right to ownership rests wholly with AJL, this ground is unsustainable. Dr.Singhvi took us through the judgments relied upon by the learned Solicitor General in the case of ***State of Rajasthan vs. Gotan Lime Stone Khanij Udyog (P) Ltd.,*** **(2016) 4 SCC 469** and ***UT, Chandigarh vs. Esys Information Technologies Pte Ltd.*****(2016) 12 SCC 582**, ***DDA vs. Skipper Construction Co. (P) Ltd. & Anr.,*** **(1996) 4 SCC 622** and canvassed a contention about change of ownership, transfer of property falling in the category of transfer by any means 'otherwise' is not a correct proposition of law as the facts in each of the aforesaid cases are clearly different, distinguishable and none of these cases would apply in the facts and circumstances of the present case. The present case is a simple case of transfer of shares without any malafide or ulterior motive. The theory of lifting of the corporate veil have been applied in the cases relied upon by Mr.Tushar Mehta based on the peculiar facts of

those cases and, therefore, they cannot be applied in the present case.

28. As far as the grounds of malafide or ulterior political motive in taking the impugned action is concerned, Dr.Singhvi relied upon the activities of 8 newspaper publishers functioning in the same area who were also not carrying out any printing activity in the area but are getting their newspapers printed in premises or establishments situated in Noida and other places and commercial activities being carried out by them in the premises. It is said that by singling out the appellants for taking action, the malafide intention and ulterior motive of the respondents are clearly made out. The learned Senior Counsel, therefore, submitted that the glaring discrimination and political motive in only singling out the appellants is writ large and, therefore, the grounds of malafide should have been upheld by the writ Court.

SUBMISSIONS OF LEARNED SOLICITOR GENERAL

29. Refuting each and every contention advanced by the appellant, Mr.Tushar Mehta, learned Solicitor General argued that the contentions advanced by the appellant are not correct. The learned writ Court has recorded a proper finding based on due appreciation of the material that came on record and once the facts as have been unfolded establish and make out a case on breach of the lease, the impugned action is in accordance with law and it need not be interfered with. Mr.Tushar Mehta argued that the land was to be used by the appellant company for construction of a building, primarily for the purpose of establishing a press, newspaper publication and for no other purpose. Initially, when the lease was granted on 8th April, 1962, it was clearly stipulated in Clause II(7) that the land shall be used by AJL only for construction of a building for the bonafide purpose of

establishing a press and for the purpose of publication of a newspaper. Thereafter, on request made by the appellant company on 19th February, 1964 certain permissions were granted and a perpetual lease that was entered into on 10th January, 1967 Clause III was incorporated in the following manner:

> "(5) The lessee will not without the previous consent in writing of the lessor or of such officer or body as a lessor may authorize in this behalf make any alternation in or additions to the buildings erected on the said demised premises so as to effect any of the architecture or structural features therefore erect or suffer to be erected on any part of the said demised premises any building other than and except the buildings erected thereon at the date of these presents.
>
> ……
>
> (7) The lessee will not without such consent as aforesaid carry on or permit to be carried on, on the said premises, any business, trade or manufacture which in the opinion of the lessor or such office as he may authorize in his behalf is noisy noxious or offensive, or permit the said premises to be used for any purpose other than the purpose specified below:
>
> (i) basement and the first floor of the building for the press and the offices of the lessee.
>
> (ii) the remaining four floors of the building for letting out to other commercial concerns as office accommodation accepting use as hotels, cinemas and restaurants. Running of a canteen in the building for the bonafide use of the building will, however, not constitute a breach of the covenant.
>
> ….
>
> (13) The lessee shall not be entitled to sub divide the demised premises or transfer by sale, mortgage, gift or otherwise, the said premises or buildings erected thereon or any part thereof without obtaining the prior approval in writing of the lessor or such officers or body as the lessor may authorize in this behalf and all transferees shall be bound by all the covenants and

conditions herein contained and be answerable in all respect therefor."

30. From the aforesaid, it is clear that the purpose for which the permission and the lease was granted is to have a press in the basement or any floor of the building and the other floors could be used for commercial purpose other than restaurant, cinema halls, hotels, etc. except canteen. Even though initially the appellants were to use the basement and the first floor for press and its office but subsequently on a request made by the Chairman of the company Sh.Motilal Vora on 13th April, 2011 certain modifications were made and the basement and any one floor was permitted to be used for press and office and the remaining four floors for letting out to other commercial concerns as office accommodation only. Sh.Tushar Mehta argued that when inspection took place initially in the year 2016, that is, on 26th September, 2016 the inspecting team did not find any printing or press activity in the premises. On 26th September, 2016, Sh.Motilal Vohra had sent a communication, the learned Solicitor General refers to the admission made by Sh.Motilal Vohra in this letter to say that the press activity was to commence only from 2016 - 2017 and certain admissions from the replies and documents to say that between 2008 till inspection took place on 26th September, 2016 there was no press activity in the premises in question. He argued that after the breach notices were issued and when the inspection took place on 9th April, 2018 by the Three - Member Committee, even at that point of time no press activity was being carried out and these factors were brought to the notice of the appellants when the subsequent show cause notices were issued to them after inspection being carried out. He argued that the admitted position that have come on record on a cumulative reading

of the replies of the respondent and the material available on record would clearly show that in the premises in question right from the year 2008, no printing activity or newspaper publication had taken place. All the employees working in the press were given VRS and it was only after the inspection and the notices issued in the year 2016 that press activity commenced.

31. Sh.Tushar Mehta argued that the dominant purpose for which the lease was granted is for establishing a printing press and publishing a newspaper. Admittedly for a long period of time, that is, for more than 8 years, no printing or press activity had taken place. It is appellant's own admission that VRS was granted to the employees and it was only on 14th November, 2016 that the digital version of the newspaper National Herald in English commenced. He argued that between the period when the press was closed and the printing activity suspended, except using the premises for commercial purpose and taking advantage of the rent received, the purpose for which the lease was granted was frustrated. This is the breach and for this breach if the impugned action is taken, the contentions advanced by Dr.Singhvi is unsustainable. He took us through various documents available on record and emphasized that there was no publication of the newspaper and the printing press was non-functional during the period 2008-2016. It was only after the first notice for inspection was issued in September, 2016 that the respondents to pre-empt any action being taken by the authorities, restarted the printing activity as is evident from the reply submitted by Sh.Motilal Vora on 26th September, 2016. He argued that once when the inspection took place in September, 2016, there was breach of the terms and conditions of the license inasmuch as no printing activity was

being carried out and when the entire action continued after this inspection and issuance of show cause notice on 10th October, 2016 by issuance of the second, third and fourth show cause notice, opportunity of hearing and culmination on 31st October, 2018 by passing of the impugned order, the action taken has to be considered as a continuing action based on various inspections and the show cause notices issued. Sh.Tushar Mehta argued that the contentions of the appellants that in the first two show cause notices issued, there was no mention of press activity being discontinued and, therefore, it could not form the basis for holding that there was a is wholly misconceived. It was his contention that the appellants were aware of this breach, that is why when the first show cause notice and inspection was to be conducted on 26th September, 2016 a mention was made about starting of the printing press in the year 2016 - 17 and in reply to the show cause notices submitted the factum about the press activity commencing with publication of the web-edition and the daily weekly newspaper 'National Herald' on Sunday from 24th September, 2017 are stated which goes to show that there had been breach which was continuing from 2008 upto the stage when the proceedings for taking the impugned action commenced and all this being a continuous action, he argued that the contention of Dr.Singhvi to the effect that on 31st October, 2018 there could not be any breach as all the breaches were rectified is a misconceived argument which cannot be accepted.

32. As far as the ground of there being silence to the extent of circulation and evidence about circulation are concerned, Sh.Tushar Mehta argued that the finding recorded by the learned writ Court in this regard is based on the facts that came on record merely to show that after issuance of the show

cause notice action was to be taken, the appellant somehow to pre-empt any action being taken, created the situation to show or to build up a case of commencement of press activities and produce certain certificates just to show about circulation, these were only produced to somehow pre-empt action being taken but do not reflect the correct picture.

33. As far as the question of transfer of shareholding and Young India being made the shareholder to the extent of 99% of the shares are concerned, Sh.Tushar Mehta made detailed submissions before us and emphasized that the theory of 'lifting of the corporate veil' has to be applied in this case and the purpose of the transaction of share transfer has to be considered by this Court and then a decision taken.

34. Learned Solicitor General invited our attention to certain facts which he pointed out are reflected in the proceedings held before this Court in certain tax matters involving shareholders of the appellant company and the Income Tax authorities and argued that a company named and styled 'Young India Ltd.' was founded on 23rd November, 2010. The registered address of this company was also shown as 5-A, Bahadur Shah Zafar Marg, namely, the premises in question. He argued that on 23rd October, 2010 when Young India was founded, 5-A, Bahadur Shah Zafar Marg was the premises in possession of the appellant but surprisingly it also constitutes the registered address of another company, namely, 'Young India Ltd.'. 'Young India' had an authorized share capital of 5,000 shares of Rs.100/- each valued at Rs.5 lakhs and the paid up share capital was 1,100 shares of Rs.100/- each valued at Rs.1,10,000/-. At the time of incorporation, Young India had two shareholders, namely, Sh.Sam Pitroda and Sh.Suman Dubey, both having 550 shares each of the face value Rs.100/- each. It is argued

that All India Congress Committee ('AICC') claimed to have lent a sum of Rs.90.21 crores to AJL and as on 15th December, 2010, it was said that AICC was entitled to receive this amount from the appellant company. On 13th December, 2010, Sh.Rahul Gandhi was inducted into Young India as its member and immediately after three days, on 16th December, 2010 AJL made a book entry in its accounts by substituting Young India in place of AICC as the entity entitled to recover the debt of Rs.90.21 crores. Sh.Tushar Mehta argued that all of a sudden on 16th December, 2010 Young India acquired the right to recover this amount from the appellant company. On 28th December, 2010, a deed of assignment was executed by which the Indian National Congress/All India Congress Committee assigned its right to recover Rs.90.21 crores to Young India Ltd. for a consideration of Rs.50 lakhs. The effect of this assignment was that Young India gets a right to recover Rs.90.21 crores for a meagre consideration of Rs.50 lakhs. Within a month of this assignment, according to Sh.Tushar Mehta, on 22nd January, 2011, Sh.Rahul Gandhi, Smt.Sonia Gandhi, Sh.Oscar Fernandez and Sh.Motilal Vora became shareholders of Young India and the share position of Young India Ltd. on 22nd January, 2011 changes and becomes as under:

Smt.Sonia Gandhi	Becaem a share holder getting 1900 shares (38%) @ Rs.100/- each. Fresh allotment of shares = 1350 Sh.Suman Dubey transferred = 550 shares.
Sh.Rahul Gandhi	Was a Director since 13.12.2010 Became a share holder of 1900 shares (38%) @ Rs.100/- each.
Sh.Motilal Vora	Became a share holder getting 600 shares (12%) @ Rs.100/-

Sh.Oscar Fernandez	Became a share holder getting 600 shares (12%) @ Rs.100/- each. Fresh shares allotted = 50 shares Sh.Sam Pitroda transferred = 550 shares

35. Consequently, Sh.Suman Dubey and Sh.Sam Pitroda by transferring their shares move out of Young India and Young India becomes a company with four new shareholders. On 26th February, 2011, that is, about a month thereafter, the Associated Journals Ltd., the appellant herein, in order to repay its loan of Rs.90.21 crores to Young India transferred 99% of shares to Young India and, therefore, it is the case of Sh.Tushar Mehta and he emphasized on the same to say that by this device Young India became shareholders entitled to the beneficial interest of appellant company's property worth Rs.413.40 crores as on that day. It was when all these transactions came to light that a notice was issued by the Income Tax Department to Young India and thereafter, notices to the individual shareholders of Young India with regard to re-opening of assessment of tax. Sh.Tushar Mehta argued that this Court should take note of these transactions, apply the principle of 'lifting of the corporate veil' and then considered the question of as to who is the actual beneficiary of all these transactions, whether the premises in question still continues to be in the ownership of AJL and what is the effect of all these transactions. He argued that even though the judgments in the case of ***Bacha F. Guzdar*** *(supra),* ***Vodafone International Holdings*** *(Supra), etc.* lays down the legal proposition as canvassed by Dr.Singhvi but if the transaction as detailed by him hereinabove, the short period within which the entire transaction took place, the nature of transaction and the theory of lifting of the corporate veil

is applied, this Court would find that technically the entire lease-right to enjoy the property stands transferred and it is because of this reason that the learned writ Court emphasized that the manner in which the transfers took place to say that the *modus operandi* employed for transferring the property falls in the category of 'otherwise' as Young India has taken over, for all practical purposes, the entire right to enjoy the property of the appellant. He argued that this transfer is termed by the learned writ Court as a clandestine transfer suspicious in nature and, therefore, a devise to transfer the property and its enjoyment which falls in the category of 'transfer otherwise than by way of sale, mortgage or gift'. Sh.Tushar Mehta argued that the principle of 'lifting of the corporate veil' is a recognized principle not only to unveil tax evasion but is also a device which should be used by the Court, in the interest of justice, for protection of public interest which is of paramount importance and corporate entities, in an attempt to evade legal obligations or to acquire right to property, contrary to public policy or interest and, therefore, the theory of 'lifting of the corporate veil' is necessary to prevent and avoid unscrupulous activities by corporate entities. He referred to certain observations made in the case of ***Gotan Lime Stone Khanij Udyog*** *(Supra)* to say that when a corporate personality is being blatantly used as a cloak for fraud or improper conduct and when protection of public interest is of paramount importance and when a company has been formed to evade obligations under law or even for the purpose of taking undue advantage of certain situations, doctrine of the lifting of the corporate veil can be invoked in public interest and should be invoked and according to Sh.Tushar Mehta this is a fit case where the said doctrine should be implemented.

36. In support of his contention on this issue, he referred to the following judgments apart from ***Gotan Lime Stone*** *(Supra),* they are ***Esys Information Technologies Pte Ltd.****(Supra)*, ***Skipper Construction Co. (P) Ltd.*** *(Supra),* and ***Arcelormittal India Private Ltd. vs. Satish Kumar Gupta & Ors.,*** **2018 SCC Online SC 1733** to say that if the theory of lifting of the corporate veil is applied in the facts and circumstances of the present case, it would be clear that the order passed by the authorities and the writ Court, impugned in this appeal, is in accordance with the requirement of law. He had further pointed out that the dominant purpose for which the lease was granted having been frustrated, determination of the lease was proper. In support of his contention with regard to the dominant purpose theory, he referred to the following judgments:-

i) ***Allensbury Engines Pvt. Ltd. vs. Ramkrishna Dalmia & Ors.,*** **(1973) 1 SCC 7**

ii) ***Boddu Narayanamma vs. Venkatrama Aluminium Co. & Ors.***, **(1999) 7 SCC 589**

iii) ***Precision Steel & Engineering Works & Anr. vs. Prem Deva Niranjan***, **(2003) 2 SCC 236**

iv) ***Waller and Son Ltd. vs. Thomas***, **(1920) 1 KB 541**

v) ***Feyereisel vs. Turnidge***, **1949 F. 614**

vi) ***T. Dakshinamoorthy vs. Thulja Bai & Anr.***, **CMP No.4955/1950, Madras High Court**

37. With regard to the non-grant of time for rectification, the same has been addressed by the respondents primarily in their written arguments and with regard to the fact of not mentioning anything about no press activity in the first three show cause notices, it is the case of the respondents that even after the first show cause notice was issued to the appellants after inspection

on 26th September, 2016 in the reply submitted by Sh.Motilal Vora on 26th September, 2016 certain facts are stated to indicate that the press activity would start in the year 2016-17. This, according to the respondents, was an admission by the appellants that no printing activity was going on in the area. That apart, it is the case of the respondent that the action in question is not taken based on any isolated show cause notice issued or inspection conducted. It is based on the cumulative effect of show cause notices issued to the appellants on 10th October, 2016, 5th April, 2018, 18th June, 2018 and on 24th September, 2018, if the replies filed by the respondents to these show cause notices of 19th November, 2016, 7th April, 2018, 16th July, 2018 and 9th October, 2018 are read together it can clearly be seen that the respondents were aware of the allegations of no printing activity being carried out in the premises and they have admitted in their reply that the digital version of the newspaper in English commenced on 14th November, 2016. The digital version of Urdu newspaper 'Qaumi Awaz' on 20th August, 2017, the digital version of Hindi edition of 'Navjivan' on 22nd August, 2017 and the hard print version of weekly newspaper 'National Herald' on Sunday was resumed from 24th September, 2017. It was emphasized by Sh.Tushar Mehta that these admissions by the appellants themselves indicate that for the period between 2008 upto 2016, that is, till 14th November, 2016 there was no publication of any newspaper or printing of any newspaper and if the concept of publication of printing of newspaper is seen in the backdrop of these facts, the action taken is appropriate and does not call for any interference.

38. The learned Solicitor General referred to various material available on record and argued that when the dominant purpose for which the land was

given and the permission accorded for construction of the building was for publication of the newspaper, merely, because the publication of the newspaper commenced after action was proposed to be taken and in fact was initiated for breach, the same will not amount to there being press activity in conformity with the lease. It was his submission that in recording a finding that there had been no press activity in the premises based on totality of the circumstances, the writ Court has not committed any error.

39. With regard to non-grant of opportunity of rectification, learned Solicitor General argued that for long years there has been continuous breach of the terms and conditions of the lease and if after the breach was pointed out and when action was being taken for breach, a mere formal rectification of a small part of the breach in the facts and circumstances of the case will not bring the case within the purview of Clause XIII (6). It is argued by him that the appellants could take advantage of Clause XIII (6)(b) only if the breach was for a short period and rectified immediately on being pointed out. In this case, the breach was not only continued for a long period of time and even the rectification done, in the facts and circumstances, is only a farce or an act on the part of the respondents to pre-empt action for breach. Even the certificates issued by the Audit Bureau of Circulation on 7th September, 2018 available at pages-677-679 of the paperbook would show that they pertain to the circulation figures for January – June, 2018 and not prior to that and these certificates further reveal that between the period January – June, 2017 and July – December, 2017, the appellants were not even members of the Audit Bureau of Circulation. It is argued by learned counsel for the respondents that these certificates do not help the appellants in overcoming the impediment of non-

compliance with the terms and conditions of the lease during the subsistence of the lease deed. He further argued that the principle applicable in the matter of a lease for tenancy in a dispute between the landlord and the tenant and the breach complained of being rectified in those cases will not apply in the facts and circumstances of this case where public property is misused for a long period of time in contravention of the terms and conditions of the lease deed.

40. As far as the grounds of malafides are concerned, Sh.Tushar Mehta argued that the contention of the appellant about malafides are not established from the material available on record and merely on the ground of discrimination vis-à-vis the appellant and other lease holders, malafides are not made out. He argued that on the same set of circumstances and on same allegations against one of the defaulters M/s Patriot House action has been taken. Even otherwise, negative equality cannot be claimed by the appellants and once breach on the part of the appellant is established, they cannot say that in the case of certain other lease holders, the breach is ignored, therefore, there is discrimination. He argued that in the case of the appellants, the breach complained of is very serious in nature, particularly, the grounds with regard to clandestine transfer of the property to a new company which is established on applying the theory of lifting of the corporate veil and, therefore, there is no question of discrimination or malafides in the matter. He further argued that except for saying and objecting to the non-filing of the counter affidavit, the appellants do not repudiate or deny the factual assertions that were made by the respondents during the course of hearing based on the show cause notice issued by the Income Tax Department and the facts as have been detailed by a coordinate

Bench of this Court in W.P.(C) No.8482/2018 & other connected matters. Sh.Tushar Mehta argued that he has not relied upon the principle of law or finding recorded in the said writ petition by the Division Bench but he only relies upon the factual assertions made with regard to the shareholding of the petitioner/appellant, National Herald, Young India, loan of more than Rs.90 crores advanced, its repayment in a manner alleged and transfer of shares etc. He points out that all these facts narrated by him at the time of hearing are contained in paras-2 to 5 of the order passed in W.P.(C) No.8482/2018 and merely if judicial notice is taken of these facts by this Court based on the facts recorded by a co-ordinate Bench of this Court, in the absence of categorical or specific denial of the same by the appellants or contending that these are false or incorrect fact, there is nothing in law which debars the respondents from canvassing these aspects of the matter only for the purpose of applying the principle of lifting of the corporate veil to understand the *modus operandi* about transfer and the reason which weighed with the respondent to say that there is transfer of the property to a third person to attract the provisions of Clause III(13) of the lease and to bring the transfer within the ambit of a prohibited transfer.

41. Sh.Tushar Mehta further invited our attention to the perpetual lease agreement and argued that the lessee is not entitled to transfer by sale, mortgage, gift or otherwise, the premises or the building erected thereupon without prior approval in writing and a similar clause in the a lease agreement was considered by a co-ordinate Bench of this Court in the case of ***Escorts Hearts Institute & Research Centre Ltd. vs. DDA & Anr.,*** **(2007) SCC Online Delhi 1180** and in para-10 of the said judgment, an identical Clause, that is, Clause XV is reproduced in para-10. Accordingly,

he argued that the transfer being contrary to the terms and conditions of the lease, in so holding, the learned writ Court has not committed any error. Sh.Mehta further submits in his written arguments that the contention of Dr.Singhvi to say that the judgments in the case of ***Gotan Lime Stone*** *(Supra)*, ***Esys Information Technologies*** *(Supra)* and ***Arcelormittal India Private Ltd.*** *(Supra)* will not apply in the facts and circumstance of the present case and is wholly misconceived. He argued that there may be some difference in the fact but the principles laid down therein as has been canvassed by him will apply in totto so far as giving effect to the doctrine of lifting of the corporate veil is concerned.

42. Finally, he addressed the last issue pertaining to applicability of the provisions of the PP Act and non-applicability of the decision in the case of ***Express Newspaper Ltd.*** *(supra)*. He argued that the law laid down in the case of ***Express Newspaper Ltd.*** *(supra)* has been considered by a Constitution Bench in the case of ***Ashoka Marketing Ltd.*** *(Supra)* and by reading together the observations and the principles laid down by the three judge Bench judgment of the Supreme Court in the case of ***Express Newspaper Ltd.*** *(supra)*, that is, paras-85 and 86 relied upon by Dr.Singhvi and inviting our attention to paras-30 and 32 of the judgment rendered by the Constitution Bench in the case of ***Ashoka Marketing Ltd.*** *(Supra)*, argued that this case would fall under second part of the definition of the expression 'unauthorized occupant' as contained in Section 2(g) of the PP Act and its interpretation made in para-30 and 32 by the Constitution bench clearly shows that the provisions of the PP Act will apply in a case like the present one where the lease has been determined. He further argues that coordinate Benches of this Court in the case of ***Escorts Hearts Institute &***

Research Centre Ltd.*(Supra)*, ***DDA vs. Ambitious Gold Nim Manufacturing*** *(supra),* ***DDA vs. Parsu Ram*** **(2007) 96 DRJ 548** having upheld the principle laid down in the case of ***Ashoka Marketing Ltd.*** *(Supra)* and having approved it, the learned writ Court has not committed any error in holding that the petition was not maintainable and the impugned order could be challenged in a statutory proceedings under the PP Act.

43. Sh.Tushar Mehta invited our attention to the judgment in the case of ***Ashoka Marketing Ltd.*** *(Supra)* and the observations made in para-34 thereof and submitted that the scheme of the PP Act and the Rules have been considered in paras-33 and 34 by the Hon'ble Supreme Court to contend that the law laid down in the case of ***Ashoka Marketing Ltd.*** *(Supra)* clearly provides that the PP Act can be invoked in the present case.

44. Accordingly, Sh.Tushar Mehta argued that in the facts and circumstances of the present case, the order passed by the learned writ Court which is based on due appreciation of the evidence and material that came on record, does not call for any reconsideration now. Concurrent findings both on questions of fact and law having been recorded by the departmental authorities while passing the order dated 30th October, 2018 and by the learned writ Court in the impugned order does not call for any interference now at this stage in these appeals. Letters patent appeals are nothing but exercise of powers akin to one available to this Court under Article 226/227 of the Constitution of India, therefore, a reasonable finding recorded in the facts and circumstances of the case cannot be interfered with by this Court in exercise of jurisdiction under Clause 10 of the Letters Patent Act. Accordingly, he prays for dismissal of this appeal.

45. We have heard the learned counsel for the parties at length and we

have also gone through the written submissions filed by them.

46. Before adverting to consider various questions as have been submitted before us based on the questions formulated by the learned Senior Counsel as are detailed hereinabove, we, at the very outset, deem it appropriate to address the objection raised by Dr.Singhvi to the effect that formal notices were not issued either by the writ Court or by this Court and no counter affidavits have been field by the respondents and the respondents have tried to bring on record various factual matrix without there being any counter affidavit on their part. We find that the aforesaid submission is devoid of merits and should not detain so long for the simple reason that most of the facts that have come on record are based on the show cause notices issued to the appellant and their replies to the same. These are material on record arising out of the proceedings held before the L&DO and even if they are not stated in the form of a counter affidavit, we can take judicial notice of the same as the appellants themselves have brought them on record in the voluminous paper book filed. As far as the assertion made with regard to the transfer of shares of AJL to Young India and the share holdings of Young India and various other issues connected thereto are concerned, they are based on certain facts stated in the show cause notice issued by the Income Tax authorities on 15th June, 2018 and even if show cause notice is ignored, they do form part of the facts stated by co-ordinate Bench of this Court while deciding three writ petitions decided on 10th September, 2019, that is, W.P.(C) No.8482/2018 and other connected matters which were filed by the shareholders of Young India while challenging the action taken by the Income Tax authorities. There is no whisper or serious challenge to these factual aspects by the appellant. They do not say, even orally, that

these facts stated and relied upon by the respondents are false, incorrect, fabricated, untrue etc. They only say that certain facts have been stated without filing a counter affidavit. If the facts so stated, cognizance of which have been taken by the writ Court, are based on materials available in proceedings held before the L&DO and by a co-ordinate Bench of this Court in a writ petition, we see no reason as to why we cannot take cognizance or judicial notice of these facts and proceed to consider them for deciding the *lis* in question, particularly, when there is no specific or categorical denial of them even orally before us at the time of hearing. Accordingly, we are not impressed by the submissions by Dr.Singhvi to say that as no counter affidavit has been filed, therefore, most of the facts stated by Sh.Tushar Mehta should not be taken into consideration.

47. Having held so, we may now proceed to address each issue canvassed before us in seriatim as have been narrated hereinabove.

NO PRESS ACTIVITY

48. The first objection of the appellants were to the finding recorded by the learned writ Court in the impugned order passed on 22nd December, 2018 pertaining to there being no press activity in the premises in question, that is, finding in para-17 of the impugned order. The facts that have come on record clearly shows and it is an admitted position if we analyse the show cause notices issued to the appellants on 10th October, 2016 replied to the same on 19th November, 2016, the second show cause notice dated 5th April, 2018, the third show cause notice dated 18th June, 2018 and the fourth show cause notice dated 24th September, 2018 and the series of replies filed by the appellants on 19th November, 2016, 7th April, 2018, 16th July, 2018 and 9th

October, 2018 along with the communication made by Sh.Motilal Vora on 26th September, 2018 available at page-406 of the paperbook that between the period from the year 2008 to 2016, the appellant themselves admitted that there was no publication of the newspaper from the premises in question or from any other place and it was only after the inspection of the premises was conducted for the first time on 26th September, 2016 that indication was made about commencement of newspaper publication for 2016 - 2017.

49. In this regard, we may take note of the communication made by Sh.Motilal Vohra on 26th September, 2016 at page-406 of the paper book. In this communication reference is made to an inspection noticed dated 15th September, 2016 and it indicates that one Sh.Ravi Dayal is authorized to be present as a representative of AJL at the time of inspection at 11 A.M. on 26th September, 2016. That apart, as requested in the notice issued, certified copies of the sanctioned plan and occupation certificates were also submitted with this letter. The letter further states that the basement and the fourth floor of the building are being used for press and offices of the lessee and surprisingly the letter further says "I am pleased to inform you that the Associated Journals Ltd. has taken steps to resume newspaper publication. Towards this objection an Editor-in-Chief was appointed in August, 2016" and the letter further says that preparations are in full swing to resume publication of the newspaper in the current financial year 2016-17. Referring to this letter, the learned Solicitor General had argued that this letter was written only for pre-empting the authorities so that they are not surprised if no printing activities are found in the premises. In fact, Sh.Tushar Mehta is right in contending that this was an attempt by the appellants and, in fact, an admission by them that no printing activity was

being carried out in the premises at that point of time. That apart, when we go through the four show cause notices available on record issued on 10th October, 2016, 5th April, 2018, 18th June, 2018 and 24th September, 2018 and the reply filed thereto, we find that various breaches were pointed out in all these show cause notices and they were replied to by the appellant company and the cumulative admitted position that can be made out from the reading of these documents are as under.

50. When the premises was inspected on 26th September, 2016, no press activity was being carried out in the area. Press activity and publication of the newspaper was suspended right from the year 2008 and all the employees were granted VRS. After the communication dated 26th September, 2016 was made by Sh.Motilal Vohar digital publication of the English Versions of the newspaper, National Herald commenced from 4th November, 2016.

51. Digital version of Urdu edition Qaumi Awaz commenced on 12th August, 2017. Digital version of Navjivan, that is, Hindi version commenced on 28th August, 2017 and the print weekly newspaper, National Herald Sunday resumed publication from 24th September, 2017 and it is the case of the appellants that these newspapers were printed in a press at Noida. Finally the printing of Hindi weekly newspaper Navjivan commenced publication on 14th November, 2018 and the necessary license and authorization for the purpose of publication indicated hereinabove was granted by the Registrar of Newspapers for India on 21st November, 2017 available at page-581 is a certificate of registration issued by Sh.K.Ganeshan, Registrar of Newspaper for India giving registration certificate for a newspaper titled 'National Herald Sunday' Accordingly it is

clear that publication of the newspapers commenced after a gap of eight years as is indicated hereinabove. If this is the factual position, it can very well be concluded that on 26th September, 2016 when the first inspection took place, admittedly, there was no printing of press or publication activity and the digital versions in English commenced publication only on 14th November, 2016, that is, about one and half month after the inspection took place on 26th September, 2016. Even though in the breach notice dated 10th October, 2016, there is no mention of there being no press activity but the admitted position is that when this notice was issued on 10th October, 2016 after inspection on 26th September, 2016 and the admission of Sh.Vohra on 26th September, 2016 that there is no printing activity, three other show cause notices were issued as have been detailed hereinabove and in the final show cause notice issued, that is, 24th September, 2018 before taking the impugned action there is a mention about no press activity being carried out in the premises when the first inspection was ordered on 26th September, 2016.

52. Contention of Dr.Singhvi was that in the first show cause notice issued there is no breach with regard to printing activity. It was only in the fourth show cause notice that the breach was pointed out and, therefore, this breach being not a breach indicated in the show cause notice, action should not be taken on this ground treating it to be violation of a condition of the lease.

53. If we go through the detailed order passed by the competent authority which was impugned in the writ petition dated 30th October, 2018, we find that the impugned action has been taken not based only on the show cause notice dated 10th June, 2016, the impugned action is taken based on four

show cause notices issued, all the replies and documents submitted by the appellants and after taking note of the totality of the facts and circumstances that came on record based on a combined analysis and scrutiny of all the four show cause notices and their replies, the breach has been recorded. The breach had been continuing right from the year 2008 till commencement of the digital publications on 14th November, 2016 and, therefore, if action is taken by holding that there has been violation of the terms and conditions of the lease deed for a period of more than 8 years and that only to retain the building and to pre-empt the respondents from taking any action, the so-called digital publications and weekly publications were commenced after inspection conducted on 26th September, 2016 is taken note of, we have no hesitation in holding that the breach of there being no printing activity or paper publication for a long period is established and this would mean and comes within the purview of breach of the terms and conditions of the license. The principles of law canvassed by the learned Senior Counsel appearing for the appellant and laid down in the case of ***S.Sundaram Pillai*** *(Supra)* and ***Shrikrishna Oil Mill vs. Radhakrishan Ramchandra,*** **(2002) 2 SCC 23** pertaining to tenancy law cannot be applied in a case like this where the lease of government properties is granted to an organization or an establishment to carry out a specific act or purpose and if for a long period of time, the said purpose is not carried out and when there is a breach which even though to some extent may have been rectified when the proceedings for breach were going on, in our considered view, cannot be a ground for holding that the breach has been rectified in full and, therefore, there cannot be determination. It is the case where admittedly printing activities and publication of the newspaper were not being carried out in the premises

when the inspection took place initially on 26th September, 2016 and even when the second inspection took place on 9th April, 2018 what was found was that the basement was lying more or less vacant and the fourth floor was being used for lessee for its office. The appellants may be right in saying that on 9th April, 2018, the weekly both Hindi and English were being published from the office at Noida and the office was functional on the fourth floor but on the appellant's own showing both these newspapers, namely, weekly in Hindi and English commenced on 24th September, 2017 and 14th October, 2018 respectively and if finding there to be no press activity for a long period of 8 years a finding is recorded that there has been breach of the terms and conditions of the lease, we see no reason to hold that the finding recorded is not proper.

54. The terms and conditions of the lease stipulated that the land shall be used by the appellant for the purpose of construction of a building for the bonafide purpose of their press and, thereafter, requests have been granted inasmuch as four floors could be used for commercial purpose for housing commercial offices except hotels, cinemas and restaurants but the basement and the 4th floor were to be used for press and office. Admittedly, if not for the entire period, for a long period of time, that is for 8 years there was no press acivity and the premises was used only for commercial activity if after examining the totality of circumstances, the lease is determined on recording a conclusive finding to the effect that no press has been functioning in the said premises for 8 or 10 years and is being used only for commercial purpose which violates a clause of the lease agreement, we see no reason to hold that the findings recorded for determining the lease and approved by the learned writ Court is a perverse and incorrect finding. The fact of lack

of printing press alleged and the finding recorded is a proper finding based on the facts and circumstances of the present case and merely because after the actions were initiated by inspection and issuance of show cause notice on 26th September, 2016 and 10th October, 2016 if some publication activity both in the form of digital or printing is carried out that would not debar or prevent the respondents from determining the lease finding the same to have been breached continuously at least for a period of 8 years and accordingly, we see no reason to uphold the first objection raised on various grounds as are discussed hereinabove.

RE-ENTRY CLAUSE

55. As far as the contention of the appellant to the effect that once the defects having been rectified and, therefore, the appellants are entitled to the benefit of the re-entry is concerned, if we peruse the breach complained of, it would be seen that the action for determining the lease was undertaken on the basis of following allegations that have been made out on a cumulative reading of various breaches indicated in the four show cause notices. The alleged breaches are:

(a) misuse of land with reference to the basement being used by Aakash Gift Gallery,

(b) Unauthorized construction on the ground floor and first floor,

(c) transfer of the lease unauthorizedly to a third entity, and

(d) no press or printing activity being functional in the area.

Except for contending that the paper publication has commenced and the breach with regard to printing activity has been rectified by publication of the newspaper in the form of a

web edition and by printing in the Noida press, other breaches with regard to misuse of the land and unauthorized constructions having been taken place is not rectified and if the allegations of transfer of 100% shares of the appellant company to Young India has the effect of transfer of the lease as contemplated under Clause III(13) is accepted then the right for re-entry would not be available as these breach still continue to exist.

REGARDING CIRCULATION

56. The next issue is with regard to the alleged silence to the extent of circulation. Even though the authorities and the learned Single Bench have held that there is no substantial evidence of circulation. The evidence adduced by the appellant vis-à-vis the certificates produced by the Audit Bureau of Circulation, when taken note of, they pertain to the period much after the show cause notices and the proceedings for determination took place and, in our considered view, even if the circulations indicated therein are accepted, they would not have material effect on the breach complained of as the breaches are with regard to various terms and conditions of the lease and the figures and certificates of circulation, in our considered view, even if accepted would only show that certain newspaper circulation has commenced during the pendency of the breach proceedings before the competent authority but they do not make any material difference with regard to various other allegations of breach which are found to be established. That being the position, we need not dwell into this aspect of the matter in any further detail.

REGARDING TRANSFER OF SHARE/PROPERTY

57. The next issue which was vehemently canvassed before us on behalf of the appellant was with regard to the transfer of shareholding from AJL to Young India. It is the case of the appellant that mere transfer of shareholding cannot be a ground for holding that to be change of ownership or transfer of the lease. Placing reliance on the judgment of ***Bacha F. Guzdar*** *(supra)* detailed submissions were made by Dr. Singhvi to emphasize that a shareholder only acquires a right to participate in the profit of the company. He gets no interest in the property of the company and even if the shareholders of the company do have some voice in administering the affairs of the company, but their interest is limited to sharing the profits of the company and the company, a juristic person, which is distinct from the shareholders still owns the property. It is argued that in the backdrop of this legal position even if some of the shares of the company have been transferred that would not mean that the ownership of the leased premises also get transferred to Young India Ltd. It was emphasized that the ownership still remains even on such transfer with AJL and the said transfer would not have any effect on the ownership or transfer of the leased premises. To consider this aspect of the matter, we are required to take note of the shareholding pattern of both the companies and the manner in which the transactions have taken place and further in case the 'lifting of the veil theory' is applied, what would be its effect with regard to the issue in question.

58. Indian National Congress sometimes referred to as AICC had

advanced a loan of Rs.90 crores to AJL. The loan was advanced on the condition that the amount shall be utilized by AJL to write off their accumulated debts and to recommence publication of its newspaper. As per the facts recorded by the co-ordinate Bench of this Court in its decision rendered on 10th September, 2018 in W.P.(C) 8482/2018, the books of account of AJL from 1st April, 2010 to 31st March, 2011 showed an outstanding debt of Rs.88,86,68,976/- and it ultimately became Rs.90,21,68,980/- as on 15th December, 2010. On 13th August, 2010, an application was made for incorporation of a charitable non-profit company (a company under Section 25 of the Companies Act named Young India). The application was in Form 1A with the competent statutory authority and on 18th November, 2010 Young India was incorporated and on 18.11.2010 license was granted and ultimately on 23rd November, 2010 Young India was incorporated with Sh.Suman Dubey and Sh.Sam Pitroda as its founder Directors. This company had an authorized share capital of 5,000 shares of Rs.100/- each valued at Rs.5,00,000/- and the paid up share capital was 1100 shares of Rs.100/- each valued at Rs.1,10,000/- and the company at that point of time had two shareholders, (a) Shri Sam Pitroda – 550 shares valued at Rs.100/- each and (b) Shri Suman Dubey – 5,000 shares valued at Rs.100/- each. On 13th December, 2010, the first Managing Committee Meeting of Young India took place and Shri Rahul Gandhi was appointed as its Director, namely, a non-shareholder and Shri Motilal Vora and Shri Oscar Fernandes as ordinary members. Within five days thereafter, that is, on 18th December, 2010, by a deed of assignment the loan of Rs.90 crores and odd outstanding in the books of Indian National Congress as recoverable from Associated Law Journals for the period 2002 to 2011 was transferred

to Young India. Three days thereafter, on 21st December, 2010, a Board Meeting of AJL called for an EGM which was subsequently held on 24th December, 2010 and on the said date a loan of Rs.1 crore was received by Young India from another company M/s Dotex and thereafter on 28th December, 2010 i.e. within a week a formal deed of assignment was executed by AICC assigning the loan of Rs.90 crores in favour of Young India. Immediately thereafter on 21st January, 2011, an EGM of Associated Law Journal was held approving fresh issue of 9.021 crores shares to Young India and on 22nd January, 2011 i.e. on the next day the second Managing Committee of Young India was held in which Smt. Sonia Gandhi, Mr. Motilal Vohra and Mr. Oscar Fernandes were appointed as Directors and the 550 shares of the existing shareholders of Young India - Suman Dubey and Sam Pitroda were transferred to Smt.Sonia Gandhi and Mr.Oscar Fernandes and on the same day fresh allotment of Young India shares were made in the following manner: (a) 1,900 shares having paid up value of Rs.1,90,000/- to Shri Rahul Gandhi, (b) 1,350 shares with a paid up amount of Rs.1,35,000/- in the name of Smt. Sonia Gandhi, (c) 600 shares with a paid up value of Rs.60,000 in the name of Sh. Motilal Vohra and (d) 50 shares with a paid up value of Rs.5,000 in the name of Sh.Oscar Fernandes and after issuance of PAN by the Income Tax Department a bank account was opened by Young India with Citibank on 14th February, 2011 and the cheque issued by M/s Dotex for Rs.1 crore was deposited in the Young India Bank account on the said day and on 26th February, 2011 Young India issued a cheque of Rs.50 lakhs to AICC as consideration for assignment of Rs.90 crore debt payable by ALJ to AICC. On the same day, i.e., 26th February, 2011, ALJ allotted 9,02,16,899 equity shares to Young India in pursuance to the AGM Meeting

decision held on 21st January, 2011 and the ALJ Board Meeting on 26th February, 2011 and thereafter Young India applied for exemption under Section 12-A on 29th March, 2011 and on 9th May, 2011 the Income Tax Authorities granted the exemption with effect from the F.Y. 2010-11.

59. Be that as it may, by the aforesaid transaction that had taken place Young India acquired beneficial interest on AJL's property which on the said date was valued at more than Rs.400 crores on payment of a sum of Rs.50 lakhs to AICC. This, according to the respondent, if viewed in the backdrop of the purpose of transferlease and the *modus operandi* adopted is nothing but a devise to transfer the property held on lease from the Government by AJL, Young India which became 99% or rather 100% shareholder of AJL. With these facts, we now propose to examine the judgments relied upon by both the parties to evaluate the legal implication and the principles culled out from these judgments and examine their applicability in the present factual matrix to decide the issue of breach of conditions of the lease on this count.

60. In the case of ***Bacha F. Guzdar*** *(supra)* relied upon by Dr. Singhvi, a Constitution Bench of the Supreme Court has taken note of certain judgments with regard to corporate identity and a legal position with regard to the rights to property of a company, a juristic person, and the relationship of a shareholder with the company and its property, as canvassed by Dr. Singhvi and as observed by the Hon'ble Supreme Court the principle indicates that a shareholder acquires a right to participate in the profit of the company but he does not acquire any right or interest in the assets of the company. It has been held that by investing money in the purchase of shares the shareholder does not get any right to property of the company though he

acquires a right in the profits if and when the company decides to divide it. Even though the shareholder of the company have the sole determining voice in administering the affairs of the company and are entitled to as provided in the Articles of Association to declare the dividends and distribute the profits of the company but their right individually or collectively is nothing more than participating in the profits of the company, it is held that the company is a juristic person and is distinct from the shareholders. In fact, it is the company which owns the property and not the shareholder. The judgment further goes to say that there is nothing in the Indian Law to warrant the assumption that the shareholder who by his share buys any interest in the property of the company which is a juristic person entirely different from the shareholder. This in fact is the law laid down by the Constitution Bench of the Supreme Court in the aforesaid case.

61. It was vehemently argued by Dr.Singhvi that once this is the accepted legal position that is culled out on a perusal of the law laid down by the Constitution Bench, then by no stretch of imagination can it be argued that on transfer of shares of AJL to Young India Ltd., there is transfer of ownership or lease or property as contemplated in clause 13(3) of the lease in question. By referring to the judgment in the case of ***Monsanto Manufacturers*** (supra) and the terms and conditions of the lease deed which prohibited transfer in the said case and by comparing it to clause XIII(3) of the lease deed in question, we were told that in the absence of there being any specific prohibition permitting transfer of ownership of shares or change in the Article of Memorandum, the finding recorded with regard to transfer of ownership of the property recorded by the learned writ Court and the competent authority is unsustainable. The principles laid down in judgment

of the Supreme Court in ***M/s K.G. Electronics*** (supra) and by this Court in ***DDA v. Human Care Medical Charitable Trust*** were also relied upon to canvass this contention.

62. On a consideration of the argument as canvassed by Dr.Singhvi, at the first instance, the same looks very attractive and the findings recorded may look to be unsustainable and perverse, however, it is an equally settled principle of law that in public interest and for assessing the actual nature of a transaction or the *modus operandi* employed in carrying out a particular transaction, the theory of lifting of the corporate veil is permissible and a Court can always apply this doctrine to see as to what is the actual nature of transaction that has taken place, its purpose and then determine the question before it after evaluating the transaction or the *modus operandi* employed in the backdrop of public interest or interest of revenue to the State etc. The theory and doctrine of lifting of corporate veil had been considered by the Supreme Court in the case of ***Gotan Lime Stone*** *(Supra)* and in the said case, judgments in the case of ***Vodafone*** (supra) and ***Skipper Construction*** (supra) etc. have been taken note of and in para 30, specific reference has been made to the Constitution Bench judgment in the case of ***Bacha F. Guzdar*** (supra). After referring to most of the judgments including the judgment in the case of ***Bacha F. Guzdar*** (supra) relied upon by Dr.Singhvi is referred to and finally the consideration to be made is culled out in para 19 of the judgment in the following manner:

> *"19. As already stated, the question for consideration is whether in the given fact situation the transfer of entire shareholding and change of all the Directors of a newly formed company to which lease rights were transferred by a declaration that it was mere change of form of partnership*

business without any transfer for consideration being involved can be taken as unauthorised transfer of lease which could be declared void."

63. Thereafter, the learned Court proceeds to discuss various issues and takes note of the fact that the transaction in fact technically does not sell the lease right but only shares are transferred and in para 24, it has been held that the principle of lifting of corporate veil as an exception to the distinct corporate personality of a company and its member is recognized not only to unravel tax evasion but also to protect public interest which is of paramount importance and to prevent a corporate entity in attempting to evade legal obligation. It has been held by the Hon'ble Supreme Court after relying upon an earlier judgment in the case of ***Workmen vs. Associated Rubber Industries***, **(1985) 4 SCC 114** that this doctrine is employed to prevent device and to avoid welfare legislation. After observing so, various judgments of this Court including ***Skipper Construction*** (supra) and the judgment of the House of Lords in the case of ***Salomon v. Salomon***, **1897 AC 22** is taken note of and the cardinal principle laid down in the case of ***Salmon v. Salmon*** (supra) with regard to the company being a different person altogether from its subscribers is taken note of and it is observed that since after the judgment of ***Salmon*** (supra) the Courts have recognized several exceptions to the rule laid down in ***Salmon*** (supra) and one of the relevant exception is that when a corporate personality is being blatantly used as a cloak for fraud or improper conduct or where the protection of public interest is of paramount importance or where the company has been formed to evade obligation imposed under the law, the theory which has been described by certain jurists as peeping behind the corporate veil is

employed and in para 27 and 29, the Hon'ble Supreme Court goes to determine the doctrine in the following manner:

> *"27. It is thus clear that the doctrine of lifting the veil can be invoked if the public interest so requires or if there is allegation of violation of law by using the device of a corporate entity. In the present case, the corporate entity has been used to conceal the real transaction of transfer of mining lease to a third party for consideration without statutory consent by terming it as two separate transactions—the first of transforming a partnership into a company and the second of sale of entire shareholding to another company. The real transaction is sale of mining lease which is not legally permitted. Thus, the doctrine of lifting the veil has to be applied to give effect to law which is sought to be circumvented.*
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> *xxx xxx xxx*
>
> *29. It is also well settled that mining rights are vested in the State and the lessee is strictly bound by the terms of the lease. [Orissa Mining Corpn. Ltd. v. Ministry of Environment and Forests(2013) 6 SCC 476, para 58; State of T.N. v. Hind Stone, (1981) 2 SCC 205, para 1; Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1, para 41; Amritlal Nathubhai Shah v. Union of India, (1976) 4 SCC 108; Geomin Minerals & Mktg. (P) Ltd. v. State of Orissa, (2013) 7 SCC 571. Ed.: See also Thressiamma Jacob v. Deptt. of Mining & Geology, (2013) 9 SCC 725 : (2013) 4 SCC (Civ) 559.] Cases of Arun Kumar Agrawal v. Union of India [Arun Kumar Agrawal v. Union of India, (2013) 7 SCC 1] (Vedanta case), Balco Employees' Union v. Union of India [Balco Employees' Union v. Union of India, (2002) 2 SCC 333] (Balco case) and Vodafone International Holdings BV v. Union of India[Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867] cited by the learned counsel for the respondent have no application to the present case once real transaction is found to be different from the apparent transactions. In fact, the principle of law laid*

down in Vodafone case [Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867] that the court can look to the real transaction goes against the respondent."

64. Finally in para 31, it is held by the Hon'ble Supreme Court that while discerning the true nature of the entire transaction, the Court is not to merely see the form of the transaction which is of sale of shares but also the substance which is the private sale of a mining right avoiding legal bar against transfer of sale rights. In fact, the learned Court deals with the issue in para 31 in the following manner:

"31. ....Thus, while discerning the true nature of the entire transaction, the court has not to merely see the form of the transaction which is of sale of shares but also the substance which is the private sale of mining rights avoiding legal bar against transfer of sale rights circumventing the mandatory consent of the competent authority. Consent of competent authority is not a formality and transfer without consent is void. The minerals vest in the State and mining lease can be operated strictly within the statutory framework. There is nothing to rebut the allegation that receipt of Rs 160 crores styled as investment in shares is nothing but sale price of the lease. No precedent has been shown permitting such a private sale of a mining lease for consideration without any corresponding benefit to the public."

65. If we consider the transaction in the present case in the backdrop of the aforesaid principles laid down by the Hon'ble Supreme Court, we have no hesitation in holding that the purpose for which the doctrine of lifting of the veil is applied is nothing but a principle followed to ensure that a corporate character or personality is not misused as a device to conduct something which is improper and not permissible in law, fraudulent in

nature and goes against public interest and is employed to evade obligations imposed in law. If that is the purpose for which the doctrine of lifting of the veil is to be employed and if we see the transaction that has taken place in the present case with regard to how the transfer of shares between AJL and Young India took place, we find that within a period of about three months, that is, between 23rd November, 2010 to 26th February, 2011, Young India was constituted. It took over the right to recover a loan of more than 90 Crores from All India Congress Committee for a consideration of Rs.50 Lakhs, thereafter replaced the original shareholders of Young India by four new entities including Sh.Moti Lal Vohra, Chairman of AJL and Young India after acquiring 99% of shares in AJL, became the main shareholder with four of its shareholders acquiring the administrative right to administer property of more than 400 Crores. Even though Dr.Singhvi had argued that there is nothing wrong in such a transaction and it is legally permissible, but if we take note of the principles and the doctrine for which the theory of lifting of the corporate veil has received legal recognition, we have no hesitation in holding that the entire transaction of transferring the shares of AJL to Young India was nothing but, as held by the learned writ Court, a clandestine and surreptitious transfer of the lucrative interest in the premises to Young India. In fact, the contention of Dr.Singhvi has to be rejected and rightly so was rejected by the Single Judge even though without applying the principle of lifting of the corporate veil. In case the theory of lifting of the corporate veil, as discussed hereinabove, is applied and the transaction viewed by analyzing as to what was the purpose for such a transaction, the so called innocent or legal and permissible transaction as canvassed before us, in our considered view, is not so simple or straight forward as put before

us, but it only indicates the dishonest and fraudulent design behind such a transaction as laid down in various judgments referred to not only in the case of ***Gotan Lime Stone Khanij Udyog (P) Ltd.*** (supra) but also in the case of ***Union Territory of Estate Officer, UT, Chandigarh vs. S.C. Information Technologies***, **(2016) 12 SCC 582**, ***Skipper Construction*** (supra), wherein also the theory has been applied after considering the principle laid down in ***Salomon*** (supra) and in para 28, in the case of ***Skipper Construction*** (supra), the law has been crystallized in the following manner:

> *"28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people."*

66. Apart from the aforesaid judgments, there are various other judgments which have been brought to our notice wherein the said theory of lifting of the corporate veil has been approved and we have no hesitation in holding that the transfer in question, if analyzed in the backdrop of the principles as discussed hereinabove, we see no error in the findings recorded by the learned writ Court to hold that the transfer in question comes within the prohibited category under clause XIII (3) of the lease agreement.

REGARDING REMEDY UNDER THE PP ACT.

67. The next question canvassed before us was pertaining to existence of alternate statutory remedy under the PP Act or maintainability of the writ petition and the finding recorded in para 21. Dr.Singhvi, by placing reliance on the judgment in the case of ***Express Newspaper Pvt. Ltd.*** (supra) and the observations made in para 85 and 86 of the said judgment, argued that the provisions of the PP Act will not apply and further that the order determining the lease by the Land and Development Authorities cannot be challenged before the Estate Officer as he is not a judicial authority and certain observations made by the Supreme Court in the ***Express Newspaper Pvt. Ltd.*** (supra) have been relied upon in this regard. However, the entire judgment in the case of ***Express Newspaper Pvt. Ltd.*** (supra) was considered by a Constitution Bench of the Supreme Court in the case of ***Ashoka Marketing*** (supra) and in para 30, 32, 34 and 36, the Constitution Bench lays down the following principle:

> *"30. The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for*

any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law. ***(emphasis supplied)***

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32. Shri Ganguli has placed reliance on the decision of A.P. Sen, J. in Express Newspapers Pvt. Ltd. v. Union of India [(1986) 1 SCC 133 : 1985 Supp 3 SCR 382] and has submitted that in that case the learned Judge has held that cases involving relationship between the lessor and lessee fall outside the purview of the Public Premises Act. We have carefully perused the said decision and we are unable to agree with Shri Ganguli. In that case A.P. Sen, J. has observed that the new building had been constructed by the Express Newspapers Pvt. Ltd. after the grant of permission by the lessor, and, therefore, the Express Newspapers Pvt. Ltd. was not in unauthorised occupation of the same within the meaning of Section 2 (g) of the Public Premises Act. It was also held by the learned Judge that the Express Building constructed by the Express Newspapers Ltd. with the sanction of lessor on plots Nos. 9 and 10 demised on perpetual lease can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(e) of the Public Premises Act, and therefore, there was no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd. under the provisions of the Public Premises Act. The aforesaid observations indicate that the learned Judge did not proceed on

the basis that cases involving relationship of lessor and lessee fall outside the purview of the Public Premises Act. On the other hand the said observations show that the learned Judge has held that the provisions of the Public Premises Act could not be invoked in the facts of that case. ***(emphasis supplied)***

xxx *xxx* *xxx*

34. Rule 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, requires the Estate Officer to record the summary of evidence tendered before him. Moreover Section 9 confers a right of appeal against an order of the Estate Officer and the said appeal has to be heard either by the District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the District Judge may designate in that behalf. It shows that the final order that is passed is by a judicial officer in the rank of a District Judge.

(emphasis supplied).*"*

68. If we consider the Constitution Bench judgment of the Supreme Court in the case of ***Ashoka Marketing*** (supra) as is reproduced hereinabove, it is clear that it is because of the peculiar facts and circumstances in the case of ***Express Newspaper Pvt. Ltd.*** (supra) that the learned Court held the provisions of PP Act not to be applicable in the said case. On the contrary, the law laid down by the Constitution Bench in the case of ***Ashoka Marketing*** (supra) as detailed hereinabove clearly indicates that the matter was re-examined by the Constitution Bench. The question of inapplicability of PP Act was considered and the law laid down is that the PP Act will apply to cases of the nature as is before us. In fact, in para 87 of the judgment in the case of ***Express Newspaper Pvt. Ltd.*** (supra), the observation made by the Supreme Court clearly shows that the Supreme

Court goes on to observe that nothing stated in the judgment of ***Express Newspaper Pvt. Ltd.*** (supra) should be construed to mean that the government has no power to take recourse to the provisions of the PP Act when there is admittedly unauthorized construction by any other person on government land which is public premises within the meaning of Section 2(e). That apart, a coordinate Division Bench of this court in the case of ***Escorts Heart Institute and Research Centre*** (supra) had occasion to consider both the judgments in the case of ***Express Newspaper Pvt. Ltd.*** (supra) and ***Ashoka Marketing*** (supra) and after detailed deliberation and after taking note of an earlier judgment by another Division Bench of this Court in ***DDA vs. Ambitious Gold Nim Manufacturing***, LPA 976/2004 in para 9 and 10 has observed in the following manner:

> *"9. A Division Bench of this Court in Ambitious Gold Nib Manufacturing (P) Limited (supra) after examining judgments in the cases of Express Newspapers and Ashoka Marketing Limited (supra) has held that proceedings before the Estate Officer are maintainable and cases like the present one would fall in the second part of the definition of the expression unauthorized occupation as defined in Section 2(g) of the Public Premises Act. The said decision being a judgment of a Coordinate Bench of two Judges is binding on us. We respectfully agree with the reasoning given and follow the said judgment to the extent it has been held that second part of Section 2(g) defining the expression unauthorized occupation for the purpose of Public Premises Act is applicable and recourse to civil proceedings for recovery of possession is not required. The said judgment cannot be ignored merely because a particular argument was not raised or addressed. We may, however, clarify that the question of jurisdiction of the Estate Officer to decide whether there was any breach of the grant/lease, whether there was valid and justified determination was not raised before us during the course of*

arguments and is not being determined and decided. We have specifically mentioned this aspect in the judgment as we find that the appellant in the grounds of appeal has referred to the decision of the Supreme Court in Annamalai Club v. Government of Tamil Nadu, (1997) 3 SCC 169.

10. Another contention raised by the appellant was that the building constructed on the land is not public premises under Section 2(c) of the Public Premises (Eviction for Unauthorised Occupants) Act, 1971 because building was never given on lease and has been constructed by the lessee. In this connection, learned Counsel for the respondent No. 1 had drawn our attention to Clause 15 in the perpetual lease deed, which stipulates that the lessee on determination of the lease shall peacefully yield up the said land and the buildings thereon to the lessor. In view of the said clause, it cannot be said that the building constructed on the land cannot be regarded as the public premises."

69. This, in our considered view, determines this issue and if we evaluate the perpetual lease in this agreement and clause XIII thereof, we find that the conditions of the lease are identical in nature and therefore in holding that the petitioners have a remedy under the PP Act, the learned writ Court has not committed any error. This issue is also therefore required to be answered against the appellant.

70. Even though during the course of hearing Dr.Singhvi had tried to distinguish each and every judgment relied upon by the respondents to say that on the facts of each case, the same is not applicable, however, we are of the considered view that the said contention cannot be accepted. There may be certain differences with regard to the facts of each case, but this Court is required to take note of the legal principle that has been laid down by the Hon'ble Supreme Court in various cases, evaluate the facts and then apply

them. While hearing this appeal, which is an intra-court appeal under Section 10 of the Letters Patent against a judgment of the Single Judge in a proceeding held under Article 226 of the Constitution, this Court has to keep in mind the limitations for interference in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. Power can be exercised in a given set of circumstances and cases where subordinate courts, statutory authorities or tribunals and officers act wholly without jurisdiction or in excess of jurisdiction or in violation of the principles of natural justice or proceed in an erroneous manner which is apparent from the face of the record resulting in omission, commission, error or excess which results in manifest injustice. Whatever be the extensive discretionary jurisdiction available to this Court, it cannot be converted into a jurisdiction akin to that of a Court of appeal, examine the correctness of an impugned decision, substitute the decision of the subordinate authority or court to that of its own and record a different finding. A reasonable finding recorded after grant of proper opportunity to all concerned which meets the requirement of law need not and should not be interfered with by this Court until and unless manifest injustice or violation of statutory enactment or well settled principles are writ large in the proceedings or order under challenge. If the case in hand is analyzed in the backdrop of the jurisdictional power available to this Court under Article 226 of the Constitution, we find that in this case the finding with regard to no press activity being carried out in the premises for about ten years, misuse of land and 100% transfer of share to another company are all subject matters of four notices issued to the petitioner. The petitioner submitted voluminous documents and replies to these notices which made allegations of unauthorized construction,

unauthorized permission to Akash Gift Gallery, clandestine transfer for ulterior motive etc. and the petitioners had in fact admitted the position with regard to there being no press activity and admitted non-publication of the newspaper due to financial trouble for more than eight years. It was only when the breach proceedings took place that press was installed, licence obtained and publication commenced after 24th September, 2017. The appellant also do not deny the fact about there being unauthorized occupation by Akash Gift Gallery, pendency of eviction proceeding. If all these factors are taken note of and a decision is taken by the respondents to say that the dominant purpose for which the lease was granted has been violated and there has been misuse of the conditions of the lease, in the absence of mala fides or ulterior motive having been established, the writ court has rightly refused to interfere into the matter. We also see no reason to make any indulgence into a reasonable order passed by the writ court in the facts and circumstances of the present case.

71. Accordingly, finding no ground made being out for making any indulgence into the matter, we dismiss the appeal.

CHIEF JUSTICE

V. KAMESWAR RAO, J

FEBRUARY 28, 2019
'anb'