IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

INDEX

IN

CIVIL MISC. WRIT PETITION (PIL) NO. OF 2015

(Under Article 226 of the Constitution of India)

DISTRICT – GAUTAMBUDH NAGAR

COMMON CAUSE, A Registered Society,
Through its Director Shri Vipul Mudgal

----------**Petitioners**

Versus

STATE OF U.P. through Chief Secretary & 4 Others.

----------**Respondents**

S.No.	Particulars of papers.	Date	Annex. No.	Page No. Fm | To
1.	List of Dates and Events			
2.	Application for interim direction.			
3.	Writ Petition (PIL) (Under Article 226 of the Constitution of India).			
4.	Copy of the Hon'ble Supreme Court order in W.P. No. 221 of 2015	02-05-2015	1	
5.	Copy of the audit report by		2	

	CAG for the year 2003			
6.	Copies of the letters/requests dated 09.02.2004, 26.02.2004, 02.05.2004, 12.05.2004, 08.07.2004, 09.08.2004, 29.04.2009, 18.08.2009, 22.09.2010, 20.07.2011 sent by the CAG for audit.		3	
7.	Copies of the letters dated 30.03.2005, 08.09.2009 and 12.10.2010 by the Infrastructure and industrial Development Commissioner refusing to the request of the CAG audit		4	
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9.	Copies of the replies to the request for audit dated March, 2011 and 29.07.2011.		6	
10.	Copy of the report in Financial Express of October 11, 2011.	11-10-2011	7	
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12.	Copies of the newspaper reports in India Today dated 29.11.2014 and Hindustan Times dated 08.12.2014 regarding income tax raid on Yadav Singh.		9	

13.	Copy of Order of Hon'ble Allahabad High Court, Lucknow Bench in Misc. Bench No. 12396 of 2014	16-07-2015	10	
14.	Copy of relevant pages of chapter V of the report of the National Commission to Review the Working of the Constitution dated March 2002.		11	
15.	Affidavit			
16.	Identity Proof of the Deponent.			
17.	Vakalatnama			

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Dated: /08/2015

(Gunjan Jadwani),
Advocate
Enrolment No. 2844/ 2015

(Yash Tandon),
Advocate
Advocate Roll No. A/Y-0117

Counsel for Respondent No. 4,
40, Lawyers Chamber,
High Court, Allahabad.

Note: Sri Anurag Khanna, Senior Advocate,
shall also appear and argue the case on behalf of the Petitioner

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

DATES AND EVENTS

IN

CIVIL MISC. WRIT PETITION (PIL) NO. OF 2015

(Under Article 226 of the Constitution of India)

DISTRICT – GAUTAMBUDH NAGAR

COMMON CAUSE, A Registered Society,
Through its Director Shri Vipul Mudgal.

----------**Petitioners**

Versus

STATE OF U.P. through Chief Secretary & 4 Others.

----------**Respondents**

NO.	DATE	EVENTS
1.	1971	Pursuant to Article 149 of the Constitution, Parliament enacts the CAG Act, laying down the entitlements of the CAG with respect to salary, term of office, leave and other conditions of service. The CAG Act also lays down the duties and powers of the CAG in relation to audit of accounts of the Union and the States. Section 10 deals with compilation and maintenance of accounts of the Union and the States. Section 11 stipulates submission of accounts to the President/Governor, and report on accounts of the Union and the States. Section 13 deals with general powers of audit in relation to expenditure from the consolidated fund

		of the union/state, Sections 14 and 15 deal with powers of audit in respect of autonomous bodies/authorities receiving grants/loans from the Consolidated Fund of India or of a State. Section 16 provides for audit of receipts of the Union and State. Section 19 deals with the audit of companies and statutory corporations of the Government. Section 20 is an enabling provision for audit by consent. Section 18 is about the powers of the CAG in connection with audit of accounts.
2.	1976	The Uttar Pradesh Industrial Area Development Act, 1976, is enacted. This Act empowers the State Government to constitute an authority for the development of a selected area into an industrial and urban township and provides for the matters connected therewith. In due course, NOIDA, GNIDA and Yamuna Expressway Authority are created under the said Act.
3.	20.01.1998	The Hon'ble Supreme Court passed an order dated 20.1.98 in WP (C) No. 150/97 NOIDA Entrepreneurs Association Case, directing the Central Bureau of Investigation to investigate the allotment of plots in NOIDA and to launch prosecution and departmental proceedings, if so warranted.
4.	2004-2010	Repeated requests by the CAG to the Government of Uttar Pradesh for allowing it to audit the accounts of NOIDA and Greater Noida Authority are turned down. In the State of U.P., the CAG has the Office of Principal Accountant General (Civil Audit), Allahabad, which is responsible for the conduct of expenditure audit under Section 13 of the CAG Act; and the Office of the Accountant General

		(Commercial and Receipt Audit), Lucknow, which is responsible for the conduct of receipt audit under Section 16 of the said Act. The CAG, through the office of the Accountant General (Commercial and Receipt Audit), U. P., Lucknow, had earlier, in terms of Sec 16 of the CAG Act, conducted Receipt Audit of NOIDA on two occasions, in 2003-04 and 2004-05. The CAG through the Dy. Accountant General/Principal Accountant General, U.P. has been requesting the Principal Secretary and Commissioner, Industrial Development Department and Chief Secretary, Government of U.P. to allow it to conduct expenditure audit at the premises of the NOIDA. Since then the CAG has repeated the request many a time, but with no success. NOIDA and GNIDA have repeatedly refused access to their records for conduct of audit by the CAG, citing Section 22 of the U.P. Act. The action of the State Government in adopting obstructive tactics and refusing to facilitate audit of the Authorities by the CAG is illegal, untenable and against the interest of accountability and transparency.
5.	2011	That the CAG, considering the substantial increase in the income of NOIDA and GNIDA from rent and sale of properties, had planned another audit of these authorities in the year 2011 as part of the audit of Service Tax, in terms of Section 16 of the CAG Act, read with Rule 5A (2) of Service Tax Rules, since these authorities are registered assessees of Service Tax. However, NOIDA and GNIDA did not allow the CAG to commence such audit, citing provisions of the U.P. Act.
6.		There have been several instances of corruption in

		these authorities which were highlighted by media and adversely commented upon by the Hon'ble Supreme Court.
7.	18.12.2014	That the recent news reports of an Income Tax raid on one Yadav Singh, who had been appointed as Engineer-in-Chief of NOIDA, GNIDA and Yamuna Expressway Authority, sheds ample light on the current state of affairs in these Authorities. It is reported that the cash and jewellery worth crores of Rupees recovered during the raid were a part of the illicit gains made from a Rs. 954 crore tendering scam.
8.	02.05.2015	The Hon'ble Supreme Court was pleased to pass an order in W.P. (PIL) No. 221 of 2015, filed by the Petitioner on the same subject matter and seeking the same relief, allowing the petitioner to withdraw the said petition with liberty to approach the High Court of Judicature at Allahabad.
9.		Hence the instant writ petition is being preferred by the petitioner before this Hon'ble Court.

Dated: /08/2015

(Yash Tandon), **(Gunjan Jadwani),**

Advocate Advocate

Advocate Roll No. A/Y-0117 Enrolment No. 2844/ 2015

Counsels for Petitioner,

40, Lawyers Chamber,

High Court, Allahabad.

Note: Sri Anurag Khanna, Senior Advocate, shall also appear and argue the case on behalf of the Petitioner

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION FOR INTERIM DIRECTION

(Under Section 151 of C.P.C. read with Article 226 of the Constitution of India)

IN

CIVIL MISC. WRIT PETITION (PIL) NO. OF 2015

(Under Article 226 of the Constitution of India)

DISTRICT – GAUTAMBUDH NAGAR

COMMON CAUSE, A Registered Society,
Through its Director Shri Vipul Mudgal

----------**Petitioners**

Versus

STATE OF U.P. through Chief Secretary & 4 Others.

----------**Respondents**

APPLICATION FOR INTERIM DIRECTION

To,

The Hon'ble Chief Justice and his other companion judges of the aforesaid court.

The humble writ petition on behalf of the above named petitioner Most Respectfully Showeth as under:-

1. That the Petitioner is filing the present writ petition under Article 226 of the Constitution of India in public interest seeking a writ of mandamus or any other direction of similar nature for audit of the accounts of New Okhla Industrial Development Authority (NOIDA), Greater Noida Industrial Development Authority (GNIDA) and the Yamuna Expressway Industrial Development Authority (Yamuna Expressway Authority)by the Comptroller & Auditor General of India (CAG). NOIDA, GNIDA and Yamuna Expressway Authority have been established under the Uttar Pradesh Industrial Area Development Act (hereinafter "the U.P. Act"), discharging functions hitherto being discharged by the Govt. of Uttar Pradesh, Respondent No.1.

2. That the Petitioner is not repeating the facts of the writ petition for the sake of brevity and same may be read as part of the present Application.

3. That the Petitioner is filing the present application seeking interim direction in the nature of interim mandamus/direction for immediate audit of the aforementioned authorities by the CAG. It is submitted that any such order will not cause any

prejudice to any party and it is much needed in public interest.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to: -

1. Issue an interim direction in the nature of interim mandamus/direction for immediate audit of the aforementioned authorities by the CAG;

2. Pass any other order as this Hon'ble Court may deem fit and proper.

_____

Dated: /08/2015

(Yash Tandon),
Advocate
Advocate Roll No. A/Y-0117

(Gunjan Jadwani),
Advocate
Enrolment No. 2844/ 2015

Note: Sri Anurag Khanna, Senior Advocate,
shall also appear and argue the case on behalf of the Petitioner

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. WRIT PETITION (PIL) NO. OF 2015

(Under Article 226 of the Constitution of India)

DISTRICT – GAUTAMBUDH NAGAR

Common Cause, A Registered Society,

Through Its Director Shri Vipul Mudgal,

Son of Shri Jai Kumar Mudgal

Resident of 43, National Media Centre, Shankar Chowk, NH-8, Gurgaon – 122 002

----------Petitioner

Versus

1. STATE OF UTTAR PRADESH
   Through its Chief Secretary,
   Government of Uttar Pradesh,
   Lucknow, Uttar Pradesh.

2. New Okhla Industrial Development Authority(NOIDA)
   Through its Chief Executive Officer,
   NOIDA Administrative Complex,
   Sector 6, Noida - 201301,
   GautamBuddh Nagar, Uttar Pradesh.

3. Greater Noida Industrial Development Authority (GNIDA),
   Through its Chairman,
   169 Chitvan Estate, Sector Gamma – II,

Greater Noida – 201308,
GautamBuddh Nagar, Uttar Pradesh.

4. Yamuna Expressway Industrial Development Authority,
Through its Chief Executive Officer,
First Floor, Commercial Complex,
P-2, Sector- Omega I,
Greater Noida-201308,
Gautam Buddh Nagar, Uttar Pradesh.

5. Comptroller & Auditor General of India,
Deen Dayal Upadhyaya Marg,
New Delhi-110124.

----------**Respondents**

WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

To,

The Hon'ble Chief Justice and his other companion judges of the aforesaid court.

The humble writ petition on behalf of the above named petitioner Most Respectfully Showeth as under:-

1. The Petitioner is a registered society (No. S/11017 of 1980) established by the legendary social activist,

Shri H. D. Shourie. It is a public interest organization dedicated to articulation of the common problems of the people and has been in the forefront of the campaign for governance reforms and probity in public life. The Petitioner society has filed several public interest petitions before this Hon'ble Court as well as the Hon'ble Delhi High Court. Mr. Vipul Mudgal, Director of the organization, is authorized to file this petition.

2. That the Petitioner had filed a Writ Petition (PIL) No. 221 of 2015 in the Hon'ble Supreme Court under Article 32 of the Constitution of India, regarding the same subject matter and seeking the same relief, as under the present writ petition. The Hon'ble Supreme Court was pleased to pass an order dated 02.05.2015 allowing the Petitioner to withdraw the said petition with liberty to approach the High Court of Judicature at Allahabad.

   Copy of the order of the Hon'ble Supreme Court dated 02-05-2015 is being enclosed herewith and marked as **ANNEXURE NO. 1** to this writ petition.

3. That this is the first writ petition, which is being filed by the Petitioner before this Hon'ble Court. No

other writ or any application on the same subject matter has been filed by the Petitioner before this Hon'ble Court.

4. That the Petitioner has not received any caveat/notice on behalf of any of the respondents regarding the dispute involved in the writ petition.

5. That the Petitioner is filing the instant petition in public interest. The petitioner has no personal interest in the litigation and the petition is not guided by self-gain or for gain of any other person/ institution/ body and that there is no motive other than of public interest in the filing the present writ petition.

6. That the Petitioner is seeking to espouse the public cause by means of the instant Public Interest Litigation.

7. That the Petitioner has no personal or private interest in the matter and there is no authoritative pronouncement by the Hon'ble Supreme Court or Hon'ble High Court on the questions raised in the instant public interest litigation.

8. That the result of the public interest litigation will not lead to any undue gain to the Petitioner or anyone associated with him or any undue loss to any person, body of persons or estate.

9. That the Petitioner has absolutely clean antecedents and has no direct or indirect interest in filing the present Public Interest Litigation. The present P.I.L. is only for and in the interest of public.

10. There is no civil, criminal, revenue or any litigation involving the Petitioner which has, or could have, a legal nexus with the issues involved in the PIL.

11. The Petitioner has not made any representation to the authorities, because the CAG has already been writing to Respondent Nos. 2 & 3, seeking their consent for audit, but the consent has not been granted so far.

12. That all the facts mentioned in the writ petition are based on the information available in the public domain and the documents obtained under the Right to Information.

13. That the Petitioner is filing the present writ petition under Article 226 of the Constitution in public interest seeking a writ of mandamus or any other direction of similar nature for audit of the accounts of New Okhla Industrial Development Authority (NOIDA), Greater Noida Industrial Development Authority (GNIDA) and the Yamuna Expressway Industrial Development Authority (Yamuna Expressway Authority) by the Comptroller & Auditor General of India (CAG).

14. That briefly stated the facts originating to the present Writ Petition (P.I.L.) under Article 226 of the Constitution of India are being showeth as under:

15. That NOIDA, GNIDA and Yamuna Expressway Authority have been established under the Uttar Pradesh Industrial Area Development Act, 1976 (hereinafter “the U. P. Act”), discharging functions hitherto being discharged by the Govt. of Uttar Pradesh, Respondent No.1. These authorities mainly deal in sale and transfer of one of the most valuable resources of the State, i.e. land, on behalf of the

State Govt. They are nothing but extensions of the State Government, operating under its total control and performing its functions. However, their accounts, unlike the accounts of the State government and its departments, are not audited by the CAG.

16. That it is imperative in public interest that the accounts of these authorities be audited by the CAG, given the nature of their functions involving acquisition and sale of land, the scale of their operations, and the escalating trend in land prices in the National Capital Region where Respondents 2 to 4 operate.

17. That land is a material resource of the community in the hands of the State, which is obliged to ensure that this resource is used for public good. However, the track record of handling of this precious resource by Respondents 2 and 3 has been marred by numerous cases of corruption and illegalities which are already in the public domain. Despite serious allegations of misconduct and corruption in the acquisition and disposal of land meant for public purpose, these authorities have repeatedly refused

access to their records for conduct of audit by the CAG, citing Section 22 of the U. P. Act, under which the Examiner, Local Fund Accounts has been entrusted with the audit of these authorities.

18. That the Examiner, Local Fund Accounts, is in reality an adjunct of the State Finance Department. The office of the Examiner is bereft of functional and financial autonomy and ill-equipped to discharge its vast responsibilities. It is pertinent to note that the Examiner, Local Fund Accounts, is a subordinate authority of the Government of U.P. The audit conducted by it as per provisions of sub section (2) of Section 22 of the U. P. Act is not insulated from governmental interference and cannot, therefore, be a substitute to the statutory audit by an independent Constitutional authority, viz. the CAG.

19. That under the said U. P. Act, the audit of the accounts of these authorities is dependent upon the discretion of the State Government. An independent audit on these authorities cannot be conducted unless consented to by the State Government.

20. That the CAG has approached NOIDA and GNIDA several times for audit of their accounts but the required consent has consistently been withheld, except for two occasions in 2003-04 and 2004-05.

21. That as NOIDA, GNIDA and Yamuna Expressway Authority are discharging the function of procuring lands acquired by the State Government and thereafter disposing of them at much higher rates, the revenue/profit earned from such transactions is rightfully payable into the Consolidated Fund of the State.

22. That, however, this revenue accrues to the said Authorities under the provisions of the U. P. Act, constituting a substantial proportion of their funds. The budget provisions of Respondents 2 and 3 for the years 2007-08 and 2008-09 show that over 85 per cent of the total income of NOIDA and over 65 per cent of the total income of GNIDA are from sale of land and buildings. Hence, the expenditure incurred from the funds of the Authorities, consisting primarily of the revenues payable into the Consolidated Fund of the State, is liable to

expenditure audit by the CAG in terms of Section 13 of the CAG Act.

23. That the Hon'ble Supreme Court has ruled in *Association of Unified Tele Services Providers & Ors. v. UOI*, (2014) 6 SCC 110, that private telecom companies should be audited by the CAG because they deal with a valuable public resource like spectrum. Extending this rationale to the matter under consideration, there is much greater justification to bring public authorities like NOIDA and Greater Noida under the sweep of audit by the CAG, because they deal with land, the most valuable of public resources that is acquired by recourse to the coercive power of the state.

24. That the action of these Authorities in not facilitating audit by the CAG and providing documents/records especially when cases of misuse and corruption in dealing with natural resources like land have been coming out from time to time is arbitrary and in violation of Article 14 of the Constitution and also against Rule of Law guaranteed under Article 21 of the Constitution.

25. That NOIDA, GNIDA and Yamuna Expressway Authority have been created under The Uttar Pradesh Industrial Area Development Act, 1976. This Act empowers the State Government to constitute an authority for the development of a selected area into an industrial and urban township and provides for the matters connected therewith. As stated above, the authorities constituted under the Act are State under Article 12 of the Constitution, having been created to discharge functions hitherto being discharged by the State Government. They function under the total control of the State Government. Some of the relevant provisions of the U. P. Act which show that these authorities are for all practical purposes are an inseparable part of the State Government and perform the State Government's functions are summarised below:

    (i) As per Section 3 (2) of the Act, the Authority is headed by its Chairman, who is the Secretary to the Government of U. P., Industries Department, or his nominee not below the rank of Joint Secretary. Other members are Secretary, Public Works Department, Government of U.P. or his nominee; Secretary, Local Self Government, Government of U. P. or

his nominee; Secretary, Finance Member Department, Government of U.P. or his nominee; the Managing Department, U.P. State Industrial Development Corporation; five members to be nominated by the State Government by notification and the Chief Executive Officer (CEO) who works as Secretary of the Authority. As per Section 4 of the U. P. Act, the CEO is appointed by the State Government. Thus, an Authority like NOIDA or GNIDA comprises only senior government officials or their nominees.

(ii) As per Section 5 of the U. P. Act, all the staff of the authority is appointed subject to such control and restrictions as may be determined by general special orders of the State Government.

(iii) Section 6 of the U. P. Act lays down the functions of the Authority as follows:

a) To secure the planned development of the industrial development area;

b) To prepare a plan for the development of the industrial development area;

c) *To demarcate and develop sites for industrial, commercial and residential purpose according to the plan;*

d) *To provide infrastructure for industrial, commercial and residential purposes;*

e) *To provide amenities which include roads, water supply, street lighting and power supply, sewerage, drainage, community facilities etc.;*

f) *To allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;*

(iv) Further, Section 11 provides that the Authority may with the previous approval of the State Government levy such taxes as it may consider necessary in respect of any site or building on the transferee or occupier thereof for the purposes of providing, maintaining, or continuing any amenities in the industrial development area.

26. That it is clear from the aforementioned provisions that these Authorities are discharging functions of

sale and transfer of land, for and on behalf of the State Government. Although they are mere extensions of the State Government, functioning under their total control and performing their functions, their accounts, unlike the accounts of the State government and its companies, are not audited by the CAG. Section 22 (2) of the Act provides-

> "*The accounts of the Authority shall be subject to audit annually by the examiner, Local Fund Accounts.*
>
> *Provided that in place or in addition to the Examiner, Local Fund Accounts, the State Government may entrust the audit to the Account General, Uttar Pradesh or Controller and Auditor General of Indian or to any other Auditor on such terms and conditions, in such manner, for such period and at such time as may be agreed upon between him and the State Government.*"

27. That the audit of the accounts of these Authorities by the CAG is contingent on the consent of the State Government. There has been a long standing demand that these authorities should be brought under the purview of the CAG. As submitted above, public audit

is a powerful instrument of good governance. It is the CAG's responsibility to ensure that revenue is raised and public money is spent not only in accordance with the law, but also with due regard to economy, efficiency and effectiveness. The CAG is the constitutional authority entrusted with the responsibility of ensuring probity in the use of public funds.

28. That any proceeds from the sale of lands which are material resources of the community are normally receipts payable to the Consolidated Fund of India or the Consolidated Fund of a State. Article 266 of the Constitution provides-

> "*All revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India*".

Similarly, it also provides for "*the Consolidated Fund of the State*".

Sub-Article (2) provides that all other public moneys received by or on behalf of the Govt. of

India or the Govt. of State shall be credited to the public account of India or the public account of the State, as the case may be.

29. That as per Section 20 (d) of the U. P. Act states that, all the receipts from sale of lands, etc. are placed as funds of the Authorities.

Section 20 of The Uttar Pradesh Industrial Area Development Act, 1976, provides:

Fund of the Authority–

(1) The authority shall have and maintain its own fund to which shall be credited–

(a) all moneys received by the Authority from the State Government by way to grants, loans advances or otherwise;

(b) all moneys borrowed by the Authority from sources other than the State Government by way of loans or debentures;

(c) all fees, tolls and charges received by the Authority under this Act;

(d) all moneys received by the Authority from the disposal of lands, buildings and other properties movable and immovable; and

(e) all moneys received by the Authority by way of rents and profits or in any other manner or from any other sources.

30. That the CAG is a constitutional functionary. The Constitution of India under Chapter V, from Articles 148 to Article 151, contains provisions relating to the CAG; his appointment, his independence, duties and powers, etc. The Constitution envisages a unitary CAG in the federal structure for both the Union and the States. The various provisions of Article 148 of the Constitution of India ensure independence of the CAG from the Executive. Article 149 of the Constitution provides for the duties and powers of the CAG. Under Article 151 of the Constitution, the audit reports of the CAG relating to accounts of the Union are to be submitted to the President who shall cause them to be laid before each House of Parliament. Similarly, the reports of the CAG relating to the accounts of the State are to be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

31. That as provided for in Article 149 of the Constitution, Parliament has enacted the CAG Act clearly laying down the entitlements of CAG on account of salary, term of office, leave and other conditions of service, etc. The CAG Act also lays down the duties and powers of the CAG in relation to audit of accounts of the Union and the States. Section 10 deals with compilation and maintenance of accounts of the Union and the States. Section 11 of the CAG Act stipulates submission of accounts to the President/Governor, and report on accounts of the Union and the States. Section 13 deals with general powers of audit in relation to expenditure from the consolidated fund of the union/state. Sections 14 and 15 deal with powers of audit in respect of autonomous bodies/authorities receiving grants/loans from the Consolidated Fund of India or of a State. Section 16 provides for audit of receipts of the Union and State. Section 19 deals with the audit of companies and statutory corporations of the Government. Section 20 is an enabling provision for audit by consent. Section 18 is about the powers of the CAG in connection with audit of accounts.

32. That Section 13 of the CAG Act deals with Expenditure Audit, Section 16 with Receipt Audit, and Section 20 with Consent/Request Audit. Section 18 provides for the powers of the CAG in connection with audit. The CAG conducts audit of Central/State Government accounts, Government Companies, Corporations, other Bodies and Authorities, etc., through his offices in the States, called the 'Field Offices'. For this purpose, the Field Offices prepare an annual audit plan based on risk perceptions arrived at by looking at the nature and extent of expenditure/receipt, and other parameters, and carry out the audit accordingly.

Some of the relevant provisions of the CAG Act are as follows:

> *"**13. General provisions relating to audit.—It shall be the duty of the Comptroller and Auditor-General**—*
>
> *(a) to audit all expenditure from the Consolidated Fund of India and of each State and of each Union Territory having a Legislative Assembly and to ascertain whether the moneys shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged and whether the*

expenditure conforms to the authority which governs it;

(b) to audit all transactions of the Union and of the States relating to Contingency Funds and Public Accounts;

(c) to audit all trading, manufacturing, profit and loss accounts and balance-sheets and other subsidiary accounts kept in any department of the Union or of a State;

and in each case to report on the expenditure, transactions or accounts so audited by him.

***14. Audit of receipts and expenditure of bodies or authorities substantially financed from Union or State Revenues.**—(1) Where anybody or authority is substantially financed by grants or loans from the Consolidated Fund of India or of any State or of any Union Territory having a Legislative Assembly, the Comptroller and Auditor-General shall, subject to the provisions of any law for the time being in force applicable to the body or authority, as the case may be, audit all receipts and expenditure of that body or authority and to report on the receipts and expenditure audited by him.*

Explanation.—Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State or of any Union Territory having a Legislative Assembly in a financial year is not

less than 2[rupees twenty-five lakhs] and the amount of such grant or loan is not less than seventy-five per cent of the total expenditure of that body or authority, such body or authority shall be deemed, for the purposes of 3[this sub-section], to be substantially financed by such grants or loans, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), the Comptroller and Auditor-General may, with the previous approval of the President or the Governor of a State or the Administrator of a Union Territory having a Legislative Assembly, as the case may be, audit all receipts and expenditure of any body or authority where the grant or loan to such body or authority from the Consolidated Fund of India or of any State or of any Union Territory having a Legislative Assembly, as the case may be, in a financial year is not less than rupees one crore.

***16. Audit of receipts of Union or of States**.—It shall be the duty of the Comptroller and Auditor-General to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union Territory having a Legislative Assembly and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed*

and to make for this purpose such examination of the accounts as he thinks fit and report thereon.

18. Powers of Comptroller and Auditor-General in connection with audit of accounts-

(1) The Comptroller and Auditor-General shall in connection with the performance of his duties under this Act, have authority-

(a) to inspect any office of accounts under the control of the Union or of a State, including treasuries and such offices responsible for the keeping of initial or subsidiary accounts, as submit accounts to him;

(b) to require that any accounts, books, papers and other documents which deal with or form the basis of or are otherwise relevant to the transactions to which his duties in respect of audit extend, shall be sent to such place as he may appoint for his inspection;

(c) to put such questions or make such observations as he may consider necessary, to the person in charge of the office and to call for such information as he may require for the preparation of any account or report which it is his duty to prepare.

(2) The person in charge of any office or department, the accounts of which have to be inspected and audited by the Comptroller and Auditor-General,

shall afford all facilities for such inspection and comply with requests for information in as complete a form as possible and whit all reasonable expedition."

33. That additionally, Rule 5A(2) of Service Tax Rules, 1994, which is extracted below, confers powers on the CAG to access records, documents, etc. of an assessee, and also casts an obligation on the assessee to furnish records to the CAG.

"Every assessee shall, on demand, make available to the officer authorized under sub-rule 1 or the audit party deputed by the Commissioner, or the CAG, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be –

(i) the records maintained or prepared by him in terms of sub-rule (2)of Rule 5;

(ii) the trial balance or its equivalent; and

the Income Tax audit report, if any, under Section 44AB of the Income Tax Act for scrutiny of the officer or the audit party, as the case may be."

34. That in the State of U.P., the CAG has the Office of Principal Accountant General (Civil Audit), U.P., Allahabad, and the Office of the Accountant General (Commercial and Receipt Audit), U.P., Lucknow. The office of the Principal Accountant General, UP (Civil Audit) is responsible for the conduct of expenditure audit under Section 13 of the CAG Act. The office of the Accountant General, U. P. (Commercial and Receipt Audit) is responsible for the conduct of receipt audit under Section 16 of the CAG Act. The CAG, through the office of the Accountant General (Commercial and Receipt Audit), U.P., Lucknow, had earlier, in terms of Section 16 of the CAG Act, conducted Receipt Audit of NOIDA on two occasions, in 2003-04 and 2004-05. Copy of the audit report by CAG for the year 2003 is being enclosed herewith and marked as **ANNEXURE NO. 2** to this writ petition. The CAG through the Dy. Accountant General/Principal Accountant General, U.P. has been requesting the Principal Secretary and Commissioner, Industrial Development Department and Chief Secretary, Government of U.P. to allow it to conduct expenditure audit at the premises of the NOIDA. Since then, the CAG has repeated the request many a time, but with

no success. Copies of the letters/requests dated 09.02.2004, 26.02.2004, 02.05.2004, 12.05.2004, 08.07.2004, 09.08.2004, 29.04.2009, 18.08.2009, 22.09.2010, 20.07.2011 sent by the CAG are being enclosed herewith and collectively marked as **ANNEXURE NO. 3** to this writ petition.

35. That NOIDA and GNIDA have repeatedly refused access to their records for conduct of audit by the CAG, citing Section 22 of the U.P. Act. The action of the NOIDA and GNIDA in adopting obstructive tactics and refusing to facilitate audit of the Authorities by the CAG is illegal, untenable and against the interest of accountability and transparency. Copies of the letters dated 30.03.2005, 08.09.2009 and 12.10.2010 refusing to the request of the CAG audit by the Infrastructure and industrial Development Commissioner are being enclosed and collectively marked as **ANNEXURE NO. 4** to this writ petition.

36. That the CAG, considering the substantial increase in the income of NOIDA and GNIDA from rent and sale of properties, had in the year 2011 planned another audit of these authorities as part of the audit of

Service Tax in terms of Section 16 of the CAG Act, read with Rule 5A (2) of Service Tax Rules, as these authorities are registered assessees of Service Tax. However, NOIDA and GNIDA did not allow the CAG to commence such audit, citing provisions of the U.P. Act.

Copies of the letters 24.01.2011, 09.02.2011, 11.02.2011, 18.02.2011, 21.02.2011, 02.03.2011, 21.03.2011, 25.03.2011, 25.05.2011, 06.06.2011, 20.07.2011 and 07.06.2012 requesting for audit by CAG are being enclosed and collectively marked as **ANNEXURE NO. 5** to this writ petition.

Copies of the replies to the request for audit dated March, 2011 and 29.07.2011 are being enclosed and collectively marked as **ANNEXURE NO. 6** to this writ petition.

37. That the audit by the CAG of these Authorities has become all the more necessary in view of the recurrent reports of egregious acts of corruption and other illegalities in land deals, which reveal a total disregard of the canons of financial propriety and the absence of a robust mechanism of ex post scrutiny in U. P.'s Industrial Development Authorities. In several cases, the Hon'ble Supreme Court has made

scathing comments on the state of affairs in these Authorities. For instance-

(I) In WP (C) No. 150/97 NOIDA Entrepreneurs Association Case, the Hon'ble Supreme Court passed an order dated 20-01-1998 directing the Central Bureau of Investigation (CBI) to investigate the allotment of plots in NOIDA and to launch prosecution and departmental inquiries on the basis of investigation, if the same was called for. The Hon'ble Supreme Court observed as under-

"In pursuance to the order dated January 6, 1998, an affidavit of Shri Sudhir Kumar, Secretary (Appointment), Government of U.P. has been filed on behalf of the State of U.P. wherein the course of the action which the State Govt. proposes to adopt with regard to the report of the Inquiry Commission has been indicated. It has been stated that the State Govt. proposes to initiate disciplinary proceedings against respondent No. 7 (Smt. Neera Yadav, former Chief Executive Officer, NOIDA) and to have the charges about which the Commission has expressed its

inability to give specific recommendation for want of further investigation to be inquired into by the Vigilance 'Department of the State. Having regard to the seriousness of the allegations that have been made in the matter of irregularities in the matter of allotment as well as conversion of plots in NOIDA we are of the opinion that it would be appropriate that the matter is investigated by the Central Bureau of Investigation (CBI) and if such investigation discloses commission of a criminal offence the persons found responsible should be prosecuted in a criminal court…

…Shri G.I. Sanghi, the learned senior counsel appearing for respondent No. 7 states that though the respondent No. 7 does not admit that she has committed any irregularity in the matter of allotment or conversion of plots in NOIDA but according to respondent No. 7 there are other persons who might have committed such irregularity and he seeks leave to file an affidavit in this regard. He may file an

affidavit giving particulars of such irregular allotments and in the event of such affidavit being filed further directions in that regard will be given.

As regards the irregular allotment and conversion of plots that which have been found to have been made in the report of the Inquiry Commission, we are of the view that it is necessary that action should be taken for cancellation of such allotments and conversions. Shri Rajeev Dhawan, prays for two weeks time to file a list of persons who have been fitted by such irregular allotments/ conversions. He may do so within two weeks."

In view of the orders passed by the Hon'ble Supreme Court in this regard, the CBI conducted the inquiry against Smt. Neera Yadav and filed a charge against her. She was put on trial and proceeded with in accordance with law.

The allegations made by Smt. Yadav against her predecessors were duly inquired into and eventually the Hon'ble Supreme Court vide

its order dated 09-05-2011, reported as (2011) 6 SCC 508, directed as under:

> *"42. In view of the above, we are of the considered opinion that these allegations being of a very serious nature and as alleged, the respondent no.4 (Shri Ravi Mathur, former & CEO) had passed orders in colourable exercise of power favouring himself and certain contractors, require investigation. Thus, in view of the above, we direct the CBI to have preliminary enquiry and in case the allegations are found having some substance warranting further proceeding with criminal prosecution, may proceed in accordance with law."*

The Hon'ble Supreme Court, in the light of the findings of enquiry into allegations of undue favors shown to the top executives of NOIDA and members of their families and other influential persons/corporate entities, was pleased to issue the following orders in this matter on 27-11-2013 in W.P. (C) No. 150 of 1997:

"16. The arbitrary character of the action taken by NOIDA is demonstrated by the fact that even though Mr. Rajiv Kumar did not want alternative plot, NOIDA has offered him alternative plot. The U. P. Act and the rules framed thereunder do not postulate conversion of plot allotted in one category to the other. What is most surprising is that originally plot No. B-88/51 measuring 450sq. meters was allotted to Ms. Suruchi Yadav but the same was converted into plot No.A-32/44 apparently because the land in Sector-44 was more costly. In the case of Ms. Sanskriti Yadav, plot No.B-73/44 was allotted under Scheme 1994(II) and within 2 months and 12 days the same was converted into plotNo.A-33/44. In the case of Mrs. Neera Yadav, original allotment was made on 8.4.1994 in Sector-32 under Scheme 1994(I) and on the next day it was converted into plot No.26 of Sector-14A having an area of 450 sq. meters. In the case of Shri Rajiv Kumar, the original allotment was in Sector-51 of a plot

measuring 450 sq. meters under Scheme 1994(III) but soon thereafter it was converted to plot No.27/14A. M/s. Flex Industries Ltd. was allotted land in Group Housing Sectors-11 and 51. The CBI found that the allotment was an end product of conspiracy. Another plot was allotted to Shri Amar Singh in the name of M/s. Flex Industries Ltd. The original allotment was of plot No.B-126,Sector-44 and it was converted into plot No.C-218, Sector-44.

18. Therefore, we direct that notices be issued to all the persons named in paragraph 16 to show cause as to why allotments/alternative allotments made in their favour may not be quashed."

(II) In *Greater Noida Indusl. Devt. Auth. v. Devendra Kumar & Ors*, (2011) 12 SCC 375, the Hon'ble Supreme Court observed as under.

"*42….The facts brought on record unmistakably show that the whole exercise of acquisition was designed to serve the interest of the builders and the veil of*

public purpose was used to mislead the people in believing that land was being acquired for a public purpose i.e. planned industrial development. This is the reason why even before the issue of notification under Section 6(1), the process for change of land use was initiated and completed with unusual haste and without waiting for the Government's approval to the modification of the Development Plan, the Authority offered and allotted the acquired land to the builders for construction of multi-storeyed complexes. This was nothing but a colourable exercise of power by the State Government under the 1894 Act and in our considered view; the High Court did not commit any error by recording a conclusion to that effect".

(III) The following observation was made by the Hon'ble Supreme Court in *Radhey Shyam v. State of U.P.*, Civil Appeal No.3261 of 2011, vide order dated 15-04-2011, reported as (2011) 5 SCC 553:

"79. In our view, the above noted factors do not furnish legally acceptable justification for the exercise of power by the State Government under Section 17(1) because the acquisition is primarily meant to cater to private interest in the name of industrial development of the district. It is neither the pleaded case of the respondents nor any evidence has been produced before the Court to show that the State Government and/or agencies/instrumentalities of the State are intending to establish industrial units on the acquired land either by itself or through its agencies/instrumentalities."

(IV) In *ITC Ltd. v. State of Uttar Pradesh and Ors.* (2011) 7 SCC 493, vide order dated 05-07-2011, the Hon'ble Supreme Court held that allotment of land by NOIDA for construction of hotels in preparation for the Commonwealth Games, 2010 contravened the regulations and policies of the Authority. Plots for construction of 14 hotels ranging from 5-Star to 3-Star was allotted on fixed

rate basis without inviting sealed tenders or holding public auction at the reserved price of Rs. 7400 per square metre applicable to industrial units, when the rate for commercial plots was Rs. 70000 per square metre. The allotments were cancelled by the State Government in the exercise of its revisionary powers. The Supreme Court allowed the allottees to save their leases by paying the differential of consideration at the rate of Rs.62,600/- per square metre with consequential increase in the annual lease rent.

(V) The Financial Express in its issue of October 11, 2011 highlighted the huge loss to Noida Authority caused by allotment of land to private builders under a Group Housing Scheme-

"Alleging a Rs 8,000-crore scam in the allotment of land under the Noida Group Housing Scheme, Bharatiya Janata Party (BJP) leader KiritSomaiya lodged a complaint with Lokayukta N K Mehrotra on Monday.

…In his complaint, Somaiya alleged that the New Okhla Industrial Development Authority (Noida) had allotted 38,22,000 square metres of land to private builders in 2009-10 and 2010-11 at Rs 8,131 crore, though the cost of the land — according to district circle rate — was more than Rs 16,000 crore."

Copy of the report in Financial Express of October 11, 2011 is being enclosed herewith and marked as **ANNEXURE NO. 7** to this writ petition.

(VI) Madhav Samaj Nirman Samiti, a public interest organisation, had filed a public interest litigation in the Allahabad High Court in 2012 being Writ Petition (PIL) No. 30825 of 2012, praying inter alia that the State of Uttar Pradesh be directed to transfer Sri Rakesh Bahadur, I.A.S., Chairman, NOIDA and Sri Sanjeev Saran, I.A.S., CEO, NOIDA, (respondent no 4 and 5 respectively) and to initiate inquiry of the entire matter by an independent agency and to restrain the Respondent Nos. 4 and 5 from holding their

respective offices. This Hon'ble Court found that the element of "colourable exercise of power" was a prime cause behind the public interest litigation wherein the "lifting of veil" was far more required. This Hon'ble Court also observed that when there were serious allegations of loss being caused to the State Government because of alleged acts and omissions on the part of the officers running into thousands of crores, it had to be considered as to whether for fair and impartial enquiry/investigation such officers be kept away from the concerned offices or not. Noting that Respondent Nos. 4 & 5 were getting state patronage and, as such, it was a fit case where an independent agency, not under the control of the State Government, should be directed to make at least a preliminary enquiry, the Court directed as follows:

> *"In view of the above, considering the seriousness of the situation and also following the principle laid down by the Supreme Court in the judgments reported in 2010 (3) SCC 571 (State of West Bengal*

and others Vs. Committee for Protection of Democratic Rights, West Bengal and others) and 2011 (12) SCC 328 (T.C. Thangaraj v. V. Engammal and others), the Central Bureau of Investigation (C.B.I.) is hereby directed to make a preliminary enquiry of the matter and report it back to this Court within a period of six months from this date.....However, either for a period of six months or till the time when the Court can be able to get all the reports to finalize the issue, the Respondent Nos. 4 and 5 will not be allowed to work as Chairman and Chief Executive Officer of NOIDA or Greater NOIDA or Yamuna Expressway Authority or any other authority and they will be withdrawn by the Government and will not be placed in the Western Uttar Pradesh to maintain the secrecy and for independent enquiry."

Copy of the order dated 08.11.2012 passed in WP (C) No. 30825/2012 by this Hon'ble Court is being enclosed herewith and marked as **ANNEXURE NO. 8** to this writ petition.

38. That the recent news reports of an Income Tax raid on Yadav Singh, who had been appointed as Engineer-in-Chief of NOIDA, GNIDA and Yamuna Expressway Authority, shed ample light on the current state of affairs in these Authorities. It is stated that the cash and jewellery worth Crores of Rupees recovered during the raid were a part of the illicit gains made from a Rs. 954 Crore tendering scam. Copies of the online newspaper reports in India Today dated 29.11.2014 and Hindustan Times dated 08.12.2014 regarding income tax raid on Yadav Singh are being enclosed herewith and marked as **ANNEXURE NO. 9** to this writ petition.

39. That on July 16, 2015 the Lucknow bench of this Hon'ble Court directed a CBI probe against Yadav Singh on the PIL filed by Dr. Nutan Thakur. The PIL had sought a CBI probe into the disproportionate assets acquired by Mr. Yadav Singh as well as into his meteoric rise in the official hierarchy from a small time assistant engineer to engineer-in-chief of three most lucrative organisations of Uttar Pradesh, i.e. NOIDA, GNIDA and Yamuna Expressway Authority in no time.

Copy of the order passed by the Lucknow Bench of this Hon'ble Court dated 16.07.2015 in Misc. Bench No. 12396 of 2014 is enclosed herewith and marked as **ANNEXURE NO. 10** to this writ petition.

40. That the National Commission to Review the Working of the Constitution in its report dated March 2002 has made the following observation in Chapter V under the heading "Parliament and State Legislatures – Synopsis" in Para 5.16.1 at page 113:

"5.16.1 Public audit is a powerful instrument of good governance. It ensures parliamentary control over expenditure voted by the legislature and renders public authorities accountable for the public moneys raised and spent by them to implement policies and programmes approved by the legislature. Accountability and transparency, the two cardinal principles of good governance in a democratic set up, depend for their observance, to a large extent, on how well the public audit function is discharged. It is for this reason that the CAG has been given special status by the Constitution in Articles 148 to 151. It is his responsibility to ensure that money is spent and revenue raised not only in accordance

with the law, but also with due regard to economy, efficiency and effectiveness. The CAG is the constitutional authority entrusted with the high reasonability of maintaining probity in the use of public funds".

Copy of relevant pages of chapter V of the report of the National Commission to Review the Working of the Constitution dated March 2002 is being enclosed herewith and marked as **ANNEXURE NO. 11** to this writ petition.

41. That the Petitioner has no other speedy and efficacious alternative remedy except to approach this Hon'ble Court under writ jurisdiction of this Hon'ble High Court under Article 226 of the Constitution of India, as such the Petitioner is filing the present Writ Petition (PIL) in view of the aforementioned facts before this Hon'ble High Court, inter-alia on the following amongst other grounds:

GROUNDS

1. Because the actions of the aforementioned Authorities in obstructing the audit of their accounts by the CAG, especially when there are recurrent reports of blatant misuse of authority and corruption

in dealing with the precious resource of land, is arbitrary and violative of Article 14 of the Constitution. It is submitted that the Hon'ble Supreme Court in several judgments such as *Aeltemesh Rein v. Union of India*, (1988) 4 SCC 54, para 6, at page 58; *Rameshwar Prasad (VI) v. Union of India*, (2006) 2 SCC 1, para 240 at page 129; *State of A.P. v. Anupama Minerals*, 1995 Supp (2) SCC 117, at page 118; *Harish Uppal (Ex-Capt.) v. Union of India*, (2003) 2 SCC 45, para 30 at page 70; and *Delhi Admn. v. Manohar Lal*, (2002) 7 SCC 222, in para 7 at page 228, has held that no discretionary power can be exercised arbitrarily and also that every power is coupled with duty. Every discretionary power vested in the executive should be exercised in a just, reasonable and fair way. That is the essence of the rule of law. To quote from Harish Uppal's case:

> "*30……No body or authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. Every power vested in a public authority is coupled with a duty to exercise it, when a situation calls for such exercise. The authority cannot refuse to act at its will or pleasure. It must be*

remembered that if such omission continues, particularly when there is an apparent threat to the administration of justice and fundamental rights of citizens i.e. the litigating public, courts will always have authority to compel or enforce the exercise of the power by the statutory authority."

2. Because accountability is the lynchpin of democracy and the institution of the CAG is the authority created by the Constitution to ensure such accountability of the Executive to Parliament and State Legislatures, and through them, to the people of this country. It is the inherent right of the citizen to know the true financial situation of the State and its instrumentalities. In recognition of this cardinal principle, the entire Chapter V of the Constitution is dedicated to the achievement of the objective of financial discipline and transparency. Parliament has enacted the CAG Act, under which the conduct of audit and the determination of its manner, timing, scope, extent, etc. are the sole responsibility of the CAG. The duty to facilitate the audit as and when decided by the CAG has been cast on the entity to be audited

so as to ensure the effectiveness of audit and delivery of the audit findings to the various stakeholders.

3. That Article 39 (b) of the Constitution states as under:

> "*The State shall, in particular, direct its policy towards securing -*
>
> *(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good*;"

Land is a material resource of the community in the hands of the State, and that the State is obliged to use this resource for public good and public purpose. Therefore, any proceeds, from the sale of lands that are material resources of the community, are receipts payable to the Consolidated Fund of India or the Consolidated Fund of a State. The U. P. Government acquires land from farmers/land owners and transfers them at a cost much below the market/circle rates to NOIDA, GNIDA, and Yamuna Expressway Authority which later sell, lease or otherwise transfer these lands to private entities at a higher

price, and retain the profit/margin. The profits earned from the sale of land by NOIDA, GNIDA and Yamuna Expressway Authority are receipts payable into the Consolidated Fund of the State of U. P., however, the U. P. Act has allowed that such receipts payable into the Consolidated Fund be retained in the Funds of the Authorities. Therefore, the aforementioned provisions of Section 16 of the CAG Act make the CAG duty-bound to audit the receipts from sale of land and for this purpose, make such examination of the accounts of the Funds of the two Authorities in such manner as he deems fit.

4. Because Section 22 of the U. P. Act, which provides for annual audit of the accounts of the Authorities by the Examiner, Local Fund Accounts, is relied upon by NOIDA and GNIDA to block the conduct of audit by the CAG. The U. P. Act has provided for the audit of the accounts of the authorities by the Examiner, Local Fund Accounts, which is a subordinate authority of the Government of U. P., and also made a provision for audit by the CAG only under entrustment. Thus, the U. P. Act has placed a hindrance in the discharge of the duty

of the CAG under Section 16 of the CAG Act, to make ‘such examination of the accounts as he thinks fit’. The Examiner, Local Fund Accounts, is a subordinate authority of the Government of U. P. Therefore, the audit conducted by it as per provisions of sub section (2) of Section 22 of the U. P. Act, cannot be a substitute to the statutory audit by independent constitutional authority; the CAG of India. Democracy is designed for the welfare of citizens and the independence of the instrumentalities created for guardianship duties is to the preserved. To ensure maintenance of the rule of law and preservation of the of our democratic polity, institutional mechanisms like the Election Commission of India, the Union Public Service Commission and the Comptroller and Auditor General of India have been generated by constitutional process. Institutional independence is guaranteed to these agencies so that their duties are unsullied by the interference of the Executive.

5. That despite the audit conducted as per provisions of sub section (2) of Section 22 of the U.P. Act, recurrent reports of corruption and other illegalities in land deals have come into the public

domain. As has been mentioned above, this Hon'ble Court has made scathing comments on the role of these authorities in the transactions in question. The recent case of Yadav Singh, Engineer-in-Chief, NOIDA, GNIDA, and Yamuna Expressway Authority, clearly shows that the extant mechanism of audit by the Examiner, Local Fund Accounts, which is a subordinate authority of the Government of U. P., has completely failed in checking the cases of corruption and misuse of national resources which directly strikes at citizen's right to life guaranteed under Article 21 of the Constitution.

6. Because the Authorities in question are discharging the function of procuring land acquired by the State Government and thereafter disposing of them at a much higher rate, the revenue/profit earned from such disposal of land is payable into the Consolidated Fund of the State. Such revenues, instead of being placed in the Consolidated Fund, have been placed as funds of the Authorities by the Act. These revenues form a major part of the funds of the Authorities. The budget provisions of NOIDA and GNIDA for the

years 2007-08 and 2008-09 show that over 85 per cent of the total income of NOIDA, and over 65 per cent of the total income of GNIDA, are from the sale of land and buildings. Therefore, the expenditure incurred from the funds of the Authorities, consisting primarily of the revenues payable into the Consolidated Fund of the State, is liable to expenditure audit by the CAG in terms of Section 13 of the CAG Act.

7. Because Rule 5A(2) of Service Tax Rules, 1994, confers powers on the CAG to access the records, documents, etc., of NOIDA and Gr. NOIDA, as they are registered assessees for payment of Service Tax. The aforementioned rule also casts an obligation on the Authorities to furnish records to the CAG. This requirement of furnishing records to the CAG for audit of Service Tax records is in the capacity of being a registered service provider, and is guided by Rule 5A(2) of Service Tax Rules,1994 and has no link to the provisions of the U. P. Act. However, NOIDA and GNIDA have not given access to their records for the conduct of audit, as provided in the Service Tax Rules, by citing the U. P. Act, which has no applicability in the conduct

of this audit. Moreover, Section 18 of the CAG Act gives unassailable powers to the CAG to requisition documents and records, inspect any office during the course of audit and casts an obligation on NOIDA and GNIDA to submit the documents, records so requisitioned by the CAG. The act of the NOIDA and GNIDA in obstructing audit by the CAG is an infringement on the powers of the CAG, and amounts to withholding of documents from audit, thereby interfering in the discharge of the Constitutional duties of the CAG.

8. Because the Hon'ble Supreme Court in its recent judgment regarding CAG Audit of Telecom Companies has held that the CAG can do audit of even private telecom companies. The Hon'ble Supreme Court has observed in the said judgment:

"We have indicated, the worth of spectrum to impress upon the fact that the State actions and actions of its agencies/instrumentalities/licensees must be for the public good to achieve the object for which it exits, the object being to serve public good by resorting to fair and reasonable methods. State is also bound to protect the resources for the enjoyment of general public rather than

permit their use for purely commercial purposes. Public trust doctrine, it is well established, puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest. Further it mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management."

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to: -

i. Issue a writ of mandamus or any other writ or direction of similar nature for getting the audit of income and expenses of NOIDA, GNIDA and Yamuna Expressway Authority, i.e. Respondent Nos. 2, 3 & 4 done by the CAG;

;

ii. Issue a writ of mandamus or any other writ or direction to do a fair and independent investigation into the cases of corruption and misuse/misappropriation of land and other resources

if highlighted by the CAG in its audit conducted pursuant to the directions of this Hon'ble Court and take consequent action thereupon against the persons found involved in such corruption cases;

iii. Pass any other order/direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

_____

Dated: /08/2015

(Yash Tandon),
Advocate
Advocate Roll No. A/Y-0117

(Gunjan Jadwani),
Advocate
Enrolment No. 2844/ 2015

Note: Sri Anurag Khanna, Senior Advocate, shall also appear and argue the case on behalf of the Petitioner

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

AFFIDAVIT

IN

CIVIL MISC. WRIT PETITION (PIL) NO. OF 2015

(Under Article 226 of the Constitution of India)

DISTRICT – GAUTAM BUDH NAGAR

COMMON CAUSE, A Registered Society,
Through its Director Shri Vipul Mudgal

----------**Petitioners**

Versus

STATE OF U.P. through Chief Secretary & 4 Others.

----------**Respondents**

Affidavit of Vipul Mudgal, aged about 52 years, Son of Jai Kumar Mudgal; Director of COMMON CAUSE, a registered society; Resident of 43, National Media Centre, Shankar Chowk, NH-8, Gurgaon – 122 002; Hindu by Religion, Nationality Indian, and Occupation - Service.

(Deponent)

I, the deponent above named, do hereby solemnly affirm and state on oath as under :-

1. That I am the Director of Applicant No. 1 society in the above mentioned writ petition and as such he is well acquainted with the facts and circumstances of the case deposed to below.

I, the deponent, above named do hereby solemnly affirm and state on oath that the contents of Paragraph No. 1 of this affidavit and those of Paragraph Nos. _ _ _

the basis of the papers produced by her before me in this case.

(Yash Tandon),

Advocate.

Solemnly affirmed before me on this ___ day of August, 2015 at about _____ A.M./P.M. by the deponent who has been identified by the aforesaid Advocate.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit fully well, which has been read over and explained to him.

(Oath Commissioner)

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Annexure No.

IN

CIVIL MISC. WRIT PETITION (PIL) NO. OF 2015

(Under Article 226 of the Constitution of India)

DISTRICT – GAUTAMBUDH NAGAR

COMMON CAUSE, A Registered Society,
Through its Director Shri Vipul Mudgal

----------**Petitioners**

Versus

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_____