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संविधान – अनुच्छेद 226 एवं लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 14 व 36(1)(a) – खासगी न्यास – संपत्ति का विक्रय – अनुमति – अभिनिर्धारित – खासगी संपत्तियों के संबंध में हक राज्य के पास है – यद्यपि संपत्तियां न्यास द्वारा प्रबंधित हैं, विलयन पर राज्य सरकार में निहित थी और पदावरोही स्वत्वधारी/होलकर राज्य के साथ व्यवस्थापित संपत्ति का भाग निर्मित नहीं करती – संपत्ति, लोक न्यास की है तथा उसका निपटान करते समय पंजीयक, लोक न्यास अथवा राज्य से अनुमति अभिप्राप्त की जानी चाहिए थी। (म.प्र. राज्य वि. खासगी (देवी अहिल्या बाई होल्कर चैरिटीज) ट्रस्ट, इंदौर) **(DB)…2538**

***Constitution – Article 227 – Scope & Jurisdiction* – Held – High Court in exercise of its power of superintendence cannot interfere to correct mere errors of law or fact or just because another view than the one taken by Tribunals or subordinate Courts, is possible – Jurisdiction has to be very sparingly exercised. [R.D. Singh Vs. Smt. Sheela Verma] …2646**

संविधान – अनुच्छेद 227 – व्याप्ति व अधिकारिता – अभिनिर्धारित – उच्च न्यायालय, पर्यवेक्षक की उसकी शक्ति के प्रयोग में, मात्र विधि या तथ्य की त्रुटियों का सुधार करने के लिए अथवा केवल इसलिए कि अधिकरणों या अधीनस्थ न्यायालयों द्वारा लिए गये दृष्टिकोण से अलग दृष्टिकोण संभव है, हस्तक्षेप नहीं कर सकता – अधिकारिता का प्रयोग अति सावधानीपूर्वक करना चाहिए। (आर.डी. सिंह वि. श्रीमती शीला वर्मा)
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***Constitution – Article 227 – Scope & Jurisdiction* – Held – Interference under Article 227 can be made on limited grounds – If order suffers from any**

***Criminal Procedure Code, 1973 (2 of 1974), Section 340 & 362 – Applicability* – Held – Before directing prosecution of witnesses, Court has considered all aspects and concluded that perjury was deliberate – If Court reopens the entire judgment, such exercise would certainly come within ambit of Section 362 Cr.P.C., which is not permissible. [Shambhu Singh Chauhan Vs. State of M.P.] (DB)…2675**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 व 362 – प्रयोज्यता – अभिनिर्धारित – साक्षीगण का अभियोजन निदेशित करने के पूर्व, न्यायालय ने सभी पहलुओं को विचार में लिया है और निष्कर्षित किया कि शपथ पर मिथ्या साक्ष्य जानबूझकर था – यदि न्यायालय संपूर्ण निर्णय पुनः खोलता है, उक्त कार्यवाही निश्चित रूप से धारा 362 दं.प्र.सं. की परिधि के भीतर आयेगी जो कि अनुज्ञेय नहीं है। (शम्भू सिंह चौहान वि. म.प्र. राज्य) **(DB)…2675**

***Criminal Procedure Code, 1973 (2 of 1974), Section 340 & 362 – Recall & Review – Preliminary Enquiry* – While deciding appeal in High Court, trial Court directed to prosecute prosecution witnesses for deliberately giving false evidence – Prayer for recall of direction – Held – It was not obligatory to conduct preliminary enquiry after giving opportunity of hearing to applicant – Even without preliminary enquiry, Court can initiate u/S 340 Cr.P.C. – Court after considering every aspect had formed a *prima facie* opinion – Mere absence of preliminary enquiry would not vitiate a *prima facie* opinion formed by Court – Case is hit by Section 362 Cr.P.C. – Application dismissed. [Shambhu Singh Chauhan Vs. State of M.P.] (DB)…2675**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 व 362 – वापस लिया जाना एवं पुनर्विलोकन – प्रारंभिक जांच – उच्च न्यायालय में अपील विनिश्चित किये जाते समय, अभियोजन साक्षियों को जानबूझकर मिथ्या साक्ष्य देने के लिए अभियोजित करने हेतु विचारण न्यायालय को निदेशित किया गया – निदेश वापस लेने हेतु प्रार्थना – अभिनिर्धारित – आवेदक को सुनवाई का अवसर देने के पश्चात् प्रारंभिक जांच संचालित करना बाध्यकारी नहीं था – प्रारंभिक जांच के बिना भी न्यायालय, धारा 340 दं.प्र.सं. के अंतर्गत आरंभ कर सकता है – न्यायालय ने प्रत्येक पहलू का विचार करने के पश्चात् प्रथम दृष्ट्या राय निर्मित की थी – मात्र प्रारंभिक जांच की अनुपस्थिति से न्यायालय द्वारा निर्मित प्रथम दृष्ट्या राय दूषित नहीं होगी – प्रकरण पर धारा 362 दं.प्र.सं. प्रयुक्त होती है – आवेदन खारिज। (शम्भू सिंह चौहान वि. म.प्र. राज्य) **(DB)…2675**

***Criminal Procedure Code, 1973 (2 of 1974), Section 340 & 482 – Delay & Laches* – Held – Present application filed after about 2 years of passing of judgment – Application suffers from delay and laches. [Shambhu Singh Chauhan Vs. State of M.P.] (DB)…2675**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 व 482 – विलंब एवं अतिविलंब – अभिनिर्धारित – वर्तमान आवेदन को निर्णय पारित किये जाने के लगभग 2

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date of next hearing whichever is earlier – Proviso to Section 52(2) rightly interpreted – Further, opportunity of hearing given to petitioner, thus no violation of rights – Interference declined – Petition dismissed. [R.D. Singh Vs. Smt. Sheela Verma] …2646

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 52 (2) – आदेश का निष्पादन – रोक की अवधि – अभिनिर्धारित – अपर कलेक्टर ने अभिनिर्धारित किया है कि आदेश के निष्पादन को, एक समय पर तीन माह से अधिक के लिए अथवा सुनवाई की अगली तिथि तक, जो भी पहले हो, रोका नहीं जाएगा – धारा 52 (2) के परंतुक का उचित रूप से निर्वचन किया गया – इसके अतिरिक्त, याची को सुनवाई का अवसर दिया गया अतः, अधिकारों का कोई उल्लंघन नहीं – हस्तक्षेप से इन्कार किया गया – याचिका खारिज। (आर.डी. सिंह वि. श्रीमती शीला वर्मा) **…2646**

***Law of Interpretation – Precedent* – Held – Judgment of Supreme Court cannot be read as *Euclid's Theorem* – Blind reliance on a judgment without considering the fact situation is bad in law – A single different fact may change precedential value of judgment. [Union Bank of India Vs. Vinod Kumar Dwivedi] …2656**

निर्वचन की विधि – पूर्व निर्णय – अभिनिर्धारित – उच्चतम न्यायालय के निर्णय को यूक्लिड प्रमेय के रूप में नहीं पढ़ा जा सकता – तथ्यात्मक परिस्थिति को विचार में लिए बिना निर्णय पर अंधा विश्वास, विधि में अनुचित है – एक भिन्न तथ्य, निर्णय के पूर्व निर्णय मूल्य को बदल सकता है। (यूनियन बैंक ऑफ इंडिया वि. विनोद कुमार द्विवेदी) **…2656**

***Motor Vehicles Act (59 of 1988), Section 166 – Appreciation of Evidence – Credibility of Witness* – Held – As per FIR lodged by eye witness, accident occurred by unknown four wheeler but according to other eye witness (PW-3), accident caused by the alleged truck – No evidence to show, how police knew that PW-3 witnessed the accident and chased the offending truck – PW-3 is planted witness and his conduct of not informing police about accident while he passed by the police station, makes him unreliable – Claimants failed to prove that deceased died in a accident with truck in question – Appeal allowed. [HDFC Agro General Insurance Co. Ltd. Vs. Smt. Anita Bhadoria] …*24**

मोटर यान अधिनियम (1988 का 59), धारा 166 – साक्ष्य का मूल्यांकन – साक्षी की विश्वसनीयता – अभिनिर्धारित – चक्षुदर्शी साक्षी द्वारा दर्ज कराये गये प्रथम सूचना प्रतिवेदन के अनुसार, एक अज्ञात चौपहिया वाहन द्वारा दुर्घटना घटित हुई परंतु अन्य चक्षुदर्शी साक्षी (अ.सा.–3) के अनुसार, अभिकथित ट्रक द्वारा दुर्घटना कारित हुई – यह दर्शाने हेतु कोई साक्ष्य नहीं है, कि पुलिस को यह कैसे ज्ञात था कि अ.सा.–3 ने दुर्घटना होते देखी थी तथा उसने आक्षेपित ट्रक का पीछा किया था – अ.सा.–3 एक बनावटी साक्षी है तथा पुलिस थाने से गुजरते समय पुलिस को दुर्घटना के बारे में सूचित न करने का उसका आचरण, उसे अविश्वसनीय बनाता है – दावेदार यह साबित करने में विफल रहे कि

दण्ड संहिता (1860 का 45), धाराएँ 148, 149 व 302 – पूर्व वैमनस्यता – अभिनिर्धारित – यदि साक्षीगण अन्यथा विश्वसनीय हैं, पूर्व वैमनस्यता अपने आप से किसी परिसाक्ष्य को अविश्वसनीय नहीं बनायेगी – वास्तव में, पूर्व वैमनस्यता अपराध के लिए एक स्पष्ट हेतु देती है। (कारूलाल वि. म.प्र. राज्य) **(SC)…2524**

Penal Code (45 of 1860), Sections 148, 149 & 302 – Related Witness – **Held – Being related to deceased does not necessarily mean that they will falsely implicate innocent persons – Further, there is an unrelated witness who has supported the version of the eye witnesses – Appellants rightly convicted. [Karulal Vs. State of M.P.] (SC)…2524**

दण्ड संहिता (1860 का 45), धाराएँ 148, 149 व 302 – संबंधी साक्षी – अभिनिर्धारित – मृतक से संबंधित होने का अर्थ जरूरी नहीं है कि वे निर्दोष व्यक्तियों को मिथ्या आलिप्त करेंगे – इसके अतिरिक्त, एक असंबंधित साक्षी है जिसने चक्षुदर्शी साक्षीगण के कथन का समर्थन किया है – अपीलार्थीगण उचित रूप से दोषसिद्ध। (कारूलाल वि. म.प्र. राज्य) **(SC)…2524**

Penal Code (45 of 1860), Sections 363, 366-A & 376, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(w)(ii) & 14-A(2), Protection of Children from Sexual Offences Act (32 of 2012), (POCSO) Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) – Cancellation of Bail – Grounds – Repetition of offence after grant of Bail – **Held – For repetition of offence, investigation is going on – Victim not living with her parents and living at One Stop Centre and her statements are not implicative – Accused trying to come out of his stigmatic past by complying other bail conditions and performing community service as reformatory measure, thus relegating him to jail would not serve the cause of justice – No case of cancellation of bail made out – Liberty granted to renew the prayer if any embarrassment/prejudice caused by accused in future – Application disposed. [Sunita Gandharva (Smt.) Vs. State of M.P.] …2691**

दण्ड संहिता (1860 का 45), धाराएँ 363, 366–A व 376, अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(w)(ii) व 14–A(2), लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), (पोक्सो) धारा 3/4 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439(2) – जमानत का रद्दकरण – आधार – जमानत प्रदान किये जाने के पश्चात् अपराध की पुनरावृत्ति – अभिनिर्धारित – अपराध की पुनरावृत्ति हेतु अन्वेषण चल रहा है – पीड़ित उसके माता–पिता के साथ नहीं रह रही है और वन स्टॉप सेन्टर में रह रही है तथा उसके कथन आलिप्त करने वाले नहीं हैं – अभियुक्त, उसके कलंकित अतीत से बाहर निकलने के लिए जमानत की अन्य शर्तों के अनुपालन एवं सुधारात्मक उपायों के रूप में सामुदायिक सेवा के संपादन द्वारा प्रयास कर रहा है, अतः उसे जेल रवाना करने से न्याय हेतुक साध्य नहीं होगा – जमानत के रद्दकरण का कोई प्रकरण नहीं बनता – भविष्य में यदि अभियुक्त द्वारा कोई

दर्जा नहीं देगा – मृत कर्मचारी के परिवार को, प्रयोज्य नीति के अनुसार पहले ही हकदारी का भुगतान किया जा चुका है – अनुच्छेद 142 के अंतर्गत शक्तियों का प्रयोग करते हुए अनुकम्पा अनुदान 1 लाख से बढ़ाकर 2 लाख किया गया – अपील मंजूर। (म.प्र. राज्य वि. अमित श्रीवास) **(SC)…2516**

***Service Law – Dismissal – Backwages – Grounds – Illegal release of pension of a widow to incompetent person* – Held – As per Tribunal's finding, pension illegally withdrawn from July 2007 to Nov 2009 and respondent joined in 2009 – Being a peon, he has no control over process of sanction/release of pension – Other officers who were responsible for issuance of pension were given minor punishments – Respondent was unnecessarily victimized and subjected to discriminatory and disproportionate punishment – Tribunal rightly granted 30% backwages – Petition dismissed with cost of Rs. 25,000 to be paid to respondent. [Union Bank of India Vs. Vinod Kumar Dwivedi] …2656**

सेवा विधि – पदच्युति – पिछला वेतन – आधार – अक्षम व्यक्ति को एक विधवा की पेंशन की अवैध निर्मुक्ति – अभिनिर्धारित – अधिकरण के निष्कर्ष के अनुसार, जुलाई 2007 से नवंबर 2009 तक अवैध रूप से पेंशन निकाली गई थी तथा प्रत्यर्थी ने 2009 में कार्यग्रहण किया था – एक भृत्य होने के नाते, पेंशन की मंजूरी/निर्मुक्ति की प्रक्रिया पर उसका कोई नियंत्रण नहीं है – अन्य अधिकारीगण जो पेंशन जारी करने के लिए उत्तरदायी थे, उन्हें लघु दण्ड दिये गये थे – प्रत्यर्थी को अनावश्यक रूप से पीड़ित किया गया और विभेदकारी एवं अननुपातिक दण्ड के अधीन किया गया – अधिकरण ने उचित रूप से 30% पिछला वेतन प्रदान किया – प्रत्यर्थी को अदा किये जाने के लिए रूपये 25,000/– व्यय के साथ याचिका खारिज। (यूनियन बैंक ऑफ इंडिया वि. विनोद कुमार द्विवेदी) **…2656**

***Service Law – Promotion & Timescale (Krammonati) – Entitlement* – Held – Appellant promoted on 10.07.2009 which he had forgone – Subsequently he became entitled for timescale w.e.f. 22.07.2010 after completing 12 years of service in UDT cadre – If person forgoes his promotion, he would not be subsequently entitled for *krammonati* – Appeal dismissed. [Premlata Raikwar (Smt.) Vs. State of M.P.] (DB)…2532**

सेवा विधि – पदोन्नति व समयमान (क्रमोन्नति) – हकदारी – अभिनिर्धारित – अपीलार्थी को 10.07.2009 को पदोन्नत किया गया जिसका उसने स्वेच्छा से परित्याग किया था – तत्पश्चात्, वह प्रवर श्रेणी शिक्षक संवर्ग में 12 वर्षों की सेवा पूर्ण करने के पश्चात्, 22.07.2010 से प्रभावी रूप से समयमान हेतु हकदार बना – यदि व्यक्ति उसकी पदोन्नति का स्वेच्छा से परित्याग करता है, वह पश्चात्वर्ती रूप से क्रमोन्नति हेतु हकदार नहीं होगा – अपील खारिज। (प्रेमलता रैकवार (श्रीमती) वि. म.प्र. राज्य) **(DB)…2532**

***Service Law – Promotion & Timescale (Krammonati)* – Held – If proposition of appellant that even after refusing promotion he can avail**

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THE INDIAN LAW REPORTS M.P. SERIES, 2020
(Vol.-4)

JOURNAL SECTION

IMPORTANT ACTS, AMENDMENTS, CIRCULARS, NOTIFICATIONS AND STANDING ORDERS.

AMENDMENTS IN THE MADHYA PRADESH GOODS AND SERVICES TAXES RULES, 2017

[Published in the Madhya Pradesh Gazette (Extra-ordinary), dated 31 August 2020, page Nos. 544(5) to 544(11)].

No. F-A-3-08-2020-1-V(28).— In exercise of the powers conferred by section 164 of the Madhya Pradesh Goods and Services Taxes Act, 2017 (19 of 2017), the State Government, hereby, makes the following further amendments in the Madhya Pradesh Goods and Services Taxes Rules, 2017, namely :–

AMENDMENTS

Save as otherwise provided in these rules, they shall be deemed to have come in force on 23rd day of March, 2020.

In the said rules,–

1. In rule 8, after sub-rule (4), the following sub-rule shall be inserted, namely :–

"(4A) The applicant shall while submitting an application under sub-rule (4), with effect from 01-04-2020, undergo authentication of aadhaar number for grant of registration.".

2. In rule 9, in sub-rule (1), for the full stop, the colon shall be substituted and thereafter the following proviso shall be added, namely :–

"Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.".

3. For rule 25, the following rule shall be substituted, namely :–

"25. Physical verification of business premises in certain cases.- Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photograph, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.".

4. In rule 43, in sub-rule (1), –

(1) for clause (c), the following clause shall be substituted, namely :–

"(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as 'T', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed:

Provided further that the amount 'T' shall be computed separately for input tax credit of Central tax, State tax, Union territory tax and Integrated tax and declared in FORM GSTR-3B.

Explanation: An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, it is subsequently covered under this clause.".

(2) for clause (d), the following clause shall be substituted, namely:–

"(d) the aggregate of the amount of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be

denoted as 'T' shall be the common credit in respect of such capital goods :

Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'T';

(3) in clause (e), the following explanation shall be inserted, namely :–

"Explanation: For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.";

(4) clause (f) shall be omitted.

5. In rule 80, in sub-rule (3), for the full stop, the colon shall be substituted and thereafter the following proviso shall be added, namely :–

"Provided that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified in FORM GSTR-9C for the financial year 2018-2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.".

6. In rule 86, after sub-rule (4), the following sub-rule shall be inserted, namely :–

"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.".

7. In rule 89, in sub-rule (4), for clause (C), the following clause shall be substituted, namely :–

"(C) "Turnover of zero-rated supply of goods' means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,

whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;".

8. In rule 92,-

(1) after sub-rule (1), the following sub-rule shall be inserted, namely :–

"(1A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.".

(2) in sub-rule (4), after the words, brackets and figure "amount refundable under sub-rule (1)", the words,brackets, figure and letter "or sub-rule (1A)" shall be inserted.

(3) in sub-rule (5), after the words, brackets and figure "amount refundable under sub-rule (1)", the words, figures and letter "or sub-rule (1A) shall be inserted.

9. In rule 96, in sub-rule (10), in clause (b), the following explanation shall be inserted, namely :–

"Explanation: For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.".

10. After rule 96A, the following rule shall be inserted, namely :–

"96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.- (1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of

such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, extended period, failing which the amount refund shall be recovered in accordance with the provisions of section 73 or 74 of the Act as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the reserve Bank of India.".

11. In rule 141, in sub-rule (2), for the word "Commissioner", the words "proper officer" shall be substituted.

12. In the said rules, in FORM GST RFD-01, after the declaration under clause (g) of sub-rule (2) of rule 89, the following undertaking shall be inserted, namely :–

"UNDERTAKING

I, hereby, undertake to deposit to the Government, the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the SGST Rules, 2017.

Signature:

Designation/Status.".

Name:

By order and in the name of the Governor of Madhya Pradesh,
RATNAKAR JHA, Dy. Secy.

AMENDMENTS IN THE HIGH COURT OF MADHYA PRADESH RULES, 2008.

[Published in M.P. Gazette, Part 4(Ga), dated 02 October 2020, page Nos. 1310 to 1311]

In exercise of the powers conferred by Articles 225 of the Constitution of India, section 54 of the States Reorganisation Act, 1956, clauses 27 and 28 of the Letters Patent, the High Court of Madhya Pradesh, hereby, makes the following amendments in the High Court of Madhya Pradesh Rules, 2008, which shall come into force from the date of notification in the Madhya Pradesh Official Gazette (Extra-ordinary).

AMENDMENT

1. In chapter VIII, in Rule 3, in the last line, the comma and words ", act and plead" shall be deleted.

2. In chapter X, in sub-rule (7) of Rule 2, for clause (b), the following clause shall be substituted, namely;

(b) neatly typed or printed on both sides of A4 size paper having not less than 75 GSM, leaving a margin of not less than 1.5" on the Top and Bottom and 1.75" margin Left and at least 1.0" margin Right.

In sub-rule (2) of Rule 3 of Chapter X;

3. (i) In clause (a), in the beginning, the words "three extra copies" shall be substituted by the words "one extra copy".

(ii) In clause (b), in the beginning, the words "two extra copies" shall be substituted by the words "one extra copy".

4. In format No. 13, after point No. 3, the following points shall be added, namely;

3A. If an application in respect of cross-case, if any, under section 438 of the Code of Criminal Procedure for bail is pending before or decided by the Supreme Court, any High Court or any Court Subordinate to a High Court, the particulars thereof.

3B. (Where the number of accused persons is more than one),

To the best of the knowledge of the applicant, no bail application in cross-case, if any, has been filed by any of the co-accused persons.

or

To the best of the knowledge of the applicant, the accused person (s) in cross-case, if any, have filed following bail application(s).

Name of the Accused	Crime number of cross-case	Date of Application If known	Institution Number	Date of the Order	Name of the Judge

In format No. 14, after point No.3, the following points shall be added, namely;

3A. If an application in respect of cross-case, if any, under section 439 of the Code of Criminal Procedure for bail is pending before or decided by the Supreme Court, any High Court or any Court Subordinate to a High Court, the particulars thereof.

3B. (Where the number of accused persons is more than one).

To the best of the knowledge of the applicant, no bail application in cross-case, if any, has been filed by any of the co-accused persons.

or

To the best of the knowledge of the applicant, the accused person(s) in cross-case, if any, have filed following bail application(s).

Name of the Accused	Crime number of cross-case	Date of Application If known	Institution Number	Date of the Order	Name of the Judge

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Rajendra Kumar Vani, Registrar General.

NOTES OF CASES SECTION

Short Note

**(23)*

Before Mr. Justice Prakash Shrivastava

W.P. No. 10950/2020 (Indore) decided on 19 October, 2020

ARUN KUMAR MEHTA …Petitioner

Vs.

STATE OF M.P. …Respondent

***Urban Engineering Service (Recruitment and Conditions of Service) Rules, M.P., 2015, Schedule 1 – Deputation – Consent* – Held – Petitioner, employee of Urban Administration Department – As per Schedule 1 of Rules, posting of Superintendent Engineers and Executive Engineers on deputation to Municipal Corporation is already provided, hence consent of employee is implicit – Rule do not provide for any separate consent – No infirmity in impugned order of transfer – Petition dismissed.**

राज्य नगरीय यांत्रिकी सेवा (भर्ती एवं सेवा की शर्तें) नियम, म.प्र., 2015, अनुसूची 1 – प्रतिनियुक्ति – सहमति – अभिनिर्धारित – याची, नगरीय प्रशासन विभाग का कर्मचारी – नियमों की अनुसूची 1 के अनुसार, नगरपालिका निगम में प्रतिनियुक्ति पर अधीक्षण यंत्रीगण एवं कार्यपालन यंत्रीगण की पदस्थापना पहले से उपबंधित है, अतः कर्मचारी की सहमति अभिप्रेत है – नियम किसी पृथक सहमति को उपबंधित नहीं करता – स्थानांतरण के आक्षेपित आदेश में कोई कमी नहीं – याचिका खारिज।

Case referred:

(2013) 3 SCC 526.

L.C. Patne, for the petitioner.
Pourush Ranka, for the respondent.

NOTES OF CASES SECTION

Short Note

****(24)***

Before Mr. Justice G.S. Ahluwalia

M.A. No. 1169/2014 (Gwalior) decided on 10 February, 2020

HDFC AGRO GENERAL INSURANCE CO. LTD. …Appellant

Vs.

SMT. ANITA BHADORIA & ors. …Respondents

A. Motor Vehicles Act (59 of 1988), Section 166 – Appreciation of Evidence – Credibility of Witness **– Held – As per FIR lodged by eye witness, accident occurred by unknown four wheeler but according to other eye witness (PW-3), accident caused by the alleged truck – No evidence to show, how police knew that PW-3 witnessed the accident and chased the offending truck – PW-3 is planted witness and his conduct of not informing police about accident while he passed by the police station, makes him unreliable – Claimants failed to prove that deceased died in a accident with truck in question – Appeal allowed.**

क. मोटर यान अधिनियम (1988 का 59), धारा 166 – साक्ष्य का मूल्यांकन – साक्षी की विश्वसनीयता – अभिनिर्धारित – चक्षुदर्शी साक्षी द्वारा दर्ज कराये गये प्रथम सूचना प्रतिवेदन के अनुसार, एक अज्ञात चौपहिया वाहन द्वारा दुर्घटना घटित हुई परंतु अन्य चक्षुदर्शी साक्षी (अ.सा.–3) के अनुसार, अभिकथित ट्रक द्वारा दुर्घटना कारित हुई – यह दर्शाने हेतु कोई साक्ष्य नहीं है, कि पुलिस को यह कैसे ज्ञात था कि अ.सा.–3 ने दुर्घटना होते देखी थी तथा उसने आक्षेपित ट्रक का पीछा किया था – अ.सा.–3 एक बनावटी साक्षी है तथा पुलिस थाने से गुजरते समय पुलिस को दुर्घटना के बारे में सूचित न करने का उसका आचरण, उसे अविश्वसनीय बनाता है – दावेदार यह साबित करने में विफल रहे कि मृतक की प्रश्नगत ट्रक द्वारा एक दुर्घटना में मृत्यु हुई – अपील मंजूर।

B. Motor Vehicles Act (59 of 1988), Section 166 – Evidence of Criminal Case **– Held – Documents of criminal case are not decisive factors for deciding claim petition – It has to be decided on basis of evidence led in claim petition.**

ख. मोटर यान अधिनियम (1988 का 59), धारा 166 – आपराधिक प्रकरण का साक्ष्य – अभिनिर्धारित – आपराधिक प्रकरण के दस्तावेज दावा याचिका को विनिश्चित करने हेतु विनिश्चय कारक नहीं हैं – दावा याचिका में प्रस्तुत किये गये साक्ष्य के आधार पर इसका विनिश्चय किया जाना चाहिए।

NOTES OF CASES SECTION

Cases referred:

(2018) 5 SCC 656, (2018) 12 SCC 15, AIR 1996 SC 3345, 1994 ACJ 708, 2010 ACJ 1340, C.A. No. 1665/2019 decided on 14.02.2019 (Supreme Court).

B.K. Agrawal, for the appellant/Insurance Company.
Naval Gupta with *S.D.S. Bhadauriya,* for the claimants.
None, for the respondents.

Short Note
**(25)*
Before Mr. Justice G.S. Ahluwalia

S.A. No. 28/2000 (Gwalior) decided on 13 February, 2020

NATHU …Appellant

Vs.

KASHIBAI & ors. …Respondents

A. ***Civil Procedure Code (5 of 1908), Order 41 Rule 27 – Grounds – Certified copy of registered sale deed* – Held – Plaintiff failed to prove that even after exercising due diligence, such document was not in his knowledge nor could he produce it before Court – No sufficient cause disclosed in application, even no pleading regarding said document and fact of sale of land – Taking such document on record would not only result in protracting trial, but would amount to taking document on record without any pleading – Appeal dismissed.**

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 – आधार – रजिस्ट्रीकृत विक्रय विलेख की प्रमाणित प्रतिलिपि – अभिनिर्धारित – वादी यह साबित करने में विफल रहा कि सम्यक् तत्परता का प्रयोग करने के बावजूद भी ऐसा कोई दस्तावेज उसके ज्ञान में नहीं था तथा न ही वह उसे न्यायालय में प्रस्तुत कर सका – आवेदन में कोई पर्याप्त कारण प्रकट नहीं किया गया, यहां तक कि कथित दस्तावेज एवं भूमि के विक्रय के तथ्य के संबंध में कोई अभिवचन नहीं है – उक्त दस्तावेज को अभिलेख पर लेने के फलस्वरूप न केवल विचारण में विलंब होगा, बल्कि बिना किसी अभिवचन के अभिलेख पर दस्तावेज लिये जाने की कोटि में आयेगा – अपील खारिज।

B. ***Public Document – Registered Sale Deed* – Held – Certified copy of registered sale deed is not a public document.**

ख. लोक दस्तावेज – रजिस्ट्रीकृत विक्रय विलेख – अभिनिर्धारित – रजिस्ट्रीकृत विक्रय विलेख की प्रमाणित प्रतिलिपि एक लोक दस्तावेज नहीं है।

NOTES OF CASES SECTION

Cases referred:

(2012) 8 SCC 148, (2014) 15 SCC 686, (2007) 8 SCC 609, AIR 2006 SC 107.

Gaurav Mishra, for the appellant.
None, for the respondents.

I.L.R. [2020] M.P. 2509 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Ashok Bhushan, Mr. Justice R. Subhash Reddy & Mr. Justice M.R. Shah

C.A. No. 3194/2020 decided on 17 September, 2020

MSD REAL ESTATE LLP (M/S.) …Appellant

Vs.

THE COLLECTOR OF STAMPS & anr. …Respondents

A. Constitution – Article 136 – Deficient Stamp Duty – Penalty – Mode of Payment **– Held – Appellant, being subsequent purchaser of property in question is liable to deposit penalty but he deposited the same through 6 post date cheques – Held – Facility to deposit penalty through post dated cheques cannot be approved. (Para 16)**

क. संविधान – अनुच्छेद 136 – कम स्टांप शुल्क – शास्ति – भुगतान का ढंग – अभिनिर्धारित – अपीलार्थी, प्रश्नगत संपत्ति का पश्चात्वर्ती क्रेता होने के नाते शास्ति जमा करने का दायी है किंतु उसने छह उत्तर दिनांकित चेक के माध्यम से उक्त शास्ति जमा की – अभिनिर्धारित – उत्तर दिनांकित चेकों के माध्यम से शास्ति जमा करने की सुविधा को अनुमोदित नहीं किया जा सकता।

B. Constitution – Article 136 – Deficient Stamp Duty – Penalty & Denial of Building Permission **– Held – Direction of High Court to reconsider application for building permission after deposit of deficit stamp duty and penalty, amply protects the rights of appellant – In view of deposit of penalty by appellant, appellant is free to apply for building permission, to be considered by Municipal Corporation – Appeal disposed. (Para 19 & 20)**

ख. संविधान – अनुच्छेद 136 – कम स्टांप शुल्क – शास्ति व निर्माण अनुमति से इंकार – अभिनिर्धारित – कम स्टांप शुल्क तथा शास्ति के जमा होने के पश्चात् निर्माण की अनुमति हेतु आवेदन को पुनः विचार में लेने का उच्च न्यायालय का निदेश, पर्याप्त रूप से अपीलार्थी के अधिकारों को संरक्षित करता है – अपीलार्थी द्वारा शास्ति जमा किया जाने को दृष्टिगत रखते हुए, अपीलार्थी निर्माण की अनुमति हेतु आवेदन करने के लिए स्वतंत्र है, नगर निगम द्वारा विचार किया जाना है – अपील निराकृत।

C. Constitution – Article 136 & 226/227 – Scope – Practice and Procedure **– Held – Orders and notices issued by Municipal Corporation and State Authorities are all subsequent actions which were not the subject matter of writ petition before High Court and thus cannot be considered in present appeal. (Para 21)**

ग. संविधान – अनुच्छेद 136 व 226/227 – विस्तार – पद्धति एवं प्रक्रिया – अभिनिर्धारित – नगर निगम तथा राज्य प्राधिकारियों द्वारा जारी आदेश एवं नोटिस, सभी

पश्चात्वर्ती कार्रवाई हैं जो कि उच्च न्यायालय के समक्ष रिट याचिका की विषय वस्तु नहीं थे और इसलिए वर्तमान अपील में विचार में नहीं लिये जा सकते।

J U D G M E N T

The Judgment of the Court was delivered by : **ASHOK BHUSHAN, J.:-** Leave granted.

2. This appeal has been filed against the judgment of the High Court of Madhya Pradesh at Indore dated 10.06.2020 by which the writ petition filed by the appellant challenging the notice dated 04.06.2020 issued by Additional Tehsildar (Recovery), District Indore as well as notice dated 04.06.2020 issued by Building Officer, Zone No.09, Municipal Corporation Indore has been dismissed.

3. Brief facts giving rise to this appeal are:

The property in question in this appeal is Lantern Hotel having Municipal No.28, Yeshwant Niwas Road, Indore with regard to which a Deed of Assent was executed on 21.04.2005 by the Trustees of Private Trust, namely, H.C. Dhanda Trust. H.C. Dhanda executed Will dated 26.10.2002. The Collector of Stamps issued notice stating that there is deficiency in the stamp duty on deed dated 21.04.2005 and passed an order dated 22.09.2008 holding the deed to be a Gift Deed and determined a deficiency of stamp duty to the extent of Rs.1,28,09,700/- and imposed penalty of ten times to the tune of Rs.12,80,97,000/-. H.C. Dhanda Trust filed writ petition in the High Court challenging order dated 22.09.2008 which was dismissed on 30.03.2017. An SLP(C) Diary No.30539 of 2017 was filed by the Trustees of H.C. Dhanda Trust against the judgment of the Madhya Pradesh High Court dated 30.03.2017 in which this Court passed following interim order dated 10.11.2017:

> "Issue notice, returnable in six weeks, limited to the quantum of penalty that has been imposed by the Collector (Stamps).
>
> Subject to the condition that stamp duty is paid within a period of one month, there shall be stay of the order qua the penalty."

4. The Trustees of H.C. Dhanda Trust could not deposit the stamp duty, this Court made it clear by order dated 22.04.2019 in SLP(C) Diary No.30539 of 2017 that no interim order is operating as on date. An amount of Rs.1,28,09,700/- was deposited through a Treasury Challan dated 07.11.2019 which was the amount of stamp duty on behalf of Jogesh Dhanda son of late Shri H.C. Dhanda.

5. The appellant, M/s. MSD Real Estate LLP by a Registered Sale Deed dated 27.11.2019, purchased the property in question, Lantern Hotel from the Trustees of the Trust of Jogesh Dhanda and Ishan Dhanda. The appellant applied for development permission and vide letter dated 18.11.2019 the appellant was granted permission for construction. Application for mutation was filed by the

appellant in the Municipal Corporation. The appellant also deposited Rs.2,92,20,794/- property tax under protest, mutation in the name of the appellant was also made against the property in question.

6. On 20.11.2019 the appellant along with Jogesh Dhanda submitted an application to Collector of Stamps regarding stamp duty and penalty imposed upon Lantern Hotel, Indore situate at Municipal No.28, Yeshwant Niwas Road, Indore. Along with letter the appellant submitted six post dated cheques totaling Rs.12,80,97,025/-. A notice dated 04.06.2020 was issued by Addl. Tehsildar (Recovery) for depositing an amount of Rs.8,80,97,095/-, outstanding amount towards the penalty. On 04.06.2020 itself another letter was issued by the Office of Municipal Corporation, Indore regarding application received from the appellant for permission of building construction. The application for building permission was rejected by notice dated 04.06.2020. Aggrieved by the aforesaid two notices dated 04.06.2020 Writ Petition No.8145 of 2020 was filed by the appellant. In the writ petition the appellant has challenged notice dated 04.06.2020 issued by the Addl. Tehsildar (Recovery) as well as order dated 04.06.2020 of the Office of Municipal Corporation, Indore. The appellant also prayed for direction to restraint the respondents from giving effect to their impugned orders and from taking any coercive/penal action against the appellant.

7. Learned Single Judge by its order dated 10.06.2020 dismissed the writ petition. Learned Single Judge held that the appellant being subsequent purchaser is liable to pay the penalty amount. Learned Single Judge noticed that there being no interim order in SLP(C) Diary No. 30539 of 2017 pending in this Court he was liable to pay the penalty amount. The High Court also took the view that payment of penalty by post dated cheques cannot be approved by the High Court. Insofar as notice dated 04.06.2020 issued by the Municipal Corporation, the High Court took the view that at that time no interference was called for and after payment of penalty amount in toto, the appellant would be free to apply afresh for building permission again whereafter the Municipal authorities are directed to reconsider the application for building permission. With the above discussion, the writ petition was dismissed. Aggrieved by the judgment of the High Court, the appellant has filed this appeal.

8. This appeal arising out of SLP(C)No.7990 of 2020 was filed on 24.06.2020.

9. During the pendency of this appeal order dated 26.07.2020 has been issued by the Municipal Corporation, Indore as well as order dated 25.07.2020 and 28.07.2020 has been issued by the Municipal Corporation, Indore. The Municipal Corporation also issued letter dated 27.07.2020 to the Sub-Divisional Officer, Revenue, Indore requesting him to remove all encroachment on Municipal property and to handover possession of the land in question to the

Municipal Corporation. The appellant by means of I.A.No.72517 of 2020 has prayed for stay the aforesaid orders and notices and has prayed for other reliefs consequent to the notices and orders issued as referred to in aforesaid IA. Counter-affidavit has also been filed by the Municipal Corporation, Indore to which Rejoinder-affidavit has also been filed. On 07.07.2020 while issuing notice this Court passed the following order:

> "Issue notice.
>
> List along with Diary No.30539/2017.
>
> Learned counsel for the petitioner submits that towards the penalty amount Rs.6.8 crores have already been encashed/paid and for rest of the penalty amount post-dated cheques have already been given. The petitioner undertakes to ensure that all post-dated cheques are cleared so that entire amount of penalty is paid which 1 shall, however, be subject to the order of this Court in the pending petition i.e. Diary No.30539/2017.
>
> In the meantime, impugned orders including the auction proceeding shall remain stayed."

10. We have heard Shri Kapil Sibal, learned senior counsel appearing for the appellant. Shri Tushar Mehta, learned Solicitor General has appeared on behalf of the State. Shri Purushaindra Kaurav, learned Advocate General, has appeared for Municipal Corporation, Indore.

11. Shri Kapil Sibal submits that the action of the Addl. Tehsildar (Recovery) asking for recovery of amount of Rs.8,80,9725/- was unjustified. It is submitted that the appellant after purchasing of the property has deposited the amount of deficit stamp duty as well as post dated cheques covering the entire amount of penalty of Rs.12,80,97,025/- by letter dated 20.11.2019 which was accepted by the Collector Stamps and letter dated 23.11.2019 was issued by the Collector of Stamps that cheques of total amount has been received and no stamp duty is outstanding. It is submitted that by 04.06.2020 on which date notice was issued by Addl. Tehsildar (Recovery) out of the abovesaid cheques, two cheques of Rs.2 crores each have already been encashed by the State Government. Shri Sibal submits that subsequently he has also deposited further amount and he has undertaken before this Court to ensure that all cheques given by him towards penalty amount shall be cleared.

12. Shri Sibal further submits that building permission was granted to the appellant after being satisfied with all necessary requirements which could not have been cancelled by order dated 04.06.2020 by the Municipal Corporation, Indore. He submits that the appellant was committed to pay the entire amount of the penalty which commitment was accepted by the Collector of Stamps by letter

dated 23.11.2019 and the action taken for cancelling the building permission was unjustified. Shri Sibal further submitted that in spite of the interim order passed by this Court on 07.07.2020 by which this Court has stayed the impugned orders and auction proceedings by the Municipal Corporation, the Municipal Corporation has issued several orders which are malafide and illegal. The order dated 25.07.2020 passed by the Municipal Corporation of Indore cancelling the mutation of the appellant on the ground that proceeding is pending in this Court and by the Collector regarding title of the property was wholly unauthorized and illegal. The appellant having purchased the property by registered sale deed, got mutation of title in his name. He further submitted that no proceeding is pending regarding title of property as mentioned in the letter dated 25.07.2020. He further submits that another order issued on 28.07.2020 by the Office-Commissioner Municipal Corporation which mentions that Indore Municipal Corporation has already sent letter to Sub-Divisional Officer Revenue for putting up the application before the competent officer for taking action under Section 4/5 of Madhya Pradesh Public Premises Eviction Act, 1974 for eviction is wholly illegal and unauthorised. He submits that the house property No.28, Yashwant Niwas Road, Indore was in the ownership of late Shri H.C. Dhanda which was gifted by his Highness Maharaja by order dated 22.04.1948 as free gift to late Shri H.C. Dhanda being Minister in the Cabinet of his Highness and right from 1948 late Shri H.C. Dhanda was the owner in possession with regard to which subsequently he created a Trust by his Will. He submitted that property had been purchased by the appellant by registered sale deed dated 23.11.2019 and there is no question of Corporation or anyone else claiming any title in the property, no determination of title is pending in any Court of law and the observation made by the Corporation in its letter that determination of title is pending with the office of District Collector is wholly malafide and unjustified. He submits that subsequent letters and action taken by the Corporation as well as by the State authorities are only with the intent to harass the appellant and all are actions are beyond their jurisdiction and deserve to be set aside by accepting the IAs filed by the appellant.

13. Shri Tushar Mehta, learned Solicitor General appearing on behalf of the State submits that no error was committed by the Addl. Tehsildar (Recovery) in issuing recovery notice dated 04.06.2020 since the interim order being not operating in SLP(C) Diary No.30539 of 2017 the amount of penalty was outstanding. He submits that there is no procedure or provision for accepting the amount of penalty by post dated cheques as it claimed by the appellant. Shri Mehta further submits that amount of penalty being outstanding against the property, mutation in the name of the appellant against the property as well as building permission has rightly been rejected. Shri Mehta further submits that subsequent actions including the notices and orders brought by the appellant by IA No.72517 of 2020 are all actions which are subsequent actions and has no

relation to issues which have been raised in this appeal. He submits that neither subsequent actions, letters were part of the writ petition nor they can be considered in this appeal. He submits if so advised it is always open to take appropriate proceeding if he is aggrieved by any action subsequently taken after the decision of the writ petition.

14. Shri Purushaindra Kaurav, learned Advocate General appearing for the Corporation fairly submitted that it is the appellant who are in possession of the property in question. He submitted that notices and actions taken by the Corporation and other authorities subsequent to the decision of the writ petition cannot be made subject matter of challenge in this appeal, remedy of the appellant if any is elsewhere. He supports the order of the Municipal Corporation by which building permission earlier granted has been cancelled.

15. We have considered the submission of the parties and perused the record.

16. In pursuance of the order of the Collector dated 22.09.2008, Trustees of H.C. Dhanda Trust were liable to deposit stamp duty as well as penalty. In SLP(C) Diary No.30539 of 2017 the interim order granted by this Court on 10.11.2017 having not been complied with there was no interim order operating and the Trustees of H.C. Dhanda Trust were liable to deposit the stamp duty and penalty. Although deficiency of stamp duty was deposited through the Treasury Challan dated 01.11.2019 but the penalty was not deposited and only post dated cheques between dates 25.02.2020 to 25.05.2020 were submitted on behalf of the appellant and Jogesh Dhanda. The High Court has rightly observed that facility to deposit the penalty by post dated cheques cannot be approved and the appellant being subsequent purchaser was liable to deposit the amount of penalty which was outstanding against the property and which was subject matter of the gift deed dated 21.04.2005. The High Court has rightly not interfered with the order dated 04.06.2020 issued by the Addl. Tehsildar(Recovery) demanding an amount of Rs.8,80,97,025/- which was outstanding on the above date.

17. We by our order of the date passed in C.A.Nos ..... of 2020 (arising out of SLP (C) Nos.10972- 10973 of 2020) allowing the appeals partly, held:

> "In result the appeals are allowed the order of the Collector of Stamps dated 22.09.2008 is modified to the extent that penalty imposed of ten times of Rs.12,80,97,000/- is modified into five times penalty i.e. Rs.6,40,48,500/-. The appeals are partly allowed to the above extent. "

18. The order of Collector dated 22.09.2008 having been modified and the amount of penalty having been reduced to the extent of half of the ten times penalty, respondents are to take steps in compliance to the said order. Shri Sibal has submitted that total deposit as on date by the appellant towards the penalty is about RS.8.8 crores. The issue of penalty as imposed by the order of the Collector

of Stamps dated 22.09.2008 having already been decided by order of even date in C.A. Nos..... of 2020 (arising out of SLP(C)Nos.10972- 10973 of 2020) all the parties are to act in accordance with the said judgment.

19. Now, we come to order dated 04.06.2020 which was under challenge in the writ petition before the High Court by which the Municipal Corporation, Indore has cancelled the building permission granted earlier was rejected. The High Court while considering the aforesaid by its judgment in paragraph 8 has held:

> "8. So far as order dated 4.6.2020 issued by the Building Officer of Indore Municipal Corporation is concerned, at this stage, no interference is called for as the petitioner has failed to deposit the penalty amount and this fact was suppressed in the application submitted for building permission. After the deposit of the stamp duty and the penalty, the Municipal authorities are directed to reconsider the application for building permission."

20. The above observation of the High Court amply protects the rights of the appellant. In view of the deposit made by the appellant towards the penalty, the appellant is free to apply for building permission which is to be considered by the Municipal Corporation as observed by the High Court in its judgment and order dated 10.06.2020. Nothing more is required to be said about the order dated 04.06.2020 issued by the Office of the Municipal Corporation.

21. Now, we come to the submission of Shri Sibal with regard to orders and notices issued by the Municipal Corporation and other State Authorities subsequent to filing of this appeal. The orders and notices issued by the Municipal Corporation and other State Authorities which have been brought on record by the IA No. 72517/2020 are all subsequent actions which were not subject matter of the writ petition before the High Court and cannot be taken into consideration in this appeal.

22. With regard to subsequent notices, actions and orders, as noticed above, brought on record by IA noted above the said issues cannot be entertained in this appeal. We give liberty to the parties to seek such remedy with regard to subsequent actions and orders as permissible in law. The appeal is disposed of accordingly.

Order accordingly

I.L.R. [2020] M.P. 2516 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Sanjay Kishan Kaul, Mr. Justice Aniruddha Bose & Mr. Justice Krishna Murari

C.A. No. 8564/2015 decided on 29 September 2020

STATE OF M.P. & ors. …Appellants

Vs.

AMIT SHRIVAS …Respondent

***Service Law – Constitution – Article 142 – Compassionate Appointment – Work Charged/Permanent/Regular Employee – Difference* – Held – Father of respondent was a work-charged employee and has been paid out of work-charged/contingency fund and having completed 15 yrs of service attained status of permanent employee which entitled him for pension and *krammonati* but this will however not *ipso facto* give him status of regular employee – Family of late employee has already been paid entitlement as per applicable policy – Exercising powers under Article 142, compassionate grant increased from 1 lakh to 2 lakhs – Appeal allowed.**

(Paras 16 to 21 & 24 to 28)

सेवा विधि – संविधान – अनुच्छेद 142 – अनुकम्पा नियुक्ति – कार्य प्रभारित/स्थायी/नियमित कर्मचारी – अंतर – अभिनिर्धारित – प्रत्यर्थी का पिता एक कार्य प्रभारित कर्मचारी था और उसे कार्य प्रभारित/आकस्मिकता निधि से भुगतान किया गया तथा 15 वर्षों की सेवा पूर्ण करने पर स्थायी कर्मचारी का दर्जा प्राप्त किया जिससे वह पेंशन एवं क्रमोन्नति हेतु हकदार हुआ, परंतु यह स्वयंमेव ही उसे नियमित कर्मचारी का दर्जा नहीं देगा – मृत कर्मचारी के परिवार को, प्रयोज्य नीति के अनुसार पहले ही हकदारी का भुगतान किया जा चुका है – अनुच्छेद 142 के अंतर्गत शक्तियों का प्रयोग करते हुए अनुकम्पा अनुदान 1 लाख से बढ़ाकर 2 लाख किया गया – अपील मंजूर।

Cases Referred :

(2012) 9 SCC 545, (2017) 3 SCC 436, (2020) 2 SCC 729, (2019) 6 SCC 774.

J U D G M E N T

The Judgment of the Court was delivered by :

SANJAY KISHAN KAUL, J. :- The respondent raises a claim of entitlement to compassionate appointment on account of the demise of his father late Shri Ranglal Shrivas, who was working as a Driver in the Tribal Welfare Department, Bhind, Madhya Pradesh, since 6.6.1984 till he passed away on 11.12.2009, i.e., over a period of almost 23 years.

2. The claim of the respondent was predicated on the nature of employment of his late father, who was initially appointed as a work-charged employee. On

12.3.1987, he was made permanent and was paid salary at a regular pay-scale. The benefits of revision of pay and *krammonati* (promotion) were also extended to him from time to time. On the demise of late Shri Ranglal Shrivas, he left behind an ailing wife, a son (i.e., the respondent herein) and three daughters and is stated to have been the sole breadwinner for his family. The family, thus, faced undue economic hardship. A Pension Payment Order ('PPO') under the Madhya Pradesh Civil Pension Rules, 1976 was issued in favour of the family on account of his having worked from 12.3.1987 to 11.12.2009 on the basis of his last pay-scale and grade pay. In view of the economic hardship, the respondent filed an application seeking the benefit of compassionate appointment.

3. The request of compassionate appointment was, however, rejected by the third appellant *vide* order dated 19.8.2010. Reliance was placed on the Policy in force for compassionate appointment dated 18.8.2008, issued by the General Administration Department Ministry, Madhya Pradesh Government. This policy pertains to when a Government servant dies while in service, and if such an employee is earning a salary from the work-charge/contingency fund at the time of his/her demise, then there was no provision for the grant of such appointment. In this behalf, reliance was placed on Clause 12.1 of the Policy, which provided for a compassionate grant of Rs.1,00,000/- to the nominated dependent of such an employee, and in this case, the same was sanctioned to the wife of the deceased. It would be appropriate to reproduce the relevant clause as under:

> "12. Provisions for work charge/contingency and daily wager employees
>
> 12.1 When employees receiving salary from work charge/contingency fund and daily wager employee die, they would not be eligible for the compassionate appointment; however Rs.1 lakh in one installment in the name of compassionate grant shall be given to the dependent member of the family nominated by them. The amount of gratuity shall not be included in it. The payment of this amount shall be given from the salary head under the head of work charge/contingency of the concerned department."

4. The respondent, being aggrieved by the aforesaid order dated 19.8.2010, filed WP No. 3542/2012 before the High Court of Madhya Pradesh, Gwalior Bench. The Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 (hereinafter referred to as the 'Pension Rules'), more specifically Rule 2(c), was relied upon. This Rule stipulates that any contingency paid employee or work-charged employee who has completed 15 years or more of service on or after 1.1.1974, as a permanent employee. It would be relevant to reproduce the definition of work-charged employee and permanent employee as set out in Rules 2(b) & 2(c) of the Pension Rules as under:

> "2. Definitions. — In these rules, unless the context otherwise requires, -
>
> xxxx xxxx xxxx xxxx xxxx
>
> (b) *"Work-Charged employee"* means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of the departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster-roll employee employed on the work;
>
> (c) *"Permanent employee"* means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after the 1st January, 1974."

5. It is not in dispute that the father of the respondent had completed more than 15 years of service at the time of his demise and was, thus, a permanent employee. Thus, the respondent claimed entitlement to compassionate appointment being eligible for a Class IV post as per Policy of 18.8.2008 and sought the quashing of the impugned decision dated 19.8.2010.

6. The writ petition was opposed by the appellants on the ground that the father of the respondent had been appointed on contingency basis as per requirement of work as a driver. Such appointment was with the condition that his service may be terminated with one month's notice and that his salary would be released from the contingency fund. In this behalf reliance was placed on his appointment order dated 5.6.1987, but strangely neither of the parties placed any appointment letter/order on record. The factum of the wife of the deceased having already received Rs. 1,00,000/- as relief in terms of the Policy was emphasised.

7. The writ petition was allowed by the learned Single Judge of the High Court *vide* order dated 19.7.2013, relying upon an earlier judgment dealing with the issue of an employee, who had been serving for more than 15 years and who was, thus, found to qualify for the status of a permanent employee. This relied upon order was sustained in a writ appeal and an SLP against this was also dismissed[1]. On the issue of the applicability of Clause 12.1 of the Policy reproduced hereinabove, it was opined that the same would apply to such employees who had not attained permanency, i.e., once an employee becomes permanent under the Pension Rules, Clause 12.1 was held as inapplicable for compassionate appointment.

8. The fact that the appellants had even granted *krammonati* to the late father of the respondent was also taken as the supportive reasoning. The appellants were directed to consider the case of the respondent for compassionate appointment in terms thereof. Aggrieved by the same, the appellants preferred

[1] Shahjad Khan v. State of Madhya Pradesh & Ors. (WP No. 2731/2010, WA No. 110/2013 and SLP (C) No. 5859/2014)

Writ Appeal No. 583/2013, *inter alia,* on the ground that the respondent was not entitled to compassionate appointment and he was not a regular Government employee within the meaning of Rule 2(b) of the Madhya Pradesh Civil Service Conduct Rules, 1965, which reads as under:

> "2. Definitions. - In these rules, unless the context otherwise requires,-
>
> xxxx xxxx xxxx xxxx xxxx
>
> (b) *"Government servant"* means any person appointed to any civil service or post in connection with the affairs of the State of Madhya Pradesh.
>
> *Explanation.* - A Government servant whose services are placed at the disposal of a company, corporation, organisation or local authority by the Government shall, for the purpose of these rules, be deemed to be a Government servant serving under the Government notwithstanding that his salary is drawn from sources other than from the Consolidated Fund of the State."

9. The emphasis of the appellants was also on the principle that a compassionate appointment is not an inherent right but a prerogative of the State, which can only be granted as per the concerned policy formulated and enforced at the relevant time. Since Clause 12.1 of the Policy did not provide for compassionate appointment to work-charge / contingency fund and daily wager employees, the monetary benefit as admissible therein had already been granted. The difference between a regular and a permanent employee was emphasised and additionally, it was pleaded that even the Rs. 1,00,000/- paid had not been directed to be refunded.

10. The writ appeal was dismissed by the Division Bench of the High Court *vide* impugned order dated 2.1.2014, primarily predicated on the reasoning that the late father of the respondent was a permanent employee as per the Pension Rules. Insofar as grant of amount of Rs. 1,00,000/- was concerned, it was directed to be returned to the appellants in the event of the respondent gaining compassionate appointment.

11. It appears that the appellants were in the process of filing an SLP and, thus, on 12.2.2014, appellant No. 3 accepted the respondent's claim for compassionate appointment, but subject to the conditions that the amount of Rs. 1,00,000/- should be returned, that such appointment would be dependent on the availability of a vacancy/post, that the posting offered be compulsorily accepted, and lastly, if an SLP/appeal is filed, then the outcome of the same will be binding. The SLP was filed on 12.7.2014 and after condonation of delay, notice was issued and the operation of the impugned judgment was stayed *vide* order dated 6.2.2015. Leave was granted on 12.10.2015 and the interim order was made absolute. Thus, till date the respondent has not got the benefit of compassionate appointment.

12. We have heard the learned counsels for the parties.

13. In our opinion, the only issue which has to be examined is whether the late father of the respondent who admittedly was employed as a work-charged/ contingency employee in the Tribal Welfare Department was entitled to the compassionate appointment as per the existing policy on the date of his demise.

14. It is trite to say that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria, especially to provide succor to a needy family. This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively.[2]

15. Insofar as providing succor is concerned, unfortunately, since the demise of the late father of the respondent, 11 years have passed and really speaking, the aspect of providing succor to the family immediately does not survive. We have still examined the matter in the conspectus of the applicable policy. It is not in question that the Policy prevailing was one dated 18.8.2008. Clause 12.1 clearly proscribes work-charge/contingency fund and daily wager employees from compassionate appointment. The gravamen of the submission of the respondent is based on the classification of his late father as a permanent employee on account of having worked for more than 15 years and the consequent regularisation of his service.

16. In our view, the aforesaid plea misses the point of distinction between a work-charged employee, a permanent employee and a regular employee. The late father of the respondent was undoubtedly a work-charged employee and it is nobody's case that he has not been paid out of work-charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and *krammonati.* This will, however, not *ipso facto* give him the status of a regular employee.

17. In the aforesaid behalf, an analogy can be drawn with the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963, under which employees can be classified as permanent, permanent seasonal, probationers, *badlis,* apprentices, temporary and fixed-term employment employees. A work-charged contingency employee can also be classified under any of the aforementioned categories and under the said Standing Orders, the classification as permanent can be granted even on the completion of 6 months service in a clear vacancy.

18. We are not required to labour much on the aforesaid issue and really speaking this issue is no more *res integra* in view of the judgment of this Court in *Ram Naresh Rawat v. Ashwini Ray & Ors.,*[3] which opined that a 'permanent' classification does not amount to regularisation. The case dealt with the aforesaid

[2]State of Gujarat & Ors. v. Arvindkumar T. Tiwari & Anr., (2012) 9 SCC 545
[3](2017) 3 SCC 436

Standing Orders and it has been observed in paras 24, 26 & 27 as under:

> "24. It is, thus, somewhat puzzling as to whether the employee, on getting the designation of "permanent employee" can be treated as "regular" employee. This answer does not flow from the reading of the Standing Orders Act and Rules. In common parlance, normally, a person who is known as "permanent employee" would be treated as a regular employee but it does not appear to be exactly that kind of situation in the instant case when we find that merely after completing six months' service an employee gets right to be treated as "permanent employee". Moreover, this Court has, as would be noticed now, drawn a distinction between "permanent employee" and "regular employee".
>
> xxxx xxxx xxxx xxxx xxxx
>
> 26. From the aforesaid, it follows that though a "permanent employee" has right to receive pay in the graded pay-scale, at the same time, he would be getting only minimum of the said pay-scale with no increments. It is only the regularisation in service which would entail grant of increments etc. in the pay-scale.
>
> 27. In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms (See Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors. [(1997) 6 SCC 766]"

19. The conclusion to be drawn from the aforesaid is that attaining the status of permanent employee would entitle one only to a minimum of the pay-scale without any increments. It is this aspect which was sought to be emphasised by learned counsel for the respondent to contend that this would not apply, because in the present case, *krammonati* and increments were given. However, we may note that in the order dated 7.2.2002 granting the benefit of monetary *krammonati* to employees, including the respondent's father, it was specified that the same would not affect the posts of such employees.

20. The moot point, thus, is that having been granted increments, could a person be said to have reached the status of a regular employee? In order to answer this question, we may note that while considering this aspect in the aforesaid judgment, it was specifically opined that even *"if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in the negative terms."* We say so, not with the objective of giving a licence to the appellants to withdraw any of the

benefits, which are already granted, and we make this unequivocally clear. However, we cannot at the same time make a conclusion that the status acquired is that of a regular employee upon having achieved the status of a permanent employee in service.

21. Thus, the classification of the late father of the respondent as a permanent employee, and this distinction between a 'permanent' status and a 'regular' status appears to have been lost sight of in the impugned judgments.

22. We may also notice the reliance placed by learned counsel for the respondent on certain other cases where orders similar in nature were passed by the High Court and an SLP against one of these orders was dismissed, but then we have already observed that this will not give a right for perpetuating something which is not permissible in law.

23. We had the occasion of examining the issue of compassion appointment in a recent judgment in *Indian Bank & Ors. v. Promila & Anr*[4] We may usefully refer to paras 3, 4, & 5 as under:

> "3. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in Canara Bank & Anr. v. M. Mahesh Kumar, (2015) 7 SCC 412, qua what would be the cut-off date for application of such scheme.
>
> 4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.
>
> 5. An aspect examined by this judgment is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what

[4] (2020) 2 SCC 729

> are the provisions made in the scheme for such compassionate appointment."

24. We are, thus, unable to give any relief to the respondent, much as we would have liked under the circumstances, but are constrained by the legal position. The family of the late employee has already been paid the entitlement as per applicable policy.

25. We may, however, notice a subsequent development arising from certain additional documents placed on record pertaining to the amendment to the policy of 18.8.2008 *vide* Circular dated 29.9.2014. In terms of this Circular, the compassionate grant amount was increased from Rs. 1,00,000/- to Rs. 2,00,000/-. Another Circular was issued on 31.8.2016, through which, a decision was taken that the dependents of deceased employees drawing a salary from the work-charged/contingency fund would be entitled to compassionate appointment, but it was clarified *vide* Circular dated 21.3.2017 that pending cases before the date of the 31.8.2016 Circular would be decided only in terms of the amended Policy dated 29.9.2014. That being the position, this last Circular also does not come to the aid of the respondent as it would amount to making the policy retrospectively applicable, while the Circular says to the contrary.

26. We, however, are of the view that we can provide some succor to the respondent in view of the Circular dated 21.3.2017, the relevant portion of which reads as under:

> "2. In this regard, it is clarified that the compassionate appointment for the employees of Workcharge and Contingency Fund is in force also w.e.f. 31.08.2016. And the cases pending before this date, will be decided only in accordance with the directions issued for compassionate appointment on 29.09.2014, i.e., they will be eligible only for compassionate grant and not the compassionate appointment. The proceedings be ensured accordingly."

27. The aforesaid Circular records that pending cases will be decided in accordance with the directions issued for compassionate appointment on 29.9.2014. The present case is really not a pending case before the authority, but a pending *lis* before this Court.

28. We are, thus, of the view that it would be appropriate to use our powers under Article 142 of the Constitution of India to do complete justice between the parties by increasing the amount from Rs. 1,00,000/-to Rs. 2,00,000/- as aforesaid. We, in fact, adopted a similar approach in *Punjab State Power Corporation Limited & Ors. v. Nirval Singh.*[5]

[5](2019) 6 SCC 774

29. It appears from the documents on record that possibly a sum of Rs. 1,00,000/- was deposited by the respondent with the State Bank of India in an interest-bearing deposit in 2016, and the amount would possibly be lying in the same deposit. This would have been pursuant to the impugned order. We, thus, direct that this FDR be released to the respondent and that this amount, along with interest which would accrue to the benefit of the respondent, apart from the additional amount of Rs. 1,00,000/-, we have found as payable to the respondent which should be so paid within a period of two (2) months from today, failing which it will carry interest @ 12 per cent per annum (simple interest) till the date of payment.

30. The appeal is accordingly allowed leaving the parties to bear their own costs.

Appeal allowed

I.L.R. [2020] M.P. 2524 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice N.V. Ramana, Mr. Justice Surya Kant & Mr. Justice Hrishikesh Roy

Cr.A. No. 316/2011 decided on 9 October, 2020

KARULAL & ors. …Appellants

Vs.

STATE OF M.P. …Respondent

A. Penal Code (45 of 1860), Sections 148, 149 & 302 – Hostile Witness – Evidentiary Value **– Held – Some witness may not support prosecution story and in such situation Court has to determine whether other available evidence comprehensively proves the charge – Prosecution version is cogent, supported by 3 eye-witnesses who gave consistent account of incident and their testimonies are corroborated by medical evidence – Hostile witness will not affect the conviction – Appeal dismissed.**

(Para 23 & 24)

क. दण्ड संहिता (1860 का 45), धाराएँ 148, 149 व 302 – पक्षद्रोही साक्षी – साक्ष्यिक मूल्य – अभिनिर्धारित – कुछ साक्षी अभियोजन कहानी का समर्थन नहीं करते तथा उक्त परिस्थिति में न्यायालय को यह अवधारित करना है कि क्या अन्य उपलब्ध साक्ष्य व्यापक रूप से आरोप को साबित करते हैं – अभियोजन कहानी प्रबल है, तीन अन्य चक्षुदर्शी साक्षीगण द्वारा समर्थित जो कि घटना का निरंतर वृतांत देते हैं, तथा उनके परिसाक्ष्य चिकित्सीय साक्ष्य द्वारा संपुष्ट हैं – पक्षद्रोही साक्षी दोषसिद्धि को प्रभावित नहीं करेगा – अपील खारिज।

***B. Penal Code (45 of 1860), Sections 148, 149 & 302 – Related Witness* – Held – Being related to deceased does not necessarily mean that they will falsely implicate innocent persons – Further, there is an unrelated witness who has supported the version of the eye witnesses – Appellants rightly convicted. (Para 19 & 20)**

ख. दण्ड संहिता (1860 का 45), धाराएँ 148, 149 व 302 – संबंधी साक्षी – अभिनिर्धारित – मृतक से संबंधित होने का अर्थ जरूरी नहीं है कि वे निर्दोष व्यक्तियों को मिथ्या आलिप्त करेंगे – इसके अतिरिक्त, एक असंबंधित साक्षी है जिसने चक्षुदर्शी साक्षीगण के कथन का समर्थन किया है – अपीलार्थीगण उचित रूप से दोषसिद्ध।

***C. Penal Code (45 of 1860), Sections 148, 149 & 302 – Previous Enmity* – Held – If witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony – In fact, previous enmity gives a clear motive for crime. (Para 22)**

ग. दण्ड संहिता (1860 का 45), धाराएँ 148, 149 व 302 – पूर्व वैमनस्यता – अभिनिर्धारित – यदि साक्षीगण अन्यथा विश्वसनीय हैं, पूर्व वैमनस्यता अपने आप से किसी परिसाक्ष्य को अविश्वसनीय नहीं बनायेगी – वास्तव में, पूर्व वैमनस्यता अपराध के लिए एक स्पष्ट हेतु देती है।

Cases referred:

AIR 1953 SC 364, (1972) 3 SCC 201, (2018) 7 SCC 429, (1995) Supp 1 SCC 363.

J U D G M E N T

The Judgment of the Court was delivered by : **HRISHIKESH ROY, J. :-** This Appeal has been preferred by 5 accused, namely, Karulal(A-5), Amra(A-6), Kachru(A-7), Suratram(A-8) and Bhagirath(A-9). They challenge the judgment and order dated 23.6.2009 in Criminal Appeal No.1637 of 1999 whereby, the Madhya Pradesh High Court, Indore Bench approved the conviction of the appellants under Section 148, 302 read with Section 149 of the Indian Penal Code, 1860 (for short "the IPC") and the resultant sentence for such conviction ordered by the 2nd Additional Sessions Judge, Mandsaur (hereinafter referred to as, "the learned Trial Court").

2. The prosecution case is that at about 8-8.30AM Madhavji the deceased, was present in his fields on 18.8.1993 and his son Bhawarlal (PW3) was grazing cattle nearby. Bhawarlal suddenly heard his father cry out and saw that Amra, Kachru, Karu, Surtaram, Lalu (who is now dead) and Bhagirath were attacking his father with axe, sword, farsa, lathi, etc. On hearing commotion, Shyambai (PW 13), daughter of the deceased, and Bhawarlal (PW9) son of Kaniram and Babulal (PW12), also reached the spot. On seeing them, the accused ran away. Bhawarlal

then arranged a bullock cart and took his injured father towards Narayangarh. When they were crossing the houses of the accused, Badambai, Munnabai, Ramibai, Sitabai and Veniram s/o Kachru, blocked the cart and tried to prevent PW3 from lodging the report and they also threatened to kill. But as other persons gathered around, the cart could proceed towards Narayangarh. On the way Madhavji died. Bhawarlal and Babulal reached Narayangarh Police Station with the dead body and lodged report at about 11.55 AM, within four hours of the incident. The distance between the police station and the spot is about 8 Kilometres.

3. On completion of the investigation, charge sheet was filed against six accused under Sections 148, 302 read with Section 149 of the IPC. Four others namely, Badambai, Munnabai, Ramibai and Sitabai were charged under Section 506 IPC as they allegedly obstructed and threatened the Informant, when they were proceeding with the injured in the bullock cart.

4. On evaluating the evidence against the 4 ladies charged under Section 506 IPC, the Trial judge held that this charge of obstruction and threat to kill the Informant, has not been proved and accordingly ordered for their acquittal.

5. Then the evidence against the accused who were charged under Section 148, 302 read with Section 149 IPC was considered. To prove its case, the prosecution examined 15 witnesses of whom, PW1 witnessed the arrest of the accused. Four others, i.e. Kishanlal (PW6), Prabhulal (PW7), Bhawarlal (PW9) s/o Kaniram and Nanuram (PW13) had turned hostile and did not support the case of the prosecution. Dr. P.N. Shrivastav (PW2) had performed the autopsy on the body of the deceased and noted the following nine injuries on his person:

> (1) Incise wound 4"x2" x 1/2" on left side of head with some pointed object.
>
> (2) Compound fracture on right tumor and swelling around it which was hard and appeared to have been afflicted by some blunt object.
>
> (3) Compound fracture of right Radioulna bone caused by some blunt object.
>
> (4) Compound fracture of left Tumor wound caused by a hard blunt object.
>
> (5) Cut wound on upper left arm 2" x 1" x 1/2" left Brachial bone with cut with dried blood inflicted with some sharp object.
>
> (6) Compound fracture of left "Alna" with dried blood caused with some hard blunt object.
>
> (7) Cut wound measuring 2x2x1" on right ankle with dried blood with some hard and blunt object resulting in cut veins.

(8) Compound fracture or right Tibia and Fabula with some hard and blunt object.

(9) Cut wound 2 x 2-1/2" on left thigh with cut veins and cut Femoral Artery with dried blood caused with some hard and cutting object.

6. According to the Doctor, the death was result of the bleeding following the injuries inflicted by hard, blunt and sharp-edged weapons and shock. He further opined during cross examination as under:

"Death of Madhav was caused as a cumulative effect of various injuries caused to his body. Injuries to the Tibia, Fabula, Radius and Alna and Humor bone shall not be fatal unless those are various serious. No fracture was found in the injury listed at no.1. If any person falls in the Nullah and suffers injuries from the rocks lying underneath and if his hands and feet come in contact with those rocks, fracture to Fabula, Tibia, Radius and Alna are possible as a result thereof."

7. Bhawarlal (PW3), Babulal (PW11) and Shyamkalabai (PW12) were the eyewitnesses of the incident. In his testimony, Bhanwar Lal, son of the deceased, stated that on 18.8.1993 morning he was grazing his oxen in the nearby field when he heard the anguished cry of Madhavji and while running towards his father, the PW3 saw Lala, Karu, Amra, Kachru, Surat Ram and Bhagirath attacking his father. His sister Shyam Kala (PW12) also reached the field. According to the (PW3), Lala and Amra were armed with lathis, Surat Ram was holding knife, Kachru had a sword, Karuji was holding an axe having edges like Farsa, Bhagirath too was holding an axe. The son rushed home and arranged a bullock cart where the injured Madhavji was placed and then they proceeded to the Narayangarh police station where he lodged the FIR. The PW3 also mentioned that injured Madhavji had told him in the field itself, before he went to fetch the bullock cart that Lala, Amru, Kachru, Surat Ram and Bhagirath had assaulted him.

8. Shyam Kala Bai (PW12) is the daughter of the deceased. While heading towards field, she heard shrieks for help from her father who was shouting that Lalaji's sons were attacking him. She rushed to the place of occurrence and saw her brother Bhanwar Lal (PW3) and Babu Lal(PW11) also reaching the spot. She saw her father in an injured condition and the accused running away with various weapons in their hand. She accompanied her injured father in the bullock cart with her brother and stated that Madhavji expired on the way to Narayangarh.

9. On the day of the incident, Babu Lal (PW11) was walking towards his village after spending the night in the residence of the deceased. In the morning he had tea with Madhavji who then went ahead to his field. While proceeding a little later, the witness heard Madhavji shouting that he was being killed. When the PW11 rushed to the field, he noticed the accused attacking Madhavji with lethal

arms. Madhavji had suffered a head injury from an axe blow, apart from other injuries to his hands and feet. The witness placed the injured on the bullock cart driven by the son (PW3). The witness was following the bullock cart on his foot. Madhavji had expired while proceeding towards Narayangarh.

10. On evaluating the evidence, the learned Trial Court found that the six accused (including Lala who died), being armed with lethal weapons, illegally assembled in order to attack the deceased Madhavji. While adverting to the eyewitness, PW3 and PW12 (children of the deceased), the Court highlighted the third eyewitness (PW11), who was not related. The trial Court also discussed the slight inconsistency in the evidence of PW3 and noted that his examination in chief and cross examination was conducted after long gap of one and a half years. His testimony as an eyewitness was however found to be consistent with the other two eyewitnesses.

11. Similarly, the evidence of Shyam Kala Bai (PW12) was also found to be reliable by the learned trial Court as her presence at the spot of attack was confirmed by PW3 and PW11 (eyewitnesses) and they corroborated each other, on all material particulars.

12. On the defence version of Ram Singh (DW1) and Mangi Lal (DW2), who projected that Madhavji suffered the injury on account of an accidental fall into the Nullah, the learned Trial Court noted that the DW2, who was the Chowkidar of the village, never visited the place of occurrence nor he reported about the alleged accident of Madhavji to the police which, he ought to have done in normal course of his duty as the village Chowkidar. Likewise the evidence of DW1 was found to be untrustworthy as he claimed to have accompanied Bhanwar Lal to the police station but in the related Exhibit there was no mention of DW1 accompanying the complainant Bhanwar Lal.

13. On the possibility of the injuries being caused through a fall, the evidence of Dr. P.N.Shrivastav (PW2) was discussed vis-a-vis the testimony of the two DWs. The learned trial Judge noted that Dr. Shrivastav has merely accepted that injuries could be sustained through a fall from some height. But it was then specifically recorded by the learned judge that the Doctor never stated that the injuries were the result of accidental fall. In fact the defence never suggested that the injuries were not the result of the violent attack by the accused on the person of Madhavji. Accordingly, it was concluded that the injuries on the vital parts were inflicted by the accused in furtherance of their common objective.

14. As the accused pleaded false implication due to old enmity with the deceased's family, this aspect was considered in detail. On evaluation of the evidence of the eyewitnesses and the post mortem report, the defence plea of false implication was found to be untrue. It was then held that the accused persons had

intentionally caused the fatal injuries on the deceased Madhavji and accordingly they were convicted under Section 302 read with 149 IPC and were sentenced to life imprisonment with fine of Rs.1,000/- each and in default to undergo six months further rigorous imprisonment. For the conviction under Section 148 IPC, the accused were sentenced to 3 years rigorous imprisonment with fine of Rs.3,000/- each. It may again be noted that amongst the six charged accused, Lala died during the trial.

15. The High Court in the appeal, rejected the plea of the appellants attempt to discredit the three eyewitnesses by observing that while it may be possible that the eyewitnesses may not have witnessed the actual assault but as they immediately reached the field on hearing the shrieks of Madhavji, their testimony on the accused being armed with lethal weapons and fleeing the spot soon after the assault, cannot be discarded. The High Court found consistency in the testimony of the eyewitnesses and noted that the injuries attributed by the eyewitnesses to the accused, is corroborated by the medical evidence. It was then concluded that there is no infirmity in the judgment of conviction rendered by the learned Trial Court and the appeal against conviction was accordingly dismissed.

16. Before us, the learned counsel for the appellant-Mr. T. Mahipal submits that the evidence of PW3 and PW12 should be discarded as they are the children of the deceased. He then submits that because of past enmity, the appellants were falsely implicated. The counsel also refers to few of the witnesses not supporting the prosecution version.

17. On the other hand, Ms. Ankita Chaudhary, the learned Dy. AG for the State of Madhya Pradesh argues that the evidence of the 3 eyewitnesses conclusively support the prosecution case. She then submits that medical evidence and injuries corroborate the oral testimonies. According to the learned counsel, bitter relationship of the two groups provide a clear motive for the accused to attack the victim.

18. Let us now consider the law on evidentiary value of a related witness. Commenting on the aspect, Justice Vivian Bose in *Dalip Singh & Ors. Vs. State of Punjab*[1] rightly opined that;

> *"25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this*

[1]AIR 1953 SC 364

> *Court endeavoured to dispel in Rameshwar vs. The State of Rajasthan. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."*
>
> *26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.... ."*

19. It may further be noted that Babu Lal (PW11) is an unrelated witness. His testimony substantially supports the evidence of PW3 and PW12 in all material particulars. In any case, being related to the deceased does not necessarily mean that they will falsely implicate innocent persons. In this context, it was appropriately observed by Justice H.R. Khanna in *State of Uttar Pradesh vs. Samman Dass*[2]

> "23..... . It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant..... ."

20. Again in a later decision of this Court in *Khurshid Ahmed vs. State of Jammu and Kashmir* [3] one of us, Justice N.V. Ramana on the issue of evidence of a related witness was justified in declaring that:

> "31. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused (See *Harbans Kaur Vs. State of Haryana)"*

The above precedents make it amply clear that the testimony of the related witness, if found to be truthful, can be the basis of conviction and we have every reason to believe that PW3 and PW12 were immediately present at the spot and identified the accused with various deadly weapons in their hands.

21. The learned counsel for the appellant next refers to the defence version of the injuries being caused through a fall on the Nullah and the old enmity being the cause for implicating the accused. On this issue, we may benefit by adverting to the observation of Justice *Faizan Uddin* in *Sushil & Ors. Vs. State of U.P.*[4] where the learned Judge so correctly observed:

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[2](1972) 3 SCC 201
[3] (2018) 7 SCC 429
[4] (1995) Supp 1 SCC 363

> "8..... . It goes without saying that enmity is a double-edged weapon which cuts both ways. It may constitute a motive for the commission of the crime and at the same time it may also provide a motive for false implication. In the present case there is evidence to establish motive and when the prosecution adduced positive evidence showing the direct involvement of the accused in the crime, motive assumes importance. The evidence of interested witnesses and those who are related to the deceased cannot be thrown out simply for that reason. But if after applying the rule of caution their evidence is found to be reliable and corroborated by independent evidence there is no reason to discard their evidence but it has to be accepted as reliable..... ."

22. If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony. In fact the history of bad blood gives a clear motive for the crime. Therefore this aspect does not in our assessment, aid the defence in the present matter.

23. The appellant's counsel also submitted that few of the witnesses had not supported the prosecution case and were declared to be hostile. But there are enough material evidence and trustworthy testimonies which clearly support the case against the accused and the prosecution need not fail on this count alone. Some witness may not support the prosecution story for their own reasons and in such situation, it is necessary for the Court to determine whether the other available evidence comprehensively proves the charge. In this case, it is seen that the prosecution version is cogent and supported by three eyewitnesses who have given a consistent account of the incident. Their testimonies are corroborated by the medical evidence. The learned Trial Judge had elaborately discussed the evidence of both sides and came to a logical conclusion which inspires confidence. We are therefore of the view that the hostile witnesses will not affect the conviction of the appellants.

24. Proceeding on the above basis and on careful examination of the manner in which the learned Trial Judge analysed the evidence and rendered his verdict, the conviction of the appellants according to our assessment, was rightly ordered and correctly upheld by the High Court. It is declared accordingly.

25. In the result, the appeal stands dismissed.

Appeal dismissed

I.L.R. [2020] M.P. 2532 (DB)
WRIT APPEAL

Before Mr. Justice S. A. Dharmadhikari & Mr. Justice Vishal Mishra

W.A. No. 515/2020 (Gwalior) decided on 29 September 2020

PREMLATA RAIKWAR (SMT.) …Appellant

Vs.

STATE OF M.P. & ors. …Respondents

***A. Service Law – Promotion & Timescale (Krammonati) – Entitlement* – Held – Appellant promoted on 10.07.2009 which he had forgone – Subsequently he became entitled for timescale w.e.f. 22.07.2010 after completing 12 years of service in UDT cadre – If person forgoes his promotion, he would not be subsequently entitled for *krammonati* – Appeal dismissed. (Para 7)**

क. सेवा विधि – पदोन्नति व समयमान (क्रमोन्नति) – हकदारी – अभिनिर्धारित – अपीलार्थी को 10.07.2009 को पदोन्नत किया गया जिसका उसने स्वेच्छा से परित्याग किया था – तत्पश्चात्, वह प्रवर श्रेणी शिक्षक संवर्ग में 12 वर्षों की सेवा पूर्ण करने के पश्चात्, 22.07.2010 से प्रभावी रूप से समयमान हेतु हकदार बना – यदि व्यक्ति उसकी पदोन्नति का स्वेच्छा से परित्याग करता है, वह पश्चात्वर्ती रूप से क्रमोन्नति हेतु हकदार नहीं होगा – अपील खारिज।

***B. Service Law – Promotion & Timescale (Krammonati)* – Held – If proposition of appellant that even after refusing promotion he can avail *Krammonati* is accepted, then the *raison d`etre* of financial-upgradation scheme which is to weed out career stagnation of employees, would be frustrated – The day appellant refused to accept promotion, he could no longer be called a stagnating employee. (Para 7)**

ख. सेवा विधि – पदोन्नति व समयमान (क्रमोन्नति) – अभिनिर्धारित – अपीलार्थी की प्रतिपादना कि पदोन्नति अस्वीकार करने के पश्चात् भी वह क्रमोन्नति का उपभोग कर सकता है, यदि स्वीकार की जाती है तब वित्तीय उन्नयन की स्कीम का मुख्य प्रयोजन जो कि कर्मचारी की करियर वृद्धिरूद्ध अलग करने के लिए है, विफल हो जाएगा – जिस दिन अपीलार्थी ने पदोन्नति अस्वीकार की, उसके बाद उसे वृद्धिरूद्ध कर्मचारी नहीं कहा जा सकता।

Cases referred :

W.P. No. 19767/2019 decided on 31.1.2019, 2010 (2) MPHT 163 (DB), AIR 1987 SC 1345.

R.P. Singh, for the appellant.
M.P.S. Raghuvanshi, Addl. A.G. for the respondents/State.

J U D G M E N T

The Judgment of the Court was delivered by : **DHARMADHIKARI, J.:-** In this appeal preferred under section 2(1) of Madhya Pradesh Uchacha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, challenge has been made to the order dated 14/2/2020 passed by learned Single Judge in W.P. No.22795/2019, whereby the prayer for grant of benefit of timescale has been refused.

2. Petitioner/appellant had filed the writ petition seeking following reliefs:-

> ''(7.1) पिटीशनर की पिटीशन स्वीकार करते हुए, पिटीशनर को विभाग में 12 वर्ष की सेवा उच्च श्रेणी शिक्षक (यू.डी.टी) / शिक्षक संवर्ग में पूर्ण करने उपरांत दिनांक 22.07.2010 से प्रथम क्रमोन्नत / वरिष्ठ वेतनमान 5500–175–9000 पुनरीक्षित वेतनमान 9300–34800+3600 ग्रेड पे स्वीकृत करते हुए वेतनमान का पुर्ननिर्धारण कर अंतर की राशि प्रदान / भुगतान एक माह में ब्याज सहित प्रदान किए जाने के आदेश / निर्देश प्रदान करने की कृपा करें।
> (7.2) अन्य उचित रिट, आदेश अथवा निर्देश न्याय हित में पिटीशनर के पक्ष में जारी करने की कृपा करें, प्रकरण व्यय रेस्पोन्डेन्ट्स से दिलाये जाने की कृपा करें।''

The learned Single Judge, while deciding the writ petition held that appellant/petitioner had consciously waived his right of getting *Kramonnati* by refusing to accept the promotion. While relying on the decision of this Court in the case of *Vishnu Prasad Verma Vs. Industrial Court of M.P.* (W.P. No. 19767/2019 decided on 31/1/2019), the writ Court held that the appellant/petitioner was promoted on the post of Headmaster which was forgone by him, as a result of which, he had waived his right to get the benefit of *Kramonnati* which became due to him subsequent to his promotion.

3. The facts of the case lie in a narrow compass. Appellant/petitioner was appointed on the post of Assistant Teacher on 4/10/1989. On 25/9/1998, he was promoted to the post of Upper Division Teacher ("UDT" for short) and was granted seniority w.e.f. 22/7/1998. He completed 12 years of service in the cadre of UDT on 22/7/2010. Prior to that, he was promoted to the post of Headmaster on 10/7/2009, but because of some personal difficulties, he had forgone the promotion. The respondents refused the grant of timescale *(Kramonnati)* after completion of 12 years of service in the cadre of UDT by the petitioner on the ground that he had forgone his promotion. While adjudicating upon the point in issue, learned Single Judge framed the following question:-

> "Whether a person who has consciously and deliberately forgone his promotion prior to becoming entitled for grant of Kramonnati is eligible for Kramonnati on the ground that he could not be promoted even after putting 12 years of service in a particular cadre and whether after forgoing the promotion, an employee can claim Kramonnati subsequent

to the date of promotion order ?"

After appreciating the material available on record, the learned Single Judge has dismissed the petition as indicated above, aggrieved whereof, this intra Court appeal has been filed.

4. Learned counsel for the appellant/petitioner contended that the case of the appellant is squarely covered by the judgment of this Court in the case of *Lokendra Kumar Agrawal Vs. State of M.P. & another* (2010 (2) MPHT 163 (DB)) and the appellant is entitled to grant of *Kramonnati* after completing 12 years of service in the cadre of UDT. In support of his contention, learned counsel has placed reliance on decision of co-ordinate Bench of this Court at Indore in W.A. No.939/2017 *(Finance Department & Others Vs. Gendalal Arniya),* as well as, that rendered in W.A. No.21/2017 *(The State of M.P. & Others Vs. Kanhaiyalal Jaitpuriya).*

The second contention is that the learned writ Court has passed three different orders almost in identical cases involving the same issue in W.P. Nos. 22052/2019 and 22355/2020. In one case notices have been issued while the other one has been disposed of with direction to decide the pending representation and the third case being the present one has been dismissed by the order impugned. It is submitted that such a situation would give rise to clear possibility of contradictory judgments being rendered in identical matters. For this, learned counsel has relied upon the decision in the case of *Bir Bajrang Kumar Vs. State of Bihar* (AIR 1987 SSC 1345), wherein the Apex Court has observed as under:-

> "After going through the record of the case it appears that one of the cases involving an identical point has already been admitted by the High Court but another identical petition was dismissed by the same High Court. This, therefore, creates a very anomalous position and there is a clear possibility of two contradictory judgments being rendered in the same case by the High Court."

It is submitted that the learned writ Court by applying the principle of waiver has held that voluntary relinquishment and surrender of some known right or privilege has dis-entitled the appellant/petitioner to claim the benefit of *Kramonnati.* However, the said principle has been applied in identical matters in different way by twisting the concept of waiver. It is also submitted that the case of *Vishnu Prasad Verma* (Supra) has been set aside by a Division Bench of this Court in W.A. No.721/2019 vide order dated 19/8/2019 and, therefore, the impugned order based thereupon is liable to be set aside.

5. On the other hand learned Additional Advocate General submitted that the facts in the case of *Lokendra Kumar Agrawal* (Supra) are different to those in present appeal, inasmuch as in that case, petitioner therein had been granted

timescale w.e.f. 19/10/2005 and thereafter had been promoted on the post of Head-clerk, which had been forgone by him. Consequent to foregoing of such promotion, the timescale granted to him was also withdrawn. It was in this context that it has been held that on account of refusal to join on the promotional post he had already suffered by forgoing the benefit and, therefore, on the basis of executive instructions the benefit of timescale could not have been withdrawn because the same would amount to reduction in pay and the aforesaid action was held to be in violation of Article 311(2) of the Constitution of India, whereas in the present case the appellant was promoted on 10/7/2009 as Headmaster which was forgone by him. After forgoing such promotion, he completed 12 years of service on 22/7/2010. Therefore, it is submitted that he is not entitled to grant of timescale.

So far as the contention of the appellant, relying on decision in the case of *Bir Bajrang* (Supra), in respect of three different orders passed by the learned Single Judge is concerned, it is submitted by learned Additional Advocate General that the said ratio is not applicable to the present facts and circumstances since the learned Single Judge in W.P. No.22355/2019 has disposed of the writ petition with liberty to the petitioner therein to file a detailed representation which is to be considered and decided in accordance with law within three months and in W.P. No.22052/2019 notices to respondents have been issued, whereas in the case of *Bir Bajrang* (Supra) one petition had been admitted and the other one was dismissed by the same High Court. It was in this context that the Apex Court had observed that there was clear possibility of contradictory judgments being rendered by the High Court in same case. So far as the applicability of ratio in *Vishnu Prasad Verma* (Supra) is concerned, it is submitted that the learned Single Judge has rightly relied upon the same by holding as under:-

> 8. The question is no more res integra. This Court in the case of Vishnu Prasad Verma vs. Industrial Court of M.P. By order dated 31.1.2019 passed in W.P.No. 19767/2017 has held as under:

The judgments on which reliance has been placed by the counsel for the petitioner, are distinguishable for the simple reason that in those cases the benefit of Kramonnati was granted and thereafter at a later stage the concerning employee forwent their promotions. Here in the present case, the petitioner has forgone his promotion prior to passing of an order granting the benefit of Kramonnati w.e.f. back date. The petitioner while foregoing his promotion was well aware of the circular dated 23.9.2002.

The respondents have relied upon the circular dated 23.9.2002, in which it is clearly mentioned that in case if a person forgoes his promotion then he would

not be entitled for Kramonnati. The circular dated 23-9-2002 is reproduced as under :

''मध्य प्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय

क्रमांक एफ.1–1/1/वेआप्र/99 भोपाल, दिनांक 5 जुलाई, 2002
23 सितम्बर, 2002

प्रति,

शासन के समस्त विभाग,

अध्यक्ष, राजस्व मंडल, म.प्र., ग्वालियर,

समस्त विभागाध्यक्ष,

समस्त संभागायुक्त,

समस्त कलेक्टर,

समस्त मुख्य कार्यपालन अधिकारी जिला पंचायत,

मध्यप्रदेश।

विषयः– शासकीय सेवकों के लिये क्रमोन्नति योजना।

संदर्भः– इस विभाग का ज्ञाप क्रमांक एफ 1–1/1/वे आप्र/99, दिनांक 31.03.2001 एवं दिनांक 9.4.2001.

संदर्भित ज्ञापन द्वारा ये निर्देश जारी किये गये थे कि ''जिन पात्र कर्मचारियों ने उच्च पदों पर पदोन्नति लेने से या पदोन्नति पद पर जाने से इंकार किया है, वे कर्मचारी क्रमोन्नति योजना के पात्र नहीं होंगें। उन्हें उक्त योजना का लाभ प्राप्त नहीं होगा। ''

2. शासन के ध्यान में यह बात आई है कि कुछ शासकीय सेवक क्रमोन्नति योजना के लाभ प्राप्त होने के बाद पदोन्नति छोड़ देते है, क्योंकि उन्हे उच्च वेतनमान का लाभ क्रमोन्नति योजना के अंतर्गत पूर्व से ही प्राप्त होता रहता है।

3. क्रमोन्नति योजना, पदोन्नति नहीं मिल पाने के कारण एक वैकल्पिक एवं तदर्थ व्यवस्था है जो शासकीय सेवक को लम्बी अवधि तक पदोन्नति नहीं मिल पाने के एवज में दी जाती है।

4. राज्य शासन द्वारा विचारोपरान्त यह निर्णय लिया गया है कि ऐसे शासकीय सेवक, जिन्हें क्रमोन्नति का लाभ दिया गया है, को जब उच्च पद पर पदोन्नत किया जाता जाता है और वह ऐसी पदोन्नति लेने से इंकार करता है तो उसे प्रदान किए गए क्रमोन्नति वेतनमान का लाभ भी समाप्त कर दिया जावे। साथ ही, पदोन्नति आदेश में भी इसका स्पष्ट उल्लेख किया जावे कि यदि शासकीय सेवक

इस पदोन्नति का परित्याग करता है तो उसे पदोन्नति के एवज में, पूर्व में प्रदान किए गए क्रमोन्नति वेतनमान का लाभ भी समाप्त कर दिया जावेंगा।

5. यह आदेश वित्त विभाग के पृष्ठांकन क्रमांक 1031/1399/02/आर/चार, दिनांक 23.09.2002 द्वारा महालेखाकार, मध्यप्रदेश , ग्वालियर को पृष्ठांकित किया गया है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,

हस्ता /– (के.एल. दीक्षित)

अपर सचिव,

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग''

It is submitted that in the aforesaid circular, it is clearly mentioned that if a person forgoes his promotion, he would not be entitled for Kramonnati. Accordingly, it is submitted that no interference is warranted in the order impugned.

6. Heard, learned counsel for the parties.

7. In the case of *Vishnu Prasad Verma* (Supra), the entitlement of *Kramonnati* had accrued in favour of the petitioner therein prior to his refusing promotion. The petitioner therein was promoted as *Daftari* vide order dated 24/4/2003. He gave up his promotion owing to personal difficulty. Later, as per *Kramonnati* scheme, he was found eligible for first *Kramonnati* w.e.f. 7/4/2002, the same was though extended but was confined till 3/5/2003 as the incumbent had later forgone his promotion. It was in this context that the writ appellate Court in W.A. No. 721/2019 has agreed with the principle of law laid down in *Lokendra Kumar Agrawal* (Supra) holding that the benefit of *Kramonnati* granted from an earlier point of time could not have been recovered merely because later the incumbent when promoted from some date in future had forgone such promotion. In the present case, the appellant/petitioner was promoted w.e.f. 10/7/2009 which he had forgone. He subsequently became entitled for timescale w.e.f. 22/7/2010 after completing 12 years of service in the cadre of UDT. As such, the facts on which the decision of *Vishnu Prasad Verma* (Supra) was over-ruled are clearly distinguishable from the fact situation in hand. Consequently, the decisions of co-ordinate Benches of this Court in *Gendalal Arniya* (Supra) and *Kanhaiyalal Jaitpuriya* (Supra), which have been rendered on the basis of *Lokendra Kumar Agrawal* (Supra), are of no avail to the petitioner. Moreover, the circular dated 23/9/2002 or those referred therein, have not been put to challenge. Besides, if the proposition of the petitioner that even after refusing promotion he can avail *Kramonnati* is accepted, then the *raison d'etre* of the financial-upgradation scheme which is to weed out career stagnation of employees, would be frustrated. The day petitioner refused to accept promotion, he could no longer be called a stagnating employee.

8. In view of the above, no fault could be found with the findings recorded by the learned Single Judge. The appeal fails and is, accordingly, dismissed.

Appeal dismissed

I.L.R. [2020] M.P. 2538 (DB)
WRIT APPEAL

Before Mr. Justice S.C. Sharma & Mr. Justice Shailendra Shukla

W.A. No. 92/2014 (Indore) decided on 5 October, 2020

STATE OF M.P. & ors. …Appellants

Vs.

KHASGI (DEVI AHILYA BAI HOLKAR CHARITIES) TRUST, INDORE & ors. …Respondents

(Alongwith W.A. No. 135/2014 & W.P. No. 11234/2020)

A. Constitution – Article 226 and Public Trusts Act, M.P. (30 of 1951), Section 14 & 36(1)(a) – Khasgi Trust – Sale of Property – Permission – **Held – Title in respect of Khasgi properties lies with the State – Properties though managed by the Trust, was vested in State government upon merger and do not form part of property settled with outgoing proprietor/Holkar State – Property belongs to Public Trust and while disposing the same, permission should have been obtained from Registrar, Public Trust or from State. (Paras 97 to 102, 112 to 118 & 129)**

क. संविधान – अनुच्छेद 226 एवं लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 14 व 36(1)(a) – खासगी न्यास – संपत्ति का विक्रय – अनुमति – अभिनिर्धारित – खासगी संपत्तियों के संबंध में हक राज्य के पास है – यद्यपि संपत्तियां न्यास द्वारा प्रबंधित हैं, विलयन पर राज्य सरकार में निहित थी और पदावरोही स्वत्वधारी/होलकर राज्य के साथ व्यवस्थापित संपत्ति का भाग निर्मित नहीं करती – संपत्ति, लोक न्यास की है तथा उसका निपटान करते समय पंजीयक, लोक न्यास अथवा राज्य से अनुमति अभिप्राप्त की जानी चाहिए थी।

B. Constitution – Article 226 and Public Trusts Act, M.P. (30 of 1951), Section 14 – Sale of Public Trust Property – Fraud – **Held – Fraud vitiates everything – Trustees have played fraud upon State government – Properties not been sold for objectives of Trust but with an oblique and ulterior motive – Sale deeds executed by Trust in respect of properties of State are null and void and stands vitiated – State is titleholder of property, it is duty of State to protect and preserve the same – Collector rightly passed order to record the name of State of M.P. in Revenue records.**

(Paras 132, 134, 135 & 149)

ख. संविधान – अनुच्छेद 226 एवं लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 14 – लोक न्यास संपत्ति का विक्रय – कपट – अभिनिर्धारित – कपट सब कुछ दूषित करता है – न्यासियों ने राज्य सरकार के साथ कपट किया है – संपत्तियों का विक्रय न्यास के उद्देश्यों हेतु नहीं बल्कि एक अस्पष्ट एवं अंतरस्थ हेतु के साथ किया गया – राज्य की संपत्तियों के संबंध में न्यास द्वारा निष्पादित किये गये विक्रय विलेख अकृत एवं शून्य है तथा दूषित हो जाते है – राज्य, संपत्ति का हकधारक है और उसका संरक्षण एवं परिरक्षण करना राज्य का कर्तव्य है – कलेक्टर ने राजस्व अभिलेखों में म.प्र. राज्य का नाम अभिलिखित करने के लिए उचित रूप से आदेश पारित किया।

***C. Constitution – Article 166(i), 166(2), 166(3) & 226, Rules of Business of the Executive, Government of M.P., Rule 13 and M.P. Government Business (Allocation) Rules – Sanction to Alienate Government Property – Procedure* – Held – The decision to accord sanction to alienate government property is a policy decision to be taken by government and same cannot be replaced by a D.O. letter of an officer of State – As per Business Allocation Rules of State in respect of sale of property, letter has to be issued in name of Governor of State – Proposals involving alienation by way of sale, grant of lease of government property exceeding 10 lacs in value, is to be placed before Council of ministers – No such procedure followed – Chief Secretary is nobody to write a letter in respect of property of State.**

(Paras 94, 95, 121, 123, 126 & 127)

ग. संविधान – अनुच्छेद 166(i), 166(2), 166(3) व 226, म.प्र. कार्यपालक शासन के कार्य नियम, नियम 13 एवं म.प्र. शासन कार्य (आवंटन) नियम – सरकारी संपत्ति के अन्यसंक्रामण हेतु मंजूरी – प्रक्रिया – अभिनिर्धारित – सरकारी संपत्ति के अन्यसंक्रामण हेतु मंजूरी प्रदान करने का विनिश्चय, सरकार द्वारा लिया जाने वाला एक नीति निर्णय है और उसे राज्य के एक अधिकारी के डी.ओ. पत्र द्वारा प्रतिस्थापित नहीं किया जा सकता – संपत्ति विक्रय के संबंध में राज्य के कार्य आवंटन नियमों के अनुसार पत्र को राज्य के राज्यपाल के नाम से जारी किया जाना चाहिए – 10 लाख से अधिक मूल्य की सरकारी संपत्ति का विक्रय के जरिए, पट्टा प्रदान द्वारा अन्य संक्रामण के समावेश वाले प्रस्तावों को मंत्री परिषद के समक्ष रखना होता है – ऐसी किसी प्रक्रिया का पालन नहीं किया गया – राज्य की संपत्ति के संबंध में पत्र लिखने के लिए मुख्य सचिव कोई नहीं होता।

***D. Constitution – Article 363 – Scope & Jurisdiction* – Held – As property in question was not the property of Maharaja, Article 363 of Constitution comes into play – Court does not have power to draft the Trust Deed nor is having power to enact the statute in respect of Trust – Impugned order is contrary to constitutional mandate provided under Article 363 and infact petitions were not at all maintainable in respect of properties of State government – Impugned order set aside – Appeals allowed and Petition disposed of.** **(Paras 116, 136, 151 & 159)**

घ. संविधान – अनुच्छेद 363 – व्याप्ति व अधिकारिता – अभिनिर्धारित – चूंकि प्रश्नगत संपत्ति, महाराजा की संपत्ति नहीं थी, संविधान का अनुच्छेद 363 प्रभावी होता है – न्यायालय को न्यास विलेख का प्रारूप बनाने की शक्ति नहीं है और न ही न्यास के संबंध में कानून अधिनियमित करने की शक्ति है – आक्षेपित आदेश, अनुच्छेद 363 के अंतर्गत उपबंधित संवैधानिक आज्ञा के विरूद्ध है तथा वस्तुतः, राज्य सरकार की संपत्तियों के संबंध में याचिकाएं बिल्कुल भी पोषणीय नहीं थी – आक्षेपित आदेश अपास्त – अपीलें मंजूर तथा याचिका निराकृत।

Cases referred :

(2015) 8 SCC 672, (2004) 11 SCC 425, (2010) 11 SCC 55, AIR (38) 1951 SC 217, (1996) 2 SCC 205, AIR 1963 SC 946, AIR 1954 SC 440, AIR 1955 SC 233, AIR 1964 SC 477, (2008) 4 SCC 649, (1995) Supp. (1) SCC 596, (1969) 2 SCC 262, (1980) 4 SCC 379, (2008) 14 SCC 151, (2017) 15 SCC 702, (1979) 2 SCC 409, (1985) 4 SCC 369, (2013) 3 SCC 559, (1971) 1 SCC 85, (1977) 1 SCC 257, (2003) 5 SCC 399, (2011) SCC OnLine MP 275, (1969) 2 SCC 187, (2000) 3 SCC 668, 2020 SCC OnLine 569, AIR 1966 SC 878, AIR 1987 SC 1554, (1991) 1 SCC 354, AIR 1994 SC 853 & (1996) 5 SCC 550, (2012) 11 SCC 574, (2018) 1 SCC 656, (2019) 14 SCC 449.

P.K. Saxena with *Rishi Tiwari*, for the appellants/State in Writ Appeals and for the respondent No. 1 in Writ Petition.

Kapil Sibal with *Abhinav Malhotra,* for the respondent No. 1 in Writ Appeals.

Shyam Divan with *Abhinav Malhotra* and *Sugandha Yadav,* for the respondent No. 2 in W.A. No. 92/2014.

A.K. Chitale with *Kartik Chitale*, for the respondent Nos. 1 & 2 in W.A. No. 92/2014 and for the respondent Nos. 6 to 9 in W.P.

S.C. Bagadia with *Vivek Patwa*, for the respondent Nos. 1-A, 1-B and 1-D in W.A. No. 135/2014.

A.S. Garg with *Poorva Mahajan*, for the respondent No. 4 in W.A. No. 92/2014 and for the respondent No. 5 in W.P.

Sameer Saxena, for the Intervenor in all cases.

Ashish Joshi, for the Intervenor in all cases.

Milind Phadke, Addl. Solicitor General with *Manoj Manav*, for the Union of India.

Rohit Sharma, for the petitioner in W.P. (PIL).

V.K. Jain with *Vaibhav Jain*, for the respondent Nos. 11 to 13 in Writ Petition.

Shekhar Bhargav with *Anika Bajpai*, for the respondent No. 3 in W.A. No. 135/2014.

All parties have been served in the both the Writ Appeals.

O R D E R

The Order of the Court was passed by :

S.C. SHARMA, J.:- Regard being had to the similitude in the controversy involved in the present case, these cases were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Appeal No.92/2014 are narrated hereunder.

The appellant before this Court has filed this present Writ Appeal being aggrieved by the order dated 28.11.2013 passed by the learned Single Judge in W.P. No.11618/2012 [The Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore & Another v/s The State of Madhya Pradesh & Others]. The writ petition was preferred before the learned Single Judge against the order (note-sheet) passed by the Collector, Indore, by which, the Collector, Indore has directed the revenue authorities to enter the name of State of Madhya Pradesh in all properties of the Trust to ensure that the properties of the Trust are not sold to other persons.

2. It was stated in the writ petition that the petitioners /Trust therein is a religious and charitable trust constituted on 27.06.1962. It was further stated in writ petition that the Trust and its activities were initiated by the erstwhile Ruler of Holkar State from the year 1761 - 1948, and thereafter, on account of merger, the Holkar State merged into Madhya Bharat.

3. The petitioners / Trust therein came up before the learned Single Judge with a case that on account of covenant executed by the parties, the private property, as per the schedule appended to the covenant, became the exclusive properties of the Maharaja, the other properties became the exclusive properties of Madhya Bharat (State of Madhya Pradesh) and a third species of property, which was not the State's property or the personal property of the Rulers of Holkar State, were the Trust's properties and in those backdrop, a Trust was constituted on 27.06.1962.

4. It has been further contended that in order to provide various checks and balances to ensure the public character of the Trust, the trust deed provided various safeguards including appointment of six trustees out of which three were government / public nominees. It has been contended that various recitals of the trustees also records that in the budget of Holkar State for the year 1947 - 48, a provision was made for Rs.2,91,952/- for maintenance of Khasgi Charities and the State Government has also issued a gazette notification on 27.07.1962 regarding the setting up of the Khasgi Trust and handing over the Khasgi properties to the Trust.

5. It was further contended by the petitioners / Trust in the writ petition that the covenant, which Maharaja Yashwant Rao Holkar had entered into with Government of India and other Rulers of the princely State of Central India to

form the United State of Madhya Pradesh, did not deal specifically with the Khasgi properties and there was only a general provision contained in Article VII (2)(c) for dealing with the properties like the Khasgi properties and the same reads as under:-

> "Subject to any directions or instructions that may form time to time be given by the Government of India in this behalf, the authority -
>
> (a) xxxxxxxxxxx
>
> (b) xxxxxxxxxxx
>
> (c) to control the administration of the fund in Gwalior known as the Gangajali Fund and / or any other existing fund of a similar character to any other Covenanting State."

6. The petitioners before the learned Single Judge have further stated that for Gangajali Fund of Gwalior State an act called Gangajali Fund Trust Act, 1954 (Madhya Bharat Act No. 11 of 1954) was enacted by the Madhya Bharat Legislature and was repealed later, however, for the Khasgi Charties (sic: Charities) and religious endowment in the Holkar State, a tripartite instrument was entered into between Government of India, Government of Madhya Pradesh and Maharaja Yashwant Rao Holkar on 07.05.1949. The Trust has categorically stated in the writ petition that petitioners / Trust do not have a copy of said instrument.

7. It has been further stated that as per the trust deed of Khasgi (Devi Ahilyabai Holkar Charities) Trust, there are 246 charities of diverse nature such as 138 temples, 18 Dharamshalas, 34 Ghats, 12 Chhatries, 24 Bagichas, Kund and other miscellaneous properties. They are situated in Varanasi, Ayodhaya, Nemisharanya, Allahabad, Haridwar, Pushkar, Omkareshwar, Pandharpur, Choundhi, Gokaran, Rameshwar, Vrindavan, Burhanpur, Trayambkeshwar, Amarkantak, Nashik, Chandwad Wafgaon, Sambalgaon, Sansthan Chhatri Maheshwar, Indore City and Indore District, Manasa, Rampura, Bhanpura, Alampur, Tarana, Maheshwar and other places.

8. It has been further stated that grant of Rs.2,91,952/-was inadequate to maintain the properties and for the purposes of generating income, a need arose to dispose of the trust property. It has been stated that in the year 1969, Shri S.V. Kanoongo, the then nominee of the Central Government of the Board of Trustees, sought a clarification from the State Government vide letter dated 09.05.1969 in respect of sale of properties and the then Chief Secretary, Shri M.P. Shrivastava, vide letter dated 13.06.1969, has informed the Trust that the Government does not come into picture in respect of sale of properties.

9. It has been further stated by the Trust that based upon the letter of the Chief Secretary, Shri M.P. Shrivastava, the trust deed was amended by executing a

supplementary deed of trust on 08.03.1972, which provided a clause for sale of the Trust properties and the same reads as under:-

> "The Trustees have always had and shall have the power to alienate not only the income but any item of the corpus of the Trust property, movable or immovable, for the necessity or benefit to the objects of the Trust and / or for the convenient or more beneficial administration of the religious and charitable endowments mentioned in the Deed of Trust dated 27th June, 1962."

10. It has been further stated by the Trust that the Trust was enjoying special status, it was duly recognized by the Registrar, M.P. Public Trust, Indore and the Registrar has granted exemption to the Trust form (sic: from) the applicability of the M.P. Public Trust Act, 1956 by treating it as a Trust administered by an agency acting under the control of the State Government.

11. It has further been contended by the Trust that it was carrying out thankless job, duty and responsibility of management of Trust and was also looking after upkeep of the Khasgi properties including temples, dharamshala, ghats etc. and it was autonomous institution. It has been contended by the Trust that the Collector, Indore has got no power to interfere and intervene or assert any right in respect of the properties vested in the Trust by claiming the same to be the State Government's properties.

12. It has further stated by the Trust that one of the property i.e. Ghats at Haridwar was to be sold and a resolution was passed by the trustees in the meeting which took place on 05.06.2008 in respect of Haridwar properties. It has been stated that the resolution was passed to sell the Haridwar property, as it was in the interest of the Trust and the property was sold for Rs.50,00,000/-. The money was deposited in the Khasgi Trust Account in the State Bank of India, Prince Yashwant Road Branch, Indore.

13. It has further been contended by the Trust that the Haridwar property was the property of the Trust and it was not the property of the State Government, and therefore, it was rightly sold by the Trust. It has been further stated that scandalous stories were published in respect of sale of the Trust property and Smt. Sumitra Mahajan, the then Member of Parliament wrote a letter to the Chief Minister on 18.04.2012 raising the issue of sale of Haridwar property and requested that the matter be investigated.

14. The Trust has further stated that on account of the letter written by Smt. Sumitra Mahajan, the then Member of Parliament, Indore, a chain of knee-jerk reactions were followed at different level of the hierarchy in the State Government

and the letter was forwarded by the Principal Secretary, Chief Minister Office on 08.05.2012 to the Collector, Indore as well as to the Registrar, Public Trust, Indore. The Registrar, Public Trust issued a notice to the petitioners on 05.06.2012 and the Trust did submit a reply on 20.05.2012 stating that the property in question is the property of the Trust and not under the ownership of the State Government, and therefore; there was no reason to continue with the illegal and *malafide* inquiry into the issue of sale.

15. It has further been contended by the Trust that the Collector, Indore, thereafter, issued an order in respect of the Trust properties dated 05.11.2012, wherein he has directed the revenue authorities to mutate the name of State Government in the revenue record and to inform all the Collectors throughout the country to ensure that the Trust property is not sold to private individuals or to any other person.

16. The petitioners / Trust has contended before the learned Single Judge that the order passed by the Collector suffers from *malafide* and was issued in colourable exercise of power and is without jurisdiction.

17. It has further been stated by the Trust that another order was passed on 05.12.2012 by the Registrar, Public Trust and a prayer was made for quashment of both the orders passed by the Collector as well as by the Registrar, Public Trust. The petitioners / Trust has contended before the learned Single Judge that grant of Rs.2,91,952/- was inadequate to manage the Trust, and therefore, a necessity arose for sale of Trust property and an action was initiated against the Trust with an oblique and ulterior motive.

18. The petitioners / Trust has raised various grounds before the learned Single Judge challenging illegality and validity of orders dated 05.11.2012 passed by the respondent No.2 / Collector in the writ petition and order dated 05.11.2012 passed by the Registrar, Public Trust by stating that the orders were illegal, arbitrary and unconstitutional. It was also contended before the learned Single Judge that the Collector does not have jurisdiction in the matter to pass such an order and the Trust property was sold for the benefit of the Trust.

19. Another ground was raised by the Trust stating that the entire action was based upon the letter of Member of Parliament with an oblique an ulterior motive and the Collector, Indore is having no power in respect of property situated in Haridwar.

20. Another ground taken by the Trust is that after the establishment of petitioner / Trust in the year 1962, all the Khasgi properties mentioned in schedule appended to the trust deed vested in the Trust and they are not the properties of the State Government, at no point of time, they became the properties of Madhya Bharat, and therefore, the action of the Collector was bad in law.

21. Another ground was raised before the learned Single Judge stating that earlier in the year 1969, the State Government has informed the Trust that the properties do not belong to the State Government and the then Chief Secretary has written a letter categorically to that effect, and therefore, once the properties were not under the ownership of the State Government, the Collector and the Registrar could not have passed the impugned orders.

22. It has further been contended that the Collector has ignored the vital fact about the membership of the nominees of the State and Central Government in the Trust and the property was sold by passing a resolution, hence, the orders of the Collector and Registrar are bad in law.

23. It has further been stated in the writ petition that there are as many as 246 charities of diverse nature including temples and ghats and if the State Government wants to takeover the control of such properties, it can only be done by enacting an act by the competent legislature and not by the order of Collector. It has been contended that the order passed by the Collector and Register (sic: Registrar), Public Trust are violative of principles of natural justice and fair play and at the best, the Principal Secretary to the Hon'ble Chief Minister could have directed an investigation in the matter through the Divisional Commissioner, Indore.

24. Another ground has been raised before the learned Single Judge stating that the Registrar, Public Trust has got no authority in light of the covenant signed at the time of merger to take any action against the Trust.

25. Another ground was raised in respect of jurisdiction and the applicability of the M.P. Land Revenue Code, 1954 in the matter. In the writ petition, the petitioners / Trust has prayed for quashment of order / note-sheet dated 05.11.2012, order dated 30.11.2012 as being void, illegal and opposite to law.

26. Appellant No.3 / Registrar has filed a caveat in the matter raising preliminary objections and it has been stated in the reply that as per the covenant executed between the parties, a Trust was formed on the basis of claim made by His Highness Maharaja Yashwant Rao Holkar of Indore concerning Khasgi properties and covenant provides that the Khasgi properties and income from Khasgi shall be treated as lapsed for all time to the Madhya Bharat Government. In lieu thereof several guarantees were given subject to conditions. It was decided that the Madhya Bharat Government shall in perpetuity set aside annually its revenue. A sum of Rs.2,91,952/- being the amount provided in the Holkar State Budget for the year 1947 - 48 for charities and the amount shall be funded and put under a permanent trust for the said charities including the charities of her highness Maharani Ahilyabai Holkar. The power and function of the Trust shall be

subject to such legislation as the Central Government or Madhya Bharat Government may enact generally for the purposes of regulating such Trust, except that the composition of Trust and the manner of its formation, as stated above, shall not be liable to any modification or change by such legislation.

27. It has further been stated that the Trust property vested in the Madhya Bharat Government and the Trust was formed only for maintenance of the properties and the Trust is certainly governed under the provisions of M.P. Public Trust Act, 1951. It has further been contended by the Registrar that the Trust in its reply dated 20.06.2012 has admitted the aforesaid situation. He has stated that on 10.08.1971 on an application of the Trust, the Trust was categorically informed that the property in question is owned and controlled by the State of Madhya Pradesh, and therefore, exemption was provided only in respect of registration of Trust. The Registrar has further contended that the provisions of M.P. Public Trust Act, 1951 are very much applicable to the Khasgi Trust and the State Government has issued a letter to the Trust dated 17.04.1997 to take prior permission under Section 14 of the M.P. Public Trust Act, 1951 for transfer of Trust property, if any.

28. It has further been contended by the Registrar that the representative of the State Government i.e. the Commissioner, Indore has issued a letter dated 26.07.2000 to the Secretary of the Trust to take prior permission under Section 14 of the M.P. Public Trust Act, 1951 in case of transfer of Trust property, however, this letter has been suppressed by the Trust while filing the writ petition.

29. The Registrar has further stated in its reply / caveat that the petitioners / Trust is fully governed and controlled by the State Authority and the State Authority has issued a letter dated 15.05.2012 with a direction to Collector, Indore to inquire the transfer of properties of the Trust, which are vested in the State Government and the Collector has initiated an inquiry through the Registrar, Public Trust after granting an opportunity of hearing to the petitioners / Trust in consonance with the provisions of M.P. Public Trust Act, 1951.

30. An Intervention Application was filed i.e. I.A. No.5493/2012 by one Jagdeependra Singh Holkar and it has been stated that the petition has been filed on the premises that disputed properties (Trust properties) were the properties of late Maharaja Yashwant Rao Holkar, who died in 1961 and was recognized as Maharaja of the erstwhile Holkar State and after the death of Maharaja Yashwant Rao Holkar, his daughter Usha Devi has created the trust of the properties. The intervenor has stated that as per the terms of covenant entered into between late Yashwant Rao Holkar and Union of India, Usha Devi could not have succeeded as heir of Yashwant Rao Holkar as the Ruler.

31. It has been further stated that as per the terms of covenant, if the Ruler dies without a sign, the rulership will devolve as per the custom prevailing in the

Holkar Dynasty and the custom prevailing in the Holkar Dynasty provided that after the death of Ruler, his nearest male heir will succeed as a Ruler in absence of a sign.

32. The intervenor has further contended that at the time of death of late Yashwant Rao Holkar, Malhar Rao Holkar, father of the intervenor, was the nearest surviving male in the family, he was cousin of Maharaja Yashwant Rao Holkar, late Yashwant Rao Holkar had no brother living at the time of his death except the father of the intervenor and in those circumstances, a civil suit has been filed i.e. Civil Suit No.15/1973 claiming declaration of title and possession of property. It has been stated that after the death of Malhar Rao Holkar, the intervenor, being his eldest son, has been brought on record and the suit was dismissed by the trial Court vide judgment and decree dated 21.04.2003. A first appeal was also preferred i.e. F.A. No.264/2003, however, it was dismissed as withdrawn, and thereafter, a SLP was preferred i.e. S.L.P. No.205/2009 and the Hon'ble Supreme Court has granted liberty to move a restoration application and accordingly, a restoration application was filed i.e. M.C.C. No.417/2011 and the same is still pending before the High Court of Madhya Pradesh, Bench at Indore. The intervenor has stated that he is also an interested party in the matter and he should also be heard.

33. There was another Intervention Application i.e. I.A. No.5552/2012 filed by Anshuman Rao Holkar and Gautam Rao Holkar. They are also claiming themselves to be the members of Holkar Dynasty. It has been stated by them that intervenors are the actual legitimate owner of the property in respect of which, the Collector, Indore has passed an order, they are having right over the property and Smt. Usha Devi Holkar has given false and fabricated assurance to the intervenors and is disposing of the property of the Trust illegally and arbitrarily that too without any authority to dispose of such property.

34. A rejoinder has been filed to the reply filed by the Registrar, Public Trust and it has been reiterated that the orders have been passed by the Registrar and the Collector without jurisdiction and it is a sheer abuse of process of law. It has been stated in the rejoinder that the State Government is not the owner of the property and the property was rightly sold by the Trust. It has been stated that the order passed by the Collector is a nullity and the properties are not at all under the control of the State Government. It has been stated that the orders have been passed without jurisdiction and the dispute can be resolved by approaching Civil Court. Reference to trust deed has also been made in the rejoinder and in nutshell, great emphasis has been laid upon the fact that the property does not belong to the State Government and the Trust has every right to dispose of the Trust property at their sweet will keeping in view the terms and conditions of the trust deed and a prayer was made for quashment of the orders passed by the Collector and the Registrar.

35. Reply to Intervention Application has also been filed denying the claim of intervenor in respect of property in question.

36. The learned Single Judge, after hearing the parties at length, has allowed the writ petition. Paragraphs - 24 to 32 of the order passed by the learned Single Judge reads as under:-

> **"24.** The broad purport of the impugned order of the Collector and the Registrar of Public Trusts is that the Government owns the Khasgi Endowments, the State Government should have control over the affairs of the trust, the name of the State Government should be entered in the revenue and municipal records and the properties comprised in the Khasgi Endowments should not be alienated.
>
> **25.** In the opinion of this Court, the Collector, Indore, the Registrar of Public Trusts, Indore and the State Government cannot and should not undertake the task of management of the Khasgi Endowments on account of its substantially extra-erritorial nature and the large number, age and condition of the Khasgi Endowments. This task is quite different from normal governmental functions. The impugned orders of the Collector and the Registrar do not substitute for the Khasgi Trust any system of management of the Khasgi Endowments superior to the Khasgi Trust. In fact they create a vacuum and a state of uncertainty in the management of the Khasgi Endowments. Record reveals that after the death of Shri K.A. Chitale, who was the trustee and passed away on 15/11/82, Shri Ranjeet Malhotra S/o Shri Satish Malhotra was appointed as Trustee, who resigned on 03/01/13. Thereafter Hon'ble Justice P.D. Muley (Retd.) was appointed as trustee vide resolution passed in October, 2013. So far as representative of Central Government is concerned, initially Mr. SV. Kanungo, Member of Public Service Commission of India was the Trustee. After him Mr. PS. Bapna was appointed as Trustee and thereafter Mr. BJ. Heerji is the Trustee in the capacity of representative of Union of India. Thus, at present following persons are the Trustee:-
>
> i. Maharani Usha Devi
>
> ii. Shri Satish Malhotra
>
> iii. Hon'ble Justice P.D. Mule, (Retd.)
>
> iv. Revenue Commissioner, Ex- officio
>
> v. Superintendent Engineer (Road & Building), Ex-officio

vi. Mr. BK. Heerji (representative of Central Government)

26. Considering the totality of the above facts, in the opinion of this Court, Khasgi Trust should continue to manage the Khasgi Endowments subject to the directions contained in this order.

27. For making permanent arrangement for the administration of the Khasgi Endowments, this Court directs as under:

PARLIAMENTARY LEGISLATION:

In view of the fact that the Trust Endowments are not confined to the District of Indore or even the State of Madhya Pradesh and most important endowments are outside the State, the Central Government, which has been impleaded as respondent No. 4 in the present case, is requested to consider a Parliamentary Legislation. For this legislation, the respondent No. 8, who is nominee of the Union of India and the Member of Parliament upon whose complaint impugned orders were passed, are requested to take the initiative.

STATE LEGISLATION:

If the Central Government is not in a position to initiate the process of enactment of a Parliamentary statute within the period of one year, the State Government may initiate steps for enactment of legislation by the State Legislature

MANAGEMENT OF KHASGI TRUST IN THE MEANTIME:

28. In the meantime, until an Act of the Central or the State Legislature is enacted, this Court issues following directions:

1. The Khasgi (Devi Ahilyabai Holkar Charities) Trust, as constituted by the Trust Deed dated 27.06.1962, shall continue to function as in the past but subject to the directions contained in this order.

2. The Khasgi Endowments are Temples, Dharamshalas, Ghats, Chhatries, Bagichas, Kunds and miscellaneous properties. They are situated in different parts of the country. They are essentially religious in nature. As such, they are in public domain and shall continue to remain in the public domain. Neither Maharani Usha Devi nor any other Trustee nor the State Government shall claim ownership of the Khasgi Endowments.

3. The Trustees of the Khasgi Trust shall, as a body, manage the Khasgi Endowments.

4. Maharani Usha Devi shall, as in the past, have the liberty to nominate two persons as trustees of the Khasgi Trust. At present her two nominees Mr. Satish Malhotra and Hon'ble Justice P.D.Mule (Retd.) are the Trustee.

5. In addition to the trustees appointed under the Trust Deed dated 27.06.1962, His Excellency the Governor of Madhya Pradesh is requested to be the Patron and is further requested to appoint two eminent non-political and non-governmental citizens of Indore with unblemished record of public service as trustees.

6. This Court appoints Smt. Sumitra Mahajan, Member of Parliament, Lok Sabha in person and not ex-officio Shri A.K. Chitale, Senior Advocate, Shri Yashwant Rao s/o Prince Richard @ Shivajirao Holkar and Shri Ranjeet Malhotra S/o Shri Satish Chandra Malhotra as trustees, subject to their accepting responsibilities of this office and for effective working of the trust Collector, Indore in place of Superintending Engineer(Building & Roads) as Nominee of the State Government. Thus, after reconstitution the Board of Trustees subject to their acceptance shall be as under:-

(I) Smt. Usharaje Malhotra -President.

(ii) Shri Satish Chandra Malhotra.

(iii) Hon'ble Justice P.D. Mule, (Retd.).

(iv) Shri AK. Chitale, Senior Advocate.

(v) Smt. Sumitra Mahajan, Member of Parliament, Indore.

(vi) Shri Yashwantrao S/o Prince Richard @ Shivajirao Holkar.

(vii) Revenue Commissioner, Indore, Ex-officio.

(viii) Collector, Indore.

(ix) Shri B.J. Heerji, Representative of Union of India.

7. Henceforth the named trustees by majority shall be at liberty to appoint trustee in case vacancy arises.

8. The religious properties comprised in the Khasgi Endowments shall never be sold.

9. If there is pressing need of selling or leasing any part of the Khasgi Endowments which is not being used or which is not capable of being used for actual religious purpose (hereinafter called "general properties") it may be sold or leased only by a unanimous resolution of the Trustees. The procedure followed for the sale shall be transparent and shall be laid down by a resolution of the Trustees passed at a formal meeting of the Trust at which the proposed sale shall be a specific item of the agenda.

10. Maharani Usha Devi and Shri Satish Chandra Malhotra have been providing financial support to the Khasgi Trust in the past. They are free and are requested to continue to provide such financial support as they wish, in future also.

11. Clause 10 of the Trust deed provides that the Settlor in her capacity as president of the Trust shall be entitled to appoint any person as her duly constituted Attorney, to do all acts, deeds and things of ministerial nature. The Trustees may appoint a Secretary by a special resolution and confer on him such powers and authorities as the Trustees may deem fit. 12. The State Government has so far been providing a fixed sum of Rs.2,91,000/-per year to the Khasgi Trust. This amount was fixed on the basis of Budget of Holkar State of the year 1947-48 for charities. This amount is now no longer adequate. The State Government shall henceforth shall make a provision in the budget for Khasgi Trust which should not be less then one crore every year keeping in view the maintenance of valuable properties of the trust and the fact that a sum of Rs.2.91 lac was fixed in the year 1947-48. This payment must be made well before 31st March of every year. 13. Though the fixed annuity of the State Government is only of Rs.2,91,000/-, the State Government has appointed a retired State Government Officer on a monthly remuneration of Rs.30,000/-, that is Rs.3,60,000/- per year, as Officer on Special Duty. This remuneration is being paid from funds of the Khasgi Trust. This payment by the Khasgi Trust must be and is stopped by the end of this year. This office of the Officer

on Special Duty and the payment may be continued only if (a) the State Government bears the financial burden and assigns specific duties and responsibilities to the Officer on Special Duty and (b) the trustees of Khasgi Trust accept such an Officer on Special Duty.

14. Since the issue has been raised by the Member of Parliament, a hope is expressed that she will provide at least Rs.5,00,000/- per year to the Khasgi Trust well before 31st March of every year from the funds of Member of Parliament. A copy of this order may be sent by the Registrar to her.

15. The revenue and municipal records regarding the Khasgi Endowments may be got corrected and entered in the name of the Khasgi Trust. 16. The Trustees may request the Indian Institute of Management, Indore to study the present system of management of the Khasgi Endowments and suggest improvements.

17. The earlier transactions of transfer by the Trust which were supported by proceedings of the trustees shall not be reopened.

18. Audit of the accounts of the Khasgi Trust shall be got done by the present auditors Messrs R.D. Joshi & Company. The State Government may get a second audit conducted by independent recognized chartered accountants but their fee and cost shall be borne by the State Government.

19. The meeting of the Trust shall be held on regular basis and at least once in three months. To give immediate effect, Collector, Indore is requested to hold the first meeting at his Office forthwith. So that reconstituted Board of Trustees of petitioners Trust become functional and consent can be obtained from the Trustees appointed under the orders of this Court.

29. For safety, preservation and management of jewellery and ornaments in temples and other places of the Khasgi Trust, the following directions are given:

1. Detailed lists may be made of gold, silver and precious stone jewellery, ornaments, Puja implements, Murtis and ancient idols and things, monuments and sculptures in temples and other places in Khasgi Endowment (hereinafter called the "Khasgi Trust Precious Articles");

2. These lists may be converted into proper bound and paged register/s;

3. For preparing these lists and the register/s, the Secretary or his representative and a responsible officer of Khasgi Trust should visit the various places where the Khasgi Trust Precious Articles are kept.

4. Panchnamas may be made of the Khasgi Trust Precious Articles at every place, dated and attested by at least two Panchas, one of whom should be a Government approved jewellery valuer;

5. The Collector in whose jurisdiction the Khasgi Trust Precious Articles are located may be requested to depute an officer of his Collectorate to be present at the time of preparation of the Panchnama. If a Collector outside Madhya Pradesh does not, cannot or refuses to depute an officer, the procedure indicated earlier may nevertheless be carried out.

6. Valuation may be done of the Khasgi Trust Precious Articles by the government approved jewellery valuer.

7. After the Panchnamas are made, the Khasgi Trust Precious Articles may be kept in a bank locker or in a Godrej Safe embedded in the temple or other places at a safe location not accessible to public.

8. Access to the Khasgi Trust Precious Articles may be provided only jointly to (a) the local Pujari or Manager of the temple or other place and (b) a person specially authorized by the Trustees and only on the occasion of Pujas, ceremonies or other occasions according to past practice.

9. Lists of the Khasgi Trust Precious Articles may be placed before the trustees and their further resolutions for safety, preservation and management the Khasgi Trust Precious Articles may be obtained and followed at all times.

10. The Trustees may lay down proper procedure and pass resolutions in order to facilitate the removal of the Khasgi Trust jewellery on special occasions for Pujas and ceremonies and putting them back safely.

11. Photographs of every individual item of Khasgi Trust Precious Articles at appropriate angles

may be taken and put in the safes where the Khasgi Trust Precious Articles would be kept and in the permanent record about the Khasgi Trust Precious Articles. These photographs may be signed by the person making the Panchnamas and the Panchas and put in sealed covers and the sealed covers may be similarly signed and dated.

12. This exercise shall be completed within three months.

30. Properties of Khasgi Trust are situated at a large number of locations. Some of these properties may be capable of yielding income or higher income. The Trustees may carry out inspection of the properties and make a report about better exploitation of their potential for earning maximum possible income. The trustees of the Khasgi Trust should thereafter take all possible steps for increasing income, without selling the properties.

31. So far as two impugned orders concerned, this Court finds are as under:-

(a) these two officers do not have any judicial power;

(b) they have purported to exercise judicial power in passing the impugned orders;

(c) the impugned orders have been passed without compliance with principles of natural justice;

(d) section 26 of the Madhya Pradesh Public Trusts Act contemplates a reference to the court in the event of a dispute requiring adjudication;

(e) the impugned orders were never communicated to the petitionerss and the other trustees.

32. Since the impugned orders Annexure P/1 & P 23 are without jurisdiction, therefore, the same stand quashed. Petition stands allowed with the direction herein above. Parties are given liberty to seek directions of this court in case of need. Copy of the order be given to the parties for immediate compliance."

The aforesaid judgment delivered by the learned Single Judge is under challenge in the present writ appeal.

37. In the connected writ appeal i.e. W.A. No.135/2014, the order dated

03.12.2013 passed in W.P. No.5372/2010 is under challenge. The order dated 03.12.2013 reads as under:-

> "Petitioner by G.M. Chaphekar, senior advocate with Shri V. Bhargav, advocate.
>
> Respondents by Smt. Vinita Phaye, Government advocate.
>
> The prayer in the petition is to direct the respondents to correct revenue entries by deleting the name of the Collector as manager and entering the name of the petitioner / trust as Bhumiswami of the lands of the Temples and the Devsthan in the list Annexure P-4.
>
> The grievance of the petitioner / trust is that in the revenue record the name of the Collector has been mentioned as manager of the lands and Temples which is owned by the petitioner / trust. Since, the detailed direction has been issued by this Court in W.P. No.11618/2012 decided on 28.11.2013 wherein this Court has directed that the petitioner / trust shall remain owner of the trust for better management.
>
> In view of this, this petition is allowed with a direction to the revenue authorities to correct the record as directed by this Corut vide order dated 28.11.12013 in W.P. No.11618/2012.
>
> With the aforesaid, petition stands disposed of."

Both the writ appeals are connected writ appeals arising out of same cause of action and in the Public Interest Litigation Writ Petition also subject matter is same and a prayer has been for conducting an investigation by the Central Bureau of Investigation besides other reliefs.

38. Heard learned counsel for the parties at length and perused the record. The appellant before this Court, the State of Madhya Pradesh, is aggrieved by the order dated 28.11.2013 passed by the learned Single Judge in W.P. No.11618/2012.

39. Shri P.K. Saxena, learned senior counsel along with Shri Rishi Tiwari, advocate has argued before this Court that the learned Single Judge has erred in law and facts in setting aside the order dated 05.11.2012 passed by the Collector as well as the order dated 30.11.2012 passed by the Registrar, Public Trust on the ground that the principles of natural justice and fair play were not followed. He has also argued that the learned Single Judge has erred in law and facts in holding that the Khasgi properties were private properties and the State Government did not lay its claim even in the year 1949 when the letter dated 06.05.1949 was written settling the claim of Maharaja for inclusion of Khasgi endowment in the inventories of private properties submitted in pursuance to Article 12 of the

Madhya Union Covenant wherein the Trust has categorically stated that it was formed only to administer the properties, which has already lapsed for all times in the State Government (Madhya Bharat Government thereafter the M.P. Government). He has further contended that appointment of trustees by Maharaja do not in any way change the nature of the right qua Khasgi properties.

40. Shri Saxena has also argued that the learned Single Judge has erred in law and facts in wrongly holding that the trustees were empowered for leasing or otherwise transferring the title of the Trust properties. He has also argued that the Writ Court has also taken into account the letter dated 16.06.1969 and has wrongly held that the Trust is having power to transfer the Trust properties. He has further argued that the Writ Court has not considered the reply of the State Government in respect of the aforesaid aspect wherein it was categorically stated that the letter dated 13.06.1969 was only a D.O. letter, which do not in any way give recognition of the Government with respect to the sale of the properties because the properties were under the absolute ownership of the Government and a cabinet decision was required for transferring the properties.

41. It has further been contended that Shri M.P. Shrivastava was also a trustee, and therefore, such kind of D.O. letter authorizing the sale of land by the Trust itself was contrary to the various clauses of trust deed and was having no legal sanctity. It has been contended that the learned Single Judge has failed to consider that the Trust was formed only for maintenance, upkeep and preservation of the Trust properties more particularly, as described in Part - B, the trustees were not entitled to sell the Trust property not even by virtue of any resolution and the net effect is that all deeds of transfer are void *ab initio.*

42. Another ground has been raised stating that the Writ Court has miserably failed to consider that the Trust was validly created, and therefore, founder as well as the trustees were bound to act as per the intention of the Trust and any deviation from the declared purpose of the Trust amounted to breach of the Trust and it was an act of treason, and therefore, the Collector was justified in taking action in accordance with law in respect of sale of Trust properties.

43. It has been further argued that the Writ Court has failed to consider that the Covenant of 1948 and the Instrument of 1949 and before formation of trust deed in the year 1962, the M.P. Land Revenue Code, 1954 came into force and as per Section 57 of the M.P. Land Revenue Code, 1954, all the properties vested in the State Government, and therefore, as per the covenant and the M.P. Land Revenue Code, 1954, the properties were the exclusive properties under the ownership of the State and no sale of any kind could have taken place in the matter as has been done by the Trust. Shri Saxena has further contended that the learned Single Judge has failed to consider that it is a settled principle of law that once the trust is created with certain objects, no one has the power to delete any of its objects. In

the present the Supplementary Deed of 1972 has the effect of deleting the main object of the Trust, and therefore, the action of the learned Single Judge in validating the sale, which took place in the matter, is certainly bad law.

44. It has been further contended that the learned Single Judge has failed to see that the supplementary trust deed had no sanctity in the eyes of law. The trust deed was not permitted by any Civil Court, and therefore, as in the original trust deed there was no power of sale, by taking shelter of the supplementary trust deed, sale could not be effected specially in light of the fact that the property in question was the property under the exclusive ownership of the State of Madhya Pradesh. It has been contended that the Supplementary Trust Deed of 1972 is in fact not a supplementary trust deed because it changes the basic nature of the original deed of 1962, and therefore, the supplementary deed was invalid having no legal sanctity nor any legal character in the eyes of law.

45. It has been further argued that the trustees could not have sold the property of the Trust keeping in view Section 47 of the Indian Trust Act, 1882. In the Trust Deed of 1962 or the Amendment of 1972 does not provide for delegation of power and in the present case, the power was delegated to a stranger to dispose of the property of the Trust and the learned Single Judge has erred in law and facts in allowing the writ petition by quashing the order passed by the Collector. It has been contended that the Khasgi endowments are of religious nature and are heritage properties, and therefore, the State Government has every right and power to interfere with the sale transactions as the trustees were not acting as per the duties so bestowed upon them and as per the Trust Deed of 1962.

46. It has been further contended by Shri Saxena that the findings arrived at by the learned Single Judge in paragraph-25 are perverse and they are beyond the jurisdiction of the Writ Court, and therefore, deserves to be set aside. He has further argued that the learned Single Judge has given a finding that Khasgi Trust shall continue to manage Khasgi endowments. He has stated that the same was not the subject matter of the dispute, the dispute was that certain heritage properties were being sold away in shady and unlawful manner and a third party right was being created and in those circumstances, the Collector came into picture and has directed that the name of the State Government be written in the *Bhumiswami* column of the revenue record with a clear endowment of non-transferable, and therefore, the learned Single Judge has erred in law and in facts in fact drafting a trust deed which not the prayer made in the original writ petition. He has further argued that the learned Single Judge was jurisdictionally incompetent to draft a trust deed and to constitute Board of Trustees. He has argued that keeping in view the power of the Registrar, as per Section 25 of the M.P. Public Trust Act, 1951 by no stretch of imagination, a trust deed can be drafted by a Writ Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

47. It has also been argued that the learned Single has failed to take notice of the fact that earlier also the Trust has applied for grant of permission under Section 14 of the M.P. Public Trust Act, 1951 for sale of properties and the permission was rejected vide order dated 14.12.2005. The order dated 14.12.2005 was not challenged before any forum which impliedly means that the Trust has accepted that the provisions of M.P. Public Trust Act, 1951 are applicable and in those circumstances, the transactions made by the Trust in respect of the heritage properties were certainly bad in law. The learned Single Judge has ignored this vital aspect of the case. Learned senior counsel has argued that the Writ Court has erred in law and facts in holding that there was adequate administrative set up in the Trust and on the basis certain reports, which were filed before the learned Single Judge without there being pleadings in support of the same or the amendment to writ petition, the reports prepared by the petitioner were believed, and therefore, the learned Single Judge has erred in law and facts in delivering the judgment contrary to the pleadings.

48. It has been further contended that the learned Single Judge has taken into account the documents filed along with the list of the documents showing the expenditure and income of the Trust. It has been stated that the documents were being scrutinized by the Registrar, Public Trust which were prepared by private auditor and without waiting for the proceedings to be completed before the Registrar, the documents prepared unilaterally by the Trust were accepted by the learned Single Judge, hence, the judgment delivered by the learned Single Judge is bad in law and deserves to be set aside. It has been argued that the learned Single Judge has given a finding that the State Government cannot and should not undertake the task of management and the manner of the formation of the Trust and the Trust shall not be liable for any modification and change by any legislation so made by the Central Government or the State Government. He has stated that the learned Single Judge himself has constituted a fresh trust deed by incorporating several clauses which was beyond the scope and jurisdiction conferred upon the Court by virtue of Article 226 of the Constitution of India. It has been stated that the direction of the learned Single Judge that the State Government shall not claim ownership of Khasgi endowment is also bad in law because it is the State of Madhya Pradesh which having title of the property in question. The Khasgi properties had lapsed for all time in the State Government (United State of Madhya Bharat) thereafter, in the Madhya Pradesh with the signing of the covenant in the year 1948 itself and till creation of the Trust in the year 1962, the same was managed by the Religious Endowment Department of the Government. It has been stated that the Trust was formed with the purpose to maintain, upkeep and preservation of the Khasgi endowment. The trust deed also made it very clear that endowment in the Trust Deed of the year 1962 was very clear on the subject that the Trust could not have sold the properties by subsequent resolution / subsequent amendment.

49. It has further been argued that the Writ Court has failed to consider that only the Civil Court has power to direct changes in the trust deed in the spirit of Doctrine of *Cy près,* which implies that the original intents of the founder should not fail. It has been contended that the directions given by the learned Single Judge for appointment of various persons as trustees is bad in law and is beyond the jurisdiction so vested under Article 226 of the Constitution of India as it has virtually changed the nature of the trust deed. It has been argued that the directions with respect to sale of property or leasing out any part of the Khasgi endowment by way unanimous resolution in (sic: is) bad in law because it runs counter to the very moto for which the Trust was formed i.e., to upkeep, preserve and maintain the Khasgi endowment.

50. It has further been argued that the direction given by the learned Single Judge to appoint a Secretary and to confer power upon him and the authority, as deems fit, also runs counter to the trust deed particularly Clause - 10 of the trust deed. Clause - 10 of the Trust Deed provides that it is the Settlor who has to appoint any person as the duly constituted attorney to do ministerial act, there is no provision in the trust deed for appointment of any Secretary, and therefore, such a direction given by the learned Single Judge is bad in law.

51. It has further been contended that it is the cardinal principle of law that original registered trust deed cannot be washed of by subsequent change in the trust deed which was not intended in the original trust deed. It has been aruged that the directions given by the learned Single Judge to the State of Madhya Pradesh for making a provision of rupees one crore for maintenance of the properties of the Trust is bad in law as the same runs counter to the trust deed and the learned Single Judge was not having jurisdiction to pass such an order which runs counter and disturbs the very essence of the trust deed. It in fact amounts to unwarranted exercise of power conferred under Article 226 of the Constitution of India.

52. Shri Saxena has also argued before this Court that a letter was written by Smt. Sumitra Mahajan, Ex Member of Parliament, to the Chief Minister of the State of Madhya Pradesh informing him about the sale of the Trust properties and the office of the Chief Minister has directed the Commissioner, Indore and the Collector, Indore to take action in accordance with law. He has argued that Smt. Sumitra Mahajan was not the party to the writ petition and the learned Single Judge has directed the Member of Parliament to pay a sum of Rs.5,00,000/- per year to the Trust before 31st March every year from the funds of the Member of the Prliament (sic: Parliament). Such a direction passed against a person without making him party to the *lis* is certainly bad in law.

53. It has further been argued that the direction given by the learned Single Judge that the name of Khasgi endowment be recorded in the revenue and municipal record is bad in law as the same could not have been done without there

being a judgment and decree from any Civil Court. The Trust is certainly not the titleholder of the properties and it is the State of Madhya Pradesh which is having title of the properties, and therefore, the direction given by the learned Single Judge is absolutely against all canons of law.

54. It has also been argued that direction given by the learned Single Judge for non-opening of all earlier transaction of sale made by the Trust is bad in law because by giving the aforesaid direction all illegal proceedings which were undertaken by the trustees and the various officers acting on behalf of the Trust have been legalized. It has been contended that such a direction is bad in law as it completely overlooks the proceedings which were pending before the Registrar regarding the transactions made by the representatives of the Trust. It has been stated that such a finding, being beyond the record, is bad in law and deserves to be set aside.

55. Shri Saxena has also argued before this Court that the direction of the learned Single Judge that the audit of the account of the Trust shall be done by the auditor of the Trust is bad in law. He has stated that the Writ Court has completely overlooked the fact that the audit of the account was already being carried out by the Joint Director, Tresury (sic: Treasury) and Account Office, and therefore, issuing a direction for carrying out audit by private auditor is bad in law and such an arbitrary order deserves to be set aside by this Court.

56. It has been argued that the learned Single Judge has given a direction regarding preservation and management of jewellery of the temple of the Khasgi Trust and such direction indicates that the learned Single Judge did not appreciate the real controversy which was before him. The real controversy was that the Trust is on a selling spree and is selling out Trust properties. He has argued that directions given in paragraph - 29 are perverse and are in exercise of such jurisdiction which was not the subject matter of *lis* before this Court.

57. Another ground has been raised by the State of Madhya Pradesh stating that the findings of the learned Single Judge that the Collector and Registrar do not have any judicial power or power so as to pass the impugned orders is bad in law because the order was passed by the Collector as Head of the District Administration and the Registrar has passed the order as competent authority under the M.P. Public Trust Act, 1951. The orders were passed after following the principles of natural justice and fair play. The order were in consonance with the statutory provisions and they were as measure to protect the properties from being alienated. He has also argued that the learned Single Judge ought to have held that the Trust and the trustees were responsible towards the State Government to explain the deeds and action undertaken by the trustees and were duty bound to participate in co-operating with the inquiry which was being held in the matter, however, on the contrary, the Writ Court has passed an order treating the orders

passed by the Collector and Registrar as final orders, and therefore, the order passed by the learned Single Judge deserves to be set aside.

58. It has also been argued that in light of various directions given by the learned Single Judge, it appears that the learned Single Judge usurped the power and jurisdiction not vested in him and has acted as a Registrar as provided under Section 25 of the M.P. Public Trust Act, 1951 and also the jurisdiction of the Civil Court, as provided under Section 27 of the M.P. Public Trust Act, 1951. Shri Saxena has argued that the Trust property was sold by the trustees for peanuts, for personal gains by playing a fraud and the matter deserves a probe by Economic Offences Wing by registering a First Information Report. He has also argued that a committee should be constituted for the purposes of conducting an inquiry into the affairs of the Trust under the Chairmanship of the Chief Secretary and it is bounden duty of this Court to save the historical monuments like temple, ghats and other properties which are under the absolute ownership of the State of Madhya Pradesh.

59. Shri Saxena has placed reliance upon a judgment delivered in the case of *The State of Madhya Pradesh v/s Maharani Usha Devi* reported in (2015) 8 SCC 672**.** Heavy reliance has been placed upon paragraphs - 27, 29 and 31. He has argued before this Court that property in question, prior to the covenant, was under the ownership of the Ruler but once a covenant is entered into, the Government has taken over all the properties except those which the Government recognizes as the private properties of the Ruler. In case of properties under the Khasgi Trust, the State of Madhya Pradesh, being the successor State, is the titleholder of the properties and in light of judgment delivered by the Hon'ble Supreme Court, the learned Single Judge was not having power to decide the writ petition keeping in view the specific bar as provided under Article 363 of the Constitution of India.

60. He has also placed reliance upon a judgment delivered in the case of *Draupadi Devi & Others v/s Union of India & Others* reported in (2004) 11 SCC 425**.** Paragraph - 43 and 44 of the aforesaid judgment read as under:-

> "43. The rule that cession of territory by one State to another is an act of State and the subjects of the former State may enforce only those rights which the new sovereign recognises has been accepted by this Court. [See in this connection: M/s Dalmia Dadri Cement Co. Ltd. V. The Commissioner of Income-tax (supra) ; Jagannath Agarwala v. State of Orissa (supra); Promod Chandra Deb and Others v. The State of Orissa and Others and The State of Saurashtra v. Jamadar Mohamad Abdulla and Others (supra).
>
> 44. Applying the law as laid down in Vora Fiddali (supra) it

appears to us that the contention of the State of Punjab and the Union of India must be upheld. The Maharaja of Kapurthala was an independent sovereign Ruler. To merge or not to merge with the Dominion of India was a political decision taken by him and the instrument of accession dated 16.8.1947 was, without doubt, an act of State. So was the covenant dated 5.5.1948. By the covenant all rights, authority and jurisdiction of the erstwhile Rulers were vested in the Patiala and East Punjab States Union and all assets and liabilities of the covenanting States became the assets and liabilities of the Union, PEPSU. It is only Article XII which ensured certain rights to the Ruler with regard to full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of the State to the Raj Pramukh. Consequently, he was also required to furnish to the Raj Pramukh, before the deadline, an inventory of all the immovable properties, securities and cash balances held by him as such private property. This was obviously done so that the Government of India could ascertain the correctness of the claim. No doubt, clause (3) of Article XII provides that a dispute arising as to whether any item of property was the private property of the Ruler or State property was referable to a nominee of the Government of India and such nominee's decision would be final and binding on all the parties concerned, provided that such dispute was to be referred by the deadline of 31.12.1948. Interpreting this clause, the learned Single Judge took the view that under the treaty the Government of India could not unilaterally refuse to recognise any property as private property of the Ruler, and, if it did, it was obliged to refer it to the person contemplated by clause (3). Failure to do so would imply recognition of the claim as to private property. In our view, this reasoning of the learned Single Judge was erroneous on two counts. In the first place, this interpretation ignores the true nature of the covenant. The covenant is a political document resulting from an act of State. Once the Government of India decides to take over all the properties of the Ruler, except the properties which it recognises as private properties, there is no question of implied recognition of any property as private property. On the other hand, this clause of the covenant merely means that, if the Ruler of the covenanting State claimed property to be his private property and the Government of India did not agree, it was open to the Ruler to have this issue decided in the manner contemplated by clause (3). Clause (3) of Article XII does not mean that the Government was obliged to refer to the dispute upon its failure

> to recognise it as private property. Secondly, the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out of the terms of the covenant and, therefore, not adjudicable by municipal courts as being beyond the jurisdiction of the municipal courts by reason of Article 363 of the Constitution of India. "

His contention is that in light of the aforesaid judgment, once as per the covenant the property was not the private property of the Maharaja and it was declared to be the property of the Madhya Bharat State (now State of Madhya Pradesh), the writ petition was certainly not at all maintainable.

61. Shri Saxena has also placed reliance upon a judgment delivered in the case of *Manohar Lal v/s Ugrasen & Others* reported in (2010) 11 SCC 55. Paragraphs - 30 to 34 of the aforesaid judgment reads as under:-

> "30. In Messrs. Trojan & Co. Vs. RM.N.N. Nagappa Chettiar AIR 1953 SC 235, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:
>
> > "It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."
>
> 31. A similar view has been re-iterated by this Court in Krishna Priya Ganguly etc.etc. Vs. University of Lucknow & Ors. etc. AIR 1984 SC 186; and Om Prakash & Ors. Vs. Ram Kumar & Ors., AIR 1991 SC 409, observing that a party cannot be granted a relief which is not claimed.
>
> 32. Dealing with the same issue, this Court in Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi & Ors., AIR 2010 SC 475 held:
>
> > "Though the Court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."
>
> 33. In Fertilizer Corporation of India Ltd. & Anr. Vs. Sarat Chandra Rath & Ors., AIR 1996 SC 2744, this Court held that "the High Court ought not to have granted reliefs to the respondents

> which they had not even prayed for."
>
> 34. In view of the above, law on the issue can be summarised that the Court cannot grant a relief which has not been specifically prayed by the parties. The instant case requires to be examined in the light of the aforesaid certain legal propositions."

The contention of learned senior counsel is that the learned Single Judge has granted relief, which was not prayed for and by no stretch of imagination, a relief could have been granted to a party without a prayer that too without proper pleadings. He has argued that the learned Single Judge has granted various reliefs which were never prayed for, the learned Single Judge has drafted a fresh trust deed which was not the matter of dispute, and therefore, the order passed by the learned Single Judge deserves to be set aside.

62. Reliance has also been placed upon a judgment delivered in the case of *Janardha Reddy & Others v/s The State of Hyderabad & Others* reported in AIR (38) 1951 SC 217. Paragraph - 26 of the aforesaid judgment reads as under:-

> "26. It is well settled that if a court acts without juris- diction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdic- tion, i.e., an appeal would lie to the court to which it would lie if its order was with jurisdiction. [See Ranjit Misser v. Ramudar Singh (1); Bandiram Mookerjee v. Purna Chandra Roy C); Wajuddi Pramanik v. Md. Balaki Moral(3); and Kalipada Karmorkar v. Sekher Bashini Dasya(4)]. There- fore, the High Court at Hyderabad had jurisdiction to hear and decide the appeal in this case. In view of this fact, the deprivation of life or liberty, upon which the case of the petitioners is founded, has been brought about in accordance with a procedure established by law, and their present detention cannot be held to be invalid."

63. Reliance has also been placed upon a judgment delivered in the case of *Puran Singh & Others v/s State of Punjab & Others* reported in (1996) 2 SCC 205. Paragraphs - 5, 6, 10, 11 and 12 read as under:-

> 5. The question with which we are concerned is as to whether the aforesaid provisions made under Order 22 of the code are applicable to proceedings under Articles 226 and 227 of the constitution. Prior to the introduction of an explanation by Civil Procedure code (Amendment) Act 1976, Section 141 of the Code was as follows:
>
> > "141. Miscellaneous proceedings-The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in

any Court of civil jurisdiction."

The explanation which was added by the aforesaid Amending Act said:

> "Explanation - In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution."

There was controversy between different courts as to whether the different provisions of the Code shall be applicable even to writ proceedings under Articles 226 and 227 of the Constitution. Some High Courts held that writ proceedings before the High Court shall be deemed to be proceedings "in any court of civil jurisdiction" within the meaning of Section 141 of the Code. (Ibrahimbhai v. State, AIR 1968 Gujarat 202; Panchayat Officer v. Jai Narain, AIR 1967 All. 334; Krishanlal Sadhu v. State, AIR 1967 Cal. 275; Sona Ram Ranga Ram v. Central Government, AIR 1963 Punjab 510; A. Adinarayana v. State of Andhra Pradesh, AIR 1958 Andhra Pradesh 16). However, in another set of cases, it was held that writ proceeding being a proceeding of a special nature and not one being in a court of civil jurisdiction Section 141 of the Code was not applicable. (Bhagwan Singh v. Additional Director Consolidation, AIR 1968 Punjab 360; Chandmal v. State, AIR 1968 Rajasthan 20; K.B.Mfg.Co. v. Sales Tax Commissioner, AIR 1965 All. 517; Ramchand v. Anandlal, AIR 1962 Gujarat 21; Messers Bharat Board Mills v. Regional Provident Fund Commissioner and Others, AIR 1957 Cal. 702).

06. Even before the introduction of the explanation to Section 141 of the Code, this Court had occasion to examine the scope of the said Section in the case of Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and others, AIR 1974 SC 2105 = (1975)2 SCR 71. It was said:

> "It is not necessary for this case to express an opinion on the point as to whether the various provisions of the Code of Civil Procedure apply to petitions under Article 226 of the Constitution. Section 141 of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any court of civil jurisdiction as far as it can be made applicable. The words "as far as it can be made applicable" make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the court must

> take into account the nature of those proceedings and the relief sought. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Court to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petition, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226."

It can be said that in the judgment aforesaid, this Court expressed the view that merely on basis of Section 141 of the code it was not necessary to adhere to the procedure of a quit in writ petitions, because in many cases the sole object of writ jurisdiction to provide quick and inexpensive remedy to the person who invokes which jurisdiction is likely to be defeated. A Constitution Bench of this Court in the case of State of U.P. vs. Vijay Anand, AIR SC 1963 946 said as follows:-

> "It is, therefore, clear from the nature of the power conferred under Art. 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Art. 226 of the Constitution exercises original jurisdiction, though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may, for convenience, be described as extraordinary original jurisdiction."

10. On a plain reading, Section 141 of the Code provides that the procedure provided in the said Code in regard to suits shall be followed "as far as it can be made applicable, in all proceedings". In other words, it is open to make the procedure provided in the said Code in regard to suits applicable to any other proceeding in any court of civil jurisdiction. The

explanation which was added is more or less in the nature of proviso, saying that the expression "proceedings" shall not include any proceeding under Article 226 of the Constitution. The necessary corollary thereof shall be that it shall be open to make applicable the procedure provided in the Code to any proceeding in any court of civil jurisdiction except to proceedings under Article 226 of the Constitution. Once the proceeding under Article 226 of the Constitution has been excluded from the expression "proceedings" occurring in Section 141 of the Code by the explanation, how on basis of Section 141 of the Code any procedure provided in the Code can be made applicable to a proceeding under Article 226 of the Constitution? In this background, how merely on basis of Writ Rule 32 the provisions of the Code shall be applicable to writ proceedings? Apart from that, Section 141 of the Code even in respect of other proceedings contemplates that the procedure provided in the Code in regard to suits shall be followed "as far as it can be made applicable". Rule 32 of Writ Rules does not specifically make provisions of Code applicable to petitions under Articles 226 and 227 of the Constitution. It simply says that in matters for which no provision has been made by those rules, the provisions of the Code shall apply mutatis mutandis in so far as they are not inconsistent with those rules. In the case of Rokyaybi v. Ismail Khan, AIR 1984 Karnataka 234 in view of Rule 39 of the Writ Proceedings Rules as framed by the Karnataka High Court making the provisions of Code of Civil Procedure applicable to writ proceedings and writ appeals, it was held that the provisions of the Code were applicable to writ proceedings and writ appeals.

11. We have not been able to appreciate the anxiety on the part of the different courts in judgments referred to above to apply the provisions of the Code to Writ Proceedings on the basis of Section 141 of the Code. When the constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227 itself. No useful purpose will be served by limiting the power of the High Court by procedural provisions prescribed in the Code. of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. It need not be

impressed that different provisions and procedures under the Code are based on well recognised principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, it cannot be disputed that many procedures prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to a person who pursues such remedies. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to be not only reasonable but also expeditious.

12. As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final."

Learned senior counsel has argued that the learned Single Judge has exercised jurisdiction in the matter as if he was acting as a Civil Court and deciding a title suit. He has stated that under Article 226 of the Constitution of India while dealing with the writ petition, the Code of Civil Procedure is not

applicable for deciding a title, and therefore, the judgment delivered by the learned Single Judge deserves to be set aside.

64. Reliance has also been placed upon a judgment delivered in the case of *State of Uttar Pradesh & Others v/s Dr. Vijay Anand Maharaj* reported in AIR 1963 SC 946. Paragraphs - 8 and 9 of the aforesaid judgment reads as under:-

> 8. Even so, the appellants would not be entitled to succeed, unless we hold, differing from the High Court, that s.11 of the Act confers a right on the appellants to have the order of Mehrotra, J., reviewed. We have already extracted the provisions of a. 11. Section 11 is in two parts: the first part of the section confers a right on a party to the proceedings under the Principal Act to apply to the court or authority for a review of the proceeding in the light of the provisions of the Act within 90 days from the commencement of the Act, and the second part issues a statutory injunction on such a court or authority to review the proceedings accordingly and to make an order as may be necessary to give effect to the provisions of the Principal Act, as amended by ss.2 and 4 of the Act. The first question, therefore, is whether the order of Mehrotra, J., in an application under Art. 226 of the Constitution was in any proceeding under the Principal Act. Obviously a petition under Art. 226 of the Constitution cannot be a proceeding under the Act: it is a proceeding under the Constitution. But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p, 68, and in Crawford on "Statutory Construction' at p. 492, that it is the duty of the Judge "to make such construction of a statute as shall suppress the mischief and advance the remedy," and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p.68 of his book:
>
> > "The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."
>
> Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature. The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of

only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature. So construed, there cannot be two possible views on the interpretation of the first part of the section. Learned counsel suggested that we should read the relevant portion of the first part thus: "in any proceedings to set aside any assessment made on the basis of the Principal Act". To accept this argument is to rewrite the section. While the section says that the order sought to be reviewed is that made in a proceeding under the Principal Act, the argument seeks to remove the qualification attached to the proceeding and add the same to the assessment. The alternative argument, namely, that without changing the position of the words as they stand in the section, the expression, on the basis of" may be substituted for the expression "under" does Dot also yield the results expected by the learned counsel. It cannot be held with any justification, without doing violence to the language used, that a proceeding under Art. 226 of the Constitution is either one under the Principal Act or on the basis of the Principal Act, for it is a proceeding under Art. 226 of the Constitution to quash the order on the ground that it was made in violation of the Act. An attempt is then made to contend that a proceeding under Art. 226 of the Constitution is a continuation of the proceedings before the Additional Collector and, therefore, the said proceedings are proceedings under the Act. This leads us to the consideration of the question of the scope of the proceedings under Art.226 of the Constitution.

09. Article 226 confers a power on a High Court to issue the writs, orders, or directions mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. This is neither an appellate nor a revisional jurisdiction of the High Court. Though the power is not confined to the prerogative writs issued by the English Courts, it is modeled on the said writs mainly to enable the High Courts to keep the subordinate tribunals within bounds. Before the Constitution, the chartered High Court, that is, the High Courts at Bombay, Calcutta and Mad- ras, were issuing prerogative writs similar to those issued by the King's Bench Division, subject to the same limitations imposed on the said. writs. In Venkataratnam v. Secretary of State for India (1), (1) (1930) I.L.P.. 53 Mad. 979. A division Bench of the Madras High Court, consisting of Venkatasubba Rao and Madhavan Nair, JJ,; held that the jurisdiction to issue a writ of certiorari was original jurisdiction. In Ryots of Garabandha v. The Zamindar of

Parlakimedi (1), another division Bench of the same High Court, consisting of Leach, C. J., and Madhavan Nair J., considered the question again incidentally and came to the same conclusion "and held that a writ of certiorari is issued only in exercise of the original jurisdiction of the High Court. In Ramayya v. State of Madras (2), a division Bench, consisting of Govinda Menon and Ramaswami Oounder, JJ,, considered the question whether the proceedings under Art. 226 of the Constitution are in exercise of the original Jurisdiction or revisional jurisdiction of the High Court, and the learned Judges held that the power to issue writs under Art. 226 of the Constitution is original and the jurisdiction exercised is original jurisdiction. In Moulvi Hamid Hassan Nomani v. Banwarilal Boy (3), the Privy Council was considering the question whether the original civil jurisdiction which the Supreme Court of Calcutta possessed over certain classes of persons outside the territorial limits of that jurisdiction has been inherited by the High Court. In that context the Judicial Committee. observed.

> "It cannot be disputed that the issue of such writs is a matter of original jurisdiction"

The Calcutta. High Court, in Budge Budge Municipality v. Mangru (4) came to the same conclusion, namely, that the jurisdiction exercised under Art. 226 of the Constitution is original as distinguished from appellate or revisional jurisdiction; but the High Court pointed out that the jurisdiction, though original, is a special jurisdiction and should not be confused with ordinary civil jurisdiction under the Letters Patent. The Andhra High Court in Satyanarayanamurthi v. 1. T. Appellate Tribunal (1) described it as an extraordinary original jurisdiction. It is, therefore, clear from the nature of the power conferred under Art. 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Art. 226 of the Constitution exercises original jurisdiction, though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may. for convenience, be described as extraordinary original jurisdiction. If that be so, it cannot be contended that a petition under Art. 226 of the Constitution is a continuation of the proceedings under the Act.

Taking shelter of the aforesaid judgment, he has argued before this Court that the High Court does not have any power to decide a civil suit as it was

not exercising original writ jurisdiction to deal with a civil case, and therefore, the learned Single Judge has erred in law and facts in holding that the Trust is the titleholder of the property. Shri Saxena has prayed for dismissal of the writ petition. He has further prayed that the writ appeals be allowed and the cost be imposed upon the Trust.

65. In the present case, Shri A.K. Chitle, learned senior counsel along with Shri Kartik Chitle, Shri A.S. Garg, learned senior counsel along with Ms. Poorva Mahajan, Shri S.C. Bagadia, learned senior counsel along with Shri Vivek Patwa and Shri Rohit Saboo, Shri Shekhar Bhargava, learned senior counsel along with Ms. Anika Bajpai, Shri V.K. Jain, learned senior counsel along with Shri Vaibhav Jain, Shri Kapil Sibal, learned senior counsel along with Shri Abhinav Malhotra , Shri Shyam Diwan, learned senior counsel along with Shri Abhinav Malhotra and Ms. Sugnadha Yadav and Shri Manoj Manav, learned counsel for the Union of India have appeared in the matter and have argued the matter at length.

Intervenors have also been represented by Shri Sameer Saxena and Shri Ashish Joshi.

66. Shri Kapil Sibal, learned senior counsel and Shri Shyam Diwan, learned senior counsel have vehemently argued before this Court that the Collector, Indore was having no jurisdiction to pass the order dated 05.11.2012 and the Registrar, Public Trust was also jurisdictionaly incompetent to pass the order dated 30.11.2012.

67. Reliance have been placed upon several judgments delivered in the cases of *T.C. Basappa v/s T. Nagappa* reported in AIR 1954 SC 440, Hari Vishnu Kamath v/s Syed Ahmad Ishaque reported in AIR 1955 SC 233, *Syed Yakoob v/s K.S. Radhakrishnan* reported in AIR 1964 SC 477, *Vimla Ben Ajit Bhai Patel v/s Vatslaben Patel* reported in (2008) 4 SCC 649 and *Jilubhai Khachar v/s The State of Gujrat* reported in (1995) Supp. (1) SCC 596.

68. Learned counsel for the respondents in the writ appeal have also argued before this Court that by orders dated 05.11.2012 and 30.11.2012, the Collector and Registrar of the State of Madhya Pradesh have held that the property in question is under the ownership of the State of Madhya Pradesh and the Collector has decided the issue of title without granted (sic: granting) opportunity of hearing to the Trust and trustees. Reliance has been placed upon judgments delivered in the cases of ***A**.K. Kraipak v/s Union of India* reported in (1969) 2 SCC 262, *S.L. Kapoor v/s Jagmohan* reported in (1980) 4 SCC 379, *Sahara India (Firm) (1) v/s CIT* reported in (2008) 14 SCC 151 and *Kanachur Islamic Education Trust v/s Union of India* reported in *(2017) 15 SCC 702.*

69. It has also been argued that the letter of the Chief Secretary is the decision of the State Government, and therefore, keeping in view the letter dated

13.06.1969, the State is estopped by its deed and conduct in disapproving the sale which took place in the matter. Reliance has also been placed upon judgments delivered in the cases of *Motilal Padampat v/s The State of UP* reported in (1979) 2 SCC 409, *Union of India v/s Godfrey Philips* reported in (1985) 4 SCC 369 and *State of Bihar v/s Sunny Prakash* reported in (2013) 3 SCC 559.

70. It has also been argued that Article 363 of the Constitution of India has no applicability in the present case and reliance has been placed upon judgments delivered in the cases of *Madhav Rao Jivaji Rao Scindia v/s Union of India* reported in (1971) 1 SCC 85 and *State of M.P. v/s Usha Devi* reported in (2015) 8 SCC 672.

71. It has also been argued before this Court that the Registrar, Public Trust and the Collector were not competent to decide the question of title keeping view the M.P. Public Trust, 1951 and no jurisdiction vested in the Registrar to decide the ownership of immovable properties, and therefore, findings given by the learned Single Judge in paragraph - 31 are correct. Reliance has also been placed upon judgments delivered in the cases of *State of Maharashtra v/s Chanderkant* reported in (1977) 1 SCC 257, *Seth Chand Ratan v/s Pandit Durga Prasad* reported in (2003) 5 SCC 399, *Shri Ram Mandir Trust v/s State of M.P.* reported in (2011) SCC On Line MP 275, *State of Gujrat v/s Patil Raghav* reported in (1969) 2 SCC 187 and *Rohini Prasad v/s Kasturchand* reported in (2000) 3 SCC 668.

72. It has also been argued before this Court that Union of India is a necessary party and it should also be heard in the matter.

73. Reference has also been made to the White Paper on Indian States published by the Government of India, Ministry of States and it has been argued that the property in question is a Trust's property and it is not the property of the State Government.

74. Reference has also been made to the book written by Shri V.P. Menon titled as 'The Story of Integration of the Indian States' published in 1956 First Edition, Chapter - 11 and the judgment delivered by the Hon'ble Supreme Court in the case of *Marthanda Varma v/s The State of Kerela* reported in 2020 SCC OnLine 569.

75. Lastly, it has been argued that power to manage Trust's properties inherently includes the power to sale and the trustees are entitled to sell the properties for the objective of the Trust. Reliance has been placed upon a judgment delivered in the case of *Chairman Madappa v/s M.N. Mahantha Devaru* reported in AIR 1966 SC 878.

76. Lastly, it was argued that Maharani Usha Devi and her husband Shri S.C. Malhotra are respectable citizen and they have contributed a lot towards public,

social and charitable causes in the township of Indore, they have donated huge amount from time to time to Khasgi Trust, and therefore, the learned Single Judge was justified in quashing the orders passed by the Collector and Registrar, Public Trust.

77. It has been vehemently argued that the Chief Secretary of the State of Madhya Pradesh has written a letter dated 13.06.1969 permitting the Trust to go ahead with the sale of the property, and therefore, the State Government is estopped from taking a contrary stand in the matter that there was no permission of the State in respect of sale of the property.

78. It has been vehemently argued by Shri Kapil Sibal and Shri Shyam Diwan, learned senior counsel that the Registrar was not having any power under the M.P. Public Trust Act, 1951 in the matter to pass any order.

79. While the matter was argued, a specific question was put to Shri Shyam Diwan, learned senior counsel i.e., whether the Indian Trust Act, 1882 and / or M.P. Public Trust Act, 1951 and / or any other law relating to Trust shall apply in the matter or not ? He was fair enough in stating before this Court that the provisions of M.P. Public Trust Act, 1951 shall be applicable in the matter. Later on Shri Kapil Sibal, after the arguments were over, has stated before this Court that neither the Indian Trust Act, 1882 nor the M.P. Public Trust Act, 1951 is applicable in respect of the Trust in question.

80. Heard learned counsel for the parties at length and perused the record. The matter is being disposed of finally with the consent of the parties.

81. At the time of Indian independence in 1947, India was divided into two sets of territories, one under direct British rule, and the other under the suzerainty of the British Crown with control over their internal affairs remaining in the hands of their hereditary rulers. There were 562 Princely States, having different types of revenue sharing arrangements with the British, often depending on their size, population and local conditions. At the time of independence, there were several colonial enclaves controlled by France and Portugal.

82. The integration of Indian States into Union of India was a herculian job and the events took place from 1947 to 1951. Shri V.P. Menon in his book titled as 'The Story of Integration of the Indian States' has dealt with the historical aspect of integration of Indore State in the Indian Union. Under the chapter Madhya Bharat, the issue of integration of Indore State has been dealt with. The relevant extracts, which are necessary to deal with the issue involved in the present case are reproduced as under:-

> "Indore, the other Important State, was founded by Malhar Rao Holkar. He was born in 1694. his soldierly qualities

brought him into prominence under th e Peshwa. The territories acquired by Malhar Rao at one time stretched from the Deccan to the Ganges. He was succeeded by his grandson, Male Rao, who had no issue, and when he died his mother Ahalyabai came to the throne. She was reputed to be not only an exemplary ruler but also a model of Hindu pety. Her temple occupies a commanding position on the crags of Maheshwar overlooking the Narmada river. She was succeeded by Tukoji Rao Holkar. His son, Jaswant Rao, in 1805, concluded a treaty of peace and amity with the British Government. But further disturbances caused and in 1718 Malhar Rao II entered into another treaty, called the Treaty of Mandsaur, which till the transfer of power continued to define the relations of the State with the British Government. There had been lond spells of minority administration under British officials by which the State had greatly benefited.

The present Maharajah, Sir Yeshwant Rao Holkar, started very well indeed and was noted for his progressive views. I recall his having written a letter to the President of the United States during the second World War stressing the imperative need of satisfying nationalist demand in India. This got him into his shell. Later he went to the other extreme and joined the group which tried to evolve a 'Third Force' out of the State. During out negotiations for accession on three subjects, the Maharajah was certainly not helpful, but he did ultimately accede the thereafter fully played his part. He is the only ruler, other than the Nizam, who had the foresight to create a trust of all his properties. After the integration of the State, he requested the States Ministry to recognize his only daughter, Ushadevi, as his heir. In view of his uniformly good relations with the Government of India after his accession to the Indian Union, and in accordance with the precedent of a former ruler Ahalyabai, the President (on the advice of Sardar and the Prime Minister) recognized the daughter as heir-apparent.

The future relations between Gwalior and Indore depended largely on the choice of the capital. The Maharajah of Gwalior, backed by his ministers, pressed the claims of Gwalior. The Maharajah of Indore along with his ministers insisted on Indore. In the end we decided that the summer capital should be at Indore and the winter capital at Gwalior. The controversy over the question of the capital is not yet settled; but for the time being at any rate, both parties have accepted Nehru's award that the capital shall be at Gwalior for six-and-a-half months and at Indore for five and-a-half months.

> The covenant was signed by practically all the rulers on 22 April 1948. There remained only a few estates and these were subsequently integrated by means of agreements between the Chiefs concerned and Rampramukh.
>
> The Madhya Bharat Union, the largest we had formed up to that time, comprising an area of 17,000 square miles, with a population over 70 lakhs and a revenue of about Rs 8 crores, was inaugurated by Nehru on 28 May 1948."

83. The Government of India, Ministry of States published a White Paper on Indian States printed in media by the Manager, Government of India Press, New Delhi and published by the Manager of Publications, Delhi, 1950. Part - VII deals with the settlement of Rulers' private properties. Paragraphs - 156 to 159 reads as under:-

> "156. The Instruments of Merger and the Covenants establishing the various Unions of States, are in the nature of over-all settlements with the Rulers who have executed them. While they provide for the integration of States and for the transfer of power from the Rulers, they also guarantee to the Rulers privy purse, succession to gaddi, rights and privileges and full ownership, use and enjoyment of all private properties belonging to them, as distinct from State properties. The position about the privy purses guaranteed or assured to the Rulers is set out in details in Part XI. The provisions of the Constitution bearing on the rights, privileges and dignities of Rulers and their succession to their respective gaddis are also explained in that Part. So far as their Private properties are concerned, the Rulers were required to furnish by a specified date inventories of immovable property, securities and cash balances claimed by them as private property. The settlement of any dispute arising in respect of the properties claimed by a Ruler was to be by reference to an arbitrator appointed by the Government of India.
>
> 157. In the past the Rulers made no distinction between private and State property; they could freely use for personal purposes any property owned by their respective States. With the integration of States it became necessary to define and demarcate clearly the private property of the Ruler. The settlement was a difficult and delicate task calling for detailed and patient examination of each case. As conditions and customs differed from State to State, there were no precedents to guide and no clear principles to follow. Each case, therefore, had to be decided on its merits. The Government of India were anxious that the new order in States should be ushered in in an

atmosphere free from any controversies or bitterness arising from any unhappy legacy of the past. A rigid and legalistic approach would have detracted from the spirit of good-will and accommodation in which the political complexion of the States had been so radically altered. By and large the inventories were settled by discussion between the representatives of the Ministry of States, the Rulers concerned and the representatives of the Governments of the Province or the Union as the case may be. The procedure generally adopted was that after the inventories had been received and scrutinised by the Provincial or the Union Government concerned and after the accounts of the States taken over had been examined, the inventories were discussed across the table and settled in a spirit of give and take. In all discussions with the Rulers of the States forming Unions, the Rajpramukhs were associated; the private properties of Rajpramukhs were settled by the Government of India in informal consultation with the Premiers of the Unions. This method made it possible to settle these properties on an equitable basis within a remarkably short period and without recourse even in a single case to arbitration. The settlements thus made are final as between the States and the Rulers concerned.

158. The settlements made in regard to private properties of the Rulers were arrived at as a compromise between the claims of the Rulers and the counter-claims of the Governments, and with due regard to the paramount need of safeguarding public interests. In the nature of things it was not possible to lay down or follow any strict or uniform standards; nevertheless certain broad principles were observed. These are indicated below:—

(i) *Palaces and other Residential Buildings.*—These were allocated on the basis of previous use and the needs of the Ruler and the administration. The Ruler's palace with houses used for his private guests and personal staff were treated as his private property. The Rulers were also allowed to retain one or two houses outside the State, for example, at a hill station or a sea-side resort.

(ii) *Farms and Gardens.*—Rulers who were interested in farming or horticulture have been allowed to retain reasonable areas of land already in their possession. These lands, will be held subject to the ordinary revenue laws and to the payment of assessment.

(iii) The Rulers have also in a number of cases been allowed to retain grazing areas; the land so held is liable

to assessment. Generally, no forest areas have been given to Rulers, though limited rights of grazing and obtaining fuel have been recognised in some cases. Shooting rights of the Rulers have been recognised in defined areas subject to the laws in force and authorised working plans.

(iv) As the privy purse is intended to cover all the expenses of the Ruler and his family including expenses on account of his personal staff, maintenance of residences, marriages and other ceremonies, Rulers have not been allowed to add to this income directly or indirectly. New jagirs or grants of villages made to the consorts or children of the Rulers have not been recognised as private property. Likewise all other rights enjoyed and claimed by Rulers in respect of land such as customary right to enjoy the fruit of trees on common lands, superior proprietary rights over agricultural areas, proprietorship of service jagirs, etc., have been extinguished. The Rulers have surrendered their jagirs and where their proprietary rights over lands has been recognised, it has been done mainly on the ground that many of them have the resources and time to undertake modern and mechanical farming and to bring new areas under cultivation. As already stated, the position of the Rulers in respect of these areas will be the same as that of a private land-holder and they will be subject to revenue laws and assessment.

(v) *Investments and Cash Balances.*—The opening balances which, according to the books of the States, belonged to the States, have been handed over to the successor Governments. Only such investments and cash to which the States could lay no claim have been recognised as private property of the Ruler.

(vi) *Ancestral Jewellery and Regalia.*—In a large number of cases, ancestral jewellery has been treated as heirloom to be preserved for the Ruling family. In the case of the States having valuable regalia, such articles are to remain in the custody of the Ruler for use on ceremonial occasions and they will be subject to periodical inspection by the Governments concerned.

(vii) *Civil List Reserve Fund.*—The Rulers had created Civil List Reserve Funds according to the advice given by the Chamber of Princes. The fund was intended to relieve the State of the expenditure in

connection with marriages etc. in the Ruler's family. The amount standing to the credit of these funds has therefore been allowed to be retained by the Rulers. Generally, additions to the fund made after the date of integration have not been treated as private property.

(viii) *Temples and Religious Funds.*—Excepting the temples situated within the palaces, temples and properties attached to them have been constituted into Trusts. The right of the public to worship at these temples has been maintained.

(ix) The Rulers will preserve for the nation objects of historical importance like rare manuscripts, paintings, arms etc. Even though treated as private property these objects will be preserved in Museums inside the States concerned. Where any of them are kept in private custody, scholars, students and others interested will have access to them under proper regulations.

(x) A number of Rulers have houses in New Delhi. Most of these were constructed on plots of land allotted on special terms and conditions when New Delhi was built. The Rulers have claimed these houses but the question whether these houses should be treated as the Rulers' private property or State property is still under consideration as also the question of their acquisition for use by the Government of India.

159. Some of the special arrangements made for management of important properties in States may be mentioned:

(i) *Indore Ahalyabai's Charities.*—The Khasgi properties of His Highness the Maharaja of Indore and the income from Khasgi which had been hitherto utilised for Maharai Ahalyabai's Charities all over India and for the maintenance of allowances to the senior Maharani of Indore, were made over to the Madhya Bharat Government and in return the Madhya Bharat Government undertook to pay annually from the revenues of the properties a sum of Rs. 291,952 for charities. The amount has been funded and placed under a permanent Trust consisting of the Ruler of Indore, two nominees of the Ruler, one nominee of the Government of India and two nominees of the Madhya Bharat Government. This Trust will also administer the charities of Her Highness Maharani Ahalyabai Holkar.

(ii) His Highness the Nawab of Rampurhas agreed to set up a Trust in respect of his famous library which contains over 12,000 rare manuscripts and several thousands of Moghul miniature paintings.

(iii) His Highness the Maharaja Gaekwar has agreed to create a Trust with a corpus of Rs. 20 millions, the income from which will be available for works of public utility in the rural areas of the erstwhile Baroda State and for the advancement of education. The new Baroda University will be amongst the institutions which will benefit from these Trusts.

(iv) *Gangajali Fund.*—This fund, which has a corpus of Rs. 16,237,000 was created by the Scindias as a special reserve fund for use during grave emergency such as famine. His Highness the Maharaja of Gwalior has made this fund available for public benefit. Subject to any instructions or directions from the Government of India, the authority to control and administer the fund is vested in the Rajpramukh of Madhya Bharat."

84. The political integration of aforesaid territories in India was a herculean task as already stated earlier and Sardar Vallabhbhai Patel and V.P. Menon played a great role to convince the rulers of the various princely states to accede to India. The process of accession / immigration / merger took in various steps to accede to India and various instruments of accession and covenant were signed by the rulers / states.

85. In this backdrop, a covenant was published on 07.10.1948 in respect of Holkar State and it clearly states that all the assets and liabilities of the covenanting states shall be the asset and liability of the United State (Madhya Bharat). It further provided for entitlement of private properties to the ruler, thus, all the properties, which were not the private properties of the ruler, became the properties of United State (Madhya Bharat). The relevant extracts of the covenant dated 07.10.1948 reads as under:-

"THE COVENANT
Entered into by the Rulers of Gwalior, Indore and certain
other
States in Central India
for the formation of
THE UNITED STATE OF GWALIOR, INDORE AND
MALWA

(MADHYA BHARAT)

We the Rulers of Gwalior, Indore and certain other States in Central India, BEING CONVINCED that the welfare of the people of this region can best be secured by the establishment of a State comprising the territories of our respective States, with a common Executive, Legislature and Judiciary;

AND HAVING resolved to entrust to a Constituent Assembly consisting of elected representatives of the people the drawing up of a democratic Constitution for the State within the framework of the Constitution of India, to which we have already acceded, and of this Covenant;

DO HEREBY, with the concurrence and guarantee of the Government of India, enter into the following Covenant-

ARTICLE I.

.....

ARTICLE II.

.....

ARTICLE III.

.....

ARTICLE IV.

.....

ARTICLE V.

.....

ARTICLE VI.

(1) The Ruler of each Covenanting State shall, as soon as may be practicable, and in any event not later than the 15 th April, 1948, make over the administration of his State to the Raj Pramukh : and thereupon-

(a) all rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental, to the Government of the Covenanting State vest in the United State and shall hereafter be exercisable only as provided by the Covenant or by the Constitution to be framed thereunder;

(b) all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the United State and shall be discharged by it;

(c) all the assets and liabilities of the Covenanting State shall be the assets and liabilities of the United State; and

(d) the military forces, if any, of the Covenanting State shall become the military forces of the United State.

(2) When, in pursuance of any such agreement of merger as is referred to in clause (b) of paragraph (1) of Article II, the administration of any other State is made over to the Raj Pramukh, the provisions of clauses (a), (b), (c) and (d) of paragraph (1) of this Article shall apply in relation to such States as they apply in relation to a Covenanting State."

86. By virtue of the covenant, which was published in official gazette of the Madhya Bharat State, the erstwhile Maharaja became the absolute owner of the properties mentioned in the schedule. It is noteworthy to mention that the properties under the Khasgi Trust were not at all included in the personal properties of the Maharaja.

87. The erstwhile ruler of the Holkar State His Highness Maharaja Yashwant Rao Holkar, Indore made a claim over the Khasgi properties and vide letter dated 06.05.1949, he was informed about the settlement of the claim in respect of Khasgi properties. The letter dated 06.05.1949 of the Government of India, Ministry of States, New Delhi, reads as under:-

"Ministry of States,

New Delhi,
(camp) Indore
May 6, 1949

Subject :Claim made by His Highness Maharaja Yeshwant Rao Holkar of Indore concerning Khasgi in the inventories of his private properties submitted in pursuance of Article XII of the Madhya Bharat Union Covenant.

Your Highness,

With reference to the claim made by Your Highness concerning the above subject, I write to inform Your Highness that this claim has been finally settled on the basis stated in the enclosure to this letter.

Yours Sincerely,
Sd/ V. P. Menon.

His Highness Maharaja Yeshwant Rao Holkar, Maharaja of Indore,

Indore"

88. The settlement of claim by Government of India in respect of Khasgi properties is reproduced as under:-

"Settlement of the claims made by His Highness

Maharaja Yeshwant Rao Holkar of Indore concerning Khasgi

--

The Khasgi properties and the income from Khasgi shall be treated as lapsed for all time to the Madhya Bharat Government. In lieu thereof the following guarantees are given subject tot he conditions mentioned below :-

(1) The Madhya Bharat Government shall in perpetuity set aside annually from its revenue a sum of Rs.2,91,952/- (Rupees two lakhs, ninety one thousand, nine hundred an fifty two only), being the amount provided in the Holkar State budget of 1947-48 for charities. This amount shall be funded and put under a permanent Trust for the said charities including the charities of Her Highness Maharani Ahilya Bai Holkar.

The Trust shall consist of the following :

1. Ruler of Indore who will always be the President of the Trust.

2. Two nominees of the Ruler.

3. One nominee of the Government of India.

4. Two nominees of the Madhya Bharat Government.

Note: The trustees nominated by the Government of India and the Madhya Bharat Government shall be so appointed in consultation with the Ruler.

> The powers and functions of the Trust shall be subject to such legislation as the Central or Madhya Bharat Government may enact generally for purposes of regulating such trusts, except that the composition of the Trust and the manner of its formation as stated above shall not be liable to any modification or change by such legislation."

The aforesaid settlement makes it very clear that the Khasgi properties, as they were not the personal properties of the Maharaja, became the exclusive properties of the Madhya Bharat Government and the Madhya Bharat Government was to pay Rs.2,91,952/- for upkeep of the properties and the amount so funded by the Madhya Bharat Government was to be placed under a permanent trust for the charities of Her Highness Maharani Ahilyabai Holkar. The Government of India also provided constitution of a trust, which included the nominees of the Madhya Bharat Government.

89. The Government of India, vide letter dated 07.05.1949, informed His Highness Maharaja Yashwant Rao Holkar about the private properties as per Article 12 of the covenant governing Madhya Bharat and this was the final settlement made on the subject and the same reads as under:-

> **"Annexure 'A'**
>
> The following of the list of private properties etc. as claimed by His Highness Maharaja Yeshwant Rao Holkar of Indore and accepted as such.
>
> General Note: In the case of building claimed, claimed, reference to these includes reference to their contents including furniture, out-house, compound etc.
>
> Immovable property in the State :
>
> 1.(a) Manik Bagh Palace together with all the buildings and outhouses and the Manik Bagh annex and its out-house.
>
> (b) Along with the Place and the Annex, the surrounding area as indicated below is also included:
>
> The area bounded by the Railway line from the level-crossing of Bhorkuwa Road up to the level-crossing at the Martand Bagh Road, then by the Martand Bagh Road from the Railway Crossing to its junction with the Bombay - Agra Road; then by the Bombay Agra Road from that point to the Bhorkuwa Cross Roads and from there by the Bhorkuwa road up to the Railway level-crossing but excluding the area that is vested in the Municipality.

The area of the Land surrounding the Manik Bagh Palace etc. as claimed in His Highness is indicated on the enclosed map (Encl. No. 1) signed by His Highness. This shall be Acquired by Government and handed over to Highness as expeditiously as possible on payment by His Highness of due compensation and will become His Highness Private Property thereafter.

2. Yeshwant Niwas Palace together with its out-house and part of the land to the east of the palace between the Yeshwant Club Road and the Yeshwant Niwas Road as shown on the plan (signed by His Highness, encl. No.2) including the land where the Police Station and water reservoir are constructed. The land as claimed is shown by lands ABCDEFGH on the plan.

3. The old place, Indore.

3. Note: High Highness agrees to allow Government to continue to use, a part of this palace, as at present, for Government Officers without charging any rent, therefore in return for which Government shall be liable to maintain the whole of the palace.

4. The Sukhniwas Ramna area including the Sukhnivas Palace, out-house and gardens attached to it, the Hava Bungalow with its compound and the unfurnished Kothi, known as Phuti Kothi but excluding the Sirpur Tanks.

There are of the Sukhniwas Homes, Sukhniwas palace, Hava Bungalow and the unfurnished Kothi, known as Phuti Kothi is shown on the enclose map signed by His Highness (Encl. 3)

5. The lal Bagh Palace, Indore.

6. The Daryao Mahal, Barwaha.

(i)Such part of the Maheshwar Fort as includes (1) the Palace, i.e. the Bada, (2) The State Chhatries, and (3) temples including the palace State Chhatries and the temples.

Note: There would be no objection to the stops leading to the Ghats through the Bada being used by the public provided the privacy, as at present, of the inner sanctions of the Bada is maintained.

8. The Kothi as Bhesle (Rampura - Bhanpura)

9. Bedar Berchha Bir. This Bir will belong to His Highness subject to his paying regular assessment on the Bir fixed in accordance with the principles of soil classification and circle rates. The details of the Bir as claimed are shown on the enclosed map (signed by His Highness, encl. No.4)

Immovable property outside the State.

10. The properties in the Deccan:

(a) Chandwad Estate at present under the management off the Gumasta, Chandwad Estate, including the following:

(1) Lands measuring 3702.12 acres held on ordinary ryotwari tenure spread over in 41 villages of different district of the Bombay Province as per details given in the State attached hereto (Signed by the Personal Advisor to His Highness) (encl. No. 5).

(2) Inam lands totalling about 1205.25 acres in 6 villages of the Bombay Province and the Hyderabad State as per details given in the Statement attached hereto (signed by the Personal Advisor to His Highness) (encl. No. 6).

(3) Palace at Chandwad and other houses at various places as per Statement (signed by the Personal Advisor to His Highness) (Encl. No. 7).

(4) Inami lands at Jejuri and Hol villages as per details given in Statement (signed by the Personal Advisor to His Highness (encl. No. 8) together with Jejuri temple, the fort and the Malhar Tank.

(b) The Holkar Bada in Poona as well as the lands in that City.

The Properties in France including Shanti Vilas and Usha Vilas.

Miscellaneous :

12. Broad-gauge and Meter gauge railway saloons.

13. Bench Craft Aeroplane.

14. All properties under the administrative control of the Household Department of the Holkar State except such of the aforementioned property with the household Department as has already been transferred to the two guest houses at Indore viz.,

the one situated in the building which was known as the Indore Hotel and the other in Rajendra Bhawan on the Bombay Agra Road.

The above properties claimed consist, in the main of the following:

(a) Miscellaneous articles including Gold, Silver, Brass and Copper articles in use and required for ceremonial occasions and functions. The gold and silver articles are kept in the Jawahirkhana.

(b) Furniture including Bichhayat, articles, canopies, crockery, cutlery.

(c) Carriages, old gun, palanquins, 'ambaries' and 'Howdas' with equipment.

(d) Animal including horses and 3 elephant with equipment.

(e) Articles in the Shilekhana.

(f) The following buildings :

1. Imam Bada.
2. Lakkad Khana.
3. Ambari Khana.
4. Bhoi Khana,
5. Khasbardar Lines.
6. Bunglow with the Officer I/c. Stables.
7. Camp Stores godown with the buildings attached thereto.

Note : The waiting room at the Indore Railway Station shall continue to be maintained, as at present, by Government for use of the Ruler and other distinguished persons.

Note : His Highness shall may on the King over the above mentioned properties, a sum of Rs.1,25,000/- (Rupees One lac and twenty five thousand only) to the Madhya Bharat Government towards the cost of maintenance of the above properties by the Government since the 16th June 1948.

Jeweler and Gold:

All the jeweler and gold at present in the Huzur Jawahirkhana at Indore except the following items which shall be treated as Crown (dynastic) jewellery:

(1) Sirpech — Note: All these are worn by the Ruler at first-class Darbards.

(2) Pearl necklaces

(3) Ceremonial belt.

(4) Ceremonial sword.

Note : The above mentioned items of Crown (dyniastic) jewellery shall be kept by His Highness (subject to the right of inspection by Government) for use by Rulers of Indore on ceremonial occasions as in the past.

16. Silver kept in the Jawahar Khana. This includes all utensils and also melted silver.

The preserves at Burwaha; Rampura-Bhanpura, Rathar; Mohadi, Matakhodra, Ralamandal, Kanchla and Nahar Zabua in the Indore District; Ranigaon range, Kantaphod range and Satwas range in the Nemawar District. In these preserves His Highness the Maharaja of Indore will have exclusive shooting rights.

The Burwaha preserve is intended to include the following :-

1. Burwaha Ramna.
2. The circuit road from Bavi to the Burwaha Ramna and
3. Asapura, Tarania and Jamnia.

Note : The Ruler's rights over the above mentioned preserves shall be regulated be the general formula that may be approved as regards such preserves.

18. The exclusive rights in spot in the tank of Badagaon, Depalpur (Indore District) and Choli near Maheshwar (Nimar District)

19. **Income from Alampur Mahal**

Whatever is the annual income from land revenue of the village comprised in this Mahal at the time when the Holkar State joined the Madhya Bharat Union is accepted as the income in Perpetuity of the Ruler of Indore for the purpose of being utilised for the Chhatri at Alampur of the Founder of the House of Holkers. This annual income shall, with

effect from June 16, 1948, on which the date the Holkar State joined the Madhya Bharat Union, be found and kept separately under permanent Trust which shall be empowered to deal with this fund for the above mentioned purpose. Trust shall consist of the following :

1. Ruler of Indore who will always be the President of the Trust.
2. Two nominees of the Ruler.
3. One nominee of the Government of India.

Two nominees of the Madhya Bharat Government.

Note : The trustees nominated by the Government of India and the Madhya Bharat Government shall be so appointed in consultation with the Ruler.

The powers and functions of the Trust shall be subject to such legislation as the Central or Madhya Bharat Government may enact generally for purposes of regulating such trusts, except that the composition of the Trust and the manner of its formation as stated above shall no be liable to any modification or change by such legislation.

20. **General Note:**

The Madhya Bharat Government shall take immediate steps to hand over such of the properties mentioned in this list as may be with the Madhya Bharat Government to His Highness Maharaja Yeshwant Rao Holkar of Indore or any person duly authorised by His Highness in this behalf."

Thus, a clear distinction was drawn between the private properties and the properties vested in the State of Madhya Pradesh in the year 1948 - 49 itself and in respect of the properties, which were part of the Trust, they also became absolute property of the State of Madhya Bharat.

90. A trust deed was executed on 27.06.1962 in respect of Khasgi properties and relevant extracts of the trust deed dated 27.06.1962 reads as under:-

"THIS DEED OF TRUST is made this 27th day of June 1962 between Her Highnes Maharani Usha Devi of Indore, daughter and successor of Major General His Highness Maharaja Yashwantrao Holkar of Indore, G.C.I.E., LL.D., (hereinafter called as the Settlor" which expression shall, where the context to admits, include her heirs, executors and administrator) of the one part and Her Highness

Maharani Usha Devi of Indore, daughter and successor of MAJOR GENERAL HIS HIGNNESS MAHARAJA YESHWANT RAO HOLKAR OF INDORE G.C.I.E., LL.D., Shri K.A. Chitale, Senior Advocate, Indore and Shri S.C. Malhotra, Indore nominees of the Settlor, Shri S.V. Kanungo, nominee of the President of India, the Commissioner, Indore Division, Indore and the Superintending Engineer (Building and Roads), Public Works Department, Indore nominees of the State of Mahdya Pradesh appointed in consultation with the Settlor (hereinafter called the Trustees" wich expression shall, where the context, so admits, include their survivors or survivor of them and the heirs executors and administrators of the last surviving trustee or their or his assign) of the other part.

WHEREAS MAJOR GENERAL HIS HIGNESS MAHARAJ YESHWANT RO HOLKAR of Indore, who as the Ruler of the Holkar State had entered into a Covenant to unite and integrate the territories of the Holkar State with and into the United State of Madhya Bharat in terms of the covenant made and executed on 22nd Aprial, 1948, and in pursuance thereof is sas agreed between him, the Government of India and the United State of Madhya Bharat under an Instrument dated the 7th May 1949 that the Khasgi properties and the income from Khasgi shall lapse for all times to the Madhya Bharat Government and in lieu thereof the Madhya Bharat Government shall in perpetuity set aside annually from its revenue a sum of Rs.2,91,952/- (Rupees two lacs ninety one thousand nine hundred fifty two) only with effect from 16.06.1948 for expending a charities and religious endowments provided in the budge of the Holkar State for 1947 inclusive of charities founded by Her Highness Maharani Devi Ahilya Bai Holkar AND FURTHER that said sum of Rs.2,91,952/- (TWO LACS NINETY ONE THOUSAND NINE HUNDREN FIFTY TWO ONLY) shall be funded and put under a permanent Trust constituted in the manner hereinafter specified, for the maintenance, upkeep and preservation of the said charities and religious endowments.

AND WHEREAS as a result of the reorganisation of the States, the rights and facilities of the Government of the former State of Madhya Bharat haven ot developed on the Government of Madhya Pradesh.

AND WHEREAS Major General His Highness

Maharaja Yeshwant Rao Holkar of Indore passed away on or about the 5th December, 1961, succeeded by Her Highness Maharani Usha Devi who has been recognised by the President as the successor and Ruler of Indore.

AND WHEREAS in pursuance of the aforesaid agreement Major General His Highness Maharaja Yeshwant Rao Holkar of Indore was desirous and the Settlor is also desirous of creating a Trust of the annuity of Rs.2,91,952/- (Rupees two lacs ninety one thousand nine hundred fifty two) only, in perpetuity of the purpose of maintenance, upkeep and preservation of the charities and religious endowment provided in the budget of the Holkar State for the year 1947 - 48, inclusive of the charities founded by late Her Highness Maharani Devi Ahilya Bai Holkar (hereinafter referred to as "the said Charities and Religious Endowments", more particularly described in part 'A' of the Schedule, which forms part of the indenture) and for the management and maintenance of the properties appurtenant thereto hereinafter referred to as the Trust Properties, more particularly described in part 'B' of the Schedule hereto annexed, which forms part of this indenture.

AND WHEREAS Major General His Highness Maharaja Yeshwant Rao Holkar of Indore after he had approved of the Deed of the Trust passed away before formally executing the Trust Deed and on his demise and in terms of the Trust Deed the party of the Ist part is the Settlor.

AND WHEREAS the trusttes have accepted the office and have become first Trustees of these present as is testified by their being parties to and executing these presents.

NOW THEREFORE, THIS INDENTURE WITNESSETH AS FOLLOWS:-

(1) The Settlor shall be the President of the Trust.

(2) The Settlor hereby agrees to accept the following persons as trustees namely:-

(i) two persons to be nominated by the Settlor.

(ii) two persons to be nominated from time to time by the State Government in consultation with the Settlor.

(iii) One person to be nominated from time to time by the Government of India in consultation with the Settlor.

(3) The settlor hereby transfers the Trust properties to the trustees who shall hold the same upon trust and shall be responsible for the maintenance, upkeep and preservation of the said Charities and Religious Endowments.

(4) The Trustees shall held and possess the annuity of Rs.2,91,952/- (Rupees two lacs ninety one thousand nine hundred fifty two) only payable with effect from 16th June 1948 by theState Government of Madhya Pradesh from and out of the consolidated fund of the State and or its successor Government to the Settlor in perpetuity who for that purpose shall have the power to grant a valid discharge on the receipt of the said annuity.

(5) The Trustees shall hold and possess the Trust Properties and shall have the power to manage the said properties and collect all sums of money by way of rent, profit, interest and any other income accruing to the Trust.

(6) The Trustees shall, in the first instance pay and discharge out of the gross receipts, inclusive of the aforesaid sum or Rs.2,91,952/- (Rupees two lacs ninety one thousand nine hundred fifty two only) and the income of the Trust Properties, all charges and expenses of collection and recovery of the income and all taxes, rates, dues, assessments and other charges, if any, in respect thereof.

(7) The Trustees shall prepare the Budget estimates of the Trust every year and shall apply the income for the fulfillment of the subjects of the Trust as referred to in paragraph 2 on the preamble of this Deed and for the maintenance, upkeep and preservation of the Trust Properties in good condition and shall make necessary repairs thereto and the balance, if any, shall be held and accumulated for being applied in the fulfillment of the aforesaid objedt of the Trust and for purposes set out in clause (14) hereunder.

(8) The Settlor hereby covenants with the Trustees that , notwithstanding anything herein contained, if any person claiming through or under the Settlor or any other person, shall at any time make any claim or demand against the Trustees of any of them on account of any payment made by the Trustees of any part of the income or the corpus of the

Trust Properties to any person whosoever in pursuance of the provisions of the these presents or on account of any act, deed or thing done or executed or caused or suffered to be done in pursuance of these presents or on the strength hereof, then the Settlor shall indemnify and keep indemnified and harmless the Trustees against all such claims and demands and against any loss, damages, costs, charges and expenses, which the Trustees or any of them may suffer or incur by reason or in consequence of any such payment having been made by them or any such act, deed or thing done or exceeded or caused or suffered to be done or executed by them or any of them and the Settlor shall make good and reimburse to any such Trustees on Trustee all losses, damages, costs, charges or expenses which such Trustees or trustees shall suffer, incur or be called upon or liable to pay on account of any person making any such claim or demand as aforesaid.

(9) The Settlor hereby further covenants with the Trustees that notwithstanding any act, ded, matter or thing whatsoever by the Settlor or any person or persons lawfully or equitably claiming from under or in Trust for her made done, omitted or executed or willingly or knowingly suffered to the contrary, the Settlor shall have absolute power to grant, release convey and assume the Trust Properties and subject to the Trust hereof, it shall be lawful for the Trustees from time to time and at all times hereafter peaceably and quietly to hold, posses and enjoy the Trust properties hereby granted with their appurtenances and receive the rents and profits thereof without any lawful eviction, interruption, claim and demand whatsoever from or by the Settlor or from or by any other person or persons lawfully or equitably claiming through her or in trust for her and that the Trust Properties are free and clear and freely and clearly and absolutely, acquitted, exonerated, released and for ever discharged or otherwise by the Settlor well and sufficiently saved, defended and kept harmless and indemnified of, from and against all estates, charges and encumbrances whatsoever either already or to be hereafter made, executed occasioned and suffered by the Settlor or by any other person or persons lawfully or equitably claiming through her or in trust for her and further that the Settlor and all persons having or lawfully or equitably claiming any estate, right, title or interest at alw or in equity in the Trust Properties hereby granted or nay part thereof , by, from, under or in Trust for her shall and will from time to time and

at all times hereafter at the request of the Trustees but at their cost do and execute or cause to be done and executed all such further and other lawful and reasonable acts, deed, things, matters and assurances whatsoever for further and more perfectly and absolutely granting and assuring the Trust Properties hereby transferred into the aforesaid Trustees as shall or may be reasonable required.

(10) The Settlor in her capacity as president of the Trust shall be entitled to appoint any Person as her duly constituted Attorney, to do all acts, deed and things of ministerial nature.

(11) The Trustees shall keep and maintain regular and accurate accounts in respect of the income and expenditure of the Trust Property and shall, when so required by the Settlor make them available or inspection by the Chartered Accountants.

(12) The Settlor hereby authorises the Trustees to invest the Trust fund in accordance with the provisions of the Indian Trust Act, 1882 (11 of 1882) (hereinafter referred to as the said Act) and the Trustees shall transact their business in accordance with such regulations not inconsistent with the said Act, in conformity with the provisions of the said Act.

(13) In the event of a vacancy occurring among the Trustees due to death, retirement resignation or any other cause, it shall be filled in :

(a) in the case of Settlor, by the successor as the Ruler or Indore : and

(b) in other cases by a person nominated in the manner provided in clause (2) above.

(14) The accumulated savings under the Trust which in the opinion or the Trustees are surplus to the requirement of the Trust may be utilised by the Trustees for any public purpose approved by the State Government and not inconsistent with the provisions of the Indian Trusts Act, 1882.

(15) The Trustees shall exercise the powers and discharge the duties hereunder in accordance with the provisions of the said Act and subject to each legislation as the Central Government or the Government of Madhya Pradesh may make generally for purposes of regulating such Trusts.

(16) The expenditure already incurred by the erstwhile

> Government of Madhya Bharat from 16.06.1948 upto 31.10.1956 and thereafter, by the Government of Madhya Pradesh from 01.11.1956 to the date of handing over the Trust Properties to Trustees for the maintenance, upkeep and preservation of the said charities and religious endowments and / or management and maintenance of the Trust Properties shall adjusted from the income, if any, derived from the Trust Properties and from the amount or security payable by the State Governmetn of Mahdya Pradesh hereunder to the Trust.
>
> (17) It is hereby declared that the Trustees have accepted the Trust and that the Trust Properties and the relevant title deeds have been made over to the Trustees and vested in the them for purposes of the Trust.
>
> In witness whereof the parties hereto have signed this INDENTURE on the date or mentioned in each case."

The aforesaid trust deed makes it very clear that as per the instrument dated 07.05.1949 executed in accordance with the covenant dated 22.04.1948, the Khasgi properties and the income from the Khasgi properties shall lapse for all time to the Madhya Bharat Government and in lieu thereof the Government shall in perpetuity set aside annually from its revenue a sum of Rs.2,91,952/-. The trust deed also makes it very clear that the properties will not be sold, the Trust shall hold and possess the Trust properties and have the power to manage the said properties only.

91. Another important aspect of the case is that the trust deed was also executed by Maharaja Yashwant Rao Holkar in favour of Princess Usha Devi in respect of the personal properties of Maharaja on 10.04.1950 and the trust deed dated 10.04.1950 did not include the Khasgi properties.

92. The Madhya Bharat Government issued a notification empowering the Commissioner and Collector in respect of *Maufi* land. As already stated earlier, a Trust was constituted in respect of Khasgi (Devi Ahilyabai Holkar Charities) Trust on 27.06.1962 and a gazette notification was issued on 27.07.1962 by the Divisional Commissioner. The Trust in fact is misconstruing notification dated 27.07.1962. As per the notification dated 27.07.1962, it was issued only for the purpose of upkeep and maintenance of the trust properties by the Trust as earlier on account of notification dated 28.12.1954, they were required to be maintained by *Maufi* section of Madhya Pradesh Government.

93. Shri M.N. Jagdale, the Secretary of the Trust, in the year 1969 i.e. on 08.05.1969, wrote a letter to the Chief Secretary of the State of Madhya Pradesh admitting categorically that there is no provision for sale of Trust properties, and

therefore, sanction be accorded by the State of Madhya Pradesh for sale of Trust properties i.e., Nagwa Bagicha. The letter of Secretary of the Trust is reproduced as under:- .

"8th May 1969.

Dear Shri Shrivastava Saheb,

In their meeting held on 20th April 1969 the Trust Deed of the Khasgi (Devi Ahilyabai Holkar Charities) Trust resolved that sanction of the Madhya Pradesh Government may be sought to sell the Nagwa Bagicha, an open piece of land measuring 2.56 acres at Varanasi, belonging to the Khasgi Trust.

2. In this connection I am to refer to Resolution dated 4th May 1968 of the Trustees in which it was decided to create a building fund by appropriation of annual savings, if any, and of the sale-proceeds f lands, buildings and other properties which are not of religious, charitable or historical importance. This became imperative for the simple reason that the main income of the Trust is the annuity from the Madhya Pradesh Government which is based on the expenditure of the Charitable Department of the then Holkar State as provided in the budget of the year 1947-48. As you are aware, prices particularly of articles required for Pooja, Archa, Naivedya and materials required for maintenance of buildings have now gone up phenomenally high so that it is wellnigh impossible to maintain the properties from this income. Hence the need of disposal of buildings and other properties which are no longer of any religious significance and which do not come within the real objects of "the charities" of the Trust.

3. The case of Nagwa Bagicha has been examined from the point of view mentioned in the foregoing paragraph. The Bagicha served a definite purpose in ancient times in providing a resting place to pilgrims going to Pachkroishi yatra of Varanasi. Now the Bagicha is auctioned for about Rs.500/- to persons who grow some vegetables or cereals there.

This property comprising of an open piece of land measuring 2.56 acres with a small hut and a 'pucca' well can now be sold for a very good price. Already there is an offer of Rs.1,60,000/-. The only alternative for the Trustees is to develop this land for putting up building, etc. This, however, is not a practical proposition.

4. There is no express provision in the Trust Deed (copy enclosed) empowering the Trustees to sell the Trust properties although by implication it is felt that they should be able to do as

the object of the sale is to find ways and means of maintaining and preserving the charities as such. The case has been examined fully from the legal point of view by the Trustees, Shri K. A. Chitale and his opinion is enclosed. In the light of this opinion it has been decided to refer the case to the Government for sanction.

5. I may add that this land was under acquisition by the Varanasi Municipal Corporation. Fortunately it has now been released. There is however, the apprehension that the Housing Board may step in place of the Municipal Corporation to acquire this land like may other similar lands. Hence the urgency for taking quick action.

In the circumstances of this case it will be very much appreciated if Government sanction could be obtained and communicated to the Trustees as early as possible.

Yours sincerely,
Sd/-.
(M. M. Jagdale)
Secretary

Shri M. P. Shrivastava,
Chief Secretary,
Madhya Pradesh Government,
Vallabh Bhawan,
B H O P A L."

94. The Chief Secretary of the State of Madhya Pradesh, in response to the letter of the Trust, wrote a D.O. letter to the Secretary on 13.06.1969 and the same reads as under:-

"The 13th June 1969.
23 Jyaistha 1891.

My dear Shri Kanungo Sahib,

Kindly refer to the letter no. 200/Gen dated the 9th May 1969 from the Secretary, Khasgi Trust, Shri M. M. Jagdale, The Law Department was consulted in the matter and, according to their opinion, Government do not come into the picture and, therefore, the question of according any sanction for the intended transfer by sale of any item of Trust Property does not arise.

Yours
Sincerely,
(M P SHRIWASTVA)

Shri S V Kanungo,
Ravindranath Tagore Marg,
INDORE."

Though the aforesaid letter refers to some opinion from the Law Department, however, it was never placed by the either side on record. Otherwise also, the letter of the Chief Secretary is mere D.O. letter and the property of the Government cannot be sold by issuance of a D.O. letter without a cabinet decision.

95. Another important aspect of the case is that Shri M.P. Shrivastava, The Chief Secretary was also one of the trustees, thus his D.O. letter dated 30.06.1969 does not have any legal sanctity.

96. The Trust on 23.06.1969 submitted an application under Section 35(1)(a) of the Madhya Pradesh Public Trust Act, 1956 to the Registrar of Public Trust, Indore seeking a decision whether the Trust was within exemption from the operation of Madhya Pradesh Trust Act, 1951. In the aforesaid letter also in paragraph - 2, it was admitted that as per the trust deed the properties have lapsed in the State of Mahdya (sic: Madhya) Pradesh, meaning thereby, the properties are absolutely the properties of the State Government. Paragraphs - 2 and 6 of the application reads as under:-

"2. The Trust was constituted under a Deed of Trust dated 27th June 1962 executed after the demise of His late Highness by Her Highness Maharani Usha Devi, the daughter and successor of His late Highness, as the Settlor, in favour of herself and five others as Trustees. A copy of the said Deed is annexed herewith marked 'ANNEXURE 'B' will be apparent from the said Deed of Trust that in .. of lapse of property called Khasgi properties and the .. from Khasgi property to the Government, the Government ... undertook to earmark annually in perpetuity the sum of Rs.2,91,952/- from the revenue of the Government for .. expending on charities and religious endowment including charities founded by Maharani Devi Ahilyabai Holkar.

6. The charities and religious endowments were initially under the management of the erstwhile Holkar State. The management and possession was, after the merger of the Holkar State with the United States of Madhya Bharat taken over by the Government of the United States of Madhya Bharat and remained in the hands of the said Government and its successor Government until it was delivered to the Trustees pursuant to the Trust Deed. The actual management and possession was transferred by the Government on 16-7-1962 and was subsequently notified by a Notification dated 27-7-1962. The report evidencing the delivery of the management and

possession by the Governor to the Trust is annexed and marked 'C' and a copy of the notification is annexed and marked 'D'."

The Trust itself has admitted in paragraph - 2 that the properties are the State Government's properties and in paragraph - 6, it has been admitted by the Trust that the charities and the religious endowments were under the Management of Holkar State earlier, and subsequently, they have been taken over by the State of Madhya Pradesh.

97. The Trust in question kept on writing letter to various authorities for sale of Trust properties and the Under Secretary, General Administration Department, State of Madhya Pradesh issued a letter to the Commissioner stating categorically that the Khasgi Trust will have to seek permission under Section 14 of the M.P. Public Trust, 1951 from the Registrar in case of sale of any of the Trust properties. This letter was duly served to the Trust and the Trust, at no point of time, took any objection in the matter.

98. On 10.08.1971, the Registrar, Public Trust, Indore, passed an order exempting Khasgi (Devi Ahilyabai Holkar Charities) Trust from its registration only.

99. Section 36(1)(a) of the M.P. Public Trust Act, 1951 reads as under:-

"Section 36. Exemption - (1) Nothing contained in this Act shall apply to -

(a) A public Trust administered by any agency acting under the control of the State or by any local authority....."

For exemption under the M.P. Public Trust, 1951, a notification is mandatory under Section 36(2) of the M.P. Public Trust Act, 1951 and in the present case, no such notification has been placed on record. Thus, the order passed by the Registrar does not give any exemption to the Trust.

100. The most unfortunate thing, which happened, was execution of supplementary trust deed on 08.02.1972. A supplementary trust deed was executed by the trustees and it was mentioned in the fourth paragraph that the power to sell immovable properties of the Trust has not been expressly stated in the original trust deed but it was implied. It was declared that the trustees always had and shall have the power to alienate the property of the Trust for benefit of the Trust. Relevant extracts of the supplementary trust deed reads as under:-

"Supplementary Deed Of Trust

AND WHEREAS in the administration of the Trust, the Trustees have realised that some items of immovable property have to be sold for the benefit of the religious and charitable endowments which are the objects of the Trust.

> AND WHEREAS the power to sell such items is implied in the Deed of the Trust but has not been expressly stated.
>
> AND WHEREAS it is deemed expedient expressly to confer on the Trustees the power to alienate any items of the corpus of the Trust properties and / or the imcome thereof when it is necessary and for the benefit of the charitable endowments to do so.
>
> NOW, THEREFORE, THIS INDENTURE WITNESSETH AS FOLLOWS.
>
> For the removal of any doubt, the Settlor declares that the Trustees have always had and shall have the power to alienate not only the income but any item of the corpus of the Trust property, movable or immovable, for the necessity or benefit to the objects of the Trust and / or for the convenient or more beneficial administration of the Religions or Charitable endowments mentioned in the Deed of Trust dated 27th June 1962.
>
> IN WITNESS WHEREOF the parties hereto have signed this indenture on the date and year mentioned in each case."

The aforesaid amendment is certainly a nullity as it is without authority. It is contrary to the spirit of the original trust deed which was for the maintenance, upkeep and preservation of the properties and the same is also the object of the State Government behind formation of the Trust. The title of the properties had lapsed in perpetuity with the State of Madhya Pradesh (Madhya Bharat) and it was never transferred to the Trust. Thus, the Trust could not have sold the properties and no such sale was approved by the Registrar, Public Trust, Indore.

101. It is pertinent note that various civil suits have been filed in respect of the properties belonging to erstwhile Maharaja Yashwant Rao Holkar and one such civil suit was filed i.e., Civil Suit No.15/1973 by Shriman Malhar Rao Holkar against Princess Usharaje Holkar and others. A written statement was filed on 18.02.1974 on behalf of the Trust and other defendants in the aforesaid civil suit and the Trust has admitted before the trial Court in the aforesaid civil suit that Khasgi Trust properties are not the personal properties. It has been categorically stated on affidavit by the trustees that the trust deed dated 27.06.1962 creating Khasgi Trust and Alampur Trust are not the joint family properties or ancestral properties or personal properties. It has also been stated in the written statement that the Trust properties vested in the United State of Madhya Bharat up to 1956 after 1948 and after 1956 into the State of Madhya Pradesh. Thus, in respect of

various litigation, the trustees have admitted before this Court also (F.A. No.264/2003) that the ownership of the Trust properties lies with the State of Madhya Pradesh.

102. The trustees on 07.02.2005 made an application to the Registrar, Public Trust seeking permission for grant of lease of Trust properties and this fact establishes that the trustees were well aware that the Trust in question is a public Trust governed by M.P. Public Trust Act, 1951. The applications made by the trustees were rejected on 14.12.2005. The Trust in question, in spite of the fact that the State of Madhya Pradesh is the titleholder of the Trust properties, kept on leasing out various properties for peanuts. On 28.07.2007, the Secretary of the Trust leased out the property of Ganpati Mandir, South Tora, Zuni, Indore admeasuring 1800 sq.ft. for a period of 30 years to one Abdul Rehman for Rs.720/- per year. The meager amount of Rs.720/- per year shows that *malafides* involved in the transaction.

103. On 05.06.2008, a resolution was passed by the trustees authorizing trustees Shri S.C. Malhotra and Shri K.S. Rathore to finalize sale of Trust property situated at Haridwar i.e. Kusha Ghat admeasuring 11931 sq.ft. Kusha Ghat is a Ghat of great historic importance and in Haridwar all *Mundan Sanskars* take place at Kusha Ghat. It is being used since time immemorial by the believers of Hindu faith and it is open to public at large and in respect of this particular property, which is a Ghat and shops, a resolution was passed by the Trust authorizing the trustees to dispose it off.

104. Section 47 of the Indian Trust Act, 1882 reads as under:-

> "47. Trustee cannot delegate.—A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless
>
> (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation. Explanation.—The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion is not a delegation within the meaning of this section.
>
> Illustrations
>
> (b) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies, C may bequeath the trust property to D and E upon the trusts of A's will.
>
> (c) A is a trustee of certain property with power to sell the

same. A may employ an auctioneer to effect the sale.

(d) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents. Comments No trustee can delegate his powers and duties to another transtee and any agreement to do so would be illegal and void and would not be covered by any of the exceptions in section 47; H.E.H.: The Nizam's Jewellery Trust (in re:), AIR 1980 SC 17."

As per the aforesaid statutory provision of law, a trustee cannot delegate power unless at least any one of the four conditions mentioned thereunder is fulfilled.

105. The most shocking aspect of the case is that the resolution was passed on 05.06.2008 and the sale agreement was already executed on 08.02.2007, meaning thereby, after executing the agreement, without there being any authority from the trustees, subsequent resolution was passed authorizing two of the trustees to finalize sale of the property. It makes it very clear that the agreement was executed without there being any authority from the trustees. At the time of execution of agreement to sell dated 08.02.2007, there was an interim order against the transfer of the property or creation of any rights passed by this Court in F.A. No.264/2003.

106. As already stated earlier, the property of Kusha Ghat is of great religious importance and finds a mention in *Scandapuran* which is one of the oldest scriptures in Hinduism. Hindi translation of the relevant portion of the scripture is quoted as under (Annexure-R/19):-

''.....क्योंकि यहां पर गंगा ने अपने भंवर मे मेरे कुशो को धारण किया, इसलिये यह कुशावर्त नाम से प्रसिद्ध तीर्थ होगा। धन्य मानव यहां स्नान तथा पितृ तर्पण करेंगे ..... महातीर्थ कुशावर्त में दिया हुआ दान कोटि गुण अधिक होगा .....

107. After passing a resolution on 05.06.2008, Shri S.C. Malhotra one of the trustees on 05.09.2008 executed a Power of Attorney appointing one Raghvendra Sharma as Trust duly appointed attorney with respect to the property situated at Kusha Ghat (Haridwar) admeasuring 13370 sq.ft. (Annexure-R/16). It is pertinent to note that the resolution of the Trust dated 05.06.2008 did not authorize Shri S.C. Malhotra to execute further a Power of Attorney for sale of property, however, on his own he executed a Power of Attorney in favour of Raghvendra Sharma who was totally a stranger to dispose of Kusha Ghat which is of great religious importance as it finds place in *Scandapuran* also.

108. It is also pertinent to note that Shri S.C. Malhotra was only authorized by the Trust for the property admeasuring 11931 sq. ft., however, he executed a Power of Attorney with respect to property admeasuring 13370 sq.ft.

109. The validity of power of Attorney dated 05.06.2008 came to an end and a fresh Power of Attorney was executed by Shri K.S. Rathore in respect of Shri Raghvendra Sharma on 05.06.2009. Shri K.S. Rathore was not a trustee and he had no power to execute the Power of Attorney. Shri Raghvendra Shrama on the basis of Power of Attorney executed by Shri K.S. Rathore on 02.09.2009, sold out the Trust properties situated at Kusha Ghat (Haridwar) to one Smt. Nikita W/o Shri Raghvendra Sharma (his own wife) and Shri Aniruddh Kumar. Shri Raghvendra Sharma also leased out the land admeasuring 653 sq.m. to Shri Aniruddh Kumar for a period of 29 years.

110. The trustees of the Khasgi Trust, knowing fully well that they are not the owner of the property in question, entered into sale of Trust properties and sold Ghat property of great religious importance and as they were aware of the fact that they are not the owner of the Trust properties, preferred a writ petition before this Court i.e. W.P. No.11618/2012 against the State of Madhya Pradesh & three others for quashment of order dated 05.11.2012 and order dated 30.11.2012.

111. The order passed the Collector dated 05.11.2012 and order dated 30.11.2012 passed by the Registrar dated 30.11.2012 are reproduced as under:-

''न्यायालय कलेक्टर, जिला इन्दौर, म.प्र.

प्रकरण क्रमांक 12/बी–113/2012–13

:: आदेश ::

(पारित दिनांक 5/11/2012)

आयुक्त, इन्दौर संभाग, इन्दौर कार्यालय से माननीय सांसद महोदय द्वारा प्रेषित पत्र प्राप्त हुआ जिसमें उल्लेखित किया गया कि खससगी देवी अहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर की सम्पत्तियां ऐतिहासिक धरोहर है तथा अत्यंत मूल्यवान है। उक्त ट्रस्ट का गठन खासगी सम्पत्तियों के संधारण हेतु किया गया था, किन्तु ट्रस्ट द्वारा हरद्विार स्थित कूशावर्त घाट अवैधानिक रूप से विक्रय किया गया है। यह अत्यंत गंभीर विषय है। भविष्य में खासगी सम्पत्तियों का अवैधानिक विक्रय रोकना एवं उनको सुरक्षित करना अत्यंत आवश्यक है।

खासगी देवी अहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर के गठन के पूर्व क्षेत्र, संस्थान, कारखाने, देवस्थान छत्रीज भवन एवं उसकी सम्पत्तियों का रख रखाव माफी आफिस, आयुक्त कार्यालय इंदौर संभाग की देखरेख में किया जाता था। पंजीयक, लोक न्यास इन्दौर प्र0 क0 5/बी/113/66–67 पुराना एवं नया नंबर 13/बी/113/70–71 में आदेश दिनांक 10/8/1971 से खासगी देवी अहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर को पंजीयन से छूट दिए जाने का आदेश दिया गया है। उक्त आदेश में उल्लेखित किया गया है कि खासकी सम्पत्ति के राज्य शासन में विलयन होने के पश्चात ..... रू. 2,91,952/–

प्रतिवर्ष राशि के व्यवस्थापन्न करने हेतु नियुक्त किया गया था और इसी लिए यह ट्रस्ट बनाया गया है। जिसका विस्तृत उल्लेख भारत शासन एवं इन्दौर के पूर्व शासकों के मध्य निष्पादित Settlement Of Claim दिनांक 6/5/1949 में किया गया है। मूल ट्रस्ट डीड का निम्न अंश विशेष रूप से पठनीय है WHEREAS MAJOR GENERAL HIS HIGHNESS MAHARAJA YESHWANT RAO HOLKAR of Indore, who as ruler of the Holkar State has entered into a Covenant to unite and integrate the territories of the Holkar State with and into the United State Of Madhya Bharat in terms of the Covenant made and executed on 22nd April 1948, and in pursuance thereof is was agreed between him, the Government of India and United State Of Madhya Bharat under an Instrument dated the 7th May 1949 that the Khasgi properties and the income from Khasgi shall lapse for all times to the Madhya Bharat Government and in lieu thereof the Madhya Bharat Government shall perpetuity set aside annually from its revenue a sum of Rs.2,91,952/- (Rupees two lakhs, ninety one thousand, nine hundred an fifty two only), With effect from 16-6-1948 for expending on charities and religious endowment provided in the budget of the Holkar State for 1947-48 inclusive of charities founded by Her Highness Maharani Devo Ahilya Bai Holkar AND FURTHER that the said sum of Rs.2,91,952/-(RUPEES TWO LACS NINETY ONE THOUSAND NINE HUNDRED FIFTY TWO only) Shall be Funded And put under a permanent Trust constituted in the manner hereinafter specified, for the maintenance upkeep and preservation of the said charities and religious endowments.

ट्रस्टडीड के उक्त अंश के परीक्षण से यह स्पष्ट होता है कि भारत की स्वतंत्रता के उपरांत जब विभिन्न रियासतों का भारतवर्ष में विलय हुआ तब इन्दौर के महाराजा यशवन्तराव होल्कर उस समय होल्कर स्टेट के शासक थे। रियासत का तत्कालीन मध्यभारत (पश्चातवर्ती मध्यप्रदेश) में विलय का विलेख दिनांक 22 अप्रैल 1948 को लिखा गया तथा इस विलेख के आधार पर राजा तथा मध्य भारत सरकार (मध्यप्रदेश) व भारत सरकार के बीच दिनांक 7 मई, 1949 को एक विलेख निष्पादित हुआ जिसमें उभयपक्षों के बीच सहमति हुई कि Khasgi properties and the income from Khasgi shall lapse for all times to the Madhya Bharat Government and in lieu thereof the Madhya Bharat Government shall in perpetuity set aside annually from its revenue a sum of Rs.2,91,952/- (Rupees two lakhs, ninety one thousand, nine hundred an fifty two only), With effect from 16-6-1948 for expending on charities and religious endowment provided in the budget of the Holkar State for 1947-48 inclusive of charities founded by Her Highness Maharani Devi Ahilya

Bai Holkar AND FURTHER that the said sum of Rs.2,91,952/- (RUPEES TWO LACS NINETY ONE THOUSAND NINE HUNDRED FIFTY TWO only) Shall be Funded And put under a permanent Trust constituted in the manner hereinafter specified, for the maintenance upkeep and preservation of the said charities and religious endowments. इससे यह तात्पर्य निकलता है कि 7 मई 1949 के पश्चात खासगी प्रापर्टीज के रूप में अंकित समस्त सम्पत्ति व उससे होने वाली आय मध्य भारत सरकार/म0प्र0 सरकार में निहित हो गई थी और इस प्रकार यह सम्पत्ति 7 मई 1949 के पश्चात मध्य प्रदेश सरकार में निहित शासकीय व सार्वजनिक सम्पत्ति की श्रेणी में आइ गई थी। मध्य भारत सरकार/मध्यप्रदेश सरकार ने इस सम्पत्ति के maintenance upkeep व preservation के लिए रू. 2,91,952/– की एन्युटी स्वीकृत की है। स्वीकृत की गई इस धनराशि के सदुपयोग निमित्त इस ट्रस्ट का निर्माण 27 जून, 1962 को ट्रस्टडीड से किया गया तथा इस धनराशि का प्रयोग ट्रस्टीज की देख रेख में मध्यप्रदेश सरकार में निहित प्रापर्टीज के maintenance upkeep व preservation के लिये किया जाना निर्धारित है।

अतः यह तथ्य स्पष्ट है कि प्रश्नाधीन सभी संपत्तियां राज्य शासन में निहित है। कोवनेंट 1949 एवं प्रथम ट्रस्टीडीड 1962 में यही लिखित है कि खासगी सम्पत्तियों का संधारण करना ट्रस्ट का दायित्व है लेकिन ट्रस्ट को सम्पत्तियों के विक्रय का अधिकार कतई उद्भूत नही होता है। पश्चातवर्ती पूरक डीड 1972 में ट्रस्ट द्वारा शासन की पूर्वानुमति के बिना ट्रस्ट सम्पत्ति के विक्रय का अधिकार प्राप्त करने की अनाधिकृत चेष्टा की गई है जो कि अवैधानिक है।

खासगी देवी अहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर की न्यासडीड अनुसार राज्य शासन में विलयित अचल सम्पत्तियां पूरे भारत वर्ष के अलग–अलग प्रदेशों में स्थित है। अचल सम्पत्तियां का अवैधानिक रूप से अंतरण रोकने के उद्देश्य से उक्त अचल सम्पत्तियों का इंद्राज राजस्व अभिलेखों में मध्य प्रदेश राज्य शासन के भूमि स्वामी स्वत्व पर अंकित किया जाना आवश्यक है।

अतः राज्य शासन की सम्पत्ति का अवैधानिक अंतरण पर रोक लगाने के दृष्टिकोण से आदेशित किया जाता है कि न्यास को मात्र व्यवस्था के लिए सौंपी गई समस्त अचल सम्पत्तियों पर राज्य शासन का भूमि स्वामी स्वत्व भू अभिलेखों के भूमि स्वामी स्वत्व के रूप में अंकित किया जावें एवं स्पष्टतः अहस्तांतरणीय लिखा जायें। चूंकि भारत के अन्य प्रदेशों में भी उल्लेखित राज्य शासन की संबंधित अनेक सम्पत्ति है। अतः उन प्रदेशों के संबंधित कलेक्टर को आदेश की प्रति क्रियान्वयन हेतु भेजी जावें।

इन्दौर जिले के संबंधित सभी अनुविभागीय अधिकारी, इंदौर एवं

तहसीलदार एवं आयुक्त नगर पालिक निगम, इंदौर निर्देशानुसार इंद्राज कराकर तत्काल पालन कराया जाकर पालन प्रतिवेदन इस न्यायालय में तत्काल भेजें ।

कलेक्टर''

न्यायालय पंजीयक, लोक न्यास, जिला इन्दौर, म0प्र0
कोर्ट रूम नं0 216 प्रशासनिक संकुल, जिला कलेक्टर
कार्यालय, इन्दौर

क्रमाक /लोक न्यास/2012 इन्दौर,दिनांक 30/11/2012

प्रति,

सयुक्त संचालक
कोष एवं लेखा,
इन्दौर, म.प्र

विषयः– खासगी देवी आहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर का विशेष अंकेक्षण करने बाबद।

खासगी देवी आहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर को म0प्र0 राज्य शासन द्वारा न्यास की सम्पत्ति के रख–रखाव हेतु राशि रू 2,91,952/– प्रतिवर्ष प्रदान की जा रही है। न्यास द्वारा देश के विभिन्न स्थलों पर स्थिति मंदिर, देवालय, धर्मशालाओं, घाट एवं अन्य सम्पत्तियों के रख रखाव से प्राप्त आय एवं व्यय का सुव्यवस्थित अंकक्षण किया जाना है। शासन नियंत्रित होने के कारण आपकों न्यास का विशेष अंकेक्षक नियुक्ति किया जाता है। अतः आप दो माह की अवधि में न्यास के आय–व्यय एवं प्राप्ति–भुगतान तथा अन्य वित्तीय स्थितियों का अंकेक्षण न्यास गठन से वर्ष 2011–12 तक सुनिश्चित कर अंकक्षण प्रतिवेदन मय आय–व्यय पत्रक के इस कार्यालय को अवगत कराना सुनिश्चित करें।

पंजीयक
लोक न्यास, इन्दौर, म.प्र.

क्रमांक 623/लोक न्यास/2012 इन्दौर, दिनांक
30/1122012

112. In the considered opinion of this Court, as the properties in question are exclusively the properties of the State of Madhya Pradesh, the trustees have got no right to dispose of Kusha Ghat properties. The learned Single Judge has allowed both the writ petitions by a common order and has held that all previous transactions done by the Trust will not be looked into. This Court really fails to understand as to how the stamp of approval has been accorded by the learned Single Judge in respect of transfer of properties of the State of Madhya Pradesh by the Khasgi Trust. The learned Single Judge could not have preempted the State of

Madhya Pradesh from taking action in the matter in respect of the properties over which the State of Madhya Pradesh is having exclusive title. The judgment delivered by the learned Single Judge reflects that the learned Single Judge has drafted a new trust deed altogether and he has gone to the extent in setting aside the orders passed by the Collector and Registrar, Public Trust.

113. The order passed by the Collector reflects that the Collector was justified in passing an order to protect the interest of the State of Madhya Pradesh as the Trust was on a selling spree of the Trust properties for peanuts without there being any authority to sell the Trust properties. Various technical grounds have been raised by the learned senior counsel arguing the matter in respect of power and jurisdiction of the Collector.

114. This Court will not enter into technicalities especially when it is crystal clear that it is the State of Madhya Pradesh, which is the titleholder of all Khasgi Trust properties.

115. The issue in respect of covenant signed by the Ruler (Maharaja of Holkar) was subjected to judicial scrutiny before the Hon'ble Supreme Court in the case of *The State of Madhya Pradesh v/s Usha Devi* reported in (2015) 8 SCC 672 and paragraphs - 24 to 40 of the aforesaid judgment reads as under :-

> 24. Before adverting to the various arguments advanced by the learned counsel on both side and the findings recorded by the Courts below, we would deem it appropriate to extract Article 363 of the Constitution of India, which reads as under:
>
> > 363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.: (1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, Covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, Covenant, engagement, sanad or other similar instrument.

A plain reading of Clause (1) of Article 363 emphatically gives the impression that no Court in this country, including this Court shall have jurisdiction to deal with any dispute arising out of treaties, agreements etc., entered into between the Rulers of erstwhile Indian States and the Government of India.

25. Coming to the facts of the present case, on 16-06-1948 through the Covenant that is exhibit P-79 Maharaja of Holkar along with other Princely States agreed to merge with the dominion of India. According to Article 12 of the Covenant, the Ruler can enjoy the rights over his personal properties which are included in the Covenant for which purpose a list of his personal properties was required to be submitted to the Government. The said Article reads thus:

> (1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh.
>
> (2) He shall furnish to the Raj Pramukh before the first day of August, 1948 an inventory of all immovable properties, securities and cash balance held by him as such private property.
>
> (3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned.
>
> ...No such dispute shall be referable after the first day of July, 1949.

26. As per article 12 (2) of the Covenant, the Maharaja of Holkar has furnished the details of the properties under different Heads. He furnished the details under the Heads as immovable properties comprising of the properties inside the State, outside the State, miscellaneous and at clause 14

> "certain properties under the administrative control of the Household Department of the Holkar State except such of the afore mentioned

> property with the Household Department as had already been transferred to the two guest houses at Indore viz the ones situated in the building which was known as the Indore hostel and the other in Rajender Bhavan on the Bombay-Agra road".

27. The Suit scheduled properties which are in possession of the plaintiff finds no mention in the entire list of properties, but the plaintiff derives his title to the property from Clause 14 of the list of properties which speaks about all properties under the control of the Household Department. The plaintiff to substantiate her case that the Suit schedule properties are private properties is relying upon clause 14 of the list of properties, the taxes paid by her and her father in respect of these properties, the communication dated 07-05-1948 and letter dated 30-01- 1956 wherein the Suit scheduled properties were retransferred to the Household Department. Though lot of evidence was adduced on behalf of the plaintiff about paying taxes to substantiate her case that the Suit scheduled properties are the private properties of the Ruler, the core issue that requires to be adjudicated is whether it is the personal property of the Ruler or the property was belonging to the State. To give any finding with regard to the ownership of the property invariably we have to look at the Covenant for the reason the Covenant is the source of title for the plaintiff. At any stretch of imagination, we cannot agree with the finding of the appellate Court that the right of the plaintiff is a pre- existing right. By all means the right of the plaintiff flows from the Covenant by virtue of which the plaintiff claims title over these properties, which according to her are declared as private properties of the Ruler.

28. A bare perusal of Article 363 and the relief sought by the plaintiff in the Suit in unequivocal terms attracts the bar contained in Article 363of the Constitution of India. The Court below distinguished the judgment in Draupadi Devi's case that it is not applicable to the facts of the present case. We are of the considered opinion that the rule of law laid down in that case applies to the case on hand. This Court in the case of Draupadi Devi held:

> 44. "... ... The Covenant is a political document resulting from an act of State. Once the Government of India decides to take over all the properties of the Ruler, except the properties which it recognises as private properties, there is no question of implied recognition of any property as private property.

> On the other hand, this clause of the Covenant merely means that, if the Ruler of the Covenanting State claimed property to be his private property and the Government of India did not agree, it was open to the Ruler to have this issue decided in the manner contemplated by clause (3). Clause (3) of Article XII does not mean that the Government was obliged to refer to the dispute upon its failure to recognise it as private property. Secondly, the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out of the terms of the Covenant and, therefore, not adjudicable by municipal courts as being beyond the jurisdiction of the municipal courts by reason of Article 363 of the Constitution".

29. The above ratio laid down by this Court makes one to understand that prior to Covenant, the ownership of all the properties remain vested with the Ruler, but once the Covenant is entered into, the Government takes over all the properties except those which the Government recognises as private properties of the Ruler. This court had categorically held that there cannot be any implied recognition of the property as private property at any later stages when an opportunity had already been granted to raise this issue in terms of clause (3) of Article 12 before defined period. In the case on hand also, similar clause existed where a dispute to recognise a property as private property could be raised only before 1st July, 1949. A dispute whether a property was recognised as private property or not was held to be a dispute arising out of the terms of Covenant, thereby barring the Courts to adjudicate the same in view of Article 363 of Constitution.

30. Also in Madhav Rao Jivaji Rao Scindia (supra), this Court while interpreting Article 363 of the Constitution, observed that a dispute relating to the enforcement, interpretation or breach of any treaty etc., is barred from the Courts' jurisdiction. The bar comes into play only when the dispute is arising out of the provisions of a treaty, Covenant etc., as in the present case. This Court held that Article 363 has two parts. The first part relates to disputes arising out of Agreements and Covenants etc. The jurisdiction of this Court as well as of other Courts is clearly barred in respect of disputes falling within that part. Then comes the second part of Article 363 which refers to disputes in respect of any right accruing under or any liability or obligation arising

out of any of the provisions of the Constitution relating to any agreement, Covenant etc. It was specifically mentioned that right as mentioned in Article 363 signifies property.

31. In yet another case, Karan Singh (Dr.) vs. State of J&K, (2004) 5 SCC 698, while examining the applicability of Article 363 of the Constitution to the disputes arising out of a treaty, Covenant etc., this Court observed that all Courts including the Supreme Court is barred to determine any right arising out of a Covenant . The correspondence exchanged between the Ruler and the Government would amount to agreement within the meaning of Article 363.

32. In view of our above discussion and as settled by this Court in the above judgments, Covenant was an act of State and any dispute arising out of its terms cannot form the subject matter in any Court including the Supreme Court, and there cannot be any implied recognition of the property as private property at any later stages when an opportunity had already been granted to raise issue in terms of clause 3 of Article 12 before defined period; above all, the properties do not find place in the Covenant. The plaintiff is trying to interpret the Covenant that all properties which are in the custody of the Household Department are the personal properties of the Ruler. We feel that such interpretation and implied recognition is impermissible as held by this Court in Draupadi Devi. Hence the Court below erred in entertaining the Suit without properly taking into consideration the judgments and the proposition of law laid down by this Court in catena of cases. Hence we are of the view that the relief in the Suit falls within the ambit of Article 363 of the Constitution of India and the Suit is not maintainable. Accordingly first issue is answered in favour of the appellant/State and against respondent/plaintiff.

33. Once we have given our finding on the maintainability of the Suit, we need not to go into the other issues. But in view of the alternative argument advanced by the counsel, we are of the view that we should throw some light on those issues. It is the finding of the Trial Court that the lands were retransferred to the Holkar State in the year 1951, and re- transferring is without any authority and it is bad. The Trial Court held that though it is the specific case of the plaintiff that they are paying Tauzi, there is no evidence to show that they have paid Tauzi prior to 1951 and the correspondence of the plaintiff and her father shows that the Suit scheduled properties were not included in item no 14 of the list of properties and further held that Suit scheduled properties

were allotted to the Forest Department. First coming to the issue of transfer of land to Forest Department, it is settled law that parties are governed by their pleadings and the burden lies on the person who pleads to prove and further plaintiff has to succeed basing on the strengths of his case and cannot depend upon the weakness of the defendant's case. The State having alleged several things, has failed to mark any document to show that the properties were transferred to the Forest Department and the retransfer in the year 1951 was without any authority of law. Though the State has filed certain documents before us, but as they are not part of the evidence, we are not inclined to look at those documents.

34. The appellant State as defendant in the Suit has marked two documents. While remanding the appeals preferred by the defendant and the plaintiff, the appellate Court gave a categorical finding that the Trial Court should not permit any of the parties to adduce further evidence. The remand order of the appellate Court was not questioned by the State. After the remand, the Suit was dismissed by the Trial Court wherein a finding was recorded that no evidence is produced before the Court to show that the property was transferred to the Forest Department. This finding has become final as no cross appeal is preferred by the appellant/State. Hence we are not inclined to look into these documents.

35. The plaintiff by marking the voluminous documentary evidence and by examining PW 5 and PW 7 established that they were in continuous possession of property till 1960, except for a short period when the Suit scheduled properties were given to the Army Department. Tauzi was also paid by Maharaja and later by the plaintiff. The finding of the Trial Court in this regard that the plaintiff has failed to adduce any evidence to show that Tauzi was paid prior to 1951, is contrary to the material on record. In spite of all these factors that the Maharaja and the plaintiff were in continuous possession of property and paid Tauzi for the properties, however long the plaintiff's possession may be and paying of the taxes will not give her any right seeking declaration of ownership when these properties are part of a Covenant and calls for an interpretation of the Covenant. In addition to this, the plaintiff wrote a letter to the Additional Chief Secretary, Government General, Administrative Department, Bhopal, dated 1st October 1962, wherein she requested for a declaration of the Suit scheduled properties as the private properties as declared by the Maharaja of Holkar which clearly shows that the whole cause of action and the

reliefs sought for in the Suit are based on the Covenant and the rights flown from the Covenant.

36. We are not inclined to go into the discussion whether the re-transfer of land is without authority or not, whether these properties are under the control of Household Department as it amounts to deciding the dispute arising out of the Covenant, which is barred under Article 363 of the Constitution of India. Even assuming for a minute that these properties are under the control of the Household Department, still the plaintiff cannot succeed for the reason that Maharaja of Holkar in the list of properties furnished has failed to mention these properties specifically, and interpretation of Covenant is not permissible as per settled law.

37. The other finding which we are not able to accept is that the Maharaja is the owner as well as the tenant of the property. All the rights whichever pleaded by the plaintiff are the rights flown only from the Covenant. As provided under clause 12(1) of Covenant, admittedly by the letter dated 29-9-1962 the respondent/plaintiff claimed the title by way of Covenant and not by any such tenancy rights. Hence, the respondent plaintiff cannot claim any right of tenancy over the Suit schedule properties and such plea is misconceived and she is estopped from raising such a plea.

38. Now we would like to deal with the other issue i.e., applicability of Section 158(2) of the Madhya Pradesh Land Revenue Code, 1959. The said Section came into force with retrospective effect from October 2, 1959 and reads thus:

> 158(2): A Ruler of an Indian State forming part of the State of Madhya Pradesh who at the time of coming into force of this Code, was holding land or was entitled to hold land as such Ruler by virtue of the Covenant or agreement entered into by him before the commencement of the Constitution, shall, as from the date of coming into force of this Code, be a Bhumiswami of such land under the Code and shall be subject to all the rights and liabilities conferred and imposed upon a Bhumiswami by or under this Code.
>
> As per Section 158(2) in order to confer the rights of Bhumiswami a Ruler should be holding land or he should have been entitled to

> hold land as such Ruler by virtue of a Covenant or agreement entered into by him.
>
> 39. The plaintiff/respondent cannot seek the status of Bhumiswami independent of the Covenant because the rights under Section 158(2) arise out of the Covenant itself. The source to hold the land arises by virtue of a Covenant. When the right so claimed by way of Covenant is disputed and the relief of settling these disputes is barred under Article 363 of the Constitution, in our considered view, one cannot claim to be "Bhumiswami" under Section 158(2) of the Madhya Pradesh Land Revenue Code, independent of the Covenant. Accordingly, this issue is held in favour of appellant/State and against the respondent/plaintiff. Hence we are of the considered opinion that the Suit filed by the plaintiff for declaration and injunction is barred under Article 363 of the Constitution of India and the plaintiff is not entitled for any relief under Section 158(2) of the Madhya Pradesh Land Revenue Code claiming the rights of Bhumiswami.
>
> 40. For all the foregoing reasons, we allow these appeals by setting adie the impugned judgments of the High Court and consequently the suit is dismissed. However, there shall be no order as to consts."

In light of the aforesaid judgment delivered by the Hon'ble Supreme Court, it is crystal clear that as per the stipulation in the covenant concerned falling under Article 326, Ruler (Maharaja Holkar) furnished specific entries of immovable properties falling under administrative control of household department of Holkar State. The property, which was not included in that inventory and which also did not form part of the private property of the Ruler, vested in the State Government and after merger, keeping in view Article 363, the Ruler cannot file a civil suit or even approach this Court claiming title of the property that it was the property not included in the personal property of the Ruler, there cannot be any claim of implied recognition of private property of Ruler at a later stage.

116. In the present case also, the Trust's properties are certainly not at all private properties of the Ruler, the property is vested in the State of Madhya Pradesh and it is the State of Madhya Pradesh, which is the titleholder of the properties and by no stretch of imagination, the learned Single Judge could have decided the writ petition there being a specific bar under Article 363 of the Constitution of India.

117. Undisputedly, the title in respect of Khasgi properties lies with the State of Madhya Pradesh and once the State of Madhya Pradesh is the titleholder, the learned Single Judge has erred in law and facts in delivering the judgment and

quashing the order of the Collector by which he has simply directed the authorities to enter the name of State of Madhya Pradesh in the revenue record in respect of Khasgi Trust properties. Illegal sales could not have been ignored by the learned Single Judge as he has observed that transfer prior to the judgment will not be looked into.

118. This Court has carefully gone through the judgment relied upon by learned counsel for the parties in depth. The property in question on account of covenant signed at the time of merger was certainly not at all private properties of Maharaja. Undisputedly, the property vested in the State of Madhya Bharat and after enactment of Madhya Pradash Reorganization Act and creation of Madhya Pradesh being the successor State, the property vested in the State of Madhya Pradesh. The Collector has not at all decided the issue of title. The Collector by an order dated 05.11.2012, as the property was the exclusive property of the State of Madhya Pradesh, has passed an order in respect of property of the State of Madhya Pradesh. The Trust, in case, it was claiming title of the property in question, should have file the civil suit or should have availed any other remedy available under the law. The property, as per the covenant after creation of Madhya Bharat State and State of Madhya Pradesh, became the property of the State Government, and therefore, the question of granting an opportunity of hearing to the trustees does not arise. The record reveals that a proper notice was issued and the Trust did file a reply before the Collector in the matter, hence, violation of principles of natural justice does not arise.

119. It has been vehemently argued that the Chief Secretary of the State of Madhya Pradesh has written a letter dated 13.06.1969 permitting the Trust to go ahead with the sale of the property, and therefore, the State Government is estopped from taking a contrary stand in the matter that there was no permission of the State in respect of sale of the property.

120. The letter dated 13.06.1969 was merely a D.O. letter and had no legal sanctity as such. From a bare perusal of the subject document it is apparent that on top right hand side corner the serial number has been mentioned as, 'DO No. 193/CS/69'. The format of the letter is also unmistakably that of a DO Letter. Moreover, the subject letter nowhere mentions that the government has accorded sanction for transfer of the Trust Property. The relevant portion of the letter states that- "***.....the question of according any sanction for the intended transfer by sale of any item of Trust Property does not arise."*** A careful examination of the aforesaid content suggests that Shri M P Shrivastava clearly mentioned that there was no question of according sanction for transfer of Trust Property.

121. Shri M P Shrivastava had no authority to give sanction for alienation of government property. The property of government could not be given away by a DO letter without a cabinet decision. Furthermore, Shri M.P Shrivastava was one

of the trustees, thus he was not in a position to accord any sanction to the Trust on behalf of the State Government.

122. As per the Rules of Business of the Executive Government of Madhya Pradesh, framed in exercise of the powers under clauses (2) and (3) of Article 166 of the Constitution of India, proposals involving the alienation either temporary or permanent, by way of sale, grant or lease of Government property exceeding Rs. 10 lac in value shall have to be placed before the Council of Ministers and dealt with only in accordance with the procedure laid down in supplementary instruction 18 under rule 13. No such procedure was ever followed for alienation of the property. Obviously the subject letter does not amount to a sanction of the Council of Ministers as mentioned above. Relevant portion of the rules is reproduced below:

> "The following cases shall be brought before the Council, subject to the proviso that if the Chief Minister considers any case to be so urgent as to necessitate the immediate issue of orders, he may direct the issue of orders at once, and when orders have been issued, the papers shall, without avoidable delay, be circulated and brought, before a meeting of the Council in accordance with the procedure laid down in supplementary instruction 18 under rule 13:-
>
> (i)...
>
> (ii)...
>
> (vi)(a) Proposals involving alienation either temporary or permanent, by way of sale, grant or lease of Government property exceeding Rs. 10 lac in value, but such cases shall not be Council cases if such alienation is by way of auction or under the normal rules of Government of under any scheme approved by Government."

123. The subject letter was not issued by or in the name of the Governor of Madhya Pradesh. The decision to accord sanction to alienate government property is a policy decision which needs to be taken by the government and the same cannot be replaced by a DO Letter of an officer of the State Government.

124. The subject letter refers to the opinion of the law department however the same was not on record and there is no mention regarding the content of such opinion.

125. This aspect has been pleaded in para No. 04 of the grounds in the appeal memo by the appellant. The effect of the subject letter was also mentioned in the

synopsis dated 01.09.2020 submitted by the appellants before this Hon'ble Court on 05.09.2020.

126. More so, the orders of the State Govt. are always issued in the name and on behalf of Hon'ble Governor it is the statutory requirement Under Article 166(i) of the Constitution of India and unless the order is issued in the name and on behalf of the Hon'ble Governor it cannot be considered to be the decision of a State Govt. Following are the citations :

Jaipur Development Authority Vs. Vijay Kumar Data -(2011) 12 SCC 1994 :-

"49. It is trite to say that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be (Articles 77(1) and 166(1). Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in such manner as may be specified in the rules to be made by the President or the Governor, as the case may be (Articles 77(2) and 166(2).

53. It is us clear that unless an order is expressed is the name of the President or the Governor and is authenticated is the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. A reading of the Letter dated 6.12.2001 shows that it was neither expressed in the name of the Governor nor was it authenticated in the manner prescribed by the rules. That letter merely speaks of the discussion made by the Committee and the decision taken by it. By no stretch of imagination the same can be treated as a policy decision of the Government within the meaning of Article 166 of the Constitution."

In the case of Lallaram Vs. Jaipur Development Authority - (2016) 11 SCC 31 :-

"It has been observed that the compliance of article 166 is directory in nature meaning that if substantial compliance is present than the order issued would not be a nullity. However, in the present case the file has not being sent to the concerning Minister nor to the Governor and thus even substantial compliance is not there."

In light of the aforesaid, by no stretch of imagination, it can be said that letter dated 13.06.1969 is the permission granted by the State Government or it was a decision communicated by the State Government.

127. The so called letter dated 13.06.1969 is a D.O. letter and any decision as per the Business Allocation Rules of the State of Madhya Pradesh in respect of a sale of property has to be issued in the name of the Governor of the State of Madhya Pradesh. The Chief, Secretary is nobody to write a letter in respect of property of the State of Madhya Pradesh as has been done in the present case.

128. Another shocking aspect of the case is that the then Chief Secretary was also one of the trustees and he has acted as a Judge in his own cause, and therefore, the arguments canvassed by learned counsel for the Trust and the trustees do not help them in any manner.

129. The facts of the case make it very clear that the properties, though managed by the Trust, had in fact vested in the State Government upon merger and do not form part of property settled with the outgoing proprietor / Holkar State, and therefore, as the property was the property of the State of Mahdya Pradesh it was a public trust, permission should have been obtained from the Registrar, Public Trust while disposing of the property or from the State of Madhya Pradesh.

130. So far as opportunity of hearing to Union of India is concerned, Shri Manoj Manav, learned counsel has appeared in the matter and has argued at length stating categorically that the property exclusively belongs to State of Madhya Pradesh and does not belong to the Ruler or to the Trust. He has stated that the Trust was constituted only to manage the affairs of the Trust and the Trust, at no point of time, was the titleholder of the property. He has stated that the State Government was justified in taking action in the matter and same has been done in accordance with law.

131. In the case of *Chairman Madappa* (supra), it has certainly been held that power to manage Trust properties inherently includes the power to sale only in case the properties are sold for the objective of the Trust.

132. In the present case, the properties have not been sold for objective of the Trust, they have sold with an oblique and ulterior motive. In case, there was insufficiency of fund in managing the affairs of the Trust, in all fairness, a request should have been made to the State of Madhya Pradesh to provide grant or the Trust should have approach this Court or should have availed other remedy for issuance of a direction to the State of Madhya Pradesh to provide funds. The inaction on the part of the Trust in respect of the aforesaid issue speaks volume about the conduct of the trustees and about their oblique and ulterior motive.

133. Much has been argued in respect of so called permission of the State Government to proceed ahead with the sale of the properties i.e., letter dated 13.06.1969 of the Chief Secretary as well as the subsequent amendment in the trust deed which provides for a clause to sell the property.

134. In the present case a fraud has taken place and the note-sheet of the Chief Secretary has not no value [see: *The State of Bihar v/s Kripalu Shankar* reported in AIR 1987 SC 1554].

It is a settled proposition of law that fraud vitiates everything [see: (1991) 1 SCC 354, AIR 1994 SC 853 & (1996) 5 SCC 550].

Fraud vitiates every solemn proceedings and no right can be claimed by a fraudster on the ground of technicalities [see: (2012) 11 SCC 574, (2018) 1 SCC 656 & (2019) 14 SCC 449].

135. This Court has not reproduced the law laid down in the aforesaid cases, however, is reproducing certain paragraphs only in respect of the last judgment on the subject delivered in the case of *Satluj Jal Vidyut Nigam v/s Taj Kumar Rajinder Singh* reported in (2019) 14 SCC 449. Paragraphs - 65 to 81 of the aforesaid judgment read as under:-

> 65. The question in the instant case is as to whether an incumbent can be permitted to play blatant fraud time and again and court has to be silent spectator under the guise of label of the various legal proceedings at different stages by taking different untenable stands whether compensation can be claimed several times as done in the instant case and its effect. Before the land acquisition had been commenced in 1987, the land more than 1000 bighas had been declared a surplus in ceiling case and compensation collected, which indeed disputed land at Jhakari, it would be a perpetuating fraud in case such a person is permitted to claim compensation for same very land. Fraud vitiates the solemn proceedings; such plea can be set up even in collateral proceedings. The label on the petition is not much material and this Court has already permitted the plea of fraud to be raised. Moreover, Appeal arising out of 72 awards is still pending in the High Court in which Reference Court has declined compensation on the aforesaid ground.
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> 66. Reliance has also been placed on the observations made in *Meher Rusi Dalal v. Union of India,* (2004) 7 SCC 362, in which this Court has dealt with the issue of apportionment of compensation for which claim was raised by the Union of India, not in the capacity of the owner but as a protected tenant. The claim of tenancy was not put forth before the LAO, though represented in the acquisition proceedings. This

Court observed that in such a case it could reasonably be inferred that no right was being claimed and it ought to have been made before the LAO if it had any such claim in respect of preexisting right. The LAO was not under a duty to make an enquiry. The claim of tenancy at the belated stage was an afterthought to frustrate the payment. The decision has no application to the instant case as the LAO in the awards passed, noted the factum of ceiling proceedings as such the effects of the same can always be considered.

67. In *Ahad Brothers v. State of M.P.,* (2005) 1 SCC 545, this Court observed that question of the title of the State over the acquired land, cannot be decided under Section 18 of Land Acquisition Act, 1894. This Court considered that when an award has been passed and the appellant was recorded as owner in the revenue papers, he was entitled to receive compensation. There is no dispute in the aforesaid proposition, however, in the instant case facts are different and a person cannot be permitted to receive the compensation of vested land in State under the Abolition Act and when the land had been declared surplus and compensation paid on wrong entry continued. The same wrong entry could not have been permitted to be utilised for award of compensation to a person under the LA Act. In the instant case, there had been earlier proceedings which makes it clear that Rajinder Singh was not entitled to claim compensation under the LA Act. It is apparent that there was no subsisting right, title or interest left with Rajinder Singh or his LRs., thus, they could not be permitted to obtain the compensation.

68. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of appellants, reliance has been placed on the definition of fraud as defined in the Black's Law Dictionary, which is as under:

> "Fraud means: (1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime. (2) A misrepresentation made recklessly without belief in its truth to induce another person to act. (3) A tort arising from a knowing misrepresentation, concealment of material fact, or reckless

> misrepresentation made to induce another to act to his or her detriment. (4) Unconscionable dealing; esp., in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."

69. Halsbury' s Law of England has defined fraud as follows:

> "Whenever a person makes a false statement which he does not actually and honestly believe to be true, for purpose of civil liability, the statement is as fraudulent as if he had stated that which he did know to be true, or know or believed to be false. Proof of absence of actual and honest belief is all that is necessary to satisfy the requirement of the law, whether the representation has been made recklessly or deliberately, indifference or reckless on the part of the representor as the truth or falsity of the representation affords merely an instance of absence of such a belief."

70. In KERR on the Law of Fraud and Mistake, fraud has been defined thus:

> "It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood by Civil Courts of Justice. The Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. Fraud is infinite in variety... Courts have always declined to define it, ... reserving to themselves the liberty to deal with it under whatever form it may present itself. Fraud ... may be said to include property all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another. Al surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of

what he is entitled too."

71. In *Ram Chandra Singh v. Savitri Devi,* (2003) 8 SCC 319, wherein it was observed that fraud vitiates every solemn act. Fraud and justice never dwell together and it cannot be perpetuated or saved by the application of any equitable doctrine including resjudicata. This Court observed as under:

> "15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud, as is wellknown, vitiates every solemn act. Fraud and justice never dwell together.
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> 16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.
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> 17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.
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> 18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.
>
> 23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception aresynonymous.
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> 25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by

the application of any equitable doctrine including resjudicata." (emphasis supplied)

72. In *Madhukar Sadbha Shivarkar v. State of Maharashtra,* (2015) 6 SCC 557, this Court observed that fraud had been played by showing the records and the orders obtained unlawfully by the declarant, would be a nullity in the eye of law though such orders have attained finality. Following observations were made:

"27. The said order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records have been destroyed and fabricated to substantiate their unjustifiable claim by playing fraud upon the Tehsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid subleases are made and they are accepted by them in the proceedings Under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sublessees Under Section 6 of the Act. The plea urged on behalf of the State Government and the defacto complainantsowners, at whose instance the orders are passed by the State Government on the alleged ground of fraud played by the declarants upon the Tehsildar and appellate authorities to get the illegal orders obtained by them to come out from the clutches of the land ceiling provisions of the Act by creating the revenue records, which is the fraudulent act on their part which unravels everything and therefore, the question of limitation under the provisions to exercise power by the State Government does not arise at all. For this purpose, the Deputy Commissioner of Pune Division was appointed as the Enquiry Officer to hold such an enquiry to enquire into the matter and submit his report for consideration of the Government to take further action in the matter. The legal contentions urged by Mr. Naphade, in justification of the impugned judgment and order prima facie at this stage, we are satisfied that the allegation of fraud in relation to getting the land holdings of the villages referred to supra by the declarants on the alleged ground of destroying original

> revenue records and fabricating revenue records to show that there are 384 subleases of the land involved in the proceedings to retain the surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of law though such orders have attained finality, if it is found in the enquiry by the Enquiry Officer that they are tainted with fraud, the same can be interfered with by the State Government and its officers to pass appropriate orders. The landowners are also aggrieved parties to agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and therefore, we accept the submission to justify the impugned judgment and order of the Division Bench of the High Court." (emphasis supplied)

73. In *Jai Narain Parasrampuria v. Pushpa Devi Saraf,* (2006) 7 SCC 756, this Court observed that fraud vitiates every solemn act. Any order or decree obtained by practicing fraud is a nullity. This Court held as under:

> "55 It is now well settled that fraud vitiated all solemn act. Any order or decree obtained by practicing fraud is a nullity. [See (1) Ram Chandra Singh v. Savitri Devi and Ors., (2003) 8 SCC 319 followed in (2) Vice Chairman, Kendriya Vidyalaya Sangathan, and Anr. v. Girdhari Lal Yadav, (2004) 6 SCC 325; (3) State of A.P. and Anr. v. T. Suryachandra Rao, (2005) 6 SCC 149; (4) Ishwar Dutt v. Land Acquisition Collector and Anr., (2005) 7 SCC 190; (5) Lillykutty v. Scrutiny Committee, SC & ST Ors., (2005) 8 SCC 283; (6) Chief Engineer, M.S.E.B. and Anr. v. Suresh Raghunath Bhokare, (2005) 10 SCC 465; (7) Smt. Satya v. Shri Teja Singh, (1975) 1 SCC 120; (8) Mahboob Sahab v. Sayed Ismail, (1995) 3 SCC 693; and (9) Asharfi Lal v. Koili, (1995) 4 SCC 163.]" (emphasis supplied)

74. In *State of A.P. v. T. Suryachandra Rao,* (2005) 6 SCC 149, it was observed that where land which was offered for surrender had already been acquired by the State and the same had vested in it. It was held that merely because an enquiry was made, the Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud. Following observations were made:

"7. The order of the High Court is clearly erroneous. There is no dispute that the land which was offered for surrender by the respondent had already been acquired by the State and the same had vested in it. This was clearly a case of fraud. Merely because an enquiry was made, Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud.

8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit, and injury to the person deceived. The injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a noneconomic or nonpecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See Dr. Vimla v. Delhi Administration, 1963 Supp (2) SCR 585 and Indian Bank v. Satyam Febres (India) Pvt. Ltd., (1996) 5 SCC 550] 9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu v. Jagannath, (1994) 1 SCC 1.) 10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the

motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors., (2003) 8 SCC 319.)

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13. This aspect of the matter has been considered recently by this Court in Roshan Deen v. Preeti Lal, (2002) 1 SCC 100, Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education, (2003) 8 SCC 311, Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319 and Ashok Leyland Ltd. v. State of T.N. and Anr., (2004) 3 SCC 1.

14. Suppression of a material document would also amount to a fraud on the court, (see Gowrishankar v. Joshi Amba Shankar 54 Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1).

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud it can be evidence of fraud; as observed in Ram Preeti Yadav, (2003) 8 SCC 311.

16. In Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702, Lord Denning observed at pages 712 & 713: (All ER p. 345C) "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment, Lord Parker LJ observed that fraud "vitiates all transactions known to the law of however high a degree of solemnity". (emphasis supplied)

75. In *A.V. Papayya Sastry v. Govt. of A.P.*, (2007) 4 SCC 221,

this Court as to the effect of fraud on the judgment or order observed thus:

> 19. Now, it is wellsettled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; Fraud avoids all judicial acts, ecclesiastical or temporal.
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> 22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and nonest in the eye of law. Such a judgment, decree or order by the first Court or by the final Cour thas to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal,revision, writ or even in collateral proceedings.
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> 38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order. 39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is nonexistent and nonest and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final

court. And it has to be treated as nonest by every Court, superior or inferior.

Supervisory jurisdiction of the court can be exercised in case of error apparent on the face of the record, abuse of process and if the issue goes to the root of the matter.

76. In *S.P. Chengalvaraya Naidu v. Jagannath,* (1994) 1 SCC 1, this Court noted that the issue of fraud goes to the root of the matter and it exercised powers under Article 136 to cure the defect. The Court observed:

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether, in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court must come with clean hands. We are constrained to say that more often than not, the process of the court is being abused. Propertygrabbers, axevaders, bankloandodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegalgains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B1S) in favour of Chunilal Sowcar regarding

> the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Nonproduction and even nonmentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellantsdefendants could have easily produced the certified registered copy of Exhibit B15 and nonsuited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

77. In *K.K. Modi v. K.N. Modi,* (1998) 3 SCC 573, it was observed that one of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him.

78. Learned counsel for the respondent has placed reliance on the decision rendered in *Ujjagar Singh v. Collector, Bhatinda,* (1996) 5 SCC 14, wherein this Court examined the effect of coming into force of Punjab Land Reforms Act, 1972 and vesting of the surplus area in the State. In this case, the area in possession of landlord was declared surplus under the Pepsu Act, but possession had not been taken by the State. It was held that area did not vest finally as the surplus area under the Pepsu Act, owing to coming into force of the new Act, the ceiling area must be determined afresh under the new Punjab Act. In the instant case, the order was passed in ceiling matter in the year 1980 and the adjudication order of Collector (Ceiling) was not questioned nor the order of remand to declare land as surplus and then the additional land was declared surplus in 1993. It was not the case of reopening of the case. In fact, the land has vested in the State under the Abolition Act. Thereafter, compensation has been obtained, obviously once land has vested in the State, the possession of such land/open land is deemed to be that of the owner. In any view of the matter, in the facts and circumstances of the instant case, compensation could not have been claimed.

79. In *State of H.P. v. Harnama,* (2004) 13 SCC 534, this Court

> observed that possession of land was not taken and the tenant was in occupation of the land and had acquired ownership rights before the land was declared surplus as against the landlord. It was further observed that the land in question had been notified as surplus and the fact that the original owner of the land had been paid compensation, would be of no avail to the State if before the date of 58 actual vesting nonoccupant tenant in possession of the land had acquired ownership rights. It is totally distinguishable and cannot be applied to the instant case.
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> 80. Learned counsel on behalf of the respondent has referred to the decision rendered in *Madan Kishore v. Major Sudhir Sewal,* (2008) 8 SCC 744, wherein question arose with respect to entitlement of subtenant to apply under Section 27(4). It was held that the expression in Section 27(4), such tenant who cultivates such land, does not entitle a subtenant either to claim proprietary rights or apply for the same under Section 27(4). It was held that he was not a subtenant. The decision is of no help to the cause espoused on behalf of LRs. of Rajinder Singh. In the peculiar facts projected in the case the principle fraud vitiates is clearly applicable it cannot be ignored and overlooked under the guise of the scope of proceedings under Section 18/30 of the LA Act.
>
> 81. In the peculiar facts projected in the case the principle fraud vitiates is clearly applicable it cannot be ignored and overlooked under the guise of the scope of proceedings under Section 18/30 of the LA Act.

In light of the aforesaid judgment, as fraud vitiates everything and in the present case, trustees have played a fraud upon the State Government, the sale deeds executed by the Trust in respect of the properties of the State Government are null and void and stands vitiated. Hence, the Collector was justified in passing the impugned order and the Registrar, Public Trust was also justified in passing the impugned order.

136. In the humble opinion of this Court, as the property in question was not the property of the Maharaja, Article 363 of the Constitution of India also comes into play and the learned Single Judge could not have drafted the trust deed which has been done by passing the impugned order. The petitions in fact were not at all maintainable in respect of the property which came to the share of the State Government though managed by the Trust, and therefore, the order passed by the learned Single Judge deserve to be set aside.

137. Shri S.C. Bagadia, learned senior counsel has argued before this Court in the connected writ appeal i.e., W.A. No.135/2014 that the order passed by the

Registrar, Public Trust and the Collector are bad in law and there is a process provided under the law for mutation of name of the State Government. Once this Court has arrived at a conclusion that a fraud has been played upon in the matter and the property of the State Government has been sold, the orders passed by the Collector and Registrar, Public Trust do not suffer from any perversity or illegality, hence, they do not warrant any interference by this Court.

138. Learned counsel appearing for the Trust has also drawn the attention of this Court towards the judgment delivered in the case of *Marthanda Varma* (supra). In the aforesaid case, the issue was in respect of Shebaitship and the Hon'ble Supreme Court has held that covenant signed by the covenanting state cannot be subjected to judicial scrutiny keeping in view the bar provided under Article 363 of the Constitution of India.

139. In the present case the issue involved is altogether different. The issue involved is whether the Khasgi Trust and its trustees can sell the property, which is exclusively the property of the State of Madhya Pradesh, or not ? The trustees have certainly sold the property of the State of Madhya Pradesh and they have violated the terms and conditions of the trust deed.

140. The most astonishing aspect of the case is that the learned Single Judge has virtually drafted a fresh trust deed by passing the impugned judgments. New trustees have been appointed new-new conditions have been incorporated in the trust deed and it has been held that the Trust properties will not be sold with the permission of the State Government and after holding that the Trust properties will not be without the permission of the Government it has also been observed that earlier sales will not be looked into. This itself is a contrary view and cannot be sustained. The religious and charitable trust have been established by erstwhile ruler with a very pious and noble object with an aim and object to help a common man and for the welfare of a common man.

141. Religious and charitable trusts are found to exist, in some shape or the other, in almost all the civilized countries and their origin can be traced primarily to the instincts of piety and benevolence which are implanted in human nature.

142. Religious and charitable trust means a trust created for the purposes of religion or charity. Religion is absolutely a matter of faith with individuals or communities, and it is not a necessarily theistic.

143. Religious purpose means that the purpose or object is to secure the spiritual well being of a person or persons according to the tenets of the particular religion in which he / they believe in.

144. Charity means benevolence and in its wide and popular sense it

comprehends all forms of benefit, physical, intellectual, moral, ethical or religious, bestowed upon persons who are in need of them.

145. In Halsburg's Laws of England (Halsburg, 2nd Addition (sic: Edition), Volume - 33, Page - 87), a trust has been defined as a confidence reposed in a person with respect to property of which he has possession or over which he can exercise power, to the intent that he may hold the property or exercise the power for the benefit of some other person or object.

146. Hindu Religions and Charitable acts have been from the earliest time classified under two heads, *viz., Istha* and *Purtta.* These two words are often used conjointly, and they are as old as *Rigveda.*

147. *Istha* means *Vedic* sacrifices, and rites and gifts in connection with the same; *Purtta* on the other hand means and signifies other pious and charitable acts which are unconnected with any *Strouta* or *Vedic* Sacrifice.

148. A trust has to function for the welfare of the society at large. In the ancient period wells, ponds, lakes, ghats, Dharamshala were established as public trust and performance of trust during ancient period is ensured by the following texts:-

> गणद्रव्यं हरेधस्तु संविदं लंघयेच्च यः ।
> सवस्वहरणं कृत्वा तं राष्ट्राद् विप्रवासयेत् ।।
>
> व्यवहाराध्याय 187
>
> He who steals communal wealth or violates the rules of a trust should be exiled from the country after being deprived of all wealth.
>
> (Yajnavalkya, Vyavaharadhyaya 187)

> यो ग्रामदेशसंधानां कृत्वा सत्येन संविदम् ।
> विसंवेदन्नरो लोभात्तं राष्ट्राद् विप्रवासयेत् ।। (81219)
>
> (स्मृतिचन्द्रिका संविद् व्यतिकम)
>
> He who, having truthfully undertaken a trust for the village, the country or community, violates it out of greed should be exiled from the country.
>
> (Manu, quoted in Smritichandrika, violation of undertaking)

149. To protect the public trust property various safeguards have been provided under the statutory provisions and it is the divine and pious duty of a trustee to ensure that the trust property is kept safe, intact and useful for the generations to come. In the present case, as the State of Madhya Pradesh is the titleholder of the property, it is the duty of the State to protect and preserve the property.

150. In light of the aforesaid, this Court is of the considered opinion that the orders passed by the learned Single Judge dated 28.11.2013 in W.P. No.11618/2012 and 03.12.2013 in W.P. No.5372/2010, which are contrary to the constitutional mandate, as provided under Article 363 of the Constitution of India, deserve to be quashed and are accordingly, quashed.

151. Shri Saxena, learned Senior Counsel has argued before this Court that doctrine of *Cy près* is applicable present case.

> "Doctrine of *Cy près* means "following as nearly as possible the intention of the donor."
>
> Sheridan and Delany,
> The *Cy près* Doctrine (1959)."

152. From early times the religious and charitable Institutions in the country came under the protection of the ruling authority. The *Smriti* writers make it a duty on the part of the King to uphold the customs and usages of the land unless they are contradictory to revelation; and the *Mitakshara,* in commenting upon a passage of *Yajnavalkya* relating to the enforcement of customs, expressly refers to customs in connection with management of temples [See: *Ghar Pure's Mitakshara,* P.329]. The duty of protecting endowments is one of the primary duties of the King as mentioned in *Shukraniti* and other treaties. [G. Iyer's Law of Endowments, 2nd Edition, P.23-25].

153. In the case of *Rajah Muttu Ramalinga Setupati Vs. Perinayagum Pillai*, L.R.1,1.A. 209 at 233, it was observed by the Privy Council that there could be little doubt that this Superintending authority over temples and religious endowments was exercised by the old rulers.

154. Keeping in view the doctrine of *Cy près,* earlier it was a duty of the erstwhile ruler to protect the property and after the Covenant was signed, as the property mentioned in the trust deed became absolute property of the State of Madhya Pradesh, it is the duty of the State of Madhya Pradesh to protect and preserve all religious and charitable institutions and other properties which finds place in the Trust Deed, especially in light of the fact that title lies with the State of Madhya Pradesh, keeping in view the intention of the donor who has created the charities for public at large.

155. It has been vehemently argued on behalf of the Trust and the Trustees that entire action was initiated in the matter only because the then Member of Parliament from Indore Mrs. Sumitra Mahajan wrote a letter to the Chief Minister. This Court really appreciates the concern shown by Member of Parliament in the matter. In fact she was the one who has brought it to the notice of the Government in order to save the Trust property, which includes 12000 acres of land including Temples, Ghats, Dharamshalas, Rest Houses, etc.

156. On the basis of letter written by the Member of Parliament, the Chief Secretary / Chief Minister directed an inquiry in the matter and the then Principal Secretary to the Chief Minister Mr. Manoj Kumar Shrivastava, IAS submitted a very detail and exhaustive report on 02/12/2012. The report is on record and it has been filed by Mr. Vijay Pal Singh, Intervener in Writ Petition No.135/2014. The report refers to Covenant dated 22/04/1948 and notification dated 07/05/1949 on account of which the Khasgi properties and the income from the Khasgi Trust vested in the State of Madhya Bharat. The report further reflects that the State of Madhya Pradesh came into existence w.e.f. 01/11/1956 and the Khasgi properties thereafter, vested in the State of Madhya Pradesh. This fact has also been admitted on 27/06/1962.

157. The then Principal Secretary to the Chief Minister after taking into account the Covenant and the case law on the subject has strongly recommended for preservation and protection of Khasgi properties and thereafter, action was taken by the Collector, Indore in the matter.

158. This Court is not reproducing the entire report as the Covenants, Trust Deeds and the notification issued by the Government of India have already been reproduced in earlier paragraphs. Thus, it is wrong on the part of the respondent to say that the mechanical exercise was undertaken by the Collector based upon letter of Member of Parliament. With due application of mind, the State Government through Collector, Indore keeping in view the covenant, trust deed and the statutory provisions has taken action in the matter.

159. In the considered opinion of this Court, this Court does not have the power to draft the Trust Deed nor is having the power to enact the statute in respect of trust in question. However, as the properties which are under the ownership of State of Madhya Pradesh have been sold by the Trust / Trustees, a Committee deserves to be constituted to ensure that the trust properties as per the schedule appended with the original trust deed are preserved, maintained and kept intact for the future generations to come.

160. The Committee so constituted shall inquire in respect of the properties sold by the Trust and shall take all possible steps to recover and retrieve any property or fund of the property, which have been sold or have been in unauthorized occupation or misappropriated. For doing the aforesaid task, the State of Madhya Pradesh shall incur all the expenditures, in case there is paucity of fund in the accounts of the trust, especially in light of the fact that it is the State of Madhya Pradesh, who is having title over all properties.

161. The following Committee is constituted for the aforesaid work comprising of :-

(a) Chief Secretary, State of Madhya Pradesh (Chairman);

(b) Principal Secretary, Finance Department (Member);

(c) Additional Chief Secretary, *Dharmaswa* Department (Member);

(d) Commissioner, Indore Division, Indore (Member);

(e) Collector, Indore (Secretary).

The State of Madhya Pradesh shall be free to proceed ahead in accordance with law.

162. In the connected writ petition i.e. W.P.No.11234/2020, which is a Public Interest Litigation, a prayer has been made for issuance of an appropriate writ, order or directing a CBI inquiry. So far as the prayer with regard to directions for CBI inquiry is concerned, this Court is of the considered opinion that no such directions are required. The allegation of misappropriation of Government properties and its disposal to favour someone and to cause loss to Public Exchequer, if at all, can very well be examined by Economic Investigation Wing of the State of Madhya Pradesh and accordingly, it is directed that the said Wing will thoroughly examine the matter and if it finds any criminality into the actions of any authority, it is expected that appropriate action should be taken by the said Wing. Hence, no positive direction to register a First Information Report is required.

Resultantly, the Economic Offences Wing shall examine the matter and shall be free to proceed ahead in accordance with law.

163. The State of Madhya Pradesh is directed to take all possible steps to preserve the cultural heritage including the Ghats, Temples, Dharamshalas, which find place in the Trust property, being the titleholder of the property in question. The State of Madhya Pradesh shall also take appropriate action in accordance with law against all those persons, who have allegedly illegally sold the Trust's property from time to time.

164. In W.P. No.11234/2020, the Union of India is already a party and Shri Milind Phadke has also been heard in the matter before delivering the judgment. He has also stated that the properties in question, on account of the covenant and the statutory notifications issued from time to time, are the exclusive properties of the State of Madhya Pradesh.

165. This Court on 23.04.2014 has directed the parties to maintain *status quo* and it has been informed by learned counsel for the State of Madhya Pradesh that some construction has taken place by the private parties.

166. Resultantly, the State of Madhya Pradesh is directed to take appropriate action in respect of the construction which has taken place over the Khasgi properties and shall restore it to its original position and the entire expenditure shall be borne by the State of Madhya Pradesh through Commissioner, Indore. The Collector, Haridwar shall assist the Divisional Commissioner, Indore in the matter and the Divisional Commissioner, Indore shall ensure that Kusha Ghat as well as other properties are again, which are meant for public charities are made available to public at large. The aforesaid direction is not only in respect of present property but in respect of other properties also. The State of Madhya Pradesh shall ensure by taking appropriate steps in accordance with law that no further sale takes place in respect of such properties and they shall maintain the properties for the generations to come keeping in view their historic importance. The Collector, Indore shall be free to take action in accordance with law pursuant to the order passed by him dated 05.11.2012 and the Registrar shall also be free to take appropriate action in accordance with law pursuant to the order passed by him dated 30.11.2012.

With the aforesaid, the present Writ Appeal stands allowed and connected Writ Appeal also stands allowed.

As this Court has already allowed both the writ appeals, Writ Petition No.11234/2020 stands disposed of and the order passed in the writ appeals shall govern the writ petition also.

Certified copy, as per rules.

Appeal allowed

I.L.L. [2020] M.P. 2636
WRIT PETITION
Before Mr. Justice Sanjay Dwivedi
W.P. No. 8063/2020 (Jabalpur) decided on 25 September, 2020

DEENDAYAL PRATHMIK SHAHKARI UPBHOKTA BHANDAR, HATA …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Public Distribution System (Control) Order, M.P., 2015, Clause 16(3) & 16(4) – Principle of Natural Justice* – Held – Show cause notice was issued, detailed reply was filed in writing, same was considered by authority and after its consideration, final order has been passed – No violation of principle of natural justice has been followed – No prejudice caused to petitioner – Petition dismissed. (Paras 24 to 26)**

क. सार्वजनिक वितरण प्रणाली (नियंत्रण) आदेश, म.प्र., 2015, खंड 16(3) व 16(4) – नैसर्गिक न्याय का सिद्धांत – अभिनिर्धारित – कारण बताओ नोटिस जारी हुआ था, विस्तृत जवाब लिखित में प्रस्तुत किया गया था, प्राधिकारी द्वारा उक्त को विचार में लिया गया था तथा विचार करने के पश्चात्, अंतिम आदेश पारित किया गया – नैसर्गिक न्याय के सिद्धांत का कोई उल्लंघन नहीं किया गया है – याची को कोई प्रतिकूल प्रभाव कारित नहीं हुआ – याचिका खारिज।

***B. Public Distribution System (Control) Order, M.P., 2015, Clause 16(3) & 16(4) – Termination of Fair Price Shop – Show Cause Notice – Interpretation* – Held – Clause 16(4) is continuation of Clause 16(3) and it should not be read independently – Period of show cause notice starts from date of suspension – Show cause notice to be issued within a period of 10 days from date of suspension and final order to be passed within a period of three months – Clause 16(4) does not provide any requirement to issue any further notice/second opportunity of hearing but it only elaborates the manner in which principle of natural justice has to be followed before passing final order. (Para 15 & 16)**

ख. सार्वजनिक वितरण प्रणाली (नियंत्रण) आदेश, म.प्र., 2015, खंड 16(3) व 16(4) – उचित मूल्य दुकान की समाप्ति – कारण बताओ नोटिस – निर्वचन– अभिनिर्धारित –खंड 16(4) खंड 16(3) का ही क्रम है तथा उसे स्वतंत्र रूप से नहीं पढ़ा जाना चाहिए – कारण बताओ नोटिस की अवधि निलंबन की तिथि से प्रारंभ हो जाती है – कारण बताओ नोटिस निलंबन की तिथि से 10 दिनों की अवधि के भीतर जारी किया जाना चाहिए तथा अंतिम आदेश 3 माह की अवधि के भीतर पारित किया जाना चाहिए–खंड 16(4) कोई अतिरिक्त नोटिस जारी करने/सुनवाई का दूसरा अवसर प्रदान करने हेतु कोई आवश्यकता उपबंधित नहीं करता है परंतु यह केवल उस ढंग को विस्तृत करता है जिसमें अंतिम आदेश पारित करने से पहले नैसर्गिक न्याय के सिद्धांत का पालन किया जाना चाहिए।

***C. Public Distribution System (Control) Order, M.P., 2015, Clause 16(3) & 16(4) – Final Order* – Held – Final order is not defined in Control Order 2015 but in a general sense, it means the order of cancellation of authority letter of running the fair price shop. (Para 15)**

ग. सार्वजनिक वितरण प्रणाली (नियंत्रण) आदेश, म.प्र., 2015, खंड 16(3) व 16(4) – अंतिम आदेश –अभिनिर्धारित–अंतिम आदेश, नियंत्रण आदेश 2015 में परिभाषित नहीं है परंतु एक सामान्य अभिप्राय में, इसका अर्थ चल रही उचित मूल्य की दुकान के प्राधिकार–पत्र के रद्दकरण का आदेश है।

Cases referred:

AIR 1955 SC 376, (2007) 2 SCC 230.

D.K. Tripathi, for the petitioner.
Pushpendra Yadav, Addl. A. G. for the respondent Nos. 1 to 4/State.
None, for the respondent No. 5.

O R D E R

SANJAY DWIVEDI, J.:- Although there were three connected petitions and with the consent of learned counsel for the parties, all have been heard finally as the counsel for the petitioner has submitted that the issues involved in these cases are interconnected. He has also submitted that in one of the petitions i.e. W.P. No.7515/2020, the State has filed reply and on the basis of the same, the present petition can also be decided. Thus, with the consent of the learned counsel for the parties, the matter is heard finally.

2. This petition is filed under Article 226 of the Constitution of India questioning the legality, validity and propriety of the order dated 30.05.2020 (Annexure-P/1) whereby respondent No.3 has passed an order of termination of fair price shop of the petitioner/society.

3. The challenged is made *inter alia* on the grounds that the impugned order has been passed in violation of principle of natural justice and the same is contrary to the provisions of sub-clause (4) of Clause 16 of the Control Order i.e. known as M.P. Public Distribution System (Control) Order, 2015 (hereinafter referred to as the 'Control Order, 2015').

4. The learned counsel for the petitioner has contended that the impugned order is also liable to be set aside as it has been passed in contravention of the directions issued by this Court in W.P. No.7507/2020 (Deendayal Prathmik Shahkari Upbhokta Bhandar Vs. State of M.P. and others). He has further contended that the impugned order also suffers from *mala fide* as the same has been issued with the instructions of the appellate authority i.e. the Collector (respondent No.2) and also at the instance of respondent No.5, who is a Member of Legislative Assembly of the rulling party.

5. The State has filed its reply in W.P. No.7515/2020 and it is submitted by the counsel for the State that the reply submitted by the respondents/State shall cover the controversy involved in the present case and on the basis of the stand taken therein, this petition can also be decided.

6. To resolve the controversy involved in this case, the relevant facts, which are necessary for proper adjudication of the present case, are briefly stated herein below:-

(6.1) That the petitioner is a registered CooperativeSociety, registered under the provisions of the Cooperative Society Act, 1960 (for short the 'Act 1960'). The petitioner/society was allotted fair price shops of Gandhi Ward and Shashtri Ward, Hata. On account of some rivalry with the petitioner, respondent No.5 wrote a letter to the concerned Minister for taking penal action

against the shop of the petitioner alleging that she is receiving complaints about irregularities committed by the said society.

(6.2) In response to the said letter, the concerned Minister wrote a letter to respondent No.2 (Collector Damoh) referring the concern of respondent No.5, asking him to initiate proceedings for suspending the shop of the petitioner. Thereafter, on 23.04.2020, a show cause notice was issued attributing the irregularities found in the shop of the petitioner as per the letter dated 21.04.2020 written by the Collector Damoh.

(6.3) The petitioner submitted his reply to the said show cause notice on 04.05.2020 (Annexure- P/15), but without considering the said reply, the order dated 14.05.2020 (Annexure-P/18) was passed placing the shop of the petitioner under suspension.

(6.4) The petitioner filed a petition i.e. W.P. No.7507/2020 challenging the order dated 14.05.2020 whereby his shop was placed under suspension.The said writ petition was decided by this Court vide order dated 22.05.2020 setting aside the order dated 14.05.2020 mainly on the ground that the reply filed by the petitioner was not considered by the authority, which amounted to violation of the principle of natural justice, therefore, the petition was disposed of giving liberty to the respondents to pass a fresh reasoned order after considering the reply of the petitioner by following the principle of natural justice. The order of the High Court is available on record as Annexure-P/19.

7. After remitting the matter to the authority, respondent No.2 passed the impugned order dated 30.05.2020 (Annexure-P/1) and terminated the shop of the petitioner, against which, the present petition has been filed on the grounds as have been mentioned hereinabove.

8. However, the respondents have filed reply in a petition i.e. W.P. No.7515/2020, but in the said petition, the order dated 30.05.2020 is not under challenge. In the said reply, the respondents have justified their action in which recommendation was made for registration of an FIR against the petitioner, but the counsel for the respondents at the time of arguments has justified their action relying upon the provisions of the Control Order 2015, under which, Clause-16 deals with the punishment and penalty and as per the respondents it is undisputed that the same deals with the suspension of fair price shop and cancellation of authority letter of fair price shop that too after following the principle of natural justice. The mode of

following the principle of natural justice is to issue show cause and to give an opportunity to submit the stand in writing by the fair price shop, then pass final order considering the stand of the fair price shop.

9. Shri Pushpendra Yadav, learned Additional Advocate General has submitted that from the impugned order it is clear that the requirement of following the principle of natural justice as contemplated in clause 16 of the Control Order 2015 has been complied with, therefore, the impugned order does not suffer from any illegality or irregularity and as such, does not call for any interference. He has further submitted that sub-clauses (3) and (4) are not independent clauses and should not be read in isolation because sub-clause (4) is a continuation of sub-clause (3) and if an opportunity of hearing is given and written submission has been called for by the authority and after considering the same final order is passed as has been done in the present case, then the said order cannot be attacked on the point that it is in violation of principle of natural justice.

10. *Per contra,* Shri Tripathi appearing for the petitioner has submitted that sub-clauses (3) and (4) are independent clauses and both the situations i.e. suspension and order of cancellation of fair price shop need separate action and as per the provisions, the authority was under obligation to issue show cause notice before suspension and reply of the same, if any, is filed shall be considered and then by issuing separate notice and asking reply to the same, final order can be passed. He has also submitted that as per the order passed by this Court on earlier occasion in W.P. No.7505/2020, it is clear that the order of suspension was under challenge but the reply of show cause notice issued before suspension since not considered by the authority, therefore, the High Court was of the opinion that the principle of natural justice was not followed, set aside the order of suspension and remitted the matter to the authority for passing a fresh order considering the reply of show cause notice filed by the petitioner. Thereafter, the authority not only passed the order of suspension but also proceeded further and by invoking the power provided under sub-clause (4) passed the order of cancellation of fair price shop without giving further opportunity as has been mentioned in sub-clause (4) and as such, the order suffers from violation of principle of natural justice and is not sustainable.

11. After hearing the rival contentions of the learned counsel for the parties, the core question arises for consideration of this Court is whether the impugned order suffers from violation of principle of natural justice or it has been passed by the authority following the requirement of principle of natural justice as has been provided under sub-clauses (3) and (4) of Clause 16 of the Control Order 2015.

12. For assessing the merits of the rival submissions, it would, at the outset, be necessary to go-through the respective provisions of Clause 16 of the Control Order 2015. If the provisions of respective clauses are seen at a glance, they do not

give clear meaning and therefore, the same require careful reading and interpretation.

13. Since the official language of the State is Hindi, therefore, for proper interpretation of respective clauses of the Control Order 2015, the Hindi portion is taken note of, which provides as under:-

> "**16. दण्ड एवं शास्ति.**– (1) केन्द्रीय/राज्य आदेश के किसी उपबंध अथवा इस आदेश के उल्लंघन की दशा में उचित मूल्य दुकान की प्राधिकार–पत्र को दुकान आबंटन प्राधिकारी द्वारा निलंबित या निरस्त किया जा सकेगा और प्रतिभूति की राशि पूर्णतः या अंशतः समपहृत की जा सकेगी। ऐसे मामले में समपहृत राशि संबंधित संस्था के दोषी कर्मचारी से वसूली योग्य होगी।
>
> (2) किसी व्यक्ति के द्वारा मासिक आबंटन की 10 प्रतिशत से अधिक मात्रा के संबंध में खण्ड 13 के अधीन उल्लंघन अथवा इसी खण्ड के अधीन उल्लंघन की पुनरावृत्ति की दशा में उसके विरूद्ध आवश्यक वस्तु अधिनियम, 1955 (1955 का 10) की धारा 7 के अधीन अभियोजन की कार्यवाही अनिवार्य रूप से की जाएगी।
>
> **(3) किसी उचित मूल्य दुकान के निलंबन की दशा में उचित मूल्य दुकान आबंटन प्राधिकारी 10 दिवस की अवधि के भीतर संबंधित उचित मूल्य दुकान को कारण बताओ नोटिस जारी करेगा और यथासंभव तीन माह के भीतर अंतिम आदेश पारित करेगा।**
>
> **(4) उचित मूल्य की दुकान आबंटन प्राधिकारी उचित मूल्य की दुकान को लिखित में अपना पक्ष प्रस्तुत करने के लिए युक्तियुक्त अवसर देने के पश्चात और प्राकृतिक न्याय के सिद्धान्तों का अनुसरण करते हुए उसके कारण का उल्लेख करते हुए दुकान का प्राधिकार पत्र निरस्त कर सकेगा :**
>
> **परन्तु उचित मूल्य दुकान आबंटन प्राधिकारी अपील के अंतिम निराकरण तक किसी नई संस्था को उचित मूल्य की दुकान आबंटन नहीं करेगा।**
>
> **(5) दुकान आबंटन प्राधिकारी उचित मूल्य की दुकान के निलंबन/निरस्ती के दौरान ऐसी दुकान से संलग्न उपभोक्ताओं को सामग्री का वितरण सुनिश्चित करने के लिए किसी निकटस्थ उचित मूल्य की दुकान से वैकल्पिक व्यवस्था करेगाः**
>
> **परंतु किसी ग्रमीण क्षेत्र की किसी उचित मूल्य की दुकान को नगरीय क्षेत्र की उचित मूल्य की दुकान से अथवा किसी नगरीय क्षेत्र की उचित मूल्य की दुकान को ग्रामीण क्षेत्र की उचित मूल्य की दुकान में संलग्न नहीं किया जाएगा।**

(6) यदि अधिकृत एजेंसी/उचित मूल्य के दुकानदार द्वारा किसी आवश्यक सामग्री का किसी अपात्र व्यक्ति को प्रदाय अथवा वितरण किया जाता है तो उसका मूल्य जिम्मेदार विक्रेता/कर्मचारी/व्यक्ति से तत्समय प्रचलित बाजार मूल्य या इकॉनामिक कॉस्ट (लागत मूल्य कम करने के पश्चात) जो भी ज्यादा हो से वसूल किया जाएगा। ऐसी राशि भू–राजस्व के बकाया के रूप में वसूली योग्य होगी।

(7) दुकान आबंटन प्राधिकारी, उचित मूल्य की दुकान के विक्रेता को, दोषी पाये जाने पर सार्वजनिक वितरण प्रणाली की सामग्री के वितरण के दायित्वों से पृथक करने का लिखित में, आदेश संस्था को दे सकेगा। ऐसा आदेश संस्था पर बाध्यकारी होगा तथा ऐसे विक्रेता को किसी अन्य उचित मूल्य की दुकान पर विक्रेता के रूप में नियुक्त नहीं किया जाएगा।

(8) किसी उचित मूल्य दुकान के संचालन में कोई अनियमितता पाए जाने पर यदि कलेक्टर की राय में यह समीचीन हो तो सोसाइटी के अध्यक्ष या प्रमुख/संस्था के विक्रेता/कर्मचारी के विरूद्ध अभियोजन की कार्यवाही आरंभ की जा सकेगी।

(9) यदि आंबटिती सहकारी सोसाइटी के विरूद्ध संबंधित उपायुक्त–सह–उप पंजीयक/सहायक आयुक्त–सह–सहायक पंजीयक द्वारा इस आदेश या सहकारिता अधिनियम के उपबंधों के अधीन कोई कार्यवाही अनुध्यात की गई है, तो वह तत्काल लिखित में उचित मूल्य की दुकान आबंटन प्राधिकारी को इसकी सूचना देगा।

(emphasis supplied)

14. From bare perusal of sub-clause (3), it can be easily gathered that it contains two things first, to give an opportunity of hearing by giving show cause, meaning thereby compliance of principle of natural justice, second, the time limit, under which the authority has to proceed. Further, to make the provision understandable and easy to grasp. It can be divided in three parts, which is described as follows:-

The first part of sub-clause (3) i.e. "**किसी उचित मूल्य दुकान के निलंबन की दशा में**" gives meaning that in the existence of suspension order, the authority is under obligation to proceed further and to comply with the principle of natural justice. It means the first part deals with the situation of existing the order of suspension, then second part "**उचित मूल्य दुकान आबंटन प्राधिकारी 10 दिवस की अवधि के भीतर संबंधित उचित मूल्य दुकान को कारण बताओ नोटिस जारी करेगा**" provides that the show cause notice has to be issued by the allotment authority to the fair price shop within a period of 10 days from the date of order of suspension and thereafter third part of the clause comes into operation which is as under **"और यथा संभव तीन माह के भीतर अंतिम आदेश पारित करेगा"** meaning thereby after giving show cause asking reply to said show cause, the authority has to pass a final

order within a period of 3 months. The final order would mean the order of cancellation of authority letter.

15. The contention of the learned counsel for the petitioner is that before suspension, a show cause notice is required as per sub-clause (3) of Clause 16 of the Control Order 2015. But, I am not convinced with the same as that is not the proper interpretation of the clause and if his contention is accepted then it gives ambiguous meaning because the second part of sub-clause (3) does not make it clear as to from what date period of 10 days would start under which show cause notice has to be issued and then what would be the final order which is to be passed within a period of 3 months. In view of this Court, sub-clause (3) deals the manner, in which, opportunity of hearing is to be provided and the period under which notice has to be issued. The period of show cause notice starts from the date of suspension. The authority within a period of 10 days from the date of suspension would issue show cause notice and would pass final order as far as possible within a period of 3 months though the final order has not been defined anywhere in the Control Order 2015 and also in the parent Act under which this Control Order has been made. But, in a general sense final order means the order of cancellation of authority letter of running the fair price shop.

16. Moreover, I am convinced with the contention of learned counsel for the respondents that sub-clause (4) is continuation of sub-clause (3) and it should not be read independently. If sub-clause (4) is seen, it deals with the requirement of following the principle of natural justice asking an opportunity to fair price shop to submit its stand in writing as show cause notice is issued under sub-clause (3), reply to the same in writing is required as per sub-clause (4) and considering the same final order would be passed as is required under sub-clause (4). It indicates like this **"“प्राकृतिक न्याय के सिद्धान्तों का अनुसरण करते हुए उसके कारण का उल्लेख करते हुए दुकान का प्राधिकार पत्र निरस्त कर सकेगा”.** Sub-clause (4) does not provide any requirement to issue any further notice and second opportunity of hearing, but it only elaborates the manner in which the principle of natural justice has to be followed before passing the final order.

17. The proviso attached to sub-clause (4) puts rider upon the authority that the shop in question in respect of which final order has been passed would not be allotted till the decision of appeal as against the final order an appeal is provided to the Collector under the Control Order 2015, as the Collector is the appellate authority.

18. In my opinion, not only sub-clause (3) and sub-clause (4) are continuation of each other, but sub-clause (5) is also connected with therewith because sub-clause (5) further provides the power of interim arrangement during the pendency of appeal as sub-clause (4) provides that the shop which is in question would not

be allotted to any new shop/society and then as to in what manner the beneficiaries/cardholders would get the foodgrains. To avoid any inconvenience to the beneficiaries/cardholders, provision of interim arrangement has been made under sub-clause (5) which provides that the shop in question in respect of which final order has been passed should be attached to some nearby shop so as to avoid difficulty which may be suffered by the beneficiaries/cardholders.

19. Justice G.P. Singh, in his 14th Edition of Principles of Statutory Interpretation has considered the golden rule of interpretation and has opined as under:-

> "The golden rule is that the words of a statue must *prima facie* be given their ordinary meaning". *(Nokes v. Doncaster Amalgamated Collieries Ltd.,* (1940) AC 1014).....The cardinal rule of construction of statues is to read the statues literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation. In the present case the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction".

20. The Supreme Court in case of *Jugalkishore Saraf v. M/s.Raw Cotton Co. Ltd.,* reported in AIR 1955 SC 376, has opined as under:-

> "(6) The first thing that strikes the reader is the sequence of events contemplated by this rule. It postulates, first, that a decree has been passed and, secondly, that that decree has been transferred (i) by assignment in writing or (ii) by operation of law. The cardinal rule of construction of statues is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case a literal construction of the rule leads to no apparent absurdity an, therefore, there can be no compelling reason for departing from that golden rule of construction."
>
> (emphasis supplied)

21. Further, the Supreme Court in case of *Raghunath Rai Bareja and another v. Punjab National Bank and others* reported in (2007) 2 SCC 230, has observed that the departure from the literal rules should be done only in very rare cases and ordinarily there should be judicial restraint in this connection.

22. Thus, in my opinion, the contention of the petitioner, in fact, gives ambiguous meaning of sub-clauses (3) and (4) of Clause 16 of the Control Order 2015. It is clear after literal reading of respective provisions that show cause notice is issued after passing the order of suspension that too within 10 days from the said order and thereafter proper reply in writing is called for to submit the stand and then final order is passed.

23. In the earlier round of litigation i.e. W.P. No.7505/2020, the High Court has considered the fact that the reply of show cause notice though submitted by the fair price shop, but the same was not considered by the authority and passed the order of suspension. According to the Co-ordinate Bench of this High Court, the principle of natural justice was not followed. But the Court has not examined the vary aspect as to whether the requirement to issue show cause notice arises before suspension or after suspension and also other ancillary requirements as have been contemplated under sub-clauses (3) and (4) of Clause 16 of the Control Order 2015.

24. From perusal of the impugned order dated 30.05.2020 (Annexure-P/1) passed by the authority in the present case after remanding of the matter by the High Court vide order dated 22.05.2020 passed in W.P. No.7505/2020, the authority has considered the reply submitted by the petitioner in very elaborate manner and then passed the final order. Although, in my opinion, there is a procedural flaw because the authority is of the opinion that the show cause has to be issued before suspension and, therefore, it has been issued in the present case before suspension and thereafter considering the said reply not only the order of suspension has been passed but final order has also been passed.

25. If the provisions of sub-clauses (3) and (4) are seen, it is clear that the basic intention of the legislation was to provide proper opportunity of hearing before passing the final order and in the present case the said basic requirement of following the principle of natural justice has been followed because the show cause notice was issued, detailed reply was also filed in writing by the petitioner, the same was considered by the authority and after its consideration, final order has been passed which is impugned in this petition.

26. Thus, in my opinion, no prejudice is caused to the petitioner by the impugned order and the action of the authority does not suffer from any violation of principle of natural justice. Accordingly, I do not find that exercising the jurisdiction of Article 226 of the Constitution of India, the impugned order can be interfered with.

27. So far as the ground of *mala fide* is concerned, I am convinced with the contentions raised by the learned counsel for the respondents that when the order of suspension was assailed, no such ground was raised before the High Court and,

therefore, at this juncture, impugned order will not be tested on the ground of *mala fide.*

28. In view of the aforesaid considerations and observations, the petition has no substance as the impugned order does not suffer from any infirmity. The petition is accordingly, **dismissed.** No order as to costs.

Petition dismissed

I.L.R. [2020] M.P. 2646
MISCELLANEOUS PETITION
Before Mr. Justice Vishal Dhagat
M.P. No. 2743/2020 (Jabalpur) decided on 19 October 2020

R. D. SINGH …Petitioner

Vs.

SMT. SHEELA VERMA & ors. …Respondents

***A. Land Revenue Code, M.P. (20 of 1959), Section 52(2) – Execution of Order – Period of Stay* – Held – Upper Collector has held that execution of order shall not be stayed for more than three months at a time or until the date of next hearing whichever is earlier – Proviso to Section 52(2) rightly interpreted – Further, opportunity of hearing given to petitioner, thus no violation of rights – Interference declined – Petition dismissed.**
(Paras 9, 10 & 13)

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 52 (2) – आदेश का निष्पादन – रोक की अवधि – अभिनिर्धारित – अपर कलेक्टर ने अभिनिर्धारित किया है कि आदेश के निष्पादन को, एक समय पर तीन माह से अधिक के लिए अथवा सुनवाई की अगली तिथि तक, जो भी पहले हो, रोका नहीं जाएगा – धारा 52 (2) के परंतुक का उचित रूप से निर्वचन किया गया – इसके अतिरिक्त, याची को सुनवाई का अवसर दिया गया अतः, अधिकारों का कोई उल्लंघन नहीं – हस्तक्षेप से इन्कार किया गया – याचिका खारिज।

***B. Constitution – Article 227 – Scope & Jurisdiction* – Held – High Court in exercise of its power of superintendence cannot interfere to correct mere errors of law or fact or just because another view than the one taken by Tribunals or subordinate Courts, is possible – Jurisdiction has to be very sparingly exercised. (Para 11)**

ख. संविधान – अनुच्छेद 227 – व्याप्ति व अधिकारिता – अभिनिर्धारित – उच्च न्यायालय, पर्यवेक्षक की उसकी शक्ति के प्रयोग में, मात्र विधि या तथ्य की त्रुटियों का सुधार करने के लिए अथवा केवल इसलिए कि अधिकरणों या अधीनस्थ न्यायालयों द्वारा लिए गये दृष्टिकोण से अलग दृष्टिकोण संभव है, हस्तक्षेप नहीं कर सकता – अधिकारिता का प्रयोग अति सावधानीपूर्वक करना चाहिए।

Cases referred:

2013 SCC Online page 9779, 2010 (8) SCC 329.

Ankit Saxena, for the petitioner.
Shashank Verma, for the respondents.

O R D E R

(Heard through Video Conferencing)

VISHAL DHAGAT, J.:- Petitioner has filed this miscellaneous petition calling in question order dated 28.09.2020 passed in Revision No. 96/ revision/ 2019-2020. By said order, Upper Collector (south), Bhopal has dismissed revision against interlocutory order of vacating stay.

2. Brief facts of the case are that Tehsildar vide its order dated 30.11.2012 has partly allowed the application under Sections 115 and 116 of Madhya Pradesh Land Revenue code, 1959 for correction of revenue records filed by Sheela Verma (R-1) and Pushp Mayur Grih Nirman Sahkari Samiti Maryadit (R-5). Tehsildar, Capital projects, Tehsil Huzur, Bhopal has relied on judgement and decree dated 29.10.2010 passed by Fifth Additional District Judge in Civil Suit No. 399-A/2006. Learned Additional District Judge held registered sale deed dated 28.03.2000 to be valid and effective. First Appeal is filed against order of Fifth Additional District Judge which is pending for consideration and there is no stay in it. Tehsildar examined registered sale deed dated 28.03.2000 which was Registry Nos. 5051/ 28.03.2000, 5052/28.03.2000 and 5125/ 29.03.2000. After examination of records, Tehsildar passed an order to correct revenue entries on basis of registered sale deed dated 28.03.2000 and 08.12.1980.

3. Petitioner has challenged the order passed by the Tehsildar before SDO, T.T. Nagar, Bhopal. Said Appeal No. 09/2012-2013 is pending before SDO. During pendency of appeal, learned Sub Divisional Officer T.T. Nagar Bhopal vacated stay order granted in favour of petitioner vide order dated 18.02.2020. Learned Sub Divisional Officer revenue held that stay was granted vide order dated 30.11.2012 till next date of hearing. Said order is not as per law and, therefore, the same was vacated after hearing the parties.

4. Petitioner filed revision before Upper Collector challenging the order passed by learned Sub Divisional Officer. Learned Upper Collector vide order dated 28.09.2020 dismissed the revision on ground that stay order was operating since 11.12.2012 for last seven years and as per amendment introduced on 27.07.2018, proviso to Section 52(2) of M.P. Land Revenue Code 1959, execution of orders shall not be stayed for more than three months at a time or until the date of next hearing, which ever is earlier.

5. Learned counsel appearing for the petitioner argued that proviso to Section 52(2) of M.P land Revenue Code, 1959, was wrongly interpreted by Commissioner. It was wrongly held that stay will only operate for three months. However in proviso to Section 52(2) of M.P Land Revenue Code, 1959 lays down that stay can be granted for three months at a time or until next date of hearing whichever is earlier. This means that stay can continue for more than three months, if stay is extended on the next date fixed. Petitioner raised second ground that he was not heard while passing the impugned order. No other ground was raised by the counsel appearing for the petitioner.

6. Counsel appearing for respondent nos. 1, 2 and 3 submitted that though he had filed a reply, but this is a petition under Article 227 of the Constitution of India and he is ready to argue the petition on the basis of record filed by petitioner. It is submitted by the counsel appearing for respondents that Upper Commissioner has rightly vacated interim stay order which was granted in the year 2012. Operation of order of Tehsildar was stayed by Appellate Court since 2012 and Upper Collector has rightly exercised his jurisdiction in vacating the stay order. Upper Collector has acted within his jurisdiction and powers as provided to him under the said section. There is no error of jurisdiction in order passed by Upper Collector and order passed by Sub Divisional Officer. Counsel for respondents relied on judgement reported in 2013 SCC online page 9779- *Smt. Munni Sharma Vs. Babu Lal.* In this case, Board of Revenue allowed revision with aid of proviso of Section 52(2) of M.P. Land Revenue Code, 1959 without opportunity of hearing to other side. This Court dismissed the petition filed under Article 227 of the Constitution of India holding that stay cannot be granted for indefinite period. On basis of same, counsel appearing for respondents also prayed for dismissal of writ petition.

7. Counsel appearing for petitioner made submission that aforesaid order is not applicable in present case. In that case, interim order was passed by S.D.O for indefinite period, therefore, this Court has rightly dismissed miscellaneous petition. This case is distinguishable from case of *Smt. Munni Sharma* (supra).

8. Heard the counsel for petitioner as well as respondents.

9. Petitioner has not raised any ground regarding interpretation of proviso to Section 52(2) of M.P Land Revenue Code, 1959 in miscellaneous petition. Said ground was raised for first time in the Court. As ground raised relates to pure question of law, therefore, said ground is taken into consideration. Looking at proviso of Section 52(2) of the M.P. Land Revenue Code, 1959, it is distinctly perceptible that there is cap to grant stay more than three months at one time or until next date of hearing whichever is earlier. This means at one time stay can be granted for a period of three months only or for a shorter period i.e till next date of

hearing. Stay order can be intermittently extended for a period more than 3 months. Neither Court of SDO nor Appellate Court held that stay order can not operate for more than three months. SDO vacated the order of stay which was granted till next date of hearing. Petitioner has not filed any order sheets to show how stay order was extended from time to time and what order was passed on subsequent dates. Upper Collector has held that Execution of order shall not be stayed for more than three months at a time or until the date of next hearing whichever is earlier. In view of same, it cannot be said that Tehsildar or Upper Collector misinterpreted proviso to Section 52(2) of M.P Land Revenue Code.

10. Counsel for the petitioner appeared before the court of SDO as well as before the Court of Upper Collector, therefore, there is no violation of rights in passing orders dated 18.02.2020 and 28.09.2020. SDO while passing order dated 30.11.2012 has also given opportunity of hearing to petitioner. Petitioner filed separate objection in respect of Khasra No. 7/4/6, measuring 1 acre. Said objection was dealt with by SDO, therefore, it cannot be said that opportunity of hearing was not given to him.

11. Sub Divisional Officer revenue as well as Upper Collector were within their jurisdiction to vacate the stay order. In case of *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil,* reported in (2010) 8 SCC 329, it was held in para 49 that high courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep tribunals or courts subordinate to it "within the bonds of their authority". In exercise of its power of superintendence, High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

12. Petitioner was given opportunity of hearing while vacating stay order. No irreparable injury will be caused to petitioner by vacation of stay order.

13. In view of the aforesaid facts and circumstances of the case, this Court refuse to exercise its jurisdiction under Article 227 of the Constitution of India and to interfere in the order passed by Revenue Authorities and **dismiss** miscellaneous petition filed by the petitioner. However Appellate Authority is directed to expedite the hearing of appeal and same may be decided by it preferably within period of two months.

Petition dismissed

I.L.R. [2020] M.P. 2650 (DB)
MISCELLANEOUS PETITION

Before Mr. Justice Sujoy Paul & Mr. Justice B.K. Shrivastava

M.P. No. 2861/2020 (Jabalpur) decided on 4 November, 2020

BEYOND MALLS LLP …Petitioner

Vs.

LIFESTYLE INTERNATIONAL PVT. LTD. & anr. …Respondents

***A. Arbitration and Conciliation Act (26 of 1996), Section 9 – Impleadment of a Party – Locus* – Held – If as per agreement, it can be shown that relief can be claimed against a party, whether or not he is signatory to agreement, he can be treated to be a "necessary party" – Further, interim measure application can be filed against such third party despite the fact that he is not a signatory to agreement – Petition dismissed. (Para 9 & 11)**

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 9 – पक्षकार बनाया जाना – सुने जाने का अधिकार – अभिनिर्धारित – यदि करार के अनुसार, यह दर्शाया जा सकता है कि एक पक्षकार के विरूद्ध अनुतोष का दावा किया जा सकता है चाहे वह करार का हस्ताक्षरकर्ता हो अथवा नहीं, उसे एक ''आवश्यक पक्षकार'' माना जा सकता है – इसके अतिरिक्त, उक्त तृतीय पक्षकार के विरूद्ध अंतरिम उपाय का आवेदन प्रस्तुत किया जा सकता है, बावजूद इस तथ्य के कि वह करार का हस्ताक्षरकर्ता नहीं है – याचिका खारिज।

***B. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016), Section 8 and Constitution – Article 227* – Held – Apex Court concluded that Section 8 of the Act of 2015 cannot be read to mean that supervisory jurisdiction of this Court under Article 227 of Constitution is taken away in any manner. (Para 8)**

ख. वाणिज्यिक न्यायालय, उच्च न्यायालय वाणिज्यिक प्रभाग और वाणिज्यिक अपील प्रभाग अधिनियम, 2015 (2016 का 4), धारा 8 एवं संविधान – अनुच्छेद 227 – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि 2015 के अधिनियम की धारा 8 को इस अर्थ में नहीं पढ़ा जा सकता कि संविधान के अनुच्छेद 227 के अंतर्गत इस न्यायालय की पर्यवेक्षी अधिकारिता को किसी भी प्रकार से हटाया गया है।

***C. Constitution – Article 227 – Scope & Jurisdiction* – Held – Interference under Article 227 can be made on limited grounds – If order suffers from any jurisdictional error, palpable procedural impropriety or manifest perversity, interference can be made – Another view is possible is not a ground for interference. (Para 13)**

ग. संविधान – अनुच्छेद 227 – व्याप्ति व अधिकारिता – अभिनिर्धारित – अनुच्छेद 227 के अंतर्गत हस्तक्षेप सीमित आधारों पर किया जा सकता है – यदि आदेश,

अधिकारिता की किसी त्रुटि से, सुस्पष्ट प्रक्रिया संबंधी अनौचित्य या प्रकट विपर्यस्तता से ग्रसित है, हस्तक्षेप किया जा सकता है – अन्य दृष्टिकोण संभव है, यह हस्तक्षेप के लिए एक आधार नहीं है।

Cases Referred :

(2011) 1 SCC 320, AIR 2006 Delhi-134, 2007 (3) MPHT 206 (DB), (2015) 13 SCC-13, (2009) 2 BCR-247, AIR 1975 Calcutta page-8, (2013) 1 SCC-641, (2018) 16 SCC-413, (2005) 6 SCC 733, (2010) 8 SCC-329, (2018) 16 SCC 434.

Priyankush Jain, for the petitioner.
Deepesh Joshi, for the respondent no.1.
None, for the respondent no.2.

O R D E R

The Order of the Court was passed by :
SUJOY PAUL, J. :- This petition filed under Article 227 of the Constitution of India takes exception to the order dated 11.09.2020 whereby application filed by present petitioner/ non-applicant No.2 under Order 1 Rule 10(2) of CPC was dismissed by the court below.

2. Draped in brevity, the relevant facts for adjudication of this matter are that respondent No.1 filed an application under section 9 of the Arbitration And Conciliation Act, 1996 (Arbitration Act) before the court below. Since petitioner/ non-applicant No.2 was impleaded as a party, he preferred an application under Order 1 rule 10(2) CPC for deletion of his name. The bone of contention before the court below was that section 9 proceedings are founded upon an agreement and petitioner/ non-applicant No.2 was not a party to the said agreement. The court below after hearing the parties, passed a detailed order dated 11.09.2020 and rejected the aforesaid application filed under Order 1 rule 10(2) of CPC.

3. Shri Priyankush Jain, learned counsel for the petitioner submits that initially a lease agreement dated 21.02.2012 (Annx.M/1) was entered into between the parties. This was followed by yet another agreement between petitioner and respondent No.2 entered in the year 2017. Section 9 proceedings are arising out of this agreement of 2017 in which admittedly present petitioner was not a privy. Hence, section 9 proceedings are not maintainable. The court below has committed error of law in disallowing the application preferred under Order 1 rule 10(2) of CPC.

By placing reliance on (2011) 1 SCC 320 *(S.N.Prasad, Hitek Industries (Bihar) Ltd. Vs. Monnet Finance Limited and others),* Shri Jain urged that the applicant could have impleaded the present petitioner/ non-applicant No.2 only

when he was a party to the agreement. Reliance is placed on the definition of "party" defined under Section 2(h) and definition of "agreement" defined under section 7 of the Arbitration Act. To bolster the aforesaid submission, reliance is placed on AIR 2006 Delhi-134 (National Highways Authority of India (NHAI) Vs. M/s China Coal Construction Group Corpn.) wherein it was held that a party who was not signatory to arbitration agreement cannot be sued. Since intervenor before the Delhi Court was not privy to contract, he was not permitted to participate in the proceedings filed under section 9 of the Arbitration Act. Lastly, he placed reliance on 2007(3) MPHT 206 (DB) *(M/s B.D.Bhanot and Sons Vs. Shri Narmada Enterprises and others)* for drawing analogy that a person who was not a party in arbitration proceedings before the court below was precluded to file an appeal under section 37 before the court below. It is urged that court below has erred in disallowing the said application.

4. Sounding a *contra* note, Shri Deepesh Joshi submits that as per section 8 of the The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Commercial Courts Act), the intention of law makers is clear that at interlocutory stage and against interlocutory orders, no revision etc. is maintainable. Although, said statutory provision may not curtail or deprive the constitutional courts to exercise the extraordinary jurisdiction under Article 226/227 of the Constitution, the fact remains that intention of law makers was to ensure minimal interference at interlocutory stage. Clause-M of the agreement dated 27.09.2017 (Annx.M-3) makes it clear that the lessee (present petitioner) shall honour all the lease agreement/ lease Deeds signed by the lessor previously with various retailers until such time any breach of agreement/ Deed is committed by those retailers. He submits that the court below has taken note of the relevant clauses of agreement dated 27.9.2017 and rightly came to hold that in view of judgment of Supreme Court in *Ambica Prasad Vs. Mohd. Alam and another* (2015)13 SCC-13, it is well settled that transferee of landlord's rights steps into the shoes of landlord's with all rights and liabilities of the transferor landlord in respect of the subsisting. He also supported the order of court below on the basis of judgment of Bombay High Court reported in (2009) 2 BCR-247 *(Narayan Manik Patil Vs. Jayawant Patil).* Shri Deepesh Joshi has taken pains to take us to clause-(e) of the application preferred under Section 9 of the Act (Annx.M-5). He submits that for the purpose of adjudication of applicant's rights in relation to aforesaid clause, the present petitioner is certainly a necessary party.

5. During the course of argument reliance is also placed by Shri Joshi on AIR 1975 Calcutta page-8 *(M/s Hindustan Steel Works Construction Ltd. Vs. M/s Bharat Spun Pipe Co.,* (2013) 1 SCC-641 *(Chloro Controls India Private Ltd. Vs. Severn Trent Water Purification Inc. and Others* and (2018) 16 SCC-413 *(Cheran Properties Ltd. Vs. Kasturi and Sons Limited and others.* It is contended that the law relating to arbitration is clear and it can very well bind the non-applicant No.2/

petitioner when applicant is in a position to demonstrate that his rights are going to be affected and provisions of section 109 of Transfer of Property Act,1882 are attracted. Lastly, (2005) 6 SCC 733 *(Kasturi Vs. Iyyamperumal and Others)* is relied upon to submit that as per *dicta* of this judgment, relief can be claimed against a party and if it is shown that relief is related to that party, the said party becomes a "necessary party".

6. No other point is pressed by learned counsel for the parties.

7. We have heard the parties at length and perused the record.

8. At the outset, we may record that Section 8 of the Commercial Courts Act cannot be read to mean that supervisory jurisdiction of this court under Article 227 of the Constitution is taken away in any manner. A Constitution Bench of Supreme Court in *L.Chandra Kumar Vs.Union of India* has taken this view. The same view is taken by the Apex Court in *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*- (2010) 8 SCC-329.

The court below has reproduced the relevant clauses in the impugned order. Clause-M of Annexure M/3 dated 27.09.2017 reads as under :-

> "Clause-M- The Lessee[1] shall honour all the lease agreement/ Lease Deeds signed by the Lessor[2] previously with various retailers[3] until such time any breach of agreement/ Deeds is committed by those retailers."

(1.-Petitioner, 2.- Respondent No.2, 3.-Applicant) (Added by us to clarify the role of parties)

9. No doubt in the peculiar facts situation, the Delhi High Court in the case of *National Highway Authority of India* (supra) opined that in arbitration proceedings impleadment of a party is in relation to subject matter and intervenor having no privity of contract with petitioner therein, prayer for its impleadment is liable to be rejected. A careful reading of this judgment shows that it was delivered keeping in view the relevant clauses of agreement prevailing in that case. As a rule of thumb or straight jacket formula it is not laid down that in no case/ situation a party not signatory to agreement can be impleaded in a proceeding under section 9 of Arbitration Act.

10. However, the principle regarding impleadment in arbitration proceedings is no more *res integra.* It is apt to consider the principle enunciated by *Russell* in *"Russell on Arbitration".* Relevant portion reproduced in (2018) 16 SCC 434 *(Cheran Properties Ltd Vs. Kasturi and Sons Ltd.* reads as under :-

> "Arbitration is usually limited to parties who have consented to the process, either by agreeing in their contract to refer any disputes arising in the future between them to arbitration or by submitting to arbitration when a dispute arises. A party who has not so consented, often referred to

> as a third party or a non-signatory to the arbitration agreement, is usually excluded from the arbitration. There are however some occasions when such a third party may be bound by the agreement to arbitrate. For example, ..., assignees and representatives may become a party to the arbitration agreement in place of the original signatory on the basis that they are successors to that party's interest and claim "through or under" the original party. The third party can then be compelled to arbitrate any dispute that arises."
>
> ***(Emphasis supplied)***

This principle was followed by the Calcutta High Court in the case of *M/s Hindustan Steel Works Construction* (supra). The same principle is followed by the Supreme Court in the case of *Chloro Controls India Private Ltd.* (supra). After reproducing the aforementioned paragraph from the book of *Russell,* the Apex Court considered this aspect in great detail in the case of *Cheran Properties* (supra). The relevant paragraphs reads as under :-

> 21. Explaining the legal basis that may be applied to bind a non signatory to an arbitration agreement, this Court held in *Chloro Controls case held thus (SCCp.694, paras 103.1, 103.1, 103.2 & 105)*
>
> "103.1 The first theory is that of implied consent, third-party beneficiaries, guarantors, assignment and other transfer mechanisms of contractual rights. This theory relies on the discernible intentions of the parties and, to a large extent, on good faith principle. They apply to private as well as public legal entities.
>
> 103.2 The second theory includes the legal doctrines of agent-principal relations, apparent authority, piercing of veil (also called "the alter ego"), joint venture relations, succession and estoppel. They do not rely on the parties' intention but rather on the force of the applicable law.
>
> 105. We have already discussed that under the group of companies doctrine, an arbitration agreement entered into by a company within a group of companies can bind its non-signatory affiliates, if the circumstances demonstrate that the mutual intention of the parties was to bind both the signatory as well as the non-signatory parties.
>
> 25. Does the requirement, as in Section 7, that an arbitration agreement be in writing exclude the possibility of binding third parties who may not be signatories to an agreement between two contracting entities? The evolving body of academic literature as well as adjudicatory trends indicate that in certain situations, an arbitration agreement between two or more parties may operate to bind other parties as well. Redfern and Hunter explain the theoretical foundation of this principle:
>
> "..The requirement of a signed agreement in writing, however, does not altogether exclude the possibility of an arbitration agreement concluded

> in proper form between two or more parties also binding other parties. Third parties to an arbitration agreement have been held to be bound by (or entitled to rely on) such an agreement in a variety of ways: first, by operation of the 'group of companies' doctrine pursuant to which the benefits and duties arising from an arbitration agreement may in certain circumstances be extended to other members of the same group of companies; and, secondly, by operation of general rules of private law, principally on assignment, agency, and succession.."
>
> ***(Emphasis supplied)***

11. A plain reading of these paragraphs makes it clear that if as per the agreement it can be shown that the relief can be claimed against a particular party, whether or not he is signatory to the said agreement, he can be treated to be a "necessary party". As noticed above, Clause-M of Annexure M/3 dated 27.09.2017 in no uncertain terms binds the present petitioner being a lessee and respondent No.2 as lessor and retailer. In this backdrop, if relief claimed in the application filed under section 9 of Arbitration Act is perused, it cannot be said that present petitioner is not a "necessary party". In the case of *S.N.Prasad* (Supra) as per relevant clauses of agreement, one guarantor was not covered and hence Apex Court ruled against original applicant. In the instant case, clauses of agreement are differently worded and hence said judgment is of no assistance to petitioner. The Bombay High Court in *Narayan Prasad* (supra) opined that interim measure application can be filed against such third party despite the fact that he is not signatory to the agreement. We respectfully agree with the principle laid down by Bombay High Court.

12. In view of relevant clauses of the agreement/ lease deeds (which were reproduced in the order impugned) we are of the opinion that court below has taken a plausible view and has not committed any illegality.

13. Interference under Article 227 of the Constitution can be made on limited grounds. If order suffers from any jurisdictional error, palpable procedural impropriety or manifest perversity, interference can be made. Another view is possible, is not a ground for interference. This court is not required to act as a *Bull in China Shop* or to correct mere errors of law or fact merely because another view than one is taken by the court below, is possible *(See : Shalini Shyam Shetty* (supra). In absence of any ingredient on which interference can be made, interference is declined. Petition is **dismissed.**

Petition dismissed

I.L.R. [2020] M.P. 2656
MISCELLANEOUS PETITION
Before Mr. Justice Sujoy Paul
M.P. No. 2560/2020 (Jabalpur) decided on 07 November 2020

UNION BANK OF INDIA & anr. …Petitioners

Vs.

VINOD KUMAR DWIVEDI …Respondent

A. Service Law – Dismissal – Backwages – Grounds – Illegal release of pension of a widow to incompetent person **– Held – As per Tribunal's finding, pension illegally withdrawn from July 2007 to Nov 2009 and respondent joined in 2009 – Being a peon, he has no control over process of sanction/release of pension – Other officers who were responsible for issuance of pension were given minor punishments – Respondent was unnecessarily victimized and subjected to discriminatory and disproportionate punishment – Tribunal rightly granted 30% backwages – Petition dismissed with cost of Rs. 25,000 to be paid to respondent. (Paras 13 to 18)**

क. सेवा विधि – पदच्युति – पिछला वेतन – आधार – अक्षम व्यक्ति को एक विधवा की पेंशन की अवैध निर्मुक्ति – अभिनिर्धारित – अधिकरण के निष्कर्ष के अनुसार, जुलाई 2007 से नवंबर 2009 तक अवैध रूप से पेंशन निकाली गई थी तथा प्रत्यर्थी ने 2009 में कार्यग्रहण किया था – एक भृत्य होने के नाते, पेंशन की मंजूरी/निर्मुक्ति की प्रक्रिया पर उसका कोई नियंत्रण नहीं है – अन्य अधिकारीगण जो पेंशन जारी करने के लिए उत्तरदायी थे, उन्हें लघु दण्ड दिये गये थे – प्रत्यर्थी को अनावश्यक रूप से पीड़ित किया गया और विभेदकारी एवं अननुपातिक दण्ड के अधीन किया गया – अधिकरण ने उचित रूप से 30% पिछला वेतन प्रदान किया – प्रत्यर्थी को अदा किये जाने के लिए रूपये 25,000/– व्यय के साथ याचिका खारिज।

B. Industrial Disputes Act (14 of 1947), Schedule 5, Clause V – Unfair Labour Practice – Dismissal **– Held – Punishment imposed was discriminatory, arbitrary and amounts to victimization of class IV employee without there being any justification – Clause (a), (b), (d) & (g) of Clause V "unfair labour practice" clearly attracted. (Para 24 & 25)**

ख. औद्योगिक विवाद अधिनियम (1947 का 14), अनुसूची 5, खण्ड V – अनुचित श्रम पद्धति – पदच्युति – अभिनिर्धारित – अधिरोपित दण्ड, विभेदकारी, मनमाना है और श्रेणी IV के कर्मचारी को बिना किसी न्यायोचित्य के पीड़ित करने की कोटि में आता है – ''अनुचित श्रम पद्धति'' के खंड V के खंड (a), (b), (d) व (g) स्पष्ट रूप से आकर्षित होते हैं।

C. Law of Interpretation – Precedent **– Held – Judgment of Supreme Court cannot be read as *Euclid's Theorem* – Blind reliance on a**

judgment without considering the fact situation is bad in law – A single different fact may change precedential value of judgment. (Paras 19 to 21)

ग. निर्वचन की विधि – पूर्व निर्णय – अभिनिर्धारित – उच्चतम न्यायालय के निर्णय को यूक्लिड प्रमेय के रूप में नहीं पढ़ा जा सकता – तथ्यात्मक परिस्थिति को विचार में लिए बिना निर्णय पर अंधा विश्वास, विधि में अनुचित है – एक भिन्न तथ्य, निर्णय के पूर्व निर्णय मूल्य को बदल सकता है।

Cases Referred:

2007 (2) SCC 443, 2020 (3) SCC 103, 2004 (8) SCC 579, 2011 (12) SCC 428, 2008 (16) SCC 14, 2003 (11) SCC 584, 2003 (2) SCC 111, 2011 (5) SCC 708, 2015 (10) SCC 161, 2016 (3) SCC 762, 2006 (1) SCC 368, 2002 (3) SCC 533, 2003 (1) SCC 289,

S.K. Rao with *S.K. Chaturvedi*, for the petitioners.
Pranay Choubey, for the respondent.

O R D E R

SUJOY PAUL, J.:- This petition filed under Article 227 of the Constitution partly assails the award passed by the Central Government Industrial Tribunal (Tribunal) dated 07.01.2020 to the extent Tribunal directed reinstatement of workman with 30% backwages and other benefits.

2. Shri S.K. Rao, learned senior counsel for the petitioners at the threshold made it clear that he is not challenging the award on merits, indeed the employer has confined its attack to the extent 30% backwages have been granted.

3. The relevant facts which have given rise to the industrial dispute referred by the appropriate government to the Tribunal on 03.12.2012 were that the respondent-workman was an employee of Sidhi Branch of the Bank between 1993 to 2009. The widow of a pensioner -Smt. Urmila Devi preferred a complaint before the Bank stating she did not withdraw her pension from her pension account for last two years. She came to know in November, 2009 during her visit to the Branch that pension has been withdrawn by the workman in connivance with the other persons. The employer placed the workman under suspension and instituted a departmental inquiry. It was alleged that the workman acted prejudicial to the interest of the Bank which amounts to gross negligence involving serious loss to the Bank, willful damage to the property of customers of the Bank, breach of rule of business of the Bank and instructions for running the department. The additional charge was also added. The Inquiry Officer found the charges as proved. The Disciplinary Authority inflicted the punishment of "dismissal without notice". Aggrieved, the respondent-workman filed an appeal which was also dismissed. This punishment became subject matter of industrial

dispute. Reference made to the Tribunal reads as under:

> "Whether the action of the management of the Union Bank of India in awarding the punishment of Dismissal without notice to Shri Vinod Kumar Dwivedi, Ex-Peon/Hammal vide order dated 30.11.2010, is legal and justified ? What relief the concerned workman is entitled to."

4. After completion of pleadings, the Tribunal framed issues and after recording evidence and hearing the parties, decided the matter by impugned award dated 07.01.2020.

5. Shri S.K. Rao, learned senior counsel urged that the only reason for interference with the punishment order is that punishment was found to be disproportionate in nature by the Tribunal. In that event, the Tribunal was not justified in granting 30% backwages. Shri Rao submits that the workman has already been reinstated by the employer. The employer is only aggrieved by the award to the extent 30% backwages were directed to be granted by the Tribunal. He placed reliance on 2007 (2) SCC 443 *(J.K. Synthetics Ltd. Vs. K.P. Agrawal and another),* which is recently followed by Supreme Court in *Om Pal Singh Vs. Disciplinary Authority and others,* 2020 (3) SCC 103. Learned senior counsel has taken pains to contend that in view of the binding judgment of *J.K. Synthetics Ltd.* (supra) followed in Om Pal Singh (supra), it is clear that the Tribunal has clearly erred in directing payment of 30% backwages. When one punishment is interfered with merely because it is found to be excessive and a lesser punishment is directed to be imposed in lieu thereof, the Tribunal cannot direct payment of backwages.

6. *Per contra,* Shri Pranay Choubey, learned counsel for the respondent supported the impugned award. Interestingly, he also placed reliance on the judgment of *J.K. Synthetics Ltd*.(supra). By placing reliance on different paragraphs of this judgment, Shri Choubey urged that the Tribunal has not committed any jurisdictional or legal error which warrants interference by this Court. He placed heavy reliance on certain paragrphs of the award. He contended that the respondent was unnecessarily subjected to disciplinary proceedings. The punishment imposed on him was not only shockingly disproportionate, the whole episode of the disciplinary proceedings smack of conspiracy. It is further urged that against other five officials, who were mainly responsible and concerned with payment to the widow of the pensioner, the matter was leniently dealt with and punishment of reduction by one stage in scale of pay without cumulative effect was awarded against those five officials. The respondent was subjected to discriminatory and step-motherly treatment.

7. No other point is pressed by learned counsel for the parties.

8. I have bestowed my anxious consideration to the rival contentions of learned counsel for the parties and perused the record.

9. As noticed above, both the parties have placed heavy reliance on the judgment of Supreme Court in *J.K. Synthetics Ltd.*(supra). On the basis of same judgment, they have taken diametrically opposite stand. Thus, the said judgment needs to be examined with utmost care and caution.

10. The judgment of *J.K. Synthetics Ltd.*(supra) has been recently followed by the Apex Court in the case of *Om Pal Singh* (supra). By placing reliance on Para 17 of the judgment of *J.K. Synthetics Ltd.*(supra), the Apex Court came to hold that where the misconduct was held to be proved, the reinstatement is itself a consequential benefit arising out of imposition of lesser punishment. The award of backwages for the period when employee has not worked may amount to rewarding the delinquent employee and punishing the employer for taking action for misconduct committed by the employee, which should be avoided.

11. The argument of Shri Rao, learned senior counsel in the first blush appears to be attractive but on a closure scrutiny, it is found that in the case of Om Pal Singh (supra), the petitioner therein was served with a punishment of dismissal from service. He preferred a departmental appeal. The Appellate Authority modified the punishment by imposing punishment of reduction of pay by 15 stages in the time scale of pay for a period of 8 years. This modified punishment was challenged by employee before the High Court by filing a writ petition. The High Court directed reconsideration of punishment and remitted the matter back before the Disciplinary Authority. In turn, the Disciplinary Authority reconsidered the matter and reiterated the same penalty of reduction of 15 stages lower in time scale in pay for a period of 8 years. However, the Disciplinary Authority modified the punishment to 10 stages in place of 15 stages for a period of 6 years in place of 8 years. The High Court did not interfere with this modified punishment in the second round of litigation. In this factual backdrop, in the case of *Om Pal Singh* (supra), the Apex Court placed heavy reliance on Para 17 of the judgment of *J.K. Synthetics Ltd.* (supra) and dismissed the appeal of the employee.

12. A plain reading of the aforesaid factual matrix of the case of *Om Pal Singh* (supra) makes it crystal clear that the singular reason on which the Disciplinary Authority modified the punishment was that it was disproportionate/excessive. No other finding was given on any other aspect. In other words, interference was not made on the ground of victimization, colourable exercise of power or for the reason of discrimination etc.

13. In the case in hand, it is apposite to take note of certain findings given by the learned Tribunal. The Tribunal opined that the illegal withdrawal of pension took place between July 21, 2007 to November 25, 2009. The respondent joined

the Bank in regular capacity only in 2009. The Tribunal totally disapproved the manner in which Bank imposed the punishment on the workman. It was noted that previously the respondent was posted as personal servant (Driver) of Lead District Manager. Later on, he became Peon. The Tribunal recorded that "it *is surprising as to how the Bank staff was so vulnerable to be pressurized by the personal Driver of the Lead District Manager".*

14. The Tribunal further recorded that *"accordingly it is held that charges of using his position in getting the fraudulent withdrawal passed is held proved though it is surprising as to how such a peon of the bank can be so influential to impress every staff of the bank to act according to his wishes. Certainly the whole episode smacks of conspiracy.* In Para 15 of the award, the Tribunal in clear terms recorded that *"the workman was not the approving authority. He was not the person to deliver the cash to the holder. The other staff is equally or more guilty than the present workman in the whole episode. The details of the punishment given to other staff show that minor penalty of reduction by one stage in scale of pay without cumulative effect was awarded to the other five officials which were mainly obligated and connected with the job whereas who were mainly obligated and connected with the job whereas the workman has been awarded with the punishment of dismissal without notice which certainly smacks of discrimination by the Bank."* The Tribunal further opined that punishment is shockingly disappropriate and discriminatory in nature.

15. A careful reading of the award shows that the Tribunal interfered with the punishment by holding that (i) it was unwarranted, (ii) amounts to discrimination and (iii) such punishment smacks of "conspiracy". Thus, in this factual background, the judgment of *J.K. Synthetics Ltd.* (supra) needs to be seen.

16. In para-19 of judgment of *J.K.Synthetics Ltd. (supra),* the Apex Court noted that where finding of misconduct is affirmed and only punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement. If reinstatement is directed, it is not automatic with retrospective effect from the date of termination. Where reinstatement is a consequence of imposition of lesser punishment, neither backwages nor continuity of service nor consequential benefits follow as a natural or necessary consequence of such reinstatement. Thereafter the Apex Court laid down two exceptions.

17. Para 20 of the judgment of *J.K. Synthetics Ltd.* (supra) reads as under:

> "20. But there are **two exceptions.** The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. **Second** is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the

> disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back-wages etc. will be the same as those applied in the cases of an illegal termination."
>
> [Emphasis Supplied]

18. In the instant case, the Tribunal has given a finding that the appellant was initially a private driver of the Bank Manager and, therefore, he was not in a position to influence the staff of the bank for the purpose of illegal release of pension. Thereafter, since 2009, he worked as a Peon. Being a Peon, he had no control over the process of sanction and release of pension. The ministerial employees and officers who were in the helm of affairs and were responsible for issuance of pension were given minor punishments whereas the petitioner was picked up and chosen for a punishment of dismissal from service. Thus, present respondent was unnecessarily victimized and subjected to discriminatory and disproportionate punishment. Thus, in my view, the second exception laid down in Para-20 of judgment of *J.K. Synthetics Ltd.* (supra) is clearly attracted in this matter.

19. It is trite that judgment of Supreme Court cannot be read as *Euclid's Theorem.* [See: 2004 (8) SCC 579 *(Bharat Petroleum Corporation Ltd. Vs. N.R. Vairamani),* 2011 (12) SCC 428 *(C. Ronald Vs. UT Andaman & Nicobar Islands)* and 2008 (16) SCC 14 *(Deepak Bajaj Vs. State of Maharashtra)].* Blind reliance on a judgment without considering the fact situation is bad in law. [See: 2003 (11) SCC 584 *(Ashwani Kumar Singh Vs. U.P. Public Service Commission),* 2003 (2) SCC 111 *(Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd.*), 2011 (5) SCC 708 *(Sushil Suri Vs. CBI)*, 2015 (10) SCC 161 *(Indian Performing Rights Society Ltd. Vs. Sanjay Dalia),* 2016 (3) SCC 762 *(Vishal N. Kalsaria Vs. Bank of India)].*

20. This is equally settled that decision of a Court should be understood in the facts situation of a case and by taking factual context in mind. [See: 2006 (1) SCC 368 *(Union of India Vs. Major Bahadur Singh),* 2002 (3) SCC 533 *(Padma Sundara Rao Vs. State of Tamil Nadu),* 496, 2003 (1) SCC 289 (Ram *Prasad Sharma Vs. Mani Kumar Subba)].*

21. This is also settled principle that a single different fact may change the precedential value of a judgment. [See : *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., 2003 (2) SCC 111].*

22. As pointed out above, in the case of *Om Pal Singh* (supra), the interference on punishment was solely based upon the doctrine of proportionality. Thus, in the case of *Om Pal Singh* (supra), the Apex Court had no occasion to apply the test and exception laid down by Supreme Court in the case of *J.K. Synthetics Ltd.* (supra). In the instant case, the necessary ingredients for applying the second exception (as

per Para 20 of the judgment) are available. Thus, I find force in the argument of Shri Choubey that exception 2 of Para 20 of *J.K. Synthetics Ltd.* (supra) is clearly attracted. In this view of the matter, it cannot be said that the Tribunal has passed the award which runs contrary to the law laid down in the case of *J.K. Synthetics Ltd.* (supra).

23. In view of the foregoing analysis, the judgment of *Om Pal Singh* (Supra) is of no assistance to the Bank.

24. The matter may be viewed from another angle. The 5th Schedule of Industrial Dispute Act, 1947 prescribes *"Unfair Labour Practice".* The relevant entries of item 5 reads as under:

> "5. To discharge or dismiss workmen—
>
> (a) by way of **victimisation;**
>
> (b) not in good faith, but in the **colourable exercise** of the employer's rights;
>
> (c) ... ...
>
> (d) for patently false reasons;
>
> (e) ... ...
>
> (f) ... ...
>
> (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a **disproportionate punishment**."
>
> [Emphasis Supplied]

25. In view of findings given by the Tribunal and discussions made hereinabove, it is clear that clause (a), (b), (d) & (g) of Clause V "unfair labour practice" are clearly attracted in the present case. The punishment imposed on the present respondent was discriminatory, arbitrary and amounts to victimization of a Class-IV employee without there being any justification. Moreso, when the clerical staff and officers of the bank who were actually responsible for the misconduct were inflicted with minor punishments. In this backdrop, the Tribunal has rightly exercised its judicial discretion and granted 30% back wages. No fault can be found in the said direction.

26. As discussed above, the award passed by the Tribunal is in consonance with the law laid down in the case of *J.K. Synthetics Ltd.* (supra). In absence of any jurisdictional error, patent illegality, palpable procedural impropriety or perversity, interference is declined.

27. Petition is dismissed with Rs.25,000/- (Rupees Twenty five Thousand) cost. The petitioners shall pay the cost to the respondent within 30 days from today.

Petition dismissed

I.L.R. [2020] M.P. 2663 (DB)
REVIEW PETITION

Before Mr. Justice Sanjay Yadav & Mr. Justice Atul Sreedharan

R.P. No. 1010/2020 (Jabalpur) decided on 02 November 2020

STATE OF M.P. SPE LOKAYUKTA, JABALPUR …Petitioner

Vs.

RAVI SHANKAR SINGH & ors. …Respondents

A. Prevention of Corruption Act (49 of 1988), Section 19 and Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Examination of Sanctioning Authority – Stage of Trial **– Held – Apex Court concluded that validity of sanction can be examined at any stage of the "proceedings" which includes the stage of framing of charges which is a pre-trial stage of proceedings – Sanctioning authority can be examined u/S 311 Cr.P.C. at the time of taking cognizance – Guidelines issued by this Court is not in conflict with judgment of Apex Court – Prayer rejected. (Para 20 & 21)**

क. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 – मंजूरी प्राधिकारी का परीक्षण – विचारण का प्रक्रम – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि मंजूरी की विधिमान्यता का परीक्षण, ''कार्यवाहियों'' के किसी भी प्रक्रम पर किया जा सकता है जिसमें आरोप विरचित करने का प्रक्रम शामिल है जो कि कार्यवाहियों का एक विचारण–पूर्व प्रक्रम है – धारा 311 दं.प्र.सं. के अंतर्गत, मंजूरी प्राधिकारी का परीक्षण, संज्ञान लेते समय किया जा सकता है – इस न्यायालय द्वारा जारी दिशानिर्देश, सर्वोच्च न्यायालय के निर्णय के विरूद्ध नहीं है – प्रार्थना नामंजूर।

B. Prevention of Corruption Act (49 of 1988), Section 19 and Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Pre-trial Examination of Sanctioning Authority – Video Conferencing **– Held – Sanctioning authority is not a material witness but only a witness to a fact of procedural fulfillment – There can be no objection from accused to the examination and cross examination of sanctioning authority through video conference – Thus there is no impracticality in implementation of the guidelines issued by this Court. (Para 27)**

ख. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 – मंजूरी प्राधिकारी का विचारण–पूर्व परीक्षण – वीडियो कॉन्फ्रेंसिंग – अभिनिर्धारित – मंजूरी प्राधिकारी एक तात्विक साक्षी नहीं है बल्कि केवल प्रक्रियात्मक पूर्ति के एक तथ्य का साक्षी है – वीडियो कॉन्फ्रेंस के जरिए मंजूरी प्राधिकारी के परीक्षण एवं प्रति परीक्षण पर अभियुक्त को कोई आपत्ति नहीं हो सकती – अतः, इस न्यायालय द्वारा जारी दिशानिर्देशों के क्रियान्वयन में कोई अव्यवहारिकता नहीं।

***C. Constitution – Article 141 and Prevention of Corruption Act (49 of 1988), Section 19(4), Explanation (a) – Binding Precedent & Obiter Dicta* – Held – When Apex Court interprets a statutory provision though not necessary for decision of the core issue involved in a case before it, same being an *obiter dicta* of Supreme Court would still be a binding precedent under Article 141 of Constitution on all subordinate Courts – Para 48 of judgment of *Prakash Singh Badal's* case is not a binding precedent but an *obiter dicta*, as it was not essential for decision on the core issue and as the *obiter dicta* does not consider provisions of Section 19(4) and explanation (a) thereto, the *obiter* is not binding on this Court. (Para 12 & 19)**

ग. संविधान – अनुच्छेद 141 एवं भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19(4), स्पष्टीकरण (a) – बाध्यकारी पूर्व निर्णय व इतरोक्ति – अभिनिर्धारित – जब सर्वोच्च न्यायालय एक कानूनी उपबंध का निर्वचन करता है, यद्यपि उसके समक्ष के प्रकरण में अंतर्ग्रस्त मूल मुद्दे के विनिश्यच हेतु आवश्यक नहीं, वह उच्चतम न्यायालय की इतरोक्ति होने के नाते, संविधान के अनुच्छेद 141 के अंतर्गत, सभी अधिनस्थ न्यायालयों पर एक बाध्यकारी पूर्व निर्णय बना रहेगा – प्रकाश सिंह बादल के प्रकरण के निर्णय का पैरा 48 एक बाध्यकारी पूर्व निर्णय नहीं है किन्तु एक इतरोक्ति है क्योंकि वह मूल मुद्दे के विनिश्चय हेतु आवश्यक नहीं था और क्योंकि इतरोक्ति में धारा 19 (4) एवं उसके स्पष्टीकरण (a) के उपबंधों को विचार में नहीं लिया गया है, इस न्यायालय पर इतरोक्ति बाध्यकारी नहीं है।

***D. Constitution – Article 226 and Criminal Procedure Code, 1973 (2 of 1974), Section 362 & 482 – Criminal Jurisdiction – Intra Court Appeal* – Held – A final order passed in a petition filed under Article 226 for quashing criminal proceeding, would still be the order of a Court exercising criminal jurisdiction and thus bar u/S 362 will squarely apply – Review petition not maintainable. (Paras 28 to 31)**

घ. संविधान – अनुच्छेद 226 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 362 व 482 – दाण्डिक अधिकारिता – अंतःन्यायालय अपील – अभिनिर्धारित – दाण्डिक कार्यवाही अभिखंडित किये जाने हेतु अनुच्छेद 226 के अंतर्गत एक याचिका में पारित अंतिम आदेश, तब भी एक दाण्डिक अधिकारिता का प्रयोग करते हुए न्यायालय का आदेश होगा और इसलिए धारा 362 के अंतर्गत वर्जन पूर्णतः लागू होगा – पुनर्विलोकन याचिका पोषणीय नहीं।

***E. Constitution – Article 21 & 226 – Right to Speedy Trial* – Held – If inordinate delay takes place in conclusion of trial for no apparent fault of accused, his right under Article 21 kicks in and his petition for quashing the retrial ordered on account of first trial ending in discharge due to invalid sanction, may effectively be sustained on grounds of violation of right to speedy trial. (Para 26)**

ङ. संविधान – अनुच्छेद 21 व 226 – शीघ्रता से विचारण का अधिकार – अभिनिर्धारित – यदि अभियुक्त का कोई प्रकट दोष ना होते हुए विचारण की समाप्ति में असाधारण विलम्ब हुआ है, उसका अनुच्छेद 21 के अंतर्गत अधिकार प्रहार करता है और अविधिमान्य मंजूरी के कारण प्रथम विचारण की समाप्ति आरोपमुक्ति में होने के कारण से आदेशित पुनःविचारण को अभिखंडित करने हेतु उसकी याचिका को, शीघ्रता से विचारण के अधिकार के उल्लंघन के आधारों पर, प्रभावी रूप से कायम रखा जा सकता है।

Cases Referred :

(2007) 1 SCC 1, (2012) 1 SCC 532, (2014) 14 SCC 295, 2019 SCC Online SC 1265, (2002) 4 SCC 638, (2006) 5 SCC 167, (2006) 1 SCC 557, (2002) 3 SCC 496, (2015) 14 SCC 186, (2014) 3 SCC 92, (2005) 8 SCC 370, W.P. No. 19792/2019 order dated 08.05.2020, AIR 1962 SC 1573, AIR 1968 SC 192, (1970) 3 SCC 451, (1979) 4 SCC 172, (1997) 7 SCC 622, (2006) 7 SCC 172, (2006) 10 SCC 560, (2007) 11 SCC 273, (2013) 1 SCC 376, (2017) 5 SCC 533.

Satyam Agrawal, for the petitioner.

O R D E R

The Order of the Court was passed by :

ATUL SREEDHARAN, J.:- The Petitioner is aggrieved by guideline **(a)** in paragraph 32 of the order dated 08/05/2020, passed by this Court in Writ Petition No. 19792/2019, requiring the examination of the sanctioning authority under section 311 Cr.P.C at the time of taking cognizance of an offence under the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act").

2. The Ld. Counsel for the Petitioner has submitted that the guideline mentioned hereinabove is in conflict with the judgements of the Supreme Court which hold, that the validity of the sanction order can only be examined during the course of the trial and not at the commencement of the proceedings before the Special Judge. The judgements of the Supreme Court that the order in question supposedly conflicts with are (1) *Prakash Singh Badal Vs. State of Punjab* - (2007) 1 SCC 1, (2) *Dinesh Kumar Vs. Airport Authority of India* - (2012) 1 SCC 532, (3) *C.B.I Vs. Ashok Kumar Aggarwal* - (2014) 14 SCC 295 and (4) *Central Bureau of Investigation Vs. Pramila Virendra Kumar Agarwal and Another* -2019 SCC OnLine Supreme Court 1265.

3. Ld. Counsel for the Petitioner has also raised, according to him, a practical difficulty in enforcing guideline **(a)** as the sanctioning authorities are senior officers in the government and they would, on account of their official engagement, find it extremely inconvenient if they have to be examined as a witness at the very outset.

4. Three questions arise in this case. Two put forth by the Ld. Counsel for the Petitioner and the third which appears apparent to this Court. They are.

(1) Whether guideline (a) in paragraph 32 of the order dated 08/05/2020, passed by this Court in Writ Petition No. 19792/2019, is in conflict with the judgements of the Supreme Court mentioned in paragraph No.2 *supra,* and

(2) Whether guideline (a) is impractical and would result in much inconvenience to the sanctioning authority to appear and establish the validity of the sanction order at the very outset? and

(3) Whether the instant Review Petition is maintainable in the light of S. 362 Cr.P.C?

QUESTION NO. 1

5. In *Prakash Singh Badal Vs. State of Punjab* - (2007) 1 SCC 1, the Petitioner had approached the Supreme Court being aggrieved by the order of the High Court of Punjab and Haryana. The High Court had refused to quash the cases against the Petitioner, the then former Chief Minister of Punjab, registered against his family members and him under the provisions of the PC Act by the succeeding government in office. The ground taken before The Supreme Court was that prior sanction under section 19 of the PC Act was mandatory as the petition (sic: Petitioner) continued to be a public servant in his capacity as an MLA. Therefore, merely because the Petitioner was no longer the Chief Minister of Punjab, did not obviate the requirement of previous sanction u/s. 19 of the PC Act. On merits, malafides were alleged.

6. The core issue before the Supreme Court in *Prakash Singh Badal's* case was whether, previous sanction u/s. 19 of the PC Act was mandatory before the Special Judge could take cognizance for offences under u/s. 7, 10, 11, 13 and 15 of the PC Act against a Public Servant, who no longer occupied the office he abused. The Supreme Court examined an issue, hitherto untouched. It was different from a situation where cognizance was to be taken against the accused who was a Public Servant, but not one, on the date the Court had to take cognizance of the offences, on account of his superannuation, dismissal, removal etc., from service. Instead, the Supreme Court examined a situation where the accused continued to be a Public Servant on the date on which cognizance was to be taken, but was not

occupying the post which was allegedly abused by him and whether, in such a situation, previous sanction u/s. 19 of the PC Act was required? The Supreme Court arrived at the finding that where, the Public Servant ceased to occupy the office alleged to have been abused by him, there was no necessity of previous sanction u/s. 19 of the PC Act, notwithstanding the fact that the accused continued to be a Public Servant in another capacity, occupying another public office. While holding so, the Supreme Court also held **"The sanction in the instant case related to the offences relatable to the act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold, but the latter is a question which has to be raised during trial"[1].** The Other judgments of the Supreme Court, relied upon by the Petitioner, have merely followed, what has been held by the Supreme Court in paragraph 48 of *Prakash Singh Badal's* case. It is relevant to mention here that this proposition of law, laid down in *Prakash Singh Badal's* case is no longer in effect on account of the amendment to S. 19 of the PC Act w.e.f. 26/07/2018 by which, explanation after the fifth proviso to s. 19(1), set to naught the law laid down by the Supreme Court, in the following words;

> **Explanation.- For the purposes of sub-section (1), the expression "public servant" includes such persons-**
>
> **(a) who has ceased to hold the office during which the offence is alleged to have been committed; or**
>
> **(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.** *(emphasis added by the Court)*

7. If, what has been stated by the Supreme Court in paragraph 48 of *Prakash Singh Badal's* case is a part of the *ratio decedendi* of that case, then it goes without saying that question No.1 would have to be answered in favour of the Petitioner. Even if the same is an *obiter dicta,* judicial discipline would require this Court to feel itself bound by it unless, the Supreme Court itself has held to the contrary in any other case, where the contrary opinion is the *ratio decedendi* of that case or, where the Supreme Court has held to the contrary by way of another *obiter dicta,* in an earlier case, where the strength of the bench is the same in both cases.

8. The Supreme Court in *Director of Settlements A.P Vs. M.R. Apparao*, has held that the law declared by the Supreme Court is binding on all courts in view of Article 141 in the following words **".....Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be**

[1]Prakash Singh Badal Vs. State of Punjab - (2007) 1 SCC 1, paragraph 48 at page 37.

binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case....."[2].

9. In *State of Haryana Vs. Ranbir,* the Supreme Court, while deciding a case under the NDPS Act, held **" .....A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect...."**[3].

10. Judgements are not to be interpreted as statutes and they must be read in the context in which they are passed. In *Haryana Financial Corporation Vs. Jagdamba Oil Mills,* the Supreme Court held **"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments.**

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[2]Director of Settlements A.P Vs. M.R. Apparao - (2002) 4 SCC 638, paragraph 7 at page 650
[3]State of Haryana Vs. Ranbir - (2006) 5 SCC 167, paragraph 12 at page 171

They interpret words of statutes, their words are not to be interpreted as statutes"[4]. The Supreme Court strongly emphasises that judgements should not be read and applied pedantically. It would lie upon the Court applying the judgement of the Supreme Court to cull the *ratio decedendi* and distinguish it from the *obiter dicta* of the Court.

11. Even in *Prakash Singh Badal's* case, the Supreme Court while dealing with the submission put forth on behalf of the Petitioner that a previous sanction for an offence u/s. 467 and 468 IPC would be essential in view of the judgement of the Supreme Court in *Rakesh Kumar Mishra Vs. State of Bihar* - (2006) 1 SCC 557, the Supreme Court observed that the said case had no relevance and held **"Reference to a particular decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context"** [5]

12. Where an *obiter* of the Supreme Court is in conflict with the clear and unambiguous words of the statute, the will of the legislature will have to prevail through the pen of the inferior Court. However, where the Supreme Court takes into consideration a statutory provision and thereafter gives a finding with reasons, or in other words, interprets a statutory provision, though the same may not have been necessary for the decision of the core issue of the case before it, the same being an *obiter dicta* of the Supreme Court, would still be a binding precedent under Article 141 on all Courts judicially subordinate to the Supreme Court.

13. As regards the judgements relied upon by the Ld. Counsel for the Petitioner, the main judgement for sustaining the postulate put forth on behalf of the Petitioner is *Prakash Singh Badal's* case. It is only in paragraph 48 of the said judgement that the Supreme Court observes, and that too fleetingly, that absence of sanction can be looked into at the threshold but the validity of sanction can only be enquired into at the stage of trial (paragraph 6 *supra)*.

14. In this regard, it would be beneficial to examine the provision of S. 19(4) of the PC Act which is as hereunder;

> **19. Previous sanction necessary for prosecution**
>
> **(1). XXX**
>
> **(2). XXX**
>
> **(3). XXX**
>
> **(4). In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in,**

[4]Haryana Financial Corporation Vs. Jagdamba Oil Mills - (2002) 3 SCC 496, paragraph 19 at page 508

[5]Prakash Singh Badal Vs. State of Punjab - (2007) 1 SCC 1 - paragraph 49 at page 37

such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. -For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

Sub section 4 of section 19 of the PC Act provides that the objection with regard to the absence of a sanction or any error, omission or irregularity, should be raised at the earliest stage of the proceeding. Here, it is relevant to mention that there has been a conscious usage of the word "proceedings" by the legislature instead of "trial". Every trial is a part of the Court proceeding but every Court Proceeding need not be a trial. In a criminal case, proceedings would start before the Court concerned after the report of investigating agency is filed u/s. 173(2) Cr.P.C and the Trial Court is called upon to take cognisance (sic: cognizance) of the offence(s) u/s. 190 Cr.P.C. Trial would commence after charges are framed as shall be reflected upon by this Court with reference to the judgement of the Constitution Bench of the Supreme Court in *Hardeep Singh's* case later in this judgement. Also, explanation (a) to sub section 4 of section 19 of the PC Act clarifies, that "error" in the sanction order includes the competence of authority granting sanction.

15. The Supreme Court in *Nanjappa Vs. State of Karnataka* -(2015) 14 SCC 186, has emphatically held in paragraph 22 that the statute forbids the taking of cognizance without previous sanction. It also lays down that the question regarding validity of sanction can be raised at any stage of the proceeding and where the sanction order is found to be invalid, the Trial Court can even discharge the accused. The judgement of the Supreme Court in *Nanjappa's* case has been elaborately examined by this Court in paragraph 14 and 15 of the impugned order. It goes without saying that where the Supreme Court has laid down that the accused can be discharged for an invalid sanction, it is obviously referring to a pretrial stage. In *Nanjappa's* case, the Supreme Court held that after the conclusion of the trial, if the Trial Court is of the opinion that the sanction order was invalid, then it ought not to acquit the accused and instead discharge him, as cognisance (sic: cognizance) itself was wrongly taken on account of defective sanction and so, the entire trial itself was void ab initio. However, the Supreme Court did not order a retrial of the Petitioner in *Nanjappa's* case as, the Petitioner had already suffered an inordinately long trial.

16. It is also relevant to refer to another judgement of the Supreme Court, which precedes *Prakash Singh Badal's* judgement, also passed by a two judge bench, wherein the Supreme Court held in the following words **"Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance...."[6].**

17. That, the trial commences only after the framing of charges is also no longer *res integra,* as has been held by the Constitution Bench of the Supreme Court in *Hardeep Singh Vs. State of Punjab and others* - (2014) 3 SCC 92 (paragraph 38). The judgment in *Hardeep Singh* has also been discussed by this Court elaborately in paragraph 21 of the impugned order.

18. It is relevant to mention here that the observation of the Supreme Court in *Nagarajaswamy's* case, which was passed by a two-judge bench was not referred, relied or distinguished by the subsequent two judge bench in *Prakash Singh Badal's* case. Also, the other judgements relied upon by the Ld. Counsel for the Petitioner, mentioned in paragraph 2 *supra,* have not broken any new ground and have all been passed by two judge benches of the Supreme Court, following the observations of the Supreme Court in paragraph 48 of *Prakash Singh Badal's* case. None of these judgements too, refer to the observation in paragraph 14 of *Nagarajaswamy's* case according to which, the validity of sanction must be looked into at the stage of taking cognizance, which as stated earlier, preceded the two bench judgement in *Prakash Singh Badal's* case.

19. Thus, in view of what this Court has discussed hereinabove, this Court holds that paragraph 48 of the judgement in *Prakash Singh Badal's* case is not a binding precedent but an *obiter dicta,* as it was not essential for a decision on the core issue before the Supreme Court. Also, as the *obiter dicta* does not consider the provisions of subsection 4 of section 19 of the PC Act and explanation (a) thereto, the *obiter* is not binding on this Court. It is also not binding on this Court in view of an earlier *obiter dicta* of the Supreme Court, to the contrary that validity of sanction must be examined at the stage of taking cognizance, as held in *Nagarajaswamy's* case.

20. What the Supreme Court has held in paragraph 22 of *Nanjappa Vs. State of Karnataka* - (2015) 14 SCC 186, clearly settles the law with regard to the stage of examining the validity of sanction, which is at any stage of the "proceedings" which includes the stage of framing of charges which is a pre-trial stage of the proceedings before the Special Court.

21. Therefore, the Court holds that guideline (a) in paragraph 32 of the order dated 08/05/2020, passed by this Court in Writ Petition No. 19792/2019, is not in

[6]State of Karnataka Vs. C. Nagarajaswamy - (2005) 8 SCC 370, paragraph 14 at page 375

conflict with the judgements of the Supreme Court mentioned in paragraph No.2 *supra,* as all of them have followed the *obiter dicta* in paragraph 48 of *Prakash Singh Badal's* case, which is not a binding precedent under Article 141, as it is not supported by any reasoning and neither was the *obiter dicta* passed after examining the provisions of S. 19(4) and Explanation (a) of the PC Act. Also, an *obiter* to the contrary was passed by an earlier two judge bench of the Supreme Court in *Nagarajaswamy's* case in 2005, holding that the validity of sanction must be looked into ordinarily, at the time of taking cognizance which, as per the judgement of the constitution bench of the Supreme Court in *Hardeep Singh's* case, is a pre trial stage. Consequently, the prayer of the Petitioner to review the order on this ground is rejected.

QUESTION NO. 2

22. The Ld. Counsel for the Petitioner has submitted that the guideline in question may not be pragmatic to implement as most of the sanctioning authorities are senior civil servants who would find it difficult to come and testify before the Trial Court at the pre-trial stage itself.

23. The argument is specious. Once a person is shown as a witness for the prosecution in the chargesheet, there is no escaping the witness box. Merely because the witness maybe a senior civil servant is no reason to assume that his testimony before the Trial Court can be avoided. It is only the sanctioning authority who can prove the validity of the sanction order so far as it relates to the application of mind. The competence of the sanctioning authority may be proved by a formal witness on the basis of documents but, the fact that the sanctioning authority had applied its mind to the record of the case against the accused, before granting sanction to prosecute u/s. 19 of the PC Act, can only be proved by the sanctioning authority. Therefore, the timing of the sanctioning authority taking the stand is not relevant.

24. The importance of the sanctioning authority establishing the validity of the sanction order at the earliest point of time cannot be underscored enough. In *R.R. Chari Vs. State of Uttar Pradesh* - AIR 1962 SC 1573, the Petitioner was convicted for an offence of bribery and the Supreme Court had set it aside on the ground of invalid sanction and refrained from ordering a retrial on account of the Petitioner having suffered the trial for a period of fourteen years. In *Sailendranath Bose Vs. State of Bihar* - AIR 1968 SC 192, the accused was acquitted by the Supreme Court in a PC Act case on the ground of invalid sanction. In *R.J. Singh Ahluwalia Vs. State of Delhi* - (1970) 3 SCC 451, the conviction of the accused was set aside by the Supreme Court as the sanction was invalid. In *Mohd. Iqbal. Ahmed Vs. State of Andhra Pradesh* - (1979) 4 SCC 172, the accused was acquitted because of invalid sanction. In *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat* - (1997) 7 SCC 622, the accused was acquitted by the Supreme Court

because of invalid sanction. In *State (Inspector of Police) Vs. Surya Sankaram Karri* - (2006) 7 SCC 172, the High Court acquitted the accused in appeal on the ground of invalid sanction and the Supreme Court upheld the acquittal in an appeal by the state. In *Moti Lal Saraf Vs. State of J & K* - (2006) 10 SCC 560, the case against the accused was quashed by the Supreme Court as even after twenty six years, not a single witness had been examined before the Trial Court in his case and in *State of Karnataka Vs. Ameerjan* - (2007) 11 SCC 273, the accused was convicted for taking bribe by the Trial Court but acquitted by the High Court on the grounds of invalid sanction which order, was upheld by the Supreme Court in appeal by the State.

25. The purpose of citing these cases as illustrations is to demonstrate, why it is so important to examine the sanctioning authority at the earliest stage under 311 Cr.P.C. If the order of sanction is invalid, the chargesheet can be returned to the prosecution/police with liberty to file afresh with an appropriate sanction order. In all the cases referred to above, the accused may have been guilty on merits but gets away only on account of the sanction order being invalid, which is a travesty of justice. Today, the accused sits pretty as he knows that the dynamics of a trial under the PC Act are such that it invariably gets protracted on account of the difficulties endured by the prosecution in producing its witnesses. Most witnesses in a PC Act case are public servants themselves and the delay in securing their presence range from the prosecutor's office not knowing the current place of posting of the witness or worse, the witness having retired has settled in some other state. Therefore, the trial can stretch on for a decade or more and at the end of this long trial, it is galling if the accused is let off the hook only because of the sanction order was invalid though on merits he may be guilty of the offence.

26. It is all very well to say that after the judgements of the Supreme Court in *State of Karnataka Vs. C. Nagarajaswamy* - (2005) 8 SCC 370, and *Nanjappa Vs. State of Karnataka* - (2015) 14 SCC 186, the law as it stands today is that where, at the end of a trial, it appears to the Trial Court that the sanction order was invalid, instead of acquitting the accused, the Trial Court should discharge him giving liberty to the State to initiate proceedings against the accused afresh after securing a valid sanction order. However, in *Nanjappa's* case itself, the Supreme Court did not allow fresh proceeding to recommence against the accused due to the extreme delay caused in the conclusion of the first trial against the accused. In similar circumstances, the Supreme Court in *Nagarajaswamy's* case, directed fresh proceedings against the accused despite a long protracted trial in the first instance but directed the Trial Court to conclude the trial within a period of six months if possible, giving liberty to the accused to reagitate his case if the trial does not conclude within six months. The fact remains that if inordinate delay takes place in the conclusion of the trial, for no apparent fault of the accused, his right under Article 21 kicks in and his petition for quashing the retrial ordered on account of

the first trial ending in a discharge due to invalid sanction, may effectively be sustained on the grounds of violation of the right to speedy trial. In such cases, it may be impractical to direct the trial Court to conclude the trial from scratch within six months, when the first trial itself took more than a decade to conclude.

27. As regards the inconvenience that pre-trail (sic: trial) examination of the sanctioning authority may cause to senior civil servants, who are invariably the sanctioning authority, the present global crisis due to the corona virus, has uncovered solutions which were existing from before, but never explored. The State is blessed with one of the best IT infrastructures existing in the country. This Court has held in paragraph 25 of the impugned order that the sanctioning authority is not a material witness but only a witness to a fact of procedural fulfilment. Thus, there can be no objection from the accused to the examination and cross examination of the sanctioning authority through the medium of video conferencing. The sanctioning authority would not have to leave the comfort of his home or office, and yet testify before the Trial Court about the validity of the sanction order. No time would be wasted in travelling and no expenditure incurred and so, in view of what has been discussed, the impracticality in implementation of guideline (a), is negated by this Court and the prayer of the Petitioner to review the impugned order on this ground is also rejected.

QUESTION NO. 3

28. This question, though not based upon the contentions of the Petitioner, is being explored by the Court on account of the perceived ramification it has. The question is, if the present review petition is maintainable in view of section 362 of the Cr.P.C which prohibits the review of an order passed in a criminal case once the case has been finally disposed of. The question assumes significance as the case before this Court was not filed for quash under section 482 Cr.P.C, but under Article 226 of the Constitution of India.

29. In *Nazma Vs. Javed Alias Anjum*, the Supreme Court was examining the propriety of an order passed in a Criminal Miscellaneous Application by which, the High Court had reviewed its order, disposing off a Criminal Miscellaneous Writ Petition. The Supreme Court held **".....Once the criminal Writ Petition has been disposed of the High Court becomes functus officio and cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors. In the instant case, the High Court has entertained a petition in a disposed of criminal writ petition and granted reliefs, which is impermissible in law"[7].**

30. As per the High Court Rules, there are only two categories of Writ Petition.

[7]Nazma Vs. Javed Alias Anjum - (2013) 1 SCC 376, paragraph 12 at page 380

(1) Writ Petition (S) for service matters and (2) Writ Petition or other than service matters, which includes writ petitions for quash of an FIR or a criminal case. Writ Petitions are not categorised as Criminal Writ Petitions or Civil Writ Petitions under the High Court rules and so it has to be examined if, in a Writ Petition, a prayer to quash an FIR is amenable to review after the final order is passed, which is not permissible had the relief been sought under S. 482 Cr.P.C.

31. A three-judge bench of the Supreme Court in *Ram Kishan Fauji's* case examined, if the power of intra court appeal could be exercised in a criminal case, where relief was sought under Article 226 instead of s. 482 Cr.P.C. No intra court appeal was maintainable if the petition was u/s. 482 Cr.P.C. The Supreme Court held **"The conception of "criminal jurisdiction" as used in Clause 10 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequence. It is the field in respect of which the jurisdiction is exercised, is relevant. The contention that solely because a writ petition is filed to quash an investigation, it would have room for intra-court appeal and if a petition is filed under inherent jurisdiction under Section 482 Cr.P.C, there would be no space for an intra-court appeal, would create an anomalous, unacceptable and inconceivable situation"[8].** By analogy, the same reasoning would apply in a writ petition praying for the quash of a criminal proceeding. It is the content of the Writ Petition that would determine its nature. A final order passed in a quash petition filed u/art 226 would still be the order of a court exercising criminal jurisdiction and therefore, the bar u/s. 362 Cr.P.C would squarely apply. Thus, this Court is of the view that the present review petition is not maintainable and therefore, it is rejected on this ground too.

Petition dismissed

I.L.R. [2020] M.P. 2675 (DB)
MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Sheel Nagu & Mr. Justice G.S. Ahluwalia

M.Cr.C. No. 35271/2019 (Gwalior) decided on 6 March, 2020

SHAMBHU SINGH CHAUHAN ...Applicant

Vs.

STATE OF M.P. …Non-applicant

(Alongwith M.Cr.C.No. 42189/2019)

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 340 & 362 – Recall & Review – Preliminary Enquiry* – While deciding appeal in High Court, trial Court directed to prosecute prosecution witnesses for**

[8]Ram Kishan Fauji Vs. State of Haryana and Ors. - (2017) 5 SCC 533, paragraph 56 at page 565

deliberately giving false evidence – Prayer for recall of direction – Held – It was not obligatory to conduct preliminary enquiry after giving opportunity of hearing to applicant – Even without preliminary enquiry, Court can initiate u/S 340 Cr.P.C. – Court after considering every aspect had formed a *prima facie* opinion – Mere absence of preliminary enquiry would not vitiate a *prima facie* opinion formed by Court – Case is hit by Section 362 Cr.P.C. – Application dismissed. (Paras 22, 34 & 38 to 40)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 व 362 – वापस लिया जाना एवं पुनर्विलोकन – प्रारंभिक जांच – उच्च न्यायालय में अपील विनिश्चित किये जाते समय, अभियोजन साक्षियों को, जानबूझकर मिथ्या साक्ष्य देने के लिए अभियोजित करने हेतु विचारण न्यायालय को निदेशित किया गया – निदेश वापस लेने हेतु प्रार्थना – अभिनिर्धारित – आवेदक को सुनवाई का अवसर देने के पश्चात् प्रारंभिक जांच संचालित करना बाध्यकारी नहीं था – प्रारंभिक जांच के बिना भी न्यायालय, धारा 340 दं.प्र.सं. के अंतर्गत आरंभ कर सकता है – न्यायालय ने प्रत्येक पहलू का विचार करने के पश्चात् प्रथम दृष्ट्या राय निर्मित की थी – मात्र प्रारंभिक जांच की अनुपस्थिति से न्यायालय द्वारा निर्मित प्रथम दृष्ट्या राय दूषित नहीं होगी – प्रकरण पर धारा 362 दं.प्र.सं.प्रयुक्त होती है – आवेदन खारिज।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 340 & 362 – Applicability* – Held – Before directing prosecution of witnesses, Court has considered all aspects and concluded that perjury was deliberate – If Court reopens the entire judgment, such exercise would certainly come within ambit of Section 362 Cr.P.C., which is not permissible. (Para 32)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 व 362 – प्रयोज्यता – अभिनिर्धारित – साक्षीगण का अभियोजन निदेशित करने के पूर्व, न्यायालय ने सभी पहलुओं को विचार में लिया है और निष्कर्षित किया कि शपथ पर मिथ्या साक्ष्य जानबूझकर था – यदि न्यायालय संपूर्ण निर्णय पुनः खोलता है, उक्त कार्यवाही निश्चित रूप से धारा 362 दं.प्र.सं. की परिधि के भीतर आयेगी जो कि अनुज्ञेय नहीं है।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 340 & 482 – Delay & Laches* – Held – Present application filed after about 2 years of passing of judgment – Application suffers from delay and laches. (Para 41)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 व 482 – विलंब एवं अतिविलंब – अभिनिर्धारित – वर्तमान आवेदन को निर्णय पारित किये जाने के लगभग 2 वर्ष पश्चात् प्रस्तुत किया गया है – आवेदन विलंब एवं अतिविलंब से ग्रसित है।

Cases referred:

(2000) 6 SCC 359, (2019) 4 SCC 376, (2018) 15 SCC 316, AIR 2011 SC 1232, (2019) 11 SCC 575, (2005) 4 SCC 370, (1987) 2 SCC 109, AIR 1964 SC 703, (2001) 1 SCC 596, (1992) 3 SCC 178, (2002) 1 SCC 253, (2017) 1 SCC 113, (2018) 11 SCC 659, (1981) 1 SCC 500.

Anil Kumar Mishra with *S.S. Rajput*, for the applicants in M.Cr.C. Nos. 35271/2019 & 42189/2019.

Somnath Seth, P.P. for the non-applicant/State.

O R D E R

The Order of the Court was passed by:
G.S. AHLUWALIA, J.:-By this common order, M.Cr.C.No.42189 of 2019 filed by S.S. Sikarwar, shall also be decided.

2. For the sake of convenience, the facts of M.Cr.C. No.35271 of 2019 shall be taken into consideration.

3. These petitions under Section 482 of Cr.P.C. have been filed against the Judgment dated 25-9-2017 passed by this Court in Criminal Appeals No.840/2004, 782/2004, 45/2005, 104/2005 and 609/2013 seeking the following relief(s):-

> 1. It is most humbly submitted that petition filed on behalf of the petitioner may kindly be allowed and observations and directions made by this Hon'ble High Court particularly in para 22 and 23 may kindly be recalled in the interest of justice.
>
> 2. Any other relief which the Hon'ble High Court deems fit in favor of the present petition according with the facts and circumstances of the case be granted in the interest of justice.

4. The necessary facts for disposal of the present petition in short are that by judgment and sentence dated 8-11-2004 passed by Vth A.S.J., Gwalior, in Sessions Trial No.30/2004, Kallu, Naval Singh @ Navla, Ballu @ Balram, Ramratan, Jaswant, Ramras were convicted for offence under Section 364A read with Section 120B, 363 read with Section 120, 365 read with Section 120B and under Section 13 of M.P.D.V.P.K. Act whereas Dayaram was convicted by judgment and sentence dated 18-7-2012 passed by Special Judge (MPDVPK Act) Gwalior in Sessions Trial No. 15/2010 for offence under Sections 363,364A of I.P.C and under Section 11/13 of MPDVPK Act.

5. All the accused persons filed Criminal Appeals which were registered as Cr.A. No.840/2004, 782/2004, 45/2005, 104/2005 and 609/2013. All the Criminal Appeals were decided by common Judgment dated 25-9-2017 and all the accused persons, namely Kallu, Naval Singh @ Navla, Ballu @ Balram, Ramratan, Jaswant, Ramras, and Dayaram were acquitted of all the charges. However, considering the conduct of the prosecution witnesses, namely Shanti Swaroop Sharma (P.W.2), Vijay Choudhary (P.W.3), Ajay Choudhary (P.W.4), Jaishankar @ Vicky (P.W.5), Atal Bihari (P.W.6), Purshottam Bajpai (P.W.7),

Vikas @ Vijay (P.W.8) as well as S.S. Sikarwar (P.W.12), S.S. Chouhan (P.W.13), Manoj Sharma (P.W.14) and Ramesh Dande (P.W.15), it was held that the above mentioned prosecution witnesses have deliberately given false evidence before the Court. Accordingly, the Trial Court was directed to initiate proceedings against the above-mentioned witnesses for giving false evidence before the Court of law.

6. **Shanti Swaroop Sharma** (P.W.2) filed a **Special Leave to Appeal (Cri) No.s 10103-10107/2017** which was dismissed by Supreme Court by order dated **26-7-2019.**

7. The **State of Madhya Pradesh,** had also filed **S.L.P. (Cri) No. 9715-9719 of 2017** which was dismissed by Supreme Court by order dated **26-7-2019.** Further a review petition was filed by the **State of Madhya Pradesh,** which was registered as **Review Petition (Cri) No. 45-49 of 2010** which was dismissed by order dated **21-1-2020.**

8. Similarly, **Jaishankar @ Vicky** (P.W.5), **Vijay Choudhary** (P.W.3), **Ajay Choudhary** (P.W.4), **Atal Bihari** (P.W. 6), **Purushottam Bajpai** (P.W. 7) **and Vikash @ Vijay** (P.W.8) had **SLP (Cri) No. 10108-10112/2017** which too was dismissed by order dated **26-7-2019.**

Thus, it is clear that not only the S.L.P. as well as review petition filed by the State has been dismissed, but the S.L.Ps. filed by some of the persons, against whom prosecution has been ordered, have also been dismissed.

9. However, it is submitted by the Counsel for the applicant, that since, the S.L.P.s have been dismissed in *limine,* therefore, the doctrine of merger would not apply, and this Court can entertain the application filed by the applicant for recall of direction for prosecution given by this Court. To buttress his contentions, the Counsel for the applicant has relied upon the Judgment passed by the Supreme Court in the case of *Kunhayammed Vs. State of Kerala* reported in (2000) 6 SCC 359.

10. Considered the submission made by the Counsel for the applicant.

11. The applicant is one of the person, against whom prosecution has been ordered for giving false evidence before the Court. As already pointed out, the S.L.Ps. filed by some of the similarly situated persons like Shanti Swaroop Sharma (P.W.2), Jaishankar @ Vicky (P.W.5), Vijay Choudhary (P.W.3), Ajay Choudhary (P.W.4), Atal Bihari (P.W.6), Purushottam Bajpai (P.W.7) and Vikash @ Vijay (P.W.8) have already been dismissed. Even the S.L.P. and Review filed by the State has also been dismissed. Dismissal of review petition is indicative of fact, that the Supreme Court did not find any error apparent on the face of record.

12. The Supreme Court in the case of *Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.,* reported in (2019) 4 SCC 376 has held as under : -

> **"26.** From a cumulative reading of the various judgments, we sum up the legal position as under:
>
> **26.1.** The conclusions rendered by the three-Judge Bench of this Court in *Kunhayammed* and summed up in para 44 are affirmed and reiterated.
>
> **26.2.** We reiterate the conclusions relevant for these cases as under: *(Kunhayammed case,* SCC p. 384)
>
> "*(iv)* An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.
>
> *(v)* If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.
>
> *(vi)* Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.
>
> *(vii)* On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC."

> **26.3.** Once we hold that the law laid down in *Kunhayammed* is to be followed, it will not make any difference whether the review petition was filed before the filing of special leave petition or was filed after the dismissal of special leave petition. Such a situation is covered in para 37 of *Kunhayammed case."*

13. It is submitted by the Counsel for the applicant, that he has not filed S.L.P. against the judgment passed by this Court in Cr.A. No.840 of 2004. Accordingly, the applicant is heard on merits.

14. It is submitted by the Counsel for the applicant that he has filed the present application for recall of the directions given by this Court in para 22 and 23 of Judgment dated 25-9-2017 passed in Cr.A. No. 840 of 2004.

15. Section 362 of Cr.P.C. reads as under :

> **"362. Court not to alter judgment.**— Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

16. In view of the bar contained under Section 362 of Cr.P.C., this Court cannot review its own order except to correct a clerical or arithmetical error.

17. The Supreme Court in the case of *Mohd. Zakir vs. Shabana,* reported in (2018) 15 SCC 316 has held as under :-

> **"3.** The High Court should not have exercised the power under Section 362 CrPC for a correction on merits. However patently erroneous the earlier order be, it can only be corrected in the process known to law and not under Section 362 CrPC. The whole purpose of Section 362 CrPC is only to correct a clerical or arithmetical error. What the High Court sought to do in the impugned order is not to correct a clerical or arithmetical error; it sought to rehear the matter on merits, since, according to the learned Judge, the earlier order was patently erroneous. That is impermissible under law. Accordingly, we set aside the impugned order dated 28-4-2017."

18. However, it is submitted by the Counsel for the applicant, that the applicant has not sought review of Judgment dated 25-9-2017, but has sought recall of the observations and directions given in para 22 and 23 of the Judgment.

19. Considered the submissions made by the Counsel for the applicant.

20. There is a difference between review and recall.

21. The Supreme Court in the case of *Vishnu Agarwal Vs. State of U.P. And another reported* in AIR 2011 SC 1232 has held as under :

> **"8**. In our opinion, Section 362 cannot be considered in a rigid and over-technical manner to defeat the ends of justice. As Brahaspati has observed :
>
> "Kevalam Shastram Ashritya Na Kartavyo Vinirnayah Yuktiheeney Vichare Tu Dharmahaani Prajayate"
>
> which means:
>
> "The Court should not give its decision based only on the letter of the law.
>
> ""For, if the decision is wholly unreasonable, injustice will follow.
>
> **9**.Apart from the above, we are of the opinion that the application filed by the respondent was an application for recall of the Order dated 2.9.2003 and not for review. In Asit Kumar v. State of West Bengal and Ors., 2009 (1) SCR 469 : (AIR 2009 SC (Supp) 282), this Court made a distinction between a recall and review which is as under:-
>
> "There is a distinction between.....a review petition and a recall petition. While in a review petition, the Court considers on merits whether there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in All Bengal Licensees Association v. Raghabendra Singh and Ors. [2007 (11) SCC 374] : (AIR 2007 SC 1386) cancelling certain licences was passed without giving opportunity of hearing to the persons who had been granted licences."

22. In the present application, the applicant has sought recall of observations and directions given in para 22 and 23 of the judgment by which the prosecution of the witnesses as well as the applicant and other persons has been ordered.

23. The moot question for consideration is that whether the application filed by the applicant is maintainable in the light of Section 362 of Cr.P.C. or not?

24. It is the case of the applicant, that since, it is a well established principle of law that no stricture or remark should be passed against any person, without affording any opportunity of hearing, and since, no opportunity of hearing was given to the applicant, before directing for his prosecution, therefore, the

observations as well as the direction given in para 22 and 23 of the Judgment may be recalled. To buttress his contentions, the Counsel for the applicant has relied upon the judgments passed by the Supreme Court in the case of *State Govt. of NCT of Delhi Vs. Pankaj Choudhary,* reported in (2019) 11 SCC 575. *Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another*, reported in **(**2005) 4 SCC 370, *S.K. Viwambaran Vs. E. Koyakunju and others* reported in **(**1987) 2 SCC 109, *State of U.P. Vs. Mohd. Naim* reported in AIR 1964 SC 703, *Manish Dixit and others Vs. State of Rajasthan* reported in (2001) 1 SCC 596.

25. Considered the submissions.

26. Section 340 of Cr.P.C. reads as under :

> **"340. Procedure in cases mentioned in Section 195** .—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause *(b)* of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—
>
> *(a)* record a finding to that effect;
>
> *(b)* make a complaint thereof in writing;
>
> *(c)* send it to a Magistrate of the first class having jurisdiction;
>
> *(d)* take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
>
> *(e)* bind over any person to appear and give evidence before such Magistrate.
>
> (2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.
>
> (3) A complaint made under this section shall be signed,—
>
> *(a)* where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court [1][or by such officer

(4) In this section, "Court" has the same meaning as in Section 195."

27. The Supreme Court in the case of *K.T.M.S. Mohd. Vs. Union of India* reported in (1992) 3 SCC 178 has held as under :-

"35. In this context, reference may be made to Section 340 of the Code of Criminal Procedure under Chapter XXVI under the heading "Provisions as to Offences Affecting the Administration of Justice". This section confers an inherent power on a court to make a complaint in respect of an offence committed in or in relation to a proceeding *in that court,* or as the case may be, in respect of a document produced or given in evidence in a proceeding *in that court,* if *that court* is of opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in clause *(b)* of sub-section (1) of Section 195 and authorises *such court* to hold preliminary enquiry as it thinks necessary and then make a complaint thereof in writing after recording a finding to that effect as contemplated under sub-section (1) of Section 340. The words "in or in relation to a proceeding *in that court"* show that the court which can take action under this section is only the court operating within the definition of Section 195(3) before which or in relation to whose proceeding the offence has been committed. There is a word of caution inbuilt in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration. The scope of Section 340(1) which corresponds to Section 476(1) of the old Code was examined by this Court in *K. Karunakaran* v. *T.V. Eachara Warrier* and in that decision, it has observed: (SCC pp. 25 and 26, paras 21 and 26)

"At an enquiry held by the Court under Section 340(1), CrPC, irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

... The two per-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193 IPC."

36. The above provisions of Section 340 of the Code of Criminal Procedure are alluded only for the purpose of showing that necessary care and caution are to be taken before initiating a criminal proceeding for perjury against the deponent of contradictory statements in a judicial proceeding."

28. The Supreme Court in the case of *Pankaj Chaudhary* (Supra) has held as under :-

"49. There are two preconditions for initiating proceedings under Section 340 CrPC:

(*i*) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause *(b)(i)* of sub-section (1) of Section 195 CrPC, and

(*ii*) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

50. Observing that the court has to be satisfied as to the prima facie case for a complaint for the purpose of inquiry into an offence under Section 195(1*)(b)* CrPC, this Court in *Amarsang Nathaji* v. *Hardik Harshadbhai Patel* held as under: (SCC pp. 117-18, paras 6-8)

"*6*. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See *K.T.M.S. Mohd.* v. *Union of India.)* The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry

though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See *Pritish* v. *State of Maharashtra)*

8. In *Iqbal Singh Marwah* v. *Meenakshi Marwah,* a Constitution Bench of this Court has gone into the scope of Section 340 CrPC. Para 23 deals with the relevant consideration: (SCC pp. 386-87)

'*23*. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)*(b*), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should .be made into any of the offences referred to in Section 195(1*)(b).* This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint.' "

The same principle was reiterated in *Chintamani Malviya* v. *High Court of M.P.*

51. It has been consistently held by this Court that prosecution for perjury be sanctioned by the courts only in those cases where perjury appears to be deliberate and that prosecution ought to be ordered where it would be expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement. In *Chajoo Ram* v. *Radhey Shyam,* this Court held as under: (SCC pp. 779-80, para 7)

> *"7.* The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation.. "

29 Thus, it is clear that before taking action under Section 340 of Cr.P.C., the Court is required to see as to whether :-

> *(i)* materials produced before the court makes out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause *(b)(i)* of sub-section (1) of Section 195 CrPC, and
>
> *(ii)* it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

30. Both the ingredients have been considered by this Court while passing Judgment dated 29-5-2017.

31. This Court in its Judgment dated 25-9-2017 has observed as under :-

> (22) In the present case, as already held by this Court, the sole intention on the part of Vijay Choudhary (P.W.3) appears to be to grab the land of the appellant Jaswant, Ramratan and Ramras therefore, a false story of kidnapping of Jaishanker @ Vicky was cooked up. The police has also not discharged its duty honestly. It appears that the investigating officers were hand in glove with Vijay Choudhary (P.W.3). Right from day one, the police had confined its investigation on the statements of Vijay Choudhary (P.W.3) and his family members. In spite of the fact, that in the F.I.R. itself, it was clear that Girraj Chourasia is alleged to have seen the incident of Kidnapping, but even then the police did not

care to examine Girraj Chourasia. Even the investigating officer Manoj Mishra (P.W.14) has not given explanation for not recording the statement of Girraj Chourasia. Even no attempt was made to find out Girraj Chourasia. Thereafter, knowing fully well that Shanti Swaroop Sharma (P.W.2) is not the eye witness, inspite of that, the spot map Ex. P.8 was prepared on his instructions, although the area of incident is undisputedly a densely populated area. Even the police did not obtain the signatures of any other witness on the spot map Ex. P.8, and no explanation has been offered by the prosecution for not obtaining the signatures of any witness on the spot map Ex. P.8. Further, when Ajay Choudhary (P.W.4) handed over the letter Ex. P.9 to the police on 2-12-2003, he was not interrogated by the police as to how he got the letter. Ajay Choudhary (P.W.4) has admitted that he did not inform the police that Kallu and Navla have delivered the Letter Ex. P.9. Even the police did not try to apprehend the person, to whom the amount of ransom was to be given. No trap was laid. It is admitted by the witnesses, that the police party was regularly visiting the house of Vijay Choudhary (P.W.3) but inspite of that, neither Vijay Choudhary (P.W.3) informed the police that Kallu and Navla would come to receive the amount of ransom, nor the police took any steps in this regard. Further there is nothing on record to show that how Manoj Mishra (P.W.14) came to know that Jaswant and Ramras are hiding in he forest. Nothing has been mentioned that whether any police party had gone to arrest the appellants Jaswant and Ramras or whether Manoj Mishra (P.W. 14), went to arrest the appellants Jaswant and Ramras, all alone. An attempt was also made by Manoj Mishra (P.W.14) to show that Jaswant and Ramras were staying in Forest by showing the seizure of some utensils and kerosene oil and one piece of chappati. The names of Jaswant, Ramras, Ballu and Dayaram were already disclosed in the F.I.R., but still, nothing has been disclosed by the prosecution, as to what actions were taken by the investigating officer to arrest Jaswant, Ramras and Ballu. There is nothing on record to show that from the date of Kidnapping till the date of arrest, whether any search was made in the houses of Jaswant, Ramras and Ballu or not? Further the intentions of police personals also appear to be doubtful. Vijay Choudhary (P.W.3) had given an affidavit on 1-3-2004 that he is the owner of the amount recovered from the appellants. Although Vijay Choudhary (P.W.3) has denied the suggestion in para 33 of his cross examination that he had given the affidavit as the police personals were trying to usurp the amount, but also admitted that he had also heard that two police personals were placed under suspension. However, he denied the suggestion

that those police personals were placed under suspension as they were trying to grab the amount. The affidavit was given by Vijay Choudhary (P.W.2) on 1-3-2004 whereas according to the prosecution case, the appellant Jaswant and Ramras were arrested on 28-2-2004 and the amount of Rs. 4,45,000 was seized from their possession i.e., just one day prior to submission of affidavit by Vijay Choudhary (P.W.3). Kallu was arrested on 2-3-2004 and an amount of Rs. 1,00,000 was seized. Vijay Choudhary (P.W.3) had given the affidavit on 1-3-2004 and from the evidence of Ramesh Dande (P.W.15) it is clear that he was given the investigation on 1-3-2004, although the reason assigned by this witness is that Manoj Mishra (P.W.14) had gone on leave because of death of his father. Thus, it is clear that the investigation was done by different investigating officers. Thus, the role of the investigating officers also doesnot appear to be very convincing. The investigating Officer Manoj Mishra (P.W.14) did not examine any witness and did not offer any explanation for not doing the same. Even the prosecution did not examine any independent witness although the same were cited as witness. Even one Girraj Chourasia was also cited as a witness, but he was given up. When the appellant Dayaram was being tried, once again Girraj Chourasia was cited as a witness, but he was not examined. Thus, this Court is of the view that it is not a case of faulty investigation but it appears to be a case of tainted investigation done deliberately, with an intention to falsely implicate the appellants, at the instance of Vijay Choudhary (P.W.3) and others.

The Supreme Court in the case of *Dayal Singh and others Vs. State of Uttaranchal* reported in AIR 2012 SC 3046 has held as under:-

> **"16**.The Investigating Officer, as well as the doctor who are dealing with the investigation of a criminal case, are obliged to act in accordance with the police manual and the known canons of medical practice, respectively. They are both obliged to be diligent, truthful and fair in their approach and investigation. A default or breach of duty, intentionally or otherwise, can sometimes prove fatal to the case of the prosecution. An Investigating Officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did not cause prejudice to the case of the prosecution ....."
>
> ***(Underline supplied)***

32. Thus, before directing the prosecution of the witnesses for giving false evidence before the Court, this Court has considered in detail and has come to a conclusion that the perjury appears to be deliberate. Furthermore, if this Court reopens the entire judgment in order to find out as to whether the above-mentioned two ingredients were taken into consideration or not, then certainly that exercise would come within the ambit of Section 362 of Cr.P.C. which is not permissible.

33. Now, the only question which requires consideration is that whether it was obligatory on the part of the Court to hold a preliminary enquiry before directing prosecution for giving false evidence before the Court or not and whether an opportunity of hearing was required to be given to the applicant or not?

34. By proceeding under Section 340 of Cr.P.C., a Court does not record the guilt of an accused, but it is merely of a *prima facie opinion* that it is expedient in the interests of justice that an inquiry should be made into the alleged offence. Therefore, where a Court is otherwise in a position to form an opinion regarding making of complaint, then the Court may dispense with the preliminary inquiry. Therefore, mere absence of any preliminary enquiry would not vitiate a *prima facie opinion* formed by this Court.

35. A three Judge Bench of the Supreme Court in the case of *Pritish Vs. State of Maharashtra,* reported in (2002) 1 SCC 253 has held as under :-

> **"18.** We are unable to agree with the said view of the learned Single Judge as the same was taken under the impression that a decision to order inquiry into the offence itself would prima facie amount to holding him, if not guilty, very near to a finding of his guilt. We have pointed out earlier that the purpose of conducting preliminary inquiry is not for that purpose at all. The would-be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be held. We have come across decisions of some other High Courts which held the view that the persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry (vide *M. Muthuswamy* v. *Special Police Establishment)..'*

36. The Supreme Court in the case of *Amarsang Nathaji Vs. Hardik Harshadbhai Patel* repored in (2017) 1 SCC 113 has held as under :-

> **"7.** In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been

committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See *Pritish* v. *State of Maharashtra)"*

37. The Supreme Court in the case of *State of Goa vs. Jose Maria Albert Vales,* reported in (2018) 11 SCC 659 has held as under :

> **"31.** It is no longer res integra that the preliminary enquiry, as comprehended in Section 340, is not obligatory to be undertaken by the court before taking the initiatives as contained in clauses *(a)* to *(e)* while invoking its powers thereunder. Section 341 provides for an appeal against an order either refusing to make a complaint or making a complaint under Section 340, whereupon the superior court may direct the making of the complaint or withdrawal thereof, as the case may be. Section 343 delineates the procedure to be adopted by the Magistrate taking cognizance. This provision being of determinative significance is quoted hereinbelow:
>
> **"343.** ***Procedure of Magistrate taking cognizance.*** — (1) A Magistrate to whom a complaint is made under Section 340 or Section 341 shall, notwithstanding anything contained in Chapter XV, *proceed, as far as may be, to deal with the case as if it were instituted on a police report.*
>
> (2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided."
>
> *(Underline supplied)*

38. Thus, even without holding a preliminary enquiry, a Court can take initiatives as contained in Clauses(a) to (e) of Section 340(1) of Cr.P.C.

39. In the present case, this Court after considering each and every aspect of the matter in detail, had formed a *prima facie* opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195(b)(i) of Cr.P.C. i.e., prosecution of the persons mentioned in para 23 of the judgment, for giving false evidence before the Court. Therefore, this Court is of the considered opinion, that it was not obligatory to

conduct a preliminary enquiry after giving an opportunity of hearing to the applicant. Therefore, it is held that the present case is hit by Section 362 of Cr.P.C.

40. The Supreme Court in the case of *Sooraj Devi v. Pyare Lal,* reported in (1981) 1 SCC 500 has held as under :-

> **"5.** The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code *(Sankatha Singh* v. *State of U.P.).* It is true that the prohibition in Section 362 against the court altering or reviewing its judgment is subject to what is "otherwise provided by this Court or by any other law for the time being in force". Those words, however, refer to those provisions only where the court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail."

41. Further, this petition was filed on 20-8-2019 i.e., after near about 2 years of passing of judgment dated 25-9-2017. Thus, this petition also suffers from delay and laches, as well as the S.L.P.s filed by the similarly situated witnesses have also been dismissed by the Supreme Court.

42. Accordingly, this petition fails and is hereby **Dismissed.**

43. M.Cr.C.No.42189 of 2019 filed by S.S.Sikarwar is also **Dismissed.**

Application dismissed

I.L.R. [2020] M.P. 2691
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Anand Pathak

M.Cr.C. No. 22615/2020 (Gwalior) decided on 08 October 2020

SUNITA GANDHARVA (SMT.) …Applicant

Vs.

STATE OF M.P. & anr. …Non-applicants

A. Penal Code (45 of 1860), Sections 363, 366-A & 376, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(w)(ii) & 14-A(2), Protection of Children from Sexual Offences Act (32 of 2012), (POCSO) Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974),

Section 439(2) – Cancellation of Bail – Grounds – Repetition of offence after grant of Bail **– Held – For repetition of offence, investigation is going on – Victim not living with her parents and living at One Stop Centre and her statements are not implicative – Accused trying to come out of his stigmatic past by complying other bail conditions and performing community service as reformatory measure, thus relegating him to jail would not serve the cause of justice – No case of cancellation of bail made out – Liberty granted to renew the prayer if any embarrassment/prejudice caused by accused in future – Application disposed. (Paras 79 to 82)**

क. दण्ड संहिता (1860 का 45), धाराएँ 363, 366–A व 376, अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(w)(ii) व 14–A(2), लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), (पोक्सो) धारा 3/4 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439(2) – जमानत का रद्दकरण – आधार – जमानत प्रदान किये जाने के पश्चात् अपराध की पुनरावृत्ति – अभिनिर्धारित – अपराध की पुनरावृत्ति हेतु अन्वेषण चल रहा है – पीड़ित उसके माता–पिता के साथ नहीं रह रही है और वन स्टॉप सेन्टर में रह रही है तथा उसके कथन आलिप्त करने वाले नहीं हैं – अभियुक्त, उसके कलंकित अतीत से बाहर निकलने के लिए जमानत की अन्य शर्तों के अनुपालन एवं सुधारात्मक उपायों के रूप में सामुदायिक सेवा के संपादन द्वारा प्रयास कर रहा है, अतः उसे जेल रवाना करने से न्याय हेतुक साध्य नहीं होगा – जमानत के रद्दकरण का कोई प्रकरण नहीं बनता – भविष्य में यदि अभियुक्त द्वारा कोई संकट/प्रतिकूल प्रभाव कारित किया जाता है तब प्रार्थना नवीकृत करने की स्वतंत्रता प्रदान की गई – आवेदन निराकृत।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 14-A(2) – Cancellation of Bail – Maintainability **– Held – Order granting bail in an appeal u/S 14-A(2) can be recalled in a fit case – Application for cancellation of bail u/S 439(2) CrPC by complainant/ aggrieved party is maintainable before the High Court which passed the order. (Para 33)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439(2) एवं अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 14–A(2) – जमानत का रद्दकरण – पोषणीयता – अभिनिर्धारित – धारा 14-A(2) के अंतर्गत अपील में जमानत प्रदान करने के आदेश को, एक उचित प्रकरण में, वापस लिया जा सकता है – परिवादी/व्यथित पक्षकार द्वारा धारा 439(2) दं.प्र.सं. के अंतर्गत जमानत के रद्दकरण हेतु आवेदन उच्च न्यायालय, जिसने आदेश पारित किया था, के समक्ष पोषणीय है।

C. ***Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 14-A(2) – Principle of Estoppel*** **– Held – Since accused takes**

benefit of bail u/S 439 before Trial Court/Special Court and on its refusal, resort to appeal then after getting bail, he is stopped from submission about non-application of Section 439(2) CrPC. (Para 23)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439(2) एवं अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 14–A(2) – विबंध का सिद्धांत – अभिनिर्धारित – चूंकि अभियुक्त ने विचारण न्यायालय/विशेष न्यायालय के समक्ष धारा 439 के अंतर्गत जमानत का लाभ लिया है और उसके इंकार पर अपील का सहारा लिया, तब जमानत मिलने के पश्चात् उसके धारा 439(2) दं.प्र.सं. प्रयोज्य न होने के बारे में निवेदन करने पर रोक है।

***D. Criminal Procedure Code, 1973 (2 of 1974), Section 439, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 14-A(2) and Protection of Children from Sexual Offences Act (32 of 2012), (POCSO) Section 3/4 – Bail Application – Maintainability – Jurisdiction of Court* – Held – POCSO Act would get precedence over Atrocities Act – When accused is tried under Atrocities Act as well as POCSO Act simultaneously, Special Court under POCSO Act shall have jurisdiction and if bail application is allowed or rejected u/S 439 CrPC by Special Court then appeal shall not lie u/S 14-A(2) of Atrocities Act but only application u/S 439 CrPC shall lie. (Paras 40 to 45 & 55)**

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439, अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 14–A(2) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), (पोक्सो) धारा 3/4 – जमानत हेतु आवेदन – पोषणीयता – न्यायालय की अधिकारिता – अभिनिर्धारित – पोक्सो अधिनियम को अत्याचार निवारण अधिनियम के ऊपर अग्रता मिलेगी – जब अभियुक्त का विचारण, अत्याचार निवारण अधिनियम के साथ–साथ पोक्सो अधिनियम के अंतर्गत एक साथ किया गया है, पोक्सो अधिनियम के अंतर्गत विशेष न्यायालय को अधिकारिता होगी और यदि विशेष न्यायालय द्वारा धारा 439 दं.प्र.सं. के अंतर्गत जमानत आवेदन मंजूर या नामंजूर किया जाता है तब अत्याचार निवारण अधिनियम की धारा 14–A(2) के अंतर्गत अपील नहीं होगी बल्कि केवल धारा 439 दं.प्र.सं. के अंतर्गत आवेदन प्रस्तुत होगा।

***E. Criminal Procedure Code, 1973 (2 of 1974), Section 437(3), 438 & 439(1) – Bail Conditions – Community Services* – Held – As per Section 437(3) CrPC, Court can impose "any other conditions in the interest of justice" over accused by way of community service and other related reformatory measures and same can be "Innovated" also but same must be as per his capacity and willingness, that to voluntarily – Onerous and excessive conditions cannot be imposed so as to render the bail ineffective. (Para 78)**

ङ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 437(3), 438 व 439(1) – जमानत की शर्तें – सामुदायिक सेवाएं – अभिनिर्धारित – धारा 437(3) दं.प्र.सं. के अनुसार,

न्यायालय, अभियुक्त पर सामुदायिक सेवा एवं अन्य संबंधित सुधारात्मक उपायों के जरिए ''न्याय हित में कोई अन्य शर्तें'' अधिरोपित कर सकता है तथा उक्त को ''नवपरिवर्तित'' भी किया जा सकता है किन्तु वह उसकी क्षमता एवं रजामंदी से और वह भी स्वेच्छापूर्वक होना चाहिए – कष्टदायक एवं अत्याधिक शर्तें अधिरोपित नहीं की जा सकती जो कि जमानत प्रभावहीन बना दें।

Cases referred :

Miscellaneous Application No. 1/2018 decided on 09.05.2018 (Allahabad High Court), 2006 Cr.L.J. 1538, Criminal Petition No. 9350/2017 decided on 11.10.2018 (Karnataka High Court), (2018) 6 SCC 454, AIR 1978 SC 527, AIR 1978 SC 429, AIR 1978 SC 1594, AIR 1980 SC 1632, 2017 Cr.L.J. 4519, 2016 Cr.L.J. 1415, (2001) 6 SCC 338, AIR 1955 SC 661, AIR 1963 SC 1207, (2019) 2 SCC 752, AIR 1977 SC 265, (2019) 7 SCC 505, AIR 1960 SC 610, AIR 1972 SC 484, (2009) 4 SCC 45, (2013) 15 SCC 570.

H.K.Shukla, for the applicant/complainant.
C.P.Singh, for the non-applicant no. 1/State.
Gaurav Mishra, for the non-applicant no. 2/accused.
N.K.Gupta, assisted by *Ravi Gupta* as well as *Vijay Dutt Sharma*, *Atul Gupta* and *Sameer Kumar Shrivastava*, as *Amicus Curiae*.

O R D E R

ANAND PATHAK, J.:- The instant applicant (sic: application) under Section 439 (2) of Code of Criminal Procedure has been preferred by the applicant / complainant (hereinafter shall be referred to as "complainant") for cancellation of bail granted to respondent No. 2/accused (hereinafter shall be referred as "accused"), who was enlarged on bail by this Court vide order dated 26/2/2020 in Criminal Appeal No. 1759/2020. Accused is facing trial for offence under Section 363, 366-A, 376 of IPC and Section 3 (1) (w)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") and Section 3/4 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

2. It is the submission of learned counsel for the complainant that earlier accused kidnapped the minor daughter of complainant, aged 16 years for which complaint was made and FIR was registered vide crime No. 486/2019 on 25/8/2019 for offences referred above. Accused was arrested on 3/9/2019 and after investigation charge-sheet was filed. Thereafter, accused preferred application under section 439 of Cr.P.C. before the trial Court for bail but same was dismissed, therefore, accused as appellant filed criminal appeal vide Cr.A.No. 1759/2020 under Section 14-A (1)(2) of Atrocities Act against the order dated 4/10/2019 passed by trial Court. After due consideration, appeal preferred by accused against the order of trial Court seeking bail, was allowed vide order

dated 26/2/2020 and accused was directed to be released on bail on certain conditions including the conditions that accused shall not try to move in the vicinity of prosecutrix and would not try to contact her in any manner and would not cause harassment, otherwise on the basis of misconduct, his bail application shall be rejected. Another contrition (sic: condition) that accused shall not commit same nature of offence for which he is facing trial. He was also subjected to the condition that he shall not induce or intimidate to any person, who is acquainted with the facts of the case.

3. It appears that after being released on bail (by the effect of order dated 26/2/2020), accused again tried to contact the prosecutrix and therefore, after four months on 30th June, 2020, complainant found her daughter missing, therefore, lodged an FIR against the present accused on 1/7/2020 at same police station Kotwali Bhind for offence under Section 363 of IPC vide crime No. 286/2020. He also made a complainant (sic: complaint) to the Superintendent of Police, Bhind on 4/7/2020, duly received by the office of Superintendent of Police, Bhind, in which she referred the conduct of accused; whereby, he constantly threatened the family of prosecutrix and exerted pressure for compromise. She specifically referred the fact that frequently, accused attacked the house of present complainant through bricks and stones to intimidate them. She also referred the fact regarding violation of bail conditions.

4. On this complainant (sic: complaint), since FIR was registered and case was investigated, therefore, complainant filed this application for cancellation of bail on the ground that bail granted to accused in earlier case be cancelled and accused be confined to jail as he became a constant threat to the family of prosecutrix including prosecutrix. He abducted the girl to marry her knowing fully well that prosecutrix is minor and himself is facing trial for same nature of offence which he committed earlier, therefore, complainant sought cancellaton of bail. It is further submitted that application for cancellation of bail is maintainable and facts indicate that interference can be made.

5. On the other hand, learned counsel for the accused opposed the prayer by raising the ground of maintainability of application for cancellation of bail. According to him, once the bail is granted under the special statute i.e. Atrocities Act, then there is no provisions under the Atrocities Act empowering the Court to recall the bail granted under Section 14-A(1)(2) of Atrocities Act, therefore, application for cancellation of bail is not maintainable. He relied upon the order dated 9/5/2018 passed by Allahabad High Court in the matter of *Sushil Kumar Vs. State of U.P. & Anr*. (Miscellaneous Application No. 1/2018) as well as order of Bombay High Court in the case of *Amar Singh Vs. State of Maharashtra*, 2006 Cr.L.J. 1538.

6. It is further submitted that accused was enlarged on bail vide order dated 26/2/2020 in which condition of community service was incorporated (at the instance of accused to perform community service) and accused regularly appeared at District Hospital, Bhind from 15th March, 2020 to 17th July, 2020 and he is working as Ambulance Driver of Emergency-108 to address any emergent situation and he is working with sincerity and devotion. Therefore, clause of community service in bail order has been voluntarily performed by the accused and he reformed himself by this condition of community service and got an occupation also of Driver of Ambulance. He referred identity card, which is placed with the application in this regard, therefore, it is submitted that his case be considered in light of such developments and instant application for cancellation of bail be dismissed. He also denied the allegations being false and baseless.

7. Although, accused cursorily raised the point of imposition of conditions by making submission that conditions beyond Section 437 (3) of Cr.P.C. cannot be imposed and therefore, if the controversy is seen from that perspective then he has not committed any offence after being released on bail.

8. Counsel for respondent/State referred the facts on the basis of case dairy and prayed for appropriate orders. State counsel referred the order dated 11/10/2018 passed in case of *Manjula Vs. State represented by K.R.Puram Police Station* passed by Karnataka High Court in Criminal Petition No. 9350/2017 and judgment of Apex Court in the case of *Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra & Anr.*,(2018) 6 SCC 454.

9. Shri N.K.Gupta, learned senior counsel appearing as Amicus Curiae referred the object of Amendment Act of 2018 by which absolute bar has been created over the grant of anticipatory bail. He also referred the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 which was of wider amplitude in which definition of victim has been incorporated alongwith amendment in Section 14 and incorporation of Section 14-A and Section 15-A of Atrocities Act, 1989. The object and purpose of Amendment Act was to protect the victims from onslaught of discrimination and harassment. Original provision in Atrocities Act, 1989 contained the provision of Section 439 of Cr.P.C. for bail but by the Amendment Act,2015, Section 14-A has been incorporated. He referred the Rule 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short "Atrocities Rules"), where, precautionary and preventive measures have been referred, therefore, looking to the aims and objects of Act and Rules as well as Amendment Acts thereunder, it is apparently clear that application for cancellation of bail is very much available to further the cause of justice. Learned senior counsel also referred Section 21 of General Clauses Act to submit that every Court which passes any order has the power and authority to recall it as per exigency,

therefore, on this count also, Court which has passed the order can recall or cancel the bail.

10. Learned senior counsel referred Section 482 of Cr.P.C. also to invite the attention of this Court over the extraordinary jurisdiction vested in the High Court to check the abuse of process of law and to further the cause of justice.

11. Shri Vijay Dutt Sharma, learned counsel appearing as Amicus Curiae relied upon history of bail, 36th Law Commission of India report of December, 1967 and amended Cr.P.C. of 1973 as well as amendment caused in Cr.P.C. in 2005, with its aims and objects to submit that any other interpretation would lead to miscarriage of justice. He also addressed on the expression **"any other conditions"** as contained in Section 437 (3) of Cr.P.C. by taking this Court to the concept of bail and 36th report of Law Commission of India and judgments rendered by Apex Court in the case of *Babu Singh & Ors. Vs. State of U.P.,* AIR 1978 SC 527, *Gudikanti Narasimhulu and Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh,* AIR 1978 SC 429, *Moti Ram and Ors. Vs. State of Madhya Pradesh,* AIR 1978 SC 1594, and *Gurbaksh Singh Sibbia, etc vs. State of Punjab,* AIR 1980 SC 1632 and submits that Court is competent to impose any other conditions in the interest of justice, especially, if the conditions are not onerous. According to him, unless the condition is excessive (monetarily) or onerous, Court can impose any conditions. He also resorted to Rules of Language in Interpretation of Statutes through Rule of Ejusdem Generis and Noscitur-A-Sociis. According to him, Court can impose any condition in the interest of justice especially for Community Service.

12. Shri Sameer Kumar Shrivastava, learned counsel appearing as Amicus Curiae also addressed on the question of maintainability of the application by referring legislative intent vis-a-vis application for cancellation of bail and submits that aims and objects of Amendment Act, 2015 (Atrocities Act) is speedy and effective justice to the members of vulnerable sections of the society as referred in the Atrocities Act. He relied upon **Full Bench decision of Allahabad High Court in Re: Provision of Section 14-A, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Criminal Writ and Public Interest Litigation No. 8/2018)** and submits that legislative intent is very clear in respect of Atrocities Act and it is to be construed that remedy under Section 439 (2) of Cr.P.C. is available to the complainant, otherwise, whole purpose of the Act would be defeated. He also referred various Rules of Construction in respect of submissions.

13. Shri Shrivastava also raised a point involved in the case in hand that in a case where offence under the provisions of Atrocities Act as well as POCSO Act are involved then the procedural law of POCSO Act will apply and Atrocities Act would give way to the POCSO Act because POCSO Act is subsequent in time and

Section 42-A of POCSO Act clearly oust the jurisdiction of any other Act and such section makes the provision of POCSO Act with overriding effect over other Acts. Therefore, looking to its subsequent promulgation and the overriding effect as reflected through Section 42-A of POCSO Act, the provisions of POCSO Act would apply and therefore, instant matter shall be tried by the special designated Judge under the POCSO Act and not special designated Judge under the Atrocities Act. He relied upon judgment of Division Bench of Madras High Court **In RE: Registrar (Judicial), High Court of Madras , reported in 2017 Cr.L.J. 4519 (Madras High Court)** as well as judgment of Hyderabad (erstwhile Andhra Pradesh High Court) in the case of *State of Andhra Pradesh Vs. Mandili Yadagiri*, 2016 Cr.L.J. 1415 to submit that Special Judge, POCSO Act will try the case and therefore, any order passed by Special Judge of POCSO Act in a bail order shall be challenged by the accused by way of Section 439 of Cr.P.C. before the High Court being concurrent jurisdiction and High Court may pass an order of bail under Section 439 of Cr.P.C. on facts and circumstances of the case. Therefore, Section 439 (2) Cr.P.C. shall automatically be available to the complainant, in case situation arises so. Therefore, on this count also, procedural law of POCSO Act will apply and application under Section 439 (2) of Cr.P.C. would be maintainable.

14. Shri Atul Gupta, learned counsel appearing as Amicus Curiae also addressed the Court almost on similar lines.

15. Shri V.D.Sharma and Shri S.K.Shrivastava, filed their synopses in support of their submissions.

16. Heard learned counsel for the parties as well as all Amici (sic: Amicus) Curiae through Video Conferencing and perused the case diary / documents appended thereto.

17. Instant case is by way of an application for cancellation of bail at the instance of complainant and the main objection to the said application is maintainability itself. Beside that question of interplay of Atrocities Act and POCSO Act and extent of bail conditions as per Section 437 (3) Cr.P.C. are involved. Therefore, according to this Court Five Questions are involved in this case, viz.:-

> ***(i)*** *Whether, High Court can entertain an application under Section 439(2) of Cr.P.C. for cancellation of bail granted in exercise of powers conferred under Section 14-A(2) of Atrocities Act ?;*
>
> ***(ii)*** *Whether, the Court granting bail in an appeal under Section 14-A (2) of Atrocities Act can be recalled/cancelled as the order granting bail does not attain finality ?;*

(iii) *Whether, in an offence where the provisions of Atrocities Act and POCSO Act are involved, the procedural law of POCSO Act will apply or the provisions of Atrocities Act ?;*

(iv) *Whether, in a composite offence involving of provisions of POCSO Act and Atrocities Act, an order refusing bail under Section 439 Cr.P.C. will be appealable as per Section 14-A (2) of Atrocities Act or an application under Section 439 Cr.P.C. simpliciter will lie before the High Court ?; and*

(v) *What is the scope and extent of bail conditions as referred in Section 437 (3) of Cr.P.C. ?*

REGARDING QUESTIONS NO. (i) AND (ii):-

(i) *Whether, High Court can entertain an application under Section 439(2) of Cr.P.C. for cancellation of bail granted in exercise of powers conferred under Section 14-A(2) of Atrocities Act ?;*

(ii) *Whether, the Court granting bail in an appeal under Section 14-A (2) of Atrocities Act can be recalled/cancelled as the order granting bail does not attain finality ?;*

18. In the case in hand, initially an application was filed under Section 439 of Cr.P.C. by accused before the trial Court seeking regular bail and dismissal thereafter, preferred appeal under Section 14-A of Atrocities Act before this Court. Insertion of Section 14-A of the Atrocities Act is the effect of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 by which sweeping amendments have been made in original Atrocities Act of 1989 making it more effective, victim oriented and special mechanism of Special Courts and speedy trial. By virtue of such amendments, which came into being in year 2016, concurrent jurisdiction of this Court to grant regular bail under Section 439 of Cr.P.C. has been taken away and in place of concurrent jurisdiction, an appellate jurisdiction has been conferred by way of an appeal under Section 14-A (2) of Atrocities Act. Although, provisions of appeal has been made but it still emanates from an order of refusal of bail by Special Court under Section 439 of Cr.P.C. Original statutory source of Section 439 is still intact. Only difference is replacement of concurrent jurisdiction with appellate jurisdiction.

19. From perusal of opening words of Sub-section (2) of Section 14-A of the Atrocities Act makes it clear that only the operation of Section 378(3) of Cr.P.C. is specifically ousted and rest of the provisions are intact and understandably so because by incorporation of Section 14-A(2), bar of **"Leave to Appeal"** as provided in Section 378(3) of Cr.P.C. is removed so that appeal can be filed on facts and law as a statutory and substantive right without conferring any discretion to the Court for grant of leave. Therefore, unless the exclusion is specific qua Section 439 Cr.P.C., same can never be inferred.

20. For appreciating the controversy meaningfully, the legislative intent and aims and objects of Principal Act of 1989 and thereafter Amendment Act of 2015 as well as Amendment Act of 2018 deserve consideration. Aims and objects of Principal Act, 1989 read as under:-

> *"An act to prevent the Commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."*

21. With the years of experience, it was found that due to some vagueness in the definitions and some procedural inertia, the purpose of Act lacked fulfillment, therefore, to make it more victim oriented, the Amendment Act was introduced. Learned Amicus Curiae Shri Shrivastava referred the letter dated 18/2/2016 of Government of India, Ministry of Tribal Affairs, referred to all Chief Secretaries of State Government, relevant contents of which is reproduced therein to sum up the legislative intent:-

> *"As you are aware that the Article 17 of the Constitution of India abolished 'untouchability', forbade its practice in any form and made enforcement of any disability arising out of untouchability as on offence punishable in accordance with law. An Act of Parliament namely the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) {PoA} act, 1989, to give effect to the provisions of Article 17 of the Constitution was enacted for preventing atrocities against embers of Scheduled Tribes, to provide for Special Courts for the trial of such offences as well as relief and rehabilitation of the victims of atrocities. The PoA Act extends to the whole of India except Jammu and Kashmir, and responsibility for its implementation rests with State Governments.*
>
> *2. The complaints/allegation of atrocities despite, provisions of the enabling Act against the members of Scheduled Tribes (STs) in matter of concern. The Act has accordingly been strengthened to make the relevant provisions of the Act more effective. Based on the consultation process with all the stakeholders, amendments in the PoA Act were proposed to broadly cover five areas namely (i) Amendments to Chapter II (Offences of Atrocities) to include new definitions, new offences, to re-phrase existing sections and expand the scope of presumptions, (ii) Institutional Strengthening, (iii) Appeal (a new section), (iv) Establishing Rights of Victims and Witnesses (a new chapter) and (v) strengthening preventive measures. The objective of these amendments in the PoA Act is to deliver members of STs, a greater justice as well as be an enhanced deterrent to the offenders. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 ((No.1 of 2016) has been notified in the Gazette*

of India Extraordinary on 01.01.2016. In view of its sub-section (2) of section (1), the Central Government has appointed 26.01.2016 as the date of enforcement of the Amendment Act, notified in the Gazette of India, Extraordinary, on 18.01.2016. The copies of the gazette notifications issued in this regard are appended.

3. You are requested to apprise your concerned offices/agencies for information and action accordingly."

22. With the legislative intent reiterated in the letter, no iota of doubt exists that intention of the Amendment Act was for Speedy Trial and Protection of Victims' Rights. By way of Section 2 (ec) Victim has been defined and beside Section 14-A, Section 15-A, **"Rights of victim and witnesses"** was introduced to take care of them for the first time. Definition of Victim includes-relatives, legal guardian and legal heirs and this definition is much wider than the definition of Victim provided in Section 2 (wa) of Cr.P.C. which includes guardian or legal heir, not the relatives. Similarly, Section 15A of Atrocities Act provides extensive mechanism for protection of Victims/Witnesses. Even victim has given chance to appear before the Court at the time of hearing of bail application. Right of the Court to cancel or revoke the bail is one of the measures by which protection of Victims/Witnesses can be ensured. Same is to be interpreted in such a manner for which it was enacted and not in a manner in which it is being tried to be interpreted by the accused.

23. Now as referred above, this Court exercises the appellate power of substantive provision of Section 439 of Cr.P.C. by way of appellate jurisdiction and since accused takes the benefit of bail under Section 439 of Cr.P.C. before the trial Court/Special Court and on its refusal resorts to appeal then after getting bail by way of an order in an appeal, he is estopped from submission about non-application of Section 439(2) of Cr.P.C.

24. Recent decision of **Full Bench of High Court of Allahabad In Re: Provisions of Section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015** (referred supra) pondered over the different provisions of Atrocities Act and concluded that the Atrocities Act is a special enactment. Legislative Intent and Aims and Objects of Atrocities Act have been discussed in detail. Full Bench found the aims and objects behind inserting the chapter of appeal was speedy justice and expeditious trial. Same aspect has been taken care of by the Division Bench of Patna High Court in the case of *Bishveshwar Mishra & Anr. Vs. State of Bihar* (Criminal Miscellaneous No. 25276/2016). Both these judgments discussed aims and objects of Amendment Act.

25. Even second proviso to the substituted Section 14-A (1) confers power upon the Special Court to take cognizance of the offence under the Act directly

creating an exception to the general rule under Section 193 of Cr.P.C.; wherein, Magistrate takes the cognizance and thereafter commits the case to the Sessions Court. By passing the mandate of Section 193 of Cr.P.C. by way of creating an exception through insertion of proviso itself indicates the legislative intent and therefore, the victim orientation of the legislature would be undermined if narrow interpretation is given by removing the provision of Section 439 (2) of Cr.P.C. from construction of the amended provisions.

26. Hon'ble Apex Court in the case of *Puran Vs. Rambilas and Ors.,* (2001) 6 SCC 338 held that High Court being superior Court has inherent powers to cancel the bail and any interpretation which restricts the powers or nullifying Section 439 (2) of Cr.P.C. cannot be given. As referred, **Mischief Rule (Rule in Heydon's case)**, has been given stamp of approval by a Constitution Bench of Hon'ble Apex Court in the case of *Bengal Immunity Co. Ltd., Vs. State of Bihar and Ors.,* AIR 1955 SC 661. As per the said judgment while deciding true interpretation of all statutes, be it Penal, Beneficial, Restrictive or Enlarging a common Law, four things are required to be considered, which are as follows:-

> *"**(i)** What was the common law before making of the Act;*
>
> ***(ii)** What was the mischief and defect for which the common law did not provide;*
>
> ***(iii)** What remedy the Parliament has resolved and appointed to cure the disease of the Commonwealth; and*
>
> ***(iv)** The true reason of the remedy."*

Judgment further mandates that office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and '*pro privato commodo*', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *'pro bono publico*'.

27. By applying the above test, following conclusions can safely be derived:-

1. Prior to coming into Amendment Act, 2015, High Court was having concurrent jurisdiction under Section 439 of Cr.P.C. for deciding the bail;

2. Speedy trial and protection of rights and interest of victim was the defect for which the amendment was brought in ;

3. Legislature provided a time bound schedule for trial and for the purpose of filing bail application as well as mechanism for deterrent has been added by way of Amendment Act, 2018 by making stringent provisions regarding arrest of a person accused

of any such offence under the Atrocities Act and making the provision of anticipatory bail as nugatory; and

4. The true reason of the remedy was to provide speedy justice to the victims and provisions to act as deterrent to the miscreants."

28. Therefore, any interpretation which restricts the right of victim to approach the High Court in case the bail condition is violated would be against the very spirit of the Amendment Act and this may lead to an anomalous position where the whole purpose of Amendment Act would be defeated and therefore, said interpretation cannot be accepted as suggested by counsel for the accused. Hon'ble Apex Court in the case of *M/s. New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar,* AIR 1963 SC 1207 (in para 8) has laid stress over rule of harmonious construction by observing as under:-

> *"8.....It is recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid....."*
>
> *Emphasis supplied*

Therefore, this Court persuades itself to prefer the interpretation /construction which advances the remedy and suppress the mischief as the legislature envisaged. All provisions can only be reconciled if doctrine of harmonious construction is resorted to.

29. Even otherwise, if the language used is capable of bearing more than one Construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. **(See: Principles of Statutory Interpretation by Justice G.P.Singh, Tenth Edition. Chapter II, Synopsis 4)**.

30. Considering the aims and objects as well as legislative intent, the judgments relied upon by the accused, in the humble opinion of this Court cannot be relied upon in favour of accused; otherwise, it would cause miscarriage of justice.

31. Victim cannot be rendered remediless, even if the accused gets bail under Section 439 of Cr.P.C. and keeps on interfering in the investigation / trial and intimidating the victim or the witnesses. **Secondary Victimization** of complainant/victim (a term used by Hon'ble Supreme Court in the case of *Mallikarjun Kodagali (Dead) represented through Legal Representatives Vs. State of Karnataka and Ors.,* (2019) 2 SCC 752) cannot be allowed to continue. It is further observed by Their Lordships that "today, the rights of an accused far outweigh the rights of the victim of an offence in many respects. There needs to be some balancing of the concerns and equalising their rights so that the criminal proceedings are fair to both". Therefore, bail conditions in Atrocities Act deserve to be complied with by the accused more stringently because of reasons discussed above.

32. Court has power to recall an order which has been passed by it earlier. Power to issue or pass order includes its recalling.

33. Therefore, in the considered opinion of this Court, an application for cancellation of bail under Section 439 of Cr.P.C. at the instance of complainant /aggrieved party is maintainable before the High Court which passed the order and order granting bail in an appeal can be recalled, of course in a fit case for recalling and that has to be seen as per the merits of the case. Therefore, the application for cancellation of bail under Section 439 (2) of Cr.P.C. preferred by the present applicant as complainant is maintainable against respondent No. 2-accused.

REGARDING QUESTIONS NO. (iii) AND (iv):-

> ***(iii)*** *Whether, in an offence where the provisions of Atrocities Act and POCSO Act are involved, the procedural law of POCSO Act will apply or the provisions of Atrocities Act ?;*
>
> ***(iv)*** *Whether, in a composite offence involving of provisions of POCSO Act and Atrocities Act, an order refusing bail under Section 439 Cr.P.C. will be appealable as per Section 14-A (2) of Atrocities Act or an application under Section 439 Cr.P.C. simpliciter will lie before the High Court ?*

34. One peculiar fact in this case surfaced regarding composition of imputations whereby accused is facing allegations of offence under Section 3/4 of POCSO Act also because prosecutrix is minor and she is a member of Scheduled Caste Community, therefore, imputation of Atrocities Act are also included, beside provisions of Indian Penal Code. Therefore, this question is repeatedly coming up before Special Courts regarding their authority and jurisdiction because both the Acts; namely Atrocities Act and POCSO Act are special Acts and interestingly both contain somewhat non-obstante clause regarding applicability of various provisions of other laws.

35. Under both the Acts, Special Courts are constituted for the purpose of taking cognizance and conduct in trial etc. However, with the Amendment Act of 2015 in Atrocities Act with insertion of Section 14-A(2), remedy to file an appeal is provided if the bail is rejected under Section 439 of Cr.P.C. by the Special Court, but no such appeal has been provided in POCSO Act in case of refusal or grant of bail. Therefore, reconciliation of procedure prescribed in both the acts deserve consideration especially for guidance to Special Courts regarding cognizance and trial etc.

36. Section 2 (1) (l) of POCSO Act defines **"Special Court"**, means a court designated as such under Section 28. Section 28 discusses **Designation of Special Courts**. Similarly Section 31 deals with **Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court**; whereas, Section 33 deals with **Procedure and Powers of Special Court**.

37. Section 42-A provides for **Act not in derogation of any other law**, and therefore, this provision deserves to be reproduced for ready reference:-

> ***"42 Alternate punishment.--...***
>
> ***42-A. Act not in derogation of any other law.-*** *The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."*

38. So far as, relevant provisions of Atrocities Act,1989 are concerned, **Section 2 (bd) defines "Exclusive Special Court"** and **Section 2 (d) defines "Special Court"** means a Court of Session specified as a Special Court in Section 14. Similarly, **Section 14 deals with Special Court and Exclusive Special Court** and **Section 14-A deals with Appeals**. Provision of Appeal has already been dealt with in detail in preceding paragraphs.

39. Section 20 of Atrocities Act is a provision which is relevant for reproduction for ready reference:-

> *"**Section 20.Act to override other laws.-** Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law."*

40. Conflict of jurisdiction between two Special Acts operating in the same field, both carrying non-obstante clause is always perplexing for the Courts to decide. Therefore, Aims and Objects and the Purpose of the enactments that operate in the same field are one of the first and foremost principles to be applied

for application of statutes. On this touchstone, looking to the legislative intent, statement of objects and reasons, different other provisions contained in the respective enactments and the language of provisions providing overriding effect indicate that POCSO Act would get precedence over Atrocities Act.

41. Perusal of provisions of Section 42-A of the POCSO Act reveals that it permits the Special Courts established under the said Act, to implement the provisions of other enactments also, insofar as they are not inconsistent with provisions of POCSO Act and in case of any inconsistency, the provisions of POCSO Act are given overriding effect over the provisions of such other enactments to the extent of inconsistency. It needs to be kept in mind that said provision (Section 42-A of POCSO Act) has been inserted in the POCSO Act w.e.f. 3/2/2013 by amendment and Atrocities Act underwent amendment in year 2018 but still Section 20 does not carry any such analogous provision that may enable the Special Court under the said Act to extend safeguards and provide benefit, that are being contemplated under the provisions of the POCSO Act. Provisions of POCSO Act are in addition and not in derogation of the provisions of any law including Atrocities Act. Therefore, POCSO Act is all encompassing in nature, whereas, Section 20 of Atrocities Act limits the interplay of other statutes.

42. Beside that, statement of objects and reasons of POCSO Act and Atrocities Act are to be seen, wherein, although both the statutes are dedicated to serve the interest of a special class of citizens but the legislative priority or preference appears to be in favour of the child because, if, Chapters V,VI, VIII and IX of POCSO Act and its different provisions are seen in tandem then it reveals that legislature intended to give delicate and protected treatment to the victim under the POCSO Act and special care of children as victims of crime have been designed to go through the process of investigation and trial of the accused. It applies irrespective of social or economic background of a child, therefore, welfare of children transcending all barriers of caste and creed and because of its all pervasive nature, POCSO Act is having overriding effect over the Atrocities Act.

43. It is to be remembered that POCSO Act has much wider scope so far as victims are concerned because POCSO Act is an act to protect Children from sexual offences, sexual harassment and pornography and provide for establishment of special Court for trial of such offences and for matters connected therewith or incidental thereto, therefore, ambit and scope of POCSO Act appears to be much wider than the Atrocities Act. Even otherwise, Child being considered the father of man is a biological evolution / phenomenon; whereas, Caste has a social/customary connotation.

44. One more facet of the controversy deserves attention is Section 28 (2) of the POCSO Act by which Special Court under the POCSO Act has been bestowed with the authority to try an accused for an offence other than the offence referred to in sub-section (1) of Section 28. Meaning thereby that Special Court, POCSO Act can try for offence under other enactments also with which the accused may under the Cr.P.C. be charged; whereas, no such analogous provision for such inclusion exists in Atrocities Act, therefore, on this Count also, legislative intent and rule of harmonious construction weigh in favour of POCSO Act.

45. Section 31 of the POCSO Act can also be profitably referred in this regard:-

> *"**31. Application of code of Criminal Procedure, 1973 to proceedings before a Special Court.-** Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purpose of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor."*

Perusal of above provision, makes it clear that provisions of the Code of Criminal Procedure have been made applicable to all the proceedings before the Special Court including bail and bonds and in later part of the same provision deeming fiction has been created whereby a Special Court for the purpose of all its proceedings shall be deemed to be a Court of Sessions. Therefore, Section 439 of Cr.P.C. is impliedly included by such provision and therefore, against the order of Special Court (POCSO Act), application under Section 439 of Cr.P.C. for bail shall be maintainable instead of appeal under Section 14-A (2) of the Atrocities Act.

46. Another principle for guidance in relation to non-obstante clause in two legislations would be the settled principle that both statutes have to be harmoniously construed as far as possible. Taking the cue from such principle, if both the Acts are taken into consideration where Special Protection, Remedies and Speedy Trial have been contemplated, it appears that POCSO Act is designed to a wider range of victims than the Atrocities Act. Since the procedure has been specifically provided, children of whatever background including the background from Scheduled Castes or Scheduled Tribes, process of investigation and trial of the accused meanders through different specifically enacted provisions while taking into consideration the delicate mind of a child victim, his probable subjugation to secondary victimization and procedural safeguards appear to be extensively incorporated in the POCSO Act, but not in Atrocities Act.

47. In fact, a Special Court under the Atrocities Act does not have the kind of infrastructure, procedure, staff and training as contemplated in different provisions of the POCSO Act, specially Section 33 to 38 of the POCSO Act, therefore, on this count also, harmonious construction and reconciliation between the two enactments would be achieved when POCSO Act given precedence over the Atrocities Act in case a Child suffers and when he belongs to a Scheduled Caste or Scheduled Tribe Community.

48. This Court may profitably refer to the judgment of Apex Court in the case of *Sarwan Singh and Anr. Vs. Kasturi Lal*, AIR 1977 SC 265. Para 20 and 21 of the said judgment, read as under:-

> *"20. Speaking generally, the object and purpose of a legislation assume greater relevance if the language of the law is obscure and ambiguous. But, it must be stated that we have referred to the object of the provisions newly introduced into the Delhi Rent Act in 1975 nor for seeking light from it for resolving in ambiguity, for there is none, but for a different purpose altogether. When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. A piquant situation, like the one before us, arose in Shri Ram Narain Vs. The Simla Banking & Industrial Co. Ltd., AIR 1949 SC 614, the competing statutes being the Banking Companies Act, 1949 as amended by Act 52 of 1953,and the Displaced persons (Debts Adjustment) Act. 1951. Section 45A of the Banking Companies Act, which was introduced by the amending Act of 1953, and Section 3 of the Displaced Persons Act 1951 contained such a non-obstante clause, providing that certain provisions would have effect "not-withstanding anything inconsistent therewith contained in any other law for the time being in force ....." This Court resolved the conflict by considering the object and purpose of the two laws and giving precedence to the Banking Companies Act by observing: "It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein. "(p. 615). As indicated by us the special and specific purpose which motivated the enactment of Section 14-A and*

Chapter IIIA of the Delhi Rent Act would be wholly frustrated if the provisions of the Slum Clearance Act requiring permission of the competent authority were to prevail over them. Therefore, the newly introduced provisions of the Delhi Rent Act must hold the field and be given full effect despite anything to the contrary contained in the Slum Clearance Act.

21. For resolving such inter se conflicts, one other test may also be applied through the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Section 14A and Chapter IIIA having been enacted with effect from December 1, 1975 are later enactments in reference to Section 19 of the Slum Clearance Act which, in its present form, was placed on the statute book with effect from February 28, 1965 and in reference to s. 39 of the same Act, which came into force in 1956 when the Act itself was passed. The legislature gave overriding effect to Section 14A and Chapter IIIA with the knowledge that Sections 19 and 39 of the Slum Clearance Act contained non- obstante clauses of equal efficacy. Therefore the later enactment must prevail over the former. The same test was mentioned with approval by this Court in Shri Ram Narain's case (Supra) at page 615."

49. Apex Court in the case of *Union of India, represented by the Secretary, Ministry of Home Affairs and Ors. Vs. Ranjeet Kumar Saha and Another*, (2019) 7 SCC 505 given guidance as under:-

"18. The courts, as a rule, lean against implying repeal unless the two provisions are so plainly repugnant to each other than they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time. If the objects of the two statutory provisions are different and the language of each statue is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes in pari materia although in apparent conflict, should also, so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject-matter, that the former, being the later expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict."

50. To reach conclusion, relevant discussions made earlier by different High Courts can also be profitably referred.

51. **In RE: Registrar (Judicial) High Court of Madras as report in 2017 Cr.L.J. 4519** it has been held in para 56 as under:-

> *"56. If the act of the accused is an offence under the POCSO Act and also an offence under the SC and ST Act, the Special Court under the POCSO Act alone shall have jurisdiction to exercise all the powers including the power to remand the accused under Section 167 of the Code, to take cognizance of the offence either on a police report or on a private complaint and to try the offender. The said Special Court shall have jurisdiction to grant all the relief's to the victim for which the victim is entitled to under the SC and ST Act."*

52. Similarly, Hyderabad High Court in the case of *State of Andhra Pradesh Vs. Mandili Yadagiri,* 2016 Cr.L.J, 1415 has held while taking into consideration Section 42-A of the POCSO Act and applying the test of chronology that POCSO Act being beneficial to all and later in point of time vis-a-vis Atrocities Act, therefore, provisions of POCSO Act has to be followed for trying cases where the accused is charged under both the enactments.

53. The Patna High Court in the case of *Guddu Kumar Yadav Vs. State of Bihar in* Criminal Miscellaneous Case No. 52792/2019 after consideration held that in case of order of grant or refusal of bail to an accused booked under both the provisions of POCSO Act as well as Atrocities Act will be tried by Special Judge, POCSO Act and no appeal would lie against the order of grant or refusal of bail under Section 14-A (2) of Atrocities Act. Bail in terms of Section 439 of Cr.P.C. will be maintainable.

54. Same view has been taken by Allahabad High Court in the case of *Rinku Vs. State of Uttar Pradesh,* Criminal Miscellaneous Bail Application No. 33075/2018.

55. So far as, application under Section 439 of Cr.P.C. or an appeal under Section 14-A of Atrocities Act are concerned, it is also worthwhile to mention that an appeal essentially a creature of statute and is a statutory right of an affected party. It contemplates appellate jurisdiction empowered by law to hear appeal from the Court of first instance while taking into consideration specific orders from which appeal emanates. There is no such statutory mechanism provided in the provisions of Atrocities Act including Section 14-A (2) of the Atrocities Act to include a bail plea by way of appeal from any order passed by Special Court under the POCSO Act.

56. Conclusively, regarding questions No. (iii) and (iv), it can safely be concluded that when an accused is being tried by Atrocities Act as well as POCSO Act simultaneously, then Special Court under POCSO Act shall have the jurisdiction and if any bail application of accused is allowed or rejected under Section 439 of Cr.P.C. by that Special Court then appeal shall not lie under Section 14-A (2) of Atrocities Act. Only an application under Section 439 of Cr.P.C. for bail shall lie.

REGARDING QUESTION NO. (v):-

> ***(v)*** *What is the scope and extent of bail conditions as referred in Section 437 (3) of Cr.P.C. ?*

57. The power to impose other conditions derive strength from Statute, Common Law traditions and Precedential Guidance. Although bail has not been defined in Cr.P.C. but usually, bail is a kind of asset or property given before the Court as a security for consideration of relief from being arrested or to avoid being jailed, as an identification that accused or suspect will be present on the day of hearing or trial and where he fails to appear before the court on the given date then his property may be seized and bail bonds may be forfeited. A long journey has been travelled from the concept of "Wergeld" meaning man price or man payment to present day system meandering through Magnacarta (year 1215 AD), Statute of Westminster (1275 AD) to Medieveal System of Jamanat/ Muchalka. Law has been travelled extensively just to ensure Justice as well as Right to access Justice. In Code of Criminal Procedure, 1973 although word bail has not been defined but all offences classified into bailable and non-bailable offences.

58. Before adverting to the question formulated above, it would be apposite to refer relevant provisions of Section 437 (3), 438 (2) and Section 439 (1) of Cr.P.C. which may throw some light, if seen in juxtaposition:-

> ***"437. When bail may be taken in case of non-bailable offence.-***
>
> *(1) xxx xxx xxx*
>
> *(2) xxx xxx xxx*
>
> *(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under Sub-Section (1) [the Court shall impose the conditions,—*
>
> *(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,*

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

and may also impose, in the interests of justice, such other conditions as it considers necessary.

Section 438. Direction for grant of bail to person apprehending arrest.-

(1) *xxx xxx xxx*

(2) When the High Court or the Court of Session makes a direction under subsection (1), ***it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including—***

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii)a condition that the person shall not leave India without the previous permission of the Court;

(iv)such other condition as may be imposed under Sub-Section (3) of section 437 , as if the bail were granted under that section.

Section 439. Special powers of High Court or Court of Session regarding bail.-*(1) A High Court or Court of Session may direct—*

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub-Section (3) of section 437, ***may impose any condition which it considers necessary for the purposes mentioned in that Sub-Section;***

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified;

Provided *that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is*

triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

***Provided further** that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376 AB or section 376 DA or section 376 DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.*

1A. The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376 AB or section 376 DA or section 376 DB of the Indian Penal Code."

59. Initially, in Cr.P.C. only condition contemplated was to ensure the "appearance of accused before the Court for trial." Thereafter, with the Amendment Act in 1973, conditions as exist in present day Section 437 (3) (a & b) were incorporated but as condition No. (c) of Section 437 (3) the condition incorporated was, with the expression "**otherwise in the interest of justice".** Now, after Amendment Act of 2005, Section 437(3) was recast which is reproduced above and now it has wider connotation. Law Commission of India was constantly trying to persuade the legislature for reconsideration and enlargement of the scope of conditions of Bail, which is evident from the **Law Commission of India 36th Report of December, 1967, 41st Report of September, 1969, 203rd Report of December, 2007** as it recommended for insertion of conditions from time to time and in year 2006 vide Amendment Act of 2005, present day statutory expression in Section 437 (3) of Cr.P.C. came into being which is already reproduced above. Therefore, legislative intent appears to widen the scope of bail conditions.

60. Recently, in **Law Commission Report No. 268 of May, 2017, in Chapter XI (Recommendations), Recommendation No. C (Conditions that may be imposed in Bail)** elaborately deals with this issue and recommended eleven conditions (Same are not exhaustive, but inclusive) in Para 11.13 of Recommendations. According to Law Commission, the Court should consider the unique circumstances of each accused person and develop a method to ensure that bail conditions are effective.

61. Here expression incorporated after Section 437 (3) (C) purportedly as appendage is worth consideration, wherein word **"and"** has been used as

disjunctively to differentiate **conditions No. (a),(b) and (c) of Section 437 (3)** from expression **"such other conditions as Courts considers necessary in the interest of justice"**. Sub-section (3) commands the Court to impose conditions as enumerated in Clause (a), (b) and (c) by incorporating the word **"shall"** but after conditions (a), (b) and (c), word **"and"** has been used, it means that conditions which are other than (a), (b) and (c) can also be imposed and those conditions would be enabling or directory because of the word **"may"** (immediately after the word **'and'**). Interplay of words **"and"** and **"may"** also indicates that those conditions would be distinct from conditions No. (a), (b) and (c). Words **"in the interest of justice"** make the ambit of protection very wide and expression **" such other conditions as it considers necessary"** confers a discretion (although not unfettered discretion) to the Court. When permissive words are employed by the Legislature to confer a power on a Court to be exercised in the circumstances pointed out by the statute, it becomes the duty of the Court to exercise that power on proof of those circumstances. **(See: Principles of Statutory Interpretation by Justice G.P.Singh, Tenth Edition, Chapter V, Synopsis 6, page 429)**.

62. The word **"or"** is normally disjunctive whereas **"and"** is normally conjunctive but at times they are read as *Vice Versa* to give effect to the manifest intention of the legislature as disclosed from the context. Here the legislative intent appears to be of extending discretion to the Courts to impose such other conditions as it considers necessary in the interest of justice and necessity stems from facts situation of the case including the nature of allegations, criminal antecedents of accused, his willingness to do some good for society by doing some reparative work or to reform himself and other related circumstances.

63. Section 438 (2) of Cr.P.C. incorporates word **"Include"** by using expression **"it may include such conditions as it may thinks fit in the light of facts of the particular case"** and word **"Include"** enlarges the meaning of words or phrases occurring in the body of the statute. Therefore, word **"Include"** is inclusive and not exhaustive in nature. In Section 438 (2) of Cr.P.C. also sufficient discretion continues for imposition of conditions. Section 439 (1) of Cr.P.C. also runs in same spirit by incorporating the expression **"may impose any condition which Court considers necessary"**. Section 438 and Section 439 of Cr.P.C. fall back upon Section 437 (3) of Cr.P.C. also for imposition of conditions beside referring other conditions to release the accused on bail.

64. Words **"Conditions"** and even **Justice (or for that matter, "in the interest of justice")** as incorporated in Section 437 (3) of Cr.P.C., if tested on the anvil of rule of Ejusdem Generis and Noscitur-A-Sociis then on the basis of said rules of construction it appears that when Legislature has intended to widen the discretion then certainly the aforementioned rules of construction Ejusdem Generis and Noscitur-A-Sociis cannot be invoked to limit, restrict or oust the said

jurisdiction of Courts for imposing any other conditions in the interest of justice while interpreting the statute. Both these doctrines cannot limit or otherwise restrict the Court from passing any order in the interest of justice/ for securing the ends of justice and to do complete justice. We cannot forget that Justice is the first promise we made to ourselves as reflected in Preamble of our Constitution. Here open ended terminology of **"Justice"** and **"such other conditions"** cannot be interpreted with the doctrine of Ejusdem Generis and its genus concept Noscitur-A-Sociis. The decision of Hon'ble Apex Court in the case of *State of Bombay and Ors. Vs. Hospital, Mazdoor Sabha,* AIR 1960 SC 610 can be profitably referred to reach home. Relevant extract is reproduced as under:-

> *"(9)It is, however, contended that, in construing the definition, we must adopt the rule of construction noscitur a sociis. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "Words and Phrases" (Vol. XIV, p. 207) :*
>
> *"Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it;Such doctrine is broader than the maxim Ejusdem Generis." In fact the latter maxim "is only an illustration or specific application of the broader maxim noscitur a sociis." The argument is that certain essential features or attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that noscitur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful or otherwise not clear, that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service."*
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> *(Emphasis supplied)*

65. Beside different recommendations which are reflected in different Law Commission Reports and statutory provisions, the common law tradition / precedential guidance can also be taken into consideration, wherein, through different pronouncements, Hon'ble Supreme Court tried to explain the concept of imposition of conditions like Community Service, creative pursuits and reformatory steps for under trial and mostly to be performed by them. One of the earliest instances in this regard may be traced in the judgment of Hon'ble Supreme Court in the case of *Hazarilal Gupta Vs. Rameshwaar Prasad,* AIR 1972 SC 484 although it was confined to discussion regarding imposition of conditions. Thereafter, series of judgments of Hon'ble Supreme Court by Hon'ble Shri Justice V.R.Krishnaiyer, J. as Lordship then was, in the case of *Gudikanti Narasimhulu* (supra), *Babu Singh* (supra) and *Moti Ram* (supra) explained the thought. Guidance of his Lordship in his inimitable style was path breaking and Ford making for Social Engineering. Para 12 of judgment rendered in the case of *Gudikanti Narsimhulu* (supra) is reproduced as under:-

> *"12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public Justice is central to the whole scheme of bail law. Fleeting justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even, through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offence while on judicially sanctioned 'free enterprise' should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our constitution."*

Perusal of these judgments indicates that beside Community Service, Meditative Drill, Study Classes, the guidance had been given in respect of Innovation of other resources also and this expression further gives discretion to the Courts to innovate new methods of Community Service and other reformatory modes as a part of Pre Trial Reforms. Apex Court found these conditions as part of holistic jurisdiction and humanistic orientation invoked by judicial discretion co related to the values of out (sic : our) Constitution.

66. And rightly so, because Justice is the first promise (Liberty, Equality and Fraternity come later in order) made by the People of India while giving Constitution to themselves as reflected in Preamble of the Constitution and thereafter reverberated in Article 38, 39-A and Article 142 of the Constitution.

Therefore, Justice as one of the legitimate expectations of citizenry guides the Rule of Law and Administration of Justice.

67. Constitution Bench decision of Hon'ble Supreme Court in the case of *Gurbaksh Singh Sibbia* (supra) also gives sufficient discretion to the Courts while granting bail. Para 13 & 14 of the aforesaid decision read as under:-

> *"13.....the amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions as they may think fit while granting anticipatory bail, should not be cut down, by reading into the statute conditions which are not to be found therein, like those evolved by the High Court or canvassed by the learned Additional Solicitor General. Our answer, clearly and emphatically, is in the negative. The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in Section 437 or which are generally considered to be relevant under Section 439 of the Code.*
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> ***14.*** *Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly these are higher courts manned by experienced persons, secondly their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges.*
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> *(Emphasis supplied)*

68. Flip side also exists; wherein, Hon'ble Apex Court has cautioned not to impose onerous, excessive or freakish conditions as reflected in judgment of

Apex Court in the case of *Munish Bhasin and Ors. Vs. State (Government of NCT of Delhi) and Anr.,* (2009) 4 SCC 45 and *Sumit Mehta Vs. State (NCT of Delhi)*, (2013) 15 SCC 570. Therefore, it is equally true that Court ought to avoid those conditions which may render the bail as ineffective or which may entail submission of Fixed Deposit receipt for security or a condition which may be the subject matter of some other legal proceedings, like the conditions in the case of *Munish Bhasin (supra) and Sumit Mehta* (supra). Such conditions may change the tenor and texture of bail conditions as contemplated by Section 437(3), 438(2) and 439 (1) of Cr.P.C. These onerous conditions may render the bail ineffective and cause prejudice to accused, especially if accused is from weaker section of the society or poor litigant.

69. Section 437 (3) and other two related provisions of Section 438 (2) and 439 (1) give scope of Community Service as a bail condition and Community Service has both; the social and the cognitive benefits and it can serve not only as an alternative to Post Trial but also to Pre Trial reforms and in fact inclusion of Community Service as Post Inquiry measure in the Section 18 (1) (c) (2) of the Juvenile Justice (Protection & Care of Children) Act, 2015 indicates the importance of this concept. **The 42nd Report of the Law Commission of India of June, 1971** for Revision of Indian Penal Code incorporated some discussion in this regard and thereafter an amendment bill was introduced in the Parliament but left out due to the proclamation of Emergency. Later on, **Law Commission in its 156th Report of August, 1997** stretched upon the need and scope of implementing the punishment of Community Service in the Indian Penal System. Even **Justice Malimath Committee in year 2002** also recommended community service as a mode of punishment.

70. Crime is one of the potent threats to the concept of Justice (beside State excesses) wherein, mostly; a citizen inflicts offence over his fellow citizen (victim), possibly to derive Psyhic gain or Monetary gain or Sadistic pleasure. Most of the time, response of the society (or even the State) revolves mainly around procedural or juridical aspect of the Justice rather than giving stress over the substantive aspect which at times takes a back seat. This starts the chain reaction of Secondary Victimization of the victim. Law at times being procedural and juridical, takes guidance from common law tradition, statute and precedential guidance but Justice is all pervasive and encompasses posterity also into it ambit. Therefore, Justice postulates more reformation centres / correction centres than prisons and remand homes in future. Community service, plantation, creative pursuits and guiding the accused for reparative techniques as pre-trial reforms can be the answer.

71. Action by the offenders affects the individual as well as community and therefore, the concept of punishment has evolved from Preventive to Deterrent to

culminate into Reparative or Reformative theory. The emphasis of Community Service is not on punishment nor on rehabilitation at times, rather, it is on accountability. Anatomy of Crime and Violence can be addressed by rekindling innately ingrained human attributes of Compassion, Mercy, Love and Service.

72. Hon'ble Supreme Court in the case of *Mallikaarjun Kodagali* (supra) has delved upon the right of victim while considering Section 3(wa) and Section 372 of Cr.P.C. and detailed out the secondary victimization of victim and mandated that rights of accused out weigh the rights of victim and need exists for re-balancing. Community service is a way out for regaining such re-balance because if the accused after release on bail is asked to do some community service by way of environmental protection work like plantation of sapling or serving in a hospital or doing such related work for environment or society or doing something for nation then he is within the bounds of the criminal justice system (within jurisdiction of Court for submission of compliance report, etc.) and is not at large to extend threat to the victim or tampering with the evidence.

73. In some cases, accused may not tamper with witness/evidence directly and overtly but his constant presence and appearance before victim may cause embarrassment and harassment to the victim specially in cases of offence under Section 354 (and its different variables) and even like Section 376 of IPC, where victim may have to face the glare of accused constantly/regularly without being intimidated by him. Community service gives a chance at times to melt the ego of an accused who is facing trial of those offences which gave psychic gains or peevish pleasure to the accused while committing such crime. Some times to purge his misdeeds and to come out of the guilt (if the individual has been falsely implicated) community service can play important role. Through this effort, accused can again be assimilated into mainstream of society and would be accepted peacefully.

74. An example can be aptly referred, wherein, this Court in Criminal Appeal No. 7795/2018, pending before Gwalior Bench of Madhya Pradesh High Court, granted suspension of sentence to accused convicted by trial Court mainly under Section 307 of IPC (beside other provisions) vide order dated 15th May, 2019 and directed to serve in nearby Govt. Rural Hospital for a day or two in a week. Accused on his own volition offered his services, in which he was directed to submit report about his experience. He referred in his compliance report a very peculiar problem faced in remote areas in State of Madhya Pradesh; wherein, language / dialect problem between doctor and patients of Govt. Hospitals/ Community Health Centres makes the diagnosis of ailment difficult, but he performed the duty of interpreter (between doctor and rural patient) because he knew the local dialect of village residents as well as main stream language (Hindi/Khadi Boli). After realizing the problem (a big one for village people) as reflected in his compliance report, this Court after calling/soliciting views of

different stakeholders like National Health Mission and State Government, directed vide order dated 17th October, 2019 to Principal Secretary of Health and Family Welfare Department, Govt. of Madhya Pradesh to devise some mechanism including the employment of Aanganwadi Workers (who are supposed to be natives of village Panchayat in which they serve) to solve language barrier between doctor and patient, which has otherwise serious ramification over common public. This small looking problem could surface through compliance report of Accused, who was directed by the Court to share his experiences also in his report.

75. Many accused after getting bail undertook to plant some saplings and now they have not only planted saplings but started the drive for others to follow. Thousands of saplings planted by accused as bail condition (voluntarily) resulted into the Germination of Thought. Therefore, as referred, innately ingrained attribute of Love, Compassion, Mercy and Service can be rekindled through this concept of community service as part of pre and post trial reforms. This thought in fact is in alignment with Fundamental Duties also, as enshrined under Article 51A of Constitution.

76. This goes with a word of caution again. Bail conditions cannot be excessive, freakish and onerous and it does not amount to buying the bail. When a case is made out for bail and when if the accused volunteers on his own volition and he himself intends to perform community service; then only this condition can be of some help. Even compliance of orders also deserves attention which can be regulated through development of Computer Applications (one such App. developed by M.P.High Court with MAP-IT deptt. of State Government) and roping in of Para Legal Volunteers from District Legal Services Authority. Nowadays, roles of State and District Legal Services Authority are much wider and includes many such welfare measures.

77. One suggestion also moves around regarding harnessing the potential of accused persons for betterment of Society/State while giving them some training of disaster/relief operations so that their reformation and rehabilitation may start from the stage of trial and their assimilation in society would not wait for long period, after recording of acquittal in trial or appeal. It is the domain of the legislature to think over it, if possible, for formulating a scheme as part of pre and post trial reforms for harnessing the energy of such big and sizable section of the society in India. Hopefully, policy makers / stakeholders would think over it one day.

78. Therefore, considering the discussion made above,this Court considers it fit to impose **"any other conditions in the interest of justice"** as per Section 437 (3) of Cr.P.C. over accused/offender by way of community service and other related reformatory measures and same can be **"Innovated"** also but same must be as per capacity and willingness of offenders/ accused, that to voluntarily.

Similarly, as discussed above, onerous and excessive conditions cannot be imposed so as to render the bail ineffective.

79. Even in the present case accused got one chance to come back to main stream because of one condition enumerated in his bail order to perform community service (as per his own volition) alongwith other conditions as per Section 437 (3) of Cr.P.C. Apparently, by his efforts, he became driver of Ambulance in Emergency Service, 108. This was an attempt to engage him in creative pursuits to make him a part of pre trial reforms and he responded well also, but pumping of adrenaline and perhaps (may or may not be true) mutual emotional proximity with prosecutrix persuaded him to allegedly commit same nature of offence again, which otherwise, he was restricted to do so.

80. If, facts of the case are seen in detail then it appears that accused, who was facing trial for offence referred in earlier paragraphs, was enlarged on bail vide order dated 26/2/2020 and Condition No. 4 was specific that he shall not commit same nature of offence and he was also directed not to extend any threat or allurement or intimidation to any person acquainted with the case. After being enlarged on bail, it is alleged that he again eloped with the same girl and compelled the father of victim girl to lodge an FIR vide crime No. 286/2020 before the same Police Station i.e. City Kotwali District Bhind for offence under Section 363 of IPC. Investigation is going on and Charge-sheet is yet to be filed. Statement under Section 161 and 164 of Cr.P.C. of victim indicates that she left her maternal home on her own volition and she went to Delhi to meet her brother and thereafter, she returned back. From the case diary, it appears that family members of victim were not ready to keep her with them at their residence, therefore, she was taken to One Stop Centre (under Child Welfare Committee). It appears that she is still living at One Stop Centre.

81. One more peculiar fact surfaced in the case is that victim/prosecutrix mentioned the fact that his father & mother were separated earlier, wherein, father remarried and she is living with her mother. Therefore, apparently her parents did not accept her in their respective households. Even after filing of charge-sheet, early trial would be a bleak possibility. Looking to the challenging period of COVID-19 pandemic, relegating the accused to jail would not serve the cause of justice, especially when prosecutrix herself is not living with her parents and living at One Stop Centre and her statements are not implicative. Beside that, accused is trying to come out of his stigmatic past by complying other bail conditions and performing community service as reformatory measure.

82. In the considered opinion of this Court, looking to the case diary and statement of victim, no case for cancellation of bail, at this stage, is made out. Needless to say that applicant/complainant as well as prosecutrix shall always be at liberty to renew the prayer for cancellation of bail, if any embarrassment or prejudice

is caused by the accused to the prosecutrix or her family members in future. Even otherwise, Accused shall not be a source of harassment/ embarrassment to complainant party.

83. Since this Court has decided the question of jurisdiction in the case where ingredients of offence under Atrocities Act and POCSO Act are involved and Special Judge, under POCSO Act has to take precedence instead of Special Judge under Atrocities Act, therefore, Office is directed to place this matter before Hon'ble Acting Chief Justice of this Court for issuance of necessary guidance and for circulation of this order amongst District and Sessions Judges for information and compliance.

84. Before parting with the case, this Court acknowledges the valuable assistance given by learned Amici (sic: Amicus) Curiae Senior Advocate Shri N.K.Gupta, assisted by Shri Ravi Gupta as well as Shri Vijay Dutta Sharma, Shri Atul Gupta and Shri Sameer Kumar Shrivastava with their erudition and expression. Their efforts are worth appreciation.

85. Case/Application stands disposed of in above terms.

Order accordingly

I.L.R. [2020] M.P. 2722
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Shailendra Shukla

M.Cr.C. No. 28166/2020 (Indore) decided on 5 November, 2020

IMRAN MEMAN …Applicant

Vs.

STATE OF M.P. …Non-applicant

A. Penal Code (45 of 1860), Sections 420, 467, 469 & 475 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – **Held – No agriculturist has come forward and stated that he has been cheated by applicant – No one stated that packets found in godown were forged or applicant was in possession of counterfeit marked material – No one stated that forgery by applicant has harmed his reputation – Provision of Sections 420, 467, 469 & 475 not attracted – FIR and criminal proceedings quashed – Application allowed. (Para 19 & 20)**

क. दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 469 व 475 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – **अभिनिर्धारित – किसी भी कृषक ने आगे आकर यह कथन नहीं किया है कि वह आवेदक द्वारा छला गया है – किसी ने भी यह कथन नहीं किया है कि गोदाम में पाये गये**

पैकेट कूटरचित थे अथवा कूटकृत चिन्हित सामग्री आवेदक के कब्जे में थी – किसी ने यह कथन नहीं किया कि आवेदक द्वारा कूटरचना ने उनकी ख्याति को नुकसान पहुंचाया है – धारा 420, 467, 469 व 475 के उपबंध आकर्षित नहीं होते – प्रथम सूचना प्रतिवेदन तथा दाण्डिक कार्यवाहियां अभिखंडित – आवेदन मंजूर।

B. ***Essential Commodities Act (10 of 1955), Section 7(1)(A)(II) & 7(2), Seeds Act (54 of 1966), Section 19, Seeds Rules, 1968, Rule 8 and Seeds (Control) Order, 1983 – Packaging of Seeds*** **– Held – If person deals in business of seeds without license/permit, he would be liable under provisions of Act of 1955 and Control Order, 1983 but prosecution failed to show any Rules of State government requiring license for labelling and packaging of seeds – Applicant already having license to store, sell and export the seeds – No allegation that applicant violated the provisions of Seed Rules – Breach of provisions of Act of 1955 not attracted. (Paras 14 to 20)**

ख. आवश्यक वस्तु अधिनियम (1955 का 10), धारा 7(1)(A)(II) व 7(2), बीज अधिनियम (1966 का 54), धारा 19, बीज नियम, 1968, नियम 8 एवं बीज (नियंत्रण) आदेश, 1983 – बीजों की पैकेजिंग – अभिनिर्धारित – यदि कोई व्यक्ति बिना अनुज्ञप्ति/अनुज्ञा के बीजों का व्यापार करता है, वह 1955 के अधिनियम तथा नियंत्रण आदेश, 1983 के उपबंधों के अंतर्गत दायी होगा लेकिन अभियोजन, बीजों की लेबलिंग और पैकेजिंग के लिए अनुज्ञप्ति की आवश्यकता वाले राज्य सरकार के ऐसे किसी भी नियम को दर्शाने में विफल रहा – आवेदक के पास पहले से ही बीजों के भंडारण, विक्रय तथा निर्यात करने की अनुज्ञप्ति है – 1955 के अधिनियम के उपबंधों का भंग आकर्षित नहीं होता।

C. ***Seeds (Control) Order, 1983, Clause 13 – Search & Seizure – Competent Authority*** **– Held – Act of search and seizure and taking samples for laboratory testing can only be done by a Seed Inspector – Police was not authorized to do so as per clause 13 of the Control Order, 1983 – Police acted in contravention of specific provision. (Para 18)**

ग. बीज (नियंत्रण) आदेश, 1983, खंड 13 – तलाशी व जब्ती – सक्षम प्राधिकारी – अभिनिर्धारित – तलाशी एवं जब्ती एवं प्रयोगशाला में जांच हेतु नमूना लेने का कार्य केवल बीज निरीक्षक द्वारा ही किया जा सकता है – 1983 के नियंत्रण आदेश के खंड 13 के अनुसार पुलिस ऐसा करने हेतु प्राधिकृत नहीं थी – पुलिस ने विनिर्दिष्ट उपबंध के उल्लंघन में कार्य किया।

D. ***Seeds (Control) Order, 1983, Clause 14 – Laboratory Test Report – Time Period*** **– Held – Laboratory analysis report should be send to concerned seed inspector within 60 days from date of receipt of the sample in laboratory which was not done in present case – It is a breach of Clause 14 of the Control Order, 1983. (Para 18)**

घ. बीज (नियंत्रण) आदेश, 1983, खंड 14 – प्रयोगशाला जांच प्रतिवेदन – समय अवधि – अभिनिर्धारित – प्रयोगशाला विश्लेषण प्रतिवेदन, प्रयोगशाला में नमूना प्राप्त होने की तिथि से साठ दिनों के भीतर संबंधित बीज निरीक्षक को भेजा जाना चाहिए, जो कि वर्तमान प्रकरण में नहीं किया गया था – यह नियंत्रण आदेश, 1983 के खंड 14 का भंग है।

Cases referred:

1992 SUPP (1) SCC 335, C.A. No. 6564/2019 decided on 22.08.2019 (Supreme Court).

S.K. Vyas with *Ayushyaman Choudhary*, for the applicant.
Prabal Jain, P.P. for the non-applicant/State.

O R D E R

(Arguments heard through Video Conferencing)

SHAILENDRA SHUKLA, J.:- This order disposes of the petition filed under Section 482 of Code of Criminal Procedure, 1973, seeking quashing of FIR registered against the applicant vide Crime No.245/2020, consequent final report No.264/2020 and Criminal Case No.59/2020 pending in the Court of JMFC, Barwah for the offence under Sections 420, 467, 469 and 475 of Indian Penal Code, 1860 along with Sections 7 (1)(A)(II) and 7(2) of Essential Commodities Act, 1955.

2. The prosecution story in short was that on 01.05.2020, the Seed Inspector, Barwah lodged a report in police station Barwah, alleging that as per oral orders issued by the Sub-Divisional Officer, Barwah, he raided the warehouse (godown) of the petitioner, which is situated at village Manihar, Tehsil Barwah, District Khargone and found that petitioner was engaged in the activity of storing and packing of chilli seeds in the name and style of Synergy Seeds, Gujarat. The Seed Inspector had noticed that 40 kilograms of chilli seeds and 20 kilograms of loose chilli seeds had been stored and there was packing and sewing machine and empty pouches were also lying. The Seed Inspector asked the petitioner to produce the seed packaging license or the consent order from the concerned Government Department for engaging in seed packaging and storing activities of seeds. The petitioner failed to produce the same hence, a report was lodged on 04.05.2020 in writing alleging that the petitioner was doing the said act with an intention to cheat the farmers. The FIR was registered under the provisions mentioned in paragraph-1 of this order. Subsequently, on 06.05.2020, the warehouse of Synergy Seeds was raided by the police and 720 kgs. of seeds were seized. The petitioner was arrested but was granted bail by the High Court on 13.07.2020. The final report has been submitted on 25.06.2020.

3. Learned senior counsel for the petitioner has submitted that there is no provision of law requiring separate license for packaging of seeds. On the contrary, Rules 7 to 12 contained in Part-V of Seeds Rules, 1968 relating to marking and labeling shows that the duty to pack and to put labeling and marking is the implied duty of the licensee. As such, FIR and final report do not disclose any offence of contravention of Seeds (Control) Order, 1983, which would invite offence under Section 7(1)(A)(II) and/or 7(2) of Essential Commodities Act. The FIR and final report do not disclose as to what false document was made or used by the applicant. The petitioner submits that he is the proprietor of Synergy Seeds and has every right to use the packing material and labels of Synergy Seeds. He has been given the license No.258 dated 28.02.2018 issued under the Seeds (Control) Order, 1983 by the Deputy Director of Horticulture, Khargone as per which he is authorized to sell, export and store seeds at Barwah. He has further submitted certificate of registration bearing No. 14312 for the period 2014 to 2018 issued under the Bombay Shops and Establishments Act, 1948 by the Shop Inspector, Upletta, District-Rajkot, Gujarat. He has further been given license No.23 dated 09.02.2017 issued under the Seeds (Control) Order, 1983 issued by the Deputy Agriculture Regulator-Extension, Rajkot, which authorizes him to sell, export and store seeds. Thus, the applicant is the proprietor of Synergy Seeds, Rajkot which were found in his warehouse. There is no question to counterfeiting any device or mark used authenticating any document when the device, mark and the product belongs to the petitioner himself and as such offence under Section 475 of IPC is not made out as there is no intention to cause wrongful gain to himself and/or wrongful loss to anybody. The provisions of Sections 467 and 469 of IPC are also not attracted and for the same reason, provisions of Section 420 of IPC are also not made out.

4. Learned senior counsel for the petitioner has submitted that the whole case is based on search and seizure by the police officer which is unauthorized and without jurisdiction in as much as per Clause 13 of the Seeds (Control) Order, 1983, it is the Seed Inspector appointed under Clause 12 who alone has the power of search and seizure in respect of the seeds. As per Section 14(1)(i)of the Seeds Act, the complainant/Seeds Inspector, before lodging any complaint against the petitioner, ought to have given an opportunity to the applicant to remove the defects, if any, found at the time of inspection. Further, as per Section 19 of the Seeds Act, 1966, any person convicted for violation of any provision of Seeds Act be punishable for the first offence with fine which may extend upto Rs.500/- whereas, for the reasons best known to the concerned authorities, petitioner has been booked for the offence punishable under Sections 420, 467, 469 and 475 of IPC. The Seed Inspector was required to report the fact of seizure to the Magistrate as per provisions of law under Section 13(3) of the Seeds (Control)

order, 1983. There is no evidence to hold that the seeds seized from the warehouse of petitioner has been sold to the farmers by the petitioner. There is no seed notification report on the record stating that the seized seeds are sub-standard and do not conform to the standards prescribed under Section 6 of the Seeds Act, 1966. Further, there is no evidence on record to substantiate the allegations that the applicant has committed forgery with the farmers. The petitioner submits that Synergy Seeds at Madhya Pradesh and Gujarat are one and the same business entity and owned by one single person i.e. the petitioner and no act of forgery or counterfeiting has been committed by the petitioner. The Seeds (Control) Order can be enforced only by the Seed Inspector and the respondent is not authorized to do so. The FIR and consequent final report is nothing but an abuse to the process of law and has been lodged to harass and pressurize the petitioner.

5. The Apex Court has held that the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice and that ends of justice are higher than the ends of mere law. There is no other evidence which may be useful for the prosecution to prove guilt against the applicant. Hence, it is prayed that the petitioner being an innocent person, having been falsely implicated, FIR registered against him in police station Barwah, vide Crime No.245/2020 final report No.264/2020 and Criminal Case No.59/2020 may be quashed.

6. The respondent/State of Madhya Pradesh has filed the written reply in which it has been stated that in this matter, charge-sheet has already been filed and the learned trial Court has taken the cognizance of the case and, therefore, at this juncture, the petitioner is having the efficacious alternative remedy available to file the discharge application before the learned trial Court. The grounds raised in the present petition may be raised before the learned trial Court also. It is further submitted that the petitioner has failed to provide any license or permit in respect of the fact that he was authorized to pack and then distribute/sell the essential commodities at Barwah, Khargone. The petitioner has further failed to acknowledge the fact that though he may get the license to store and distribute the essential commodities at Barwah, but the essential commodities were to be obtained in a packed manner from Gujarat itself. The petitioner has also failed to comply with the conditions of license to plate/show the license at the conspicuous place/premises.

7. In para-wise reply by the respondent, it has been stated that the petitioner was having the license only for the storage and distribution of seeds but in the investigation it was found that the petitioner has used packaging material and packing machine in his premises and was also doing the packing work illegally.

The petitioner was having huge quantity of chilli seeds and using the said packaging material in order to cheat the innocent buyers/customers to sell the said packed chilli seeds. The petitioner was thus forging the packets and stickers of Synergy Seeds Company and was using the same to pack the chilli seeds. The petitioner was also unable to produce any such license for the packaging of said chilli seeds. There is sufficient material including the documentary evidence against the petitioner on the basis of which the present offence has been registered. The petitioner was having the license only for the storage and distribution of seeds whereas, it was found that the packaging work was also going on and forged packing material was seized from the godown of the petitioner. The Seed Inspector was a competent person to raid the premises of the petitioner and make complaint to the police for further action. It has been submitted that the petitioner should have obtained the license/permit to show that he was authorized to pack and then distribute/sell the essential commodities at Barwah. The petitioner has failed to acknowledge that though he had license to store and distribute the essential commodities at Barwah, the said essential commodity was to be obtained in a packed manner in Gujarat itself. Hence, the petition deserves to be dismissed on the aforesaid ground.

8. Submissions were heard and the documents submitted by the learned counsel for the petitioner were perused.

9. As far as the ambit and scope of Section 482 of the Code of Criminal Procedure, 1973 are concerned, the Hon'ble Apex Court in the case of *State of Haryana and Others vs Bhajanlal and Others* reported in 1992 SUPP (1) SCC 335 has laid down the guidelines for exercising such power under Section 482 of Code of Criminal Procedure, which in itself is an extraordinary power. These guidelines are as follows:

> 1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> 2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> 3. Where the allegations made in the FIR or complaint and the evidence collected in support of the

same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

10. This Court has to see as to whether the case of the petitioner falls under anyone of such guidelines or not.

11. Seeds were not regarded as essential commodities under Section 2 of the Essential Commodities Act prior to 1983. The Central Government by a notified order passed in February 1983, declared seeds of fruits, vegetable and food crops to be essential commodities. After issuing the aforesaid order, the Central Government issued Seeds (Control) Order, 1983, which was passed in exercise of the powers conferred by Section 3 of the Act. This order *inter-alia* contemplates that the persons carrying on business of selling, exporting or importing seeds should obtain license. It also provided for grant and/or refusal of license, renewal of license and various ancillary provision for suspension, cancellation of license and submissions of various returns including provision of punishing for violation of the Seeds (Control) Order, 1983. As far as the present matter is concerned, it is not disputed by the prosecution that petitioner Imran did not have license for storing, selling, importing or exporting chilli seeds. A panchnama dated 1.5.2020

shows that although Imran had license but he did not have relevant documents for packing of seeds or any documents showing permission issued by the department for packing of seeds.

12. In the complaint filed by the seeds inspector before police again it has been mentioned that Imran did not produce any license for packing of seeds or any documents showing permission issued by the department for packing of seeds.

13. Learned senior counsel for the petitioner submits that there is no provision in Seeds Act, 1966, Seeds Rules, 1968 or Seeds (Control) Order, 1983 regarding issuance of a separate license for packing of seeds.

14. A perusal of the aforesaid provisions show that there is of-course no provision requiring license for packaging of seeds. Chapter V of the Seeds Rules, 1968 is relating to marking or labelling of seeds. Rule No.7 to Rule No. 12 of Seeds Rules, 1968 are reproduced as under :-

> **"7. Responsibility for Marking or Labelling. -**When seed of a notified kind or variety is offered for sale under section 7, each container shall be marked or labelled in the manner hereinafter specified. The person whose name appears on the mark or label shall be responsible for the accuracy of the information required to appear on the mark or label so long as seed is contained in the unopened original container: Provided, however, that such person shall not be responsible for the accuracy of the statement appearing on the mark or label if the seed is removed from the original unopened container, or he shall not be responsible for the accuracy of the germination statement beyond the date of validity indicated on the mark or label.
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> **8. Contents of the mark or label.** - There shall be specified on every mark or label-
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> (i) particulars, as specified by the Central Government under clause (b) of section 6 of the Act;
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> (ii) a correct statement of the net content in terms of weight and expressed in metric system;
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> (iii) date of testing;
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> (iv) if the seed in container has been treated-
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> (a) a statement indicating that the seed has been treated;
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> (b) the commonly accepted chemical or abbreviated chemical (generic) name of the applied substance; and

(c) if the substance of the chemical used for treatment, and present with the seed is harmful to human beings or other vertebrate animals, a caution statement such as "Do not use for food, feed or oil purposes". The caution for mercurials and similarly toxic substance shall be the word "Poison" which shall be in type size, prominently displayed on the label in red:

(v) the name and address of the person who offers for sale, sells or otherwise supplies the seed and who is responsible for its quality;

(vi) the name of the seed as notified under section 5 of the Act.

9. Manner of marking or labelling the container under clause (C) of section 7 and clause (B) of section 17. -

(1) The mark or label containing the particulars of the seed as specified under clause (b) of section 6 shall appear on each container of seed or on a tag or mark or label attached to the container in a conspicuous place on the innermost container in which the seed is packed and on every other covering in which that container is packed and shall be legible.

(2) Any transparent cover or any wrapper, case or other covering used solely for the purpose of packing of transport or delivery need not be marked or labelled.

(3) Where by a provision of these rules, any particulars are required to be displayed on a label on the container, such particulars may, instead of being displayed on a label be etched, painted or otherwise indelibly marked on the container.

10. Mark or Label not to contain false or misleading statement. - The mark or label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the seed contained in the container.

11. Mark or label not to contain reference to theAct or Rules contradictory to required particulars. - The mark or label shall not contain any reference to the Act, or any of these, rules or any comment on, or reference to, or explanation of any particulars or declaration required by the Act or any of these rules which directly or by implication contradicts, qualifies or modifies such particulars or declaration.

12. Denial of Responsibility for mark or label content prohibited. - Nothing shall appear on the mark or label or in any

advertisement pertaining to any seed of any notified kind or variety which shall deny responsibility for the statement required by or under the Act to appear on such mark, label or advertisement."

15. The prosecution case is not that the packages found in the godown of the petitioner contained incorrect statement or other particulars which are prescribed under Rule 8. No infringement of any of the Rules has been alleged. Thus, the contention of the learned senior counsel for the petitioner is accepted that no separate license is required for packaging the chilli seeds. There is further substance in the submission of learned senior counsel for the petitioner that a person who is dealer of seeds is only required to adhere to the aforesaid Rules of Seeds Rules of 1968 and the prosecution has not alleged that these Rules were violated. As already stated the petitioner was having a license to deal in Synergy chilli seeds. A perusal of document placed at Page No.50 of the compilation shows that Deputy Director of Agriculture and Seeds who is the licensing officer of Khargone District has issued a license in favour of petitioner Imran Meman for selling, exporting, storing and distribution of chilly and vegetable seeds. This license is dated 28.2.2018. The petitioner was also having a license in the name of Synergy Seeds issued by the Government of Gujarat on 1.2.2017, which is displayed at page no.51. This was valid up to 30.9.2024.

16. It is not the prosecution case that either of these licenses shown by petitioner were forged or fabricated. The documents placed at page no.54, 55 and 56 show that petitioner Imran Yunus Meman was given license for dealing in selling, distribution and exporting of chilli seeds under the name of Synergy Seeds and this license was issued by concerned authorities at Rajkot Gujarat in which the address has been shown to be 2 Raja Complex, Upletta, District Rajkot. The prosecution has not challenged the validity of either of these license. The license which was issued from the concerned authority at Khargone shows that license had been granted to the petitioner for storing, selling and exporting chilli seeds in the name of Synegry Seeds Rajkot. This shows that the petitioner was having a license to store seeds. Thus, the petitioner could store the seeds in an appropriate place which can only be a godown and there is substance in the submission of learned senior counsel for the petitioner that petitioner had kept the seeds in the godown. Some of the seeds were found in loose state, which were being put in packets in the godown. As already stated that no license was required for packing seeds. If any person deals in a variety of seed which is different from the variety which he is authorized to deal in, the punishment is provided for such violation under Section 19 of the Seeds Act. If a person deals in business of seeds without license or without valid license, provisions of Seeds (Control) Order, 1983 would

be violated and provisions of Essential Commodities Act would become attracted. Section 3(2)(d) of Essential Commodities Act, 1955 is of importance which reads as under :-

> *3. Powers to control, production, supply, distribution, etc, of essential commodities.- (1) If the central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices {or for securing any essential commodity for the defence of India or the efficient conduct of military operations}, it may be, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.*
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> *(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide-*
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> *(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;*

17. Thus, it is clear that if a person deals in business of seeds without obtaining license or permit, he would be liable under provision of Essential Commodities Act. The Hon'ble Supreme Court in *State of Maharashtra & Ors. vs. Maharashtra Hybrid Seeds Co. Pvt. Ltd* (Civil Appeal No.6564/2019) dated 22.8.2019, observed that for labelling and packing of cotton seeds, the respondent was required to have a separate license granted under Section 11 of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 and Rule 4 of Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010 and without such license, activity of labelling and packing carried out in the godown was illegal. However, as far as the present case is concerned, the prosecution has not been able to show any such equivalent Rules framed by the State of M.P requiring license for labelling and packaging. In absence of requirement of such license, breach of Seeds Rules would invite penalty only under Seeds Act and not under Essential Commodities Act.

18. There is further substance in the submission of the learned senior counsel for the petitioner that acts of search and seizure and drawing of sample of seeds for laboratory testing can only be done by a seeds inspector as per Clause 13 of Seeds (Control) Order, 1983, but in the present case it was not the seeds inspector who had seized the packets and the seeds found in the godown but the aforesaid act was

done by the police, which is apparent from perusal of the charge sheet. The police was not authorized to do so as per the aforesaid provision. The police was also not authorized to take the samples of seeds and send it to the laboratory for testing. It was the job of seeds inspector only. Thus, the police has acted in contravention of specific provision regarding search, seizure and taking sample of seeds. Further, Clause 14 of the Seeds (Control) Order, 1983 provides that the laboratory to which a sample has been sent by an inspector for an analysis under this order shall analyze the said sample and send the analysis report to the concerned inspector within 60 days from the date of receipt of the sample in the laboratory. In this matter the samples were sent by the police to the laboratory on 23.6.2020. The laboratory is situated at Sagar. However, so far the analysis report has not been received. This is a breach of Clause 14 of the Seeds (Control) Order, 1983.

19. Thus, it is apparent that provisions of Essential Commodities Act are not attracted in this matter. Further, no agriculturist has come forward and stated that he has been cheated by petitioner Imran Yunus Meman. Hence, provision of Section 420 of IPC are not attracted. Similar view was adopted by Co-ordinate Bench in M.Cr.C. No.6742/2016, passed on January 2017. A copy of the said order has been placed on record by the learned senior counsel for the petitioner, as also in another order passed in M.Cr.C. No. 18348/2017 passed on 25.10.2018 by another Co-ordinate Bench. The other sections in which the police has implicated the petitioner are Sections 467, 469 and 475 of IPC as per which the police had to show that the petitioner had committed forgery of evidence by getting the packaging material printed in a manner which amounts to fabrication of documents. However, no person has come forward and stated that the packets found in the godown of the petitioner were forged. The police has made communication with authorized officer of Synergy Seeds at Upletta. The person's name is Mr. Shivkumar Sangem. The seized packets have not been sent to him and no query has been made from him as to whether the packets are genuine or not. Without doing so, the charge sheet has been filed. Hence, neither forgery can be proved nor it can be proved that the petitioner was in possession of counterfeit marked material. Hence, provisions of Section 467 and 475 of IPC are also not attracted. Section 469 of IPC is a provision for punishing forgery for purpose of harming the reputation. No complainant has come forward alleging that forgery by the petitioner has harmed his reputation. Hence, provisions of Section 469 of IPC are also not applicable.

20. The prosecution case is such that if the facts are taken at their face value, the breach of provisions of Essential Commodities Act or provision of IPC are not attracted. Hence, no case is made out for prosecuting the petitioner under the aforesaid provisions. This petition under Section 482 of Cr.P.C stands allowed

and FIR registered against the petitioner vide Crime No.245/2020, consequent Final Report No.264/2020 and Criminal Case No.59/2020, pending in the Court of JMFC Barwah stands quashed. His bail bonds shall stand discharged. The material seized by the police shall be returned to the petitioner. The petition stands allowed in the aforesaid terms.

Application allowed