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# Law Summary

( Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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PART-17 (15TH SEPTEMBER 2019)


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Held – High Court has erred in quashing and setting aside the acquisition proceedings on the ground that the same have lapsed as the award was not declared within a period of two years from the date of declaration under Section 6 of the Act - High Court has committed a grave error in not excluding the period of interim stay granted by it in writ petition – Appealstands allowed - Impugned judgments and orders passed by the High Court are quashed and set aside. **(S.C.)** ***30***

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Held - Grave as the offences may be, they relate to cheating and criminal breach of trust and so, no inference of disturbance of public order can be drawn - These cases can be tried under the normal criminal law - And, if convicted, can certainly be punished by the Court of law - Hence, there was no need for the detaining authority to pass the detention order - Impugned orders are legally unsustainable - Writ Petition stands allowed - Impugned detention Order and the confirmation order are hereby set aside.

**(T.S.)** ***1***

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Held – Change of surname is not going to effect interest of anybody – Change was sought only in the sur name, and not the full name – Contention of the counsel that the procedure under Rule 69.1(i) has not been followed, is not applicable in this case as it is only expansion of M as Mythli which can be permitted – Writ Petition stands allowd directing the 2nd respondent to effect the necessary changes.

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***--X--***

# LAW SUMMARY
# 2019 (3)
# JOURNAL SECTION

## EFFECT OF CLAIM OF ADVERSE POSSESSION IN DECLARATORY SUITS

**Y. Srinivasa Rao,**
M.A (English Litt.)., B.Ed., LL.M.,
Research Scholar in Torts (Ph.D);
Senior Civil Judge, Avanigadda.

''*If defendant sets-up a plea of adverse possession, he must not only plead but also prove the three requirements as held by the Privy Council in Secretary of State for India v. Debendra Lal Khan (28) AIR 1934 PC 23, wherein it was observed that the ordinary classical requirement of adverse possession is that it should be "nec vi, nec clam, nec precario" and the possession required must be adequate in continuity, in publicity and in extent to show that possession is adverse to the competitor*."

**Introduction**: An issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner. A person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. *The word title or right in the context of immovable property connotes ownership or possession of property with right as was held in SSPDL Limited,rep. by its Managing Director Prakash Challa, Hyderabad Vs. Hyderabad Metropolitan Development Authority, rep. by its Metropolitan Commissioner, Hyderabad and others -* ***2017 (6) ALT 253.*** Adverse possession **needs to be pleaded and proved with certainty** . Whether a person who is in long possession of the property can be become land owner? If so, it is an interest point to see when a trespasser can be become land owner. Under what circumstances, a trespasser can come onto one's land, occupy it, and gain legal ownership of it. This is what we now call 'Adverse possession'. Adverse possession is a legal theory under which someone who is in possession of land owned by another can actually become the owner if certain requirements are met for a period of time

defined in the statutes of that particular jurisdiction. A party who claims adverse possession must plead and prove that his possession is peaceful, open and continuous and it must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. See. **2016 (3) ALT 12** – G.Narayan Reddy Vs. P.Narayana Reddy.

What is '*Adverse possession*' and what are the requirements of it; how to consider whether it is *adverse possession* or not; what is the specified period of time to claim adverse possession; what is the period of limitation; and , mainly, ''*what is the effect of claim of adverse possession on declaratory suits*'' are some of the important points which are discussed in this article. It is seminal to remember that plea of adverse possession is not a pure question of law but a blended one of fact and law.

**Adverse possession**:- Before discussing the theory of 'adverse possession', it is very important to know the dicta observed by the Privy Council in Secretary of State for India v. Debendra Lal Khan (28) AIR 1934 PC 23. In this case, it was observed that ''*the ordinary classical requirement of adverse possession is that it should be "nec vi, nec clam, nec precario" and the possession required must be adequate in continuity, in publicity and in extent to show that possession is adverse to the competitor.*'' By pleading adverse possession a party admits the initial title of the opposite party which however is said to be extinguished. It is well-settled law that acquisition of right Acquisition of right to property occurs only if possession of property transferred was delivered to the transferee or if transferee is entitled to recover possession on the basis of transfer from the transferor or any other person who is enjoying it – See. R.V.S. Vara Prasad and others Vs. Dr.V. Ramdas (Died) per L.Rs. - **2014 (1) ALT 488 ( D.B. )**. A plaintiff filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (*See S.M. Karim v. Bibi Sakina*.) In P. Periasami v. P. Periathambi this Court ruled that: (SCC p. 527, para 5). Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property.The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. In *Cheedella Padmavathi's case, 2015 (5) ALT 634*, it was held that a person pleading advverse possession has no equities in his favour, since he is trying to defeat the rights of the true owner, thus it is for him to clearly plead and establish all facts necessary for adverse possession. A person who claims adverse possession should show:
(a) on what date he came into possession,

(b) what was the nature of his possession,
(c) whether the factum of possession was known to the other party,
(d) how long his possession has continued, and
(e) his possession was open and undisturbed.

See. Apex Court ruling chatti Konati Rao and Ors. Vs. Palle Venkata Subba Rao. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.See. Mahesh Chand Sharma (Dr). Vs. Raj Kumari Sharma, (1996) 8 SCC 128. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession.

**Effect of claim of adverse possession**:-

Effect of claim of adverse possession relating to the partition of property uder Hindu law is discussed in ***Mettubandi (died) per L.Rs. Vs. T. Lakshmamma and others, 2016 (4) ALT Page 1***. In this case, it was observed that when the plaintiff failed to prove that he and his brother contributed money for the purchase of schedule property and when it is in the name of his brother and after him, in the name of his L.Rs. in the records and in their possession and enjoyment, the property is not liable for partition as plaintiff failed to initiate any legal action in time and as L.Rs. of his brother have also perfected their title to property by adverse possession.

**Mere long possession without adverse animus**:- It is well-settled law that mere long possession of a property without adverse animus against real owner will not ripen into title. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. See. *Karnataka Board of Wakf's case, (2004) 10 SCC 779*. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property

and asserts a right over it. adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is *nec vi, nec clam, nec precario*, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina, Parsinni v. Sukhi and D.N. Venkatarayappa v. State of Karnataka.) Physical fact of exclusive possession and the *animus possidendi* to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession (b) what was the nature of his possession (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma*.]

It is now a well-settled principle of law that mere possesssion of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title. *See. Annakili v. A. Vedanayagam (3) 2008 (2) SCJ 218.*

In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant possession becomes adverse.(See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak). Animus possidendiâ€™ is one of the ingredients of adverse possession.Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Md. Mohammad Ali v. Jagadish Kalita, SCC para 21.). The said statement of law was reiterated in T. Anjanappa v. Somalingappa stating: (SCC p. 577, para 20).

**Adverse Claim against Government property**:- Whether the Government contests the suit or not, plaintiff, who is in possession of government property and seeks injunction against government, should establish adverse possession for a period of more than 30 years before a suit against government is decreed ex parte Court should also find out the nature of possession claimed by plaintiff whether it is authorized or unauthorized or permissive, etc. While considering application filed by government for condonation of delay in filing application for setting aside ex parte decree, a certain amount of latitude is not impermissible as there is likely to be procedural delay incidental in the very nature of government functioning and in the decision making process and as adoption of strict standard of proof leads to grave miscarriage of public justice and loss of public property. See. Chilkuri Narsimha (died) per L.Rs. Vs. District Collector, Ranga Reddy District and another - 2015 (6) ALT 98. After amendment of Section 6 of Hindu Succession Act, 1956 by Central Act 39 of 2005, a married daughter is also entitled to a share in joint family property as a copercener as a son if the property was not partitioned by 20-12-2004. See. Burugupalli Sesharatnam's case – 2015 (4) ALT 412.

**Mere injunction without seeking a prayer for declaration of title** :- A suit for mere injunction without seeking a prayer for declaration of title is maintainable as persons in possession of property can resist interference with the said property on the strength of possession alone. See. Ediga Ranganayakulu (Died) per L.Rs. Vs. B. Venkatesu and others - **2015 (3) ALT 481**. In M. Kallappa Setty v. M.V. Lakshminarayana Rao (1) AIR 1972 SC 2299, the Supreme Court held that plaintiff can, on the strength of his possession, resist interference from persons who had no better title than himself to the plaint schedule property. In that case, the Supreme Court, having found that the plaintiff failed to establish his title to the plaint schedule property but was found to be in possession on the date of the filing of the suit, granted injunction in favour of the plaintiff. In Chepana Peda Appalaswamy v. Chepana Appalanaidu and others (2) 1996 (2) ALT 389, a learned single Judge of this Court also held that a suit for mere injunction without seeking a prayer for declaration of title is maintainable. Similar view has been taken in Karuppana Goundar and another v. V.C.T.N. Chidambaram Chettiar and another (3) AIR 1936 Madras 963 and Fakirbhai Bhagwandas and another v. Maganlal Haribhai and another (4) AIR 1951 Bom. 380. In Rame Gowda v. M. Varadappa Naidu (5) (2004) 1 SCC 769 = 2004 (2) ALT 24.1 (DN SC), the Supreme Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against the entire world but a rightful owner, and that when facts disclose no title in either party, possession alone decides. Thus as a matter of law, a suit for mere injunction without seeking a prayer for declaration of title is maintainable.

In Paladugu Ramesh Vs. Shaik Begum Bee (died) per L.Rs. and others - **2015 (3) ALT 167,** it was held that Suit for perpetual injunction in respect of property covered by an agreement of sale without seeking relief of specific of performance of such agreement may be maintainable only in case the plaintiff proves that there was delivery of possession and he continued to be in possession of the property or has done something in furtherance of the said agreement but not when he commits default under the agreement of sale. It was also observed that even though a suit for specific performance of a contract is barred by limitation, the law of limitation does not come in the way of the transferee taking plea under Section 53-A of TP Act to protect his possession of suit property if he fulfils the necessary conditions.

**Adverse claim on Inam land**:- When once the disputed land is determined as inam land of a religious institution and ryotwari patta is issued under Section 7 of A.P. Inams Abolition Act of 1956 by the competent authorities in favour of the institution, neither the plea of adverse possession set up nor the title claimed under a sale deed would entitle a party to claim compensation concerning the said land in the absence of valid title to convey. See. *Kesavlal Vs. Land Acquisition Officer-cum-Special Tahsildar (LA), Tirupati and another - 2015 (3) ALT 230 (D.B.)*. In Pushpagiri Math v. Kopparaju Veerabhadra Rao (1) 1996 (5) Supreme 281 = 1996 (3) ALT 23 (D.N.), it was held that Under the A.P. Inams Abolition and Conversion into Ryotwari Act, Act 37/56, after the Act had come into force, the pre-existing right, title and interest stood extinguished and the new rights were sought to be conferred under Section 3 read with Section 7 thereof either in a suo motu enquiry under Section 3 or on an application under Section 7. A new grant of ryotwari patta is to be made by the Tehsildar by way of an order after enquiry to the extent of entitlement as per law. It would be subject to an appeal to the Revenue Divisional Officer which becomes final.

In Peddinti Venkata Murail Ranganatha Deslka Iyengar and others v. Govt. of A.P. and another [JT 1996 (1) SC 234], a Bench of two Judges of Hon'ble Supreme Court (in which one of us K Ramaswamy J. was a member) had considered the scope and operation of the Act. While considering the constitutional validity of Section 75 of the A.P Charitable and Hindu Religious Institution and Endowments Act 1987, the Court held that a person or institution or the tenant in occupation is entitled to ryotwari patta in respect of the land. The institution is entitled to the extent of 2/3 and the tenant or person is entitled to ryotwari patta to an extent of 1/3 share. The grant of ryotwari patta under Section 7 becomes conclusive overriding the effect given by Section 15 over any other law. It would therefore be clear that after the Inam stood abolished the preexisting rights extinguished and the obligation to render service burdened with the land was relieved.

The holder of the land became entitled to free hold ryotwari patta. Thus the pre-existing right, title and interest stood extinguished.

**Whether the suit for declaration of ownership and injunction is maintainable on the basis of adverse possession?** As was held in Saraswati Bhagat Vs. Eshwaramma @ Lakshmamma (died) per L.R. and others - **2016 (4) ALT 17** , adverse possession need not always be used as a shield or defence.

The Hon'ble Division Bench of Andhra Pradesh High Court held that the right of the owner over the land was extinguished when the government took possession of the land after an award of compensation was made under the 1894 Act. See. *D. Mahesh Kumar Vs. State of Telangana, Department of Revenue, rep. by its Principal Secretary, Hyderabad and others - 2017 (1) ALT 400 (D.B.)*. The golden rule of construction is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition.

In *P S R Yethiraj Vs. P.S.R.Rama Rao - 2016 (6) ALT 398*, the plaintiff has sought relief of declaration of title and recovery of possession from the defendant. In this case, the Court held as infra '*There is no plea of adverse possession raised by defendant in the written statement to defeat the title of plaintiff which he had acquired under Ex.A.2 sale deed in respect of Ac.0.50 cents of land alienated to him by defendant. It is the admitted case of defendant that he is in possession of the property. Once title is found to be with plaintiff under Ex.A.2, and plaintiff has not been divested of title under any registered conveyance in favour of defendant subsequently, the plaintiff would be entitled for the reliefs of declaration of title as well as for the recovery of possession*''.

In the decision in *Chatti Konati Rao v. Palle Venkata Subba Rao (8) 2011 (1) ALT 46 (SC) = (2010) 14 SCC 316* , it was held in support of the settled proposition of law that mere *possession* however long does not necessarily mean that it is *adverse* to the true owner and that *adverse possession* really means the hostile *possession* which is expressly or impliedly in denial of the title of the true owner and that in order to constitute *adverse possession* the *possession* proved must be adequate in continuity, in publicity and in extent so as to show that it is *adverse* to the true owner and that the classical requirements of acquisition of title by are that such *possession* in denial of the true owners title must be peaceful, open and continuous. See also*. Durgampudi Padmamma Vs. Kallutla Kottamma (died) and another - 2016 (5) ALT 739*.

Till a document is set-aside, though it is invalid, it is operative on the parties to the

document and the parties thereto are entitled to enforce the terms there under. It is well-settled law that Normally the pleadings in rural areas have to be construed liberally; merely because the pleadings are inartistic they cannot be thrown away. Hindu Undivided Joint Family is wider than Hindu Undivided Coparcenary since the coparcenary consists of lineal male descendants earlier, now both lineal male and female. The law is well settled that an old partition can be inferred basing on the surrounding circumstances like mutation of property, shares of individuals in the revenue records and municipal records, transactions of sale subsequent to the partition would form the basis to infer that the partition was real and acted upon. See. *K.V. Janaradhanam Chetty and another Vs. K.V. Jaya Kumar and another - 2016 (5) ALT 609*.

In Gorige Ailamma Vs. Utkoori Somaiah and others - **2015 (2) ALT 467** , it was held that Where a party is seeking declaration of title and recovery of possession, burden lies on such a party to adduce satisfactory evidence to prove his title and possession. He has to succeed only on the strength of his case and not on the weakness of case set up by defendants. In para 38, it was observed that Even if a person fails to prove his title claimed by him, as per law by not obtaining any registered sale deed and by not applying Section 54 of T.P. Act, his long and continuous hostile possession denying the title of the owner is sufficient to prove his adverse possession.

**The plea of adverse possession is a double edged sword**:-

Any plea of adverse possession contains an admission that the opposite party is the owner of the property, but the said title of the opposite party has been extinguished because of the open hostile possession with animus by the claimant for the statutory period Therefore, by pleading adverse possession a party admits the initial title of the opposite party which however is said to be extinguished. See. See also**.** *Uppara Anjinappa's case infra.*

In *Union of India v. Vasavi Co-op. Housing Society Ltd. (1) 2014 ALT (Rev.) 28 (SC) = AIR 2014 SC 937*, it was held that The plea of adverse possession is a double edged sword. In suit for declaration of title, the burden is squarely on the plaintiffs to prove their title and also their possession and enjoyment of the suit schedule property. The learned counsel for the respondents/ defendants cited a judgment which reiterated the position of law that is well-settled. See also**.** *Uppara Anjinappa (died) and others Vs. T. Khasim Sab (died) per Legal represetatives & Ors.- 2018 (5) ALT 511.*

In many suits for declaration of suit, the parties usually heavily relies on revenue records. But, it is well-settled law that the revenue records by themselves cannot be treated as documents of title. However, the fact remains that both under Section 35 of the Indian Evidence Act and because of the fact that they are the result of a physical exercise

done on the land, they do have a certain evidentiary value, particularly the 1929 Resettlement Register.

*It was held in Seelam Mallaiah (died) per LRs.and others Vs. P. Narasinga Rao (died) per LRs. and others - 2017 (3) ALT 228, de-exhibited from the record Ex.A-1, agreement to sell, shall hold good but, since Ex.A-3 is de-exhibited from the record, the plaintiffs cannot claim possession of the suit property w.e.f. 5-3-1988, as recited in Ex.A-3.*

**Period of limitation**:- The law is well settled that when a person acquires title by *adverse possession* and the real owners fail to recover *possession* from such occupant of the property within the statutory period, the right of the owners to such property stands extinguished at the determination of the period limited to owners for instituting a suit for *possession* of the property. Therefore, this section of law of limitation not only bars the remedy of the real owners but also extinguishes their title/right to the property. See. Section 27 of the Indian Limitation Act; *Durgampudi Padmamma Vs. Kallutla Kottamma (died) and another - 2016 (5) ALT 739*.

Section 65 of Limitation Act governs the suit for possession based on title - Period of limitation for such a suit is 12 years when possession of defendants became adverse to the plaintiff, Pidikiti Venkatarathnam v. Dr. Ramanavarapu Sampath Kumar - **2010 (5) ALT 136**. *In the absence of plea of adverse possession, the issue as to suit being barred by limitation does not arise for a decision in second appeal.*(Para 6.8), Kasa Muthanna and another Vs. Sunke Rajanna and others - **2016 (1) ALT(REV.) 98** .

In fact, after the Limitation Act, 1963 came into operation, it is not necessary for the plaintiff to state when she is dispossessed unlike under the Limitation Act, 1908; and if the petitioner were to establish title, she would be entitled recovery of possession unless the defendant establishes better title and he is able to prove that he has acquired such title by adverse possession. See. **2019 (4) ALT 191 -Smt. P. Shailaja Kumari @ Shaila Kumari, Hyderabad Vs. Vasantha Malavika and another**. The scope of Section 27 and Articles 64 and 65 of the Limitation Act, 1963 are dealing with right of recovery of possession and not with title, though Section 27 alone speaks of person claiming *adverse possession* by prescription to seek for declaration. Of which, as per Article 64 of the Act, 1963 for possession of immovable property based on previous *possession* and not on title, when the plaintiff while in *possession* of the property has been dispossessed, the limitation period is 12 years from date of actual dis*possession*; whereas, as per Article 65 of the Act, 1963 for *possession* of immovable property or any interest therein based on title (and not on previous *possession* and with no need of saying when the plaintiff was and if so, while in *possession* of the property has been

dispossessed), the limitation period is 12 years, when the *possession* of the defendant becomes adverse to the plaintiff. (Para 27 (iv)).

Section 65 of Limitation Act governs the suit for possession based on title - Period of limitation for such a suit is 12 years when possession of defendants became adverse to the plaintiff. – Pidikiti Venkatarathnam v. Dr. Ramanavarapu Sampath Kumar - **2010 (5) ALT 136** . It is now well-settled principle of law that mere continuous possession howsoever long it may have been qua its true owner is not enough to sustain the *plea of adverse possession* unless it is further proved that such possession was open, hostile, exclusive and with the assertion of ownership right over the property to the knowledge of its true owner. It is observed by the Hon'ble Supreme Court in Mallikarjunaiah Vs. Nanjaiah and others – 2019 (3) ALT (Supreme Court) 277, Division Bench.
In **V. Suryanarayana Vs. P. Dalenna** - **1983 (1) ALT(NRC) 63.1** it was held that Once a person was inducted into possession pursuant to an oral sale, for want of requisite legal form policies, though title was not secured, yet when the vendee was allowed in continuous and uninterrupted possession and enjoyment for full statutory-period, the vendee acquires title by prescription. Thereafter even any attempt made to get a regular sale deed from the Vendor, unless the facts and circumstances lead to draw an irresistible and irrefutable inference that the Vendee was animated that his possession continued to be permissive and acquired no title, the admission of title of Vendor thereafter made does not wipe out the prescriptive right already acquired. Mere menial animation of the -Vendor of his being the owner does not by itself - sufficient. It does not have the effect of interrupting running of adverse possession thus started nor amounts 10 break up of the exclusive possession of the vendee. It gets effected only by change of possession of the vendee on his disposession or such other legally acceptable means. In this case, the appellants and weir predecessor have lost their title. They possession for 12 years prior to suit. Tie appellants acquired no valid title to the plaint secure are not in possession at any time in pursuance of their sale deeds. Thus the respondent, has acquired title by adverse possession to the plaint schedule property.

**Possession – Injunction**:- It is a settled principle of law that in order to claim prohibitory (temporary or permanent) injunction, it is necessary for the plaintiff to *prima facie* prove apart from establishing other two ingredients, namely, irreparable loss and injury that his possession over the suit land is "legal". This being a simple suit for grant of permanent injunction between the two private parties in relation to the land which was subject matter of the State Ceiling Laws, was liable to be dismissed on the short ground apart from many others as detailed above that any order that may be passed by the Civil Court would adversely affect and interfere in the rights of the State under the Act, which

had not been impleaded as party defendant. In the Hon'ble Court finds that no quarrel with the general proposition of law laid down in *Nagubai Ammal and others v. B. Shama Rao and others*, *Bhagwati Prasad v. Shri Chandramaul*, *Pinninti Kishtamma and others v. Duvvada Parasuram Chowdary and others*, *State of Tamil Nadu v. Ramalinga Samigal Madam*, *Annamreddi Bodayya and another v. Lokanarapu Ramaswamy (Dead) by L.Rs.*, *Anathula Sudhakar v. P. Buchi Reddy (D) by L.Rs.*, *Rajendra Singh and others v. State of U.P. and others* and *Karnail Singh v. State of Haryana and another.*

**Conclusion**:- It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well-settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants. It is only thereafter and subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it. See. Dagadabai(Dead) by L.Rs Vs. Abbas @ Gulab Rustum Pinjar, 2017 (3) ALT(SC) 17 ( D.B. ). It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. (Girajala Subbarao 's case - 2015 (6) ALT 55). Further, it is well-settled law that The question as to who is in possession of the suit property is essentially a question of fact Such question is required to be decided on appreciation of evidence adduced by the parties in support of their respective contentions. See*. Agnigundala Venkata Ranga Rao's case reported in 2017 (1) ALT(REV.)(SC) 85 ( D.B.)*. One cannot dispute the legal proposition being well settled that the question as to who is in possession of the suit property is essentially a question of fact. It is only when such finding of fact is found to be against the pleading or evidence or any provision of law or when it is found to be so perverse or/and arbitrary to the extent that no judicial person of an average capacity can ever record, the same would not be binding on the higher Courts and may in appropriate case call for interference.

The activist approach of the English Courts is quite visible from the judgments of Beaulane

Properties Limited v. Palmer (2005) 3 WLR 554 and JA Pye (Oxford) Limited v. United Kingdom (2005) 49 ERG 90. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights." In similar circumstances, in Ramaiah v. Singaraiah (35) 1973 (2) APLJ 10 (SN), held as follows: "Each factor by itself may be decisive, but the cumulative effect or the totality of all the relevant and material factors should be the safe guide for determining the benami nature or otherwise of a transaction."

As per Limitation Act, 1963, if a plaintiff establishes his title, he is entitled to recover possession. The burden to prove perfection of title by adverse possession rests upon defendant who raises such a plea. See. Thota Kameswara Rao Vs. Thota Ramgopal - **2015 (2) ALT 317 ( D.B. )**. The person who pleads adverse possession must not only prove the factum of continuous possessionfor over 12 years but also prove that such possession was open and adverse to the actual owner.

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# LAW SUMMARY
## 2019 (3)
## Andhra Pradesh High Court Reports

### 2019(3) L.S. 1 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
D.V.S.S. Somayajulu

Selvaraju Dhanasekhar ..Petitioner
Vs.
Viswanadha Venkata
Yegneswara Sastry & Anr., ..Respondents

**CIVIL PROCEDURE CODE – Civil Revision filed questioning the Order passed in I.A. by Trial Court – Suit is filed for a permanent injunction restraining the defendants from interfering with plaintiff's peaceful possession of plaint property – I.A. was filed for appointment of an advocate commissioner which was dismissed by the Trial Court.**

**Held – Comparison of photographs by an advocate commissioner and verification of the ground reality is not really countenanced by the law - Comparison of photographs is not a local investigation that is contemplated by Order 26 of CPC – Instant matter can be proved even without the appointment of an Advocate commissioner – Trial Court did not commit any error in passing impugned Order – Civil Revision Petition stands dismissed.**

Mr.S. Subba Reddy, Advocate for the Petitioner.
E.V.V.S. Ravi Kumar, Advocate for the Respondents.

**O R D E R**

This Civil Revision Petition is filed questioning the Order dated 21.02.2017 passed in I.A.No.2088 of 2016 in O.S.No.141 of 2015, by the learned II Additional Junior Civil Judge, Kakinada.

The suit in O.S. No.141 of 2015 is filed for a permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the schedule property. In the said suit, during the progress of the trial I.A.No.2088 of 2016 was filed for appointment of an Advocate Commissioner. The said application was dismissed. Questioning the same, the present Civil Revision Petition has been filed.

This Court has heard Sri S. Subba Reddy, learned counsel for the revision petitioner and Sri E.V.V.S. Ravi Kumar, learned counsel for the respondents.

Learned counsel for the petitioner argued the matter with his usual passion and submitted the following case law:

1) Smt. A. Laxmamma v Smt. A.

Venkatamma – (2016) 6 ALT 795.

2) Velaga Narayana & Others v Bommakanti Srinivas & others – (2014) 4 ALT 152.

3)Nambada Varaha Narasimhulu v Karanam Dalamma & others – (2014) 6 ALT 94.

4)Haryana Waqf Board v Shanti Sarup & Ors., - (2008) 8 SC 671.

5)K. Dayanand v P. Sampath Kumar and family – (2015) 4 ALT 560.

6)Bandaru Mutyalu & another v Palli Appalaraju – (2013) 6 ALT 26.

The argument of the learned counsel for the petitioner is that although the suit is filed for an injunction there is no bar or prohibition against the appointment of an Advocate Commissioner. It is his contention that the learned single Judges of this Court in all the cases cited and also the Hon'ble Supreme Court of India have held that the appointment of an Advocate Commissioner is permissible while deciding a suit for injunction. He submits that in view of the peculiar facts and circumstances of this case the appointment of an Advocate Commissioner to note down the physical features of the property is necessary and that therefore the appointment of an Advocate Commissioner is needed in this case. He submits that the lower Court committed an error in dismissing the application. It is his contention that the present Civil Revision Petition should be allowed and an Advocate Commissioner should be appointed to visit the site and to note down the physical features and not for visiting the site and comparing the photographs.

In response to this, learned counsel for the respondents submits that while that there is no bar for the appointment of an Advocate Commissioner in a suit for injunction as per the settled law, this Court should see the facts and circumstances of the decided cases and the present case in order to come to a conclusion whether the appointment of Advocate Commissioner is actually required or not. Learned counsel submits that a judgment is an authority for what it decides only. He also submits that facts of the judgment have to be considered very carefully before the same is treated as a precedent to apply to the other cases. Learned counsel submits that even one single fact in the decided case can make a difference. In addition, he submits that the prayers made in the present case are for appointment of an Advocate Commissioner to "compare the photographs" that are filed along with the plaint and also to "note down the physical features of the plaint schedule property". The learned counsel submits that this amounts to clear gathering of evidence.

This Court after hearing both the counsel notices that the application to appoint an Advocate Commissioner is filed during the examination of the witnesses i.e., during the oral evidence. According to the averments in the petition the affidavit is filed seeking appointment of an Advocate Commissioner because P.W.1 (1st plaintiff) denied the photographs, which were confronted to him. A statement is made in the affidavit that P.W.1 in order to avoid the admission stated that the photograph does not relate to the suit schedule property. In those circumstances, an application is filed to appoint an Advocate Commissioner.

The question is: whether the court rightly or wrongly decided the application?

Even if the plaintiff's witnesses denies the photographs there are other modes and methods available to the defendant to prove the photograph/the contents of the photograph or even the existence of a thatched hut inside the suit schedule property. Comparison of photographs by an Advocate Commissioner and verification of the ground reality is not really countenanced by the law. The existence of a thatched hut has been taken by him. He has made an attempt to confront the witness of the photographs showing the existence of hut in the site. The witness denied it. Therefore, the defendant has a duty to establish that there is a thatched hut and that this particular photograph pertains to that site or that it records the existence of the hut. These are all matters which are capable of being proved and the appointment of an Advocate Commissioner to compare the photographs is not a correct method of proving the photograph or its contents in the opinion of this Court.

The other point that arises for consideration of this case is that whether the Advocate Commissioner should be appointed to note down the physical features?

The case law cited by the learned counsel for the petitioner shows that the Advocate Commissioner can be appointed, even in a suit for injunction, to note down the physical features. There is no doubt with regard to the settled proposition of law, but the submission of the learned counsel for the respondents that the facts in each case have to be seen before the law is uniformly applied deserves attention. As per the settled law on the subject even one fact can make a fundamental difference in the applicability of a decision. The law is so well settled that it does not require repetition. A judgment is an authoritative pronouncement for what it decides and not for what logically follows. Against this backdrop if the case law cited by the learned counsel for the petitioner is examined it is evident that in most of the cases, that are relied upon by the learned counsel for the petitioner, there actually was a dispute about the identity of the property. In **Smt. A. Laxmamma case (1 supra**) it is averred that the plaint schedule property is imaginary and that the wrong boundaries are shown. In **Velaga Narayana case (2 supra)** there is a dispute regarding the identity of the property covered by Sy.No.257/D and 280 and in **Nambada Varaha Narasimhulu case (3 supra**) in para 3 it is very clear that there is a very serious dispute about the identity of the property and the survey number in which the property is located. Similarly, in **Bandaru Mutyalu case (5 supra)** learned judge has clearly held in para 19 as follows:

"I hold that in situations where there is controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that the parties are aware of the report of the Commissioner and go the trial prepared. The party against whom the report may have gone may choose to adduce evidence in rebuttal."

In **Haryana Waqf Board case (4 supra)** the matter was remanded to the High Court with observation that in view of the nature of the disputes whether the local Commissioner should be appointed should have to be decided by the High Court. Last but not the least in **K. Dayanand case (5 supra),** a learned single Judge of this Court after considering all the judgments on the subject came to the conclusion that there is no bar for appointment of an Advocate Commissioner to note down the physical features. In that case, respondent stated that he has constructed a small room, erected a fencing and went on to state that the schedule property is still agriculture land, that there are no house plots or roads in existence. Therefore, a case was made out for appointment of Advocate Commissioner. Hence, the learned single Judge held that appointment of Advocate Commissioner is not really prohibited by law and that the Advocate Commissioner could be appointed. Learned trial Judge also pointed out that if there is a need to localize the property the same should be carried out at the beginning of the litigation only.

Against this legal backdrop if the present case is examined this Court is of the opinion that the lower Court did not really commit any error in passing the impugned order. Comparison of photographs is not a local investigation that is contemplated by order 26 of CPC. Local investigation would mean an investigation for ascertaining of certain facts on the ground because the Court cannot physically go there and note down the actual physical features. In cases where there is a serious dispute about the identity of the property, dispute about the boundaries or about the relevant survey numbers etc., in which the property is situated then an Advocate Commissioner could be appointed to aid and assist the Court by verifying the facts at the ground level and submitting a report to the Court. This list is not exhaustive and is only illustrative. But in the case on hand there is no such dispute about the very existence of the property or survey number etc., in which it is situated. The crux of the defense of the defendant is that he is in peaceful possession and enjoyment of the property and that he has constructed a hut thereon. This court is of the opinion that this is a matter that can be proved even without the appointment of an Advocate Commissioner. The existence of the hut, construction of the hut etc., can be proved by the defendant. Hence, this Court is of the opinion that the lower Court did not commit any error in passing the impugned order.

For all these reasons the Civil Revision Petition is dismissed. But in the circumstances, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending shall stand dismissed.

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**2019(3) L.S. 5 (A.P.)**

IN THE HIGH COURT OF
ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
Gudiseva Shyam Prasad

Aparajitha ..Petitioner

Vs.

The Union of India
& Ors., ..Respondents

**Writ Petition filed by Petitioner seeking for a direction to 2nd respondent/ CBSE to change the name of the petitioner as per the Aadhar card.**

**Held – Change of surname is not going to effect interest of anybody – Change was sought only in the sur name, and not the full name – Contention of the counsel that the procedure under Rule 69.1(i) has not been followed, is not applicable in this case as it is only expansion of M as Mythli which can be permitted – Writ Petition stands allowd directing the 2nd respondent to effect the necessary changes.**

Mr.M.Murali Krishna, Advocate for the Petitioner.

Mr.B.Krishna Mohan, Asst. Solicitor General, Advocate for Respondent No.1.

Smt.S.Chaya Devi, SC for CBSE, Advocate for the Respondent No.2.

W.P.No.42969/18 Date: 14-6-2019

**O R D E R**

This is a Writ of Mandamus filed by the petitioner seeking for a direction to the 2nd respondent-Central Board of Secondary Education to change the name of the petitioner from Aparajitha M to 'Aparajitha Mythili' as per the Aadhar Card.

2.The mother of the petitioner filed affidavit being the guardian of the petitioner stating that the petitioner is aged about 16 years passed her 10th Standard from 3rd respondent-Pragathi Central School. She made a request to the 3rd respondent institution with regard to the change of her daughter's name in 10th class Certificate from Aparajitha M to Aparajitha Mythili. The 2nd respondent vide letter dated 08.06.2018 rejected the request of the petitioner stating that the changes have to be admitted by a Court of law with regard to change the name of the candidate and the same has to be notified in the Government Gazette before the publication of the result of the candidate. Being aggrieved by the same, the present writ petition has been filed.

3. The 2nd respondent has filed counter stating that the petitioner has applied for correction of her surname vide letter dated 25.05.2018 along with Gazette notification dated March 18-24, 2017. The same was rejected on the ground that chnges in the name or surname of candidates has to be admitted by the court of law, and notified in the Government Gazette, before the publication of the result of the candidate, as per Rule 69.1(i). The applications regarding the changes in candidate's name, mother's name, father's name and changes in name of surname of

the candidates will be considered provided the changes have been admitted by the court of law and notified in the Government Gazette before the publication of the results of the candidate. The petitioner is seeking for change of surname from Aparajitha Musti to Aparajitha Mythili, which is a total change in the surname of the petitioner, as such, the petitioner is not entitled for change of surname.

4.The point for consideration in this matter is whether the petitioner is entitled for change of her name in the light of the amended Rule 69.1(i) of the notification dated 01.02.2018/

5.The existing Rule under 69.1(i) reads as under:

> "(Change in Candidate Name, Mother Name & Father Name)
>
> Applications regarding changes in name or surname of candidates may be considered provided the changes have been admitted by the Court of Law and notified in the Government Gazette before the publication of the result of the candidate."

6.The amended Rule under 69.1(i) reads as under:

> "(Change in Candidate Name, Mother Name & Father Name)
>
> Applications regarding changes in name or surname of candidates will be considered provided the changes have been admitted by the Court of law and notified in the Government Gazette before the publication of the result of the candidate in cases of change in documents after the court orders caption will be mentioned on the document "CHANGE ALLOWED IN NAME/FATHER'S NAME/ MOTHER'S NAME/GUARDIAN'S NAME FROM————TO———— ——ON (DATED) ————————AS PER COURT ORDER NO———————— ———DATED ————————."

7. The contention of the learned Standing Counsel appearing for 2nd respondent is that in view of the Rule under 69.1(i), the total change in the surname of the peititoner cannot be considered as the petitioner is asking for change of surname from Aparajitha Musti to Aparajitha Mythili. Whereas, the petitioner's name was mentioned as Aparajitha M in the School certificate as per the List of Candidate (LOC), as such, the Board cannot change the name, which was printed on Board certificates as per the list of candidates whose names were registered online as submitted by the concerned school.

8.Learned counsel for the petitioner has relied on catena of decisions and argued that the condition in the above rule of obtaining an order from Court of law for change of name and getting it notified In a Government Gazette is impossible to comply with, as there is no defendant against whom a civil suit can be filed by the applicant for declaration of her right of change of name.

9.Learned counsel placed reliance on a judgment of High Court of Delhi reported in **Navee & others Vs. CBSE – WP (C) No.24753-54/2005 dated 21.11.2013** and also placed a reliance on

judgment of High Court of Delhi reported in **RAUNAQ SINGH SAWHNEY versus CENTRAL BOARD OF SECONDARY EDUCATION – W.P.( C ) No.2152/2018 dated 5.2.2019,** wherein CBSE was directed to issue a revised Marks sheet of Class X to the petitioner, reflecting the name of his father as "Raminder Singh Sawhney" after surrender of his Certificate already issued to him, showing the name of his father reflected as "Raminder S. Sawhney".

In another judgment of High Court of Jharkhand at Ranch reported in **Neelu Prasad Vs Ventral Board of Secondary Education & others – W.P.(c) No.2713 of 2016 dated 2.5.2018,** the Court directed to change name of the petitioner's daughter 'Avani' as 'Avani Prasad' and her son 'Ayush' as 'Ayush Prasad' and accordingly ordered to issue fresh (revised) certificates of Class and XII Certificates to them within a period of four weeks from the date of receipt/production of a copy of the order.

In **Vanika Vs Central Board of Secondary Education & Others-CWP No.11315 of 2018 dated** the High Court of Punjab & Haryana, had issued a direction to CBSE to issue DMC of Class X to the petitioner by adding surname "Kansal" to the names of her parents, within a period of 15 days from the date of receipt of certified copy of the order.

In **Subham Vs Central Board of Secondary Education and others – WP (C) No.1948 of 2017 dated 06.02.2018** wherein, the respondent – CBSE was directed to make necessary correction in the name of the petitioner changing from 'subham' to 'Shubham Thakur' in his educational certificates of Class-X and Class-XII within a period of three months from the date of receipt/production of a copy of the order.

In para-7 of the judgment it was held as under:

> *"The High Court may issue suitable direction under Article 226 of Constitution of India to render complete justice to a citizen. In the case on hand if the prayer for correction in the name of the petitioner in X Class marks sheet/ certificate is denied on the ground of delay, it will not resolve the issue. Thus, in the interest of justice the name of the petitioner is required to be corrected in all educational certificates. More so, the corrections sought to be made is merely an addition of the surname, for which publication in the official Gazette of the Government of India vide Gazette notification No.5 dated 5.11.2016 has already been made."*
>
> *Under the circumstances, the respondent CBSE was directed to make necessary correction in the name of the petitioner from "Subham" to "Shubham Thakur" as referred above.*

10. On the other hand, learned Standing counsel for the respondent submitted that Rule 69.1(i) has not been followed by approaching a civil court for change of petitioner's name, as such, the petition is liable to be dismissed.

11. On consideration of the decisions referred above, and the facts and circumstances of this case, it is obvious that the petitioner has sought for change of her surname from Aprajitha Musti to Aparajitha Mythili. In this regard, a Gazette notification was made. The Gazette notification clearly shows that the petitioner intended to change her name from Aparajitha Musti to Aparajitha Mythili. There is no change in the main name Aparajitha but the change sought was only in the surname Musti to Mythili. The Gazette notification was admittedly published in the month of March 18 to March 24 of 2017. There is no protest by anybody in connection with the said change in the Gazette notification. Therefore, in the light of the above decisions and in the facts of the present case, it appears that the change of surname is not going to effect interest of anybody, as none appeared for all most two years even after the Gazette publication was made.

12. It is also pertinent to note that the change was sought only in the surname Musti to Mythili. As per X class Marks list, the surname was shown as Aparajitha m and she wanted to change it to Aparajithi Mythili. "Mythili" is the name of the mother of the petitioner. Therefore, there cannot be any objection from anybody for changing her surname from 'M' to 'Mythili'.

13. No doubt, the Gazette publication shows that the surname Musti was changed as Mythili. As there was no objection from anybody since the date of notification and, since the change sought was only in the surname, and not the full name of the petitioner, as Aparajitha M mentioned in CBSE institution was sought to be changed as Aparajitha Mythili, the objections raised by the learned Standing Counsel for the respondent that the procedure under Rule 69.1(i) has not been followed, is not applicable in this case as it is only expansion of M as Mythili which can be permitted in the light of the decisions referred above. It is also pertinent to note that Gazette publication was made in the year 2017. Till now, no objections have been filed by anybody though the change of name is notified in the Gazette to the public. Even on this ground the petitioner is entitled for change of her surname as she is not seeking for any change in her main name Aparajitha.

14. In the result, the Writ Petition is allowed directing the 2nd respondent-CBSE to effect the necessary changes in the X Class certificate and issue a fresh certificate within four (04) weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous Petitions, if any pending, shall also stand closed.

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**2019(3) L.S. 9 (A.P.)**

IN THE HIGH COURT OF
ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
Gudiseva Shyam Prasad

Aniseety Siva Nageswara
Rao ..Petitioner

Vs.

State of A.P.,&Ors., ..Respondents

**CONSTITUTION OF INDIA, Article 14 - Writ of mandamus by petitioner for declaring the suspension Order issued by APSRTC as illegal and arbitrary – Petitioner was working as a conductor in APSRTC and was suspended from service on the complaint of a passenger for his misbehavior.**

**Held – This Court is not inclined to go into merits of the allegations made against the petitioner in the charge sheet or in the departmental enquiry – Competent authority has to expediate the enquiry by following their own guidelines - Discrimination and arbitrariness nor malafide action on the part of corporation is not proved - Writ petition stands dismissed.**

Mr.M.Pitchaiah, Advocate for the Petitioner.
Mr.P.Durga Prasad, Advocate for the Respondent.

WP.No.2335/19 Date:14-6-2019

**ORDER**

This is a Writ of Mandamus filed by the petitioner for declaring the suspension order bearing vide APSRTC No.M1/1140(01)/2019-MNGL, dated 11.02.2019 as illegal and arbitrary.

2.Heard the arguments of the learned counsel for petitioner and learned Standing Counsel for APSRTC at the stage of admission on the consent of both the counsel.

3.The brief facts are that the petitioner, while working as a Conductor in APSRTC, was suspended from service on the complaint of a passenger for his misbehavior. The Corporation ordered enquiry against him and a criminal case is also pending against the petitioner. The brief contents of charge sheet discloses that the writ petitioner, while working as a Conductor in Mangalagiri Depot, had misbehaved with a passenger namely Smt. Rajasree while she was travelling in the bus bearing No. AP 07 Z 0201 on 22.01.2019 from Mangalagiri to Pedavadlapudi, and on her complaint, the police registered a case against him and filed charge sheet. The petitioner was placed under suspension.

4.Learned counsel for the petitioner submits that the action of the respondents is arbitrary and discriminatory which is in violation of Article 14 of the Constitution of India. In case of other employees, the respondents have not placed under suspension for similar offences of misbehavior with woman passengers, but in the case of the petitioner, they placed him under suspension though the circular says that the suspension is not warranted.

5. The submission of the counsel for the petitioner is tht the order of suspension made by the corporation is against the circular orders issued by them. As per the circular orders, in a case of misbehaviour with women passenger, suspension is not warranted.

6. The learned counsel further submits that in similar cases of misbehavior, the Corporation passed orders, but in no case, the delinquent was placed under suspension. As per the Guideline 7.2.1 under major offences, in case of employee misbehavior with women passengers, suspension of employee is not warranted. The counsel for the petitioner placed reliance on the said circular bearing No.PD01/2019, dated 01.01.2019 at page No.13 Serial No.6.5 and submitted that as per the rule, in case of misbehavior with women passengers, suspension of employee is not warranted.

7. The statutory provisions relating to suspension and disciplinary action against the employees in APSRTC are contained in APSRTC Classification Control and Appeal Regulations Act, 1967, of which Regulation 8 is relevant. The relevant regulation reads as under:

*"Regulation-8 of the said Regulations reveals that the appointing authority or any authority to which it is subordinate or any other authority authorized by the Corporation in that behalf by resolution may subject such conditions or limitation if any as may be specified place an employee under suspension from the service,*

*a. Pending investigation or enquiry into grave charges where such suspension is necessary in the public interest.*

*b.Where any criminal offences under investigation or trial.*

*As per the Circular, the following procedural guidelines have been followed consequent to number of brainstorming sessions among the senior officers and feedback from the unions of APSRTC.*

*i) All types of offences are categorized into minor or major offences and the punishments proposed for such offences or standardized as furnished in Annexure-I.*

*ii) An offence Rating Scale is designed with points assigned to each type of minor offence.*

*iii) For each minor offence committed by the employee, points as earmarked on the Offence Rating Scale would be awarded on the "Score Sheet" as shown in the Annexure-III.*

*iv) The Score Sheet will be filed in the P Case of the employee concerned and must be updated as and when any minor offence reported duly awarding points as indicated in the Offence Rating Scale and the cumulative score shall be recorded.*

*v) Cases need not be open for each and every minor offence. On reaching or crossing and accumulated score*

*of 6 points, a consolidated charge sheet shall be issued with at least one charge framed for each of the offences committed. The Consolidated charge sheet may contain charges for different types of offences. The subject head under which the case has to be opened will be based on the gravest of all the offences committed up to that point of time.*

*vi) Once the disciplinary cases initiated on all the minor offences committed up to that point of time, the scoring shall start afresh for the subsequent offences.*

*vii) The sub-classification of minor and major offences and the proposed punishments are given in Annexure-II.*

*viii) All the cases of minor punishments shall invariably be disposed of within one month from the date of submission of explanation by the employee. If the employee does not submit his/her explanation within the stipulated time, it shall be deemed that he/she has no explanation to offer and the case shall be disposed of within one month from the date of completion of the stipulated time.*

*ix) In all the cases of major punishment, final order shall be passed within one month from the date of submission of explanation by the employee to show cause notice. If the employee does not submit his/her explanation within the stipulated time, it shall be deemed that he/she has no explanation to offer and the case shall be disposed of within one month from the date of completion of the stipulated time.*

*x) Further, all the Appeal, Review and Mercy petitions shall be disposed of by the competent authority within one month from the date of receipt of the representation from the employee concerned.*

*xi) Appeal/review/mercy petitions received from now onwards on punishments already awarded shall also be disposed of by the competent authority concerned according to the instructions issued in this circular, if such appeals are not time barred.*

*These instructions will supersede all the othe instructions issued in earlier circulars and shall be implemented with immediate effect.*

*"The offences listed in an extent to, are not exhaustive and if any offence that is not specifically covered is reported, it shall be dealt with as per the gravity duly transferring the same as minor or major".*

*The executive directors and original anagers shall monitor the disposal of disciplinary cases during their inspections and review meetings to ensure that the instructions are implemented uniformly by the unit officers.*

*All the unit officers are advised to educate the crew and the unions regarding these modified instructions on the various offences on the punishments to be imposed, by conducting gate meetings.*

8. Learned counsel for the petitioner mainly argued that suspension of the petitioner is not warranted even as per circular PD 01/2019, dated 01.01.2019, issued by the Corporation in case of misbehaviour with women passengers.

9. Learned Standing Counsel for APSRTC submits that the petitioner has misbehaved with the women passenger and even after filing of charge sheet against him, he threatened the sister of the woman passenger to withdraw the case. It is further submitted that the circular was only intended as a guideline, but not exhaustive nor can be made applicable in the facts of the present case.

10. It is further submitted that the Corporation felt that it was a case of gross misconduct on the part of the petitioner and therefore, they placed him under suspension and proceeded to conduct enquiry. In fact, the decision taken by the Corporation by placing the petitioner under suspension is only in the interest of the institution in order to secure the safety of the woman passengers.

11. The learned Standing Counsel for the respondent placed reliance on a decision reported in **M. Swamynadhan vs. Chairman and Managing Director, SIDCO, (1988 WLR 41**) with regard to the scope and jurisdiction of this Court under Article 226 of the Constitution of India in a matter like suspension. Para No.8 reads as under:

*"Before parting with this case, we would like to make it clear that the jurisdiction under Article 226 of the Constitution of India should not be freely exercised in matters of suspension pending or any contemplation of disciplinary proceedings. We find to our consternation that a tendency has recently developed on the part of the employees to rush to this Court with petition under Article 226 of the Constitution of India against such orders of suspension and such petitions are very often entertained. In our view, unless an order of suspension is invalid in law either for want of competence on the part of the authority passing the same or for violation of any specific rule, the High Court should not entertain writ petitions against such orders of suspension. It is high time that the litigants are told in unequivocal terms that the High Court will not sit any appeal over the orders of suspension passed by competent authorities. The writ petitions in which the merits of the orders of suspension are canvassed on the basis of factual allegations shall not be entertained and other shall be throuwn out at the threshold. It must be remembered that the High Court cannot go into the question whether the order of suspension is passed on proper materials."*

12. In the light of the above decision, it is obvious that the Court cannot sit in an appeal over the disputed question of facts. The questions of fact whether order of suspension was based on proper material or not, Court be gone into under writ jurisdiction. The alleged discrimination between the petitioner and others is also not established satisfactorily. In fact, the petitioner is alleged to have threatened the sister of the *de facto* complainant to withdraw the case.

13. It is also pertinent to note that the reputation of the Corporation is at stake due to the alleged mis-behaviour of the petitioner. It is not only a case of misbehaviour, but also threatening the sister of the victim to withdraw the case after ordering enquiry against him.

14. In view of the facts and circumstances of the case, this Court is not inclined to go into the merits of the allegations made against the petitioner in the charge sheet or in the departmental enquiry

15. I am of the view that this case cannot be considered as similar to other cases.

16. As a matter of fact as per the circular issued by the Corporation, the competent authority has to complete the enquiry within a period of one month from the date of suspension, but in the instant case, it appears that the enquiry has not yet been completed. Though the petitioner has not sought for any relief of completion of enquiry expeditiously as per the rules and guidelines, this Court is of the opinion that the competent authority has to expedite the enquiry by following their own guidelines.

17. The discrimination, arbitrariness nor malafide action on the part of the Corporation is not proved by any satisfactory material.

18. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

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## 2019(3) L.S. 14 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Smt.Justice T. Rajani

Kothapalli Venkateswara Rao ..Petitioner

Vs.

M.Raghavamma & Ors., ..Respondents

**HINDU SUCCESSION ACT, Secs.14(i) and 14(ii) - Appeal questioning the Judgment passed in appeal suit which was dismissed confirming the Judgment of Trial Court, whereby the suit was decreed for partition directing the property to be divided into 12 equal shares and separate possession of share to each of the plaintiffs 1 to 3 – Suit property belongs to paternal grandfather of 2nd and 3rd plaintiff's and father in law of 1stplaintiff.**

**Held - There is absolutely no evidence on the aspect whether durgamma is a destitute or not by the date property in dispute is gifted to her – Whether the property given by her in laws is sufficient to maintain herself or not, is proved or not proved before the Court, the admitted fact is that she had some property and possible presumption is that said property would be sufficient to maintain herself as the same is given by her in laws for maintenance – No reason to interfere with the impugned Judgment - Second Appeal stands dismissed.**

Mr.Manoher Reddy, Advocate for the Petitioner.
Mr.Challa Gunrunjan, Advocate for the Respondents.

**J U D G M E N T**

This appeal is preferred questioning the judgment, dated 21.08.2017, passed in A.S.No.34 of 2015 on the file of the court of XI Additional District and Sessions Judge, Tenali which was dismissed confirming the judgment ,dated 31.10.2014, passed in O.S.No.6 of 2011 by the court of Senior Civil Judge, Repalle, by virtue of which the Senor Civil Judge decreed the suit filed for partition directing the property to be divided into 12 equal shares and separate possession of share to each of the plaintiffs 1 to 3 is ordered.

2. Heard Sri O.Manohar Reddy, learned senior counsel appearing for the appellant and Sri Challa Gunaranjan, learned counsel appearing for the respondents.

3. The facts briefly, as per the plaint, are that the suit schedule property originally belongs to Myneni Jaya Ramaiah, the paternal great grandfather of 2nd and 3rd plaintiffs and father in law of 1st plaintiff. The said Myneni Jaya Ramaiah had one son and one daughter by name Myneni Kotaiah and Abbineni Durgamma respectively. The said Durgamma was married and some properties were given to said Durgamma at the time of her marriage. Subsequently, father and brother of said Durgamma i.e.

Ramaiah and Kotaiah executed a registered gift deed dated 20.09.1925 in her favour in respect of the schedule properties, in addition to the properties that were given by her in laws towards her maintenance, with a limited right of enjoyment during her life time. Hence the Will dated 10.07.1991 that was executed by said Durgamma in favour of the mother of the defendant Kotipalli Venkata Subbamma is not valid according to law. The father and brother of Durgamma executed the gift deed with a clause that she does not have a right to sell or alienate the suit schedule property and that she can only enjoy the property till her death. Hence, the property should revert back to legal heirs of Myneni Kotaiah. Myneni Kotaiah has a son, who is the husband of 1st plaintiff and father of 2nd and 3rd plaintiffs by name Jaya Ramaiah and a daughter, Venkata Subbamma, the mother of the defendant. All grand fathers and husband of 1st plaintiff died. Plaintiffs and defendant are the legal heirs for the suit schedule property as per gift deed, dated 20.09.1995. The suit schedule property would devolve upon the heirs of said Myneni Jaya Ramaiah and so upon the heirs of Venkata Subbamma. The suit schedule property is a joint property. The plaintiffs requested the defendants to partition the suit schedule property, after the death of said Durgamma, but the same was being postponed on one pretext or other. The 3rd plaintiff filed a suit in O.S.No.250 of 2007 on the file of the Additional Junior Civil Judge , Repalle, for permanent injunction. The matter was put before the elders. The defendants agreed to partition the suit schedule property and not to press upon the suit by the 3rd plaintiff. As such the suit was not pressed. Request was made by the plaintiffs to partition the suit schedule properties as per the agreement. But the defendants are not coming forward. The 3rd plaintiff filed a suit in O.S.No.250 of 2007 on the file of the Additional Junior Civil Judge, Repalle, for permanent injunction. The matter was put before the elders. The defendants agreed to partition the suit schedule property and not to press upon the suit by the 3rd plaintiff. As such, the suit was not pressed. The defendant was not coming forward for partition of the suit schedule property on the ground that Durgamma executed a Will, dated 10.07.1992 in favour of his mother Venkata Subbamma and that the plaintiffs issued a registered notice, dated 02.11.2010 for partition. The defendant received the legal notice and kept quiet. Durgamma has no right to execute the Will in favour of the mother of the defendant or to any other person.

4. The defendant files written statement contending that the boundaries of the property are not correct and that the plaintiffs suppressed the earlier registered notice and correspondence between the plaintiffs and the mother of the defendant. After the death of Durgamma, by mentioning that Durgamma executed a Will in favour of the mother of the defendant, they got issued a registered notice. They also stated that the Will is not valid and Durgamma does not have any right to execute the will.

5. On the basis of above rival pleadings, the trial court framed the following issues for consideration:

1. Whether the suit schedule property is join family property of both the parties.

2.Whether the plaintiffs are entitled for partition of the suit schedule property and for separate possession as prayedfor.

3. Whether the suit is barred by limitation.

4. Whether the Will dated 10.07.1991 is true, valid and binding on the defendant.

5. Whether the suit is barred by *res judicata.*

6. To what relief.

6. On behalf of the plaintiffs, PW1 was examined and Exs.A1 to A4 were marked. On behalf of the defendant, Exs.B1 to B18 were marked. After full fledged trial, the trial court, preliminarily decreed the suit with costs, for partition of the suit schedule property in equal shares and for separate possession of 1/6$^{th}$ share to each of the plaintiffs in the schedule property.

7. Questioning the said decree, the defendant preferred an appeal and by the impugned judgment, the first appellate court dismissed the appeal, confirming the judgment and decree passed by the trial court.

8. Aggrieved by the dismissal of the first appeal, this second appeal is preferred. However, this court framed three question of law, which read as under:

"(1) Whether the courts below are not in error in holding that Section 14(2) of the Hindu Succession Act would apply and not Section 14(1) of the Act.

(2) Having regard to the recitals in the documents which clearly show that the property was given to Smt. Durgamma towards maintenance, whether the courts below acted legally in holding that the property was given as in addition to the maintenance provided by her in laws as the same was not sufficient.

(3) Whether the interpretation placed by the courts below with regard to the recitals in the document i.e., Ex.A1 is legally correct."

9. The very small issue involved in this appeal is whether the property, which was given to Durgamma towards maintenance with limited rights, has enlarged into an absolute right by virtue of Section 14(ii) of the Hindu Succession Act (for short, "the Act") or whether Durgamma would have only limited right over the suit schedule property without any right of alienation. The plaint itself avers that some properties were given to Durgamma by her in laws towards maintenance. The gift deed recites that the property is being gifted to her, as the properties given by her in laws is not sufficient for her maintenance, whether Section 14(i) applies to such a situation or whether it is section 14(ii) that applies to the case, is the question that has to be answered in this appeal.

10. One judgment each was relied upon by the learned senior counsel for the appellant as well as the learned counsel appearing for the respondents.

11. The contention of the appellant's counsel is that the father and brother have moral obligation to maintain their daughter and sister respectively and since the property is given in lieu of maintenance, it has to be considered as being given in recognition of the pre existing right of maintenance and hence, the same would enlarge into an absolute right. In the ruling of the apex court relied upon by the counsel for the appellant between **LAXMAPPA VS BALAWA KOM TIRKAPPA CHAVDI – (1996) 5 SCC 458**, the Supreme Court held that though the father has only a moral obligation, not enforceable under law, to maintain his married daughter, who became destitute and unable to maintain herself, by making acknowledgment in the gift deed, the moral obligation transformed into legal obligation, which the father, as Karta, could discharge by alienating even ancestral property. Hence, it was held that by operation of Section 14(1) of the Act she became absolute owner of the property.

12. With the help of the above ruling, the counsel contends that there is a clear recital in the gift deed that maintenance given by her in-laws was not sufficient and hence, the property in dispute is being gifted to her towards her maintenance and hence, it has to be considered that the case comes within the purview of Section 14(1) of the Act and thereby her right in the property becomes an absolute right inspite of there being a recital that after her lifetime it should revert back to the legal heirs of the donor.

13. As against the said argument, the counsel for the respondents relies upon judgment of the Supreme Court reported in **SHIVDEV KAUR vs R.S.GREWAL- 2013(4) SCC 636,** wherein at paragraph 14 it was held as follows:

> "14. Thus, in view of the above, the law on the issue can be summarized to the effect that if a Hindu female has been given only a "life interest", through will or gift or any other document referred to in Section 14 of the 1956 Act, the said rights would not stand crystallized into absolute ownership as interpreting the provisions to the effect that she would acquire ownership/title into the property by virtue of the provisions of Section 14(1) of the 1956 Act, the provisions of Sections 14(2) and 30 of the 1956 Act would become otiose. Section 14(2) carves out an exception to the rule provided in sub-section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain the same even after commencement of the 1956 Act, and such a Hindu female cannot acquire absolute title".

14. If a woman has a pre-existing right of maintenance, and if the property is given to her, even without a recital that it is being given towards maintenance, the same would enlarge into an absolute estate and if she does not have a pre-existing right of

maintenance even it is mentioned that it is given towards maintenance, the same would not enlarge into an absolute estate. The purport of **V. TULASAMMA vs.V. SESHA REDDI (DEAD) BY LRS – (1977) 3 SCC 99** is clear to the above effect. In **SHAKUNTLA DEVI vs KAMLA – (2005) 5 SCC 390**, the Supreme Court held that **KAMRI vs AMRU's – (1972) 4 SCC 86** case has been superseded by **V. TULASAMMA'S** case (referred supra). The Supreme Court in **V. TULASAMMA's** case held as follows:

> "Where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of sub-section (1)....sub-section (2) must, therefore, be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property…Where, however property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property…The controversy in each case therefore, boils down to the narrow question whether ….the properties were acquired by Hindu female concerned under the gift, will, decree, order, award, etc., in virtue of a pre-existing right or they were acquired for the first time as a grant owing its origin to the gift, will, decree, order, award, etc., alone and to nothing else."

15. Hence, it is the pre-existing right of maintenance that decides the nature of the estate held by the female under the gift deed. In this case, there is no doubt that the recital in the gift deed is to the effect that the property is being given towards the maintenance of the donee, as the maintenance provided by her in laws is not sufficient. Then, sufficiency of maintenance already granted, becomes a factual issue.

16. The judgment of the Supreme Court in **SHIVDEV KAUR's** case (supra) would offer guidance to decide the issue involved. The meaning of the word, "destitute" as held by the Supreme Court in the afore-stated ruling, is, a person who has no one to support him, is found wandering without any settled place of abode and without visible means of subsistence. In this case, it is clear that there is support for the donee in the form of property though there might be no one to support her physically. She is not found wandering without any settled place of abode and she has a visible means of subsistence in the form of property given by her in laws. There is no evidence as to how much property was given to her by her in-laws and as to the income that the said property fetches or is fetching. Without there being any evidence, if by a mere recital that the property that she holds is not

# LAW SUMMARY

## 2019 (3)

## Telangana High Court Reports

### 2019(3) L.S. 1 (T.S.)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr. Chief Justice Justice Raghvendra Singh Chauhan &
The Hon'ble Mr. Justice Justice Shameer Akther

V. Padmavathi ..Petitioner
Vs.
The State of Telangana, & Ors., ..Respondents

**INDIAN PENAL CODE - Petitioner filed this Habeas Corpus petition on behalf of the Detenu/SateeshanPalayad, challenging the detention order, passed by the Commissioner of Police, and the confirmation order, passed by the respondent no.1 – According to the respondent No.3, the detenu is involved in as many as nine criminal cases of cheating in the limits of various police stations under Hyderabad and Cyberabad Police Commissionerate's.**

**Held - Grave as the offences may be, they relate to cheating and criminal breach of trust and so, no inference of disturbance of public order can be drawn - These cases can be tried under the normal criminal law - And, if convicted, can certainly be punished by the Court of law - Hence, there was no need for the detaining authority to pass the detention order - Impugned orders are legally unsustainable - Writ Petition stands allowed - Impugned detention Order and the confirmation order are hereby set aside.**

Mr.H. Sudhakar Rao, Advocates for the Petitioner.
The Advocate General, Advocates for the Respondents.

**J U D G M E N T**
(per the Hon'ble Mr.Justice Shameer Akther)

Smt. V. Padmavathi, the petitioner herein, has filed this present Habeas Corpus Petition on behalf of the detenu-Sateeshan Palayad, S/o. Late M.Karunan, challenging the detention order, dated 31.10.2018, passed by the Commissioner of Police, Hyderabad City, the respondent No.3, and the confirmation order, dated 26.02.2019, passed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana, the respondent No.1.

2. Heard the learned counsel for the parties, and perused the impugned orders.

Writ Petition No.11784/2019 Date:1-8-2019

3. Briefly, the facts of the case are that by relying on the five criminal cases registered against the detenu in the year 2018, the Commissioner of Police, Hyderabad City, the respondent No.3, passed the detention order dated 31.10.2018. According to the respondent No.3, the detenu is involved in as many as nine criminal cases of cheating in the limits of various police stations under Hyderabad and Cyberabad Police Commissionerates. But, merely relying on the five cases registered in the year 2018, the detention order is passed. Subsequently, by order dated 26.02.2019, the detention order was confirmed by the Principal Secretary to Government (POLL), General Administration (Spl. (Law and Order) Department, Government of Telangana, the respondent No.1. Hence, this writ petition before this Court.

4. Sri H. Sudhakar Rao, learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, that relying only on the five cases registered against the detenu in the year 2018, the detention order is passed.

Secondly, the alleged cases do not add up to "disturbing the public order". They are confined within the ambit and scope of the word "law and order". Since the offences alleged are under the Indian Penal Code , the detenu can certainly be tried and convicted under the Penal Code . Thus, there was no need for the detaining authority to invoke the draconian preventive detention laws. Hence, the impugned order tantamount to the colourable exercise of power. Thus, the impugned orders are legally unsustainable.

5. On the other hand, Mr. T. Srikanth Reddy, the learned Government Pleader for Home, appearing for the respondents, would plead that in two cases relied by the detaining authority for preventively detaining the detenu, he managed to get bail from the Courts concerned. The series of crimes allegedly committed by him were sufficient to cause a feeling of insecurity in the minds of the people at large. Since the modus of committing the crime was cheating and criminal breach of trust, it has created sufficient panic in the minds of the general public. Therefore, the detaining authority was legally justified in passing the impugned orders. Hence, the learned Government Pleader has supported the impugned orders.

6. In view of the submissions made by both the sides, the point that arises for determination in this Writ Petition is:

"Whether the detention order, dated 31.10.2018, passed by the respondent No.3 and the.confirmation order, dated 26.02.2019, passed by the respondent No.1, are liable to be set aside?"

Point:

7. In catena of cases, the Hon'ble Supreme Court had clearly opined that there is a vast difference between "law and order" and "public order". The offences which are committed against a particular individual fall within the ambit of "law and order". It is only when the public at large is adversely affected by the criminal activities of a person,

is the conduct of a person said to disturb the public order. Moreover, individual cases can be dealt with by the criminal justice system. Therefore, there is no need for the detaining authority to invoke the draconian preventive detention laws against an individual. For the invoking of such law adversely effects the fundamental right of personal liberty, which is protected and promoted by Article 21 of the Constitution of India. Hence, according to the Apex Court, the detaining authority should be wary of invoking the immense power under the Act.

8. In the case of Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 , the Hon'ble Supreme Court has, in fact, deprecated the invoking of the preventive law in order to tackle a law and order problem. The Hon'ble Supreme Court has observed as under:

"54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of aperson likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order' take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law a nd order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances."

9. In the case of Kanu Biswas v. State of West Bengal, (1972) 3 SCC 831 , the Supreme Court has opined as under:

"The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call 'order publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of

the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

10. In the present case, the detaining authority relied on five cases for preventively detaining the detenu vide Crime Nos.182/2018, 189/2018, 169/2018, 605/2018 and 327/2018. We shall present them in a tabular column the date of occurrence, the date of registration of FIRs, the offences complained of and their nature, such as bailable/non-bailable or cognizable/non-cognizable.

| Sl. No. | Crime No. | Date of Occurrence | Date of registration of FIR | Offences | Nature |
|---|---|---|---|---|---|
| 1. | 182/2018 of Narayanaguda PS | Prior to 22.06.2018 | 22.06.2018 | Sections 406 & 420 of IPC | Cognizable/ Non-Bailable |
| 2. | 189/2018 of Narayanaguda PS | Prior to 28.06.2018 | 28.06.2018 | Sections 406 & 420 of IPC | Cognizable/ Non-Bailable |
| 3. | 169/2018 of Langer House PS | Prior to 26.06.2018 | 26.06.2018 | Sections 406 , 420 &506 of IPC | Sections 406 & 420 : Cognizable/ Non-Bailable Section 506 : Non-Cognizable/ Bailable |
| 4. | 327/2018 of Sanathnagar PS | Prior to 26.06.2018 | 26.06.2018 | Sections 406 & 420 of IPC | Cognizable/ Non-Bailable |
| 5. | 605/2018 of KPHB Colony PS | Prior to 26.06.2018 | 26.06.2018 | Sections 406 & 420 of IPC | Cognizable/ Non-Bailable |

13. A bare perusal of the detention order clearly reveals that the detaining authority is concerned by the fact that in two cases out of.five cases relied by it (Crime Nos.182/2018 and 189/2018), the detenu was granted bail by the Courts concerned and he was released on bail on 13.07.2018. However, the apprehension of the detaining authority that the since the detenu was released on bail in Crime Nos.182/2018 and 189/2018,

# LAW SUMMARY
## 2019 (3)
## Supreme Court Reports

### 2019 (3) L.S. 1 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mrs.Justice
R.Banumathi &
The Hon'ble Mr.Justice
A.S. Bopanna

P. Chidambaram ..Petitioner
Vs.
Directorate of Enforcement ..Respondent

**CRIMINAL PROCEDURE CODE, Sec.438 - INDIAN PENAL CODE, Sec. 120-B, r/w Sec.420 - Prevention of Corruption Act - Money Laundering Act - High Court rejected the appellant's plea for anticipatory bail in the case registered by Central Bureau of Investigation - High Court dismissed the application refusing to grant anticipatory bail to the appellant by holding that "it is a classic case of money-laundering" - Being aggrieved, appellant preferred present appeal.**

**Held - Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information - Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail - Section 438 Cr.P.C. is to be invoked only in exceptional cases where the case alleged is frivolous or groundless - Investigating agency has to be given sufficient freedom in the process of investigation - Appeal stands dismissed - It is for the appellant to work out his remedy in accordance with law - As and when the application for regular bail is filed, the same shall be considered by the learned trial court on its own merits and in accordance with law without being influenced by any of the observations made in this judgment and the impugned order of the High Court.**

**J U D G M E N T**
(per the Hon'ble Mrs.Justice R.Banumathi)

Leave granted.

2. This appeal relates to the alleged irregularities in Foreign Investment Promotion Board (FIPB) clearance given to the INX Media for receiving foreign investment to the tune of Rs. 305 crores against approved inflow of Rs. 4.62 crores. The High Court of Delhi rejected the appellant's plea for anticipatory bail in the case registered by Central Bureau of Investigation (CBI) being RC No. 220/2017-

Crl.A.No.1340/2019 Date:5-9-2019

E-0011 under Section 120B IPC read with Section 420 IPC, Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. By the impugned order dated 20.08.2019, the High Court also refused to grant anticipatory bail in the case registered by the Enforcement Directorate in ECIR No. 07/HIU/2017 punishable under Sections 3 and 4 of the Prevention of Money-Laundering Act, 2002.

3. Grievance of the appellant is that against the impugned order of the High Court, the appellant tried to get the matter listed in the Supreme Court on 21.08.2019; but the appellant could not get an urgent hearing in the Supreme Court seeking stay of the impugned order of the High Court. The appellant was arrested by the CBI on the night of 21.08.2019. Since the appellant was arrested and remanded to custody in CBI case, in view of the judgment of the Constitution Bench in **Shri Gurbaksh Singh Sibbia and others vs. State of Punjab (1980) 2 SCC 565,** the appellant cannot seek anticipatory bail after he is arrested. Accordingly, SLP(Crl.) No. 7525 of 2019 preferred by the appellant qua the CBI case was dismissed as infructuous vide order dated 26.08.2019 on the ground that the appellant has already been arrested and remanded to custody. This Court granted liberty to the appellant to work out his remedy in accordance with law.

4. On 15.05.2017, CBI registered FIR in RC No. 220/2017-E-0011 under Section 120B IPC read with Section 420 IPC, Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against the accused viz. (i) INX Media through its Director Indrani Mukherjea; (ii) INX News through its Director Sh. Pratim Mukherjea @ Peter Mukherjea and others; (iii) Sh. Karti P. Chidambaram; (iv) Chess Management Services through its Director Sh. Karti P. Chidambaram and others; (v) Advantage Strategic Consulting through its Director Ms. Padma Vishwanathan @ Padma Bhaskararaman and others; (vi) unknown officers/officials of Ministry of Finance, Govt. of India; and (vii) other unknown persons for the alleged irregularities in giving FIPB's clearance to INX Media to receive overseas funds of Rs. 305 crores against approved Foreign Direct Investment (FDI) of Rs. 4.62 crores.

5. Case of the prosecution in the predicate offence is that in 2007, INX Media Pvt. Ltd. approached **Foreign Investment Promotion Board (FIPB)** seeking approval for FDI upto 46.216 per cent of the issued equity capital. While sending the proposal by INX Media to be placed before the FIPB, INX Media had clearly mentioned in it the inflow of FDI to the extent of Rs. 4,62,16,000/- taking the proposed issue at its face value. The FIPB in its meeting held on 18.05.2007 recommended the proposal of INX Media subject to the approval of the Finance Minister-the appellant. In the meeting, the Board did not approve the downstream investment by INX Media in INX News. In violation of the conditions of the approval, the recommendation of FIPB:- (i) INX Media deliberately made a downstream investment to the extent of 26% in the capital of INX News Ltd. without specific approval of FIPB which included indirect foreign investment by the same Foreign Investors; (ii) generated more than

Rs. 305 crores FDI in INX Media which is in clear violation of the approved foreign flow of Rs. 4.62 crores by issuing shares to the foreign investors at a premium of more than Rs. 800/- per share.

6. Upon receipt of a complaint on the basis of a cheque for an amount of Rs. 10,00,000/- made in favour of M/s Advantage Strategic Consulting Private Limited (ASCPL) by INX Media, the investigation wing of the Income Tax Department proceeded to investigate the matter and the relevant information was sought from the FIPB, which in turn, vide its letter dated 26.05.2008 sought clarification from the INX Media which justified its action saying that the downstream investment has been authorised and that the same was made in accordance with the approval of FIPB. It is alleged by the prosecution that in order to get out of the situation without any penal provision, INX Media entered into a criminal conspiracy with Sh. Karti Chidambaram, Promoter Director, Chess Management Services Pvt. Ltd. and the appellant-the then Finance Minister of India. INX Media through the letter dated 26.06.2008 tried to justify their action stating that the downstream investment has been approved and the same was made in accordance with approval.

7. The FIR further alleges that for the services rendered by Sh. Karti Chidambaram to INX Media through Chess Management Services in getting the issues scuttled by influencing the public servants of FIPB unit of the Ministry of Finance, consideration in the form of payments were received against invoices raised on INX Media by ASCPL. It is alleged in the FIR that the very reason for getting the invoices raised in the name of ASCPL for the services rendered by Chess Management Services was with a view to conceal the identity of Sh. Karti Chidambaram inasmuch as on the day when the invoices were raised and payment was received. It is stated that Sh. Karti Chidambaram was the Promoter, Director of Chess Management Services whereas ASCPL was being controlled by him indirectly. It is alleged that the invoices approximately for an amount of Rs. 3.50 crores were falsely got raised in favour of INX Media in the name of other companies in which Sh. Karti Chidambaram was having sustainable interest either directly or indirectly. It is alleged that such invoices were falsely got raised for creation of acquisition of media content, consultancy in respect of market research, acquisition of content of various genre of Audio-Video etc. It is alleged that INX Media Group in his record has clearly mentioned the purpose of payment of Rs. 10,00,000/- to ASCPL as towards “management consultancy charges towards FIPB notification and clarification”. Alleging that the above acts of omission and commission prima facie disclose commission of offence, CBI has registered FIR in RC No. 220/2017-E-0011 on 15.05.2017 under Section 120B read with Section 420 IPC, Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against the aforesaid accused.

8. On the basis of the said FIR registered by CBI, the Enforcement Directorate registered a case in ECIR No.07/HIU/2017 against the aforesaid accused persons for allegedly committing the offence punishable

under Sections 3 and 4 of the Prevention of Money-Laundering Act, 2002 (PMLA). Ever since the registration of the cases in 2017, there were various proceedings seeking bail and number of other proceedings pending filed by Sh. Karti Chidambaram and other accused. Finally, the Delhi High Court granted bail to Sh. Karti Chidambaram in INX Media case filed by CBI on 23.03.2018. Thereafter, the appellant moved Delhi High Court seeking anticipatory bail both in CBI case and also in money-laundering case filed by Enforcement Directorate. On 25.07.2018, the Delhi High Court granted the appellant interim protection from arrest in both the cases and the same was extended till 20.08.2019 - the date on which the High Court dismissed the appellant's petition refusing to grant anticipatory bail.

9. The High Court dismissed the application refusing to grant anticipatory bail to the appellant by holding that "it is a classic case of money-laundering". The High Court observed that "it is a clear case of money-laundering". The learned Single Judge dismissed the application for anticipatory bail by holding "that the alleged irregularities committed by the appellant makes out a prima facie case for refusing pre-arrest bail to the appellant'. The learned Single Judge also held that "considering the gravity of the offence and the evasive reply given by the appellant to the questions put to him while he was under the protective cover extended to him by the court are the twin factors which weigh to deny the pre-arrest bail to the appellant. Being aggrieved, the appellant has preferred this appeal.

10. Lengthy arguments were heard on number of hearings stretched over for long time. Learned Senior counsel appearing for the appellant Mr. Kapil Sibal and Mr. Abhishek Manu Singhvi made meticulous submissions on the concept of life and liberty enshrined in Article 21 of the Constitution of India to urge that the appellant is entitled to the privilege of anticipatory bail. Arguments were also advanced on various aspects - whether the court can look into the materials produced by the respondent-Enforcement Directorate to seek custody of the appellant when the appellant was not confronted with those documents on the three dates of interrogation of the appellant conducted on 19.12.2018, 01.01.2019 and 21.01.2019. Interlocutory application was filed by the appellant to produce the transcripts of the questions put to the appellant and the answers given by the appellant, recorded by Enforcement Directorate. Countering the above submissions, Mr. Tushar Mehta, learned Solicitor General made the submissions that grant of anticipatory bail is not part of Article 21 of the Constitution of India. Mr. Tushar Mehta urged that having regard to the materials collected by the respondent-Enforcement Directorate and the specific inputs and in view of the provisions of the special enactment-PMLA, custodial interrogation of the appellant is required and the appellant is not entitled to the privilege of anticipatory bail.

**Contention of Mr. Kapil Sibal. learned Senior counsel:-**

11. Mr. Kapil Sibal, learned Senior counsel appearing on behalf of the appellant

submitted that the clearance for INX FDI was approved by Foreign Investment Promotion Board (FIPB) consisting of six Secretaries and the appellant as the then Finance Minister granted approval in the normal course of official business. The learned Senior counsel submitted that the crux of the allegation is that the appellant's son Sh. Karti Chidambaram tried to influence the officials of FIPB for granting ex-post facto approval for downstream investment by INX Media to INX News; whereas neither the Board members of FIPB nor the officials of FIPB have stated anything about the appellant's son Sh. Karti Chidambaram that he approached and influenced them for ex-post facto approval. The learned Senior counsel contended that the entire case alleges about money paid to ASCPL and Sh. Karti Chidambaram is neither the share-holder nor a Director in the said ASCPL; but the Enforcement Directorate has falsely alleged that Sh. Karti Chidambaram has been controlling the company-ASCPL. It was submitted that the appellant has nothing to do with the said ASCPL to whom money has been paid by INX Media.

12. Taking us through the impugned judgment and the note said to have been submitted by the Enforcement Directorate before the High Court, the learned Senior counsel submitted that the learned Single Judge has "copied and pasted" paragraphs after paragraphs of the note given by the respondent in the court. It was urged that there was no basis for the allegations contained in the said note to substantiate the alleged transactions/transfer of money as stated in the tabular column given in the impugned order.

13. So far as the sealed cover containing the materials sought to be handed over by the Enforcement Directorate, the learned Senior counsel raised strong objections and submitted that the Enforcement Directorate cannot randomly produce the documents in the court "behind the back" of the appellant for seeking custody of the appellant. Strong objections were raised for the plea of Enforcement Directorate requesting the court to receive the sealed cover and for looking into the documents/ material collected during the investigation allegedly showing the trail of money in the name of companies and the money-laundering.

14. The appellant was interrogated by the respondent on three dates viz. 19.12.2018, 01.01.2019 and 21.01.2019. So far as the observation of the High Court that the appellant was "evasive" during interrogation, the learned Senior counsel submitted that the appellant has well cooperated with the respondent and the respondent cannot allege that the appellant was "non-cooperative". On behalf of the appellant, an application has also been filed seeking direction to the respondent to produce the transcripts of the questioning conducted on 19.12.2018, 01.01.2019 and 21.01.2019. The learned Senior counsel submitted that the transcripts will show whether the appellant was "evasive" or not during his questioning as alleged by the respondent.

15. Learned Senior counsel submitted that the provision for anticipatory bail i.e. Section 438 Cr.P.C. has to be interpreted in a fair and reasonable manner and while so, the

High Court has mechanically rejected the anticipatory bail. It was further submitted that in case of offences of the nature alleged, everything is borne out by the records and there is no question of the appellant being "evasive". The learned Senior counsel also submitted that co-accused Sh. Karti Chidambaram and Padma Bhaskararaman were granted bail and the other accused Indrani Mukherjea and Sh. Pratim Mukherjea @ Peter Mukherjea are on statutory bail and the appellant is entitled to bail on parity also.

**Contention of Mr. Abhishek Manu Singhvi. learned Senior counsel:-**

16. Reiterating the submission of Mr. Kapil Sibal, Mr. Abhishek ManuSinghvi, learned Senior counsel submitted that the Enforcement Directorate cannot say that the appellant was "non-cooperative" and "evasive". Mr. Singhvi also urged for production of transcripts i.e. questions put to the appellant and the answers which would show whether the appellant has properly responded to the questions or not. Placing reliance upon **Additional District Magistrate, Jabalpur vs. Shivakant Shukla (1976) 2 SCC 521,** the learned Senior counsel submitted that the respondent cannot rely upon the documents without furnishing those documents to the appellant or without questioning the appellant about the materials collected during the investigation. Reiterating the submission of Mr. Sibal, Mr. Singhvi contended that the High Court has denied anticipatory bail to the appellant on the basis of materials produced by the respondent in the cover before the court which were never shown to the appellant nor was the appellant confronted with the same. The learned Senior counsel submitted that the alleged occurrence was of the year 2007-08 and Sections 420 IPC and 120B IPC and Section 13 of the Prevention of Corruption Act were not part of the "scheduled offence" of Prevention of Money-Laundering Act in 2008 and were introduced by a notification dated 01.06.2009 and in view of the protection given under Article 20(1) of the Constitution of India, there can never be a retrospective operation of a criminal/penal statute. Placing reliance upon **Rao Shiv Bahadur Singh and another vs. State of Vindhya Pradesh AIR 1953 SC 394,** it was contended that the appellant has to substantiate the contention that the acts charged as offences were offences "at the time of commission of the offence". The learned Senior counsel urged that in 2007-2008 when the alleged acts of commission and omission were committed, they were not "scheduled offences" and hence prosecution under Prevention of Money-Laundering Act, 2002 is not maintainable.

17. The learned Senior counsel has taken strong exception to the two factors stated by the High Court in the impugned order for denying pre-arrest bail i.e. (i) gravity of the offence; and (ii) the appellant was "evasive" to deny the anticipatory bail. The learned Senior counsel submitted that the "gravity of the offence" cannot be the perception of the individual or the court and the test for "gravity of the offence" should be the punishment prescribed by the statute for the offence committed. Insofar as the finding of the High Court that "the appellant

was evasive to the questions", the learned Senior counsel submitted that the investigating agency-Enforcement Directorate cannot expect an accused to give answers in the manner they want and that the accused is entitled to protection under Article 20(3) of the Constitution of India. Reliance was placed upon **Santosh s/o Dwarkadas Fafat vs. State of Maharashtra (2017) 9 SCC 714.**

**Contention of Mr. Tushar Mehta. learned Solicitor General:-**

18. Taking us through the Statement of Objects and Reasons and salient features of the PMLA, the learned Solicitor General submitted that India is a part of the global community having responsibility to crackdown on money-laundering with an effective legislation and PMLA is a result of the joint initiatives taken by several nations. Taking us through the various provisions of the PMLA, the learned Solicitor General submitted that money-laundering poses a serious threat to the financial system and financial integrity of the nation and has to be sternly dealt with. It was submitted that PMLA offence has two dimensions - predicate offence and money-laundering. Money-laundering is a separate and independent offence punishable under Section 4 read with Section 3 of the PMLA.

19. Learned Solicitor General submitted that under Section 19 of PMLA, specified officers, on the basis of material in possession, having reason to believe which is to be recorded in writing that the person has been guilty of the offence under the Act, have power to arrest. It was urged that the power to arrest and necessary safeguards are enshrined under Section 19 of the Act. It was submitted that since respondent has collected cogent materials to show that it is a case of money-laundering and the Enforcement Directorate has issued Letter rogatory and if the Court intervenes by granting anticipatory bail, the authority cannot exercise the statutory right of arrest and interrogate the appellant.

20. The learned Solicitor General submitted that they have obtained specific inputs from overseas banks and also about the companies and properties and it is a clear case of money-laundering. The learned Solicitor General submitted that the Court has power to look into the materials so collected by the Enforcement Directorate and the same cannot be shared with the appellant at this initial stage when the Court is considering the matter for grant of pre-arrest bail. Relying upon number of judgments, the learned Solicitor General has submitted that as a matter of practice, Courts have always perused the case diaries produced by the prosecution and receive and peruse the materials/documents to satisfy its judicial conscience. In support of his contention, learned Solicitor General placed reliance upon **Romila Thapar and Others vs. Union of India and Others (2018) 10 SCC 753**, **Jai Prakash Singh vs. State of Bihar and Another (2012) 4 SCC 379** and **Directorate of Enforcement and Another vs. P.V. Prabhakar Rao (1997) 6 SCC 647** and other judgments and requested the Court to peruse the materials produced by the Enforcement Directorate in the sealed cover.

21. Opposing the grant of anticipatory bail, the learned Solicitor General submitted that the Enforcement Directorate has cogent evidence to prove that it is a case of money-laundering and there is a need of custodial interrogation of the appellant. The learned Solicitor General submitted that the economic offences stand as a class apart and custodial interrogation is required for the Enforcement Directorate to trace the trail of money and prayed for dismissal of the appeal.

22. As noted earlier, the predicate offences are under Sections 120B IPC and 420 IPC, Section 8 and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. Case is registered against the appellant and others under Sections 3 and 4 of PMLA. The main point falling for consideration is whether the appellant is entitled to the privilege of anticipatory bail. In order to consider whether the appellant is to be granted the privilege of anticipatory bail, it is necessary to consider the salient features of the special enactment - Prevention of Money-Laundering Act, 2002.

23. **Prevention of Money-laundering Act, 2002 - Special Enactment:-** Money-laundering is the process of concealing illicit sources of money and the launderer transforming the money proceeds derived from criminal activity into funds and moved to other institution or transformed into legitimate asset. It is realised world around that money laundering poses a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty. The Prevention of Money-laundering Act, 2002 was enacted in pursuance of the Political Declaration adopted by the Special Session of the United Nations General Assembly held in June 1998, calling upon the Member States to adopt national money-laundering legislation and programme, primarily with a view to meet out the serious threat posed by money laundering to the financial system of the countries and to their integrity and sovereignty.

24. **Statement of Objects and Reasons** to the Prevention of Money-laundering Act, 2002 recognises that money laundering poses a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty. PMLA is a special enactment containing the provisions with adequate safeguards with a view to prevent money-laundering. The Preamble to the Prevention of Money-Laundering Act, 2002 states that “An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.”

25. Chapter II of PMLA contains provisions relating to the offences of money-laundering. Section 2(1)(p) of PMLA defines **”money-laundering”** that it has the same meaning assigned to it in Section 3. Section 2(1)(ra) of PMLA defines “offence of cross border implications”. To prevent offences of “cross border implications”, PMLA contains Sections 55 to 61 dealing with reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property between the contracting States with regard to the offences of money-laundering and predicate offences.

Section 2(1)(y) of PMLA defines "scheduled offence" which reads as under:-

**"2. Definitions** -

**(1).....**

(y) "scheduled offence" means -

(i) the offences specified under Part A of the Scheduled; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule."

"Scheduled Offence" is a sine qua non for the offence of money-laundering which would generate the money that is being laundered. PMLA contains Schedules which originally contained three parts namely Part A, Part B and Part C. Part A contains various paragraphs which enumerate offences under the Indian Penal Code, Narcotic Drugs and Psychotropic Substances Act, 1985, offences under the Explosives Substances Act, 1908 and the offences under the Prevention of Corruption Act, 1988 **(paragraph 8)** etc. The Schedule was amended by Act 21 of 2009 (w.e.f. 01.06.2009). Section 13 of Prevention of Corruption Act was inserted in the Part A of the Schedule to PMLA by the Amendment Act, 16 of 2018 (w.e.f. 26.07.2018).

26. Section 3 of PMLA stipulates "money-laundering" to be an offence. Section 3 of PMLA states that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of the crime and projecting it as untainted property shall be guilty of the offences of money laundering. The provisions of the PMLA including Section 3 have undergone various amendments. The words in Section 3 "with the proceeds of crime and projecting" has been amended as "proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming" by the Amendment Act 2 of 2013 (w.e.f. 15.02.2013).

27. Section 4 of PMLA deals with punishment for money laundering. Prior to Amendment Act 2 of 2013, Section 4 provided punishment with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and the fine which may extend to Rs. 5,00,000/-. By Amendment Act 2 of 2013, Section 4 is amended w.e.f. 15.02.2013 vide S.O. 343(E) dated 08.02.2013. Now, the punishment prescribed under Section 4 of PMLA to the offender is rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and the offender is also liable to pay fine. The limit of fine has been done away with and now after the amendment, appropriate fine even above Rs. 5,00,000/- can be imposed against the offender.

28. Section 5 of PMLA which provides for attachment of property involved in money laundering, states that where the Director

or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this Section, has **"reason to believe" (the reason for such belief to be recorded in writing),** on the basis of material in his possession, that (a) any person is in possession of any proceeds of crime; and (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under Chapter III, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and fifty days from the date of the order, in such manner as may be prescribed. Section 5 provides that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be.

29. The term "reason to **believe"** is not defined in PMLA. The expression "reason to **believe"** has been defined in Section 26 of IPC. As per the definition in Section 26 IPC, a person is said to have "reason to **believe"** a thing, if he has sufficient cause to believe that thing but not otherwise. The specified officer must have "**reason to believe"** on the basis of material in his possession that the property sought to be attached is likely to be concealed, transferred or dealt with in a manner which may result in frustrating any proceedings for confiscation of their property under the Act. It is stated that in the present case, exercising power under Section 5 of the PMLA, the Adjudicating Authority had attached some of the properties of the appellant. Challenging the attachment, the appellant and others are said to have preferred appeal before the Appellate Tribunal and stay has been granted by the Appellate Authority and the said appeal is stated to be pending.

30. As rightly submitted by the learned Solicitor General, sufficient safeguards are provided under the provisions of PMLA. Under Section 5 of PMLA, the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of Section 5 who passed the impugned order is required to have **"reason to believe"** that the properties sought to be attached would be transferred or dealt with in a manner which would frustrate the proceedings relating to confiscation of such properties. Further, the officer who passed the order of attachment is required to record the reasons for such belief. The provisions of the PMLA and the Rules also provide for manner of forwarding a copy of the order of provisional attachment of property along with material under sub-section (2) of Section 5 of PMLA to the Adjudicating Authority.

31. In order to ensure the safeguards, in exercise of power under Section 73 of PMLA, the Central Government has framed "The Prevention of Money-Laundering (The Manner of Forwarding a Copy of the Order of Provisional Attachment of Property along with the Material, and Copy of the Reasons

along with the Material in respect of Survey, to the Adjudicating Authority and its period of Retention) Rules, 2005". Rule 3 of the said Rules provides for manner of forwarding a copy of the order of provisional attachment of property along with the material under sub-section (2) of Section 5 of the Act to the Adjudicating Authority. Rule 3 stipulates various safeguards as to the confidentiality of the sealed envelope sent to the Adjudicating Authority.

32. Section 17 of PMLA deals with the search and seizure. Section 17 which deals with search and seizure states that where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section on the basis of the information in his possession has **"reason to believe" (reason for such belief to be recorded in writing)** that any person has committed an offence which constitutes the money laundering or is in possession of any proceeds of crime involved in money laundering etc. may search building, place and seize any record or property found as a result of such search. Section 17 of PMLA also uses the expression **"reason to believe"** and **"reason for such belief to be recorded in writing".** Here again, the authorised officer shall immediately on search and seizure or upon issuance of freezing order forward a copy of the reasons so recorded along with the material in his possession to the Adjudicating Authority in a **"sealed envelope"** in the manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed. In order to ensure the sanctity of the search and seizure and to ensure the safeguards, in exercise of power under Section 73 of PMLA, the Central Government has framed "The Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the period of Retention) Rules, 2005".

33. Section 19 of PMLA deals with the power of the specified officer to arrest. Under sub-section (1) of Section 19 of PMLA, the specified officer viz. the Director, the Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, on the basis of the material in possession, having **"reason to believe"** and **"reasons for such belief be recorded in writing"** that the person has been guilty of offence punishable under the PMLA, has power to arrest such person. The authorised officer is required to inform the accused the grounds for such arrest at the earliest and in terms of subsection (3) of Section 19 of the Act, the arrested person is required to be produced to the jurisdictional Judicial Magistrate or Metropolitan Magistrate within 24 hours excluding the journey time from the place of arrest to the Magistrate's Court. In order to ensure the safeguards, in exercise of power under Section 73 of the Act, the Central Government has framed "The Prevention of Money-Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005". Rule 3 of the said Rules requires

the arresting officer to forward a copy of order of arrest and the material to the Adjudicating Authority in a sealed cover marked "confidential" and Rule 3 provides for the manner in maintaining the confidentiality of the contents.

34. As rightly submitted by Mr. Tushar Mehta, the procedure under PMLA for arrest ensures sufficient safeguards viz.:- (i) only the specified officers are authorised to arrest; (ii) based on **"reasons to believe"** that an offence punishable under the Act has been committed; (iii) the reasons for such belief to be recorded in writing; (iv) evidence and the material submitted to the Adjudicating Authority in sealed envelope in the manner as may be prescribed ensuring the safeguards in maintaining the confidentiality; and (v) every person arrested under PMLA to be produced before the Judicial Magistrate or Metropolitan Magistrate within 24 hours. Section 19 of PMLA provides for the power to arrest to the specified officer on the basis of material in his possession and has **"reason to believe"** and the **"reasons for such belief to be recorded in writing"** that any person has been guilty of an offence punishable under PMLA. The statutory power has been vested upon the specified officers of higher rank to arrest the person whom the officer has **"reason to believe"** that such person has been guilty of an offence punishable under PMLA. In cases of PMLA, in exercising the power to grant anticipatory bail would be to scuttle the statutory power of the specified officers to arrest which is enshrined in the statute with sufficient safeguards.

35. Section 71 of PMLA gives overriding effect to the provisions of PMLA. Section 71 of PMLA states that the provisions of the Act would have overriding effect on the provisions of all other Acts applicable. The provisions of PMLA shall prevail over the contrary provisions of the other Acts. Section 65 of PMLA states that the provisions of Code of Criminal Procedure, 1973 shall apply to the provisions under the Act insofar as they are not inconsistent with the provisions of PMLA.

36. Insofar as the issue of grant of bail is concerned, Section 45 of PMLA starts with non-obstante clause. Section 45 imposes two conditions for grant of bail to any person accused of any offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule of the Act viz., (i) that the prosecutor must be given an opportunity to oppose the application for such bail; (ii) that the court must be satisfied that there are reasonable grounds for believing that the accused persons is not guilty of such offence and that he is not likely to commit any offence while on bail.

37. The twin conditions under Section 45(1) for the offences classified thereunder in Part-A of the Schedule was held arbitrary and discriminatory and invalid in **Nikesh Tarachand Shah vs. Union of India and another (2018) 11 SCC 1**. Insofar as the twin conditions for release of accused on bail under Section 45 of the Act, the Supreme Court held the same to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. Subsequently, Section 45 has been amended by Amendment Act 13 of 2008. The words "imprisonment for

a term of imprisonment of more than three years under Part A of the Schedule" has been substituted with "accused of an offence under this Act.....". Section 45 prior to Nikesh Tarachand and post Nikesh Tarachand reads as under:-

| Section 45 - Prior to Nikesh Tarachand Shah | Section 45 - Post Nikesh Tarachand |
|---|---|
| Section 45. Offence to be cognizable and nonbailable<br>(1) Notwithstanding contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail;Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs: | Section 45. Offences to be cognizable and non-bailable.<br>(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless-(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail;Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money laundering a sum of less than one crore rupees may be released on bail, |

38. The occurrence was of the year 2007-2008. CBI registered the case against Sh. Karti Chidambaram, the appellant and others on 15.05.2017 under Sections 120-B IPC read with Section 420 IPC and under Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Learned Senior counsel for the appellant, Mr. A.M. Singhvi has submitted that there could not have been 'reasons to believe' that the appellant has committed the offence under Section 3 of PMLA, since in 2007-2008 the time of commission of alleged offence, Sections 120-B IPC and 420 IPC and Section 13 of the Prevention of Corruption Act were not there in Part 'A of the Schedule to PMLA and were included in Part 'A of the Schedule only

by Amendment Act 21 of 2009 w.e.f. 01.06.2009 and w.e.f. 26.07.2018 respectively and therefore, no prima-facie case of commission of offence by the appellant under PMLA is made out. It was urged that under Article 20 of the Constitution, no person shall be convicted of any offence except for violation of law in force at the time of the commission of that act charged as offence. When Section 120B IPC and Section 420 IPC and Section 13 of Prevention of Corruption Act were not then included in Part A of the Schedule, in 2007-2008, then the appellant and others cannot be said to have committed the offence under PMLA. Insofar as Section 8 of the Prevention of Corruption Act is concerned, it was submitted that Section 8 of the Prevention of Corruption Act is not attracted against the appellant as there are no allegations in the FIR that the appellant accepted or agreed to accept any gratification as a motive or reward for inducing any public servant and hence, the accusation under Section 8 of the Prevention of Corruption Act does not apply to the appellant. It was further submitted that even assuming Section 8 of the Prevention of Corruption Act is made out, the amount allegedly paid to ASCPL was only Rs. 10,00,000/- whereas, Rs. 30,00,000/- was the amount then stipulated to attract Section 8 to be the Scheduled offence under Part A of the Schedule to the Act and therefore, there was no basis for offence against the appellant and in such view of the matter, the appellant is entitled for anticipatory bail.

39. Section 45 of the PMLA makes the offence of money laundering cognizable and non-bailable and no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail unless the twin conditions thereon are satisfied. Section 120-B IPC - Criminal Conspiracy and Section 420 IPC - Cheating and dishonestly inducing delivery of property were included in Part A of the Schedule to PMLA by way of Amendment Act 21 of 2009 w.e.f. 01.06.2009 and byway of Amendment Act 2 of 2013 w.e.f. 15.02.2013. Likewise, Section 13 of the Prevention of Corruption Act hasbeen introduced to Part A of the Schedule **(Paragraph 8)** by way of Amendment Act 16 of 2018 w.e.f. 26.07.2018. As pointed out earlier, the FIR was registered by CBI under Section 8 of the Prevention of Corruption Act also which was then in Part A of the Schedule at the time of alleged commission of offence.

40. Learned Senior counsel submitted that since the offence under Sections 120-B IPC and 420 IPC and under Section 13 of Prevention of Corruption Act were included in the Schedule only w.e.f. 01.06.2009 and w.e.f. 26.07.2018 respectively and there can never be a retrospective operation of a criminal/penal statue and the test is not whether the proceeds are retained by the person; but the test as laid down by the Constitution Bench of this Court is, the test of the acts constituting the offence at the time of the commission of the offence and the appellant cannot be proceeded with prosecution under PMLA in violation of constitutional protection under Article 20(1) of the Constitution of India.

41. Under Article 20(1) of the Constitution,

no person shall be convicted of any offence except for violation of law in force at the time of commission of that act charged as an offence. FIR for the predicate offence has been registered by CBI under Section 120B IPC, 420 IPC and Section 13 of the Prevention of Corruption Act and also under Section 8 of the Prevention of Corruption Act. As discussed earlier, Section 120B IPC and Section 420IPC were included in Part A of the Schedule only by Amendment Act 21 of 2009 w.e.f. 01.06.2009. Section 13 of the Prevention of Corruption Act was included in Part A of the Schedule by Amendment Act 16 of 2018 w.e.f. 26.07.2018. Section 8 of the Prevention of Corruption Act is punishable with imprisonment extending upto seven years. Section 8 of the Prevention of Corruption Act was very much available in Part A of the Schedule of PMLA at the time of alleged commission of offence in 2007-2008. It cannot therefore be said that the appellant is proceeded against in violation of Article 20(1) of the Constitution of India for the alleged commission of the acts which was not an offence as per law then in existence. The merits of the contention that Section 8 of the Prevention of Corruption Act cannot be the predicate offence qua the appellant, cannot be gone into at this stage when this Court is only considering the prayer for anticipatory bail.

42. Yet another contention advanced on behalf of the appellant is that minimum threshold for the Enforcement Directorate to acquire jurisdiction at the relevant time was Rs. 30 lakhs whereas, in the present case, there is no material to show any payment apart from the sum of Rs.10 lakhs (approximately) allegedly paid by INX Media to ASCPL with which the appellant is said to be having no connection whatsoever. The merits of the contention that Section 8 of the Prevention of Corruption Act (then included in Schedule A of the PMLA in 2007-08) whether attracted or not and whether the Enforcement Directorate had the threshold to acquire jurisdiction under PMLA cannot be considered at this stage while this Court is considering only the prayer for anticipatory bail.

43. In terms of Section 4 of the PMLA, the offence of money-laundering is punishable with rigorous imprisonment for a term not less than three years extending to seven years and with fine. The Second Schedule to the Criminal Procedure Code relates to classification of offences against other laws and in terms of the Second Schedule of the Code, an offence which is punishable with imprisonment for three years and upward but not more than seven years is a cognizable and non-bailable offence. Thus, Section 4 of the Act read with the Second Schedule of the Code makes it clear that the offences under the PMLA are cognizable offences. As pointed out earlier, Section 8 of the Prevention of Corruption Act was then found a mention in Part 'A of the Schedule **(Paragraph 8).** Section 8 of the Prevention of Corruption Act is punishable for a term extending to seven years. Thus, the essential requirement of Section 45 of PMLA "accused of an offence punishable for a term of imprisonment of more than three years under Part 'A of the Schedule" is satisfied making the offence under PMLA. There is no merit in the contention of the appellant

that very registration of the FIR against the appellant under PMLA is not maintainable.

**Whether Court can look into the documents/materials collected during investigation**

44. During the course of lengthy hearing, much arguments were advanced mainly on the question whether the court can look into the documents and materials produced by the prosecution before the court without first confronting the accused with those materials.

45. The learned Solicitor General submitted that during investigation, the Enforcement Directorate has collected materials and overseas banks have given specific inputs regarding the companies and properties that money has been parked in the name of shell companies and the said money has been used to make legitimate assets and that custodial interrogation is necessary with regard to the materials so collected. The learned Solicitor General sought to produce the materials so collected in the sealed cover and requested the court to peruse the documents and the materials to satisfy the conscience of the court as to the necessity for the custodial interrogation.

46. Contention of learned Solicitor General requesting the court to peruse the documents produced in the sealed cover was strongly objected by the appellant on the grounds :- (i) that the Enforcement Directorate cannot randomly place the documents in the court behind the back of the accused to seek custody of the accused; (ii) the materials so collected by Enforcement Directorate during investigation cannot be placed before the court unless the accused has been confronted with such materials.

47. Mr. Kapil Sibal, learned Senior counsel submitted that the statements recorded under Section 161 Cr.P.C. are part of the case diary and the case diary must reflect day to day movement of the investigation based on which the investigating agency came to the conclusion that the crime has been committed so that a final report can be filed before the court. The learned Senior counsel submitted that during the course of such investigation, the investigating officer may discover several documents which may have a bearing on the crime committed; however the documents themselves can never be the part of the case diary and the documents would be a piece of documentary evidence during trial which would be required to be proved in accordance with the provisions of the Evidence Act before such documents can be relied upon for the purpose of supporting the case of prosecution. Enforcement Directorate does not maintain a case diary; but maintain the file with paginated pages. It was urged that even assuming that there is a case diary maintained by the respondent in conformity with Section 172 Cr.P.C, the opinion of the investigating officer for the conclusion reached by the authorised officer under PMLA, can never be relied upon for the purposes of consideration of anticipatory bail.

48. Having regard to the submissions, two points arise for consideration -

(i) whether the court can/cannot look into the documents/materials produced before the court unless the accused was earlier confronted with those documents/ materials?; and

(ii) whether the court is called upon to hold a mini inquiry during the intermediary stages of investigation by examining whether the questions put to the accused are 'satisfactory' or 'evasive', etc.?

49. Sub-section (2) of Section 172 Cr.P.C. permits any court to send for case diary to use them in the trial. Section 172(3) Cr.P.C. specifically provides that neither the accused nor his agents shall be entitled to call for case diary nor shall he or they be entitled to see them merely because they are referred to by the court. But if they are used by the police officer who made them to refresh his memory or if the court uses them for the purpose of contradicting the such police officer, the provisions of Section 161 Crl.P.C. or the provision of Section 145 of the Evidence Act shall be complied with. In this regard, the learned Solicitor General placed reliance upon **Balakram vs. State of Uttarakhand and others (2017) 7 SCC 668.** Observing that the confidentiality is always kept in the matter of investigation and it is not desirable to make available the police diary to the accused on his demand, in Balakram, the Supreme Court held as under:-

"15. The police diary is only a record of day-to-day investigation made by the investigating officer. Neither the accused nor his agent is entitled to call for such case diary and also are not entitled to see them during the course of inquiry or trial. The unfettered power conferred by the statute under Section 172(2) CrPC on the court to examine the entries of the police diary would not allow the accused to claim similar unfettered right to inspect the case diary.

.....

17. From the aforementioned, it is clear that the denial of right to the accused to inspect the case diary cannot be characterised as unreasonable or arbitrary. The confidentiality is always kept in the matter of investigation and it is not desirable to make available the police diary to the accused on his demand."

50. Reiterating the same principles in **Sidharth and others vs. State of Bihar (2005) 12 SCC 545**, the Supreme Court held as under:-

"27. Lastly, we may point out that in the present case, we have noticed that the entire case diary maintained by the police was made available to the accused. Under Section 172 of the Criminal Procedure Code, every police officer making an investigation has to record his proceedings in a diary setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation. It is specifically provided in sub-clause (3) of Section 172 that neither the accused nor his agents shall be entitled to call for such diaries nor shall he or they be entitled to see them

merely because they are referred to by the court, but if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of Section 161 CrPC or the provisions of Section 145 of the Evidence Act shall be complied with. The court is empowered to call for such diaries not to use it as evidence but to use it as aid to find out anything that happened during the investigation of the crime. These provisions have been incorporated in the Code of Criminal Procedure to achieve certain specific objectives. The police officer who is conducting the investigation may come across a series of information which cannot be divulged to the accused. He is bound to record such facts in the case diary. But if the entire case diary is made available to the accused, it may cause serious prejudice to others and even affect the safety and security of those who may have given statements to the police. The confidentiality is always kept in the matter of criminal investigation and it is not desirable to make available the entire case diary to the accused. In the instant case, we have noticed that the entire case diary was given to the accused and the investigating officer was extensively cross-examined on many facts which were not very much relevant for the purpose of the case. The learned Sessions Judge should have been careful in seeing that the trial of the case was conducted in accordance with the provisions of CrPC." [underlining added]

The same position has been reiterated in **Naresh Kumar Yadav vs. Ravindra Kumar and others (2008) 1 SCC 632** [Paras 11 to 14], **Malkiat Singh and others vs. State of Punjab (1991) 4 SCC 341** [Para 11] and other judgments.

51. It is seen from various judgments that on several instances, court always received and perused the case diaries/materials collected by the prosecution during investigation to satisfy itself as to whether the investigation is proceeding in the right direction or for consideration of the question of grant of bail etc. In **Directorate of Enforcement and another vs. P.V. Prabhakar Rao (1997) 6 SCC 647,** the Supreme Court perused the records to examine the correctness of the order passed by the High Court granting bail. In **R.K. Krishna Kumar vs. State of Assam and others (1998) 1 SCC 474**, the Supreme Court received court diary maintained under Section 172 Cr.P.C. and perused the case diary to satisfy itself that the investigation has revealed that the company thereon has funded the organisation (ULFA) and that the appellants thereon had a role to play in it. While considering the question of arrest of five well known human rights activists, journalists, advocates and political workers, in **Romila Thapar andOthers vs. Union of India and Others (2018) 10 SCC 753**, this Court perused the registers containing relevant documents and the case diary produced by the State of Maharashtra. However, the court avoided to dilate on the factual position emerging therefrom on the ground that any observation made thereon might cause prejudice to the accused or to the prosecution in any manner. Upholding the validity of Section 172(3) Crl.P.C. and observing that "there can be no better custodian or guardian of the interest of

justice than the court trying the case", in **Mukund Lal vs. Union of India and another 1989 Supp. (1) SCC 622,** the Supreme Court held as under:-

3.....

"So far as the other parts are concerned, the accused need not necessarily have a right of access to them because in a criminal trial or enquiry, whatever is sought to be proved against the accused, will have to be proved by the evidence other than the diary itself and the diary can only be used for a very limited purpose by the court or the police officer as stated above..... When in the enquiry or trial, everything which may appear against the accused has to be established and brought before the court by evidence other than the diary and the accused can have the benefit of cross-examining the witnesses and the court has power to call for the diary and use it. of course not as evidence but in aid of the enquiry or trial. I am clearly of the opinion, that the provisions under Section 172(3) CrPC cannot be said to be unconstitutional."

We fully endorse the reasoning of the High Court and concur with its conclusion. We are of the opinion that the provision embodied in sub-section (3) of Section 172 of the CrPC cannot be characterised as unreasonable or arbitrary. Under sub-section (2) of Section 172 CrPC the court itself has the unfettered power to examine the entries in the diaries. This is a very important safeguard. The legislature has reposed complete trust in the court which is conducting the inquiry or the trial. It has empowered the court to call for any such relevant case diary; if there is any inconsistency or contradiction arising in the context of the case diary the court can use the entries for the purpose of contradicting the police officer as provided in subsection (3) of Section 172 of the CrPC. Ultimately there can be no better custodian or guardian of the interest of justice than the court trying the case. No court will deny to itself the power to make use of the entries in the diary to the advantage of the accused by contradicting the police officer with reference to the contents of the diaries. In view of this safeguard, the charge of unreasonableness or arbitrariness cannot stand scrutiny. ..... Public interest demands that such an entry is not made available to the accused for it might endanger the safety of the informants and it might deter the informants from giving any information to assist the investigating agency. ....." **[underlining added]**

52. So far as the production of the case diary during trial and reference to the same by the court and the interdict against accused to call for case diary is governed by Section 172 Cr.P.C. As per sub-section (3) of Section 172, neither the accused nor his agent is entitled to call for such case diaries and also not entitled to see them during the course of enquiry or trial. The case diaries can be used for refreshing memory by the investigating officer and court can use it for the purpose of contradicting such police officer as per provisions of Section 161 or Section 145 of the Indian Evidence Act. Unless the investigating officer or the court so uses the case diary either to refresh the memory or for contradicting the investigating officer as previous

statement under Section 161, after drawing his attention under Section 145, the entries in case diary cannot be used by the accused as evidence (vide Section 172(3) Cr.P.C).

53. It is well-settled that the court can peruse the case diary/materials collected during investigation by the prosecution even before the commencement of the trial inter-alia in circumstances like:- (i) to satisfy its conscience as to whether the investigation is proceeding in the right direction; (ii) to satisfy itself that the investigation has been conducted in the right lines and that there is no misuse or abuse of process in the investigation; (iii) whether regular or anticipatory bail is to be granted to the accused or not; (iv) whether any further custody of the accused is required for the prosecution; (v) to satisfy itself as to the correctness of the decision of the High Court/trial court which is under challenge. The above instances are only illustrative and not exhaustive. Where the interest of justice requires, the court has the powers, to receive the case diary/materials collected during the investigation. As held in Mukund Lal, ultimately there can be no better custodian or guardian of the interest of justice than the court trying the case. Needless to point out that when the Court has received and perused the documents/ materials, it is only for the purpose of satisfaction of court's conscience. In the initial stages of investigation, the Court may not extract or verbatim refer to the materials which the Court has perused (as has been done in this case by the learned Single Judge) and make observations which might cause serious prejudice to the accused in trial and other proceedings resulting in miscarriage of justice.

54. The Enforcement Directorate has produced the sealed cover before us containing the materials collected during investigation and the same was received. Vide order dated 29.08.2019, we have stated that the receipt of the sealed cover would be subject to our finding whether the court can peruse the materials or not. As discussed earlier, we have held that the court can receive the materials/documents collected during the investigation and peruse the same to satisfy its conscience that the investigation is proceeding in the right lines and for the purpose of consideration of grant of bail/anticipatory bail etc. In the present case, though sealed cover was received by this Court, we have consciously refrained from opening the sealed cover and perusing the documents. Lest, if we peruse the materials collected by the respondent and make some observations thereon, it might cause prejudice to the appellant and the other co-accused who are not before this court when they are to pursue the appropriate relief before various forum. Suffice to note that at present, we are only at the stage of considering the pre-arrest bail. Since according to the respondent, they have collected documents/materials for which custodial interrogation of the appellant is necessary, which we deem appropriate to accept the submission of the respondent for the limited purpose of refusing pre-arrest bail to the appellant.

55. Of course, while considering the request for anticipatory bail and while perusing the materials/note produced by the Enforcement Directorate/CBI, the learned Single Judge

could have satisfied his conscience to hold that it is not a fit case for grant of anticipatory bail. On the other hand, the learned Single Judge has verbatim quoted the note produced by the respondent-Enforcement Directorate. The learned Single Judge, was not right in extracting the note produced by the Enforcement Directorate/CBI which in our view, is not a correct approach for consideration of grant/refusal of anticipatory bail. But such incorrect approach of the learned Single Judge-in our view, does not affect the correctness of the conclusion in refusing to grant of anticipatory bail to the appellant in view of all other aspects considered herein.

**Re: Contention:- The appellant should have been confronted with the materials collected by the Enforcement Directorate earlier, before being produced to the court.**

56. On behalf of the appellant, it was contended that the materials produced by the Enforcement Directorate could have never been relied upon for the purpose of consideration of anticipatory bail unless the appellant was earlier confronted with those documents/materials. It was submitted that if the appellant's response was completely "evasive" and "non co-operative" during the three days when he was interrogated i.e. 19.12.2018, 01.01.2019 and 21.01.2019, the respondent should place before the court the materials put to the appellant and the responses elicited from the accused to demonstrate to the court that "the accused was completely evasive and non-co-operative".

57. Contention of the appellant that the court will have to scrutinise the questions put to the accused during interrogation and answers given by the appellant and satisfy itself whether the answers were "evasive or not", would amount to conducting "mini trial" and substituting court's view over the view of the investigating agency about the "cooperation" or "evasiveness" of the accused and thereafter, the court to decide the questions of grant of anticipatory bail. This contention is far-fetched and does not merit acceptance.

58. As rightly submitted by learned Solicitor General that if the accused are to be confronted with the materials which were collected by the prosecution/Enforcement Directorate with huge efforts, it would lead to devastating consequences and would defeat the very purpose of the investigation into crimes, in particular, white collar offences. If the contention of the appellant is to be accepted, the investigating agency will have to question each and every accused such materials collected during investigation and in this process, the investigating agency would be exposing the evidence collected by them with huge efforts using their men and resources and this would give a chance to the accused to tamper with the evidence and to destroy the money trail apart from paving the way for the accused to influence the witnesses. If the contention of the appellant is to be accepted that the accused will have to be questioned with the materials and the investigating agency has to satisfy the court that the accused was "evasive" during interrogation, the court will have to undertake a "mini trial" of scrutinizing the matter at intermediary stages of

investigation like interrogation of the accused and the answers elicited from the accused and to find out whether the answers given by the accused are 'evasive' or whether they are 'satisfactory' or not. This could have never been the intention of the legislature either under PMLA or any other statute.

59. Interrogation of the accused and the answers elicited from the accused and the opinion whether the answers given by the accused are "satisfactory" or "evasive", is purely within the domain of the investigating agency and the court cannot substitute its views by conducting mini trial at various stages of the investigation.

60. The investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds. In exercise of its inherent power under Section 482 Cr.P.C, the court can interfere and issue appropriate direction only when the court is convinced that the power of the investigating officer is exercised mala fide or where there is abuse of power and non-compliance of the provisions of Code of Criminal Procedure. However, this power of invoking inherent jurisdiction to issue direction and interfering with the investigation is exercised only in rare cases where there is abuse of process or non-compliance of the provisions of Criminal Procedure Code.

61. In **King-Emperor vs. Khwaja Nazir Ahmad AIR 1945 PC 18 : 1944 SCC Online PC 29**, it was held as under:-

".....it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.

In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under S. 491 of the Crl. P.C....." [underlining added]

62. The above decision in Khwaja Nazir Ahmad has been quoted with approval by the Supreme Court in **Abhinandan Jha and others vs. Dinesh Mishra AIR 1968 SC 117** and **State of Bihar and another vs. J.A.C. Saldanha and others (1980) 1 SCC 554**. Observing that the investigation of the offence is the field exclusively reserved for the executive through the police department and the superintendence over which vests in the State Government, in J.A.C. Saldanha, it was held as under.

"25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounded duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the court, and to award adequate punishment according to law for the offence proved to the satisfaction of the court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognised way back in **King Emperor vs. Khwaja Nazir Ahmad AIR 1944 PC 18**.....".

The same view was reiterated in **Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) vs. Arun Kumar Bajoria (1998) 1 SCC 52**, **M.C. Abraham and Another vs. State of Maharashtra and Others (2003) 2 SCC 649**, **Subramanian Swamy vs. Director, Central Bureau of Investigation and another (2014) 8 SCC 682** and **Divine Retreat Centre vs. State of Kerala and Others (2008) 3 SCC 542**.

63. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. In **State of Bihar and another vs. P.P. Sharma, IAS and another 1992 Supp. (1) 222**, it was held that "The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order.....Enough power is therefore given to the police officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation...". In **Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) vs. Arun Kumar Bajoria (1998) 1 SCC 52,** this Court held that".....it is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual."

64. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.

65. It is one thing to say that if the power of investigation has been exercised by an investigating officer mala fide or non-compliance of the provisions of the Criminal Procedure Code in the conduct of the investigation, it is open to the court to quash the proceedings where there is a clear case of abuse of power. It is a different matter that the High Court in exercise of its inherent power under Section 482 Cr.P.C, the court can always issue appropriate direction at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide and not in accordance with the provisions of the Criminal Procedure Code. However, as pointed out earlier that power is to be exercised in rare cases where there is a clear abuse of power and non-compliance of the provisions falling under Chapter-XII of the Code of Criminal Procedure requiring the interference of the High Court. In the initial stages of investigation where the court is considering the question of grant of regular bail or pre-arrest bail, it is not for the court to enter into the demarcated function of the investigation and collection of evidence/ materials for establishing the offence and interrogation of the accused and the witnesses.

66. **Whether direction to produce the transcripts could be issued:-** Contention of the appellant is that it has not been placed before the court as to what were the questions/aspects on which the appellant was interrogated on 19.12.2018, 01.01.2019 and 21.01.2019 and the Enforcement Directorate has not been able to show as to how the answers given by the appellant are “evasive”. It was submitted that the investigating agency-Enforcement Directorate cannot expect the accused to give answers in the manner they want and the investigating agency should always keep in their mind the rights of the accused protected under Article 20(3) of the Constitution of India. Since the interrogation of the accused and the questions put to the accused and the answers given by the accused are part of the investigation which is purely within the domain of the investigation officer, unless satisfied that the police officer has improperly and illegally exercised his investigating powers in breach of any statutory provision, the court cannot interfere. In the present case, no direction could be issued to the respondent to produce the transcripts of the questions put to the appellant and answers given by the appellant.

**Grant of Anticipatory bail in exceptional cases:-**

67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

68. On behalf of the appellant, much arguments were advanced contending that anticipatory bail is a facet of Article 21 of the Constitution of India. It was contended that unless custodial interrogation is warranted, in the facts and circumstances of the case, denial of anticipatory bail would amount to denial of the right conferred upon the appellant under Article 21 of the Constitution of India.

69. Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law. However, the power conferred by Article 21 of the Constitution of India is not unfettered and is qualified by the later part of the Article i.e. "...except according to a procedure prescribed by law." In **State of M.P. and another vs. Ram Kishna Balothia and another (1995) 3 SCC 221**, the Supreme Court held that the right of anticipatory bail is not a part of Article 21 of the Constitution of India and held as under:-

"7.....We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

"We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised."

In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-

application to a certain special category of offences cannot be considered as violative of Article 21." **[underlining added]**

70. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

71. The learned Solicitor General has submitted that depending upon the facts of each case, it is for the investigating agency to confront the accused with the material, only when the accused is in custody. It was submitted that the statutory right under Section 19 of PMLA has an in-built safeguard against arbitrary exercise of power of arrest by the investigating officer. Submitting that custodial interrogation is a recognised mode of interrogation which is not only permissible but has been held to be more effective, the learned Solicitor General placed reliance upon **State Rep. By The CBI vs. Anil Sharma (1997) 7 SCC 187**; **Sudhir vs. State of Maharashtra and Another (2016) 1 SCC 146**; and **Assistant Director, Directorate of Enforcement vs. Hassan AH Khan (2011) 12 SCC 684**.

72. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In **State Rep. By The CBI vs. Anil Sharma (1997) 7 SCC 187**, the Supreme Court held as under:-

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can

be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

73. Observing that the arrest is a part of the investigation intended to secure several purposes, in **Adri Dharan Das vs. State of W.B. (2005) 4 SCC 303**, it was held as under:-

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

74. In **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others (2011) 1 SCC 694**, the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

75. After referring to Siddharam Satlingappa Mhetre and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in **Jai Prakash Singh vs. State of Bihar and another (2012) 4 SCC 379**, the Supreme Court held as under:-

"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See **D.K. Ganesh Babu vs. P.T.**

**Manokaran (2007) 4 SCC 434**, **State of Maharashtra vs. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213** and **Union of India vs. Padam Narain Aggarwal (2008) 13 SCC 305**.)"

**Economic Offences:-**

76. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In **Directorate of Enforcement vs. Ashok Kumar Jain (1998) 2 SCC 105,** it was held that in economic offences, the accused is not entitled to anticipatory bail.

77. The learned Solicitor General submitted that the "Scheduled offence" and "offence of money laundering" are independent of each other and PMLA being a special enactment applicable to the offence of money laundering is not a fit case for grant of anticipatory bail. The learned Solicitor General submitted that money laundering being an economic offence committed with much planning and deliberate design poses a serious threat to the nation's economy and financial integrity and in order to unearth the laundering and trail of money, custodial interrogation of the appellant is necessary.

78. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in **State of Gujarat vs. Mohanlal Jitamalji Porwal and others (1987) 2 SCC 364**, it was held as under:-

"5.....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

79. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in **Y.S. Jagan Mohan Reddy vs. CBI (2013) 7 SCC 439**, the Supreme Court held as under:-

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof,

the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." **[underlining added]**

80. Referring to **Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) vs. Arun Kumar Bajoria (1998) 1 SCC 52**, in **Enforcement Officer, Ted, Bombay v. Bher Chand Tikaji Bora and others (1999) 5 SCC 720**, while hearing an appeal by the Enforcement Directorate against the order of the Single Judge of the Bombay High Court granting anticipatory bail to the respondent thereon, the Supreme Court set aside the order of the Single Judge granting anticipatory bail.

81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

82. In a case of money-laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", it requires systematic and analysed investigation which would be of great advantage. As held in Anil Sharma, success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 Cr.P.C. is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order. Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the appellant will hamper the investigation and this is not a fit case for exercise of discretion to grant anticipatory bail to the appellant.

83. In the result, the appeal is dismissed. It is for the appellant to work out his remedy in accordance with law. As and when the application for regular bail is filed, the same

shall be considered by the learned trial court on its own merits and in accordance with law without being influenced by any of the observations made in this judgment and the impugned order of the High Court

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## 2019 (3) L.S. 30 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Arun Mishra
The Hon'ble Mr.Justice
M.R.Shah &
The Hon'ble Mr.Justice
Ajay Rastogi

The State of Maharashtra
& Ors., ..Petitioner

Vs.

M/s. Moti Ratan Estate
& Anr., ..Respondents

**LAND ACQUISITION ACT, Sec.11 - Aggrieved with the impugned judgment by which the High Court has allowed the writ petitions and has quashed the entire acquisition proceedings with respect to the acquired lands solely on the ground that the acquisition has lapsed as the awards under section 11 of the Land Acquisition Act, were not declared within a period of two years from the date of declaration made under Section 6 of the Act.**

C.A.Nos.6996,6998,6997/19 Date:4-9-019

**Held – High Court has erred in quashing and setting aside the acquisition proceedings on the ground that the same have lapsed as the award was not declared within a period of two years from the date of declaration under Section 6 of the Act - High Court has committed a grave error in not excluding the period of interim stay granted by it in writ petition – Appealstands allowed - Impugned judgments and orders passed by the High Court are quashed and set aside.**

**J U D G M E N T**

(per the Hon'ble Mr.Justice M.R. Shah )

Delay condoned in Special Leave Petition (C) Diary No.3189/2019. Leave granted in all the special leave petitions.

2. As common question of law and facts arise in this group of appeals, they are being disposed of by this common judgment and order.

3. Feeling aggrieved and dissatisfied with the impugned judgments and orders dated 24.03.2017 and 27.04.2018 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition Nos. 7867/ 2012, 10894/2016 and 9088/2016, by which the High Court has allowed the said writ petitions and has quashed the entire acquisition proceedings with respect to the acquired lands solely on the ground that the acquisition has lapsed as the awards under section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') were not declared within a period of

two years from the date of declaration made under Section 6 of the Act, the State of Maharashtra and others have preferred the present appeals.

3.1 For the sake of convenience, the facts in the appeal arising out of special leave petition No. 23921/2018 arising out of the impugned judgment and order dated 24.03.2017 passed by the High Court in Writ Petition No. 7867/2012 are considered as the facts in other two appeals are identical.

4. That the acquired land in question is situated within the local limits of village Asarjan, Taluka and District Nanded. That the notification under Section 4 of the Act was issued and published in the Official Gazette on 01.03.2012. The same was published at Village Chawdi Asarjan by beating of drums on 12.04.2012. That thereafter notification under Section 6 of the Act was published on 07.02.2013 and the notification under Section 6 of the Act was published at Village Chawdi Asarjan by beating of drums on 13.02.2013.

4.1 That the original land owners challenged the acquisition and the notification under Section 4 of the Act dated 01.03.2012 by filing Writ Petition No. 7867 of 2012 on 09.05.2012. That vide order dated 11.10.2013, the High Court directed that the possession of the original writ petitioners shall not be disturbed. The other land owners, whose lands were acquired for the very project and under the very Section 4 notification dated 01.03.2012, also challenged the acquisition proceedings and Section 4 notification with respect to their lands by filing Writ Petition Nos. 3051/2013 and 3159/2013. In those writ petitions also the High Court granted stay to the acquisition proceedings vide order dated 12.11.2013. It appears that by order dated 20.11.2013, the High Court in Writ Petition Nos. 3051/2013 and 3159/2013 modified the earlier interim order and directed that till the next date, final award shall not be declared. However, the State was permitted to move an application seeking leave of the Court to declare the award, if the award is ready. That the aforesaid two writ petitions came to be disposed of vide order dated 08.01.2014. However, the High Court continued the interim order dated 20.11.2013 by 12 weeks. The 12 weeks period got over on 02.04.2014. That thereafter the award under Section 11 of the Act was passed on 08.05.2015 with respect to the acquired lands in question, i.e., in the case of Writ Petition No. 7867/2012. At this stage, it is required to be noted that the acquisition was challenged on number of grounds. However, at the time of hearing of Writ Petition No. 7867/2012, it was submitted that the entire acquisition has been lapsed as the award was not declared within a period of two years from the date of publication of the declaration under Section 6 of the Act. It was submitted on behalf of the State that in view of the pending proceedings challenging the acquisition as well as in view of the interim stay granted by the High Court directing that the possession of the acquired land shall not be disturbed and in view of the specific stay order granted in Writ Petition Nos. 3051/2013 and 3159/2013 restraining the State from declaring final award, the period during which stay was operating is required to be

excluded and if such period is excluded, in that case, the award was declared within a period of two years and therefore there is no question of lapsing the acquisition proceedings. However, by the impugned judgment and order, the High Court has set aside the acquisition proceedings solely on the ground that the acquisition has lapsed as the award under Section 11 of the Act has not been declared within a period of two years from the date of publication of the declaration under Section 6 of the Act. It is required to be noted that so far as challenge to the acquisition on other grounds is concerned, the High Court held against the original writ petitioners. However, set aside the acquisition solely on the ground that the award under Section 11 of the Act has not been declared within a period of two years from the date of declaration under Section 6 of the Act.

4.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in quashing and setting aside the acquisition, the State has preferred the present appeal. So far as other two appeals are concerned, the original writ petitioners subsequently challenged the acquisition in the year 2016 after the declaration of the award under Section 11 of the Act challenging the acquisition proceedings also on the ground that as the award has not been declared within a period of two years from the date of declaration under Section 6 of the Act the acquisition proceedings have been lapsed. Accepting the submission on behalf of the original writ petitioners, by the impugned common judgment and order, the High Court has quashed and set aside the acquisition proceedings considering Section 11A of the Act and on the ground that the acquisition proceedings have been lapsed as the award under Section 11 of the Act has not been declared within a period of two years from the date of declaration under Section 6 of the Act. Hence, these appeals by grant of special leave petitions.

5. Shri Nishant Ramakantrao Katneshwarkar, learned Advocate appearing on behalf of the appellant - State has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in quashing and setting aside the acquisition on the ground that the award under Section 11 of the Act has not been declared within a period of two years from the date of declaration under Section 6 of the Act.

5.1 It is vehemently submitted by Shri Katneshwarkar, learned Advocate appearing for the appellants that the High Court has materially erred in not properly appreciating the fact that in view of the challenge to the acquisition proceedings and stay of possession granted by the High Court in Writ Petition No. 7867/2012 and even the stay of the acquisition proceedings and against declaring the award in Writ Petition Nos. 3051/2013 and 3159/2013, the award under Section 11 of the Act was not declared. It is submitted that excluding the period during which the stay was granted, more particularly stay granted in Writ Petition Nos. 3051/2013 and 3159/2013, subsequent declaration of the award can be said to be within the period prescribed under Section 11 of the Act.

5.2 It is further submitted by the learned Advocate appearing on behalf of the appellants that the High Court has erred in holding that as respondent no.1 herein - original writ petitioner was not a party to Writ Petition Nos. 3051/2013 and 3159/2013, the extension of period during which stay was in operation in the said writ petitions was not applicable to the case of respondent no.1. It is submitted that as such writ petition Nos. 3051/2013 and 3159/2013 were with respect to the lands acquired under the same notification and with respect to the very village and the project and therefore the authority was justified in not declaring the award in the present case during the period the stay was operating in writ petition Nos. 3051/2013 and 3159/2013.

5.3 It is further submitted by the learned Advocate appearing on behalf of the appellants that even in the present case there was a stay against possession and the entire acquisition proceedings were under challenge and therefore the authority was justified in not declaring the award, which was declared subsequently, more particularly after the vacation of the stay granted in writ petition Nos. 3051/2013 and 3159/2013.

5.4 In support of his submission that in the facts and circumstances of the case the authorities were justified in not proceeding with the acquisition proceedings including not declaring the award and therefore acquisition proceedings would not lapse, Shri Katneshwarkar, learned Advocate appearing on behalf of the appellants has relied upon the following decisions of this Court in the cases of G. Narayanaswamy Reddy v. State of Karnataka (1991) 3 SCC 261; Yusufbhai Noormohmed Nendoliya v. State of Gujarat (1991) 4 SCC 531; Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan (1993) 2 SCC 662; Hansraj H. Jain v. State of Maharashtra (1993) 3 SCC 634; Sangappa Gurulingappa Sajjan v. State of Karnataka (1994) 4 SCC 145; Abhey Ram v. Union of India (1997) 5 SCC 421; Om Prakash v. Union of India (2010) 4 SCC 17; and the recent decision of this Court in the case of Raj Kumar Gandhi v. Chandigarh Administration and others (2018) 7 SCC 763.

5.5 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeals and quash and set aside the impugned judgments and orders passed by the High Court.

6. Shri Vinay Navare, learned Senior Advocate has appeared on behalf of the respondents - original writ petitioners.

6.1 While opposing the present appeals and supporting the impugned judgments and orders passed by the High Court, Shri Navare, learned Senior Advocate appearing on behalf of the original writ petitioners has vehemently submitted that in the facts and circumstances of the case, the High Court has rightly quashed and set aside the acquisition proceedings on the ground that the award under Section 11 of the Act has not been declared within a period of two years from the date of declaration under Section 6 of the Act. It is submitted that in the facts and circumstances of the case, the High Court has rightly observed that

Section 11A of the Act would be attracted and therefore due to non-declaration of the award within a period of two years from the date of declaration under Section 6 of the Act, the acquisition proceedings have been lapsed.

6.2 It is further submitted by Shri Navare, learned Senior Advocate appearing on behalf of the original writ petitioners that in fact there was no stay by the High Court restraining the authorities from declaring the award and the only stay was granted with respect to possession and therefore it was always open for the authorities to declare the award under Section 11 of the Act to avoid lapsing of proceedings. It is submitted that however the authorities did not declare the award. It is submitted that therefore as there was no stay either to the acquisition proceedings and/or against declaring the final award, as rightly observed by the High Court, there is no question of any exclusion of the period. It is submitted that therefore the award under Section 11 of the Act was beyond the period of two years and therefore considering Section 11A of the Act, the entire acquisition proceedings would lapse.

6.3 It is further submitted by Shri Navare, learned Senior Advocate appearing on behalf of the original writ petitioners that as rightly observed by the High Court the stay to the acquisition proceedings and/or against declaring the final award was in other petitions, i.e., Writ Petition Nos. 3051/2013 and 3159/2013 and not relating to the petitioners land and therefore the exclusion of period of stay granted in writ petition Nos. 3051/2013 and 3159/2013 shall not be available to the State/authorities with respect to the original writ petitioners land.

6.4 Now so far as reliance placed upon the decision of this Court in the case of Raj Kumar Gandhi (supra), relied upon by the learned Advocate appearing on behalf of the State is concerned, Shri Navare, learned Senior Advocate appearing on behalf of the original writ petitioners has submitted that the said decision shall not be applicable to the facts of the case on hand as in the instant case the Land Acquisition Officer has chosen to keep the land, with respect to which stay was granted, away from the declaration of the award (Writ Petition Nos. 3051/2013 and 3159/2013) and the award was declared with respect to rest of the land. It is submitted that therefore the award in the case of the writ petitioners will have to comply with the mandate of Section 11A of the Act.

6.5 Making the above submissions, it is prayed to dismiss the present appeals.

7. We have heard the learned counsel for the respective parties at length.

7.1 (A) The short question posed for the consideration of this Court is, whether in the facts and circumstances of the case, the High Court is justified in quashing and setting aside the entire acquisition proceedings on the ground that the same have lapsed under Section 11A of the Act? (B) The moot question which arises for our consideration is whether the stay of action/ proceedings by some of the land holders prohibiting/preventing the State authorities to make the award under Section 11 of the

Act, within a statutory period of two years provided under Section 11A of the Act from declaration under Section 6 of the Act would be equally extendable to the other alike cases of land holders/persons interested/ respondents in the instant case?

7.2 Now so far as the appeal arising out of the impugned judgment and order passed by the High Court in Writ Petition No. 7867/ 2012 is concerned, immediately on publication of the notification under Section 4 of the Act, the original writ petitioners challenged the acquisition proceedings including the notification under Section 4 of the Act. The High Court passed the interim order directing that the possession of the original writ petitioners shall not be disturbed. Simultaneously, the other land owners whose lands were acquired under the very same notification and of the very village Asarjan and acquired for the very project also challenged the acquisition proceedings by filing Writ Petition Nos. 3051/2013 and 3159/2013. The High Court granted stay to the acquisition proceedings on 12.11.2013 which subsequently came to be modified and it was directed that the final award shall not be declared. Other two writ petitions being Writ Petition Nos. 10894/2016 and 9088/2016 were filed after the award was declared under Section 11 of the Act challenging the acquisition proceedings on the ground that the same have been lapsed under Section 11A of the Act as the award has not been declared within a period of two years. The State authorities pleaded for extension of time during which the stay was operating in writ petition nos. 3051/ 2013 and 3159/2013. It has not been accepted by the High Court on the ground that the stay of the acquisition proceedings was granted not relating to the writ petitioners but was with respect to the other land owners. Therefore, the question which is required to be considered is, whether the authorities were justified in not declaring the award in the case of other land owners in view of granting of the stay to the acquisition proceedings with respect to other lands acquired, which were acquired under the very notification and for the very project.

7.3 In the recent decision in the case of Raj Kumar Gandhi (supra), this Court had an occasion to consider the applicability of Section 11A of the Act. After considering catena of decisions of this Court on the applicability of Section 11A of the Act, this Court observed and held that where scheme of the acquisition is one, interim stay granted in respect of one pocket of land would operate even in respect of other pockets of land and therefore the authorities were justified in not proceeding with the acquisition proceedings and consequently the acquisition proceedings would not lapse. In the same decision, this Court has considered the earlier decisions of this Court in the cases of G. Narayanaswamy Reddy (supra); Yusufbhai Noormohmed Nendoliya (supra); Gandhi Grah Nirman Sahkari Samiti Ltd.(supra);Hansraj H. Jain (supra); Sangappa Gurulingappa Sajjan (supra); Abhey Ram (supra); and Om Prakash(supra). In the case of Raj Kumar Gandhi (supra), in which one of us (Brother Arun Mishra, J. was a member), this Court has dealt with and considered the earlier decisions of this Court with respect to applicability of Section 11A of the Act in paragraphs 11, 12, 15 and 16 as under:

"11. In Abhey Ram [Abhey Ram v. Union of India, (1997) 5 SCC 421] this Court has considered the extended meaning of the words "stay of the action or proceedings" and referring to various decisions, observed that any type of the orders passed by the Court would be an inhibitive action on the part of the authorities to proceed further. This Court has observed thus: (SCC pp. 428-29, para 9)

"9. Therefore, the reasons given in B.R. Gupta v. Union of India [B.R. Gupta v. Union of India, 1988 SCC OnLine Del 367 : (1989) 37 DLT 150] are obvious with reference to the quashing of the publication of the declaration under Section 6 vis-a-vis the writ petitioners therein. The question that arises for consideration is whether the stay obtained by some of the persons who prohibited the respondents from publication of the declaration under Section 6 would equally be extendible to the cases relating to the appellants. We proceed on the premise that the appellants had not obtained any stay of the publication of the declaration but since the High Court in some of the cases has, in fact, prohibited them as extracted hereinbefore, from publication of the declaration, necessarily, when the Court has not restricted the declaration in the impugned orders in support of the petitioners therein, the officers had to hold back their hands till the matters were disposed of. In fact, this Court has given extended meaning to the orders of stay or proceeding in various cases, namely, Yusufbhai Noormohmed Nendoliya v. State of Gujarat [Yusufbhai Noormohmed Nendoliya v. State of Gujarat, (1991) 4 SCC 531] ; Hansraj H. Jain v. State of Maharashtra [Hansraj H. Jain v. State of Maharashtra, (1993) 3 SCC 634] ; Sangappa Gurulingappa Sajjan v. State of Karnataka [Sangappa Gurulingappa Sajjan v. State of Karnataka, (1994) 4 SCC 145] ; Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan [Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan, (1993) 2 SCC 662] ; G. Narayanaswamy Reddy v. State of Karnataka [G. Narayanaswamy Reddy v. State of Karnataka, (1991) 3 SCC 261] and Roshanara Begum v. Union of India [Roshanara Begum v. Union of India, (1986) 1 Apex Dec 6 (SC)] . The words "stay of the action or proceeding" have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry under Section 5-A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5-A was properly conducted and the declaration published under Section 6 was valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5-A enquiry and consideration of objections as it was not challenged by the respondent Union. We express no opinion on its correctness, though it is open to doubt."

12. In Om Parkash v. Union of India [Om

Parkash v. Union of India, (2010) 4 SCC 17 : (2010) 2 SCC (Civ) 1] , this Court as to the effect of interim stay has observed thus: (SCC p. 44, para 72)

"72. Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act."

15. The learned counsel has also relied upon Yusufbhai Noormohmed Nendoliya v. State of Gujarat [Yusufbhai Noormohmed Nendoliya v. State of Gujarat, (1991) 4 SCC 531] in which this Court has opined that the Explanation to Section 11-A is in the widest possible terms and there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award under Section 11. Therefore, the period of an injunction obtained by the landholder from the High Court restraining the land acquisition authorities from taking possession of the land has to be excluded in computing the period of two years. The decision is of no help to the submission espoused on behalf of the appellant. This Court in Yusufbhai Noormohmed Nendoliya[Yusufbhai Noormohmed Nendoliya v. State of Gujarat, (1991) 4 SCC 531] observed: (SCC p. 535, para 8)

"8. The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award under Section 11 of the said Act. In the first place, as held by the learned Single Judge himself where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise. On the other hand, it appears to us that Section 11-A is intended to confer a benefit on a landholder whose land is acquired after the declaration under Section 6 is made in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder. In order to get the benefit of the said provision what is required, is that the landholder who seeks the benefit must not have obtained any order from a court restraining any action or proceeding in pursuance of the declaration under Section 6 of the said Act so that the Explanation covers only the cases of those landholders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired. In our opinion, the Gujarat High Court was right

in taking a similar view in the impugned judgment."

16. Reliance has also been placed on Sangappa Gurulingappa Sajjan v. State of Karnataka [Sangappa Gurulingappa Sajjan v. State of Karnataka, (1994) 4 SCC 145] , in which this Court has laid down that in case there was a stay of dispossession, no useful purpose would be served by issuing a declaration under Section 6. Therefore, the period during which the order of dispossession granted by the High Court operated, should be excluded in the computing period. In Sangappa Gurulingappa Sajjan [Sangappa Gurulingappa Sajjan v. State of Karnataka, (1994) 4 SCC 145] this Court observed: (SCC pp. 147-48, para 2)

"2. The petitioner contends that the declaration under Section 6 was not published within three years from the date of the Notification dated 17-5-1984 and, therefore, the Notification under Section 4(1) shall stand lapsed. We find no substance in the contention. Firstly, the case would be dismissed on a short ground that though this plea was available to the petitioner, he did not raise the same in the first instance and that, therefore, by operation of section 11 CPC, it operates as constructive res judicata. Under first proviso to Section 6(1), as amended in Land Acquisition (Amendment) Act 68 of 1984 through Section 6 thereof that (i) no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1) shall be published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984, after the expiry of three years from the date of publication of the notification; or (ii) after the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of the publication of the notification. In other words, under the pre-Amendment Act the declaration under Section 6(1) shall not be published after the expiry of three years from the date of Section 4(1) publication and after the commencement of the Amendment Act, the State has no power to proceed with the matter and publish the declaration under Section 6(1) after the expiry of one year from the date of the publication of the notification. Explanation 1 thereto provides the method or mode of computation of the period referred to in the first proviso, namely, the period during which "any action or proceeding" be taken in pursuance of the notification issued under sub-section (1) of Section 4 being "stayed by an order of a court shall be excluded". In other words, the period occupied by the order of stay made by a court shall be excluded. Admittedly, pending writ petition on both the occasions the High Court granted "stay of dispossession". Admittedly, the validity or tenability of the notification issued and published under Section 4(1) is subject of adjudication before the High Court. Till the writ petitions are disposed of or the appeals following its heels, the stay of dispossession was in operation. Though there is no specific direction prohibiting the publication of the declaration under Section 6, no useful purpose would

be served by publishing Section 6(1) declaration pending adjudication of the legality of Section 4(1) notification. If any action is taken to pre-empt the proceedings, it would be stigmatised either as "undue haste" or action to "overreach the court's judicial process". Therefore, the period during which the order of dispossession granted by the High Court operated, should be excluded in computation of the period of three years covered by clause (1) of the first proviso to the Land Acquisition Act. When it is so computed, the declaration published on the second occasion is perfectly valid. Under these circumstances, we do not find any justification to quash the notification published under Section 6 dated 17-5-1984. The review petitions are accordingly dismissed. No costs."

7.4 That thereafter in paragraphs 13 and 17, this Court has observed and held as under:

"13. Thus, it is apparent that when the stay has been granted in one matter and when the scheme was one, authorities were justified in the facts and circumstances of the instant case to stay their hands. Moreover, a large number of writ petitions have been dismissed by the High Court and orders have attained finality and this Court has also dismissed the appeals/SLPs. Thus, we are not inclined to take a different view in the instant case.

17. In the instant case, various notifications and declarations under Sections 4 and 6 were issued on the same date with respect to the same scheme. Thus, they were part and parcel of the same scheme. Thus, the submission raised by the learned counsel for the appellant stands rejected."

7.5 On considering catena of decisions of this Court, referred to hereinabove, the following propositions of law can be culled out:

(i) when the scheme of the acquisition is one, interim stay granted in respect of one pocket of land would operate even with respect to other pockets of land and in such a situation the authorities are justified in not proceeding with the acquisition proceedings and therefore the acquisition proceedings would not lapse;

(ii) interim order of stay granted in respect of one of the land owners would have a complete restraint for the authorities to proceed further;

(iii) when the stay has been granted in one matter and where the scheme was one, the authorities were justified to stay their hands;

(iv) the extended meaning of the words "stay of the action or proceedings under Section 11A of the Act" would mean that any interim effective order passed by the court which may come in the way of the authorities to proceed further;

(v) Explanation to Section 11A of the Act is in the widest possible terms and there is no warrant for limiting the action or proceedings, referred to in the explanation, to actions or proceedings preceding the

making of the award under Section 11 of the Act and therefore the period of injunction obtained by the land holders staying the acquisition and authorities from taking possession of the land has to be excluded in computing the period of two years.

7.6 Now so far as submission on behalf of the original writ petitioners that when subsequently the award was declared, the lands with respect to Writ Petition Nos. 3051/2013 and 3159/2013 were excluded and therefore the decision of this Court in the case of Raj Kumar Gandhi (supra) shall not be applicable has no substance. Merely because to avoid contempt proceedings and/or in view of the stay granted in the aforesaid two writ petitions which was continued subsequently till the representations are considered, the authorities excluded the lands for which writ petitions were filed, it cannot be said that the period during which the stay was operating in Writ Petition Nos. 3051/2013 and 3159/2013 shall not be excluded. The words "stay of the action or proceedings under Section 11A of the Act" would mean that any order of stay in one or the other matter if passed by Court of law, which either prohibits or prevents the State authorities from passing of an award, such a period of stay of action/proceedings deserves to be excluded while computing the statutory period of two years in passing of an award by the authority under Section 11 of the Act. Even otherwise, as observed hereinabove, there was already a stay of possession in Writ Petition No. 7867/2012 and therefore even otherwise the authorities were justified in not proceeding further with the acquisition proceedings.

7.7 It is true that there is no bar to have more than one declaration under Section 6 or the award under Section 11 of the Act in reference to the self-same acquisition proceedings initiated under Section 4 followed with Section 6 of the Act but if there is a stay of the proceedings by a Court of law in any of the matter, that certainly prevents the authorities in taking its decision to complete the acquisition proceedings within the statutory period as mandated by law in passing of award within two years from the date of declaration under Section 6 of the Act.

7.8 In meeting out a complex situation, the conclusion which emerges is that if there is any stay over the action or proceeding by a Court of law, in one or the other matter arising from the selfsame acquisition proceedings in reference to Section 4 followed with Section 6 of the Act, the authorities are said to be justified in the given facts and circumstances to stay their hands and await the decision of the Court and such a period during which there is a stay over the action or proceeding by a Court of law in a matter, that has to be excluded for all practical purposes, in computing the statutory period of two years in passing of an award under Section 11 of the Act.

8. Applying the aforesaid principles of law to the facts of the case on hand and considering the fact that there was a stay granted by the High Court in writ petition Nos. 3051/2013 and 3159/2013 against

declaring the final award and the said writ petitions were with respect to the lands acquired of the very village under the very notification and for the very project and there was stay of possession in writ petition no. 7867/2012 during the pendency of the said petition, the period during which the aforesaid stay/s was/were operative is to be excluded and if the said period is excluded, in that case, the acquisition proceedings would not lapse, considering explanation to Section 11A of the Act. Under the circumstances, the High Court has erred in quashing and setting aside the acquisition proceedings on the ground that the same have lapsed as the award was not declared within a period of two years from the date of declaration under Section 6 of the Act. The High Court has committed a grave error in not excluding the period of interim stay granted by it in writ petition nos. 3051/2013 and 3159/2013. As observed hereinabove, even grant of interim stay of possession would also save lapsing of the acquisition.

9. In view of the above and for the reasons stated above, all these appeals succeed. The impugned judgments and orders passed by the High Court are hereby quashed and set aside. Consequently, the writ petitions filed before the High Court stand dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

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## 2019 (3) L.S. 41 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Navin Sinha &
The Hon'ble Mr.Justice
B.R.Gavai

Prakash Sahu ..Appellant

Vs.

Saulal & Ors., ..Respondents

**REGISTRATION ACT, Sec.49 - Unregistered document could not be taken into consideration for collateral purpose.**

**O R D E R**
(per the Hon'ble Mr.Justice
Navin Sinha)

Leave granted.

We have heard learned counsel for the parties.

The short question in the present appeal is whether an unregistered agreement of sale can be seen for collateral purposes under the proviso to Section 49 of the Registration Act, 1908.

The Trial Court based its reasoning on a decision of this Court in **S. Kaladevi vs. V.R. Somasundaram & Ors.** (2010) 5 SCC 401 elucidating as follows:-

"(I) In that situation it is essential for the registration of the document, if, unregistered is not admissible in evidence under Section 49 of the Registration Act.

(ii) Yet, such unregistered document can be used by way of collateral evidences provided in the proviso to the Section 49 of the Registration Act.

(iii) For effecting with the collateral transaction, whose registration is required by law should be free from the transaction or be divisible from that.

(iv) Collateral transaction should be such a transaction which may not be automatically expected of effecting by the registered document, i.e. Rupees One Hundred or any transaction or instrument or right or interest in any immovable property of the value of more than Rupees One Hundred.

(v) If the document is inadmissible in evidence in the absence of registration then any of its estopple cannot be admitted in evidence and for use of the document for purposes of proving important part, it would not be utilized by way of collateral purpose."

The High Court failed to consider the aforesaid while holding that the unregistered document could not be taken into consideration for collateral purposes.

We consider the same as sufficient reason to set aside the order of the

High Court and restore the order of the Trial Court dated 18 March, 2016.

The appeal is accordingly, allowed.

Pending application(s), if any, shall stand disposed of.

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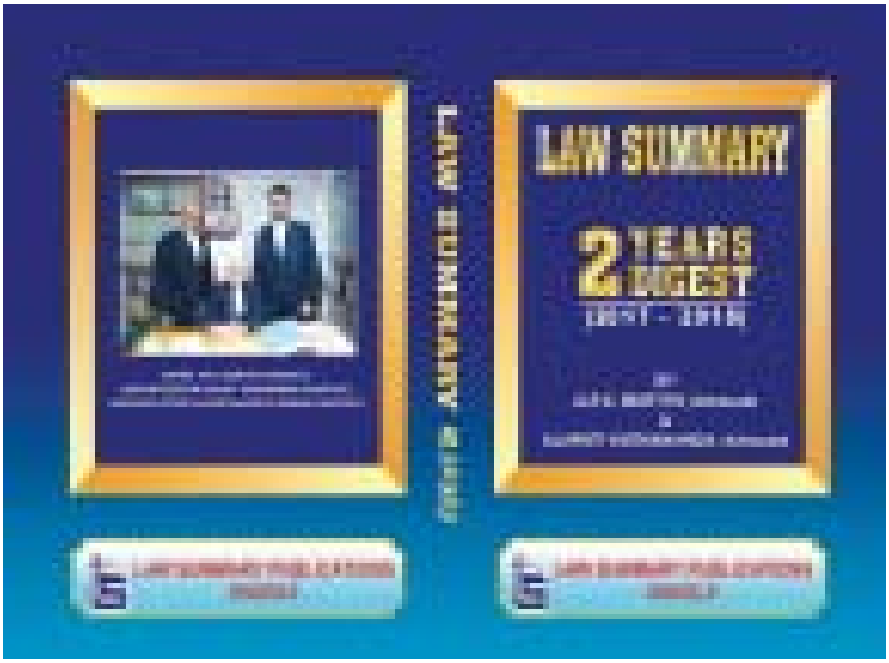


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