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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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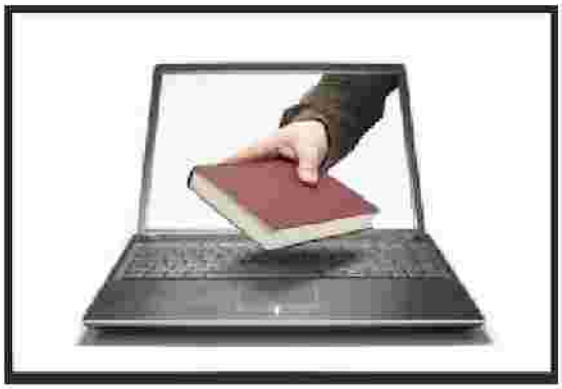

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PART - 14 (31ST JULY 2022)

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Accused or suspects cannot be summoned or called to the Police Station or anywhere else either during festivals/elections/ weekends etc. - They cannot be made to wait at the Police Stations for any reason or seek permission to leave the local jurisdiction - Writ Petitions allowed. **(A.P.)** ***195***

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HELD: Electronic records cannot be admitted in evidence unless mandatory requirements of Sec,65-B of the Evidence Act are satisfied - Documents i.e., Photographs with C.D and e-mail online copy are not accompanied by the Certificate in terms of Section 65-B(4) of the Evidence Act, an opportunity should have been afforded to the Petitioner - Trial Judge went wrong in opining that the Petitioner failed to establish the mode of acquisition of the Photographs with C.D etc., even before marking the documents - Order under Revision is set aside and the matter is remitted to Trial Court for passing appropriate Orders after affording opportunity to the Petitioner to fulfil the conditions as contemplated under Section 65-B(4) of the Evidence Act - Revision Petition stands allowed. **(A.P.)** ***225***

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HELD: Approach of the Sessions Judge in concluding that the charge u/Sec.302 IPC had to be framed though the police had ruled out that the deceased was murdered, appears to be misconceived and contrary to the record and evidence collected during investigation - Assumptions, presumptions and fanciful thinking cannot be made basis to arrive at conclusions in a criminal case - Any injuries found on the deceased have to be explained by the prosecution and in absence of such explanation, the Accused cannot be suspected or asked to explain.

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Direction issued by the High Court to Economic Offences Wing of the State Government to hold an inquiry was not warranted - Registrar under the Public Trusts Act, having jurisdiction over Trust, to call for the record of the Trust relating to all the alienations made by the Trustees - Appeals allowed in part. **(S.C.)** ***57***

STAMP ACT, Article 49-A of Schedule 1-A - Plaintiff filed a suit for cancellation of registered non-possessory agreement of sale-cum general power of attorney, executed by defendants 1 and 2 in favour of 3rd defendant alleging fraud and collusion - During trial, when the 3rd defendant was intending to mark the money voucher issued by the defendants 1 and 2, Plaintiff raised an objection for marking the same as exhibit on the ground that it is neither a mere money voucher nor a receipt, but was a deed of conveyance and is liable to be registered and necessary stamp duty and penalty are to be collected and therefore, the said document cannot be admitted in evidence.

Trial Court held that the document which is styled as money voucher, requires registration as possession is delivered by virtue of that document and it cannot be admitted in evidence unless stamp duty and penalty are paid - Hence, instant revision by the Plaintiff.

HELD: A document can be objected to be received in evidence mainly on two grounds; such as want of registration and want of payment of proper stamp duty - Since both these aspects are governed by two separate enactments, mere compliance of provisions of one of such Acts is not enough - To make a document fit for receipt in evidence, the provisions of the Stamp Act are also to be complied with - As such, since in the present case, the document requires stamp duty and penalty with reference to Article 49 A of Schedule 1A of the Stamp Act.

In the present case, document requires stamp duty and penalty with reference to Article 49-A of Schedule 1A of the Stamp Act, as it was held to be a document of agreement of sale with possession by subsequent act in continuation of the earlier agreement of sale without possession, unless such condition of payment of proper stamp duty with penalty is complied with, the document cannot be received in evidence - On such payment, the document cannot be objected to be received in evidence for collateral purpose - Civil Revision stands dismissed. **(A.P.)** ***217***

2022(2) L.S. 195 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
D.V.S.S.Somayujulu

Udathu Suresh ..Petitioner

Vs.

State of AP.&Ors., ..Respondents

A.P. POLICE STANDING ORDERS - Batch of Writ Petitions filed questioning the opening and continuation of rowdy sheets against the Petitioners.

HELD: Standing Orders of A.P. Police Manual/A.P. Police Standing Orders to the extent of opening/ continuation of Rowdy Sheet, Suspect Sheet, History Sheet etc., and on that basis the surveillance of the individual (in terms of Chapter 37 of the above said Standing Orders) are void - All the rowdy sheets opened in this batch of Writ Petitions are directed to be closed immediately - Police cannot open or continue a rowdy sheet or collect data pertaining to a person without the sanction of "law" - Collection of personal data and its usage for prevention of crimes also can only be in accordance with a "law" which crosses the thresholds mentioned in the Constitution of India and the various judgments, Since 'privacy' is now a Fundamental Right as per Part- III of the Constitution of India - It is reiterated that the police cannot (under the existing orders) indulge in night visits; domiciliary visits to the houses of a suspect or accused - They cannot take or demand the photographs, fingerprints etc., except under the procedure established by a 'law' and if the conditions laid down are satisfied.

Accused or suspects cannot be summoned or called to the Police Station or anywhere else either during festivals/elections/ weekends etc. - They cannot be made to wait at the Police Stations for any reason or seek permission to leave the local jurisdiction - Writ Petitions allowed.

Mr.Raja Reddy Koneti, K.S. Murthy, O. Manohar Reddy, Senior Counsels, V.V. Satish, G. Ramgopal, P.S.P. Suresh Kumar, A.K. Kishore Reddy, R. Ramnjaneyulu, Thota Ramakoteswara Rao, G. Rajkumar, P.B. Vijay Kumar, N. Chandra Sekhar Reddy, N. Siva Reddy, Peeta Raman, Ch. Venkata Raman, B.V. Anjaneyulu, C. Raghu, Harinath Reddy Soma, Sivaprasad Reddy Venati, C. Subodh, Challa Gunaranjan, Manoj Kumar Bethapudi, Jada Sravan Kumar, Ch. Bhanu Prasad, G. Eswaraiah, Kolluri Arjun Chowdary, Nimmagadda Revathi, Harishkumar Rasineni, Posani Venkateswarulu, K. Sreedhar Murthy, Majji Suri Babu, K.M. Krishna Reddy, Karumanchi Indraneel Babu, D.S.N.V. Prasad Babu, Advocates, for the Petitioner.

G.P. for Home, Advocate for the Respondents

C O M M O N O R D E R

"Your freedom ends where my nose begins."

A man is walking on a busy crowded street swinging his arms with gay abandon, when somebody stopped him. He said "I have my freedom and these are my arms". An elderly gentleman told him that by swinging your arms you cannot hit me on my face - "Your freedom, therefore, ends where my nose begins". This is how the concept of reasonable restriction was planted in our mind at a young age.

2. The question that arises in these cases is similar and has been pending before the Indian Judiciary for years. The opening remarks made in 1981 in Malak Singh and Others v State of P&H and Others (1981) 1 SCC 420 = AIR 1981 SC 760) by Justice O.Chinnappa Reddy are as follows:

"To what extent may the citizen's right to be let alone be invaded by the duty of the police to prevent crime is the problem posed in these two appeals by special leave under Article 136 of the Constitution."

3. This big batch of writ petitions has been filed questioning the opening and continuation of rowdy sheets against the petitioners in all these cases.

4. Learned counsels have argued the matter at length, but the leading arguments were advanced by Sri Rajareddy Koneti, learned counsel for the petitioner in W.P.No.3568 of 2022, who also challenged the vires of the Police Standing Orders under which these rowdy sheets are being opened and continued. Therefore, this Writ Petition is taken up as the lead Writ Petition.

5. This Court has also heard Sri K.S.Murthy, Learned Senior counsel, Sri V.V. Satish, Sri G. Ramgopal, Sri P.S.P. Suresh Kumar and others. The learned counsels adopted the essential arguments advanced by the lead counsels and each of them supplemented the same by making their submissions on the facts of each case.

6. In reply to this Sri G. Maheswar Reddy, learned Government Pleader for Home argued the matter at length for the respondent-State of Andhra Pradesh.

7. This Court at the very outset places on record its deep sense of appreciation for the learned counsels who argued the matter at length and also to Sri G.Maheswar Reddy, learned Government Pleader for Home, who articulated the State's view point very efficiently.

8. The gist of the submissions made by all the learned counsels for the petitioners can be summarized as follows:

a) The opening and the continuation of rowdy sheets is contrary to law. The Constitution Bench of the Hon'ble Supreme Court of India in K.S.Puttaswamy v Union of India (2017) 10 SCC 1) has clarified that privacy is also a Fundamental Right and that the judgments in cases of Kharak Singh v State of U.P. (AIR 1963 SC 1295) and M.P. Sharma v Satish Chandra (AIR 1954 SC 300)

are not good law. In view of the declaration of law by the highest Court of the land that Privacy is a Fundamental Right, it can be restricted only in accordance with a "law".

b) It is argued that as far as the State of Andhra Pradesh is concerned all the rowdy sheets are being opened and continued on the basis of Andhra Pradesh Police Standing Orders, which are merely departmental instructions and are not "law". The Andhra Pradesh Police Manual, and the orders therein on which the State places reliance, cannot be called "law". It is also submitted that the standing orders have been declared to not to have the force or / effect of law, in the cases of Mohammed Quadeer and Ors., v Commissioner of Police, Hyderabad and Ors., (1993 (3) ALD 30) and Sunkara Satyanarayana v State of Andhra Pradesh, Home Department and Ors., (1999 (6) ALT 240). It is submitted that in view of these pronouncements of law relating to the very same Police orders, no further declaration need be sought, but still the lead petitioners have sought a declaration that the Standing Orders are not law in view of the recent judgment in K.S.Puttaswamy case (2 supra).

c) Alternatively, it is also submitted that even the rules and procedure prescribed in Standing Orders are not being followed and that the Rowdy Sheets are being opened and continued mechanically without any application of mind and without any basis or material in support. It is also stated that the periodical review, which is stipulated by the Police Standing Orders, is not being followed and rowdy sheets are being continued ad infinitum. Even after acquittals in the solitary cases the rowdy sheets are being continued.

d) Even the offences not included under the A.P. Police Manual are being included or stated as the reason for opening of rowdy sheets. Cases involving transportation of tobacco products are used as a reason to open the rowdy sheets, for example in W.P.Nos.20220 of 2021 and 20139 of 2021. Even after FIRs were quashed the rowdy sheets are continued. It is also submitted that cases which are compromised in Lok Adalat etc., are still being used as a ruse to continue the rowdy sheets (W.P.No.17453 of 2021). Petty offences are registered and rowdy sheets are opened.

e) The petitioners are being called to the police station at unearthly hours and are made to wait for a day or two at the police station. The right of the police to summon the petitioners / rowdies to the police stations, making them stand / wait and the practice of parading them before the superior officers is also questioned. Police personnel are

constantly visiting the houses of the petitioners without any basis or reason.

f) Their photographs are obtained and are put up in Police Stations in prominent places branding them as "Rowdies" for the general public to see.

g) The petitioners are being classified as habitual offenders / known depredators / rowdies even if they are involved in one stray crime. Judicial definition of habitual offender as decided by the Hon'ble Supreme Court of India in the case of Vijay Narain Singh v State of Bihar (1984 CrlLJ 909), which is followed in the case of Kamma Bapuji and Ors., v Station House Officer, Brahamasamudram and Ors., (1997 (6) ALD 583) is also blatantly overlooked by the Police authority.

h) It is also submitted that despite the clear pronouncement on the law by the highest Courts of the land and the High Court of Andhra Pradesh, police are opening and continuing the rowdy sheets with utter disregard to the settled law. None of the procedural safeguards are also followed. There is no application of mind or consideration of material either in the opening or the continuation of the rowdy sheets.

i) The home/domiciliary visits, summoning to the station, collection of personal information, the display of such information and its dissemination including sharing of the same is questioned as a clear infringement of the right of privacy. Infringement of Articles 14,19 and 21 is mentioned in many writ petitions.

j) It is argued that the Cr.P.C., and other laws contain measures / provisions for prevention of crime and that these provisions of law are not at all utilised,

k) Lastly, it is argued that once there is an authoritative declaration by the Hon'ble Supreme Court of India that privacy is a Fundamental Right, it can only be restricted by a law. According to the learned counsels there is no 'law 'at all in existence and the PSO are mere administrative guidelines. Hence they pray for a general order.

9. Since very long arguments are advanced on various aspects the gist of the submission is summarised on behalf of the petitioners.

10. For the respondents, Sri G. Maheswar Reddy, learned Government Pleader for Home submitted the following:-

a) According to him, one of the most important functions of the Police is the early detection and prevention of crime. Learned Government Pleader emphasises on this aspect of collection of data / intelligence etc., for early detection of a potential crime and for the purpose of prevention of

the same. This is the essential substratum of his arguments and he submits that compelling public interest is involved in this. He relies on the Chapters relating to Surveillance in the Police Standing Orders in support.

b) It is his contention that under Section 149 of Cr.P.C., also the Police have an active duty to prevent the commission of cognizable offences. Learned Government Pleader for Home, therefore, emphasises that the entire exercise of the Police Department, in either opening or in continuing the rowdy sheet, is to ensure that a crime is not committed by gathering information/intelligence. According to him, the prevention of crime and the protection of the society are the essential reasons / rationale for the opening of a rowdy sheet.

c) He also submits that the challenge to the Police Standing Orders made in these cases is not backed up by adequate or proper pleadings and that, therefore, this Court cannot decide on the vires of the Police Standing Orders.

d) Learned Government Pleader also argues that the Police Standing Orders are not unconstitutional, that procedural safeguards are provided and that they are being implemented. He points out that proportionality is also present and that the rowdy sheets are being opened and continued only in cases whether it is absolutely necessary and in the public interest.

e) He also submits that the decision in K.S.Puttaswamy (2 supra) did not directly discuss the issue of "rowdy sheet / surveillance" etc., and that, therefore, the fact context of the said judgment cannot be lost sight of. In view of the difference in facts and the points of law, learned Government Pleader for Home submits that the case of K.S.Puttaswamy (2 supra) by itself cannot be a ground to allow all these Writ Petitions.

f) He also submits in the alternative that the judgments of the Hon'ble Supreme Court of India reported in Gobind v State of Madhya Pradesh and Another (1975) 2 SCC 148) and Malak Singh case (1 supra) recognized the need for and upheld discrete unobtrusive surveillance of suspects.

g) He also points out that in the State of Andhra Pradesh in the leading judgment of Sunkara Satyanarayana (6 supra) a learned single Judge of this Court also held that discreet surveillance is permissible in order to prevent crime.

h) He points out that the learned single Judge held that right to privacy under Articles 14, 19 and 21 are violated only when the rowdy sheeter is subjected to obtrusive/intrusive surveillance. Learned Government

Pleader for Home points out that even before the Hon'ble Supreme Court of India held that privacy is a Fundamental Right, the learned single Judge noticed this aspect and yet did not strike down the action being taken by the police. He only imposed certain "reasonable" restrictions. This judgment is cited as an alternative argument.

i) Similarly, he relies upon the judgment of the learned single Judge of the Telangana High Court in W.P.No.18726 of 2020 to argue that unobtrusive surveillance limited to barest minimum can be carried out. Alternatively by relying upon a judgment of the Karnataka High Court in W.P.No.4504 of 2021 and batch decided on 22.04.2021 (B.S.Prakash v State of Karnataka) which is after the judgment in K.S.Puttaswamy case (2 supra), learned Government Pleader points out that even the learned single Judge clearly held that in view of the compelling State interest certain guidelines have to be issued and that the institutionalised rowdy register, history sheeting etc., should not be abruptly discontinued with a stroke of pen. He points out that the learned single Judge gave alternative directions to include the due process clause. In line with this he also relies on the judgment of a learned single Judge of Madras High Court in Thirumagan v Superintendent of Police and another (2020 SCCOnLine Mad 6675) case where directions were issued to the Police only with respect to rowdy sheets

j) Therefore, learned Government Pleader argues that the Writ Petitions have to be dismissed and the entire process of rowdy sheeting etc., should not be abruptly discontinued as that would lead to "compelling State interest" being sacrificed. At best some more safeguards can be suggested and that only a case to case decision must be given based on individual facts and an enmasse declaration against rowdy sheeting is not all called for.

CONSIDERATION BY COURT:

11. The question that arises in this case is a question which has been pending before the Judiciary for years and is mentioned in the opening paragraph. The opening remarks in Malak Singh case (1 supra) by Justice O.Chinnappa Reddy were reproduced earlier itself.

12. There is no quietus to this vexed issue as can be seen from the various decisions that were pronounced over the decades. The important judgments relied upon during the course of the submissions are the following:-

i) The first of the decisions is of course the Kharak Singh case (3 supra). In this Constitution Bench judgment, the majority Judges held that the shadowing of the history sheeter for the purpose of recording his movements and activities for obtaining information is not prohibited by

law and it was held that the freedom guaranteed under Article 19(1) of the Constitution of India is not infringed by a watch being kept on the movements of the suspect. The regulation prescribing domiciliary visits was, however, struck down. The dissent of Justice K. Subba Rao for himself and Justice Shah which held that surveillance is bad is discussed later again in the judgment.

ii) In Dhanji Ram Sharma v Superintendent of Police, North Dist., Delhi Police and Ors., (AIR 1966 SC 1766 = 1996 CrlLJ 1486), three Judges of the Hon'ble Supreme Court of India had an occasion to judicially define a 'habitual offender'. However, while defining a habitual offender as one who is addicted to crime or a criminal by habit or disposition formed by repetition of crimes, the Hon'ble Supreme Court of India sounded a note of caution stating that this belief must be based upon sufficient grounds and must be reasonable.

iii) In Gopalachari v State of Kerala (AIR 1981 SC 674) a coordinate Bench of three learned Judges held that as follows:

> "To call a man dangerous is itself dangerous; to call a man desperate is to affix a desperate adjective to stigmatise a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available."

iv) In the case of Malak Singh (1 supra) also Hon'ble Supreme Court of India held that surveillance has to be unobtrusive and within limits. It was noted that prevention of crime is one of the prime purposes of the constitution of a police force. It was held that if the surveillance is unobtrusive and within bounds it is permissible. At the same time the Hon'ble Supreme Court of India clearly held in paragraphs 8 and 9 that the police do not have the licence to enter the names of whoever they like (dislike?).

v) The next judgment is the case of Gobind (9 supra). In this case the Hon'ble Supreme Court of India found that the regulations which the petitioner challenged were framed under a section of the Police Act and, therefore, they were held to be valid. The issue of privacy was also raised in this case, but the Supreme Court of India held that even if personal liberty etc., creates an independent right of privacy it can be subject to reasonable restrictions since regulations were found to have force of law. However, in paragraph 33 the following was expressed by the Hon'ble Supreme Court of India

> "...Mere convictions in criminal cases where nothing gravely imperilling the safety of society cannot be regarded as warranting surveillance under this regulation. Similarly, domiciliary visits and picketing by the police should be reduced to the clearest cases of

danger to community security and not routine follow-up at the end of a conviction or release from prison or at the whim of a police officer. In truth, legality apart, these regulations ill-accord with the essence of personal freedoms and the State will do well to revise these old police regulations verging perilously near unconstitutionality."

Emphasis is supplied, because since 1975 nothing was done to follow this dictum of the highest court of the land. In fact, this court notices all the above mentioned judgments are virtually ignored in actual practice till date.

vi) In the State of Andhra Pradesh also, a habitual offender has been defined i.e., Kamma Bapuji case (8 supra) and Puttagunta Pasi v Commissioner of Police and Ors., (1998 (3) ALT 55). The second is a Division Bench Judgment and the Kamma Bapuji (8 supra) was also approved. In the case of Mohammed Quadeer (5 supra) the right of privacy was also discussed and it is held that the Police Standing Orders do not have statutory force, and the opening of a rowdy sheet may be in violation of Law and the Constitution.

vii) In B. Satyanarayana Reddy v State of Andhra Pradesh & Ors., (2003 Online AP 1013) a Division Bench approved Kamma Bapuji (8 supra) and also held that a habitual offender is one who repeatedly or persistently commits the offence. A one-time offender / accused cannot be called a "habitual offender" as per the Division Bench.

viii) The Next important judgment for Andhra Pradesh is Sunkara Satyanarayana case (6 supra) wherein a learned single Judge went into the entire range of issues including the right to privacy long before the case of K.S.Puttaswamy (2 supra). He, however, held that the right to privacy is not expressly guaranteed under the Constitution of India as it exists but by a judicial interpretation it was held to be a guaranteed right. Ultimately, the learned single Judge gave directions about the manner in which unobtrusive surveillance should be carried out and what would be justified. He also set out the judicial remedies open to a person who has been deprived of this right. Learned single Judge held that if the surveillance is not obtrusive and does not in a material or palpable form affect the right of the suspect to move freely, it will not affect Article 21. Extensive directions were given in this judgment in Andhra Pradesh.

ix) In a large number of cases in the State of Andhra Pradesh orders were passed by this High Court holding that opening of a rowdy sheet against a person accused of a single / solitary crime is bad; that periodic review as stipulated in the Police Station Orders was not followed; that application of mind by the concerned is not visible etc. Such judgments on a case to case basis are being passed regularly by this High Court quashing / striking down the rowdy sheet due to the procedural and other lapses by the State.

x) The judgment of the Honourable Supreme Court of India in State of Andhra

Pradesh v N. Venugopal (AIR 1964 SC 33) while dealing with the Madras Police Standing Orders also held that the Standing Orders are mere administrative instructions only and do not have the force of law.

13. The reason why these judgments are mentioned is because this Court notices that despite the law as it exists (the judgments of the Hon'ble Supreme Court of India and the series of orders by the High Court of Andhra Pradesh), the police are still opening and continuing the rowdy sheets ignoring the settled law. Procedural lapses pointed out by the High Court are overlooked over and over again. The decisions in Dhanji Ram Sharma case (11 supra), Gopalachari case (12 supra) and B.Satyanarayana Reddy case (14 supra) are also completely ignored. Many people are labelled and branded as 'rowdies' without adequate grounds and/or credible material. The counters filed in the cases do not disclose the existence of credible material for branding the people as rowdies etc. Except stating the number of cases filed /pending and raising a standard plea that no one is coming forward to complain, no credible material is filed either for branding a person as such or for continuing the rowdy sheet, for example in W.P.No.17453 of 2021 the petitioner was charged under Section 379 IPC in C.C.No.462 of 2014. This was compromised in the Lok Adalat on 05.12.2014. The rowdy sheet opened in August, 2014 is continuing. Similar is the predicament of the petitioners in W.P.No.20139 of 2021, wherein the FIR itself is quashed. In W.P.No.4814 of 2020 the case was compromised in Lok Adalat. Despite the authoritative pronouncements of the Andhra Pradesh High Court that the Police Standing Orders do not have any statutory force, they are still relied upon by the respondent State for the purpose of opening and continuing the rowdy sheets. In the counters the State relies on the Police Standing Orders only. Despite there being no procedure or regulation the photographs of petitioners are being exhibited on the boards in the Police Stations. The cases are not "reviewed" as stipulated and orders of superior officers are not obtained. Despite findings of the Court acquitting them, the petitioners are still being called to the police station and paraded or made to wait for hours. In a majority of the cases in this batch the interim prayer is for an order not to call/summon the petitioner to the police station. The people involved in transportation of Tobacco produce are also being classified as rowdy sheeters. These are also not offences described under the Police Stating Orders. In W.P.No.25448 of 2021 the petitioner was acquitted in May, 2019. But the rowdy sheet is continuing. It is not clear how the Police have concluded that these petitioners are "habitual offenders" who are 'addicted' to crime and are likely to commit the crimes / become repeat offenders. Despite Kharak Singh case (3 supra) and Sunkara Satyanarayana case (6 supra), police still visit the houses of the petitioners/ citizens. This is the State of affairs. In the lead case W.P.No.3568 of 2022 the petitioner is essentially charged under the FSS Act. Three out of five cases were quashed. Two similar crimes are still pending. In the counter affidavit filed itself the order No.601 is reproduced. It clearly shows that the

petitioner will not fit within the 14 types of offences mentioned in paragraph 5. Even the condition mentioned in Standing Order No.602(2) which shows that the History Sheet can be continued if the SP/DCP/CP is of the considered view that his activities are prejudicial to the maintenance of public order. This suggestion should be based upon the credible material and cannot be subjective satisfaction. The necessary information, including the details which lead to the conclusion to continue the rowdy sheet is not visible from a reading of the counter.

K.S.PUTTASWAMY AND ITS IMPACT:

14. The issue on privacy is finally settled in the landmark judgment of K.S.Puttaswamy case (2 supra). The following are the conclusions of the learned Judges:

> Dr. Justice D.Y. Chandrachud on behalf of himself and the Chief Justice J.S. Khehar and Justice S. Abdul Nazeer: (Paras 313 and 315)
>
> "313. Privacy has been held to be an intrinsic element of the right to life and personal liberty under Article 21 and as a constitutional value which is embodied in the fundamental freedoms embedded in Part III of the Constitution. Like the right to life and liberty, privacy is not absolute. The limitations which operate on the right to life and personal liberty would operate on the right to privacy. Any curtailment or deprivation of that right would have to take place under a regime of law. The procedure established by law must be fair, just and reasonable. The law which provides for the curtailment of the right must also be subject to constitutional safeguards.
>
> Justice Jasti Chelameswar – Para 375
>
> "375. All liberal democracies believe that the State should not have unqualified authority to intrude into certain aspects of human life and that the authority should be limited by parameters constitutionally fixed. Fundamental rights are the only constitutional firewall to prevent State's interference with those core freedoms constituting liberty of a human being. The right to privacy is certainly one of the core freedoms which is to be defended. It is part of liberty within the meaning of that expression in Article 21."
>
> Justice S.A.Bobde – Paras 428.2 and 428.3
>
> "428.2. The right to privacy is inextricably bound up with all exercises of human liberty—both as it is specifically enumerated across Part III, and as it is guaranteed in the residue under Article 21. It is distributed across the various Articles in Part III and, mutatis mutandis, takes the form of whichever of their enjoyment its violation curtails.
>
> 428.3. Any interference with privacy

by an entity covered by Article 12's description of the "State" must satisfy the tests applicable to whichever one or more of the Part III freedoms the interference effects."

Justice R.F.Nariman – para 526

"526. But this is not to say that such a right is absolute. This right is subject to reasonable regulations made by the State to protect legitimate State interests or public interest. However, when it comes to restrictions on this right, the drill of various articles to which the right relates must be scrupulously followed. For example, if the restraint on privacy is over fundamental personal choices that an individual is to make, State action can be restrained under Article 21 read with Article 14 if it is arbitrary and unreasonable; and under Article 21 read with Article 19(1)(a) only if it relates to the subjects mentioned in Article 19(2) and the tests laid down by this Court for such legislation or subordinate legislation to pass muster under the said article. Each of the tests evolved by this Court, qua legislation or executive action, under Article 21 read with Article 14; or Article 21 read with Article 19(1)(a) in the aforesaid examples must be met in order that State action pass muster. In the ultimate analysis, the balancing act that is to be carried out between individual, societal and State interests must be left to the training and expertise of the judicial mind."

Justice A.M. Sapre – 557

"557. In my considered opinion, "right to privacy of any individual" is essentially a natural right, which inheres in every human being by birth. Such right remains with the human being till he/she breathes their last. It is indeed inseparable and inalienable from human being. In other words, it is born with the human being and extinguishes with human being."

Justice Sanjay Kishan Kaul – Paras 639 and 650

639. The right to privacy as already observed is not absolute. The right to privacy as falling in Part III of the Constitution may, depending on its variable facts, vest in one part or the other, and would thus be subject to the restrictions of exercise of that particular fundamental right. National security would thus be an obvious restriction, so would the provisos to different fundamental rights, dependent on where the right to privacy would arise. The public interest element would be another aspect.

650. Let the right to privacy, an inherent right, be unequivocally a fundamental right embedded in Part III of the Constitution of India, but subject to the restrictions specified,

relatable to that part. This is the call of today. The old order changeth yielding a place to new."

15. The final conclusions of this landmark judgment are in para 652, which are reproduced hereunder –

"652. The reference is disposed of in the following terms:

652.1. The decision in M.P. Sharma [M.P. Sharma v. Satish Chandra, AIR 1954 SC 300] which holds that the right to privacy is not protected by the Constitution stands overruled;

652.2. The decision in Kharak Singh [Kharak Singh v. State of U.P., AIR 1963 SC 1295] to the extent that it holds that the right to privacy is not protected by the Constitution stands overruled. 652.3. The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.

652.4. Decisions subsequent to Kharak Singh [Kharak Singh v. State of U.P., AIR 1963 SC 1295] which have enunciated the position in para 652.3, above lay down the correct position in law."

16. Thus, in view of this authoritative pronouncement of the Hon'ble Supreme Court of India the right to privacy is now recognized as a Fundamental Right. It is an "inherent right", an "intrinsic right" that always exists and has been classified as a "primordial natural right". Therefore, it is crystal clear that the police orders or police action will have to be tested against the touchstone of the conclusions in this landmark judgment.

17. Justice R.F.Nariman in his book 'Discordant Notes' called Justice Koka Subba Rao as the Guardian of Fundamental Rights and as one of the Four Horsemen of the Apocalypse for foreseeing the future tribulations. This guardian angel's dissent in Kharak Singh case (3 supra) has been expressly approved in K.S.Puttaswamy case (2 supra). This dissent as approved is the core of the submissions of many counsels and particularly Sri Raja Reddy K. On this basis he fervently submits that any surveillance without the backing of law is a clear infringement of Act 19 of 2021. He lays stress on the conclusions in para-32/33 and argues that the "whole state" is a prison / jail if a person is under surveillance.

18. Actually a closer examination reveals that even before K.S.Puttaswamy (2 supra) the march of law in declaring "privacy" as a fundamental law is clearly visible from the following judgments:

19. In People's Union for Civil Liberties (PUCL) v. Union of India (1997) 1 SCC 301) it was held in para 17 as follows:

"17. We have, therefore, no hesitation in holding that right to privacy is a part of the right to 'life' and 'personal liberty' enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to

privacy, Article 21 is attracted. The said right cannot be curtailed 'except according to procedure established by law'."

20. In Ramlila Maidan Incident, In re (2012) 5 SCC 1) it was held as follows:

"309. Privacy and dignity of human life has always been considered a fundamental human right of every human being like any other key values such as freedom of association and freedom of speech. Therefore, every act which offends or impairs human dignity tantamounts to deprivation pro tanto of his right to live and the State action must be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. (Vide Francis Coralie Mullin v. UT of Delhi [(1981) 1 SCC 608 : 1981 SCC (Cri) 212 : AIR 1981 SC 746].)

311. The citizens/persons have a right to leisure, to sleep, not to hear and to remain silent. The knock at the door, whether by day or by night, as a prelude to a search without authority of law amounts to be police incursion into privacy and violation of fundamental right of a citizen. (See Wolf v. Colorado [93 L Ed 1782:338 US 25 (1949)].)

312. Right to privacy has been held to be a fundamental right of the citizen being an integral part of Article 21 of the Constitution of India by this Court. Illegitimate intrusion into privacy of a person is not permissible as right to privacy is implicit in the right to life and liberty guaranteed under our Constitution. Such a right has been extended even to woman of easy virtues as she has been held to be entitled to her right of privacy. However, right of privacy may not be absolute and in exceptional circumstance particularly surveillance in consonance with the statutory provisions may not violate such a right."

21. K .S.Puttaswamy case (2 supra) dealt with all the issues raised and finally concluded the matter.

22. Once "privacy" is declared as a Fundamental Right law and any restriction is to be imposed on this primordial, intrinsic, natural Right can only be in terms of a "law" which meets the rigor of Article 13, which occurs in Part-III of the Constitution of India.

23. Articles 13 (2) and 13 (3) are reproduced hereunder:

"13. (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having

in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

24. Any such law which will or can place a restriction on this right of privacy shall also have to meet the following triple test as laid down in K.S.Puttaswamy case (2 supra) –

(i) Legality, which postulates the existence of law;

(ii) Need, defined in terms of a legitimate State aim; and

(iii) Proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them."

(iv) In addition, procedural guarantees against abuse should also be present.

25. Therefore, unless and until these tests or these thresholds are crossed the police in the State of Andhra Pradesh cannot deprive a man of his right to privacy with the Police Standing Orders.

26. The Police Standing orders in the State of AP were introduced as per G.O.Ms.No.308, dated 09.02.1960, amended/updated by G.O.Ms.No.201, dated 08.09.2001 and lastly revised on 14.02.2017. This is the current / prevalent version. It is stated very clearly in these three G.Os., that these orders are only "guidelines".

27. Admittedly, as per G.O.Ms.No.19, dated 14.02.2017, the Manual with the Standing Orders are finally revised. It is stated very clearly in clause (1) - that these "Standing Orders" in the Manual do not supersede any statutory rules, regulations etc. As per Clause (2) these orders do not vest the police officers with any power not specifically conferred with the Cr.P.C., I.P.C., etc. It is clear that the Manual is only a guideline and procedure for all the police officers. Thus (apart from the authoritative case law) it is clear that the Police Standing Orders do not have any statutory force. They are not even regulations and are mere departmental instructions. It is clearly spelt out in all the three G.O.s, mentioned above that they will not supersede any rule or regulation. They are admittedly not framed under the Police Act, 1861 or any other such law.

28. As far as sufficiency of pleadings issue is concerned, this Court is of the opinion that sufficient pleadings have been raised. Infringement of Articles 14, 19 and 21 is specifically mentioned in many of the Writ Petitions. Even otherwise, the parties had ample opportunity spread over days for arguing the issue. The case law cited and considered makes it clear that the issue of infringement of Fundamental Rights was argued. All the facts necessary for determination are before this Court.

Therefore, this Court holds that the adequacy of pleadings issue is not very material. This Court also draws the support from Union of India v Khas Karanpura Colliery Co. Ltd., (AIR 1969 SC 125) and Kedar Lal Seal v Hari Lal Seal (AIR 1952 SC 47).

29. Therefore, as far as the State of Andhra Pradesh is concerned –

a) It is reiterated that the Police Standing Orders do not have the force of law and they cannot be used as the means or the justification for opening and continuation of rowdy sheets. They are mere administrative guidelines.

b) Already in Mohammed Qadeer case (5 supra), Sunkara Satyanarayana case (6 supra), the Courts have held that these Standing Orders do not have force of law. These judgments have become final and have not been challenged. Therefore, there is no need for further 'declaration' on this as mentioned earlier.

c) Once the Police Standing Orders are held / declared to be without any statutory force in the State of Andhra Pradesh it is not necessary or needed for a party to seek a de novo declaration that the Standing Orders are contrary to law. However, such a prayer is made in W.P.No.3568 of 2022 and an Interlocutory Application (I.A.No.2 of 2022) was also filed to amend the prayer. The said application is also allowed and the prayer is amended. That such regulations/orders are bordering on unconstitutionality is noticed by the Hon'ble Supreme Court of India also in 1975 itself. (Gobind case – 9 supra).

d) The Police Standing Orders do not also pass the tests stipulated in K.S.Puttaswamy case (2 supra).

e) The issues of infringement of Fundamental Rights are raised in many of these cases. That domiciliary visits are continuing is alleged. Display of photographs is also alleged. Summoning to the Police Station; being asked to wait for hours; branding a person as "rowdy" contrary to law etc., are all urged. Difficulties faced for simple issues like getting a passport due to the pendency of a rowdy sheet are also urged. Persons involved in a single but simple offence are branded as habitual offenders. There are also glaring violations and disobedience of the judicial orders passed. Application of mind is not visible as per PSO 600(2) etc., and periodic review as per PSO 602 (1 and 2) is also not visible.

30. However, the compelling State interest, which is so well argued and articulated by Sri G. Maheswar Reddy, learned Government Pleader for Home, cannot be totally lost sight of by this Court and needs to be answered. This compelling State interest is the need of the State and the police to prevent the crime. The

"surveillance" and the opening of rowdy sheets is justified by the learned Government Pleader for Home on the ground that the collection of this data and information is necessary for the purpose of detection of a crime before it occurs.

31. This Court cannot be oblivious to this compelling State need or that this procedure has been in vogue for decades. However, it must be said again that the efforts to "prevent" crime do not meet the test of law. The issue is about the use / misuse of the information and the abuse of power. Unobtrusive surveillance, gathering of information through lawful means was not prohibited. In fact, it was held necessary to prevent crime in the earlier cases. The indiscriminate use of this information; the night visits; frequent calling to the police station; display of photographs is the issue, despite the clear judgments.

32. Sri Maheswar Reddy, learned Government Pleader for Home sought to get over the judgment of K.S.Puttaswamy (2 supra) by stating that the factual context in the said judgment is different. He also relied upon the compilation of judgments which he had furnished including the judgments of Gobind and Malak Singh cases (9 and 1 supra) etc., to substantiate his case that these judgments of Hon'ble Supreme Court permitted certain actions of the Police like surveillance etc. Therefore, he sought to justify the police action in the present case. In the case of Gobind (9 supra), the Hon'ble Supreme Court found that the regulations were traceable to Section 46(2) (c) the Police Act. In Malak Singh's case (1 supra), the vires of the rules was not challenged. However, in the State of Andhra Pradesh, it is clear the standing orders are not framed under any statute. They were already held to be without any statutory force. Apart from this, it is noticed by close analysis of the judgment of the learned Judges in K.S.Puttaswamy (2 supra) that their Lordships considered the entire law on the subject. Issues about privacy/surveillance etc., were raised in the submissions of the learned counsels and also considered by the learned Judges. The lead judgment of Justice Dr.D.Y.Chandrachud discusses the upholding of the minority view in Kharak Singh case (3 supra) etc., by the judgments in Rustom Cavasjee Cooper v. Union of India etc.. He clearly points out in para 22 by supplying emphasis that the minority view in Kharak Singh case (3 supra) case was upheld in Maneka Gandhi v Union of India (1978) 1 SCC 248) case. Thereafter, from paras 51 to 104, there is a discussion about the various judgments on the subject including Gobind and Malak Singh cases (9 and 1 supra) etc. His Lordship further traced the growth of law under various heads and ultimately while discussing 'discordant notes'; in the case of ADM Jabalpur, he quoted the dissenting opinion of His Lordship H.R.Khanna and clearly held that even in the absence of Article 21, it would not be permissible for the State to deprive a person of his life and liberty without the authority of law. Thereafter, His Lordship held that ADM Jabalpur has to be overruled. After further examining the matter and the growth of law including a comparative study with the law in other countries, in para 326 His Lordship held as follows:

"326. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them;"

33. Thereafter, His Lordship Justice Jasti Chelameswar did a very similar analysis and proceeded to examine the salient features of the minority view in Kharak Singh case (3 supra) at para 342. He endorsed the view expressed by Justice Nariman and thereafter analysed the law on the subject. Ultimately, in para 374 and 375 his lordship held as follows page 531:

"374. I do not think that anybody in this country would like to have the officers of the State intruding into their homes or private property at will or soldiers quartered in their houses without their consent. I do not think that anybody would like to be told by the State as to what they should eat or how they should dress or whom they should be associated with either in their personal, social or political life. Freedom of social and political association is guaranteed to citizens under Article 19(1)(c). Personal association is still a doubtful area. The decision making process regarding the freedom of association, freedoms of travel and residence are purely private and fall within the realm of the right of privacy. It is one of the most intimate decisions.

375. All liberal democracies believe that the State should not have unqualified authority to intrude into certain aspects of human life and that the authority should be limited by parameters constitutionally fixed. Fundamental rights are the only constitutional firewall to prevent State's interference with those core freedoms constituting liberty of a human being. The right to privacy is certainly one of the core freedoms which is to be defended. It is part of liberty within the meaning of that expression in Article 21."

34. All the other learned Judges also agreed with the conclusions.

35. Therefore, the contention of learned Government Pleader that the Police Standing Orders cannot be struck down only on the findings of K.S.Puttaswamy (2

supra) does not appear to be correct. K.S.Puttaswamy's case (2 supra) is not merely relating to "data protection or aadhar card". The entire gamut of issues involving 'privacy' has been discussed and concluded. The cases relied on by the State in the present batch and issues of surveillance vis-a-vis 'privacy' were elaborately discussed. Therefore, since this is the now law of the land, as declared by the Constitution Bench, it has to be followed.

36. The decision of the Hon'ble Supreme Court of India in Government of Andhra Pradesh and Ors., v P. Laxmi Devi (2008) 4 SCC 720) gives a useful direction to this Court to conclude this issue.

> "34. In India the grundnorm is the Indian Constitution, and the hierarchy is as follows:
>
> (i) The Constitution of India;
>
> (ii) Statutory law, which may be either law made by Parliament or by the State Legislature;
>
> (iii) Delegated legislation, which may be in the form of rules made under the statute, regulations made under the statute, etc.;
>
> (iv) Purely executive orders not made under any statute.
>
> 35. If a law (norm) in a higher layer in the above hierarchy clashes with a law in a lower layer, the former will prevail. Hence a constitutional provision will prevail over all other laws, whether in a statute or in delegated legislation or in an executive order. The Constitution is the highest law of the land, and no law which is in conflict with it can survive. Since the law made by the legislature is in the second layer of the hierarchy, obviously it will be invalid if it is in conflict with a provision in the Constitution (except the directive principles which, by Article 37, have been expressly made non-enforceable).

37. The duty of a Constitutional Court is also spelt out in this very judgment as follows:

> 90. It may be noted that there were no fundamental rights in the Government of India Act, 1935. The Founding Fathers of our Constitution, who were also freedom fighters for India's Independence, knew the value of these rights, and that is why they incorporated them in the Constitution.
>
> 91. It must be understood that while a statute is made by the peoples' elected representatives, the Constitution too is a document which has been created by the people (as is evident from the Preamble). The courts are guardians of the rights and liberties of the citizens, and they will be failing in their responsibility if they abdicate this solemn duty towards the citizens. For this, they may sometimes have to declare the act of the executive or the legislature as unconstitutional.

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95. In Ghani v. Jones [(1970) 1 QB 693 : (1969) 3 WLR 1158 : (1969) 3 All ER 1700 (CA)] Lord Denning observed: (All ER p. 1706 A-B)

"... A man's liberty of movement is regarded so highly by the law of England that it is not to be hindered or prevented except on the surest grounds."

96. The above observation has been quoted with approval by a Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248] (vide SCC para 64 : AIR para 99).

.....

98. ..... It is the solemn duty of the courts to uphold the civil rights and liberties of the citizens against executive or legislative invasion, and the court cannot sit quiet in this situation, but must play an activist role in upholding civil liberties and the fundamental rights in Part III, vide Maneka Gandhi v. Union of India [(1993) 1 SCC 22], Joginder Kumar v. State of U.P. [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172 : AIR 1994 SC 1349] , D.K. Basu v. State of W.B. [(1997) 1 SCC 416 : 1997 SCC (Cri) 92 : AIR 1997 SC 610] , etc."

38. In view of the clear case law including but not limited to K.S.Puttaswamy case (2 supra) and the absolute failure to follow the settled law this Court has to conclude as follows:

> This collection of photos; the display of photos; branding a person as "rowdy"; summoning to the Police Station, parading / waiting domiciliary/home visits etc., as per the Police Station Orders are a direct infringement of the petitioners' right to privacy. Henceforth with the existing Police Standing Orders the police cannot do the same. The police cannot summon any person to the Police Station, visit any home or house for surveillance; for gathering information, take or display photographs, fingerprints etc., or even classify/ label a person as a ROWDY etc. They cannot carry out intrusive or obtrusive surveillance. Sunkara Satyanarayana case (6 supra) also has to be read subject to K. Puttaswamy (2 supra), which is by a Constitution Bench of the Supreme Court of India.

39. The judgments of the Learned Judges of the Telangana; Karnataka and Madras High Courts are not relied upon because the A.P. Police Standing Orders were declared by this High Court as 'non-statutory'. This Court is bound by the same. This Court has to hold that the same cannot be used as a justification for opening or continuing the rowdy sheets. The action of calling a person to the Police Station etc., taking photograph; display of photos etc., are thus a direct violation of Articles 14, 19 and 21 of the Constitution of India.

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40. In addition, keeping in view the compelling state need for prevention of crime, the following directions are also issued:

(a) The State should either frame statutory rules or enact a law within a short time on these issues of surveillance etc., since there is a need for gathering information / intelligence to prevent crime. This should be done on a high priority. The comment made by the Hon'ble Supreme Court of India in Gobind case (9 supra) is that "In truth, legality apart, these regulations ill-accord with the essence of personal freedoms and the State will do well to revise these old police regulations verging perilously near unconstitutionality".

Even after about 45 years it transpires that the State did not revise the old Police regulations which were held to be very close to unconstitutionality". It is hoped that the State would urgently frame an appropriate law on this subject keeping in view the laws on the subject including the aspect of 'privacy' being declared a Fundamental Right.

(b) This Court also notices that Chapter-VII of the Cr.P.C., is hardly being invoked by the Police. This provides for obtaining security for keeping the peace and for good behaviour i.e., to prevent crime. The various Sections 106, 111 and other sections of this Part of the Cr.P.C., are in the opinion of this Court enough to meet the apprehension of the police that they should know about the activities of the people, who are classified as rowdies etc., and for preventing crime. In fact, Sections 107 and 109 Cr.P.C., deal with people, who are likely to commit a crime, which is a cognizable offence or disturb the public tranquillity etc., and to take preventive steps. Similarly, Section 110 (a) to (g) of Cr.P.C., also deals with 'habitual offenders'. These Sections also provide some procedural safeguards. Their efficacy and use has been recognised and upheld in cases like Madhu Limaye v Sub-Divisional Magistrate (AIR 1971 SC 2486). Therefore, for the present, this Court is of the opinion that if the Police are of the opinion that a check must be kept on the activities of the habitual offenders or others likely to commit a crime and to prevent a crime the provisions of this Chapter must be utilised. This is also clearly mentioned in Chapter 38 of the Police Manual but it is not followed. Similarly, the police can also encourage the people mentioned in Section 40 of the Cr.P.C., (with regard to villages and panchayats) to furnish the information as required under this Section.

(c) The provisions of other laws like the A.P. Habitual Offenders Act 1962 can also be utilised for the registration

of habitual offenders (Sec.3 and 4) collect their fingerprints, photographs, palm impressions, foot prints etc., (Sec.6) and also place restrictions on his movement (Sec.11).

(d) A further legal solution is also found in the Cr.P.C., (Identification) Act, 2022 (for short "Act 11 of 2022"). The objects of the Act are as follows:

"An Act to authorise for taking measurements of convicts and other persons for the purpose of identification and investigation in criminal matters and to preserve records and for matters connected therewith and incidental thereto."

(e) 'Measurement' is defined in Section 2(b) of Act 11 of 2022 as follows:

"measurements" includes finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure, 1973"

(f) Section 3 is as follows:

"3. Any person, who has been —

(a) convicted of an offence punishable under any law for the time being in force; or

(b) ordered to give security for his good behaviour or maintaining peace under section 117 of the Code of Criminal Procedure, 1973 for a proceeding under section 107 or section 108 or section 109 or section 110 of the said Code; or

(c) arrested in connection with an offence punishable under any law for the time being in force or detained under any preventive detention law, shall, if so required, allow his measurement to be taken by a police officer or a prison officer in such manner as may be prescribed by the Central Government or the State Government:

Provided that any person arrested for an offence committed under any law for the time being in force (except for an offence committed against a woman or a child or for any offence punishable with imprisonment for a period not less than seven years) may not be obliged to allow taking of his biological samples under the provisions of this section.

(g) Section 5 is as follows:

"Where the Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 or any other law for the time being in force, it is expedient to direct any person to give measurements under this Act, the Magistrate may make an order to that effect and in that case, the person to whom the order

relates shall allow the measurements to be taken in conformity with such directions".

41. Section 5 provides for judicial intervention / supervision and thus there are certain inherent safeguards in this to meet the legal due process test.

42. These suggestions are made as the provisions of the existing laws mentioned above give enough scope for the police to gather the information and also to take action necessary for the purpose of prevention of crime.

43. The correct method is to enact a "law" permitting the surveillance etc., for gathering information only.

44. It is also made clear that in view of the authoritative pronouncements of the Hon'ble Supreme Court of India ending with the case of K.S.Puttaswamy case (2 supra) and as the Police Standing Orders are not law and do not meet the rigorous standards prescribed, the summoning to the station, intrusive surveillance, display of photographs etc., will amount to a breach of the Fundamental Right of privacy. It will also amount to wilful disobedience of the order of the Hon'ble Supreme Court of India, which is the law of the land. It will also be a violation of the earlier orders passed by this Court. The officers who are not party to these writs may also be is contempt of court if they still follow the A.P. Police Standing Orders.

45. Hence, the Writ Petition No.3568 of 2022 is allowed declaring the Standing Orders of A.P. Police Manual / A.P. Police Standing Orders to the extent of opening/continuation of Rowdy Sheet, Suspect Sheet, History Sheet etc., and on that basis the surveillance of the individual (in terms of Chapter 37 of the above said Standing Orders) as void. All the other Writ Petitions are also allowed. All the rowdy sheets opened in this batch of Writ Petitions are directed to be closed immediately. The police cannot open or continue a rowdy sheet or collect data pertaining to a person without the sanction of "law". Collection of personal data and its usage for prevention of crimes also can only be in accordance with a "law" which crosses the thresholds mentioned in the Constitution of India and the various judgments including K.S.Puttaswamy case (2 supra) since 'privacy' is now a Fundamental Right as per Part-III of the Constitution of India. It is reiterated that the police cannot (under the existing orders) indulge in night visits; domiciliary visits to the houses of a suspect or accused. They cannot take or demand the photographs, fingerprints etc., except under the procedure established by a 'law' and if the conditions laid down are satisfied. Accused or suspects cannot be summoned or called to the Police Station or anywhere else either during festivals / elections/ weekends etc. They cannot be made to wait at the Police Stations for any reason or seek permission to leave the local jurisdiction.

46. In the circumstances, there shall be no order as to costs. Consequently, the Miscellaneous Applications pending, if any, shall stand closed.

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2022(2) L.S. 217 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Ms.Justice B.S. Bhanumathi

Yerra Madhubabu ..Petitioner
Vs.
Sam Uma Lakshmi Kantham & Ors., ..Respondents

STAMP ACT, Article 49-A of Schedule 1-A - Plaintiff filed a suit for cancellation of registered non-possessory agreement of sale-cum general power of attorney, executed by defendants 1 and 2 in favour of 3rd defendant alleging fraud and collusion - During trial, when the 3rd defendant was intending to mark the money voucher issued by the defendants 1 and 2, Plaintiff raised an objection for marking the same as exhibit on the ground that it is neither a mere money voucher nor a receipt, but was a deed of conveyance and is liable to be registered and necessary stamp duty and penalty are to be collected and therefore, the said document cannot be admitted in evidence.

Trial Court held that the document which is styled as money voucher, requires registration as possession is delivered by virtue of that document and it cannot be admitted in evidence unless stamp duty and penalty are paid - Hence, instant revision by the Plaintiff.

HELD: A document can be objected to be received in evidence mainly on two grounds; such as want of registration and want of payment of proper stamp duty - Since both these aspects are governed by two separate enactments, mere compliance of provisions of one of such Acts is not enough - To make a document fit for receipt in evidence, the provisions of the Stamp Act are also to be complied with - As such, since in the present case, the document requires stamp duty and penalty with reference to Article 49 A of Schedule 1A of the Stamp Act.

In the present case, document requires stamp duty and penalty with reference to Article 49-A of Schedule 1A of the Stamp Act, as it was held to be a document of agreement of sale with possession by subsequent act in continuation of the earlier agreement of sale without possession, unless such condition of payment of proper stamp duty with penalty is complied with, the document cannot be received in evidence - On such payment, the document cannot be objected to be received in evidence for collateral purpose - Civil Revision stands dismissed.

Mr.Sai Gangadhar Charmarty, Advocate for the Petitioner.
Mr.M.Radha Krishna, Advocate for the Respondents.

CRP.No.99/18 Date:16-6-2022

O R D E R

This civil revision petition, under Article 227 of the Constitution of India, is filed aggrieved of the order, dated 22.11.2017, passed in O.S.No.36 of 2011 on the file of the Court of X Additional District & Sessions Judge, Krishna, at Machilipatnam.

2. Heard Sri Sai Gangadhar Chamarty, learned counsel for the revision petitioner/plaintiff and Sri M. Radha Krishna, learned counsel the respondents/ defendants.

3. The facts, in brief, are that the plaintiff filed a suit for cancellation of registered non-possessory agreement of sale-cumgeneral power of attorney, dated 10.12.2019, executed by defendants 1 and 2 in favour of 3rd defendant alleging fraud and collusion. The plaintiff filed a suit in O.S.No.52 of 2009 on the file of the Court of Principal District Judge, Machilipatnam, against the 1st defendant for recovery of amount due under the promissory note, dated 30.06.2008, executed by the 1st defendant. As the 1st defendant failed to discharge the same, the plaintiff filed I.A.No.342 of 2009 in O.S.No.52 of 2009 seeking attachment of the schedule property before judgment. In spite of giving an undertaking not to alienate the schedule property, the 1st defendant filed counter stating that the schedule property was mortgaged to State Bank of Hyderabad, Machilipatnam, towards security and the 1st defendant already alienated the schedule property and has no salable interest over the same. It is the contention of the plaintiff that the property hypothecated to the State Bank of Hyderabad and the schedule property in I.A.No.342 of 2009 in O.S.No.52 of 2009 are one and the same and the registered nonpossessory agreement-cum-general power of attorney is created with a view to defeat and delay the suit claim of the plaintiff. Hence, the suit was filed.

4. The defendants 1 and 2 filed separate written statements and in respect of the document in question, they stated that the 3rd defendant is a bona fide purchaser of the schedule property, purchased the same for valuable consideration of Rs.41,81,000/- from defendants 1 & 2 and paid a sum of Rs.36,00,000/- and also paid the balance of Rs.5,80,000/- to the defendants 1 & 2 on 18.12.2009. The 3rd defendant filed separate written statement and further contended that he obtained receipt from defendants 1 and 2 and thereafter, he sold away the property to the 4th defendant long prior to the filing of the suit. On receipt of suit summons, he came to know about the previous transaction and the suit filed by the plaintiff in O.S.No.52 of 2009 and about filing of petition in I.A.No.342 of 2009 for attachment before judgment in the suit. During trial, when the 3rd defendant was intending to mark the money voucher issued for Rs.5,80,000/- by the defendants 1 and 2 on 18.12.2009, counsel for the plaintiff raised an objection for marking the same as exhibit on the ground that it is neither a mere money voucher nor a receipt, but possession was delivered after receiving Rs.5,80,000/- and as such, it is a deed of conveyance and is liable to be registered and necessary stamp duty and penalty are

to be collected and therefore, the said document cannot be admitted in evidence.

5. After hearing both the parties, the trial Court held that the document which is styled as money voucher, requires registration as possession is delivered by virtue of that document and it cannot be admitted in evidence unless stamp duty and penalty are paid by the 3rd defendant.

6. Hence, this revision by the plaintiff.

7. The revision petitioner is mainly aggrieved by the direction of the trial Court permitting the 3rd defendant to take steps for payment of stamp duty and penalty for use of the document for collateral purpose of proving possession of the property. It is argued that a document which requires registration but not registered cannot be looked into as evidence and in this regard, the following decisions have been cited:

(i) Ponnapola Seetha Ramaiah v. Snagala Sreenivasulu (2012 (6) ALT 549)

(ii) Golla Dharmanna v. Sakari Poshetty and others (2013 (6) ALT 205)

(iii) Yashchandra (D) by L.Rs v. State of Madhya Pradesh (AIR 2017 SUPREME COURT 4572)

(i) In Ponnapola Seetha Ramaiah (1 supra) (decided on 27.09.2012), where the agreement of sale without possession followed by delivery of property on payment vide endorsements on the back of agreement, it is held that such document requires registration and for want of registration, the same is to be excluded for evidence. In the said case, Section 49 of the Registration Act has been considered. It is pertinent to refer contrary view expressed by the same Judge in the case of K.Ramamoorthi (infra).

(ii) In Golla Dharmanna v. Sakari Poshetty and others (2nd supra) the suit is one for declaration of tile and perpetual injunction. A document transferring right, title and interest in the immovable property worth exceeding Rs.100/- is regarded as sale deed and held it requires registration as per Section 17(1)(b) of the Registration Act and thus merely because the requisite stamp duty and penalty has been paid in view of Section 35(a) of the Indian Stamp act, 1899, it cannot be said that such document is admissible in evidence as objection as to requirement of registration is different from objection as to requirement of stamp duty and compliance of stamp duty does not automatically make it admissible in evidence, if as per law, the said document is also required to be registered. No point regarding admissibility of such document for purposes mentioned in Section 49 of the Registration Act was considered.

(iii) In Yashchandra (D) by L.Rs v. State of Madhya Pradesh (3rd supra)

a document receipt of amount and permission to enclose land and cultivate 1/3rd of his land and after payment of the full amount, payee is entitled to cultivate the land for 10 years. Since this document was held to be antedated, it was held that the said document cannot be looked into for deciding whether this document creates any right, title or interest in the appellant. Further, on the contention that it can be used for collateral purpose of possession is raised, no express finding is given nor was Section 49 of the Registration Act was considered.

8. On the other hand, learned counsel for the respondents submitted that when a document which requires registration has not been registered, the same can be received in evidence for collateral purpose by virtue of proviso to Section 49 of the Registration Act, 1908 and as such, the trial Court has rightly given liberty to the 3rd defendant to pay necessary stamp duty and penalty for collateral purpose of proving possession and in this regard, learned counsel placed reliance on the following decisions:

(i) E.Padma Rao @ Vadla Padma Rao & others v. Vijay Kumar (2013) 1 ALD 581)

(ii) K.Ramamoorthi v. C.Surendranatha Reddy (2012) 6 ALD 163)

(iii) V.Dharma Reddy v. S.Hari Ram (2004) 5 ALD 600).

(i) In E.Padma Rao @ Vadla Padma Rao & others v. Vijay Kumar (4 supra), in a suit for specific performance, the existence of the agreement was not in dispute, but its admissibility in evidence is objected on the ground it was not stamped as required under law. The proviso to Explanation 1 to Article 47-A of Schedule 1 A of the Stamp Act reads as below:

"Explanation 1:- An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a "sale" under this article: Provided that, where subsequently, a sale deed is executed in pursuance of agreement of sale as aforesaid or in pursuance of an agreement referred to in clause (B) of article 6, the stamp duty, if any, already paid or recovered on the agreement of sale shall be adjusted towards the towards the total duty leviable on the sale deed".

After excerpting proviso to Explanation 1 to Article 47-A of Schedule 1 A of the Stamp Act, it is observed that what becomes important and pivotal in this regard is the factum of delivery of possession, whether it is at the time of execution of agreement or subsequent thereto.

Therefore, it is held that the agreement by which possession of land was given to lay it into plots, lay roads thereon and develop the land was held to have fallen within the explanation and requires stamp duty under

Article 47A. It is a peculiar case, where ¾ of the property was already sold; a converse situation arose where the stamp duty paid on sale deeds to be considered to examine whether the agreement to sell was found not adequately stamped and such situation is not contemplated in the proviso to Explanation 1. Then the High Court observed at paragraphs 14 to 17 as follows:

> "14. The situation in fail, triggers a discussion about certain basic aspects. Though logic and morality, as such, do not constitute the basis for claiming any relief, there is no taboo as regards their application in the process of adjudication. This very case provides an occasion to address the issue.
>
> 15. The petitioners do not dispute the existence of an agreement between them and the respondents. As a matter of fact, they have respected it to the extent of 3/4th of the property covered by it. Till the matter reached the Court, they did not doubt the veracity of the agreement or its enforceability. It is only when a suit is filed as regards the balance, they plead that the agreement is such a prohibited substance, that it cannot have entry into the Court at all. It is on account of such a stance, that people are gaining courage to say or do something in a Court, which they do not feel it appropriate, to do outside. This is how an idiom, that a person who is otherwise truthful outside, would gain courage to speak falsehood, once he enters the witness box in a Court.
>
> 16. The procedures in law are formulated only to help the parties and the Court, to get the root and truth of the matter and the Courts cannot remain mute spectators to braze in attempts to subvert the truth. If proper attention is not paid in this regard, a situation may develop where Courts would become places where acts of immorality are committed with impunity.
>
> 17. Logic is not a prohibited phenomenon, in law. Benjamin Cardozo, in his treatise "Judicial Process" has observed (Page 32):
>
> Logical consistency does not cease to be a good because it is not the supreme good. Holmes has told us in a sentence which is now classic that "the life of the law has not been logic; it has been experience." But Holmes did not tell us that logic is to be ignored when experience is silent. I am not to mar the symmetry of the legal structure by the introduction of inconsistencies and irrelevancies and artificial exceptions unless for some sufficient reason, which will commonly be some consideration of history or custom or policy or justice. Lacking such a reason, I must be logical, just as I must be impartial, and upon like grounds.

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18. The observation made by the learned Jurist becomes relevant in cases of this nature. A person, who acts under an agreement, and derives benefit under it, cannot turn around and treat it as untouchable, as regards the balance."

(ii) In K.Ramamoorthi v. C.Surendranatha Reddy (decided on 27.07.2012), unregistered sale deed is held to be admissible in evidence for collateral purpose of proving possession as consistently held by Court. After narrating all such cases, the following conclusions were drawn and illustrations for collateral purposes were given.

"22. On a compendious reference of the case law discussed above, the followings conclusions emerge:

i) A document, which is compulsorily registrable, but not registered, cannot be received as evidence of any transaction affecting such property or conferring such power. The phrase "affecting the immovable property" needs to be understood in the light of the provisions of Section 17(b) of the Registration Act, which would mean that any instrument which creates, declares, assigns, limits or extinguishes a right to immovable property, affects the immovable property.

ii) The restriction imposed under Section 49 of the Registration Act is confined to the use of the document to affect the immovable property and to use the document as evidence of a transaction affecting the immovable property.

iii) If the object in putting the document in evidence does not fall within the two purposes mentioned in (ii) supra, the document cannot be excluded from evidence altogether.

iv) A collateral transaction must be independent of or divisible from a transaction to affect the property i.e., a transaction creating any right, title or interest in the immovable property of the value of rupees hundred and upwards.

v) The phrase "collateral purpose" is with reference to the transaction and not to the relief claimed in the suit.

vi) The proviso to Section 49 of the Registration Act does not speak of collateral purpose but of collateral transaction i.e., one collateral to the transaction affecting immovable property by reason of which registration is necessary, rather than one collateral to the document.

vii) Whether a transaction is collateral or not needs to be decided on the nature, purpose and recitals of the document.

Having culled out the legal propositions, the discussion on this issue will be incomplete if a few illustrations as to what constitutes collateral transaction are not

enumerated as given out in Radhomal Alumal (supra) and other Judgments. They are as under:

a) If a lessor sues his lessee for rent on an unregistered lease which has expired at the date of the suit, he cannot succeed for two reasons, namely, that the lease which is registrable is unregistered and that the period of lease has expired on the date of filing of the suit. However, such a lease deed can be relied upon by the plaintiff in a suit for possession filed after expiry of the lease to prove the nature of the defendant's possession.

b) An unregistered mortgage deed requiring registration may be received as evidence to prove the money debt, provided, the mortgage deed contains a personal covenant by the mortgagor to pay (See: Queen-Empress v Rama Tevan('92) 15 Mad. 253, P.V. M.Kunhu Moidu v T. Madhava Menon('09) 32 Mad. 410 and Vani v Bani ('96) 20 Bom. 553).

c) In an unregistered agreement dealing with the right to share in certain lands and also to a share in a cash allowance, the party is entitled to sue on the document in respect of movable property (Hanmantapparao v Ramabai Hanmant.[AIR 1919 Bom. 38: 21 Bom. L.R.716).

d) An unregistered deed of gift requiring registration under Section 17 of the Registration Act is admissible in evidence not to prove the gift, but to explain by reference to it the character of the possession of the person who held the land and who claimed it, not by virtue of deed of gift but by setting up the plea of adverse possession (Varada Pillai (supra).

(e) A sale deed of immovable property requiring registration but not registered can be used to show nature of possession (Radhomal Alumal (2-supra), Bondar Singh (15-supra) and A. Kishore (16-supra).

23. The above instances are only illustrative and not exhaustive. There may be many more situations where a transaction can be collateral to the transaction which affects the immovable property. The Courts will have to carefully decide on a case to case basis in the light of the legal principles contained in the above discussed and various other judgments holding the field."

(iii) In V. Dharma Reddy v. S. Hari Ram (supra), it was held that where an agreement of sale culminates into a sale deed, it loses its character as instrument within the definition of Section 2(14) of the Stamp Act as held in paragraphs Nos.7 and 8.

"7. Agreement of sale, undoubtedly, creates rights and liabilities between the parties concerned. However, where it results in a sale-deed, the

purpose underlying the agreement cannot be said to be still subsisting even thereafter. Therefore, once a sale-deed is executed, the agreement of sale preceding it cannot be treated as an instrument for the purpose of the Stamp Act.

8. There is another way of examining the matter. Whenever stamp duty is collected on an agreement of sale, the same is taken into account at the time of levying stamp duty on the sale deed. The effort is to ensure that the stamp duty on the entire transaction does not exceed the prescribed limit. Where, however, the entire stamp duty is collected on the sale deed, levy of stamp duty on an agreement of sale, which preceded the sale-deed, under any pretext, would result in subjecting the transaction for stamp duty, over and above what is prescribed under law. Such a course of action is impermissible."

9. Insofar as the observation of the trial Court that the disputed document requires registration, the same is not under challenge. It is also rightly held by the trial Court that the said document requires registration. The effect of non-registration is dealt with in Section 49 of the Registration Act, 1908, and the same prohibits such a document to be received as evidence of any transaction affecting such property or conferring such power, however, the proviso to Section 49 gives leverage to receive such document in evidence under three circumstances, viz., (i) to receive such document as evidence of contract in a suit for specific performance; (ii) as evidence of part performance of a contract for the purpose of Section 53(a) of the Transfer of Property Act, 1882 or (iii) as evidence of any collateral transaction not required to be effected by registered instruments.

10. In the present case, the purpose of producing the document in evidence is not covered by the points (i) & (ii). Obviously, the document can be permitted to be received in evidence for collateral purpose. The trial Court has spelt out what is the collateral purpose in the present case for which this document can be received in evidence by stating that it may be for the purpose of proving possession of the property.

11. A document can be objected to be received in evidence mainly on two grounds; such as want of registration and want of payment of proper stamp duty. Since both these aspects are governed by two separate enactments, mere compliance of provisions of one of such Acts is not enough. To make a document fit for receipt in evidence, the provisions of the Stamp Act are also to be complied with. As such, since in the present case, the document requires stamp duty and penalty with reference to Article 49 A of Schedule 1A of the Stamp Act, as it was held to be a document of agreement of sale with possession by subsequent act in continuation of the earlier agreement of sale without possession, unless such condition of payment of proper stamp duty with penalty is complied with, the document cannot be received in evidence. On such payment,

the document cannot be objected to be received in evidence for collateral purpose, which is already indicated supra. Therefore, the contention of the revision petitioner that the document cannot be received in evidence for any purpose just because it is defective for want of registration and such defect is incurable unlike in the case of stamp duty, is not tenable. The decisions relied on by the revision petitioner have no application to the present case as distinguished above. On the other hand, the decision in K.Ramamoorthi squarely covers the present on the point in support of it.

12. Accordingly, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

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2022(2) L.S. 225 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ninala Jayasurya

Sidagam Sanjeev ..Petitioner
Vs.
Akula Venkata Lakshmi & Anr., ..Respondents

HINDU MARRIAGE ACT, Sec.13(1)(i) - INDIAN EVIDENCE ACT, Sec.65-B - Petitioner/Husband of the 1st Respondent filed O.P, seeking annulment of marriage on the ground of adultery - As the documents filed by Petitioner along with main O.P. were not marked, Petitioner filed an application in I.A. to recall him and to mark the documents as exhibits.

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Subsequently, at the time of marking the documents,Trial Court by the impugned docket Order held that the Petitioner is not entitled to recall himself and to mark the documents mentioned in I.A. holding that in order to receive the photographs with C.D and e-mail online copy, the Petitioner has to establish the requirement contemplated under Sec.65-B of the Indian Evidence Act.

HELD: Electronic records cannot be admitted in evidence unless mandatory requirements of Sec,65-B of

the Evidence Act are satisfied - Documents i.e., Photographs with C.D and e-mail online copy are not accompanied by the Certificate in terms of Section 65-B(4) of the Evidence Act, an opportunity should have been afforded to the Petitioner - Trial Judge went wrong in opining that the Petitioner failed to establish the mode of acquisition of the Photographs with C.D etc., even before marking the documents - Order under Revision is set aside and the matter is remitted to Trial Court for passing appropriate Orders after affording opportunity to the Petitioner to fulfil the conditions as contemplated under Section 65-B(4) of the Evidence Act - Revision Petition stands allowed.

Mr.K.V. Sheshagiri Rao, Advocates for the Petitioner.
Mr.T.V. Jaggi Reddy, A.S.C. Bose, Advocates for the Respondents.

J U D G M E N T

The present Revision Petition has been filed aggrieved by the docket Order dated 31.03.2021 in H.M.O.P.No.274 of 2018 on the file of the III Additional Senior Civil Judge, Kakinada, East Godavari District.

2. Heard Mr.Palanki Rama Mohan Rao, learned counsel on behalf of Mr.K.V.Seshagiri Rao, Advocate appearing for the petitioner and Mr.T.V.Jaggi Reddy, learned counsel for the 1st respondent. Despite service of notice, none entered appearance on behalf of the 2nd respondent.

3. The petitioner herein is the husband of the 1st respondent. He filed O.P.No.274 of 2018 on the file of the III Additional Senior Civil Judge, Kakinada, East Godavari District under Section 13(1)(i) of the Hindu Marriage Act, 1955 seeking annulment of marriage between the petitioner and the 1st respondent on the ground of adultery. In the said O.P, the 1st respondent filed counter and contesting the same. The petitioner along with the main O.P filed certain documents including Original Residence Certificate dated 15.08.2018, Originals of 10 photos of respondents 1 & 2 with C.D and e-mail screen shot. As the said documents were not marked, the petitioner filed an application in I.A.No.40 of 2020 to recall him and to mark the said documents as exhibits. In the said application, the 1st respondent filed a counter, but was not present at the time of hearing of the said I.A. The learned Trial Judge after considering the matter and perusing the counter was pleased to allow the said application by an Order dated 17.12.2020. Subsequently, at the time of marking the documents, the counsel for the 1st respondent raised objection for marking the same and the Court below by the impugned docket Order held that the petitioner is not entitled to recall himself and to mark the documents mentioned in I.A.No.40 of 2020. The learned Trial Judge inter alia opined that in order to receive the photographs with C.D and e-mail online copy, the petitioner has to establish the requirement contemplated under Section 65-B of the Indian Evidence Act, but the petitioner did not fulfill the conditions

contemplated under Section 65-B and also failed to furnish the Certificate under Section 65-B of Indian Evidence Act. The learned Trial Judge also opined that the petitioner failed to establish the mode of acquisition of 10 Photographs with C.D and e-mail online copy and as such failed to establish the admissibility of the documents. Aggrieved by the said Order, the present Revision Petition has been preferred by the petitioner/husband.

4. The learned counsel for the petitioner inter alia submits that the Order of the learned Trial Court constitutes failure to exercise the jurisdiction vested in it and therefore the same is liable to be set aside. He submits that the learned Trial Judge failed to appreciate that I.A.No.40 of 2020 seeking to recall the petitioner and mark the originals of the documents was allowed on 17.12.2020 and despite the same, erred in not allowing marking of the documents, which are crucial for establishing the petitioner's case on the premise that the petitioner failed to establish the admissibility of the documents. He further submits that the learned Trial Court erred in coming to a conclusion that in order to receive the photographs with C.D and e-mail online copy, the petitioner is required to comply with the conditions for marking of the documents as contemplated under Section 65-B of the Evidence Act. He submits that the learned Trial Court erred in holding that the petitioner failed to establish the admissibility of documents, even before marking of the same. He also submits that the learned Trial Court at least should have given an opportunity to the petitioner to fulfill the conditions contemplated under Section 65-B of the Evidence Act and mark the documents, but the learned Trial Court failed to consider the matter in a proper perspective. He further submits that the learned Trial Court had committed a gross error in opining that the petitioner failed to establish the mode of acquisition of 10 Photographs with CD, e-mail online copy etc., and the same is not sustainable. The learned counsel in support of his contentions placed reliance on the Judgment of the Hon'ble Supreme Court in State by Karnataka Lokayukta Police Station, Bengaluru v. M.R.Hiremath (AIR 2019 Supreme Court 2377). The learned counsel submits that, in any event, the learned Trial Court ought to have granted sometime to enable the petitioner to file a copy of the Certificate as contemplated under Section 65-B of the Evidence Act, instead of rejecting the marking of the documents. Making the said submissions, the learned counsel seeks to allow the C.R.P, by setting aside the Order under challenge.

5. The learned counsel for the respondent on the other hand while drawing the attention of this Court to the relevant paragraphs in the counter, inter alia submitted that no Certificate was produced by the petitioner as per Section 65-B of the Indian Evidence Act, which provides for admissibility of electronic records. He submits that unless Certificate of the Company is filed along with the documents, the same cannot be received. It is his submission that to avoid manipulation of documents, filing of the Certificate was prescribed by the Act and the same cannot

be dispensed with. Drawing the attention of this Court to the various averments in the counter opposing the application in I.A.No.40 of 2020, the learned counsel would further submit that the previous Presiding Officer refused to mark the documents and the petitioner, therefore, cannot maintain the present application. The learned counsel submits that in any event, the Court below has not committed any irregularity nor the Order under Revision is perverse, warranting interference by this Court, in exercise of powers under Article 227 of the Constitution of India. Relying on the decision of the Hon'ble Supreme Court in Anvar P V vs. P K Basheer and Others (2014 LawSuit(SC) 783) and Sonu @ Amar vs. State of Haryana (2017 LawSuit(SC) 704), the learned counsel submits that the Order under Revision warrants no interference and accordingly urges for dismissal of the same.

6. On appreciating the rival contentions of both the learned counsel, and perusing the material on record, the point that falls for consideration by this Court is as to whether the impugned Order is un-sustainable, in the facts and circumstances of the case?

7. In order to appreciate the rival contentions, it may be appropriate to refer to the relevant provisions of Law. Section 65-A of the Indian Evidence Act provides that the contents of electronic records may be proved, in accordance with the provisions of Section 65-B of the Indian Evidence Act and the same is reproduced hereunder for ready reference.

65-B. Admissibility of electronic records.—

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the

information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the

certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.— For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

8. In Anvar P V vs P K Basheer and Others referred to supra, a three member Bench of the Hon'ble Supreme Court had an occasion to deal with Section 65-B of the Indian Evidence Act. The Hon'ble Supreme Court while opining that any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A of the Act can be proved only in accordance with the procedure prescribed under Section 65-B of the Evidence Act, held that an electronic record by way of secondary evidence shall not be admitted in evidence, unless the requirements under Section 65-B of the Act are satisfied. The Hon'ble Supreme Court categorically held that in the case of C.D, V.C.D, Chip etc., the same shall be accompanied by a Certificate in terms of Section 65-B of the Evidence Act obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record is inadmissible. The Hon'ble Supreme Court in Para 26 of the Judgment, however clarified that if electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65-B of the Evidence Act.

9. In Sonu @ Amar vs. State of Haryana referred to supra, the Hon'ble Supreme Court dealt with an issue, inter alia, with regard to permissibility of an objection regarding inadmissibility of electronic record at the stage of appeal before the Hon'ble Supreme Court. In the said case, Call Detail Records (C.D.Rs) of

the mobile phones were filed before the Trial Court without a Certificate as required by Section 65-B of the Evidence Act. No objection was taken even at the appellate stage before the High Court. The Hon'ble Supreme Court, in the attending facts and circumstances of the case, inter alia opined that if an objection was taken to the C.D.Rs, being marked without a Certificate, the Court could have given an opportunity to rectify the deficiency. The Hon'ble Supreme Court further opined that admissibility of a document, which is inherently inadmissible is an issue, which can be taken up at the appellate stage, because it is a fundamental issue and that the mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage and held that an objection that C.D.Rs are un-reliable, due to violation of the procedure prescribed under Section 65-B(4) of the Evidence Act, cannot be permitted to be raised before it, as the objection relates to mode or method of proof.

10. State by Karnataka Lokayukta Police Station, Bengaluru v. M.R. Hiremath referred to supra is a case, wherein an appeal was preferred against the Judgment of the High Court of Karnataka in a petition filed under Section 482 of the Code of Criminal Procedure. The Hon'ble High Court allowed the said petition, inter alia holding that failure to produce the Certificate under Section 65-B(4) of the Evidence Act at the stage when the Charge Sheet was filed was fatal to the Prosecution. The Hon'ble Supreme Court after referring to the relevant provisions of Law and the Judgment in Anvar P V vs. P K Basheer and Others, referred to supra at Paras 14 and 15 of the Judgment held as follows:-

> 14. The provisions of Section 65B came up for interpretation before a three judge Bench of this Court in Anvar P.V. v P.K. Basheer. Interpreting the provision, this Court held : Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. Section 65B(4) is attracted in any proceedings where it is desired to give a statement in evidence by virtue of this section. Emphasising this facet of sub-section (4) the decision in Anvar holds that the requirement of producing a certificate arises when the electronic record is sought to be used as evidence. This is clarified in the following extract from the judgment : Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to

ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

15. The same view has been reiterated by a two judge Bench of this Court in Union of India and Others v CDR Ravindra V Desai (2018) 16 SCC 272). The Court emphasised that non-production of a certificate under Section 65B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in Sonu alias Amar v State of Haryana, in which it was held : The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency.

11. A conspectus of the above decisions of the Hon'ble Supreme Court would make it clear that electronic records cannot be admitted in evidence unless mandatory requirements of Section 65-B of the Evidence Act are satisfied.

12. In the present case, the view taken by the learned Trial Judge that the petitioner did not fulfil the conditions contemplated under Section 65-B of the Evidence Act and failed to furnish the Certificate under the said Section cannot be found fault with. However, if the documents i.e., Photographs with C.D and e-mail online copy are not accompanied by the Certificate in terms of Section 65-B(4) of the Evidence Act, an opportunity should have been afforded to the petitioner in the light of the expression of the Hon'ble Supreme Court in the Judgments referred to supra. Further, as rightly contended by the learned counsel for the petitioner, the learned Trial Judge went wrong in opining that the petitioner failed to establish the mode of acquisition of the Photographs with C.D etc., even before marking the documents. Though the learned counsel for the 1st respondent raised a contention that the I.A filed by the petitioner itself is not maintainable as the earlier Presiding Officer refused to receive the same, this Court is not inclined to accept the said submission, in the absence of any Order or material on record to that effect. While this Court is in complete agreement with the contentions advanced by the learned counsel for the 1st respondent that in the absence of the Certificate, as required under Section 65-B(4) of the Evidence Act, the electronic record cannot be admitted into evidence, as the same is the curable defect, deems it appropriate to remand the matter to enable the petitioner to rectify the deficiency. Accordingly, the Order under Revision is set aside and the matter is remitted to the learned Trial Judge for passing appropriate Orders after affording opportunity

to the petitioner to fulfil the conditions as contemplated under Section 65-B(4) of the Evidence Act.

13. The Revision Petition is accordingly, allowed. It is made clear that this Court has not expressed any opinion on the proof, relevancy and admissibility of the documents sought to be marked and the learned Trial Judge is at liberty to pass appropriate Orders, in accordance with Law, uninfluenced by the observations, if any, made by this Court. There shall be no Order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

–X--

2022(2) L.S. 233 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ninala Jayasurya

Sarvepalli Venkata Radha Krishna ..Petitioner

Vs.

Rudravaram Anand Swaroop ..Respondent

CIVIL PROCEDURE CODE, Secs.144 & 151 - Revision Petition against an Order in E.A. - Petitioner/ Decree holder filed a suit seeking a decree for delivery of possession of the suit schedule properties - Suit was decreed against the respondent and other defendants - Petitioner filed E.P. seeking delivery of items of the suit schedule properties and the same was allowed - Pursuant to which, items were delivered to the Petitioner/decree holder.

In the meanwhile, Respondent filed an application seeking to set aside the ex parte decree and the same was allowed - Thereafter, he filed E.A. seeking to re-deliver possession of items to him - Court below allowed the application with a direction to the Petitioner to re-deliver possession of items - Aggrieved by the said Order, instant Revision Petition was preferred by the Petitioner/decree holder.

HELD: Impugned Order pursuant to the application filed under Section 144 of CPC would amount to a decree and therefore, an appeal has to be filed against the same in terms of Sec.96 of CPC - Revision Petition stands disposed of, leaving it open to the Revision Petitioner to avail the appeal remedy as provided under Law.

Mr.Sita Ram Chaparla, Advocates for the Petitioner.
Mr.Naga Praveen Vankayalapati, Advocate for the Respondent.

J U D G M E N T

The present Revision Petition has been preferred against an Order dated

13.10.2020 in E.A.No.2 of 2018 in E.P.No.75 of 2015 in O.S.No.220 of 2006 on the file of the Court of the Additional Senior Civil Judge, Ongole, Prakasam District.

2. Heard Mr.Sita Ram Chaparla, learned counsel for the petitioner and Mr.Naga Praveen Vankayalapati, learned counsel for the respondent.

3. The petitioner herein is the decree holder in O.S.No.220 of 2016. The petitioner/ plaintiff filed the said suit seeking a decree for delivery of possession of the suit schedule properties. The said suit was decreed on 12.03.2015 against the respondent and other defendants. The petitioner/plaintiff filed E.P.No.75 of 2015 seeking delivery of items 1 and 2 of the suit schedule properties and the same was allowed. Pursuant to which, items 1 and 2 of the suit schedule properties were delivered to the petitioner/decree holder on 22.06.2015 and 21.06.2018 respectively. In the meanwhile, the respondent/J.Dr.No.7 filed an application seeking to set aside the ex parte decree dated 12.03.2015 and the same was allowed on 09.06.2017. Thereafter, he filed E.A.No.2 of 2018 under Sections 144 and 151 of Code of Civil Procedure (hereinafter referred to as "CPC") seeking to re-deliver possession of items 1 and 2 of the suit schedule properties to him. The said E.A was opposed by the petitioner/decree holder by filing a counter. The Court below after considering the matter by an Order dated 13.10.2020 allowed the said application with a direction to the petitioner/decree holder to re-deliver possession of items 1 and 2 of the suit schedule properties to the petitioner/ J.Dr.No.7 within 6 months from the date of the Order, failing which the respondent/ J.Dr.No.7 is granted liberty to get delivery the same through process of Law. Aggrieved by the said Order, the present Revision Petition was preferred by the petitioner/ decree holder on various grounds.

4. The learned counsel for the petitioner inter alia strenuously contended that the Order under Revision is not sustainable, as the Court below failed to exercise the jurisdiction vested in it in a proper perspective. He submits that the respondent is guilty of suppression of facts and on that ground the application filed by him is liable to be dismissed. In elaboration, he submits that the respondent/J.Dr.No.7 filed O.S.No.99 of 2017 on the file of the Court of Family-cum- VIII Additional District Judge at Ongole against the petitioner as well as his vendors seeking declaration and consequential possession of the properties and the Court below grievously erred in not considering the detailed counter filed by the petitioner/decree holder in E.A, wherein these aspects averred that the property in question was sold to third parties and filing of the suit by the respondent/J.Dr.No.7 for declaration and recovery of possession by the respondent were set out. He submits that the petitioner sold the suit schedule properties through Registered Sale Deeds dated 06.10.2016 and 30.05.2017 and thereafter the application to set aside the ex parte decree was allowed on 09.06.2017. He submits that since the petitioner/decree holder had already sold the suit schedule

property to third parties and is not in possession of the schedule properties, the impugned Order is not sustainable against the petitioner/decree holder. He submits that the Court below grossly erred in allowing the application without looking into the crucial aspects and went wrong in allowing the application without considering the matter in a proper perspective. He submits that the petitioner had approached the Honourable Court with unclean hands as such the Court below ought to have rejected the application at the threshold. He further submits that no party shall suffer by the acts of the Court and as the respondent herein obtained the impugned Order by playing fraud on the petitioner as well as on the Honourable Court, the Order in E.A.No.2 of 2018 is not sustainable in Law. He submits that unless the impugned Order is set aside, the petitioner/decree holder would suffer serious prejudice and irreparable loss. Making the said submissions, the learned counsel for the petitioner seeks to allow the Revision Petition.

5. Per contra, the learned counsel for the respondent/J.Dr.No.7 inter alia submits that the Order under Revision is well considered and warrants no interference by this Court. He further submits that in fact the present Civil Revision Petition is not maintainable and against the Order passed under Section 144 of CPC, appeal alone lies and as such the Revision Petition deserves to be dismissed. The learned counsel also submits that the rights of the parties can be decided under Section 144 of CPC, without even filing a separate suit. He submits that at any rate filing of a separate suit for recovery of possession is of no consequence. The learned counsel would further urge that as the ex parte decree was set aside and the suit was restored, the possession of the property has to be re-delivered and considering the legal position, the Court below had ordered for the same and in the facts and circumstances, of the case the Court below is justified in allowing the application filed by the respondent/J.Dr.No.7. In support of his contentions, the learned counsel places reliance on the decisions reported in AIR 1965 SC 1477 and AIR 1996 SC 1204. The learned counsel would further submit that the petitioner/decree holder during the pendency of application to set aside the ex parte decree sold the subject matter properties with a mala fide intention and therefore he is not entitled to any relief from this Court.

6. In reply to the said contentions the learned counsel for the petitioner submits that the respondent/J.Dr.No.7 has not filed any rejoinder to the counter of the petitioner/ decree holder in E.A.No.2 of 2018 and therefore the averments therein are deemed to have been admitted. In so far as maintainability of the Revision Petition is concerned, he submits that the same is not tenable and even otherwise the Revision Petition is maintainable under Article 227 of the Constitution of India, as the Order suffers from non-application of mind. Making the said submissions, the learned counsel for the petitioner seeks to allow the Revision Petition.

7. Though the learned counsel for the petitioner raised several contentions, in view of the contentions advanced by the learned counsel for the respondent with regard to maintainability of the Revision Petition under Article 227 of the Constitution of India, this Court deems it appropriate to deal with the said aspect instead of adjudicating the matter with reference to the various undertaking a detailed examination of all the contentions raised by the learned counsel for both sides.

8. As noticed earlier, the Order impugned in the present Revision Petition was passed in an application filed under Section 144 of CPC, which reads thus:

> Section 144. Application for restitution.-
>
> (1) Where and in so far as a decree 1[or an Order] is 2[varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose the Court which passed the decree or Order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree 1[or Order] or 3[such part thereof as has been varied, reversed, set aside or modified], and, for this purpose, the Court may make any Orders, including Orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly 4[consequential on such variation, reversal, setting aside or modification of the decree or Order.]
>
> 5[Explanation.- For the purposes of sub-section (1) the expression "Court which passed the decree or Order" shall be deemed to include,-
>
> (a) where the decree or Order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;
>
> (b) where the decree or Order has been set aside by a separate suit, the Court of first instance which passed such decree or Order;
>
> (c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or Order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]
>
> (2) No suit shall be instituted for the pr-pose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

9. Interpreting the above referred

Section, a Constitutional Bench of the Supreme Court in Mahijibhai Mohanbhai Barot vs. Patel Manibhai Gokalbhai and others (AIR 1965 Supreme Court 1477) referred to supra, inter alia answered the question holding that the application for restitution under Section 144 of CPC is an application for execution of a decree.

10. Section 2 (2) of CPC deals with a "Decree in the following terms:-

> (2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include –
>
> (a) any adjudication from which an appeal lies as an appeal from an order; or
>
> (b) any order of dismissal for default.
>
> Explanation:- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final where such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

11. In the light of the specific provision of Law and the legal position, the impugned Order pursuant to the application filed under Section 144 of CPC would amount to a decree and therefore as rightly contended by the learned counsel for the respondent, an appeal has to be filed against the same in terms of Section 96 of CPC, which provides that an appeal shall lie from every "decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

12. In Mohammed Abdul Sattar vs. Mrs.Shahzad Tahera and another (2012 (2) ALT 230 (S.B.) a learned Judge of the erstwhile High Court of Judicature of Andhra Pradesh at Hyderabad had an occasion to consider Section 144 of CPC and maintainability of Civil Revision Petition under Section 115 of CPC filed against an Order dismissing the application for restitution.

13. In an elaborate Judgment after referring to a catena of cases, it was inter alia held that an Order passed in an application filed under Section 144 of CPC is an appealable Order and Revision against the same under Section 115 of CPC does not lie. The learned Judge was also not inclined to accept the alternative contention that a Revision Petition under Article 227 of the Constitution of India can be maintained despite alternative remedy by way of appeal.

14. In the said case, it was urged on behalf of the petitioner/Judgment Debtor

that the application was not laid under Section 144 of CPC simpliciter and that it was filed under Section 144 of CPC R/w Section 151 of CPC and therefore assuming that an Order under Section 144 of CPC is appealable, an Order under Section 151 of CPC is not appealable and consequently a Revision would lie.

15. At Para 26 of the said Judgment, the learned Judge categorically held that an Order under Section 144 of CPC is a decree in view of the definition of decree under Section 2, (2) of CPC and that Section 96 of CPC envisages that an appeal would lie from every decree, with certain exceptions. While observing that Section 144 of CPC does not fall within the exceptions under Section 96 of CPC, the learned Judge held that an Order in an application under Section 144 of CPC is an appealable Order.

16. In the light of the above stated legal position, this Court finds merit in the submission made by the learned counsel for the respondent that the present Revision Petition is not maintainable and accordingly the said contention is upheld. Though the learned counsel for the petitioner had addressed several contentions inter alia that the Order under Revision is not sustainable as the respondent suppressed the material facts and several contentions raised in the counter were not considered, this Court is not inclined to deal with the same, in view of the conclusion arrived at supra that the Revision Petition is not maintainable and an appeal lies against the Order under Revision. Therefore, this Court deems it appropriate to leave all the contentions for examination on merits by the Appellate Court, in the event an appeal is preferred by the petitioner against the impugned Order.

17. In the aforesaid view of the matter, the Revision Petition is disposed of, leaving it open to the Revision Petitioner to avail the appeal remedy as provided under Law and in the event of the petitioner filing any appeal, the concerned Court shall consider the same on its merits and in accordance with Law, as this Court had not expressed any opinion on the merits of the Order impugned in the present Revision Petition. There shall be no Order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

-X–

2022 (2) L.S. 87 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
K. Surender

Ganta Narender ..Petitioner

Vs.

The State of A.P. ..Respondent

(INDIAN) PENAL CODE, Sec.304 Part-II - Appellant aggrieved by the conviction and sentenced to undergo rigorous imprisonment for a period of five years vide judgment in S.C. preferred present appeal - Altogether three accused were tried for the offence under Section 302 IPC, however, the learned Sessions Judge acquitted A2 and A3 of the offence under Section 302 of IPC.

HELD: Approach of the Sessions Judge in concluding that the charge u/Sec.302 IPC had to be framed though the police had ruled out that the deceased was murdered, appears to be misconceived and contrary to the record and evidence collected during investigation - Assumptions, presumptions and fanciful thinking cannot be made basis to arrive at conclusions in a criminal case - Any injuries found on the deceased have to be explained by the prosecution and in absence of such explanation, the Accused cannot be suspected or asked to explain.

Benefit of doubt has to be extended to the Appellant and accordingly, the conviction of Accused under Section 304- Part-II IPC stands set aside and Criminal Appeal stands allowed.

Mr.Madireddy Shanker, Advocate for the Appellant.
Public Prosecutor, Advocate for the Respondent.

J U D G M E N T

The appellant aggrieved by the conviction under Section 304 Part-II of IPC and sentenced to undergo rigorous imprisonment for a period of five years vide judgment in S.C.No.347 of 2007 dated 29.10.2008 passed by the learned IV Additional Sessions Judge, Ranga Reddy District (for short 'the learned Sessions Judge'), the present appeal is filed. Altogether three accused were tried for the offence under Section 302 IPC, however, the learned Sessions Judge acquitted A2 and A3 of the offence under Section 302 of IPC.

2. The case of the prosecution according to final report is that the appellant herein and his deceased wife loved each other and got married at Yadagirigutta temple, without the knowledge of P.Ws.1 and 2, who are the parents of the deceased. Both A1 and the deceased shifted to quarters in Crystal poultry at Ghatkesar.

On 16.10.2006, the deceased asked A1 to take her to hospital as she was not well. However, this appellant and A2 and A3 refused to take her to the hospital. For the said reason, the deceased got frustrated and closed doors of her quarter from inside. At that time, one Nandesh(PW4) and Prashanth(PW5) knocked the doors of the quarter of the deceased and she did not open, as such, both of them opened the doors forcibly and found the deceased lying in sitting position by the side of almirah with a saree tied around her neck. Accordingly, it was informed to others in the quarters and they brought her out and laid her in the verandah. Since the investigation revealed that there is no harassment by the accused, the charge sheet was laid for the offence under Section 306 of IPC.

3. The Court, however, after going through the charge sheet and other material filed under Section 178 of Cr.P.C, came to the conclusion that the case is one of murder punishable under Section 302 of IPC on the basis of injuries found on the deceased and accordingly, the learned Sessions Judge framed charge as follows:

> "That you Narender (A1) along with A2 Chakri and A3 Sarasthi, on 6.10.2006 in the morning hours intentionally killed your wife Manjula, at your quarter in a poultry farm at Ghatkesar by beating and strangulation with saree and thereby you have committed the 5 offence 'murder' punishable under Section 302 IPC, within my cognizance."

4. Learned counsel appearing for the appellant would submit that the finding of the learned Sessions Judge is based on assumptions and not supported by any evidence brought on record. The learned Judge assumed that A1 did not state any reason for his absence in the poultry when informed to P.W.3, the owner of poultry. Further, when there was blood stained stone found at the scene of offence, the conclusion that A1 beat the deceased in between 7.00 am to 8.30 a.m and by the reason of the said injuries, the deceased gradually lost her conscious and died has no basis. At the same breath, learned Sessions Judge found that there is no evidence on record to prove that the accused harassed the deceased and there was ill motive or intention on the part of the accused to kill the deceased.

5. Learned counsel for the appellant relied upon the judgment in the case of **Anwar Ali v. State of Himachal Pradesh** (2020) 10 Supreme Court Cases 166), wherein their Lordships found that in all the cases of circumstantial evidence, when the prosecution fails to prove the complete chain of events, the accused would be entitled to acquittal. He also relied on the judgment of Delhi High Court in the case of **Shyam Sunder @ Pappu v. State** [Criminal Appeal No.31 of 2005], dated 30.09.2013, and **Dehal Singh v. State of Himachal Pradesh** [Criminal Appeal No.1215 of 2005], dated 31.08.2010, wherein the Hon'ble Supreme Court held that Section 313 Cr.P.C statement of the accused is recorded without administering any oath as such it cannot be treated as evidence within the meaning of Section 3 of Evidence Act.

6. On the other hand, learned Public

Prosecutor submits that the finding of the learned Sessions Judge cannot be interfered with for the reason of the learned Sessions Judge, having found that the circumstances in the present case ruled out any other possibility except the accused committing offence. For the said reason, the finding of the Sessions cannot be interfered with.

7. In the case of **Sharad Birdhi Chand Sarda vs State Of Maharashtra [1984 AIR 1622],** the Hon'ble Supreme Court 7 framed the following golden principles in the case of circumstantial evidence, which are as follows:

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

8. It is pertinent to note that during the course of investigation, the police found that the deceased was last seen by L.W.4-Smt.Guggilla Parvathi, however, she was given up and not examined during the course of trial. Further, from the statement of P.Ws.4 and 5 during investigation it was stated that they forcibly opened the door and found the deceased in the quarter with a saree tied around her neck, as such, from the evidence available and the circumstances, the Investigating Officer found that beating by A1 to A3 was frivolous and fabricated. For the said reasons, murder of the deceased was ruled out and charge sheet was filed under Section 306 of IPC.

9. Ex.P1 is the complaint in which P.W.1/father of the deceased stated that his daughter married A1 after they eloped three months prior to the incident. On receiving phone call from the manager of poultry farm that the deceased committed suicide, P.W.1 and others went to the quarter and found her dead. However, injuries were found on the forehead and bangles were broken, as such, P.W.1 suspected that A1 to A3 committed murder of his daughter. As stated above, the police after investigation found that the door was locked from inside and the same was forcibly opened, for which reason, murder was ruled out.

10. During the course of examination, P.W.1 and 2 parents of deceased narrated the facts as stated in the complaint.

11. The evidence of P.Ws.4 and 5 is crucial to the case. P.W.4 stated that they had seen the deceased was alive at

7.00 a.m while she was washing her clothes. Both P.Ws.4 and 5 further stated that they did not know any quarrel that took place between A1 and the deceased and so also the other family members of A1. Further, PW.5 specifically stated that about 10.00 a.m, while they were playing outside, the deceased closed the doors and at that time, no other person except deceased was present in the house. The said statement of P.Ws.4 and 5 made on oath before Court was not disputed by the prosecution.

12. The approach of the learned Sessions Judge in concluding that the charge under Section 302 IPC had to be framed though the police had ruled out that the deceased was murdered, appears to be misconceived and contrary to the record and evidence collected during investigation.

13. The learned Sessions Judge was of the opinion that on the basis of the circumstances that (i) A1 had gone to the poultry work and informed P.W.3, the owner of the poultry that deceased would not come, (ii) the admission by the accused in his Section 313 Cr.P.C examination that there was a stone drained in blood at the scene of offence, were sufficient linking circumstances to prove that the deceased was murdered.

14. Assumptions, presumptions and fanciful thinking cannot be made basis to arrive at conclusions in a criminal case. Prosecution witnesses P.Ws.4 and 5 have stated that when they were playing in front of the house of the deceased, the deceased was washing cloths and subsequently by 10.00 a.m, went inside and closed doors. Further, there was no one in the house except the deceased. It is not in dispute that door was forced open to get the deceased out and she was laid in the verandah.

15. The facts of the case and eye witnesses account would rule out that when the appellant went to work, the deceased was either injured or any altercation took place. The evidence of P.Ws.4 and 5 is not disputed by the prosecution and the same cannot be brushed aside by the trial Court without giving reasons. The view taken by the learned Sessions Judge that the accused might have injured the deceased in between 7.00 a.m to 8.30 a.m that she was slowly died at 10.00 a.m is totally erroneous, without basis and result of fanciful thinking.

16. Any injuries found on the deceased have to be explained by the prosecution and in absence of such explanation, the accused cannot be suspected or asked to explain in the background of the evidence of PW4 and 5. For the said reasons, benefit of doubt has to be extended to the appellant and accordingly, the conviction of accused under Section 304- Part-II IPC is set aside.

17. In the result, the Criminal Appeal is allowed. The impugned judgment dated 29.10.2008 in S.C.No.347 of 2007 is set aside. Since the appellant is in jail, he shall be set at liberty forthwith, if he is not required in any other case.

As a sequel thereto, miscellaneous petitions, if any, pending, shall stands closed.

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As per the evidence on record, he went along with the false and fabricated document dated 06.08.1996 along with another person and he introduced that person as a new cashier and he ensured that the voucher was not signed by him but singed by the other person who was introduced by him as a new cashier. Therefore, he saw to it that there is no evidence on record that he actually received the money. This shows the criminal mind/conduct on the part of the delinquent officer. Therefore, in the facts and circumstances of the case it cannot be said that the disciplinary authority/ competent authority/management had committed any error in dismissing the respondent – delinquent officer from service.

11. In view of the above and for the reasons stated above, the impugned judgment and order passed by the Division Bench of the High Court dismissing the appeal and not interfering with the judgment and order passed by the learned Single Judge which interfered with the order of punishment imposed by the Disciplinary Authority dismissing the respondent – delinquent officer from service and the judgment and order passed by the learned Single Judge are hereby quashed and set aside.

The order passed by the Management dismissing the respondent – delinquent officer on proved charge and misconduct is hereby restored.

Present Appeal is accordingly Allowed. In the facts and circumstances of the case, there shall be no order as to costs

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2021 (2) L.S. 91 (S.C)

IIN THE SUPREME COURT
OF INDIA

Present:
The Hon'ble Mr.Justice
A.M. Khanwilkar
The Hon'ble Mr.Justice
Abhay S. Oka &
The Hon'ble Mr.Justice
C.T. Ravi Kumar

The Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore & Anr., ..Petitioner

Vs.

Vipin Dhanaitkar & Ors., ..Respondents

Abhay

PUBLIC TRUSTS ACT - Appeals against the common judgment and order passed by a Division Bench of High Court - Alienations were made by the Trustees in relation to at least six properties.

HELD: Alienation of the properties can be made only by taking recourse to Sec.14 of the Public Trusts Act - A Trust property cannot be alienated unless it is for the benefit of the Trust and/or its beneficiaries - The Trustees are not expected to deal with the Trust property, as if it is their private property - It is the legal obligation of the Trustees to administer the Trust and to give effect to the objects of the Trust.

Direction issued by the High

Court to Economic Offences Wing of the State Government to hold an inquiry was not warranted - Registrar under the Public Trusts Act, having jurisdiction over Trust, to call for the record of the Trust relating to all the alienations made by the Trustees - Appeals allowed in part.

J U D G M E N T

(per the Hon'ble Mr.Justice Abhay S. Oka)

Permission to file Special Leave Petition is granted. Leave anted.

FACTUAL MATRIX

2. These appeals take exception to the common judgment and order dated 5th October 2020 of a Division Bench of the High Court of Madhya Pradesh, Bench at Indore. By the said decision, the Madhya Pradesh High Court decided two Writ Appeals filed by the appellants in Civil Appeals arising out Special Leave Petition (C) 12133 of 2020 and Special Leave Petition (C) No. 12241-42 of 2020. The Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore (for short, 'the Khasgi Trust') and its Trustee Shri S. C. Malhotra are the said appellants. The two writ appeals decided under the impugned judgment arise out of Writ Petition Nos. 11618 of 2012 and 5372 of 2010 filed by the Khasgi Trust. Writ Appeal No. 92 of 2014 arises out of Writ Petition No. 11618 of 2012. The Writ Appeal No. 135 of 2014 arises out of Writ Petition No.5372 of 2010. By the impugned judgment, a Public Interest Litigation filed by the first respondentShri Vipin Dhanaitkar in Civil Appeal arising out of Special Leave Petition (C) No. 12133 of 2020 was also decided.

3. The controversy revolves around the properties claimed by the Khasgi Trust as the Trust Properties. On 30th October 1948, an instrument called as 'The Covenant' was executed by the erstwhile Rulers of Gwalior, Indore and certain other States in Central India for the formation of the United State of Gwalior, Indore and Malwa (Madhya Bharat). Late Yashwantrao Holkar, the Maharaja of Indore (for short 'the Maharaja') was a party to the said Covenant who agreed to unite and integrate the territory of Indore into one State with a common executive, legislature and judiciary, by the name of the United State of Gwalior, Indore and Malwa (Madhya Bharat). Article XII provided that the Ruler of each covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from the State Properties) belonging to them on the date of their making over the administration of their respective States to Raj Pramukh (the Head of the State of the United State of Gwalior, Indore and Malwa). Article XII further provided that the Ruler of each covenanting State shall furnish to Raj Pramukh, before the first day of August 1948, an inventory of all immovable properties, securities and cash balance held by him. The Convention further provided that if any dispute arises as to whether any item of property is a private property of the Ruler or a State Property, it shall be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh. It is further provided that the decision of that person shall be final and binding on all parties concerned. It appears

that Maharaja Yashwantrao Holkar submitted two inventories in terms of Article XII. The first inventory was concerning his alleged private properties. The second inventory submitted by the Maharaja was of the properties known as the Khasgi Properties. In terms of Clause (3) of Article XII, the Government of India appointed Shri V.P. Menon, the Secretary of the Ministry of States as the authority to decide the claims. By the letter dated 7th May 1949, Shri V.P. Menon informed the Maharaja that the claim made by him in respect of his private properties as listed in Annexure 'A' to the said letter has been finally approved, accepted and signed in pursuance of Article XII of the Covenant. Annexure 'A' contains a detailed description of the private properties of the Maharaja, which are accepted as per Article XII of the Covenant to be his private properties. By another letter dated 6th May 1949, Shri V.P. Menon informed the Maharaja that his claim in respect of the properties described as the Khasgi properties has been finally settled on the basis of the enclosure to the said letter. In the enclosure to the letter, it was mentioned that the Khasgi properties and income received from the Khasgi properties shall be treated as lapsed for all the time to the Madhya Bharat Government. In lieu thereof, certain guarantees were given. The enclosure provided that the Madhya Bharat Government shall in perpetuity set aside a sum of Rs.2,91,952/- (Rupees Two Lakh Ninety-One Thousand Nine Hundred and Fifty-Two only) for the charities. The amount shall be put under a permanent Trust for the said charities, including the charities of Maharani Ahilya Bai Holkar. It provided that the Trust shall consist of the Ruler of erstwhile Indore State, who will be the President. There will be two nominees of the Ruler. One nominee shall be of the Central Government, and two nominees shall be of the Madhya Bharat Government. However, it was stated that the trustees nominated by the Government of India and the Madhya Bharat State shall be appointed in consultation with the Ruler. It provided that powers and functions of the Trust shall be subject to such legislation as the Central Government or the Madhya Bharat Government may enact generally to regulate such Trusts. However, the composition of the Trust and the manner of its formation shall not be liable to any modification or change by such legislation.

4. It must be noted here that the State Government enacted the Madhya Pradesh Public Trusts Act, 1951 (for short, 'the Public Trusts Act'). On 26th May 1959, the Ministry of Home Affairs of the Government of India addressed a letter to the Maharaja, which refers to the settlement of Khasgi Property. By the said letter, the Central Government nominated one Shri S.V. Kanungo as its nominee. The letter records that Shri Kanungo was already a trustee nominated by the Central Government on two other family Trusts of the Holkar family. Before that, on 6th January 1959, by addressing a letter, the General Administration Department of the State Government informed the Private Secretary to the Maharaja that the State Government was proposing to nominate the Commissioner, Indore Division and the Superintending Engineer (B & R), Public Works Department, Indore Circle as the trustees. The State Government requested

the Secretary to the Maharaja to communicate the concurrence of the Maharaja to the said nominations. By another letter dated 1st April 1959, the General Administration Department of Madhya Pradesh communicated to the Secretary to the Maharaja requesting him that representatives of the Ruler on the Trust be nominated. The letter records that the State Government has prepared a draft of the Trust Deed which will be finalised without any delay. The letter dated 14th November 1959 of the State Government addressed to the Secretary of Maharaja which is by way of reminder to the Maharaja to nominate his two representatives. The said letter also records that the draft of the Khasgi Trust Deed will be finalised and sent for approval of the Maharaja. The letter dated 14th April 1961 addressed by the State Government to the Secretary to Maharaja records that the draft of the Deed of Khasgi Trust is under examination and will be sent soon.

5. Ultimately, in terms of the draft provided by the State Government, the Deed of Trust of the Khasgi Trust (for short, 'the Trust Deed') was executed on 27th June 1962 by and between Her Highness Maharani Usha Devi of Indore, the daughter and successor of Maharaja Yashwantrao Holkar, described therein as the Settlor, Shri K.A. Chitale, Senior Advocate and Shri S.C. Malhotra as the nominees of the Settlor and Shri S.V. Kanungo, the nominee of the President of India. The Trust Deed was also signed by the Commissioner, Indore Division and Superintending Engineer (B & R), Public Works Department, Indore who were nominated as trustees by the State Government. In the recitals, it is mentioned that the Trust was being created of the annuity of Rs.2,91,952/- in perpetuity for maintenance, upkeep and preservation of charities and religious endowments provided in the budget of the Holkar State for the year 1947-48 inclusive of the charities founded by Maharani Devi Ahilaya Bai Holkar. The said endowments were described in part 'A' of the Schedule. Further, it is provided that the Trust will be for the management and maintenance of the properties described as the Trust Properties, more particularly described in Part 'B' of the Schedule to the Deed of Trust. Part 'B' of the Schedule contains a list of a large number of properties in various States.

6. There was a notification issued by the State of Madhya Pradesh on 27th July 1962. It was mentioned therein that on the formation of the Madhya Bharat State, institutions, factories, religious places, chhatries, etc. fell under the supervision and management of the Commissioner, Pardon Office. It was further stated in the notification that the State Government while granting permission for the formation of the Khasgi Trust and the Alampur Trust (the Holkar Chhatries Trust), has granted recognition/approval to the transfer of the areas, and institutions etc. included in the Trust Deeds of the aforesaid Trusts. It is further mentioned that accordingly, the areas, institutions, factories, religious places, chhatries etc. were transferred to the respective Trusts on 16th July 1962. A report of making over and taking over charge of the properties described as the Alampur and Khasgi trust properties was recorded on 16th July 1962. For the sake

of completion, it must be mentioned here that on 8th March 1972, a Supplementary Deed of Trust was executed by and between the Trustees for incorporating a clause that the Trustees have always had and shall have the power to alienate not only the income but any other item of the corpus of Trust Property for the necessity or for the benefit to the objects of the Trusts.

7. Alienations were made by the Trustees in relation to at least six properties. On 18th April 2012, a letter was addressed by Smt. Sumitra Mahajan, a Member of the Parliament to the Chief Minister of the Government of Madhya Pradesh. She contended in the said letter that the property mentioned in the Trust Deed was vesting in the erstwhile State of Madhya Bharat. It is mentioned that a valuable property shown in the Trust Deed at Haridwar was sold by the trustees without the permission of the Registrar under the Public Trusts Act. Therefore, she requested the Chief Minister to order an inquiry. Along with the notice dated 23rd May 2012, a copy of the said complaint was forwarded to the trustees of the Khasgi Trust by the Registrar of Public Trusts, District Indore. The Trustees replied on 20th June 2012 contending that the Public Trusts Act was not applicable to the Khasgi Trust and it is for the benefit of the Trust that the alienations have been made. Thereafter, the Collector of District Indore passed an order dated 5th November 2012 holding that the properties mentioned in the Trust Deed were the properties of the State Government. He held that the trustees have made illegal alienations without prior permission from the Government. Therefore, the alienations were held to be invalid. Hence, the Collector directed that the name of the State Government be entered in revenue records/land records to prevent further alienations.

8. A Writ Petition being Writ Petition No. 11618 of 2012 was filed by the Khasgi Trust and its Trustee Shri S.C. Malhotra in the Madhya Pradesh High Court for challenging the aforesaid order dated 5th November 2012 passed by the Collector and praying for restraining the Collector from interfering with affairs of the Trust. The learned Single Judge disposed of the petition by the judgment and order dated 28th November 2013 by issuing diverse directions for the administration of the Khasgi Trust. The learned Single Judge directed that the Board of Trustees shall be reconstituted by including Smt. Sumitra Mahajan and two the persons as trustees. The State Government was directed to make a provision for payment of Rs.1 crore every year to the Khasgi Trust. Another writ petition (W.P. No. 5372 of 2010) filed by the Khasgi Trust was disposed of by the order dated 3rd December 2013 by the learned Single Judge directing the authorities to correct the revenue record in terms of the aforesaid order dated 28th November 2013. As stated earlier, both the said orders of the learned Single Judge were challenged by the State Government by filing two writ appeals. The Public Interest Litigation which was decided along with the writ appeals contained a prayer for directing inquiry through CBI regarding the affairs of the trust and in particular, regarding the alienations made by the Trustees.

9. Following are the important

findings rendered by the Division Bench in the impugned judgment and order:

(a) the Khasgi properties mentioned in Part 'B' of the Schedule to the Trust Deed continued to be vested in the State Government and therefore, the Trustees had no authority to alienate the same;

(b) the subsequent modification of the Trust Deed made by the Trustees empowering them to alienate the properties described in Part 'B' of the Trust Deed was illegal and was not binding on the State Government;

(c) the alienations made by the Trustees were void;

(d) the Khasgi Trust was governed by the Public Trusts Act; and

(e) the learned Single Judge while deciding the writ petitions filed by the Khasgi Trust has virtually re-written the Trust Deed and therefore, his Judgment cannot be sustained.

In paragraphs 158 to 166 of the impugned judgment, the Division Bench issued following directions:

'158. This Court is not reproducing the entire report as the Covenants, Trust Deeds and the notification issued by the Government of India have already been reproduced in earlier paragraphs. Thus, it is wrong on the part of the respondent to say that the mechanical exercise was undertaken by the Collector based upon letter of Member of Parliament. With due application of mind, the State Government through Collector, Indore keeping in view the covenant, trust deed and the statutory provisions has taken action in the matter.

159. In the considered opinion of this Court, this Court does not have the power to draft the Trust Deed nor is having the power to enact the statute in respect of trust in question. However, as the properties which are under the ownership of State of Madhya Pradesh have been sold by the Trust/Trustees, a committee deserves to be constituted to ensure that the trust properties as per the schedule appended with the original trust deed are preserved, maintained and kept intact for the future generations to come.

160. The Committee so constituted shall inquire in respect of the properties sold by the Trust and shall take all possible steps to recover and retrieve any property or fund of the property, which have been sold or have been in unauthorized occupation or misappropriated. For doing the aforesaid task, the State of Madhya Pradesh shall incur all the expenditures, in case there is paucity of fund in the accounts of the trust, especially in light of the fact that it is the State of Madhya Pradesh, who is having title over all properties.

161. The following Committee is constituted for the aforesaid work comprising of:-

(a) Chief Secretary, State of Madhya Pradesh (Chairman);

(b) Principal Secretary, Finance Department (Member);

(c) Additional Chief Secretary, Dharmaswa Department (Member);

(d) Commissioner, Indore Division, Indore (Member);

(e) Collector, Indore (Secretary).

The State of Madhya Pradesh shall be free to proceed ahead in accordance with law.

162. In the connected writ petition i.e. W.P. No. 11234/2020, which is a Public Interest Litigation, a prayer has been made for issuance of an appropriate writ, order or directing a CBI inquiry. So far as the prayer with regard to directions for CBI inquiry is concerned, this Court is of the considered opinion that no such directions are required. The allegation of misappropriation of Government properties and its disposal to favour someone and to cause loss to Public Exchequer, if at all, can very well be examined by Economic Investigation Wing of the State of Madhya Pradesh and accordingly, it is directed that the said Wing will thoroughly examine the matter and if it finds any criminality into the actions of any authority, it is expected that appropriate action should be taken by the said Wing. Hence, no positive direction to register a First Information Report is required.

Resultantly, the Economic Offences Wing shall examine the matter and shall be free to proceed ahead in accordance with law.

163. The State of Madhya Pradesh is directed to take all possible steps to preserve the cultural heritage including the Ghats, Temples, Dharamshalas, which find place in the Trust property, being the titleholder of the property in question. The State of Madhya Pradesh shall also take appropriate action in accordance with law against all those persons, who have allegedly illegally sold the Trust's property from time to time.

164. In W.P. No. 11234/2020, the Union of India is already a party and Shri Milind Phadke has also been heard in the matter before delivering the judgment. He has also stated that the properties in question, on account of the covenant and the statutory notifications issued from time to time, are the exclusive properties of the State of Madhya Pradesh.

165. This Court on 23-4-2014 has directed the parties to maintain status quo and it has been informed by learned counsel for the State of Madhya Pradesh that some construction has taken place by the private parties.

166. Resultantly, the State of Madhya Pradesh is directed to take appropriate action in respect of the construction which has taken place over the Khasgi properties and shall restore it to its original position and the entire expenditure shall be borne by the State of Madhya Pradesh through Commissioner, Indore. The Collector, Haridwar shall assist the Divisional Commissioner, Indore in the matter and the

Divisional Commissioner, Indore shall ensure that Kusha Ghat as well as other properties are again, which are meant for public charities are made available to public at large. The aforesaid direction is not only in respect of present property but in respect of other properties also. The State of Madhya Pradesh shall ensure by taking appropriate steps in accordance with law that no further sale takes place in respect of such properties and they shall maintain the properties for the generations to come keeping in view their historic importance. The Collector, Indore shall be free to take action in accordance with law pursuant to the order passed by him dated 5-11- 2012 and the Registrar shall also be free to take appropriate action in accordance with law pursuant to the order passed by him dated 30- 11-2012.' (emphasis added)

SUBMISSIONS
ON BEHALF OF THE KHASGI TRUST

10. The submissions have been made initially by Shri Mukul Rohatgi, Senior Advocate and thereafter, by Dr. A.M. Singhvi, Senior Advocate in Civil Appeals arising out of Special Leave Petition (C) No.12133 of 2020 and Special Leave Petition (C) No.12241-42 of 2020. The learned senior counsel appearing for the appellants urged that at the time of the merger of the erstwhile State of Indore with the newly formed State of Madhya Bharat, there were three categories of properties - (A) State Properties covered by Article VI(1)(c) and Article XII of the Covenant; (B) Private Properties of the Ruler of Indore; and (C) Charities and Trust Properties held by the family of the Ruler of Indore. The contention raised by the appellants is that the charities which were already dedicated to the public, could not lapse to the State Government. The main submission is that in the impugned order of the Collector dated 5th November 2012, there is an error committed by holding that the properties described in Part 'B' of the Schedule to the Trust Deed of the Khasgi Trust, were not the Trust Properties but, were the properties of the State. It was submitted that the properties mentioned in Part 'B' of the Schedule, are the properties vested in the Khasgi Trust, as can be seen from various clauses of the Trust Deed. It was submitted that the Supplementary Deed of Trust dated 8th March 1972 clearly confers a power on the Trustees to alienate the Trust properties mentioned in Part 'B' of the Schedule to the Trust Deed. The submission is that as the Khasgi Trust is a State-controlled Trust, in view of clause (a) of the sub-Section (1) of Section 36 of the Public Trusts Act, the provisions of the Public Trusts Act, are not applicable to it. The learned senior counsel relied upon a specific order passed in that behalf by the Registrar of Public Trusts. He submitted that there are as many as 246 properties listed in Part 'B' of the Schedule to the Trust Deed, out of which, only six have been transferred by the Trustees during the span of over sixty years. He submitted that apart from the fact that Section 14 of the Public Trusts Act is not applicable to the Khasgi Trust, the scope of Section 14 has been laid down by this Court in the case of Parsi Zoroastrian Anjuman, Mhow v. Sub Divisional Officer/The Registrar of Public Trusts and Anr., 2022 SCC Online SC 104 He submitted that as the Public Trusts Act allows the Trustees to alienate the Trust

properties, the Registrar would be required to grant permission for alienation in view of sub-Section (2) of Section 14 of the Public Trusts Act.

11. The learned senior counsel would urge that for a period of over fifty years from the date of execution of the Trust Deed, the State Government never disputed the status of properties mentioned in Part 'B' of the Schedule to the Trust Deed as the properties of the Khasgi Trust. He submitted that only on the basis of a complaint dated 18th April 2012, made by a senior Member of Parliament of the ruling party to the office of the Chief Minister, the Principal Secretary prepared an Inquiry Report dated 2nd November 2012. No notice of any such inquiry was served upon the Trustees. He pointed out that the said Inquiry Report dated 2nd November 2012 proceeds on the footing that the Trust properties are, in fact, the properties of the State Government. The Inquiry Report suggests that the possession of the Government properties should be taken over by the State Government. He pointed out that it is on the basis of this Inquiry Report that the impugned order dated 5th November 2012 was passed by the Collector unilaterally holding that the State Government was the owner of the properties described as the Trust properties in the Trust Deed. Apart from the fact that the Collector had no jurisdiction to adjudicate on the disputed question of title, even the elementary principles of natural justice have not been followed. He pointed out that a show cause notice was issued by the Registrar of the Public Trusts to the Khasgi Trust on the basis of the complaint made by the Member of Parliament. Though, the Trustees replied to the said show cause notice issued by the Registrar, the said reply has not been considered by the Collector while passing the impugned order dated 5th November 2012.

12. Inviting our attention to the findings recorded in the impugned judgment of the Division Bench, the learned senior counsel submitted that correspondence on record and the clauses in the Trust Deed have been completely overlooked by the Division Bench of the High Court of Madhya Pradesh. He pointed out that the Supplementary Deed of Trust was executed on 8th March 1972 by all the Trustees including the nominees of the State Government as well as of the Central Government. Though the said Supplementary Deed was not challenged specifically, the Division Bench has gone into the issue of legality thereof. As regards the sale of the property known as Holkar Bada at Haridwar, he pointed out that the Bada which consists of only residential premises, has been sold under four separate Sale Deeds, but the adjacent Kusha Ghat has not been sold by the Trustees. The Bada property sold by the Trustees was encroached upon. There is a resolution of the Board of Trustees authorising the sale of the said property to which all the Trustees are parties. He pointed out that the constituted Attorney appointed by the Trustees may be related to the purchasers, but the purchasers are not at all related to any of the Trustees. He submitted that the entire sale proceeds have been deposited in the corpus of the Trust. Moreover, the Sale Deeds executed by the Trustees in the year 2009, were never challenged by the beneficiaries or any other person till

2012, when the Member of Parliament raised an objection to the said transactions. If according to the Authorities, the Trustees had violated the provisions of the Public Trusts Act, assuming the same were applicable, the Registrar could have invoked his powers under Chapter V of the Public Trusts Act. He submitted that the impugned order dated 5th November 2012 was passed by the Collector behind the back of the Trustees. Moreover, the Collector had no jurisdiction to make an adjudication on the question whether the Trustees have violated any provision of law. He submitted that the order of the Collector is without jurisdiction. In any case, in view of the order dated 10th August 1971 passed by the Registrar of Public Trust, Indore, the provisions of the Public Trusts Act are not applicable to the Khasgi Trust. He pointed out that each and every alienation has been made pursuant to the resolutions passed by the Trustees which included the Government nominees.

13. The learned senior counsel submitted that when the Trustees have acted within the four corners of the Trust Deed as well as the Supplementary Trust Deed, criminal intention cannot be attributed to them. There is a complete absence of mens rea. He submitted that before making the first alienation in respect of a garden, the Trustees approached the State Government for sanction. The Chief Secretary of the State by communication dated 13th June 1969, clearly took a stand that the sanction of the Government for making alienation was not required. He submitted that the three nominees of the Governments are parties to the decision taken by the Board of Trustees to alienate the properties. He urged that the Trustees acted in a bona fide manner and therefore, in the year 2020, the High Court ought not to have ordered inquiry through the Economic Offences Wing of the State Government especially when the transactions concerning Holkar Bada were of 2009. He submitted that even the learned Single Judge while deciding the writ petition filed by the Trustees, had exceeded the jurisdiction vested in him and directed substantial modifications to be made to the Trust Deed. He submitted that on all counts, the impugned order of the Collector dated 5th November 2012, deserved to be set aside by allowing the writ petition.

SUBMISSIONS OF THE APPELLANT IN CIVIL APPEAL FILED BY THE PURCHASER

14. Civil Appeal arising out of Special Leave Petition (C) Diary No.22151 of 2020 has been filed by the purchaser of Holkar Bada. Shri P. S. Patwalia, the learned senior counsel firstly submitted that by the impugned judgment, the High Court has declared that the Sale Deeds executed in favour of the appellant, were void, though, the appellant-purchaser was not a party to the writ petition before the learned Single Judge and to the Appeals before the Division Bench. Moreover, after eleven years of the execution of the Sale Deeds, the High Court found fault with the same. He submitted that the appellant are bona fide purchaser. He submitted that one Mr. Vijay Singh Pal filed a Public Interest Litigation before the High Court of Uttarakhand, seeking an inquiry through the Central Bureau of Investigation into the sale transactions and

the said writ petition/PIL was dismissed by the order dated 24th May 2018. The High Court held that the petitioner therein had not challenged the Sale Deeds by approaching the Civil Courts. The learned senior counsel pointed out that the said order was confirmed by this Court. He submitted that the appellant has been harassed and blackmailed by the said Mr. Vijay Singh Pal. Therefore, a suit for injunction was filed by the appellant/ purchaser against him, which was decreed by the Civil Court. He submitted that to the Public Interest Litigation decided by the impugned judgment, the appellant/purchaser was not a party and moreover, the same was belatedly filed in the year 2020. He submitted that the Sale Deeds, under which Holkar Bada was sold, were not challenged in any proceedings before any competent Court. He submitted that the appellant has not purchased Kusha Ghat and he is the purchaser of only the property known as Holkar Bada.

15. He also invited our attention to the resolution passed by the Board of Trustees on 5th June 2008, approving the sale transaction. He submitted that there is no material to show that the sale transaction was made at a price which was less than the prevailing market value. He stated that the old tenants had encroached upon the said property and their presence on the property has been noted in the revenue records.

SUBMISSIONS ON THE INTERVENTION APPLICATIONS

16. Shri Prashant Bhushan, the learned counsel appearing for the applicant/ intervenor in I.A.No.124266 of 2020, filed in Civil Appeals arising out of Special Leave Petition (C) Nos.12241-42 of 2020, has made detailed submissions. He submitted that the dispute regarding the title claimed by a Maharaja of Indore was resolved in terms of Article XII of the Covenant by Shri V. P. Menon nominated by the Central Government. By a letter dated 6th May 1949, he settled the claim of Maharaja in respect of the Khasgi properties by holding that the same shall be treated as transferred to the State Government. He submitted that in the same order, a Trust was proposed to be constituted for maintenance, upkeep and preservation of the charities including the Khasgi properties vested in the State Government. He submitted that apart from the fact that the Trustees had no authority to sell the property described in Part 'B' of the Schedule to the Trust Deed, the documents on record show that the Trust was getting good income and therefore, there was no necessity of selling the said property known as Holkar Bada. He pointed out that on 23rd August 2007, a resolution was passed by the Board of Trustees to authorize Shri S. C. Malhotra, a Trustee to give a power of attorney to the concerned employee/person, only for the purpose of looking after the legal and other matters of the Trust as well as the property of the Trust. The resolution did not authorize Shri S. C. Malhotra to execute a power of attorney, authorizing the attorney to sell or dispose of the property. However, Shri S. C. Malhotra fraudulently executed a power of attorney in favour of one Mr. Raghvendra Sharma, authorizing him to sell the property having an area of 13370 sq.ft. at Kusha

Ghat, Haridwar. Shri S. C. Malhotra had no authority to execute such a power of attorney. Similarly, Mr. Kanwaljit Singh Rathore claiming to be the Secretary of the Khasgi Trust executed a similar power of attorney in favour of said Mr. Raghvendra. On the basis of the said power of attorney, Mr. Raghvendra executed four separate Sale Deeds in favour of his own brother Mr. Aniruddh Kumar. In one of the four Sale Deeds, even Mr. Raghvendra's wife is shown as a purchaser along with Mr. Aniruddh. He would, therefore, submit that a fraud has been played by the Trustees. He relied upon various decisions in support of his contention that the Sale Deeds executed in favour of said Mr. Aniruddh, are illegal and void. He submitted that on the basis of the complaint filed by a Member of Parliament, a detailed inquiry was conducted by the Principal Secretary. He pointed out that only on the basis of the findings recorded in the said inquiry that the impugned order has been passed by the Collector.

17. Shri P.S. Patwalia, the learned senior counsel appearing for the purchaser has raised a strong objection to the locus of the applicant Mr. Ved Prakash Pal, represented by Mr. Prashant Bhushan by relying upon various documents annexed to the counter affidavit. He pointed out that the applicant Mr. Ved Prakash Pal has been set up by Mr Vijay Singh Pal, who unsuccessfully filed a Public Interest Litigation before the Uttarakhand High Court, which was finally rejected. He submitted that in one of the complaints filed by the intervenor Mr. Ved Prakash Pal before the District Magistrate in April 2019, he has given the cell phone number of the said Mr Vijay Singh Pal as his own. He relied upon several photographs and other documents to show that the applicant is a close associate of Mr Vijay Singh Pal, who was the petitioner in the Public Interest Litigation. He pointed out that the members of the syndicate led by Mr Vijay Singh Pal, have criminal antecedents. He pointed out several documents in this regard. He submitted that the I.A. for intervention filed by Mr Vijay Singh Pal has been dismissed by this Court by imposing costs of Rupees Twenty-Five Lakhs. He would, therefore, submit that the intervention application made by Mr. Prashant Bhushan deserves to be dismissed with exemplary costs.

18. The learned senior counsel appearing for the applicant Richard Holkar in I.A. No.74790 of 2021 filed in Civil Appeals arising out of Special Leave Petition (C) Nos.12241-42 of 2020, submitted that the property known as 'Maheshwar Wada' was accepted as a private property of Maharaja Yashwant Rao Holkar by communication dated 7th May 1949. His submission is that the lease granted to the applicant in respect of the said property cannot be interfered with. He submitted that before executing the transaction with him, the Trustees had applied for a permission under Section 14 of the Public Trusts Act. He submitted that in any case, the applicant was not impleaded as a party in the proceedings before the High Court and therefore, the High Court could not have dealt with the issue of the legality of the transactions in favour of the applicant.

19. The learned counsel appearing

for the intervenors/ applicants in I.A. No.7103 of 2020 filed in Civil Appeal arising out of Special Leave Petition (C) No. 12133 of 2020 submitted that for managing the property subject matter of the Trust Deed, a High-Level National Committee should be constituted. He submitted that the annuity of Rs.2,91,952/- granted to the Khasgi Trust, is inadequate and the State must substantially increase the same.

SUBMISSIONS ON BEHALF OF THE STATE OF MADHYA PRADESH

20. Shri Balbir Singh, the learned Additional Solicitor General of India submitted that only one Trustee of the Khasgi Trust Shri S. C. Malhotra had filed the two writ petitions subject matter of these Civil Appeals and therefore, the same were not maintainable. He had no authority to represent the Khasgi Trust to the exclusion of the other Trustees. He submitted that the property subject matter of Part 'B' of the Schedule to the Trust Deed was treated as lapsed in favour of the erstwhile Madhya Bharat Government. The Trust Deed clearly recites that the Trustees were authorized only to maintain and preserve the said properties. He pointed out that in the written statement filed by the Trustees in Civil Suit No.15 of 1973 as well as in the writ petition filed by them before the High Court, it is admitted that the Khasgi property subject matter of the Trust Deed had lapsed in favour of the State Government. He submitted that the correspondence exchanged between the Maharaja and the Government of India constitutes a treaty or agreement within the meaning of Article 363 of the Constitution of India. Therefore, all disputes arising on the basis of the same are required to be adjudicated by this Court. He submitted that in terms of the adjudication made in accordance with Article XII of the Covenant, the Khasgi properties vested in the State Government and thereafter, the State Government was not divested of the said properties. He submitted that what is mentioned in the letter dated 13th June 1969 issued by the then Chief Secretary, is contrary to law and therefore, not binding on the State Government. He submitted that the Khasgi Trust is a public trust, which is governed by the Public Trusts Act. He submitted that as the Khasgi Trust cannot be said to be under the control of the State Government, exemption under Clause (a) of sub-Section (1) of Section 36 of the Public Trusts Act, was not applicable. Though the constraints imposed by Section 14 of the Public Trusts Act were applicable to all the alienations made by the Trust, prior consent of the Registrar under Section 14 was not obtained.

21. It is pointed out by him that on 28th July 2007, the land appended to Ganpati Mandir admeasuring 1800 sq.ft. was given on annual lease for thirty years for a meagre rent amount of Rs.720/- per year. As the Khasgi property, which even according to the case of the appellant was a Trust property was illegally sold, an inquiry by the Economic Offences Wing has been rightly ordered. He would, therefore, submit that no interference is called for with the impugned judgment.

BROAD QUESTIONS FOR CONSIDERATION

22. After considering the submissions made across the Bar, broadly the following main questions arise for our consideration:-

a. Whether the properties incorporated in Part 'B' of the Schedule to the Trust Deed are the properties of the Khasgi Trust?

b. Whether the Khasgi Trust is a Public Trust within the meaning of the Madhya Pradesh Public Trusts Act, 1951 and whether its provisions are applicable to the Trust?

c. Whether the Supplementary Trust Deed dated 08th May 1972 is legal and valid?

d. Whether the Trustees of the Khasgi Trust were under an obligation to obtain the previous sanction of the Registrar in accordance with Section 14 of the Public Trusts Act, 1951 for alienating the Trust property?

e. Whether the Division Bench of the High Court was right in holding that the impugned order dated 5th November 2012 passed by the Collector was lawful and correct?

f. Whether the High Court was justified in directing the investigation into the allegations of misappropriation against the Trustees by the Economic Offences Wing of the State Government? and

g. Whether the writ petitions filed by only one Trustee of the Khasgi Trust before the learned Single Judge were maintainable?

THE STATUS OF THE PROPERTIES IN PART 'B' OF THE SCHEDULE TO THE TRUST DEED (Question a)

23. Perusal of the Trust Deed shows that 246 immovable properties are listed in Part 'B' of its Schedule. In one of the recitals of the Trust Deed, the properties in Part 'B' have been described as 'the Trust Properties'. It is necessary to consider the relevant provisions of the Covenant to which the Maharaja is a party. Article XII of the Covenant reads thus:

'(1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to Raj Pramukh.

(2) He shall furnish to the Raj Pramukh before the first day of August 1948 an inventory of all the immovable properties, securities and cash balance held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property it shall be referred to such person as the Government of India may nominate, in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned.

Provided that no such dispute shall be referable after the first day of July 1949.'

24. It appears that the Maharaja made

an inventory of all the immovable properties, securities and cash balance held by him. The Maharaja made claims in terms of clause (3) of Article XII. Shri V.P. Menon, the Secretary to the Government of India was nominated by the Government of India to make an adjudication on the dispute in terms of clause (3) of Article XII. By the letter dated 6th May 1949 addressed by Shri V.P. Menon, the Maharaja was informed that the inventory of private properties of Maharaja submitted pursuant to Article XII has been approved and accepted. It is mentioned in the said letter that Annexure 'A' contains a list of properties which are approved as private properties of the Maharaja. Annexure 'A' contains several properties. Admittedly, none of these properties has been included in Part 'B' of Schedule to the Trust Deed. Shri V.P. Menon addressed another letter dated 7th May 1949 to the Maharaja informing him that the claim submitted by him in respect of the Khasgi properties in the inventory has been also settled as per the enclosure to the said letter. The enclosure to the said letter is very relevant which reads thus:

'His Highness Maharaja Yashwant Rao Holkar, Maharaja of Indore, Indore

Settlement of the claim made by His Highness Maharaja Yashwant Rao Holkar of Indore concerning Khasgi

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

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

The Trust shall consist of the following:

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

2. Two nominees of the Ruler.

3. One nominee of the Government of India.

4. Two nominees of the Madhya Bharat Government.

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

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

25. Thus, the Government of India

held that the Khasgi properties and the income from Khasgi should be treated as lapsed for all time to the Madhya Bharat Government. This shows that the claim made by the Maharaja in respect of the Khasgi properties was not accepted and that a decision was taken that the said properties shall vest in the State Government. In lieu thereof, certain guarantees were given by the Government of India, which included that an autonomous Trust would be created for the said charities (the Khasgi properties and the charities of Maharani Ahilyadevi Holkar). The Trust was to be headed by the Ruler of Indore as its President. Out of five other Trustees, two were to be the nominees of the Ruler, two were to be the nominees of the State Government, and one was to be the nominee of the Government of India. The government nominees were to be appointed after consultation with the Ruler. The powers and functions of the Trust were made subject to the State or Central legislation, which may be enacted in future. However, it was clarified that the legislation shall not change the manner of formation of the autonomous Trust and the composition of the Trust.

26. Apart from the rejection of the claim by the Maharaja in respect of the Khasgi properties, the Trustees have accepted time and again that by virtue of the settlement of the dispute in accordance with clause (3) of Article XII of the Covenant, the State Government became the owner of the Khasgi properties. Suit No. 15 of 1975 was filed by a member of the Holkar family to which the Khasgi Trust as well as other two Trusts of Holkar family were party defendants. A written statement was filed by the Khasgi Trust in the said suit. Paragraph 6 of the said written statement is material, which reads thus:

'6. Reply to para 6:

It is admitted that the property descended to His late Highness on succession from his predecessor Ruler of Holkar Dynasty and recognition by Paramount Power. The property comprised of the Kingdom Malharrao extension acquired by Shrimant Holkar and further and addition Subhedar acquisition, by successive Rulers, Including His late Highness. The property bestowed on Maharani Gautamabai Holkar at the instance of her husband Subhedar Malharrao was held and managed separately by or on behalf of the consent of the Ruler and was called the "Khasgi" property, Devi Ahilyabai created public religious and charitable endowment from her resources and in the year 1904 the Khasgi property came to be administered by the Holkar State. In the integration of the administration under the Covenant entered into by the Rulers of the States of Central India, the administration of the property settled for public charitable and religious endowments founded by Devi Ahilyabai also passed to the United State of Madhya Bharat, a provision having been made that the endowments would be administered subject to any directions or instructions that may from time to time be given by the Government of India. The properties had been settled as a foundation for funds for charity. These properties lapsed to the State and cash grant in lieu thereof was made. The Khasgi (Devi Ahilyabai Holkar Charities) Trust was constituted under the

appropriate directions of the Government of India to administer this Trust fund and the charities. The Registrar of Public Trusts has upheld the Trust as a Public Trust administered by an agency acting under the control of the State. Annexed herewith is a copy of the relevant order and marked 'B'.' (emphasis added)

27. Paragraphs 29.2 and 29.3 are also relevant, which read thus:-

'29.2 As stated above, the list of Private Properties settled in 1948 under the Covenant excluded the endowments which were eventually transferred to the Khasgi (Devi Ahilyabai Holkar Charities) Trust and Alampur (Subhedar Malharrao Holkar Chhatri) Trust. These endowments vested in the United State of Madhya Bharat till 1950, then in the Part 5 State of Madhya Bharat till 1956 and thereafter in the reorganized State of Madhya Pradesh until the year 1962 when the two Trusts were created under the obligation to do so. Article VI:(2) (c) of the Covenant recognised the necessary of the Successor State providing for management of the religious, charitable and historical endowments and keeping them separate from the Private Properties.

29.3 The defendants say that the properties which eventually vested in these two Trusts were not Private Properties of His late Highness. They did not vest in His late Highness either before or after 1940 either as personal or joint family properties. Alternatively, they were either State Props or properties which vested in the United State of Madhya Bharat under Article 47 of the Covenant.' (emphasis added)

Again in paragraph 29.4, it is stated thus:

'29.4 This vesting in three successive Governments referred to above and the handing over of the property by the Government of Madhya Pradesh to the defendant No.1 for the purposes of creation of trusts under the Covenant were acts of State which cannot be challenged by the Plaintiff in municipal courts.' (emphasis added)

28. Even in the writ petition filed by the Khasgi Trust out of which the present Civil Appeals arise, a specific stand was taken in Paragraph 5.1 that the Khasgi Properties were charities and religious endowments of the family of Rulers of Indore. A stand was taken that the Khasgi properties held by Holkar rulers vested in the State Government which were restored to the Trust created for that purpose. The relevant part of paragraph 5.1 reads thus:

'5.1. The petitioner is a religious and charitable Trust duly constituted on 27.06.1962 by a registered instrument. A copy of the Trust Deed is annexed hereto marked ANNEXURE P-2. However, the history of the Trust and its activities can be traced to the Holkar rulers who had founded and ruled Holkar State at Indore from 1761 A.D. to 1948 A.D. when the said State (i.e. Holkar State) joined the Union of India by first merging itself into a Part B State by the name of Madhya Bharat. Right from the lime of establishment of their rule, the Holkar rulers, particularly the legendary Devi Ahilya Bai Holkar being of an extra-ordinary and unprecedented

religious and charitable disposition, generously established charities and religious endowments spread all over the country including in their own State. Since the said charities and religious endowments were managed and looked after personally by the Rulers and their Queens, the same came to be called "Khasgi" or 'personal' charities and religious endowments. However, since during those days there was little or no distinction between 'State' and 'personal' charities and religious endowments, the funds for the upkeep and management of the said charities and religious endowments were provided by the State and a budgetary provision was accordingly, made therefor. Historically, therefore, the charities and religious endowments came to be regarded as a different and third species of property, as distinguished from the State properties and/ or personal properties of the Rulers of Holkar State.'

29. Paragraph 5.2 is also material, which reads thus:-

'5.2 The above nature of the charities and religious endowments of the Trust is also clear from the recitals of the Trust Deed, particularly, clauses (3), (5), (12), (15) and (17) therein. (Kindly see ANNEXURE P-2). It is, therefore, apparent that the Holkar rulers acquired properties in many religious places throughout the country and established several temples, dharamshalas, ghats etc. and dedicated the same for public use. However, there were apparently several properties which could not be put to such use, but which continued to be owned and managed as Khasgi properties Ultimately, when the Trust was established in 1962, all such properties, including the temples, dharamshalas, ghats etc, which formed part of the Khasgi properties, were vested in and handed over to the petitioner Trust as per the list/ schedule to the Trust Deed. It also appears that the petitioner Trust was created with the active support, participation and approval of the State government as the latter's Muafi Department, which had been looking after the Khasgi properties after the merger of the Holkar State with Madhya Bharat, was apparently finding it difficult to manage the numerous and far flung Khasgi properties in the nominal budget grant of about Rs.2.91 lacs. The properties were apparently in danger of being wasted or being encroached upon and what was worse still, was the fact that the charities and religious endowments were in danger of losing their historical identity and importance, both which were closely associated with the erstwhile Holkar Rulers. Therefore, in the above historical background, the State Government in its wisdom decided to restore the Khasgi properties to the erstwhile Holkar Rulers by getting them to create the petitioner Trust which was the vehicle used for entrusting the Khasgi properties to them. However, the petitioner Trust could come into existence only after the demise of late Maharaja Yeshwant Rao Holkar though the process had begun much earlier during his lifetime.' (emphasis added)

30. On 23rd June 1969, an application was made by the Trustees of Khasgi properties to the Registrar seeking a declaration regarding exemption under clause (a) of sub-Section (1) of Section 36

of the Public Trusts Act. In paragraph 6 of the said application, the Trustees stated that the charities and religious endowments were initially under the management of the erstwhile Holkar State. They further stated that after the merger of Holkar State with the State of Madhya Bharat, the management and possession of the charities and religious endowments remained with the State Government and its successors till 16th July 1962, when the same was handed over to the Trustees. The stand consistently taken by the Trustees of the Khasgi Trust clearly shows that it is an accepted position that the properties described in Part 'B' of the Schedule to the Trust Deed vested in the State Government after the adjudication was made in accordance with Clause (3) of the Article XII. It must be noted here that the Maharaja or none of his family members challenged the said adjudication made on the issue of ownership of the Khasgi properties and none of them disputed or challenged the act of the State Government of taking over the Khasgi properties/charities. In fact, the Maharaja acted upon it by nominating two trustees. The Khasgi Trust has been created on the basis of the said adjudication. Hence, the Trustees are bound by the adjudication.

31. Thus, as a result of adjudication made in accordance with clause (3) of Article XII of the Covenant, the Khasgi properties which are listed in Part 'B' of the Schedule to the Trust Deed vested in the State Government.

32. On 6th January 1959, the Under Secretary to the Government of Madhya Pradesh wrote to the Private Secretary of Maharaja that the State Government proposes to nominate the Commissioner, Indore Division and the Superintending Engineer (B&R), P.W.D., Indore Circle as their nominees to the Trust to be constituted as per the enclosure to the letter dated 06th May 1949 addressed by Shri V.P. Menon. Therefore, a request was made to convey to the State Government whether the Maharaja had accepted their nominations. The letter records that after receiving the reply from the Maharaja, the draft of the Trust Deed would be finalised. By the letter dated 1st April 1959, the Deputy Secretary to the State Government requested the Private Secretary of the Maharaja of Indore to make nominations of two persons for being appointed as Trustees. Arequest was made to make nominations immediately so that the State Government could finalise the draft of the Trust Deed. The letter dated 14th November 1959 addressed by the Under Secretary to the State Government to the Secretary to Maharaja reiterates that after the Maharaja confirms the nominations, the Trust Deed will be finalised. By the letter dated 14th April 1961, the Under Secretary to the Government of Madhya Pradesh informed the Personal Assistant to the Maharaja that the draft deed of the Khasgi Trust was still under consideration and would be sent as soon as it was finalised. These contemporaneous documents establish that the State Government prepared the draft of the Trust Deed in terms of which the Trust Deed dated 27th June 1962 was executed. As the Khasgi Trust was created on the basis of the decision in terms of clause (3) of Article XII of the Covenant, the draft of the Trust Deed was made by the State Government. One of the recitals refers to

the properties in Part 'B' of the Schedule as the Trust properties. Various clauses of the Trust Deed refer to the fact that the Khasgi properties, which vested in the State Government, became the Trust property of the Khasgi Trust. The recitals and clauses in the Trust Deed are very relevant as the Trust Deed was drafted by the State Government. Clauses 3 and 5 are material which read thus:

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

xxx xxx xxx

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

Even Clause 7 of the Trust Deed again refers to maintenance, upkeep and preservation of the Trust properties, which reads thus:-

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

33. Under the report dated 16th July 1962, Muafi Officer of the State Government handed over the possession of properties of the Khasgi Trust as well as of the Alampur Trust to the Secretary of the Trusts. In terms of the handing over of the properties as aforesaid, a notification was issued by the State Government on 27th July 1962. English translation of the said notification reads thus.:-

'STATE OF MADHYA PRADESH DATED
27.07.1962

COMMUNIQUE FOR COMMISSIONERS AND
DISTRICT

CHAIRMANS

OFFICE OF COMMISSIONER, INDORE DIVISION.

INDORE

(PARDON SECTION)

Owing to the formation of Madhya Bharat, Areas, Institutions, Factories, "Chhatris", Religious Places etc. of Agreement Executor former State Indore fell under the supervision and management of Commissioner, Pardon Office. Now, in relation to these properties, Government while granting permission for formation two

Trusts, one Khasgi Trust (The Maharani Ahilyabai Charities Trust) and second Alampur Trust (The Holkar Chhatris Trust), has granted recognition to transfer of the areas, institutions etc. included in the trust deed to the aforesaid trusts. Accordingly, all the Areas, Institutions, Factories, "Chhatris", Religious Places etc., in connection with the trust were transferred to them on 16.07.1962. Hence, for the information of all government offices and general public, this communiqué has been published. (2273) M. P. Shrivastava, Commissioner' (emphasis added)

Thus, the properties described in Part 'B' of the schedule to the Trust Deed which were vested in the State Government were transferred to the autonomous Khasgi Trust on its incorporation. In fact, till 2012, the State Government never disputed that the Khasgi properties listed in Part 'B' of the Schedule to the Trust Deed were the Trust properties of the Khasgi Trust. Therefore, to that extent, the Division Bench of the High Court is not right when it concluded that the properties incorporated in Part 'B' of the Schedule to the Trust Deed continue to be the Government properties even after 16th July 1962. The said properties are vesting in the Khasgi Trust.

APPLICABILITY OF THE PROVISIONS OF THE PUBLIC TRUSTS ACT (Question b)

34. The second issue to be decided is whether the provisions of the Public Trusts Act apply to the Khasgi Trust. We have already quoted the enclosure to the letter dated 6th May 1949, issued by Shri V. P. Menon. The enclosure incorporates the decision of the Government of India on the claim made by the Maharaja about the Khasgi properties. It specifically records that the powers and functions of the Khasgi Trust shall be subject to such legislation as the Central Government or Madhya Bharat Government may enact generally for the purposes of regulating such Trusts. It is in this context that we will have to examine the provisions of the Public Trusts Act, which was enacted in the year 1951. Sub-section (4) of Section 2 defines a Public Trust, which reads thus.:-

'2. Definitions. In this Act, unless there is anything repugnant in the subject or context,

(1).;

(2).;

(3).;

(4) "public trust" means an express or constructive trust for a public, religious or charitable purposes and includes a temple, a math, a mosque, a church, a wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose;

(5).;

..'

35. Coming back to the Trust Deed, the object of the Trust is to maintain up-keep and preserve the Trust properties and the charities as well as religious endowments. Part 'A' of Schedule to the Trust Deed contains details about the

endowments to various places of religion, such as, temples, anna chattras, peersthans, donations to dharmshalas and chhatris. Some of the properties in Part 'B' of the Schedule are temples and religious places. The trust was created with the object of preservation and maintenance of the Trust properties which are charities and endowments. Thus, it can be said that the Khasgi Trust, is an express Trust for public, religious and charitable purposes. Under Section 4(1) of the Public Trusts Act, every such Trust requires compulsory registration.

36. The Trustees in support of their appeals relied upon the order dated 10th August 1971, passed by the Registrar of Public Trusts, holding that the Khasgi Trust was entitled to exemption under Clause (a) of Sub-Section (1) of Section 36 of the Public Trusts Act. Paragraph 3 of the said order reads thus.:-

'3 Out of five members of the Management Committee of Khasgi (Devi Ahilyabai Holkar Charities) Trust are nominated by the State Government and Central Government. In such circumstances, control of the State Government on this Trust is evidently clear. Even the savings of the Trust could be spent only with the prior permission of the State Government in accordance with the Section 14 of the Trust Deed. It is clear from it that State Government is in full control of the present Trust and it is eligible for the exemption from registration. I believe that the Objection raised by the Secretary of the Trust is valid and appropriate.

Thus, proceedings of the registration are concluded.'

37. It is, therefore, necessary to consider the ambit of Section 36. For the sake of convenience, we are reproducing Section 36, which reads thus:-

'36. Exemption.

(1) Nothing contained in this Act shall apply to (a) a public trust administered by any agency acting under the control of the State or by any local authority,

(b) a public trust administered under any enactment for the time being in force, and (c) a public trust to which the Muslim Wakfs Act, 1954 (29 of 1954) applies.

(2) The State Government may exempt by notification, specifying the reasons for such exemption in the said notification, any public trust or class of public trusts from all or any of the provisions of this Act subject to such conditions, if any, as the State Government may deem fit to impose.'

(emphasis added)

38. The order of the Registrar proceeds on the footing that even if Clause (a) of Sub-Section (1) of Section 36 is applicable, Section 14 of the Public Trusts Act will apply. Obviously, if Clause (a) is attracted, nothing contained in the Public Trusts Act shall apply to such a Trust, which will include Section 14 as well. The powers of the Registrar under the Public Trusts Act are found in Chapter V. None of the provisions of the Public Trusts Act

confer any power on the Registrar to decide the question whether an exemption under Clause (a) of Sub-Section (1) of Section 36 is applicable to a particular public Trust. Therefore, we have independently examined whether Clause (a) of sub-Section (1) of Section 36 will have application. It is not the case that the Khasgi Trust is being administered by any local authority as such. The question is whether it is being administered by any agency acting under the control of the State Government. There are six Trustees of the Khasgi Trust, out of which, one is the Ruler, who is the ex-officio President. Two Trustees are the nominees of the Ruler. The remaining three are the nominees of the State Government and Central Government. Neither in the order of the Government of India dated 6th May 1949 nor in the Trust Deed, there is anything to indicate that the Khasgi Trust is administered by any agency acting under the control of the State Government. Even the power to nominate two Trustees vested in the State Government and similar power vested in the Central Government to nominate one Trustee has to be exercised in consultation with the Ruler. The three Trustees nominated by the Government do not have a majority in decision making. The State Government has no effective control over the functioning of the Khasgi Trust. In one sense, it is an autonomous public Trust. Therefore, on the face of it, Clause (a) of Sub-Section (1) of Section 36 has no application. The Khasgi Trust cannot claim to be covered under the excepted category in clause (a) of sub-section (1) of Section 36.

39. We may note here that the High Court has proceeded on the erroneous footing that as there was no notification issued under sub-Section (2) of Section 36, Clause (a) of Sub-Section (1) of Section 36 will not apply. Sub-Sections (1) and (2) of Section 36 operate in different fields. When sub-Section (1) is applicable to a Public Trust, none of the provisions of the Public Trusts Act is applicable to the Trust. Sub-Section (2) is an independent power of the State Government to issue a notification exempting certain Public Trusts from all or any of the provisions of the Public Trusts Act. Thus, we have no manner of doubt that the Khasgi Trust will be governed by the Public Trusts Act and that the same is required to be registered accordingly.

VALIDITY OF THE SUPPLEMENTARY TRUST DEED (Question c) AND OBLIGATION TO OBTAIN A PERMISSION UNDER SECTION 14 (Question d)

40. We may note here that owing to the order of the Registrar dated 10th August 1971, even the Trustees of the Khasgi Trust had reason to believe that though by virtue of Clause (a) of Sub-Section (1) of Section 36, the Trust was exempted from registration under the Public Trusts Act, Section 14 thereof was applicable. Section 14 reads thus :

'14. Previous sanction of Registrar, in cases of sale, etc., of property belonging to a public trust.-(1) Subject to the directions in the instrument of trust or any direction given under this or any other law by any court

(a) no sale, mortgage, exchange of gift of any immovable property; and

(b) no lease for a period exceeding seven years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or building; belonging to a public trust, shall be valid without the previous sanction of the Registrar.

(2) The Registrar shall not refuse his sanction in respect of any transaction specified in sub-section

(1) unless such transition will, in his opinion, be prejudicial to the interests of the public trust.

An application was made by the Secretary of the Khasgi Trust on 21st August 1997 to the Registrar to grant permission under sub- Section (1) of Section 14 to sell the Trust property mentioned therein which was sold to the appellant in Civil Appeal arising out of Special Leave Petition (C) No. 19063 of 2021. By the order dated 16th October 1997, permission to alienate was accorded by the Registrar to the Trustees, subject to several conditions. One of the important conditions was that the property should be sold at the maximum price by inviting tenders and that the sale price should not be less than the market rate prevailing in the area where the property is situated. In any event, as the Public Trusts Act is applicable to the Khasgi Trust, the Trustees cannot alienate the Trust properties without complying with Section 14.

41. The Trustees relied upon the Supplementary Trust Deed dated 08th March 1972 for contending that they are empowered to alienate trust property without taking recourse to Section 14 of the Public Trusts Act. This document was not challenged in the proceedings before the High Court. But, the issue of legality thereof has been gone into by the High Court. As noted earlier, the Khasgi Trust has been created on the basis of the adjudication made under clause (3) of Article XII of the Covenant. The Khasgi properties vested in the State Government by virtue of the said adjudication. However, the Khasgi properties were transferred to the Khasgi Trust on its establishment. Therefore, we have already held that the Khasgi properties vested in the Khasgi Trust which is a public Trust under the Public Trusts Act. The Public Trusts Act itself permits the Trustees of a Public Trust to alienate the Trust Property subject to constraints imposed by Section 14. Therefore, the Supplementary Trust Deed which enables the Trustees to alienate the Trust Property cannot be illegal. However, alienation of the Trust property can be made only in accordance with Section 14. The Trustees by executing such a document cannot overcome the mandate of Section 14. Therefore, the power to alienate under the Supplementary Trust Deed is subject to the constraints imposed by Section 14 of the Public Trusts Act. To that extent, the Division Bench of the High Court was not right.

42. Before we discuss Section 14 of the Public Trusts Act, even if we assume that the exemption under Clause (a) of Sub-Section (1) of Section 36 was applicable

to the Khasgi Trust, it must be noted that the Trustees held the property in a fiduciary capacity for the benefit of the beneficiaries, which in the present case are the members of the public as the Trust properties include a large number of temples, ghats, etc. The property of the Khasgi Trust could not have been sold without following a fair and transparent process. The view consistently taken by this Court, as regards the alienation of public property, right from the case of Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and Ors., 2011 (5) SCC 29 will substantially apply to the alienation of the property of a public Trust and therefore, the Trustees are bound to dispose of the Trust property only for the benefit of the Trust or its beneficiaries, and not as a private venture. This can be achieved only by following a fair and transparent process. The process must be such that the Trust property fetches the best possible price. Only if alienations are made in such a manner, the same will be in the interests of the beneficiaries.

43. As we have held that the provisions of the Public Trusts Act shall apply to the Khasgi Trust, now we are referring to the provisions of Section 14. Section 14 imposes an embargo on the sale, mortgage or gift of any immovable property of the Public Trust as well as lease for a period exceeding seven years in the case of agricultural lands, or for a period exceeding three years in case of a non-agricultural land or building. Such transactions shall not be valid without the previous sanction of the Registrar. Sub-Section (2) limits the power of the Registrar to refuse the sanction in respect of transactions covered by sub-Section (1). The Registrar can refuse sanction only when he is satisfied that the transactions will be prejudicial to the interests of the Public Trust.

44. In the case of Parsi Zoroastrian Anjuman, Mhow (supra), a Co- ordinate Bench of this Court had an occasion to deal with the scope of Section 14. The Co-ordinate Bench compared Section 14 with a similar provision of Section 36 under the Maharashtra Public Trusts Act, 1950, putting an embargo on the powers of the Trustees of a Public Trust of alienating the trust property. Paragraph 22 of the said judgment reads thus:

'22. As can be seen by Section 14(1), previous sanction of the Registrar of public trusts is a precondition, for the (a) 'sale, mortgage, exchange of gift of any immovable property' or (b) 'lease for a period exceeding seven years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or building.' If Section 14(1) had stopped there, the embargo on alienation of the types enumerated in the provision (sale, gift, exchange, mortgage etc., or long-term lease(s) of agricultural or non- agricultural properties) i.e., obtaining previous sanction, could well have meant that the Registrar's role was conceivably intrusive. However, the provisions of Section 14(1) and the power conferred on the Registrar under it, are controlled by Section 14(2) which states that the Registrar 'shall not refuse his sanction' unless in his opinion the alienation, or transfer is prejudicial to the interests of the public trust. The clear reference in Section 14(2) is to the power exercisable

under Section 14(1). The controlling expression in Section 14(1) significantly, is that previous sanction in respect of the two situations (i.e., alluded in clauses (a) and (b)) is 'subject to the directions in the instrument of trust or any direction given under this or any other law by any Court.' This controlling or, rather opening words, clearly indicate that the grant or refusal of sanction by the Registrar have to be based on either 'the directions in the instrument of trust', or 'any direction given under this (i.e., M.P. Public Trusts Act) or any other law by any court'. The discretion thus, is relatable to directions in the trust document, or any provision of the Act, or any other law as ordered (or directed) by any court. Therefore, the Registrar, is not empowered to read into it her own notions of what is beneficial and what is prejudicial to the trust. The refusal has to be specific to the requirement of law, wherever such law clearly stipulates so, or any specific provision of the trust document.' (emphasis added)

This Court proceeded to permit the Trustees to alienate the Trust Property, subject to fresh valuation of the property and subject to selling the property to the highest bidder through a public tender.

45. Section 14 is applicable to immovable property of a Public Trust. Section 13 governs the investment of public trust money. The State's control of charities and religious endowments in some form is not foreign to our jurisprudence. A Public Trust invariably depends on charity done by individuals by donating immovable property or by making cash donations. Though in law, the assets and properties of a Public Trust vest in its Trustees, they hold the Trust property in a fiduciary capacity for the benefit of the beneficiaries of the Trust. They hold the property for giving effect to the objects of the Public Trust. A Trust property cannot be alienated unless it is for the benefit of the Trust and/or its beneficiaries. The Trustees are not expected to deal with the Trust property, as if it is their private property. It is the legal obligation of the Trustees to administer the Trust and to give effect to the objects of the Trust. Therefore, the statutes dealing with the Public Trusts which are operating in various States, provide for limited control of the activities of a Public Trust. The control is exercised by providing for the submission of the annual accounts by the Trustees and filing of returns with the concerned charity organization or other authority under the law. There are statutory constraints on the power of the Trustees to alienate the property of a Public Charitable Trust. There are provisions in such statutes for penalizing the Trustees for misappropriation of the property of the Trust. Many such Statutes empower the authorities under the Statutes to remove a Trustee of a Public Trust, on account of misbehaviour or acts of misappropriation, etc. The Trustees are the custodians of Trust properties. The Trustees have a duty to safeguard the interests of the beneficiaries of the Public Trust. That is how, a provision in Public Trust Law, like Section 14 of the Public Trusts Act, is of importance. This provision seeks to protect the Trust property in the hands of the Trustees from unwarranted alienations. In the present case, the transactions of sale in favour of the appellant in Civil Appeal arising out of Special Leave Petition 19063

of 2021, have been effected admittedly without obtaining prior permission under Section 14. The Division Bench of the High Court has gone into the question whether the alienations were null and void. However, the purchasers were not parties to the proceedings before the High Court. Hence, final adjudication could not have been made on the issue of nullity of the alienations made by the Trustees of the Khasgi Trust in absence of the necessary parties. However, there is no manner of doubt that the alienations could not have been made without prior sanction of the Registrar.

POWERS OF THE REGISTRAR UNDER THE PUBLIC TRUSTS ACT.

46. Under Chapter V of the Public Trusts Act, there are powers vested in the Registrar of controlling a Public Trust. Sections 17, 22 and 23 are material, which read thus:-

'17. Auditor's duty to prepare balance sheet and to report irregularities, etc. - (1) It shall be the duty of every auditor auditing the accounts of a public trust under Section 16 to prepare a balance sheet and income and expenditure account and to forward a copy of the same to the Registrar within whose jurisdiction a public trust has been registered.

(2) The auditor shall, in his report specify all cases of irregularities, illegal or improper expenditure or failure or omission to recover monies or other property belonging to the public trust or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of a breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person.

22. Power of the Registrar.The Registrar shall have powers,

(a) to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;

(b) to call for or inspect any extract from any proceedings of the trustees of any public trust or any book or account in the possession of or under the control of the trustees;

(c) to call for any return, statement, account or report which he may think fit from the trustees or any person connected with a public trust:

Provided that in entering upon any property belonging to the public trust the officer making the entry shall give reasonable notice to the trustee and shall have due regard to the religious practices or usages of the trust.

23. Procedure after receipt of the report by the Registrar. (1) If the report of the auditor made under section 17 shows, in the opinion of the Registrar, material defects in the administration of the public trust, the Registrar may require the working trustee to submit an explanation thereon within such period as he thinks fit.

(2) If on the consideration of the report of the auditor, the accounts and explanation,

if any, furnished by the working trustee, the Registrar is, after holding an inquiry in the prescribed manner and giving opportunity to the person concerned, satisfied that the trustees or any other person has been guilty of gross negligence, a breach of trust, misapplication or misconduct which has resulted in the loss to the public trust he shall determine

(a) the amount of loss caused to the public trust;

(b) whether such loss was due to any breach of trust, misapplication, or misconduct on the part of any person;

(c) whether any of the trustees, or any other person is responsible for such loss;

(d) the amount which any of the trustees or any other person is liable to pay to the public trust for such loss.

(3) The amount surcharged on any trustee or other person in accordance with clause (d) of sub- section (2) shall, subject to any order of the Court under section 24, be paid by the trustee or person surcharged within such time as the Registrar may fix.' (emphasis added)

The Registrar by exercising powers under Section 22 of the Public Trusts Act, can call for the record and report from the Trustees. If the report of the Auditor, submitted in accordance with Section 17, shows material defects in the administration of the Public Trust, the Registrar can always call upon the Trustees to submit an explanation. Under Sub-Section (2) of Section 23, the Registrar has power, after holding an inquiry in a prescribed manner, to decide whether Trustees have been guilty of any conduct which has resulted in any loss to the Public Trust. He is empowered to quantify the amount of loss caused to the Public Trust and also to decide the amount which any of the Trustees or any other person, is liable to pay to the Public Trust for compensating for such a loss. Section 24 provides for an appeal to the Court against an order made under Section 23. Section 31 of the Public Trusts Act provides that the amount determined in accordance with Sections 23 and 24, is recoverable as arrears of land revenue. In a given case, the Registrar can direct recovery from Trustees of an amount equivalent to the loss caused to the Trust due to illegal alienation of Trust property by the Trustees.

47. When a Trust property is transferred without prior sanction of the Registrar under Section 14 and/or without following a fair and transparent process, it can be always said that the Trust property is not being properly managed or administered. In such a case, apart from exercising the power under Section 23, the Registrar can make an application under sub-Section (1) of Section 26 inviting the attention of the Court to the mismanagement of the Trust. Sections 26 and 27 are material in this behalf, which read thus: -

'26. Application to for directions.-(1) If the Registrar on the application of any person interested in the public trust or otherwise is satisfied that,

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