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CONTAINING

CASES DETERMINED BY THE HIGH COURT

AT PATNA

AND BY THE SUPREME COURT ON APPEAL

FROM THAT COURT

REPORTED BY

S. P. Jamuar, M.A, B.L. (Reporter)

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PATNA

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The true import of the language of the provision contained in section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, is, where the issue in a case rests solely or primarily on the challenge to a particular document of transfer or deed, the resultant consequence is that if the said document is void ab initio then nesessarily the proceeding will abate and the matter would come squarely within the jurisdiction of the consolidation authorities. However, if such a document is only voidable in nature and is sought to be voided by one of the parties on any ground, then the court has to adjudicate upon the same and set it aside, and, therefore, no abatement of such a proceeding would follow and the forum, including the Civil Court, will have continued jurisdiction to deal with the same.

Held, that in the instant case, the sale deed having been challenged primarily as a voidable document or held to be voidable one, the suit or the appeal arising therefrom would not abate.

Sheoratan Chamar and others v. Ram Murat Singh alias Kishori Raman Singh and others *(1985). I.L.R. 64; Pat.* **641**

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Bihar Control of Crimes Act, 1981 Section 23 (2) --- provisions of --- no fresh facts arose after the date of revocation of earlier order of detention --- fresh order of detention, validity of --- subjective satisfaction of District Magistrate lacking --- effect of order of detention of petitioner on non-est grounds, whether abuse of power on the part of the District Magistrate amounts District Magistrate whether to deprivation of petitioner of his fundamental right to liberty.

From the perusal of section 23(2) of the Bihar Control of Crimes Act, 1981, hereinafter called the Act, if an order for the detention of a person had been made under section 12 of the Act, on the grounds mentioned in that order or served on the person with the order and if that order was either subsequently revoked or the period for which the detention order was made had expired, the said order would not staned in the way of making a fresh order of detention under section 12 of the Act against the same person provided fresh facts arose after the date of the said revocation or expiry. If no fresh facts came into being afrer the date of revocation or expiry as may warrant the making of an order of detention, the requisite condition precedent to the making of the subsequent order would be non-existent and it would not be permissible to make a subsequent order of detention under section 12 of the Act on the very same grounds.

Held, that after the order of revocation dated 9.6.1984 of the earlier order of detention dated 3.6.1984, no fresh facts had arisen and in that view of the matter the revooation order dated 9.6.1984

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necessary for all the applicants to establish that all of them are either co-sharers or adjoining raiyats of all the vended plots. If any one of them cannot claim pre-emption separately it is not possible for them to claim pre-emption jointly.

Held, therefore, that in the instant case the Additional Collector having found that none of the petitioners are individually and jointly in the boundary of each of the plots in question, the claim of pre-emption could not be maintained and the learned Additional Collector has rightly disallowed the claim for pre-emption.

Ram Shankar Prasad Singh & others: v. Additional Member Board of Revenue & others (1985) I.L.R. 64, Pat. 770

Bihar Privileged Persons Homestead Tenancy Act. 1947, section 2 (h) (i) --- person claiming to be a privileged person --- authority declaring him as such and directing to issue purcha to him --- relationship of landlord and tenant --- authority, whether bound to give a finding to this effect.

It is necessary for the privileged tenant claiming permanant tenancy in the homestead to prove that he is a privileged person within the meaning of section 2(h) (i) and that besides his homestead he does not hold any other land or hold any such land not exceeding one acre. The authorities have got to give a finding to this effect before passing any order under the provisions of the Act giving a permanant tenancy in the homestead to the privileged tonant.

Held, therefore, that in the impugned order

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susceptible by a narrow or technical meaning. as well as popular meaning the court would be justified in assuming that the legislature used the expression in the sence which would carry out its object and reject that which renderrs the exercise of its power invalid.

Held, that considering the preamble of the Act and the object thereof the legislature intended that appontment should be made only in a regular manner and for that restrictions were put on the Institutions. The intention was to cure the evil and if it is held to be directory, the very purpose of the Act will be frustrated. Therefore, the directions are mandatory in nature.

Bameshwar Prasad & Others. v. The State of Bihar & Others. (1985) I.L.R. 64, Pat. 754

Code of Criminal Procedure, 1973

1- Sections 210 and 319 --- scope and applicability of --- case pending on a Police report against some persons --- complaint filed subsequently for the same occurence against some more persons --- complaint case sent to the court under section 210 where Police case is pending --- Magistrate, whether has power to issue processes against newly added accused persons.

If a complaint case is transferred under section 210 (2) of the code before a Magistrate where a Police case is pending, the purpose of such transfer is both for *enquiry* and *trial*. In the instant case from the order it is clear that the Magistrate perused the petition of complaint and after applying his mind issued processes against

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inconsistent with some document --- this being entirely a matter for consideration at the conclusion of the trial and not a ground for quashing a criminal proceeding --- appraisement of evidence and documents, whether permissible --- Essential Commodities Act, 1955 (Act X of 1955) --- instructions issued under, regarding weight of cement bags.

For the purpose of quashing of a criminal prosecution at the threshold stage of the cognizance of the offence by a Magistrage, one of the basic rules is that if on accepting the prosecution allegations as the gospel truth still no offence whatsoever is disclosed, then alone the plea of quashing can be entertained, Where, however, the petition of complaint undoubtedly discloses an offence and the primary argument is that this was in a way in conflict with some other document, any such conflict is not at all a ground for quashing a criminal proceeding at the threshold. It might be of some relevance at the conclusion of the trial. but, can obviously avail nothing to the petitioner in his claim at the very outset for halting the prosecution case in its track and quashing it altogether.

Held, further, that it is wholly unwarranted for the High Court, for the purpose of quashing the proceeding at the threshold, to appraise evidence and to draw inferences from the contents of the first information report and the chargesheet, as if they were admissible and recorded in the case. It is equally not proper to appraise and appreciate the documents on which the defence sought to rely without those being either proved or tested by the

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revocation and suspension of counter-signature of permits, Sections 47 to 68, which occur in chapter IV are, therefore, attracted in case of Inter-regional permits, The number of services in the region can, of course be fixed by the Regional Transport Authority. but they will be for the region only as envisaged by section 47 (3) of the Act. Provision of section 47 (3) of the Act will not be available to the Regional Transport Authority for fixing the number of vacancies on Inter-regional Routes as if in involved extra territorial jurisdiction and the only way by which such number of vacancies could he fixed was by a reciprecal agreement between the two concerned Regional Transport Authorities. The number of services for the Inter-regional routes has to be determined by agreement before granting the permits and not after.

Held, therefore. that the respondent no.2 (The Darbhanga Regional Transport Authority) in granting permanent permits on Inter-regional Routes without determining the number of services by an agreement with the other Regional Transport Authorities through whose jurisdiction the Inter-regional Routes pass and in granting temporary permits on Inter-regional Routes without there being concurrence of the other Regional Transport Authorities concerned has acted against the provisions of the law and hence such permits on Inter-regional Routes, as have been granted (either permanent or temporary) by resolution dated 16.11.83 are inoperative.

Held, further, that even subsequent concurrence from the concerned other Regional

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without the person's consent. If the Legislature intended to narrowly limit the word dispossessed" there could have been no difficulty by specifying in terms the actuality of physical possession as its necessary and vital ingredient. The word employed is the ordinary word 'dispossess'. Plainly enough it would include within its sweep actual physical dispossession also but this is no warrant for holding that it necessarily excludes the violation of other forms of possession including a symbolical possession duly delivered by law and contumaciously violated by an aggresive trespasser. On principle the word 'dispossessed' in section 6 connot be construed in any hypertechnical sense and to push it into the procrustean bed of actual physical possession only. Indeed the intent of the Legislature in section 6 to provide early and expeditious relief against the violation of possessery right, irrespective of title, would be equally, if not more, relevant where symbolical possession delivered by due prooess of law is sought to be set at naught forthwith.

Held, therefore, that on a larger and liberal construction, it seems wholly unnecessary to limit or constrict the ordinary and plain meaning of the word 'dispossessed', which is obviously wide enough to include both actual physical possession and equally a symbolical possession of immovable property which is well recognised in the eye of law.

Kumar Kalyan Prasad & another v. Kulanand Vaidik & Ors. (1985) I.L.R. 64, Pat. **738**

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It is plain that the Commissioner could act in terms of secion 25 (2)- of the act only if the order of the Wealth Tax Officer was considered by him to be erroneous. He has no jurisdiction to pass order in terms of section 25 (2) if orders have been passed by Assistant Commissioner of Wealth Tax.

In order to attract the principle of merger, it is essential that order on merit must have been passed by the appellate or superior authority. In the instant case, no order on merit has been passed, In fact, on the date of hearing of the appeals there were no appeals on which order could be passed on merit, The appellant (assessee) sought permission to withdraw the appeals. The learned A.C.C. granted the prayer. That was the end of the appeals. There was thus no ocassion for the A.C.C. to consider whether the levy of penalty was right or wrong until a decision has been given on merit, there could be no question of doctrine of merger being attracted.

Held, therefore, that on the facts and in the circumstances of the instant case, the Tribunal was absolutely wrong in holding that the Wealth Tax Commissioner had no power to revise the order of the Wealth Tax Officer on the basis that it had merged with the order of the A.C.C. The appeals having been withdrawn there was no question of merger of the two orders.

The Commissioner of wealth Tax, Bihar, Patna v. Sheo Kumar Dalmia (1985). I.L.R. 64, Pat. 730

FULL BENCH

Before S.S. Sandhawalia, C.J., B.P. Jha & S. Ali Ahmad, J.J.

1984

August, 18

*Sheoratan Chamar and others.**

v.

Ram Murat Singh alias Kishori Raman Singh and others.

Bihar consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act XXII of 1956). section 4 (c), provisions of --- document of transfer, void ab initio --- proceeding, whether will abate --- no abatement when the document is only voidable in nature and court will have jurisdiction to deal with the same.

The true import of the language of the provision contained in section 4 (c) of the Bihar Comsolidation of Holndings and Prevention of Fragmentation Act, 1956, is, where the issue in a case rests solely or primarily on the challenge to a particular document of transfer of deed, the resultant consequence is that if the said document is void ab initio then nesessarily the proceeding will abate and the matter would come squarely within the jurisdiction of the consolidation authorities. However, if such a document is only voidable in nature and is sought to be voided by one of the parties on any ground, then the court has to adjudicate

*Appeal from Original Decree No. 84 of 1972. From the decision of Shree Laxman Sinha, Additional Subordinate Judge, Sasaram, dated the 23rd December, 1971.

upon the same and set it aside, and, therefore, no abatemtnt of such a proceeding would follow and the forum, including the Civil Court, will have continued jurisdiction to deal with the same.

Held, that, in the instant case, the sale deed having been challenged primarily as a voidable document or held to be voidable one, the suit or the appeal arising therefrom would not abate.

Gorakhnath Dubey v. Harinarain singh and others. (1), followed.

Petition filed under section 151 of the Code of Civil Procedure in the First Appeal by the defendants-appellants to press the claim that the suit as also the appeal abated under section 4 (c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

The petition originally came up before a Division Bench comprised of B.P. Jha and S. Ali Ahmad, JJ who referred it to a Full Bench.

On this referance.

Mr. Jagdish Pandey, and Mrs. Indu Bala Pandey for the appellants

Mr. Keshri Singh, and Mr. Mahesh Prasad for the respondents.

S.S. Sandhwalia, C.J. : The true import of the somewhat widely couched language of clause (c) of section 4 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, is the significant question, which has necessitated this reference to the Full Bench.

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(1) (1973) A.I.R. (S.C.) 2451

2. The plaintiff-respondents had instituted the suit giving rise to the present proceeding on the 10th February, 1965, for setting aside the sale deed dated the 18th of February, 1959, executed by Choudhary Guptnath Singh, who was the Karta of the Hindu joint family, in favour of Respondents Nos. 2 to 17. Barring a wholly fragmentary and conventional avermet about the non-execution of the said deed, the primary claim for setting aside was sought to be rested on the basis of the absence of legal necessity, non-payment of any consideration, and lack of any bonafide inquiry, The further case setup was that Defendants Nos. 2 and 17, by a fradulent device and undue influence, had obtained the deed in question from Choudhary Guptnath Singh, but the same had not been acted upon at all.

3. Defendants Nos. 4 and 17 strenuously contested the suit by filling a joint written statement, controverting all material averments in the plaint. However, the other defendants, filed a joint written statement, supporting the case of the plaintiffs.

4. On the pleadings of the parties, as many as 7 ssues were framed, of which Issue Nos. 1 and 4 are relevant to the point and were in the following terms :

> "1. Is the sale-deed dated 18.3.59 alleged to have been executed by Choudhary Guptnath Singh in favour of Defendants 2 and 17, fraudulent and collusive, as alleged by plaintiffs, or, the same is for legal necessity and for consideration, as alleged by defendants 2 and 17 ?"
>
> "4. Whether the sale-deed dated 18.3.59 was executed with consent of family members of Guputnath singh and the same was for the benefit of the family of Guputnath singh ?"

5. It is manifest from the above, and, equally so from the very exhaustive judgment of the trial court, that the question of non-execution of the sale deed by Choudhary

Guptnath singh was not seriously raised or pressed and was indeed in terms abandoned by the plaintiffs. The matter before the trial court was pressed only with regard to the other grounds of challenge on the points of legal necessity, lack of consideration and absence of bonafide inquiry, etc.

6. It is common ground that during the pendency of the suit a notification under section 3 of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act), was issued on the 26th November, 1970, nor is it in dispute that the agricultural land pertaining to the area in question came within the ambit of the said notification, However, no issue of abatement under section 4 (c) of the Act was raised at all before the trial court. Consequently, more than a year later, on the 23rd December, 1971, the suit was decreed and the impugned sale-deed was set aside, inter alia, on the following grounds :-

> "On consideration of entire evidence and circumstances of the case, I hold that the sale-deed in question is not a fraudulent and collusive sale-deed, as alleged by plaintiffs, but the same is not for legal necessities. I also hold that the sale deed is for consideration. I also hold that the sale deed was not executed with consent of family members of Guputnath Singh. nor the same was for the benefit of the family of Guputnath Singh. I also hold that defendants have failed to prove that they had made honest and bonafide enquiry about the existence of legal necessities for the sale of suit land. ."

The present first appeal was preferred on 13th march 1972. Curiously enough, even at that stage, no ground whatsoever regarding the suit having abated was taken on behalf of the defendant-appellants, However, later, on 2.7.1981 this question of abatement was pointedly raised by a petition filed under section 151 of the code of civil

procedure, to press the claim that the title suit as also the present appeal stand abated under section 4 (c) of the Act.

7. This petition under section 151 of the Code of Civil Procedure originally came up before a Division Bench comprised of my learned Brothers B.P. Jha and S. Ali Ahmad, J.J. Reliance on behalf of the appellants before them primarily was placed on *Gorakhnath Dube - vs - Harinarain Singh and others* (1). Noticing the obvious significance of the question and the intricacy of interpreting clause (c) of section 4 of the Act, couched as it is, in terms of wide amplitude, the matter was referred for an authoritative decision by the Full Bench.

8. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act came into force in 1956. The statute has undergone a structural change by a number of subsequent amendments, to which detailed reference is not necessary. As the exhaustive provisions of the 40 sections of this Act would indicate, it was intended to be a self-contained code for the purpose of consolidation of all agricultural lands within the State. The bar of Jurisdiction of Civil Courts under section 37 of the Act would show that the Legislature clearly requires that with respect to any matter for which a proceeding could or ought to have been taken under this Act, the same alone provides the forum, and, further, all decisions or orders, given or passed under this Act, are immune from interference by the Civil Court.

9. Coming specifically now to section 4, it deserves recalling that, as originally enacted, its contents and even the caption, were entirely different from the present one, which were substituted by Act 27 of 1975, The provision, as its caption indicates, deals with the necessary legal and consequential effects which follow upon a notification

(1) (1973) A.I.R. (S.C.) 2451.

under section 3 (1) of the Act.

It is unnecessary for our purpose to advert to all the provisions of the exhaustive section 4. It suffices to mention that vide clause (c) there of, it is plainly intended that with regard to all matters, a proceeding which can and ought to have been taken under this Act, and any proceeding pending before any court or authority at any stage, would abate, with the necessary consequence of being decided under the Act. Since the controversy herein is entirely focussed under section 4 (c) of the Act, the same is quoted herein for facility of reference :

Sec. 4 : effect of notification under section 3 (1) of the Act :

> "upon the publication of the notification under sub-section (1) of section 3 in the official gazette, the consequences, as hereinafter set forth, shall, subject to the provisions of this Act, from the date specified in the notification till the close of the consolidation operations, ensue in the area to which the notification relates, namely -
>
> (c) Every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority, whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such of proceeding is pending, stand abated :"

10. It is indeed plain that the language of the provision aforesaid is cauched in terms of widest amplitude. It is, therefore, capable of an equally wide ranging construction. However, it seems unnecessary to indulge in the exercise of its interpretation, because, it appears to me

as covered by binding precedent, The controversy particularly before us is narrowed down by the authoritative observations of the final Court in Gorakhnath Dube's case (supra). To appreciate the true import and applicability of the said judgment, it may first be pointedly noticed that what has come for consideration before their Lordships was the provision of section 5 (2) (a) of the Uttar Pradesh Consolidation of Holdings Act, 1954, which was quoted in paragraph 2 of the report. It is manifest therefrom that the provisions of clause (c) of section 4 of the Bihar Act and clause (a) of sub-section (2) of section 5 of the U.P. Act are in parimateria. Consequently, the observations of the final court in the context of the U.P. Act would apply literally to the present case as well. Therein, whilst approving the ratio of *Jagarnath shukla -vs- Sita Ram Pandey* (1), their Lordships pointedly observed as follows :-

> "We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existance and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would "be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that

(1) (1969) A.L.J. 768.

> the consolidation authorities have no power to cancel the deed, and therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it."

11. Now it seems to be plain that the meaningful distinction drawn by their Lordships and the observations in this context are attracted to and can fit in only to cases were the suit is rested wholly or primerily on the basis of a document or deed of transfer, etc. It is only where the issue turns on such a deed or document that the observations of the final court come to play, and, consequently, in a converse case, where the proceeding or the declaration sought does not necessarily flow from a single document, the ratio of *Gorakhnath Dubey's case* (supra) would not be applicable. In such a case the matter has to be construed in the light of the language of clause (c) only.

12. Now applying the ratio of *Gorakhnath Dubey's case* to the case where the issue rests solely or primarily on the challenge to a particular document or deed, the resultant consequence is that if the said document is void ab initio then necessarily the proceeding will abate and the matter would come squarely within the jurisdiction of the consolidation authorities. However, if such a document is only voidable in nature and is sought to be voided by one of the parties on any ground, then the court has to adjudicate upon the same and set it aside, and therefore, no abatement of such a proceeding would follow and the forum, including the Civil Court, will have continued jurisdiction to deal with the same.

13. Mr. Jagdish Pandey, learned counsel for the appellants, some what tenuously and vainly had attempted to distinguish the observations in Gorakhnath Dube's case.

However, the argument was one of desperation and nothing meaningful could be pointed out which could possibly take the present case out of the sweep and ambit of those observations. Equally vainly, learned counsel relied on a single Judge decision of this court in *Tarkeshwar Upadhayay -vs- Mahesh Thakur and others* (1). A close perusal of the same would indicate that after reference to Gorakhnath Dubey's case, the learned single Judge expressly held in paragraph 8 of the report that the document in the said case having been executed by a person of unsound mind was plainly void and inevitably the proceeding in the Civil Court would, therefore, abate and fall within the jurisdiction of the consolidation authorities. Reference was also made by learned counsel to *Bijali Thakur -vs- Rameshwar Thakur* (2) and *Banshi Bhagat -vs- Kishun Bhagat* (3), which equally are of no relevance. As has been noticed above, the ratio in Gorakhnath Dubey's case (supra) is attracted only in a case founded entirely on a transfer document. It would appear that no such situation or issue arose in any one of the above cases, far from the same being considered or adjudicated upon.

14. To conclude, following the ration *Gorakhnath Dubey's case* (supra), it is held that under section 4 (c) of the Act, all cases where the lis is rested wholly on a document or transfer deed, the proceeding would abate, if such document is void, but no such abatement would result, if the same is voidable and has to be set aside by the court after adjudication.

15. We are mindful of the intricacy and the difficulty that the aforesaid enunciation may pose in actual practice.

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(1) (1982) B.B.C.J. 114

(2) (1977) B.B.C.J. 701.

(3) (1981) A.I.R. (Pat) 304.

yet the distinction betwixt a void and a voidable document is well known in law, though the line is not easy to draw in marginal cases, but, in view of the dictum of their Lordships the same has to be necessarily applied in this context.

16. In fairness to Mr. Keshari Singh, learned counsel for the respondents, we must notice his argument, that where the challenge to the document is raised both on the grounds of the same being void and, in any case in the alternative as voidable, then the matter cannot be separated and the court must proceed with the inquiry. Even in such a situation, the proceeding could, therefore, not abate, because the composite lis still under adjudication cannot be separated, In sum, the stand taken is that in cases of a composite challenge to the document on the ground of the same being void or voidable still the proceeding must continue and no abatement should follow. It is now unnecessary to pronounce on this somewhat refreshing alternative aspect, because of the firm conclusion I have arrived at herein, that the basic challenge to the sale-deed in the present case was on the ground of the absence of legal necessity, consideration and lack of inquiry, etc., and, therefore, about its voidability and not that it was void simpliciter. On that finding, there is no occasion to consider any further alternative hypothetical submission.

17. Now, viewing the matter in the light of the aforesaid conclusions, it seems that the sale-deed was a sale primarily as a voidable document. At the very threshold stage of the suit not even an issue was claimed by the parties or framed by the court with regard to any question of the document having been executed by Choudhary Guptnath Singh. As noticed earlier, the question of its non-execution seems to have not been raised at all, or, apparently given up, and, at the present stage, is a mere afterthought. The parties went to trial mainly on the

question of the absence of the legal necessity or of considaration, etc., for the purpose of avoiding the document and led evidence therein. It was on the ground of the absence of legal necessity that the court found and sale-deed to be voidable, and, therefore, set it aside. It necessarily follows that herein the document in dispute was and has been held to be a voidable one. plainly enough, the appellants prayer herein cannot succeed., in view of the dictum in *Gorakhnath Dubey's case* (supra). it must be held that the original suit herein would not abate, nor the appeal arising therefrom. This petition under section 151 of the Code of Civil Procedure is here by dismissed. The first appeal would now go back to the Division Bench for decision on merits. There will be no order as to costs.

B. P. Jho, J. I agree

S. Ali Ahmad, J. I agree

S.P.J. Order accordingly

CIVIL WRIT JURISDICTION

Before S.K. Jha and A. K. Sinha , JJ.

1984

November, 7

Baldeo Choudhary.*

V.

The State of Bihar and another.

Motor Vehicles Act, 1939 (Act IV of 1939). Chapter IV, sections 47 to 68- - provisions of — whether attracted in case of Inter -regional permits— grant of temporary / permanent permits on Inter- regional Routes— fixing the number of services by the Regional Transport Authority- section 47(3) , provisions of — whether available in the case of Inter-regional routes determination of the number of services for the Inter-regional routes by agreement with the other Regional-Teransport Authorities concerned, whether necessary subsequent concurrence, whether would validate the grant of permits.

In the case of inter- regional permits, under section 63 of the Motor Vehicles Act, 1939, a permit granted by the Regional Transport Authority of one region shall not be valid in any other region unless the permit is counter-signed by the Regional Transport Authority of that other region. Section 63 (3) of the Act makes the provision of chapter-IV applicable relating to the grant, revocation and suspension

*Civil writ jurisdiction case No. 4771 of 1983 . In the matter of an application under Articles 226 and 227 of the Constitution of India.

of permits and to the grant, revocation and suspension of counter-singnature of permits. Sections 47 to 68, which occur in chapter IV are, therefore, attracted in case of Inter-regional permits. The number of services in the region can, of course be fixed by the Regional Transport Authority but they will be for the region only as envisaged by section 47 (3) of the Act. Provisions of section 47 (3) of the Act will not be available to the Regional Transport Authority for fixing the numher of vacancies on Inter - regional Routes as it in involved extra territorial jurisdiction and the only way by which such numher of vacancies could be fixed was by a reciprocal agreement between the two concerned Regional Transport Authorities. The number of services for the Inter-regional routes has to be determined by agreement before granting the permits and not after.

Held, therefore, that the respondent no. 2 (The Darbhanga Regional Transport Authority) in granting permanent permits on Inter-regional Routes without determining the number of services by an agreement with the other Regional Transport Authorities through whose Jurisdiction the Inter-regional Routes pass and in granting temporary permits on Inter-regional Routes without there being concurrence of the other regional Transport Authorities concerned has acted against the provisions of the law and hence such permits of Inter-regional Routhes, as have been granted (either permanent or temporary) by resolution dated 16.11.83 are in operative.

Held, further, that even subsequent concurrence from the concerned other regional Transport Authorities would not validate the grant of the temporary/permanent permits on Inter-regional Routes.

Application by the objector.

The facts of the case material to this report are set out in the judgment of A.K.Sinha, J.

M/s. Basudeva Prasad, J.N.P. Sinha, Karuna Nidhan Keshav, Maheshwardhari Dwivedi and Mukul Sinha for the petitioner

M/s. J.P. Shukla, G.P. II and S.C. Jha, J.C. to G.P. II for the respondents.

A. K. Sinha, J. By this writ application under Articles 226 and 227 of the Constitution of India, the Writ Petitioner has prayed for issuance of an appropriate writ, order or direction prohibiting and restraining the respondent no.2 (The Darbhanga Regional Transport Authority)(hereinafter referred to as D.R.T.A) from illegally assuming jurisdiction of other Regional Transport Authorities and arbitrarily issuing temporary/permanent permits on Inter-regional Route without determining the number of services on the Inter-regional Routes by agreement of the Regional Transport Authorities concerned. The writ petitioner has also prayed for prohibiting the respondent no.2 (D.R.T.A.) from issuing any temporary/permanent permits on Inter-regional Routes in contravention of the Schemes approved under section 68D of the Motors/Vehicles Act (hereinafter referred to as 'the Act'), which , according to the petitioner, had the force of law. The writ petitioner, in his reply to the counter affidavit (filed on behalf of the respondents) also prayed for quashing the resolution dated 16-11-1983 and has prayed that this resolution be declared as void and non est. This resolution dated 16-11-83 was passed after issuance of notice to the respondents by this Court on 11-10-83 to show cause as to why the writ petition should not be admitted. This meeting, according to the petitioner, was held for granting the permits which were already under challenge in the main writ application. According to the petitioner his counsel appeared on 16-11-83 before the respondent no.2 and objected to the grant of Inter regional permits which were already under challenge in the writ petition and had

submitted that the respondent no.2(D.R.T.A) had no jurisdiction to grant permits in the absence of agreement for the grant of permanent permits and in absence of concurrence for the grant of temporary permits on the Inter-regional Routes; more so in violation of the Scheme approved under section 68D of the Act. According to the petitioner, the respondent no.2(D.R.T.A) proceeded with the meeting on 16-11-83 and granted the permits malafide, inspite of the objection raised by the petitioner and also for extraneous reasons.

2. According to the petitioner, even though in the meeting dated 14-9-83 the number of proposed vacancies on the routes Kusheshwar Asthan to Muzaffarpur, Madhawapur to Muzaffarpur and Harlakhi to Muzaffarpur was only 5 being in items no.3, 7 and 8 for which number the agreement was sought for from the North Bihar Regional Transport Authority which was not accorded, Yet in the meeting dated 16-11-1983, according to the petitioner, the respondent granted 7 permits on the route Kusheshwar Asthan to Muzaffarpur, 9 permits on the route Madhawapur to Muzaffarpur and 6 permits on the route Harlakhi to Muzaffarpur-even more than what was proposed in the meeting dated 14-9-1983 for agreement from North Bihar Regional Transport Authority. The respondent no. 2 on 16-11-1983 also granted permits for Inter-regional routes to 6 persons though their applications were received without any advertisement. The respondent no.2 also extended 5 permits making them Inter-regional permits without any consent and concurrence of the other Authorities which, according to the petitioner, amounted to granting fresh permanent permits on Inter-regional Routes. According to the petitioner, on 16-11-1983, a supplementary agenda was further introduced for the grant of temporary permits on 16 routes out of which 11 routes were Inter-regional Routes and permits for those routes were also granted without any

concurrence or consent of the other regional Transport Authorities (a copy of the agenda dated 16-11-1983 is marked Annexure 14 to the writ petition).

3. Thus, accoriding to the petitioner by resolution dated 16-11-1983, 51 persons were ordered to be granted permanent permits and 11 temporary permits on different Inter-regional Routes. This resolution was passed during the pendency of the writ application in this Court and the petitioner, as already stated above, has also prayed for quashing this resolution and has prayed for declaring the same as void and non-est.

4. The main question for determination in the instant writ application is whether the Regional Transport Authority, Darbhanga (Respondent no.2) was entitled in law to issue any temporary/permanent permit on any Inter-regional Route without determining the number of services for the Inter-regional Routes by agreement for permanent permits and concurrence for temporary permits of the other Regional Transport Authorities through whose jurisdiction the Inter-regional Routes pass. The next question to be considered in the instant case is whether in the absence of determination of the number of services on Inter-regional Routes in agreement with the regional Transport Authorities concerned, does a particular temporary need as prescribed by section 62(1)(a)(c) of the Act, legally entitles D.R.T.A. (respondent no.2) to grant temporary permit on the Inter-regional Routes.

5. In fact, the questions arising in the instant case, as referred to above, are inter-linked and are answered hereinafter.

6. In order to answer the points involved in the instant case, it is necessary to state some relevant facts.

7. The writ petitioner in paragraph 24 of the writ

petition asserted that the portion of the route Darbhanga-Muzaffarpur falling on those routes, there were 90 services of B.S.R.T.C. and 70 of the private operators.By adding 5 services for each of the routes there was going to be further addition of 45 services on this portion of the routes-even then, according to the writ petitioner, the D.R.T.A. unilaterally and illegally created 5 vacancies for each of these routes. The petitioner's further case was that on other Regional Routes vacancies were created in accordance with the number of applicants for Inter-regional Routes *even though there was no agreement or vacancies created after following the provisions of section 63 of the Act* (the words have been underlined by me for emphasis).

8. On 14-10-1982 , the respondent no.2(D.R.T.A) invited applications for grant of permanent permits for 71 routes by its Memo No. 481 dated 14-10-82. The number of vacancies for the grant of such permanent permits, as required under section 47(3) of the Act was stipulated to be determined at the time of consideration of the grant of permits. This notification was duly published in the local News-papers as required under the Act (a copy of this notification has been marked as Annexure-1 to the writ application). Out of the aforesaid 71 routes notified for the grant of permanent permits 17 routes were Inter-regional Routes falling within the region of D.R.T.A. and North Bihar Regional Transport Authority, Muzaffarpur, being serial nos.8,9,19,24,to 29,32,36 to 39,41,45,51 and 53 of the aforesaid notification. On 23rd of December, 1982, further applications were invited by the respondent no.2 for grant of permanent permits on 66 more routes out of which 2 routes were Inter-regional, namely, Sl. nos.24 and 58(a copy of the Memo No. 607 dated 23-12-82 has been marked as Annexure-2 to the writ application).

9. In response to the notifications, as contained in

Annexures 1 and 2 above, large number of applications were received by the respondent which were published in a local News-paper "PRADEEP" on 8th of April, 1983, under section 57(3) of the Act.

10. According to the writ petitioner, as the grant of permits for the Inter-regional Routes was going to be made without following the procedures of law, the writ petitioner filed an objection on 15-6-1983 on which date a meeting was to be held (copy of the objection filed by the writ petitioner is marked Annexure-3 to the writ application). In short, the objection was that permits (temporary or permanent) on Inter-regional Routes could not be granted without determining the number of services by agreement. However, the meeting of the regional Transport Authorities was adjourned to 2-7-83 and on 2-7-83 the writ petitioner again made specific and categorical objection to the grant of any permanent permit for the routes connecting Muzaffarpur-Darbhanga and gave a list of 8 such routes and objected to the jurisdiction of the Regional Transport Authority for granting any further permit without complying the provisions of the Act, viz., without determining the number of vacancies for the grant of permits Accoriding to the writ petitioner, the Regional Transport Authority was giving a complete go-by to the provisions of law and was acting without jurisdiction (the copy of the objectiion dated 2-7-83 is marked Annexure-4 to the writ application).

11. Objections as raised by the writ petitioner (and as referred to above) the R.T.A. in the meeting dated 2-7-83 relating to Inter-regional permits, in Agenda no.21, *decided to grant permanent permits to all such operators who were operating on the Inter-regional permits on temporary basis* and thereafter for creating the vacanciee it was decided to enquire from the Bihar State Road Transport Corporation as well as from the concerned Regional Authorities.

12. In furtherance of the resolution dated 2-7-83, the respondent no.2 sent a letter on 16-7-83 to the North Bihar Regional Transport Authority, Muzaffarpur, and also to the South Bihar Regional Authority, Patna, asking for the information as to how many services were being operated by them on the relevant routes (the copy of this letter dated 16-7-83 is marked as Annexure-6 to the writ application). Thereafter, it is relevant to state that on 3rd of September, 1983, the Chairman, D.R.T.A. requested the State Transport Authority, Bihar, Patna, as also the North Bihar Regional Tranaport Authority, Muzaffarpur, not to grant any further permit for the various Inter-regional Routes extending to the region of Darbhanga Regional Transport Authority, as they were already over crowded on those routes (the copy of this letter is marked as Annexure-7 to the writ application). It is more surprising that though the respondents requested the State Transport Authority, Bihar, Patna, and the North Bihar Regional Transport Authority, Muzaffarpur, not to grant any further permit for the routes mentioned in the letter dated 3-9-83, still on 6th of September, 1983 (i.e. only three days after) 6 applications for the grant of permanent permits for those very routes were sent suo motu for publication even though such applications were received without any advertisement and were liable to be rejected by the Authority under proviso to sub-section (3) of section 57 of the Act (copy of the Letter dated 6-9-83 is marked annexure-8 to the writ application).

13. According to the petitioner, in the meeting dated 14-9-83, respondent no.2 again proceeded to consider the applications which were before it in the Agenda dated 15-6-83 and 2-7-83. The petitioner again objected to the grant of any permit on Inter-regional Routes in the absence of an agreement about the number of vacancies on those routes. The D.R.T.A. despite the objection declared unilaterally 5 vacancies on all such routes which were

connecting Darbhanga and Muzaffarpur. Even though, as stated earlier, a request was sent in the letter dated 3-9-83 to the State Transport Authority not to grant further permits a supplementary agenda was introduced in the meeting dated 14-9-83 proposing grant of temporary permits to 20 applicants - all for temporary Inter-regional permits. According to the petitioner, all the 20 applicants were granted temporary permits without complying with the provisions of section 63(4) of the Act and also without assigning any reason for the same (a copy of the proceeding dated 14-9-83 is marked Annexure -10 to the writ application).

14. The respondents filed a counter affidavit. The main stand of the respondents was that the Authority was fully entitled in law to issue any temporary or permanent permit on any Regional or Inter-Regional route under section 45 of the Act. According to the respondents only the number of services was to be determined by agreement for permanent permits and concurrence for temporary permits granted on Inter-State Route, as provided under section 63 of the Act. The respondents in their supplementary counter took the step that the permits were granted in accordance with the provisions under the Act and there was no order of prohibition passed by this Court, but the respondents, at the same time, stated that the D.R.T.A. (respondent no.2) after the receipt of the order of the High Court on 10-12-1983 had sought for the prior concurrence from the concerned Authorities and during the pendency of the concurrence of the other Transport Authorities, the issuance of the permits on Inter-regional Routes was being held up.

15. According to the respondents, the object of section 63 (4) of the Act was served when the temporary stage carriage permits are counter-singned by the concerned Transport Authorities under the provisions of section 63(i). The respondents, in reply to the violation of

the Scheme approved under section 68D of the Act, stated that there was no violation of the scheme in the instant case. According to the respondents permanent and temporary stage carriage permits on Regional or Inter - regional Routes are granted by the Authority under the direction of the Government of Bihar, Transport Department's notification no.825 dated 10-6-81 , which is a delegated power of the State Govt. under the provisions of section 68E(2) of the Act.

16. It is relevant to state here that the writ petitioner, in his reply to the counter affidavit, annexed the notification dated 10-6-81 as Annexure-1,6.

17. It is well settled that a limit has been fixed under section 47(3) of the Act by the Regional Transport Authority and thereafter if the said Authority proceeds to consider application for permits under section 48, read with section 57, the Regional Transport Authority must confine the number of permits issued by it within those limits. And it is not open to issue permits beyond the limits so fixed under that section. Though it is true that the Regional Transport Authority can revise the general order passed by it under section 47(3) of the Act, this revision is a separate power in the Authority and is a power arising when it is dealing with the individual permits.

18. It is also well settled that when a new route is advertised for the first time and advertisement is issued calling for applications for such a new route specifying the number of vacancies for it, it is reasonable to infer that when the number of vacancies was specified that shows that limit which must have been decided upon by the Regional Transport Authority u/s 47(3) of the Act. It is also well settled that where the advertisement is with respect to an old route, the fact that the advertisement mentions a particular number of vacancies would not necessarily mean that that was the number fixed u/s 47(3) of the Act as the

number fixed may be much more and there may be only few vacancies because a few permits had expired.

19. Section 47(3) of the Act relates to a Regional Transport Authority limiting the number of stage carriages for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region. In other words, section 47(3) of the Act is confined in its operation in or within the region.

20. In the case of Inter-regional permits, an application under section 45 of the Act has to be made to the Regional Transport Authority of the region in which the major portion of the proposed route or area lies and in case the portion of the proposed route or area in each of the regions is approximately equal to the Regional Transport Authority of the region in which it is proposed to keep the vehicle or vehicles. Then under Section 63 of the Act a permit granted by the Regional Transport Authority of one region shall not be valid in any other region unless the permit is counter-signed by the Regional Transport Authority of that other region. Section 63(3) of the Act makes the revision of Chapter-IV applicable relating to the grant, revocation and suspension of permits and to the grant, revocation and suspension of counter-signature of permits. The result is that sections 47 to 68, which occur in Chapter-IV, are, therefore, attracted in case of Inter- regional permits. In view of the fact that section 47(3) of the Act is rastricted in its field in or within the region, the provisions in terms do not become applicable to Inter-regional permits. Section 68 of the Act contemplates rules and conditions subject to which and the extent to which a permit shall be valid in another region within the State without counter signature. The learned counsel for the respondents has not shown any rule to that effect.

21. Thus, I hold that the relevant Authorities in the two

regions are to ensure agreement and act in concert as the case may be. The number of sarvices in the region can, of course, be fixed by the Regional Transport Authority but they will be for the region only. I have already held above that sections 47 to 68 which occur in Chapter-IV are attracted in case of Inter-regional permits. On a harmonious reading of the sections occurring in Chapter-IV of the Act, I further hold that the number of services for the Inter-regional routes beyond the frontier of the region will have to be determined by agreement.

22. In the instant case permits (temporary/ permanent)on Inter- regional Routes have been granted by the respondents without there being an agreement with the other Regional Transport Authorities. As already stated above, the respondents stand in their counter affidavit is that concurrence has been sought for from the concerned Authorities and during the pendency of the concurrence of the other Transport Authorities the issuance of the permits on Inter-regional Routes was held up. In other words, according to the respondents, even subsequent concurrence from the concerned other Transport Authorities would validate the grant of the permits on Inter-regional Routes. In my opinion, such a stand taken on behalf of the respondents is not valid and correct in law.Though it will bear repetition, I have already held above that the relevant Authorities of the two regions are to ensure agreement and act in concert and the number of services for Inter-regional Routes beyond the frontier of the region have to be determined by agreement - which, in the instant case, has not been done.

23. Though, it is true that a Regional Transport Authority of one region may issue a *temporary permit* under clause (a) or clause (c) of sub-section(1) of section 62 to be *valid in another region*, I hold that this power with the Regional Transport Authority of one region to issue a

temporary permit on the Inter- regional Routes is circumscribed by clause(4) of section 63, which necessitates concurrence of the Regional Transport Authority of that other region either given generally or for the particular occasion. In my opinion, the subsequent concurrence of the other Regional Athority concerned would not validate the grant of even the temporary permit by one regional Transport Authority on the Inter-regional routes. In the instant case a perusal of Annexure-6, letter sent by respondent no.2(D.R.T.A.) dated 16-7-83 would show that no concurrence as contemplated under section 63(4) of the Act was asked for either from the North Bihar Regional Transport Authority, Muzaffarpur, or from the South Bihar Regional Transport Authority, Patna, for the grant of any temporary permit. It further shows that there was no proposal as to what number of permits the respondent no.2(D.R.T.A.) was proposing to grant, and as such no proposal was made regarding the number of services for an agreement between the two Regional Transport Authorities as contemplated under section 68 of the Act. Provisions of section 47(3) of the Act were not available to the respondent no.2(D.R.T.A.) for fixing the number of vacancies on Inter-regional Routes as it involved extra territorial jurisdiction and the only way by which such number of vacancies could be fixed was by a reciprocal agreement between the two concerned Regional Transport Authorities.

24. The respondents also took the stand that there had been no violation of the Scheme approved under section 68D of the Act and relied upon the Notification No.S.O.825 dated 10-6-81. This Notification dated 10-6-81 is marked as Annexure-16 in reply to the counter affidavit). The State Government by this Notification amended clause (1) of the Notification NoS.O.294 dated 19th March, 1981, and the amendment as given in Annexure-16 was as follows:-

"(1) The Transport authority may permit private buses

to pass through or traverse stretches of notified routes meant for exclusive plying of State Transport undertaking to the maximum extent of 40 (forty) kilometer with a view to connect the services with their natural termini in the public interest provided that either the starting or terminating point falls on the notified route. The buses of the private operators also pick-up or drop the passengers on the notified portions of the routes but only for journey original from or terminating at places which do not lie on the route notified for exclusive operation of the State Transport undertaking."

25. Thus, it seems that by notification dated 10-6-81 the State Government further modified the approved Scheme under section 68E(2) of the Act. A perusal of this notification shows that this notification authorised the Transport Authorities to grant permits to private operators in appropriate cases allowing them to traverse the notified routes upto a distance of 40 kilometer only with a view to connect their services with their natural termini. This, in my opinion, only means that the exemption was not meant for grant of a fresh permit and, therefore, in granting temporary/ permanent on Inter-regional Routes, the respondents could not take shelter under the notification dated 10-6-81.

26. The number of services for the Inter-regional routes has to be determined by agreement before granting the permits and not after. It would be, in my opinion, putting the cart before the horse if the question of agreement relating to number of services for Inter-regional routes is considered after the actual grant of the permit.

27. Thus, I hold that the respondent no. 2(D.R.T.A) in granting permanent permits on Inter-regional Routes without determining the number of services by an agreement with the other Regional Transport Authorities concerned and in granting temporary permits on Inter-regional Routes without there being concurrence of the other Regional

Transport Authorites concerned has acted against the provisions of the law and hence such permits on Inter-regional Routes, as have been granted(either permanent or temporary) by resolution dated 16-11-83, are inoperative.

28. This application is accordingly allowed and the respondents are directed to proceed in accordance with law and in consonance with the directions and observations made above. However, there will be no order as to costs.

S. K. Jha, J. I agree

S.P.J. Application allowed

TAX CASE

Before Uday Sinha and Nazir Ahmad, JJ.

1984

November, 8

*Commissioner of Income-tax, Bihar, Patna.**

v.

M/s Bihar State Agro Industries Development Corporation, Patna.

Taxation— interest on hire purchase — how to be assessed — amount due to the assessee from purchasers shown as interest accrued during accounting year assessee crediting part of the interest to hire purchase interest suspense account and taking part thereof into profit and loss account — assessee, Whether following mercantile system or cash system of accouting — tax, whether to be assessed on whole or part of the interest.

Where a sum of Rs.15 lacs and odd due to the assessee from purchasers had been shown as interest accrued to it during the accounting year and the assessee credited it in part to the hire-purchase interest suspense account and a small part thereof was taken into profit and loss account;

Held, that the assessee was following mercantile

*Taxation Case No. 38 of 1976. Re:-Statement of the case by the Income Tax Appellate Tribunal, Patna Bench 'B' Patna in the matter of assessment of Income Tax on M/s Bihar State Agro Industries Corporation Ltd. Patna for the assessment year 1969-70.

system of accounting on the basis of accrual and not on realisation basis and as such the entire sum which had fallen due from the hire purchase instalments was to be taken as the in come of the assessee and the Tribunal was not justified in holding that the interest on hire-purchase was to be assessed on realisation basis.

Commissioner of Income-tax. Madras v. K. R. M. T.T. Thiagaraja Chetty & Company (1).

S.C.Morvi Industries Ltd. v. C.I.T.(2)

James Finlay & Co. v. Commissioner of Income-tax.(3)

State Bank of Travancore v. Commissioner of Income-tax, Kerala(4)— relied on.

Reference under section 256 (1) of the Income-tax Act, 1961.

The facts of the case material to this report are set out in the judgment of Uday Sinha, J.

Messrs B.P. Rajgarhia (S.C.I.T.D.) and S. K. Sharan (J.C. to S.C.I.T.D.). for the petitioner

Messrs Kashi Nath Jain and G.C. Bharuka for the opposits party.

Uday Sinha, J : In this reference under section 256(1) of the Income - tax Act, 1961, the following question has been referred to this Court:

> "Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that the in terest on the hire purchase was to be assessed on the basis of realisation and not on the accrual basis ?"

2. This reference relates to assessment year 1969-70.

(1) 24 I.T.R. 525 (2) 82 I.T.R. 835

(3) 137 I.T.R. 693 (4) 110 I.T.R. 336

The facts, in brief, are that the assesses is a Government Corporation. It sells tractors and other agricultural implements on cash payment basis as also hire-purchase basis. In respect of sales effected on hire-purchase basis the buyers are liable to pay interest on the price remaining due. In regard to the interest which fell due during the year ending 31st March, 1969, the assessee credited it in part to the hire-purchase" in terest suspense account. A small part thereof was taken into profit and loss account. The total interest, which had fallen due in the year in question, was Rs.16,65,327/-.Out of that sum Rs.71,820/- was credited by the assessee in the profit and loss account and Rs. 15,93,703/- was transferred to hire-purchase 'Interest suspense account'. According to the assessee a sum of Rs. 71,820/-, which had been transferred to the profit and loss account, was the only sum which had actually been raceived by the assessee during the assessement year. Upon these facts the assessee claimed that it was following cash system of accounting and, there fore, the sum of Rs.71,820/- alone was liable to be added to the taxable figure. The Income-tax officer was, however, of the view that the system of accounting and, therefore, the entire sum which had fallen due from the hire-purchase instalments was to be taken as the income of assessee. He, therefore, included the amount shown in hire- purchase interest account as the total income of the assessee. The assessee being aggrieved, appealed to the Appellate Assistant Commisioner (hereinatter called A.A.C.) The A.A.C. in regard to the interest suspense account held that the assessee had to be assessed on acmroal basis and not on realiation basis. He thus concurred with the view of the Income-tax Officer.

3. The assessee being agrieved by the order of the A.A.C. in regard to his verdict on the interest suspense account filed appeal to the Tribunal. The Tribunal found that the similar question had been concidered by it in the

prceeding year and in that year also the hire-purchase interest suspense account had not been included in the total taxable income. The Tribunal, as in the previous year, held that the assessee was following cash system of accounting as it was acting on the basis of realisation. The Tribunal took into account that the assesse was a Government undertaking and,therefore, there would be no intention to avoid any tax on any income. In view of the Tribunal, the system followed by the assessee was reasonable system. For those reasons the Tribunal held that the assessee was not following mercantile system of accounting and a sum of Rs. 15 lacs and odd could not be added to the taxable amount. The Revenue being aggrieved by the order of the Tribunal applied for reference to it in terms of section 256(1) of the Income-tax Act. The Tribunal referred the question for our opinion as mentioned earlier.

3A. The question which falls for consideration is; whether the assessee was following mercantile system of accounting or it was cash system of accounting. If the assessee was following cash system of accounting the sum of Rs.71 thousand and odd alone could be added to the taxable income, but if mercantile system of accounting was being followed , the Tribunal would not be justified in allowing the assessee's appeal.

4. The crucial matter whether the Tribunal went wrong is that the sum of Rs.15 lacs and odd due to the assessee to it during the accounting year. It is, therefore, obvious that the assessee was following accrual system of accounting i.e. mercantile system of accounting and not realisation basis i.e. cash system of accounting. Learned counsel for the assessee submitted that the fact that the sum of Rs.15 lacs and odd had been put in the sus pense account made it absolutely clear that the same had not been realised and, therefore, it is obvious that the assessee was following realisation basis or cash basis of accounting. Reliance was

placed upon the Supreme Court decision in *Commissioner of Income-tax, Madras Versus K.R.M.T.T. Thiagaraja Chetty & Company* (1). That was a case where the assessee was entitled to a Commission of Rs.2,26,850/-during accounting year ending 31st March,1942. On 30th March, 1942 the assessee wrote to the Company of which the assesee was the managing agent that the debt which the assessee owed to the Company for a long time past should be written off. The Directors by their resolution, passed on the same date, refused to write off the amount without consulting the general body of shareholders and pending the settlement of the dispute the Directors resolved to keep the said sum in suspense without paying it. The said sum was debited as a revenue expenditure of the company and was allowed as deduction in computing the profits of the company for the purpose of income-tax. The question arose whether the assessee was liable to pay tax on the a said sum. The Department held in those circumatances that the assessee followed the mercantile method of accounting and not cash accounting. The Tribunal, however, took a different view. It held that the assessee was being assessed on cash basis in *previous years* and that the income had not accrued to assessee and, therefore, the said sum should be excluded from taxation as not having been received in the accounting year. On reference the High Court held that the said sum was rightly excluded from taxation, as it had not been received in the accounting year. On those facts the matter went upto the Supreme Court. It was urged on behalf of the assessee before the Supreme Court that the commission could not be subjected to tax when it was not more than a mere right to receive. The supreme Court observed as follows:-

"This argument involves the fallacy that profits do

(1) 24 I.T.R. 525

not accrue unless and until they are actually computed. The computation of the profits whenever it may take place cannot possibly be allowed to suspend their accrual."

The same was the view of the Supreme Court in 82 I.T.R. 835 (S.C). *Morvi Industries Ltd. Verus CIT.*

5. The case of *James Finlay & Co. Versus Commissioner of Income-tax* (1) has also been relied upon by learned Standing Counsel. In this case also the assessee was following mercantile system of accounting. It used to credit the interest to its profit and loss account. It was urged before the Revenue that the assessee had decided to change its method of accounting in respect of interest which was doubtful of recovery and such Interest was thenceforth credited to suspense account. Question arose whether the method of accounting had changed from mercantile system to cash system. It was contended before the High Court that the interest credited to the suspense account could not form part of the assessee's real income. A Bench of the Calcutta High Court rajected the stand of the assessee holding that the alteration in book-keeping and transfer of amounts to the suspense account could not be termed as a change in the method of accounting. It was observed by Sabyasachi Mukherji, J that the claim for interest not having been given up, the amounts in question were includible in the total income of the assessee for the relevant assessment year.

6. *The Kerala High Court in State Bank of Travancore Vereus Commissioner of Income-Tax, Kerala*(2) also took the view that where interest as advances by the Bank considered doubt ful of recovery were credited to a separate account shown as interest suspense account, they must be assessed as income of the assessee on accrual basis.

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(1) 137 I.T.R. 693.

(2) 110 I.T.R. 336.

7. The above cases do lend support to the stand of the revenue. The Tribunal in the instant case did not hold as a fact that the assessee was following the cash system of accounting. It did obseve that the assessee had followed the basis of realisation for paying his income-tax from interest. The question, however, is whether there was any basis for that conclusion of the Tribunal . The Tribunal failed to take note of the fact that while the sum of Rs.71,000/- and odd were being credited on realisation basis, the balance sum transferred to suspense account could have been shown only if that had accrued to the assessee during the assessment year. The fact that it was transferred to suspense account is indicative of the fact that the assessee took the sum of rupees fifteen lacs and odd as having accrued to it. It is thus obvious that the assessee was working on accrual basis. If that were not so, there would be nothing to transfer to suspense account. The conclusion of the Tribunal, therefore, that the assessee was following the realisation basis of accounting and not on accrual basis was legally unsound. Upon the facts asserted by the assessee himself it is obvious that it was following the mercantile system of accounting. The sums transferred to suspense account would, therefore, necessarily have to be included in the income of the assessement year.

8. Learned counsel for the respondent assessee submitted that the Tribunal had held as a fact that the assessee was following realisation basis of accounting. That would be a finding of fact with which this Court in a referenoe application could not interfere. I regret, the finding of the Tribunal that the assessee was acting on realiation basis would not be a pure question of fact. In fact, upon the facts asserted by the assessee, it would indicate mercantile system of accounting. That would be a pure question of law. It is obvious that the assessee was proceeding on accrual basis and not on realisation basis. If the hire-purchase

interest had not been transferred to suspense account and only Rs.71,000/-and odd had been credited to the profit and loss account, it could be said that realisation basis of accounting was being followed. The fact that certain sums were transferred to the suspense account itself shows that those interests had accrued to the assessee. The inference, therefore, is inescapable that accrual system of accounting or mercantile system of accounting was being followed.

9. Learned counsel for the respondent assessee endeavoured to distinguish the Supreme Court and Calcutta High Court cases by contending that in all of those cases it was admitted by the assessee that is was following mercantile system of accounting which was not conceded in the present case. The above cases are indistinguishable from the instant cases before us. In all those cases the assessees were claiming that in regard to the disputed sums the cash system of accounting should be held to have been followed. Their stand was not accepted on the facts and circumstances of the case. The same is the position in the instant case in regard to interest on hire-purchase the assessee is claiming that the cash accounting system must be held to have been followed. On undisputed facts we have not the least doubt that the assessee was following mercantile system of accounting on the basis of accrual and not on realisation basis.

10. In my view, therefore, the Tribunal was not justified in holding that the interest on hire-purchase was to be assessed on realisation basis. The answer to the question referred to this Court must be answered in the negative. The reference is disposed of accordingly. There shall be no order for costs.

Nazir Ahmad, J. I agree

M.K.C. Question answered

MISCELLANEOUS CRIMINAL

Before S. S. Sandhawalia, C.J and S. S. Hasan, J.

1984

November, 12

*Narayan Saraf.**

v.

The State of Bihar.

Code of Criminal Procedure, 1973 (Act II of 1974), Section 482 — quashing of Criminal proceeding — requirements of— potition of complaint undoubtedly disclosing an offence for which the petitioners are charged — petitioners contending that the allegations were somewhat inconsistent with some document — this being entirely a matter for consideration at the conclusion of the trial and not a ground for quashing a Criminal proceeding — appraisement of evidence and documents, whether permissible — Essential Commodities Act, 1955 (Act X of 1955)— instructions issued under, regarding weight of cement bags.

For the purpose of quashing of a Criminal prosecution at the threshold stage of the cognizance of the offence by a Magistrate, one of the basic rules is that if on accepting the prosecution allegations as the gospel truth still no offence whatsoever is disclosed, then alone the plea of quashing can be entertained. Where, however, the petition of complaint undoubtedly discloses an offence and the primary argument is that this was in a way in conflict

*Criminal Miscellaneous No.12216 of 1983. In the matter of an application under section 482 of the Code of Criminal Procedure.

with some other document, any such conflict is not at all a ground for quashing a criminal proceeding at the threshold. It might be of some relevance at the conclusion of the trial, but, can obviously avail nothing to the petitioner in his claim at the very outset for halting the prosectuion case in its track and quashing it altogether.

Held, further, that it is wholly unwarranted for the High Court, for the purpose of quashing the proceeding at the threshold, to appraise evidence and to draw inferences from the contents of the first information report and the chargesheet. as if they were admissible and recorded evidence in the case. It is equally not proper to appraise and appreciate the documents on which the defence sought to rely without those being either proved or tested by the challenge of cross-examination of their authors.

Held, also , that, in view of the instructions issued by the State Government under theEssential Commodities Act, 1955, the petitioner's stand that there is no prescribed weight for an individual cement bag or that he is entitled to fall back on the average wight of the whole consignent howsoever large is untenable and cannot be accepted.

Ram Balak Prasad v. The State of Bihar (1) overruled.

R.P.Kapoor v. The State of Punjab (2),

Jehan Singh v. Delhi Administration (3) and

Kurukshetra University v. The State of Haryana and another (4)— referred to.

Application by the accused.

The facts of the case material to report are out in

(1) (1982) Bihar Revenue and Labour Journal 153.

(2) (1960) A.I.R. (S.C.) 866.

(3) (1974) A.I.R.(S.c.) 1164.

(4) (1977) A.I.R. (S.C.) 2229.

the judgment of S.S. Sandhawalia, C.J.

The case inthe first instance was placed for hearing before S.S. Hasan, J, who referred it to a Division Bench.

On this reference.

Mr. L. K. Bajla for the petitioner

Mr. G. P. Jaiswal for the state.

S.S.Sandhawalia, C.J. The true approach to the quashing of a criminal prosecution at the threshold stage of the cognizance of the offence by a Magistrate has yet again come to be the significent question in this criminal miscellaneous case referred to the Division Bench for an authoritive decision. More pointedly at issue is the correctness of the single Bench judgment in *Ram Balak Prasad V. The State of Bihar (1).*

2. Narayan Saraf, the petitioner, is the proprietor of firm M/s Narayan Saraf at Katihar, which admittedly is a licensee under ther Bihar Cement Control order 1972, and is the autherised agent of M/s Associated Cement Company Limited. It is the claim that in ordinary course of business the firm purchased 36 metric tonnes of cement packed in 720 bags, which were despatched by three trucks from Chaibasa to Katihar. The last consignment containing 240 bags of cement by truck no.BHQ 5053 arrived at Katihar on the 20th of January, 1992 . On the petitioners own showing he noticed from the appearance of the bags that the contents of some of them were under weight and consequently he contacted the local offictals of the Supply Department and got the same weighed in presence of an Inspector. This disclosed that some bags were grossly under weight being less than standard weight of 50 kilograms. He sent a written information to the District Supply

(1) (1982) Bihar Revenue and labour journel 153.

officer at Katihar along with the weighment chart prepared in presence of the Supply Inspector. It has been averred that the petitiorer also requested for a direction from the authorities with regard to this consignment. However, since no specific direction with regard to this consignment, which was admitteldy under-weight on the average, had come, the petitioner sold the said bags as well against permits issued by the authorities for the levy cement. The petitioner's case is that though in the relevant consignment of 240 bags the majority of bags were less than the standard weight of 50 kilograms each yet in making the sales he so assorted some of the other bags that it is likely that the customers purchasing a large number of bags got the standard weight of 50 kilograms per bag. However, on the 11th of May, 1982,the petitioner received a show cause notice from the District Supply Officer wherein allegations were contained with regard to the sale of bags below the standard weight and he replied thereto to highlight his bona fides and for being absolved from penal proceedings. Apparently after consideration of his show cause and rejecting the same the prosecution of the petitioner was ordered in August 1982 against which he first represented to the District Magistrate but ultimately on the 23rd of August, 1982, a petition of complaint was filed in the court of the Chief Judicial Magistrate alleging therein that the petitioner by selling the aforesaid 240 bags of cement, which were found to be below the standard weight of 50 killegrams, had vielated the previsiens of the Contrel Order and was hence liable under section 7 of the Essential Commodities Act, 1935. The learned Chief Judicial Magistrate, Katihar, by his order dated the 27th of Aughust, 1982, took cognizance of the offence and issued summons against the petitioner.

3. Aggrieved by the prosecution aforesaid, the present criminal miscellanceeus petition was preferred which originally came up for hearing before my learned brother S.S.Hasan,J., sitting singly. Before him specific reliance was

sought to be placed on the case of Ram Balak Prasad (supra). Disagreeing with the same and observing that for the purpose of quashing a proceeding what is primarily to be seen is the allegation of an offence and not the applicability of a partioular section, the matter was referred for an autheritative decision to the Division Bench and that is how it is before us now.

4. Learned counsel for the petitioner primarily relied on Annexure '3', the petition of complaint, for his claim to the quashing of the proceeding against the petitioner. It was contended that the said petition of complaint was somewhat contradictory in nature and the earlier part thereof could not be reconciled with the penultimate portion therein. On this premise it was vehemently contended that the prosecution case was not likely to succeed and, therefore, should be nipped in the bud.

5. The stand aforesaid has only to be noticed and rejected. The subatantive part of the brief petition of complaint (Annexure '3'), when freely translated, reads as under :-

> "This is to report that Messrs Narain Saraf. Katihar, is the A.C.C. Cement Stockist. He received 240 bags of cement to a truck on 20.1.82. The stockist presented a statemnt before the District Supply Office. according to which to average weight of those bags was 46.6 kilograms, whereas full weight should have been 50 kilograms each. On enquiry, the A.C.C.Company replied that bags with full weight have been delivered from their Company. After this, the cement stockist has sold all the cement bags after realising price of 50 kilograms, where as the average weight was 46.6 kilograms, meaning there by 3.4 kilograms less per bag.In this way, he has committed an offence of realising price of standard weight of coment instead of less weight of cement per bag, by managing to ramove cement therefrom. There fore, action under the Bihar Cement Control Order, 1972, and the Indian Penal Code, 1960, may be taken against him."

It is manifest from the above that the concrete allegation herein is that Messrs A.C.C Limited, that principal of the petitioner had supplied cement bags of 50 kilograms each to the petitioner, wherefrom he removed cement and thereafter sold the bags weighing 46.6 kilograms for the price of the full weight of 50 kilograms, though, to his knowledge, most of them were under weight. It resounds to the credit of Mr. L. K. Bajla, Learned Counsel for the petitioner, that he fairly conceded that if these allegations were established, they would un doubtedly amount to an offence under the Essential Commodities Act. However, his stand was that these allogations were some what in consistent with Annexure 'I', whereby the petitioner had himself reported to the District Supply Officer that there had been a short supply of cement in the bags and that a statement of the weights thereof was attached, whilst seekins further directions in the matter. I am, however, unable to see, how this stand can in any way advance the case of the petitioner for seeking the quashing of the proceeding altogether. At the very highest this could provide him some basis for as tablishing his defence that the sale was not done malafide or with the requisite mens rea to constitute the offence. This, however, is entirely a matter for consideretion at the conelusion of the trial after wrighing and appralsing the evidence on either side. It is to be firmly kept in mind that for the purpose of quashing; one of the basic rules is that if on accepting the prosecution sllegations as the gospel truth still no offence whatsoever is disclosed, then alone the plea for quashing can be entertained. Herein, learned Counsel himself conced that the petition of complaint undoubtedly discloses an offence and the primary argument is that this was in a way in conflict with some other document. Be that as it may, any such conflict is not at all a ground for quashing a criminal proceeding at the threshold. It might be of some relevance at the conciusion of the trial, but , can obviously avail no

thing to the petitioner in his claim at the very outset for halting the prosecution case in its track and quashing it altoge ther. This submission of the learned Counsel for the petitioner, therefore, must inevitably be rejeeted

6. The doctrinare stand then taken on behalf of the petitionsr was that under the Bihar Cement Control Order, 1972 (hereinafter called the Control Order), the weight of a cement bag has not been expressly prescribed at 50 kilograms, and, therefore, the petitioner was entitled to take or claim the average weight of a large consignment and was not liable for any amount of shortage in an individual bag. It was argued that some of the bags of the consignment of the whole truck might well be over-weight, even though, admittedly, the average weight of the bags of the whole consignment was 46.6 kilograms, i.e., 3.4 kilogram less than the prescribed weight.

7. On principle, the aforessid argument is wholly untenable and apparently stems from some misaprehension of the statutory provisions. Clause 12 of the Control order reads as under:-

> "No stockist shall sell or offer for sale. no person or institution shall buy levy cement at a price higher than that fixed under any Order made under suction 18C of the Industries (Development and Regulation) Act, 1951 (55 of 1951)."

Again, it was not disputed that under the Essential Commodities Act, the Goverment is entitled to issue directions, which would be statutory in nature. In this context, the state Government has issued instructions No. 7122/S.C. Therein, after reference to the Central Cement Control Order and the specifications laid by the Indian Standard Institute, it has been directed as under:-

> "Therefore, in a filled bag of cement, of which the standard weight should be 50 kilograms and 538 grams, difference of more than 1 kilograms and 250 grams would be treated to be totaliy improper. It is requested that the

> cement dealers may be made properly conversant with the above in structions. and if any shortage is found in the bags of cement, necessary legal action the basis of the above instruction be taken against the cement dealers."

In view of the above, the petitioner's stand that there is no prescrited weight for an individual cement bag or that he is entitled to fall back on the average weight of the whole consignment howsoever large is utterly untenable and has to be rejected.

8. However, the sheet anchor of the petitioner herein is the single judgment in Rambalak Prasad's case (supra), wherein the view does seem to be taken that there is no prescribed weight for a bag of cement and that the entire stock should be weighted for arriving at an average weight, and, further, that a dealer may derive benefit from the fact that any bag may be weighing more than 50 kilogram of cement. The learned judge also proceeded to appreciate the contents of the first information report and the chargeshteet as also documents advenced in favour of the defence and, thereafter quashed the prosecution.

9. With the deepest deference it appears to me that the whole approach to the issue of quashing of prosecution at the threshold in Rambalak Prasad's cass (supre) is some what warped. It would appear that the learned Counsel for the parties were gravely remiss in not bringing to the notice of the Court the long line of precedents of the Final Court itself laying down the limitations of the jurisdiction. Way back in A.I.R. 1960 Supreme Court/(R.F.Kapoor-vs-The State of Punjab) Gajendra Gadkar, J., speaking for the Bench, had categorically observed as under:-

> "In exercising its jurisdicition under Section 561-1 the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate. and, ordinarily it would not be open to any party to invcke the High Court's inherent

jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

That view has been reiterated with stringency later in *Jehan Singh-vs- Delhi Administration* (1) and *Kurukshetra University -vs- The state of Haryana and another* (2)

10. In the light of the above, it would appear that the basic error in Rambalak Prasad's case (supra) is that the the Court was tempted into appraisal of evidence itself and to draw inferences from the contents of the first information report and the chargesheet, as if they were admissible and recorded evidence in the case. That is a role wholly unwarranted for the High Court in this field of quashing the proceeding at the threshold. The learned judge did not even advert to, far from arriving at a clear conclusion,that even accepting the prosecution allegations as true no offence was disclosed, which is the rock on which alone the relief for quashing can ordinarily be granted. did he find that there was any legal bar to the contnuance of the trial, which can possibly warrani interference within this jurisdiction.

It appears from the tenor of the judgemtnt that documents on which the defence sought to rely were equally sought to be appraised and appreciated without those being either proved or tested by the challenge of cross-examination of their authors. Even the alleged likely in firmities in the prosecution case were sought to be noticed and adverse inferences taken therefrom on the ground that in the chargesheet no customer of the petitioner had been cited as a withess. The matter was then sought to be narrowly confined to what was said in the first information report or the chargesheet, without reference to the accompanying documents. This would be contrary to the

(1) (1974) A.I.R. (S.C.) 1146

(2) (1977) A.I.R. (S.C.) 2229

reasoning and the authoritative decision of their Lordships in the case of *Satya Narain Musedi and others - vs - The State of Bihar* (1), wherein it is observed as follows:-

> "The report as envisaged by section 173(2) has to be accompanied as requied by sub-section (5) by all the documents and statement of the witnesea therein mentioned. One cannot divorce the details which the report must contain as required by sub-section (2)from its accompaniments which are required to be submitted under sub-section (5). The whole of it is submitted as a report to the Court."

It is plain from the above that the Court must not put blinkers and confine itself merely to an ill-drafted complaint or a police report alone for the purpose of quashing. Equally, the Counsel was remiss in not bringing to the notice of the Court the statutory provisions with regard to the prescription of weight for one bag of cement, and the patently untenability of the stand that the whole stock of a dealer must be weighed before he can be charged for selling of underweight bags. With the greatest respect, Rambalak Prasad's case (supra) is not correctly decided and is hereby overruled.

11. Once the reasoning and the ratio of Rambalak Prasad'[s cese(supra) gets out of the way, the learned Ceunsel for the petitioner indeed has no other meaningful submission to urge. The criminal miscellanceous petition seeking the quashing of the preceeding is thus wholly without merit and is here by dismissed.

12. In view of the delay that already ocourred in the trial, the learned Magistrate will proceed to expeditiously dispose of the same.

S. Shamsul Hasan, J. I agree.

S.P.J. Application dismissed.

(1) (1980) A.I.R. (S.C.) 506.

CIVIL WRIT JURISDICTION

Before Birendra Prasad Sinha, J.

1984

November, 12

*Sk. Wajuddin.**

v.

The State of Bihar and others.

Bihar Privileged Persons Homestead Tenancy Act, 1947 (Act IV of 1948), section 2(i) --- person claiming to be a privileged person --- authority declaring him as such and directing to issue purcha to him--- relationship of landlord and tenant --- authority, whether bound to give a finding to this effect.

It is necessary for the privileged tenant claiming permanant tenancy in the homestead to prove that he is a privileged person within the meaning of section 2 (h) (i) and that besides his homestead he does not hold any other land or hold any such land not exceeding one acre. The authorities have got to give a finding to this effect before passing any order under the provisions of the act giving a permanant tenancy in the homestead to the privileged tenant.

Held, therefore, that in the impugned order no such finding having been given by the authority concerned, the order is not in accordance with law and must be quashed.

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*Civil Writ Jurisdiction Case No. 1672 of 1980. In the matter of an application under Articles 226 and 227 of the Constitution of India.

Application under Articles 226 and 227 of the Constitution of India.

The facts of the case material to this report are set out in the judgment of Birendra Prasad Sinha, J.

Messrs Nawal Kishore Singh, Ravi Bhushan Singh and Najmul Bari. for the petitioner.

Mr. Rameshwar Prasad, Govt. Pleader VI and Mr. Amarendra Kumar Sinha, Jr. counsel to Govt. Pleader VI for the state.

Birendra Prasad Sinha, J. This is an application under Articles 226 and 227 of the constitution of India. A prayer has been made for issuance of a writ of certiorary for quashing annexures 3 and 5. By Annexure-3 which is an order dated 22.8.1981 passed by the Anchal Adhikari, Katihar in Basgit Case No. 72 of 1980-81. Respondent No. 2 Md. Belal Hussain has been declaired to be a privileged person and it has been directed to issue a Purcha to him in respect of plot no. 274, khata no. 72 area 3 decimals in village Rampur in the district of Katihar. The petitioner has challenged this order contained in Annexure-3 on the ground that the impugned order is not only cryptic and unreasoned but no finding has been recorded that there is any relationship of landlord and tenant between the petitioner and respondent no. 2. It is also submitted that there is no finding that respondent no. 2 is a privileged person.

2. According to section 2h (i) of the Bihar Privileged Persons Homestead Tenancy Act, privileged person means a person -

> "who is not a proprietor, tenure-holder, under tenure-holder or a mahajan and
>
> (2) Who, besides his homestead, holds no other land or holds any such land not exceeding one acre."

Privileged tenant is defined in section 2(j) and means

> "a privileged person who holds homestead under another person and is, or but for a special contract would be, liable to pay rent for such homestead to such person."

Section 4 of the Act provides : that

> "Subject to the payment of such rent as may be agreed upon between a privileged tenant and his landlord, or where there is no contract or no valid contract in respect of rent or where the rent contracted is alleged to be unfair or inequitable such rent as may be fixed by the collector under the provisions of section 6, a privileged tenant shall have a permanant tenancy in the homestead held by him at any time continuously for a period of one year."

It is also necessary for the privileged tenant claiming permanent tenancy in the homestead to prove that he is a privileged person within the meaning of section 2(i) and that besides his homestead he does not hold any other land or holds any such land not exceeding one acre. The authorities have got to give a finding to this effect before passing any order under the provisions of this Act giving a permanent tenancy in the homestead to the privileged tenant. It is clear from the impugned order that no such finding has been given by the authority concerned. The order, therefore, is not in accordance with the provisions of this Act and must be quashed.

3. The application, accordingly, succeeds and the impugned order contained in Annexure-3 is quashed. There shall be no order as to costs.

M.K.C. Application allowed.

MISCELLANEOUS CRIMINAL

Before S.S. Sandhwalia, C.J. and Nazir Ahmad, J.

1984

November, 28

*Santosh Kumar Ranka and another.**

v.

The State of Bihar & another.

Code of Criminal Procedure, 1973 (Act II of 1974), section 432 --- quashing of criminal proceedings --- High Court, whether can appraise oral and documentary evidence and such evidence which is not on the record of the trial court.

Held, that, the High Court for the purposes of quashing criminal proceedings cannot appraise oral and documentary evidence and in particular, such evidence which is not on the record of the trial court.

R.P. Kapoor v. The State of Punjab (1), *Jehan Singh v. Delhi Administration* (2) and *Kurukshetra University v. The State of Haryana and another* (3) -- relied on. *Hari Prasad Chamaria v. Bishnu Kumar Surekha and others* (4) *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* (5) --distinguished.

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*Criminal Miscellaneous No. 5776 of 1982. In the matter of an application under section 482 of the code of Criminal Procedure.

(1) (1960) A.I.R. (S.C.) 866. (2) (1974) A.I.R. (S.C.) 1146.
(3) (1977) A.I.R. (S.C.) 2229. (4) (1974) A.I.R. (S.C.) 301.
(5) (1983) A.I.R. (S.C.) 67.

Held, therefore, that the basic challenge, in the instant case, on behalf of the petitioners, being either to the appraisal of tenstimony on the record or for appreciation of evidence which they might choose to bring in their defence, the criminal proceeding against them cannot be quashed.

Application by the accused.

The facts of the case material to this report are set out in the judgment of S.S. Sandhawalia, C.J.

The case in the first instance was placed before a single Judge who referred it to a Division Bench.

On this reference.

Messrs Balbhadra Prasad Singh and Jagdish Prasad Bhagat for the petitioner.

Mr. Lala Kailash Bihari Prasad for the State.

Mr. Shabbir Ahmad for opposite party no. 2.

S.S. Sandhawalia, C.J. Can the High Court for the purpose of quashing criminal proceedings appraise oral and documentary evidence, and, in particular, such evidence which is not on the record of the trial court - has come to be the significant issue in this reference to the Division Bench.

2. Khemchand Sancheti (opposite party no.2) had preferred a complaint before the Chief Judicial Magistrate, Purnea, on the 7th of July, 1982, against two petitioners, Santosh Kumar Ranka and Dharamchand Ranka levelling serious charges under sections 403, 406, 418, 424 and 109 of the Indian Penal Code. The gravamen of the case was that the complainant was the sole proprietor of North Bihar Zarda Manufacturing Company which had a factory at Purnea. The complainant engaged petitioner no.1 Santosh Kumar Ranka as the manager of the said concern as he was personally known to him and he reposed great trust in him.

Sometimes in the month of April, 1979, the complainant left Purnea for the purpose of management of his ancestral properties at Rajasthan and in connection with his business at Calcutta and entrusted petitioner no. 1 to look after the business and pursue the matter of registration of the Trade Mark with the Registrar of Trade and Mercantile Marks at Calcutta. In January 1981 the complainant returned to Purnea and found that the factory had been shifted to different premises without his knowledge or censent. Petitioner No. 1 assured him that this had been done for the better conduct of business. The complainant there after had another long spell of absence from Purnea and on his return in May 1982 he asked for the accounts of the business but petitioner no. 1 adamantly declined to do so because by that time he had registered with the Central Excise Department for the manufacturing of Zarda in the style of Kanak Zarda Company in his name. It was the complainant's case that petitioner no. 1 had fraudulently converted the trade mark and goodwill of the concern to his own use and along with petitioner no. 2 had misapropriated the entire amount of the concern belonging to the complainant. It was alleged that the two petitioners had dishonestly and fraudulently removed properties of the value of Rs. 25,000/- belonging to the complainant and entrusted to them and further caused a loss of Rs. 2,00,000/ to him by their wrongful acts and conversion of the trade mark, business etc. Nine witnesses were specifically named in support of the prosecution allegations. The Magistrate examined the complainant and as many as six witnesses in support of the case and took cognizance of the offence and directed summeons to be issued against the petitioners on the 21st August, 1982 and transferred the case to the file of the Judicial Magistrate, 1st class, Purnia. It is alleged on behalf of the petitioners that the complaint is on abuse of the process of the Court and the learned Magistrate has erred in issuing processes against the petitioners. Various

infirmities in the complaint and the evidence are sought to be pointed out and it is alleged that the court has taken cognizance merely on the oral statement of six witnesses whose testimony is annexed as Annexures 2 to 7.

3. It is the stand of the petitioners that they have been running an independent business and petitioner no. 1 holds a licence in the name of Messrs Kanak Zarda Co., and has been making returns, photostat copies where of have been annexed as Annexures '8' to '8/D'. A copy of the licence has been annexed as Annexure '9'. It is further alleged that the complainant in feet was not absent from Purnia in the prolonged period alleged by him and it is averred that the complainant was an accused in G.R. case no. 652 of 1972 at Purnia where he had been presenting himself on various dates. This is aought to be established by the production of the certified copies of the attendance filed on his behalf and the ordersheet maintained in the said case. Inter alia, on the basis of this defence avidence it is prayed that the proceeding against the petitioners be quashed including the order of cognizance taken on the 21st of August, 1982.

4. Mr. Balbhadra Prasad Singh, learned counsel for the petitioners, had raised a twin argument in support of the case. It was submitted that Zarda is an excizable commodity and its production and manufacture can only be under a license duly issued by the Central Fxcise Authorities. To substantiste the likely plan of the petitioners in defence against the prosecution he sought to place reliance on Annexure '9', which purports to be a copy of a licence issued in favour of M/s Kanak Zarda Company, and equally on Annexures '8', '8A', '8B', '8C' and '8D', which are allegedly the returns filed by M/s Kanak Zarda Company with regard to the annual production and duty paid by them. Secondly it was sought to be contended that the depositions of witness no. 1 Abdul Shankar (Annexure 2), witness no. 2 Kishore Kumar Lal Ghua (Annexure 3), Witness no. 3 Panalal

Shathi (Annexure 4), witness no. 4 Sarwar Kumar Jhunjunwala (Annexure 5), witness no. 5 Apchandra Bhagat (Annexure 6), and witness no. 6 Mohammad Kamalu (Annexure 7), who have been examined in support of the prosecution case, suffer from intrinsic infirmities and are unworthy of reliance. Basic reliance was sought to be placed on *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* (1) and *Hari Prasad Chamaria v. Bishun Kumar Surekha and others* (2).

5. I am afraid that both the arguments of the learned counsel for the petitioners run against the grist of the fundamentals for the quashing of proceedings by the High Court under section 482 of the Code of Criminal Procedure at the very threshold. At the very outset it may be noticed that the present is certainly not a case where tha allegation made in the complaint, even if accepted, would not disclose any offence or that the statements of witnesses recorded in support there of would make out absolutely no case against the accused. It is indeed manifest that the detailed complaint (Annexure 1) makes specific allegations which come squarely within the mischief of the relevant sections for which the petitioners are charged. Datailed and specific averments have been made with regard to entrustment of the property to the petitioners and dishonest misappropriation and conversion by them. Reference to paragraphs 14 to 18 can leave no manner of doubt that the detailed allegations made therein, if accepted, would clearly amount to the offences alleged in the complaint. Consequently one of the basic and primal requirements for the quashing of criminal proceedings is not even remotely satistied herein.

6. Adverting now to the learned counsel's stand that

(1) (1983) A.I.R. (S.C.) 67:

(2) (1974) A.I.R. (S.C.) 301.

the whole testimony of witness nos. 1 to 6 be appraised and held unworthy of credence, I would wish to observe that this stance is diametrically contrary to the basic approach to the issue of quashing a prosecution at the threshold. This indeed seems to be so wall settled by a long line of precedent of the final Court itself laying down the limitations of this jurisdiction that it is unnecessary to examine it on principle way back in A.I.R. 1960 Supreme Court 866 *(R.P. Kapoor v. State of Punjab)* Gajendragadkar, J., Speaking for the court had categorically observed as under :

> "In exercising its jurisdiction under section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and conten that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

That view has been reiterated with stringency later in *Jehan Singh v. Delhi Administration* (1) and *Kurukshetra University v. The State of Haryana and another* (2). In view of the authoritative enunciation in the aforesaid cases, the petitioners cannot even remotely sustain their claim for an enquiry as to whether the evidence of witnesses in support of the complaint is either unreliable or that on an appraisal and appreciation of the same the accusation made against the petitioners may perhaps be not sustainable.

7. Now once that is so, the petitioners are even on a weaker wicket with regard to their alternative submission in seeking to rely before us on Annexure 9 and on Annexures 8, 8A, 8B, 8C and 8D. Admittedly these are documents which are not as yet even proved on the record of the trial court.

(1) (1974) A.I.R. (S.C.) 1146.

(2) (1977) A.I.R. (S.C.) 2229.

The authenticity as also the admissibility of these documents were squarely challenged on behalf of the opposite party. These have naither been proved nor tested by the challenge of cross-examination to their authors. Equally it appears to me that for the purposes of quashing the nature of the defence itself can rarely be of relevance, and it is more so with regard to the purported documents in support there of which as yet do not even form part of the record of the trial court. It seems plain that if within the jurisdiction the High Court is precluded from appraisal of evidence on the record a portiori it would be equally precluded from looking at the documents which are as yet unproved in the trial forum.

8. In fairness to the learned counsel for the petitioners, a reference may be made to *Hari Prasad Chamaria's case* (supra). However, that in no case advances their stand because admittedly therein even accepting the allegntions in the complaint to be true they were held to amount merely to a breach of contract and did not disclose any offence. Similarly paragraph 8 of the report (*Municipal Corporation of Delhi v. Ram Kishan Rohtagi)* (supra), which was sought to be relled upon, merely spelt out the cases when the proceedings before a magistrate can be quashed or set aside, There is no quarrel about the propositions laid down there but the petitioners case would not come even remotely within the ambit.

9. To conclude : The answer to the question posed at the outset has to be randered in the negative and it is held that the High Court for the purposes of quashing criminal proceedings cannot appraise oral and documentary evidence, and, in particular, such evidence which is not on the record of the trial court.

10. Once it is held as above, it is plain that the petitioners do not have the semblance of a case. The basic challenge on their behalf herein was either to the appraisal

of testimony on the record or for appreciation of evidence which they might choose to bring in their defence. This must necessarily fail in view of the enunciation of the law aforesaid.

11. This criminal miscellaneous petition is without merit and is hereby dismissed.

Nazir Ahmad, J. I agree

S.P.J. Application dismissed.

CIVIL WRIT JURISDICTION

Before Hari Lal Agrawal and S.Ali Ahmad, JJ.

1984

December, 10

*Nawal Kishore Sharma.**

v.

The State of Bihar and Others.

Oaths Act,1969 (Central Act no. XLIV of 1969) section 3(2)— notification issued by State of Bihar under, vesting power to administer Oath in "Executive Officers"— validity of — authorisation to Block Development Officer and Circle Officers to administer oath, whether valid and legal-- Judicial Magistrate, whether covered under definition expression "Executive Officer.

Where State of Bihar issued notification under section 3(2) of the Oath's Act, 1969 vesting power in Executive Officers in relation to judicial and other matters and thereafter instruction was issued by Home Department (Special Branch)of State Government to the Registrar of High Court requesting him to direct all Judicial Magistrates of First Class through their District and Sessions Judges, that if any freedom-fighter goes to them with an application for swearing affidavit, then they should administer oath to him with respect to such application.

Held, that the expression "Executive Officer", in the

*Civil Writ Jurisdiction Case Nos.1000 & 4586 of 1981. In the matter of applications under Articles 226 and 227 of the Constitution of India.

notification of the State of Bihar dated 6.11.1975 under section 3 (2) of the Oath's Act, 1969 is genus which would include all those officers who are enjoined with the obligations and duties of performing executive functions in the State.

Following the principles of construction which could make the legislation workable and serve its purpose, and particularly in case of this type of a circular, which is a part of a benevolent intention and a beneficial notification, it must be construed in such a manner whch would make it workable instead of defeating its object and purpose, unless of course giving such a meaning would do some violence to the established principles and constitution of the Magistracy.

Held, further, that the notification by which the Block Development Officers and Circle Officers have been empowered, to administer oath, is perfectly valid and legal.

Held, also, that the Judicial Magistrates,i.e, Munsifs vested with power to try criminal case, can not be covered under the definition of the expression "Executive Officer".

Applictions under Articles 226 and 227 of the Constitution.

The facts of the cases material to this report are set out in the judgement of the Court.

M/s Devendra Prasad Sharma, Umesh Lal Verma and Ram Kishun Singh for the petitioner in both the cases.

Mr. C. S. Prasad (J.C. to G.P. 1) for the respondents in C.W.J.C. 1000/81

Mr. A.K. Sinha (J.C. to G.P. 1) for the respondents in C.W.J.C. 4586/81.

Hari Lal Agrawal & S. Ali Ahmad, JJ. The petitioner

has filed two writ application which have been heard together as similar question is Involved in both of them,and they are being disposed of herewith .

2. The matter relates to the authority of the Executive Magistrates to administer oath to certain categories of persons, who have been authorised to discharge this function under different Government instructions to be referred to hereinafter.

3. The petitioner has been duly appointed as a Notary under the Notaries Act,1952 (Act 53 of 1952) by the State of Bihar under the notification dated 15th December, 1978, at Jehanabad. By virtue of his appointment he has been authorised to do all or any of the acts and things mentioned in section 8 of the Notaries Act in ralation to verification, authent ication, attestation of any document etc.and administer oath to or take affidavit from any person.

4. The State of Bihar issued notification dated 6.11.1975 (Annexure 1 to the first case-C.W.J.C. 1000/81) under section 3(2) of the Oaths Act (Act 44 of 1969) vesting the power to administer oath in Executive Officers in relation to judicial and other matters, and thereafter one instruction was issued by the Home Department (Special Branch) of the State Government to the Registrar of this court by his letter dated 3.2.1981 (Annexure 3), requesting him to direct all the Judicial Magistrates of first Class through their District & Sesions Judges, that if any freedom-fighter goes to them with an application for swearing affidavit then for the purpose of convenience he should administer oath to him with respect to such application. In pursuance of this request on behalf of the State Government, the Registrar of this this Court by his letter dated 2nd February, 1981 (Annexure 4) issued directions to all the District & Sessions Judges including the Judicial Commissioner, Ranchi, requesting them to instruct all the Magistrates of the First

Class posted under them to take immediate action on the application of the freedom-- fighters under the pension Scheme formulated for their benefit by the Government, when presented in connection with swearing affidavit by the concerned applicants before them.

5. In C.W.J.C. No. 4586 of 1981, in paragraph 3 of Annexure 1 the State Government in the Department of Labour & Employment issued direction to the Deputy Development Commissioners to the effect that in the scheme in relation to application for getting token allowance by educated unemployed' for the year 1981-82, the affidavits could also be affirmed before the Block Development Officers and Circle Officers declaring them to be Oath Commissioners.

6. The afore said authorisations - in the first case by the Registrar of this Court to the Judicial Magistrates, and in the latter case by the State Government to the Block Development Officers and Circle Officers, are under challenge.

7. Learned counsel contended that under the notification under section 3(2) of the Oaths Act which is the source of power, neither of the two classes of officers could be authorised to administer oath or affirmation. Section 3(2) of the Oaths Act authorises the High Court in respect of affidavits for the purposes of judicial proceedings and the State Government in respect or other affidavit to empower any court, judge, Magistrate or person to administer oaths and affirmation for the purpose of affidavits.

The argument of Mr. Devendra prasad Sharma, appearing for the petitioner in both the cases, is that the relevant notification (Annexure 1 to C.W.J.C.1000/81) under section 3(2)(b) of the Oaths Act empowers only the Executive Officers (कार्यपालक पदाधिकारी) and, therefore, the Judicial Magistrates in the first case and the Block

Development Officers and Circle Officers in the second case, could not be directed to discharge the duties in reletion to administration of oath or affirmation for the purpose of affidavits.

The expression "Executive Officer" is not defined in any statute. The only reference to such kind of Magistrates to our knowledge is feund in the Municipal Act where a provision has been made for appointment of an Executive Officer in any municipality and Section 37(a) of the said Act provides for creation of a cadre of Executive officers by the State Government, which, of course, is to form a separate cadre, but they have to be officers of the municipality and their appointment has to be made by the Government in consultation with the Bihar Public Service Commision. If this interpretation and the apparent meaning is given to the Government notification contained in Annexure 1 aforesaid, than theposition would be that for non-judicial works or 'other affidavits' an applicant or the person for whose benefit and facility the Government intended to issue the notification has to go only before the Executive Officer of a Municipality instead of the spring of Executive Magistrates posted extensively in remote areas from where the applicants might come. It is well known that in the State of Bihar Municipalities are not everywhere, on account of the limit imposed for constitution of a municipality in relation to population. Apart from that, we are inclined to hold that the expression "Executive officer" is genius which would include all those officers who are enjoined with the obligations and duties of performing executive functions in the State and the expression cannot be given a narrower meaning as suggested by Mr. Sharma. Following the principles of construction which could make the legislation workable and serve its purpose and particularly in case of this type or a circular, which is a part of a benevolent intention and a beneficial not if ication, we must costrue it in such a manner

which would make it workable instead of defeating its object and purpose, unless of course giving such a meaning would do some violencee to the established principles and constitution of the Magistracy. If once this construction is accepted, then the notification in the second case by which the Block Development Officers and Circle Officers have been empowered, must be held to be perfectly valid and legal. But even giving this liberal interpretation, we find difficulty in upholding the institution of the Registrar of this Court contained in Annexure 4 to the first writ application (C.W.J.C. 1000/81), whereby a direction was issued to discharge this function by the First class Judicial Magistrates.

It is well known that after the separation of the judiciary from the Executive on coming into force of the new Code of Criminal Procedure, the High Court empowers the officers of the rank of Munsifs to deal with criminal matters which now come to the Civil Courts and those Magistrates are called Judicial Magistrates as they are to hear and dispose of cases which come for trial of the accused persons before them. This category of Magistrates, i.e., Judicial Magistrates, cannot be covered under the definition of the expression "Executive Officer".

9. We would accordingly allow C.W.J.C. No.1000 of 1981 and quash the order dated 19-2-1981 contained in Annexure 4 thereto, but would dismiss C.W.J.C. No. 4586 of 1981 in which the similar authorisation to the Block Development Officers and Circle Officers has been challenged. Let and appropriate writ issue accordingly. In the circumstance, we shall make no order as to costs.

R.D. C.W.J.C. no 1000 of 1981 allowed.

C.W.J.C. no. 4586 of 1981 dismissed.

CRIMINAL WRIT JURISDICTION

Before P.S. Sahay and Ashwini Kumar Sinha, J.J.

1984

December, 17

*Dilip Singh.**

v.

The State of Bihar & ors.

Bihar Control of Crimes Act, 1981 (Bihar Act no. VII of --1981) Section 23 (2) --- provisions of - no fresh facts arose after the date of revocation of earlier order of detention --- fresh order of detention, Validity of --- subjective satisfaction of District Magistrate lacking --- effect of order of detention of petitioner on non-est grounds, whether abuse of power on the part of the District Magistrate whether amounts to deprivation of petitioner of his fundamental right to liberty.

From the perusal of section 23 (2) of the Bihar control of Crimes Act, 1981, hereinafter called the Act, if an order for the detention of a person had been made under section 12 of the Act, on the grounds mentioned in that order or served on the person with the order and if that order was either subsequently revoked or the period for which the detention order was made had expired, the said order would not stand in the way of making a fresh order of detention under section 12 of the Act against the same person provided fresh facts arose after the date of the said

*Criminal writ Jurisdiction Case 214 of 1984. In the matter of an application under Articles 226 and 227 of the Constitution of India.

revocation or expiry. If no fresh facts came into being after the date of revocation or expiry as may warrant the making of an order of detention, the requisite condition precedent to the making of the subsequent order would be non-existent and it would not be permissible to make a subsequent order of detention under section 12 of the Act on the very same grounds.

Held, that after the order of revocation dated 9.6.1984 of the earlier order of detention dated 3.6.1984, no fresh facts had arisen and in that view of the matter the revocation order dated 9.6.1984 was a legal bar for making the fresh detention order dated 9.6.1984 on the very same/identical grounds as in the earlier detention order dated 3.6.1984.

Held, further, that the grounds on which the petitioner was detained under section 12 of the Act by order dated 9.6.1984 were non-est in the eye of law.

Held, further, that the subjective satisfaction of the District Magistrate, Purnea, in passing the impuged order of detention dated 9.6.1984 was completely lacking and order was passed absolutely in a mechanical way and in perfunctory manner.

Held, also that the order of detention of the petitioner on non-est grounds was a clear case of abuse of power on the part of District Magistrate. Purnea and the petitioner was deprived of his fundamental right to liberty and his fundamental right to liberty could not be curtailed in the way it has been done.

Application under Articles 226 and 227 of the Constitution.

The facts of the case material to this report are set out in the judgment of Ashwini Kumar Sinha, J.

M/s Tara Kant Jha and Mihir Kumar Jha for the

petitioner

M/s N.K. Sinha. S.C.V. Braj Kishore Pd. Sinha, J.C. to S.C.V. & C. K. Prasad, J.C. to S.C.V. for the respondents.

Ashwini Kumar Sinha, J. By this application, petitioner Dilip Singh challenges the validity of his detention in consequence of the order of the State Government dated 3.8.1984 (Annexure-18 to the writ petition) in exercise of powers conferred under section 21 (1), read with section 22 of the Bihar Control of Crimes Act, 1981 (Bihar Act 7 of 1981). By this order the petitioner has been ordered to remain in detention till 8.6.1985.

2. The petitioner has also challenged the order dated 9.6.84, by which the District Magistrate, Purnea, had passed the order of detention under section 12(1) of the Bihar Control of Crimes Act, 1981 (here in after referred to as the Act). This order dated 9.6.84, referred to above, was approved by the State Government on 19.6.84 (vide Annexure-8 of the writ petition). It was only after the confirmation by the State Government of the order dated 9.6.84, referred to above, that the main impugned order of the State Government dated 3.8.84 (Annexure-18 to the writ petition) was passed by which the petitioner was ordered to remain in detention till 8.6.1985.

3. The petitioner has also prayed for quashing the grounds communicated to him by memo no. 2447/C dated 9.6.84. The petitioner has also challenged the order dated 19.6.84, by which the State Government had approved the detention order passed on 9.6.84 (Annexure-4 to the writ petition) by the District Magistrate, Purnea, under section 12(1) of the Act. The petitioner has also challenged the recommendation of the Advisory Board, which had approved the order of detention passed by the District Magistrate Purnea.

4. Though, the petitioner by this application has

challenged the aforesaid orders but the main challenge is with regard to the validity of petitioner's detention till 8.6.85, passed by the State Government on 3.8.84 (Annexure-18) in exercise of powers conferred by section 21(1) read with section 22 of the Act.

5. Learned counsel appearing for the petitioner very rightly contended that if the court felt satisfied that this order (Annexure-18) was infirm and illegal, in that case all other orders would automatically fall to the ground, Learned counsel for the petitioner has raised only two points. The first submission advanced by the learned counsel for the petitioner was that if the earlier detention order dated 3.6.84 (by Memo No. 2374 - in case No. 1 of 1984) (Annexure-3 to the writ petition) passed by the District Magistrate, Purnea, stating also the grounds, was revoked by the District Magistrate, Purnea, by his subsequent order dated 9.6.84 (Annexure-6), The very same grounds could not be used in the eye of law as grounds for fresh detention, and as the grounds for passing ultimate impugned order (Annexure-18) were not fresh facts (as envisaged under section 23(2) of the Act) after the date of revocation (i.e., after 9.6.84) fresh detention order (Annexure-18) was wholly illegal and was fit to be quashed.

6. The second limb of submission advanced by the learned counsel for the petitioner was that a proceeding under section 107 of the Code of Criminal Procedure could not be taken to be one of the grounds for detention in the eye of law.

7. No other point was raised before us by the learned counsel for the petitioner.

8. In order to appreciate the submissions advanced by the learned counsel for the petitioner it is essential to state a few relevant facts.

9. Shorn of other details in 1981-82, a few criminal

cases were launched against the petitioner as below :

Case No.	Offence.
1. K. Hat P.S. Case No. 12/81.	Sec. 379, 323 I.P.C.
2. K. Hat P.S. Case No. 127/81.	Sec 395 I.P.C.
3. K. Hat P.S. Case No. 308/81.	Sec. 147, 323, 342, 309 I.P.C.
4. K. Hat P.S. Case No. 470/81.	Sec. 25(A) & 26 Arms Act.
5. K. Hat P.S. Case No. 180/82.	Sec 448, 323, 324, 309 I.P.C.
6. K. Hat P.S. Case No. 215/82.	Sec. 341, 323, 309 I.P.C.
7. K. Hat P.S. Case No. 223/82.	Sec. 342, 323, 307 I.P.C.

10. According to the petitioner the aforesaid criminal cases were covered within the ambit of law and order and as such, attempt of the District Magistrate, Purnea, initiating a proceeding under section 3 of the Act was not approved by the State Government and the petitioner's detention under section 3 of the Act was revoked, According to the petitioner, the District Magistrate, Purnea, having failed in his first attempt made another attempt to detain the petitioner under section 3 of the Act in Case No. 11 of 1983, and in this case 7 criminal cases were mentioned, some of which, according to the petitioner, were the part of the first detention order and only two cases of the year 1983 and one proceeding under section 107 of the Code of Criminal Procedure were included as fresh grounds. The petitioner was taken into custody in connection with Case No. 11 of 1983, just mentioned above, while he was already in jail in connection with Khazanchi Hat P.S. Case No. 135/83. On being released in the aforesaid Khazanchi Hat P.S. case by the order of the Sessions Judge, Purnea, the petitioner was served with a copy of the notice under section 3 of the Act and was remanded in custody in connection with Case No. 11 of 1983 on 20.5.83 (vide

Annexure-1 to the writ petition). The petitioner thereafter filed a criminal writ case numbered as Cr. W.J.C. No. 197 of 1983 in this Court, in which bail was granted and the petitioner was released from custody on 5.7.1983, after furnishing bail bond to the satisfaction of the District Magistrate, Purnea, This criminal writ case, just referred to above, was finally disposed of by this Court on 5.10.83, in which this court directed the petitioner to appear before the authorities concerned and cooperate in the disposal of pending case. This Court also directed the authorities to supply copies of all the relevant documents and dispose of the proceeding pending in case no. 11/83. In the instant writ application the petitioner has complained that despite the petitioner remaining present on a number of dates, the authorities had not supplied the relevant documents and have been adjourning the case from one date to another. And, as it seems from the averment of facts in the instant writ application, the aforesaid case no. 11 of 1983 is still pending.

However, the learned counsel for the petitioner, in the course of his submission, has informed this court that the same has been dropped on 6.8.84. Be that as it may, we are not concerned with that case in the instant writ application. The facts relevant to the present case starts now. The petitioner was arrested on 31.5.84, and, according to the petitioner, there was no warrant pending against him yet he was arrested on the order of the District Magistrate, Purnea, and was sent to jail on 1.6.84.

11. On 3.6.1984, the District Magistrate, Purnea, vested with the powers under section 12 (2) of the Act, passed an order of detention of the petitioner for a period of three months with effect from 1.6.1984, and also served the petitioner in jail the grounds of detention, It is very relevant to quote these grounds of detention (vide order dated 3.6.84) which were served upon the petitioner in jail on that very day.

"Grounds of detention of Sri Dilip Singh s/o Bhim singh of village Chandwa, P.S. Meerganj, District Purnea at present Durgabari, Bhatta Bazar, P.S. K.Hat, District Purnea u/s 12(2) of Bihar Control of Crimes Act, 1981 (Bihar Act 7 of 1981) herein after be called the 'Act'.

1. That on 7.2.81 you along with one of your accomplices and other stopped Bus Bus No. BHQ 9564 plying on Birpur-Patna road and on refusal of the Conductor of the Bus to pay any 'Chanda' you along with your accomplices assaul-ted him and took away the wrist-watch, spectacle and Rs. 5/- from the person of the conductor. K.Hat P.S. case no. 12 dt. 7.2.81 u/s 379/323 I.P.C.

2 That on 30-6-81 you along with your nine accomplices stopped one Jeep bearing No. BEK 8391. You with the help of your accomplices took away foreibly Rs. 150/- from the person of Surya Narain Singh the Driver of the Jeep and pushed the said Jeep to a nearby ditch. (K. Hat P.S. Case No. 308/81 dt. 30-6-81 u/s 147/342/323/379 I.P.C.)

3. That on 11.11.81 S.I. K.N.Mishra of K.Hat P.S. upon confidential information raided the premises of one Nitya Chandra Bhattacharya of Bhatta Sheopuri Mohalla, P. S. K.Hat, Purnea and during raid one country made Pistol was recovered from the bed upon which you along with your accomplices were found sitting and talking in a room. (K.Hat P.S. Case No. 471/81 dt. 11.11.81).

4. On 8.6.82 you along with one Sunil Kumar Singh of Madhubani Gandhi Nagar and others entered illegally the office of Manager, Chitrabani Cinema, Purnea at about 2.45 P.M. You along with your associates forcibly deprived the Manager of the Cinema named Sri Upendra Pd. Singh of cash amounting to about Rs. 1800/-. When the said Manager put up some resistence, you assaulted him with a knife which hit the Manager on the forehead. (K.Hat P.S. case No. 180/ 82 dt. 8.6.82 u/s 448/323/324/379 I.P.C.).

5. On 10.7.82 about 8 P.M. you along with your associates near Kalibari Chawk deprived Anil Kumar, a second year student of purnea Polytechnic of his wrist watch

and a golden ring. You also threatened him that he would be killed in case he dared to report the incident to the Police. (K.Hat P.S. case no. 215/82 dt. 10.7.82 u/s 341/323/379 I.P.C.).

6. On 17.7.82 at 3 P.M. near Purnea Agrawal Market you along with your associates assaulted one Murari Singh of Ufrail, P.S. Basaithi (Raniganj), District Purnea at present Sipahi Tola, Madhubani, P.S. K.Hat. One of your accomplices assaulted Murari Singh and you fired a shot from your pistol at him injuring him on the left side of the chest. (K.Hat P.S. Case No. 223/82 dt. 18.7.82 u/s 342/323/307 I.P.C. & 27 Arms Act).

7. On 29.3.83 at 5 P.M. you along with your nine associates all being armed with Pistol, revolvers and daggers went on Motor Cycles to the House of one Mishri Azad Choudhary of Rajani Chawk, Bhatta Bazar, Purnea and illegally entered into his house, abused him and forcibly took away one Kajal wrist-watch worth Rs. 600/-, one gold chain of 1½ Tolas worth Rs. 3000/- and cash amounting to Rs. 350/- from his Brief case. (K.Hat P.S. case No. 116/83 dt. 29.3.83 u/s 144/448/380 I.P.C.).

8. On 10.4.83 at 8 A.M. while one Rohit Yadav of Bhatta Bazar, P.S. K.Hat, Purnea was going to take tea near Lakhan Chowk, you along with your associates Raj Kumar Dubey, and Boby Ghosh committed murderous attack on him by firing shots from Pistols and there by caused bullet injuries on his persons. (K.Hat P.S. case no. 135/83 dt. 10.4.83. u/s 307 I.P.C. & u/s 25(A) & 26 Arms Act.).

9. On 26.10.83 in broad day light you with the help of your accomplices kidnappad a minor girl Kumari Mamta Ghosh by forcibly lifting her in a car for immoral purposes. (K.Hat P.S. case No. 395/83 dt. 26.10.83 u/s 363/366 I.P.C.).

10. On 15.3.84 at about 10 A.M. while Sri Ashok Kumar Ghosh of south Bhatta Bazar, P.S. K. Hat, Purnea was taking tea at Lakhan Chowk you along with your associates reached there, assaulted him, Threw away hot tea upon his face and took out Rs. 450/- from his pocket of the shirt. (K.Hat P.S. case no. 81/84 dated 15.3.84 u/s 341/

379/323 I.P.C.).

11. On 9.3.84 at about 12 A.M. you along with your associates stopped Bus no. B.R.J. 1327 of one Ashok Kumar Ghosh of Bhatta Bazar, Purnea, in front of old petrol Pump to the east of Khuskibagh, P. S. Sadar, Purnea, You at the point of revolver called all the staffs of the Busrat Petrol Pump and threatened them to put them in the Bus and to set fire in it if they would drive the Bus and work in it. (K.hat P.S. case No. 51/84 u/s 341/504 I.P.C.).

12. On 17.4.84 at about 4 P.M. while one Subhas Kumar Ghosh went on his motor Cycle bearing No. B.R.K. 7947 to see one wooden bridge near Supni Hat, P.S. Sadar, Purnea, if it was fit for plying Bus, you along with your three associates reached there on two motor cycles, one of red colour bearing No. B.H.K. 2287 and another of Black colour without number. One of your associate named Raj Kumar Dubey snatched away wrist-watch worth Rs. 650/- from the hand of Subhash Kumar Ghosh at the point of his revolver and whereas you fled away with the motor-cycle of the said Subhas Kumar Ghosh, you and your accomplices threatened Subhas Kumar Ghosh to kill him if he would inform the police about the incident (K.Hat P.S. case No. 79/84 dt. 17.4.84 u/s 392 I.P.C.).

13. On accont of the criminal activities and finding apprehension of breach of peace a report for action u/s 107 Cr. P.C. was submitted by K.Hat P.S. on 1.4.83 to the S.D.O., Sadar, against you and your associates as 2nd party and Rohit Yadav and his associates as 1st party (vide K.Hat P.S. Non-F.I.R. No. 21/83 dated 1.4.83).

Sd/-
District Magistrate,
Purnea.

If you like, representation, in duplicate, may be submitted to Joint Secretary to Government of Bihar, Home (Police) Department, Patna through the District Magistrate, Purnea."

12. From the above, it would appear that there were 13 grounds for detention of the petitioner-vide order of the District Magistrate dated 3.6.84 (by memo No. 2374).

13. It would not have been the necessity of quoting these grounds in extenso but for the facts that these very grounds have been made the basis for the petitioner's present detention in jail culminating in the impugned order dated 3.8.84 (Annexure-18).

14. Before I discuss the legal impact of repeating the very same grounds for fresh detention, it is essential to state a few more facts.

15. This order (Annexure-3) with the grounds quoted in extenso, just above, was revoked by the District Magistrate, Purnea, by his order dated 9.6.84 unequivocally and without any vagueness. This order dated 9.6.84, passed by the District Magistrate, Purnea, is categorical, positive and unequivocal and is not amenable to any other interpretation except that the earlier order passed by him dated 3.6.84 (Annexure-3) fell to the ground without any rider.

16. It is very relevant to quote this order of revocation passed by the District Magistrate, as the main submission advanced by the learned counsel for the petitioner, is founded on this order of revocation (Annexure-6).

जिला दण्डाधिकारी का कार्यालय, पूर्णियाँ

प्रेषित :–

श्री दिलिप सिंह पिता श्री भीम सिंह, शिवपूरी, भट्टा बाजार, थाना-खजांची हाट, जिला पूर्णियाँ, मेरे ज्ञापांक 2374 सी० दिनांक 3.6.84 द्वारा पारित निर्द्ध आदेश प्रतिसंहृत किया जाता है ।

जिला दण्डाधिकारी
पूर्णियाँ 9-6

The petitioner in paragtaph 14 of his petition though has averred that the aforesaid order of detention dated 3.6.84

was not approved by the competent authority of the State Government and was ordered to be revoked by its letter no. 6683 dated 6.6.84, this letter of the State Government is not on the record of the brief. However, the fact remains, as already stated above, the order of detention dated 3.6.84 (Annexure-3) passed by the District Magistrate, Purnea (the grounds of which have been quoted in extenso above) was revoked by the District Magistrate, Purnea, himself, by his order dated 9.6.84 (Annexure-6).

17. Having already revoked the earlier order of detention dated 3.6.84 (Annexure-3, by his order dated 9.6.84 (Annexure-6), the District Magistrate, Purnea, on the very same day, most surprisingly, issued another order contained in Memo No. 2446 (dated 9.6.84) and passed order of detention of the petitioner under section 12(1) of the Act. The District Magistrate, Purnea, passed the following order :-

"Order"

No. 2446/C Dated 9.6.84.

Where as I am satistied that with a view to preventing Sri Dilip Singh S/o Sri Bhim Singh of village Chandwa, P.S. Mirganj (Dhamdaha). District Purnea, Present address Mohalla Shibpuri, Bhatta Bazar, P.S. Khazanchi Hat, District Purnea from acting in any manner prejudicial to the public order, it is necessary to make an order that he be detained.

Now, therefore, in exercise of the powers conferred by Section 12(1) of the Bihar Control of Crimes Act, 1981, I here by direct that the said Dilip Singh be datained.

He shall be placed in detention in Purnea District Jail and classified as ---- division.

Sd/-
District Magistrate,
Purnea."

18. On the same day the District Magistrate issued another order contained in Memo No. 2447/C in which the grounds were disclosed for detention.

For the purpose of appreciating the submissions advanced by the learned counsel for the petitioner, it is very relevant to quote the grounds for detention of the petitioner by Memo No. 2447/C dated 9.6.84 served on the petitioner in jail.

"OFFICE OF THE DISTRICT MAGISTRATE, PURNEA.

ORDER.

Memo No. 2447/C, Dated, the 9th June, 1984.

Shri Dilip Singh s/o Shri Bhim Singh of village Chandwa, P.S. Mirganj (Dhamdaha), District- Purnea at present Shibpuri, Bhatta Bazar, P.S. Khazanchi Hat District - Purnea is hereby informed that under section 12(1) of Bihar Control of Crimes Act, 1981, he has been ordered to be detained vide my order no. 2564/c dated 9.6.84 on the following grounds.

GROUNDS

1. On 29.3.83 at 5 P.M. you along with your nine associates all being armed with pistol, revolvers and daggers went on Motor Cycles to the house of one Mishri Azad Choudhary of Rajni Chowk, Bhatta Bazar, Purnea and illegally entered into his house, abused him and forcibly took away one Kajal wrist watch worth Rs. 600/-, one gold chain of 1½ Tolas worth Rs. 3000/- and cash amounting to Rs. 350/- from his Brief case. (K.Hat P.S. Case no. 116/83 dated 29.3.83 u/s 144/448/380 I.P.C.).

2. On account of the oriminal activities and finding apprehension of breach of peace a report for action u/s 107 Cr. P.C. was submitted by K. Hat P.S. on 1.4.83 to the S.D.O. Sadar against you and your associates as 2nd party and Rohit Yadav and his associates as 1st party. (K.Hat P.S.

Non-F.I.R. No. 21/83 dated 1.4.83).

3. On 10.4.83 at 8 A.M. while one Rohit Yadav of Bhatta Bazar, P.S. K.Hat, Purnea, was going to take tea near Lakhan Chowk you along with your associates Raj Kumar Dubey and Boby Ghosh committed murderous attack on him by firing shots from Pistols and thereby caused bullet injuries on his persons. (K.Hat P.S. Case no. 135/83 dated 10.4.83 u/s 307 I.P.C. & 25(A) and 26 Arms Act.).

4. On 26.10.83 in broad day light you with the help of your accomplices kidnapped a minor girl Kumari Mamta Ghosh by forcibly lifting her in a car for immoral purposes. (K.Hat P.S. Case No. 395/83 dated 26.10.83 u/s 363/366 I.P.C.).

5. On 9.3.84 at about 12 A.M. you along with your associates stopped Bus No. BRJ 1327 of one Ashok Kumar Ghosh of Bhatta Bazar, Purnea in front of old Petrol Pump to the west of Khuskibagh, P.S. Sadar, Purnea. You at the point of revolver called all the staffs of the Bus at petrol Pump and threatened them to put them in the Bus and to set fire in it if they would drive the Bus and work in it (Sadar P.S. Case No. 51/84 u/s 341/504 I.P.C.).

6. On 15.3.84 at about 10 A.M. while Sri Ashok Kumar Ghosh of south Bhatta Bazar, P.S. K. Hat, Purnea, was taking tea at Lakhan Chowk you along with your associates reached there, assaulted him threw away hot ten upon his face and took out Rs. 450/- from his pocket of the shirt. (K.Hat P.S. Case No. 81/84 dated 15.3.84 u/s 341/379/323 I.P.C.).

7. On 17.4.84 at about 4 P.M. while one Subhas Kumar Ghosh went on his Motor-Cycle bearing No. BRK 7947 to see one wooden bridge near Supni Hat, P.S. Sadar, Purnea, if it was fit for plying Bus, you along with your three associates reached there on two motor-cycles, one of red colour bearing No. BHK 2287 and another of black colour without number. One of your associates, named, Raj Kumar Dubey snatched away wrist-watch worth Rs. 650/- from the

hand of Subhas Kumar Ghosh at the point of his revolver and whereas you fled away with the motor-cycle of the said Subhas Kumar Ghosh, you and your accomplices threatened Subhas Kumar Ghosh to kill him if he would inform the police about the incident. (Sadar P.S. Case No. 79/84 dated 17.4.84 u/s 392 I.P.C.).

PREVIOUS GROUNDS.

1. That on 7.2.81 you along with one of your accomplices and other stopped Bus No. BHQ 9564 plying on Birpur-Patna road and on refusal of the Conductor of the Bus to pay any Chanda you along with your accomplices assaulted him and took away the wrist-watch, spectacle and Rs. 5/- from the person of the Conductor. (K.Hat P.S. Case No. 12 dated 7.2.81 u/s 379/323 I.P.C.).

2. That on 30.6.81 you along with your nine accomplices stopped one jeep bearing No. BRK 8391. You with the help of your accomplices took away forcibly Rs. 150/- from the person of Surya Narain Singh the driver of the Jeep and pushed the said Jeep to a nearby ditch. (K. Hat P.S. Case No 308/81 dated 30.6.81 u/s 147/342/323/ 379 I.P.C.).

3. That on 11.11.81 S.I., K.N. Mishra of K. Hat P.S. upon confidential information raided the premises of one Nitya Chandra Bhattacharya of Bhatta Sheopuri Mohalla, P.S. K. Hat, Purnea and during raid one country made Pistol was recovered from your bed upon which you along with your accomplices were found sitting and talking in a room. (K. Hat P.S. case No. 471/81 dated 11.11.81 u/s 25(A)/26/35 Arms Act.).

4. On 8.6.82 you along with one Sunil Kumar Singh of Madhubani, Gandhi Nagar and others entered illegally the office of Manager Chitrabani Cinema, Purnea at about 2.40 P.M. you along with your associates forcibly deprived the Manager of the Cinema named Sri Upendra Pd. Singh of cash amounting to about Rs. 1800/-. When the said Manager put up some rasistance, you assaulted him with knife which hit

the Manager on the forehead. (K.Hat P.S. case No. 0180/82 dated 8.6.82 u/s 448/323/324/379 I.P.C.).

5. On 10.7.82 about 8 P.M. you along with your associates near Kalibari Chowk deprived Anil Kumar, a second year student of Purnea Polytechnic of his wrist watch and a golden ring. You also threatened him that he would be killed in case he dared to report the incident to the Police. (K.Hat P.S. case no. 215/82 dt. 10.7.82 u/s 341/323/379 I.P.C.).

6. On 17.7.82 at 3 P.M. near Purnea Agrawal Market you along with your associates assaulted one Murari Singh of Ufrail, P.S. Basaithi (Raniganj), District Purnea at present Sipahi Tola, Madhubani, P.S. K.Hat. One of your accomplices assaulted Murari Singh and you fired a shot from your pistol at him injuring him on the left side of the chest. (K.Hat P.S. Case No. 223/82 dt. 18.7.82 u/s 342/323/307 I.P.C. & 27 Arms Act).

In view of the above grounds, I am satisfied that with a view to preventing him from acting in any manner prejudicial to the public order it is necessary to detain him under section 12(1) of the Bihar Control of Crimes Act, 1981.

Hence, Sri Dilip Singh is hereby informed that he can file representation in writing against the detention order by which he has been detained. If he has to submit any representation, he may address the same to the Under Secretary to Government of Bihar, Home (Police) Department, Patna, through the Jail Superintendent.

Sd/-
District Magistrate,
Purnea.

Forwarded, in triplicate, to the Jail Superintendent, District Jail, Purnea. He will please return two copies with detenue's signature after being served on the detenue.

(All connected papers have been given to the detenue on 3.6.84).

A very surprising thing which appears to me is that the District Magistrate, Purnea, while disclosing the grounds by Memo No. 2447/C dated 9.6.84 (Annexure-5 to the writ application). Has said "all connected papers have been given to the detenue on 3.6.84".

Though it will bear repetition the order of detention dated 3.6.84 along with which the grounds of detention were served upon the petitioner was already revoked by the District Magistrate by his order dated 9.6.84 (Annexure-6).

19. In pursuance of the grounds served upon the petition were served upon the petitioner was already revoked by the District Magistrate by his order dated 9.6.84 (Annexure-6).

19A. In pursuance of the grounds served upon the petitioner, as above, the petitioner filed a representation to the State Government as contemplated under section 17 of the Act on 13.6.84. However, representation was rejected and the State Government on 19.6.84, approved the order of detention dated 9.6.84, passed by the District Magistrate, Purnea. The petitioner has complained in the instant application that the order rejecting the representation was served upon him as late as on 16.7.84.

20. Thereafter, the petitioner was produced before the Advisory Board on 23.7.84. The Advisory Board submitted its opinion to the State Government upholding the order of detention and held that sufficient grounds existed for detention of the petitioner. WHEREUPON the impugned order (Annexure-18) dated 3rd August, 1984, was passed by the State Government in exercise of powers conferred by section 21 (1) read with section 22 of the Act and the State Government confirmed the detention order No. 2446/C dated 9.6.84 passed by the District Magistrate, Purnea, under section 12(1) of the Act and ordered that the petitioner shall remain in detention till 8.6.85.

The facts, as stated above, are the relevant facts which needed to be stated in order to appreciate the legal submissions advanced by the learned counsel for the petitioner.

21. Before I deal with the submissions advanced by the learned counsel for the petitioner, it is relevant to quote a few sections of the Act :

Sec, 2(d) :- "Anti-social element " means a person who -

(i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abate the commission of offences punishable under chapter XVI or Chapter XVII of the Indian Panel code; or

** **

(iv) has been found habitually passing indecent remarks to, or teasing women girls ; or....

Sec. 12(1) - The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of anti-social elements cannot be prevented otherwise than by the immediate arrest of such presons, make an order directing that such anti-social element be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by on order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1) exercise the powers conferred upon by the said sub-section :

Proviso to clause (2) and clause (3) of section 12 are

not relevant for the purpose of deciding the question involved in the instant case and hence they are omitted.

Sec. 21(1) - In any case where the Advisory Board has reported that thereis, in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the government shall revoke the detention order and cause the person concerned to be released forthwith.

Sec. 22. Maximum period of detention- The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 21 shall be twelve months from the date of detention :

Provided that nothing contained in this section shall effect the power of the Government to revoke or modify the detention order at any earlier time.

Sec.23 Revocation of detention orders - (1) Without prejudice to the provision of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified -

(1). notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 12, or by the State Government to which that officer is subordinate.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 12 against the same person in any case where *fresh facts have arison after the date of revocation* or expiry on which the State Government or an officer mentioned in sub-section (2) of section 12, as the case may be, is satisfied that such an order should be made.

(The words have been under-lined by me for emphasis).

22. In the instant case the main impugned order (Annexure-18) dated 3.8.84, by which the petitioner has been ordered to remain in detention till 8.6.85 is founded on the initial order (no. 2446/C) dated 9.6.84 (Annexure-4) passed under section 12(1) of the Act by the District Magistrate, Purnea, by which the petitioner was ordered to be detained. It is this initial order (Annexure-4) with which the grounds of detention was served on the petitioner on the same day by Memo No. 2447/C (Annexure-5) and which ultimately, on the opinion of the Advisory Board, the State Government passed the impugned order dated 3.8.84 (Annexure-18).

Thus, the initial order (Annexure-4) having been passed under section 12(1) of the Act, it is relevant to explain as to what is "anti-social element". Thus, the order passed under section 12(1) of the Act necessarily has to be read with the definition of "Anti-social element", the relevant clauses of which have been quoted above. Looking to the definition of "anti-social element", it seems that in sub-clauses (i) and (iv) of section 2(d), the word "habitually" is used. The expression "habitually" means "repeatedly" or "persistently". It implies thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It cannotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. This appears to be clear from the use of the word "habitually" separately in clause (i), sub-clause (ii) and sub-clause (iv) of section 2(d) and not in sub-clauses (iii) and (v) of section 2(d). Commission of an act or omission referred to in one of the sub-clauses (i), (ii) and (iv) and of another act or omission referred to in any other of the said sub-clauses would not be sufficient to treat a person as an "anti-social element". A single act or

omission falling under sub-clause (i) and a single act or omission falling under sub-clause (iv) of section 2(d) cannot, therefore, be characterised as a habitual act or omission referred to in either of them. Because the idea of "habit" involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the name kind or even if they are of the same kind when they are committed with a long interval of time between them they cannot be treated as habitual ones (the Supreme Court in the case of Vijay Narain Singh v State of Bihar, reported in 1984 S.C. 1334, has interpreted "anti-social element" with reference to sub-clauses (i) and (iv) of section 2(d) and has held as above).

Keeping the aforesaid principle in mind of an anti-social element, I have to see whether the present main impugned order (Annexure-18) founded on the initial order (Annexure-4) passed under section 12(1) of the Act is valid or not.

23. to appreciate the legal submissions advanced by the learned counsel for the petitioner, it is also relevant to quote the relevant provisions of the preventive Detention Act (Act 4 of 1950), which came for consideration by the Supreme Court in the case of Hadibandhu Das v. District Magistrate, Cuttak & another, reported in 1969 S.C. 43. The relevant provisions of that Act is, for the purpose of the present case, section 13(2), which provides as follows :-

> "The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an Officer, as the case may be, is satistied that such an order should be made."

Thus, if section 13(2) of Preventive Detention Act (Act 4 of 1950) is compared with section 23 (2) of the Bihar Control of Crimes Act (Bihar Act 7 of 1981), it is obvious that section 23(2) of the Bihar control of Crimes Act, 1981, stands at par with section 13(2) of the Preventive Detention Act (Act 4 of 1950).

24. It is well settled that the power of detaining authority must be determined by reference to the language used in the statute and not by reference to any predilections about the legislative intent. In my opinion, there is nothing in section 23(2) of Bihar Control of Crimes Act, 1981, which indicates that the expression "revocation" means only revocation of an order which is otherwise valid and operative : *apparently it includes cancellation of all orders invalid as well as valid* (words have been underlined by me for emphasis).

The word "revocation" means annulling, rescinding withdrawing. "Revocation" means cencellation of the previous order, the word revocation, in my opinion, is not capable of restricted interpretation without any indication by the framer of law of any other intention.

25. Negligence or inaptitude of the detaining authority in making a defective order or in failing to comply with the mandatory provisions of the Act may in some cases enure for the benefit of the detenue to which he is not entitled. But, it must be remembered that the Act confers power to make a serious invasion upon the liberty of the citizen by the subjective determination of facts by an executive authority and the framers of Act have provided several safeguards against misuse of the powers. If a defective order is passed or if an order has become invalid because of default in strictly complying with the mandatory provisions of the law, it bespeaks negligence on the part of the detaining authority and the principle underlying section 23(2) of the Bihar Control of Crimes Act, 1981, is in my

opinion, the outcome of insistence by the framers of the Act that the detaining authority shall fully apply its mind to and comply with the requirements of the statute and of insistence upon refusal to countenance slipshod exercise of power.

26. Similar provision as in section 23(2) of the Bihar Control of Crimes Act, 1981, was there in section 14(2) of the Maintenance of the Internal Security Act (1971).

Thus, section 23(2) of the Bihar Control of Crimes Act, 1981 stands at per also with section 14(2) of the Maintenance of the Internal Security Act (1971).

27. Keeping in view the aforesaid meaning of the word "revocation", it has to be seen whether main impugned order in the instant case (Annexure-18) is sustainable in law under section 23(2) of the Bihar Control of Crimes Act, 1981. in other words, whether the impugned order is based on fresh facts after the revocation of the earlier order dated 3.6.84 (Annexure-3) (also passed under section 12(1) of the Act).

28. The grounds of detention of the petitioner served with the earlier order (Annexure-3) have already been quoted in extenso in paragraph 11 above. There were 13 grounds of detention. This order (Annexure-3) dated 3.6.84, was revoked by order dated 9.6.84. passed by the District Magistrate, Purnea (Annexure-6), as quoted in paragraph 16 above.

At this stage, it would be pertinent to refer to the submissions advanced by the learned counsel for the respondents. Learned counsel for the respondents has submitted that, in fact, the word "Pratisangrahit" in Annexure-6 (order of revocation) means only "RECALLING" and not "revoking". Learned counsel by advancing such a submission submitted that if it is an order of recall then the present order of detention dated 9.6.84 (Memo No. 2447/C) passed under section 12(1) of the Act by the District

Magistrate, Purnea, could be passed on the very same grounds and, therefore, no infirmity or illegality was there. Learned counsel for the respondents also submitted that, in fact, the District Magistrate, Purnea, in the instant case, was exercising power under section 21 ot the General Clauses Act, 1897 (10 of 1897) and not under section 23(2) of the Bihar Control of Crimes Act, 1981, and thus has contended that section 23(2) of the Bihar Control of Crimes Act is attracted only in case of revocation and not in cases in which the power is exercised under the General Clauses Act.

29. The grounds of detention of the petitioner was served upon him along with the order of detention, i,e., on the same day the 9th of June, 1984 (by Memo No. 2447C) itself. These grounds upon which the main impugned order (Annexure-18) is founded have been quoted in extenso in paragraph 18 above and, thougth it will bear repetition at the end it has been stated "all connected papers have been given to the detenue on 3.6.84".

If one compares the grounds as quoted in paragraph 18 above (in annexure-5) upon which the main impugned order (Annexure-18 is founded, it is manifest as thus :

	Grounds in Annexure-5.			Grounds in Annexure-3	
(i)	Ground	No. 1	=	Ground	No. 7 (already revoked)
(ii)	,,	No. 2	=	,,	No. 13
(iii)	,,	No. 3	=	,,	No. 8
(iv)	,,	No. 4	=	,,	No. 9
(v)	,,	No. 5	=	,,	No. 11
(vi)	,,	No. 6	=	,,	No. 10
(vii)	,,	No. 7	=	,,	No. 12

Then, it seems that in Annexure-5 another heading

has been given as *Previous Grounds.* Under this heading (Previous Grounds). there are 5 grounds and it is again clear that ground no. 1 under this heading is very same ground no. 1 of annexure-3. Ground no. 2 = ground no. 2, ground no. 3 = ground no.3, ground no.4 = ground no.4, ground no. 5 = ground no.5 and ground no.6 = ground no. 6 of Annexure-3.

30. From the above, it would appear that no fresh fact, whatsoever, was mentioned in Annexure-5, dated 9.6.84 (Memo No. 2447/C) while passing the order of detention dated 9.6.84 (Memo No. 2446 C) (Annexure-4) by the District Magistrate, Purnea, under section 12(1) of the Act. The grounds in Annexure-5 are mere verbatim repetitions of the earlier grounds. They are absolutely identical to the grounds (Annexure-3) which stood revoked by Annexure-6, No fresh fact had arisen after the revocation of the earlier order/grounds (Annexure-3) dated 3.6.84, (revoked by order dated 9.6.84 (Annexure-6).

31. Thus the question is whether the present main impugned order (Annexure-18) in sustainable in law in the aforesaid background.

32. Now, looking to section 23(2) of the Bihar Control of Crimes Act, 1981, as already quoted above, in my opinion, if an order for the detention of a person had been made under the Act on the grounds mentioned in that the order or served on the person with the order and if that order was either subsequently revoked or the period for which the detention order was made had expired, the said order would not stand in the way of making a fresh order of detention under section 12 of the Act against the same person *provided fresh facts arose after the date of the said revocation or expiry*; if no fresh facts came into being after the date of revocation or expiry, as may warrant the making of an order of detention, the requisite condition precedent to the making of the subsequent order would be non-existent and it would not be permissible to make a

subsequent order of detention under section 12 of the Act on the very same grounds.

33. The matter can also be looked at from another angle. Section 22 of the Bihar Control of Crimes ACt, 1981, provides that the maximum period for which person may be detained in pursuance of any detention order which has been confirmed under section 21 of the Act shall be 12 months from the date of detention. It is, therefore, plain that the maximum period for which a person can be detained on account of specified acts should not exceed 12 months. If *for the same acts* repeated orders of detention can be made, the effect would be that *for the same acts* a detenue would be liable to be detained for a period of more than 12 months. The making of a subsequent order of detention in respect of the same acts, for which an earlier order of detention was made, would run counter to the entire scheme of the Act. It would also set at naught the restriction which is imposed by section 22 of the Act relating to the maximum period for which a person can be detailed in pursuance of a detention order.

34. In the instant case, I hold that after the order of revocation (Annexure-6) of the earlier order of detention (Annexure-3), no *fresh facts* had arisen and in that view of the matter the revocation order (Annexure-6) was a legal bar for making the fresh detention order (Annexure-4) dated 9.6.84 on the very same/identical grounds as in Annexure-3 the grounds of detention being Annexure-5 dated 9.6.84.

35. For the reasons stated here in before, I hold that the grounds (Annexure-5) on which the petitioner was detained under section 12(1) of the Act were non est in the eye of law. I further hold that, on the facts stated above, the subjective setisfaction of the District Magistrate, Purnea, in passing the impugned order of detention (Annexure-4) was completely lacking and the order was passed absolutely in a mechanical way and in perfunctory manner. I further hold

that in the instant case, on the facts and in the circumstances of the case, the order of detention of the petitioner (Annexure-4) on non-est grounds (Annexure-5) was a clear case of abuse of power on the part of the District Magistrate, Purnea, and in the instant case the petitioner, on the facts of the present case, was deprived of his fundamental right to liberty and the petitioner's fundamental right of liberty could not be curtailed in the way as it has been done in the instant case.

36. Thus, I hold that the main submission of the learned counsel for the petitioner succeeds.

The submissions advanced by the learned counsel for the respondents have no force and they must be rejected in view of the interpretation of the word "revocation" as already given above. The word "PRATISANGRAHIT" as used in Annexure-6 (which has been quoted in full above) means "revoked" as would appear from the legal Glossary issued by the State of Bihar in the year 1979. The word used in annexure-6 (in the order of revocation) does not suffer from any vagueness at all. It specifically, categorically and positively says that the order/grounds dated 3.6.84 (Memo No. 2374) is here by revoked.

37. Section 23(1) of the Bihar Control of Crimes Act, 1981, starts as follows :-

> "Without prejudice to the provision of section 21 of the General Clauses Act. 1897 (10 of 1897). a detention order may, at any time, be revoked or modified ..."

Thus, there is no ambiguity or vagueness is section 23(1) of the Act. A detention order can be revoked or modified under section 23(1) of the Act. In the instant case the District Magistrate, Purnea, by Annexure-6 (quoted above) has positively and without any vagueness revoked the earlier order of detention (Annexure-3) under section 23(1) of the Act, There is no mention in the order of

revocation (Annexure-6) that the District Magistrate was exercising his power under section 21 of the General Clauses Act, 1897. If the District Magistrate was exercising his power under section 21 of the General Clauses Act, 1897, he could have very easily and conveniently referred to his power under the General Clauses Act. Non-mention of the power exercised under the General Clauses Act, 1897, shows that in the instant case the District Magistrate, Purnea, has exercised his power under section 23(1) of the Bihar Control of Crimes Act, 1981, and not under the General Clauses Act, as submitted by the learned counsel for the respondents. The submission advanced by the learned counsel for the respondents that the order (Annexure-3) was only "recalled" by order (Annexure-6) and not "revoked", has no substance at all as the word "PRATISANGRAHIT" means "revoked" and not "recalled".

38. Having rejected this submission of the learned counsel appearing for the respondents, the other submission advanced by the learned counsel for the respondents automatically falls, the learned counsel for the respondents submitted that if power of revocation was exercised under General Clauses Act, section 23(2) of the Bihar Control of Crimes Act was not attracted. I have already held above that in the present case the order of revocation (Annexure-6) was not passed under the General Clauses Act, but positively under section 23(1) of the Bihar Control of Crimes Act, 1981.

Learned counsel for the respondents fairly contended that section 23(2) of the Bihar Control of Crimes Act, 1981, was attracted only in case of revocation. As I have already stated above that here was a case of revocation and not a case in which the District Magistrate had exercised his power under General Clauses Act. I hold that section 23(2) of the Bihar Control of Crimes Act, 1981, was fully attracted on the facts of the case.

39. For the reasons given hereinbefore, the

submissions advanced by the learned counsel for the respondents fail and are rejected.

40. In view of the fact that the application succeeds on the very first submission advanced by the learned counsel for the petitioner, the second limb of his submission to the effect that the proceeding under section 107 of the code of Criminal Procedure could not be one of the grounds for detention need not be considered.

41. Having given my anxious consideration to the case, I am of the view that the order of detention (Annexure-4) dated 9.6.84, the grounds of detention (Annexure-5) dated 9.6.84, must be held to be non-est in the eye of law and consequently the main impugned order (Annexure-18) dated 3.8.84 is also wholly illegal and against the provisions of law as contained in section 23(2) of the Bihar Control of Crimes Act, 1981, as the order of detention is not passed on *fresh facts* after the date of revocation (Annexure-6).

42. In the result, I quash the order of detention (Annexure-4), the grounds of detention (Annexure-5) and also the order dated 3.8.84 (Annexure-18) by which the petitioner has been ordered to remain in detention till 6.8.85. The petition is, accordingly, allowed. The petitioner shall be set at liberty forthwith unless he is required to be in custody on some other grounds.

P. S. Sahay — I agree

R. D. — Application allowed.

TAX CASE

Before Uday Sinha and S.Shamsul Hasan, JJ.

1984

December, 20

Commissioner of Wealth Tax, Bihar, Patna.

v.

Sheo Kumar Dalmia.

Wealth Tax Act, 1957 (Act XXVII of 1957), Section 25(2) Commissioner, whether and when can act in terms of section 25 (2) — to attract the principle of merger— essential element for.

It is plain that the Commissioner could act in terms of section 25 (2) of the Act only if the order of the Wealth Tax Officer was considered by him to be erroneous . He has no jurisdiction to pass order in terms of section 25 (2) if orders have been passed by Assistant commissioner of Wealth Tax.

In order to attract the principle of merger, it is essential that order on merit must have been passed by the appellate or superior authority. In the instant case, no order on merit has been passed. In fact, on the date of hearing of the appeals there were no appeals on which order could be passed on merit. The appellant (assessee) sought permission to withdraw the appeals. The learned A.C.C. granted the prayer. That was the end of the appeals.There

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*Taxation Case Nos. 24 to 28 of 1976 (Consolidated). Re: Statement of case under section 27(1) of the Wealth Tax Act by the Income Tax Appelate Tribunal, Patna Bench, 'B' in the matter of assessment of Wealth Tax on Sheo Kumar Dalmia for the assessment years 1964-65 to 1968-69.

was thus no occasion for the A.C.C. to consider whether the levy of penalty was right or wrong. Until a decision has been given on merit,there could be no question of doctrine of merger being attracted.

Held, therefore, that on the facts and in the circumstances of the instant case, the Tribunal was absolutely wrong in holding that the Wealth Tax Commisssioner had no power to revise the order of the Wealth Tax Officer on the basis that it had merged with the order of th A.A.C. The appeals having been withdrawnthere was no question of merger of the two orders.

Case Laws discussed.

Reference under section 27 (1) of the Wealth Tax Act.

The facts of the case material to this report are set out in the judgment of Uday Sinha,J.

Messrs B. P. Rajgarhia (S.C.I.T.D.) and S. K. Sharma (J.C. to S.C.C.I.T.D.) for the petitioner.

Mr. L. K. Bajla for the opposite party.

Uday Sinha, J: These are five references under section 27 (1) of the Wealth Tax Act at the instance of the Commissioner of Wealth Tax,Bihar. The five consolidated references are being disposed of by this judgment. The question referred for the opinion of this Court is as follows:

> "Whether on the facts and in the circumstances of this case the Tribunal were correct in law in holding that the Commissioner of Wealth-tax had no power to revise the orders of the Wealth-tax Officer under section 25(2) because the orders of the Wealth-tax Officer had merged with the order of the Appellate Assistant Commissioner ?"

2. The references before us relate to imposition of penalty for non-filing of return at the appropriate time. In this reference we are concerned with the assessment years

1964-65 to 1968-69. The assessee is a Hindu undivided family. The return of wealth had to be filed by 30th june of each assessment year. They were, in fact, filed for the said five assessment years on 6-10-1969. The returns not having been filed when they were due, the Wealth Tax Officer (hereinafter referred to as 'W.T.O.') initiated proceeding under section 18(1)(a) of the Wealth Tax Act (hereinafter called'the Act') and imposed penalty for each assessment year on the basis of the tax payable by the assessee in the respective years. The orders imposing penalty are Annexures-A series to the statement of the case. The assessee preferred appeals to Appellate Assistant Commissioner (hereinafter referred to as 'the A.A.C.') against the order of the W.T.O. imposing penalty. On the date of hearing, however, the assessee withdrew the appeals. The order of 12-8-1971 reads as follows:

> "All these five appeals have been withdrawn by the appellent's counsel vide his signature on the ground of appeal. These appeals are, therefore, dismissed."

3. The assessee thereafter filed an application under section 18(2A) of the Act to the Commissioner of Wealth Tax (hereinafter called 'the Commissioner') for waiving the penalties imposed by the W.T.O. The application was rejected by the Commissioner. The Commissioner observed in his order dated 17-11-1972 that the provisions of section 18(2A) were not applicable as penalties under section 18(1)(a) had already been imposed by the W.T.O. and confirmed by the A.A.C. The chapter relating to levy of penality was thus closed. Later the Commissioner suo motu in exercise of his powers under section 25(2) of the Act made it a live issue. Notice was issued accordingly in terms of section 25(2) of the Act to the assessee. The Commissioner was of the view that the W.T.O. had not levied penalty in terms of the amended provisions of 18(1A) of the Act as it stood on the date of passing the orders. In his view the amount of penalty should

have been worked out on the basis or the taxable wealth and not on the basis of the tax payable by the assessee in the respective years. The orders thus being prejudicial to the Revenue, the matter was re-opened by issuance of notice. After hearing the assessee, the Commissioner enhanced the penalties, as mentioned in his order which is Annexure-B to the statement of the case.

4. The assessee appealed against the order of the Commissioner to the Wealth Tax Tribunal. One of the submissions urged on behalf of the assessee, which found favour with the Tribunal was that the Commissioner of Wealth Tax was not justified in assuming jurisdiction under section 25(2) of the Act to revise the order of the W.T.O. as it had merged in the order of the A.A.C. The stand of the revenue on the other hand was that the appeals having been withdrawn, there was no order of the A.A.C. There was thus no question of merger of the order of the W.T.O. in the order of the A.A.C. The Commissioner, according to the Revenue, had the jurisdiction to revise the order of the W.T.O.

5. The short question to be resolved thus is is whether the order of the A.A.C. quoted in paragraph 2 above was a decision on the appeals filed by the assessee and whether the order of the W.T.O. merged in the order of the A.A.C. It is plain that the Commissioner could act in terms of section 25(2) of the Act only if the order of the W.T.O. was considered by him to be erroneous. He has no jurisdiction to pass order in terms of section 25(2), if orders have been passed by Assistant Commissioner of Wealth Tax. If the order of the Assistant Commissioner in the instant case is read an order in the appeal on merit, the Comissioner's order would be without jurisdiction.

6. The question at issue has to be settled in the light of the principle whether the order of the W.T.O. got merged in the order of the A.A.C. dated 12-8-1971, quoted above or it stood out as an independent order. Having heard counsel

for the parties at length, I am definitely of the view that no question of merger is involed in the instant case. In order to attract the principle of merger, it is essential that order on merit must have been passed by the appellate or superior authority. In the instant case, no order on merit has been passed. In fact; on the date of hearing of the appeals there were no appeals on which order could be passed on merit. The appellant (assessee) sought permission to withdraw the appeals. The learned A.A.C. granted the prayer. That was the end of the appeals. There was thus no occasion for the A.A.C. to consider whether the levy of penalty was right or wrong. Until a decision had been given on merit, there could be no question of doctrine of merger being attracted.

7. It is not necessary to multiply decisions, as the point admits of no difficulty. Reference may be made to a Full Bench decision of the *Madhya Pradesh High Court in Commissioner of Income-Tax, M.P.II versus R.S. Banwarilal* (1).

The point raised in that case was similar to the one before us. Although that was a case of exercise of power under section 263 of the Income-Tax Act, yet the ratio of that case will determine the case under section 25(2) of the Wealth Tax Act as well. In that case the facts were that the I.T.O. passes assessment order. The assessee challenged the assessment in appeal challenging the addition in trading account and disallowance of deductions claimed as expenditure. The A.A.C. upheld the disallowance, but set aside the addition of Rs. 5,000/- in the trading account. After the appellate order made by the A.A.C. the commissioner issued notice to the assessee under section 263(1) of the Income-Tax Act, 1961 which is in pari materia to section 25(2) of the Wealth Tax Act. The Commissioner directed the I.T.O. to make a fresh assessment according to law. The assessee preferred an appeal to the Tribunal against the

(1) (1983) 140 I.T.R. 3

order of the Commissioner but without any success. In the reference before the High Court it was contended that the order of the I.T.O. having merged in the appedlate order of the A.A.C. the Commisioner had no jurisdiction to invoked the powers under section 263(1) of the Income-Tax Act. The Full Bench laid down that the Commissioner's revisional jurisdiction under section 263 was available over matters not considered and decided by the A.A.C. In regard to other matters he had no jurisdiction. From this decision it will be seen that even when there is an appellate order, but it does not cover the entire matter falling for consideration before the I.T.O. The matter which did not fall for consideration before the appellate authority could very well fall within the revisional jurisdiction of the Commissioner. The doctrine of merger was not attracted although there was an appellate order. The instant case before us must be placed on a much higher footing. In the case before us, the appellate authority was not invited to give its verdict on any of the matters decided by the W.T.O. There can, therefore, be no question of merger. The view taken by the Madhya Pradesh High Court which I am inclined to accept with respect is based upon the decision of the Supreme Court in AIR 1967 Supreme Court 681: State of Madras versus Madurai Mills Co. Ltd. and (1958) 34 ITR 130 (SC): CIT versus Amritlal Bhogilal and Co. and that of the Gujarat High Court in (1975) 98 ITR 255: *Karsan Das Bhagwandas Patel versus G.V.Shah, I.T.O.* (1)

8. The Income Tax Appellate Tribunal took a contrary view relying upon two decisions of the Supreme Court. In my view, none of those decisions have any application. In *Mela Rama and Sons*: (1) the Supreme Court was concerned with a case where the appellate authority had dismissed the appeal on the ground of limitation. In those circumstances,

(1) 25 I.T.R. 607.

the Supreme Court laid down that decision of an appeal on preliminary such as limitation and the like are also orders of affirmance. The proposition cannot be disputed, but the instant case is not one of dismissal of appeal on the ground of limitation or on the ground of any preliminary objection regarding the maintainability of the appeal. The instant case is one where the appeals were withdrawn and the A.A.C. was forestalled from giving his verdict on merit. This case of the Supreme Court can be of no avail to the assessee.

9. I am a little surprised at the Tribunal placing reliance upon *Amritlal Bhogilal's* case (supra). The passage quoted by the Tribunal is entirely irrelevant. There can be no doubt that where the appellate authority modifies, reverses or confirms, there is a decision of the appellate authority, the question of modification, reversion or confirmation does not arise. The Tribunal failed to take note of the following observation in the same case which runs as follows:

> "But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute"

If the above observations had been taken note of, the Tribunal would not have for derailed. The reliance placed upon 66 ITR 443: *Commissioner of Income Tax (Central), Calcutta versus Rai Bahadur Hardutroy Motilal Chamaria* was equally misplaced. In my view, *Amritlal Bhogilal's case (supra)* laid down the exactly contrary to what the Tribunal understood.

10. Having given my best consideration to every aspect of the matter, I have not the least doubt that the

Tribunal was absolutely wrong in holding that the Wealth Tax had no power to revise the order of the W.T.O. on the basis that it had merged with the order of A.A.C The appeals having been withdrawn, there was no question of merger of the two orders.

11. For the reasons, indicated above, the reference is answered in the negative in favour of the Revenue and against the assessee. In the circumstances of the case, there shall be no order as to costs.

12. Paragraph 14 of the order of the Tribunal shows that the submission regarding merger having been accepted by theTribunal, the other submissions urged on behalf of the assessee were not .The assessee is entitled to consideration by the Tribunal.It will, therefore, now be for the Tribunal to consider the other submissions urged on behalf of the assessee and dispose of the appeals in accordance with law.

S. Shamshul Hasan — I agree

M.K.C. — Order accordingly.

REVISIONAL CIVIL

Before S.S.Sandhawalia, C.J. and B.P.Jha,J.

1985

January, 5

Kumar Kalyan Prasad & another

v.

Kulanand Vaidik & Others.

Specifc Relief Act, 1963(Act XL VII of 1963), Section 6— Scope and applicability of — dispossession envisaged in section 6 — whether includes within its sweep the flagrant and contumacious violation of symbolical possession of immovable property duly delivered in the course of law.

A mere reference to the plain language of the provision of section 6 would indicate that the word" dispossessed" has not been used in the narrowly constricted sense of the actual physical possession of immovable property. Indeed, it talks somewhat widely of dispossession of immovable property otherwise than in due course of law without the persons consent. If the Legislature intended to narrowly limit the woud "dispossessed" there could have been no difficulty by specifying in terms the actuality of physical possession as its necessary and vital ingredient. The word employed is the ordinany word "dispossess". Plainly enough it would include within its sweep actual

*Civil Revision No. 1210 of 1981. From an order of Mr. Jagdish Kumar Sinha, Additional Munsif, Darbhanga, dated the 30th of May 1981.

physical dispossession also but this is no warrant for holding that it necessarily excludes the violation of other froms of possession including a symbolcal possession duly delivered by law and contumaciously violated by an aggresive trespasser. On principle the word "dispossesed" in section 6 cannot be construed in any hypertechnical sense and to push it into the procrustean bed of actual physical possession only. Indeed the intent of the Legislature in section 6 to provide early and expeditious relief against the violation of possessory right, irrespective of title, would be egually, if not more, relevant where symbolical possession delivered by due process of law is sought to be set at naught forthwith.

Held, therefore, that on a larger and liberal construction, it seems wholly unnecessary to limit or constrict the ordinary and plain meaning of the word "dispossessed", which is obviously wide enough to include both actual physical possession and equally a symbolical possession of immovable property which is well recognised in the eye of law.

Case laws discussed.

Application by the petitioners.

The facts of the case material to this report are set out in the judgment of S.S.Sandhawalia, C.J.

Messrs R. S. Chatterjee and G.P. Jaiswal for the petitioners.

Messrs S. C. Ghose and Kalyan Kumar Ghose for the opposite party.

S.S.Sandhawalia, C.J. Whether the dispossession envisaged in section 6 of the Specific Relief Act, 1963, includes within its sweep the flagrant and contumacious violation of symbolical possession of immovable property

duly delivered in the course of law — has come to be the spinal issue in this oivil revision.

2. The facts herein call for a some what brief notice and indeed highlight how the vagaries of law can lead to grave delays and thus virtual injustice for a suitor seeking relief through its processes. The petitioners herein are members of a joint Hindu Mitakshara family of which Kumar Kalyan Prasad (petitioner no:1) is the Karta and manager and the suit under section 6 of the Specific Relief Act (hereinafter referred to as "the Act") for the recovery of possession of the suit property had been filed in a representative capacity. It is unnecessary to recount the somewhat tangled facts and it suffices to mention that way back in the year 1956 the petitioners had filed Title Suit No. 130 seeking eviction of the opposite party and securing the possession of the suit property. Though the suit was dismissed by the Munsif, 1st Court, Darbhanga, and the lower appellate court upheld the dismissal, the High Court in Second Appeal No.125 of 1961, decided on the 5th of April, 1963, decreed the suit in favour of the petitioners for recovery of possession with regard to the suit land by ejecting the defendants as also for recovery of arrears of rental. The decree of the High Court was duly executed in Execution Case No. 113 of 1963 and actual possession was secured on the 10th of Novmber, 1965.

3. It is the petitioners case that having got delivery of possession they locked the house and deputed two of the servants to keep a watch over the same. however, on the very night of the 10th November, 1965, the opposite party with the help of other associates forcibly entered the house and took possession of the same by ousting the plaintiffs' servants and also assaulted them. A criminal case was then filed by Jageshwar Bhandari, one of the petitioner' servants, under section 147,448,452,and 323 of the Indian Penal Code in which the acoused persons were convicted and sentenced

by the trial court. The conviction had been maintained up to the highest level by the High Court. The opposite party, however, clung to the property and despite repeated demands refused to give up their illegal possession and indeed started erecting new structures over the suit property and putting down the old ones. The petitioners then instituted the suit under section 6 of the Act giving rise to the present revision.

4. The suit was contested by the defendants on a variety of grounds and on the pleadings of the parties as many as eight issues were framed of which the material ones are issue nos.5 and 6 in the terms following:

> "5. Is the delivery of possession given by Nazir to the plaintiffs over the disputed land a mere paper transaction ?
>
> 6. Are the plaintiffs dispossessed of the disputed land as alleged ?"

5. In a prolonged trial, which seems to have extended to the inordinate length of 15 years, the Additional Munsif, Darbhanga, came to the categoric conclusion that the plaintiff-petitioners had acquired clear title over 2 kathas and 19 dhurs of land which was the suit property but held that in the execution proceedings the Nazir had only delivered symbolical possession of the property and the recording of the delivery of actual physical possession was not established. Taking a narrowly constricted view of the matter that the plaintiff-petitioners were not given physical delivery of possession over the suit land, he held that the question of their actual dispossession therefrom could not arise and, therefore, they had no cause of action under section 6 of the Act to file the suit. Consequently the same was dismissed and the petitioners pointedly assiled this finding in the present civil revision.

6. Though the finding of the court below that the actual recording of delivery of possession of the suit

property by the Nazir was a paper transaction was seriously and forcefully assailed before us as resting on no evidence what soever, yet in this revision application it is wholly unnecessary to go behind that finding or to enter the thicket of facts. I intend, therefore, to proceed on the firm finding arrived at by the trial court itself that symbolical possession of the suit land had been duly delivered to the plaintiff-petitioners in the execution procedings by the Nazir in accordance with law. This finding in catogoric terms in as under:

> ".I find that actually Nazir visited the spot but he was not allowed to deliver possession so he submitted a report showing actual physical possession but in fact no such delivery was done rather the same was a symbolical delivery of possession."

7. Now on the aforesaid finding the legal issue that now squarely arises is whether a flagrant and contumacious dislodging of symbolical passession duly delivered in accordance with law would come within the ambit of dispossession envisaged under section 6 of the Act and entitle the aggrieved party to maintain the suit.

8. The learned Counsel for the parties took the stand that on the direct and narrow question aforesaid the matter seems to be res integra and no precedent covering the issue on all fours could be cited. Judgments were referred to only by way of analogy. That being so, it is first necessary to examine the matter on principle and on the language of the statute. The relevant part of section 6 of the Act is in the following terms:

> "6 (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. (2)...(3).....(4) ...."

9. In the first instance, a mere reference to the plain language of the provision aforesaid would indicate that the word "dispossessed" has not been used in the narrowly

constricted sense of the actual physical possession of immoveable property. Indeed, it talks somewhat widely of dispossession of immoveable property otherwise than in due course of law without the person's consent. If the Legislature intended to narrowly limit the word "dispossessed" there could have been no difficulty by specifying in terms the actuality of physical possession as its necessary and vital ingredient. The word employed is the ordinary word 'dispossess'. Plainly enough it would include within its sweep actual physical dispossession also but this is no warrant for holding that it necessarily excludes the violation of other forms of possession including a symbolical possession duly delivered by law and contumaciously violated by an aggresive trespasser. On principle I am not inclined to construe the word "dispossessed" in section 6 in any hypertechnical sense and to push it into the procrustean bed of actual physical possession only. Indeed the intent of the Legislature in section 6 to provide early and expeditious relief against the violation of possessory right, irrespective of title, would be eqally, if not more, relevant where symbolical possession delivered by due process of law is sought to be set at naught forthwith. On a larger and liberal construction, therefore, it seems wholly unnecessary to limit or constrict the ordinary and plain meaing of the word "dispossessed", which is obviously wide enough to include both actual physical possession and equally a symbolical possession of immoveable property which is well recognised in the eye of law. The view that I am inclined to take would receive massive support from the observations in the full Bench judgment in *Jayagopal Mundra v. Glulab Chand Agarwalla and others*(1). Therein after "close analysis of rules 35 and 36 of Order 21 of the Code of Civil Procedure and relying on *Juggobundhu Mukherjee v. Ram Chunder Bysack* (2); which

(1) (1974) A.I.R. Orisan 173 (2) I.L.R. 5 Calcutta 584 (F.B.)

was affirmed in *Sri Radha Krisshan Chanderjee v. Ram Bahadur* (1) and equally on a string of the judgments of this Court beginning with *Maharaja Pratan Udai Nath v. Sahi Sunderbans Koer* (2) it has been concluded as under:

> "Thus, the legal position is well settled that symbolical delivery of possession against the judgment-debtor where even actual possession could have been delivered amounts to actual delivery of possession."

Equally reference may also instructively be made to *Ramamanemma v. Basavayya* (2) whihet keeping in mind that the provisions of section 6 of the Specific Relief Act are virtually in pari materia with the old section 9 of the repealed Act of 1877, It was observed in the aforesaid case that if the remedy is clear under the onerous remedy of another suit. By way of analogy in *Monikayala Rao v. Narasimhaswami* (4) it was observed in paragraph 12 that the delivery of symbolical possession under order 21 rule 35(2) would amount to an interruption of the respondent's adverse possession. It seems to follow from the aforesaid precedents that the weight of authority seems to be a pointer to the view that symbolical possession is in no was out of the ambit of dispossession and sought to be remedied by section 6 of the Act.

10. In fairness to Mr. S.C. Ghose, reference must be made to a passing observation in *Sona Mia v. Prokash Chandra*(5). This case is, however, plainly distinguishable. Therein the plaintiffs had continued tobe in physical possession of the land and the grievance raised was that the defendants had dispossessed them only by realising tolls from allegedlyshop-keepers on the market days of Mondays and Fridays. It was on those peculiar facts that it was observed

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(1) (1917) A.I.R. P.C.197(2) (2) (1923) A.I.R. Patna 76

(3) (1934) A.I.R. Madras 558 (4) (1966) A.I.R. Supreme Court 470

(5) (1940) A.I.R. (cel)464

that section 9 of the Specific Relief Act of 1877 comes into operation only if the defendants have deprived the plaintiffs of actual physical possession. A close reading of the judgment would show that the issue before us, namely, whether symbolical possession comes within the sweep of section 6 of the Act, did not even remotely arise for consideration. Consequently it was neither debated upon nor adjudicated by the Bench. However, if the observation therein is sought to be construed as a warrant for the proposition that symbolical possession would be excluded from the scope of section 6, I would respectfully wish to record a dissent therefrom; Mr. Ghose had also referred to *Hindustan Aeronautics v. Ajit Prasad* (1) but the general observation therein with regard to the scope of interference under section 115 of the Code of Civil Procedure would in no way aid or advance the case of the respondents.

11. To conclude, the answer to the question posed at the outset is rendered in the affirmative and it is held that the word "dispossessed" in section 6 of the Act will equally include within its sweep any flagrant and contumacious violation of symbolical possession duly delivered in the course of law.

12. Once it is held as above, it is plain that the petitioners herein must succeed. The trial court had non-suited them primarily on the ground that they had no cause of action to file the suit under Section 6 of the Act. This was on the ground that they had secured only symbolical possession of the property in dispute and not actual physical delivery thereof from the Nazir. Even on that finding, the petitioners would be entitled to maintain the suit and the finding on Issue No.2, there fore, must be reversed to hold that the plaintiffs had a right and sound cause of action against the defendants.

(1) (1973) A.I.R. (S.C.) 76

13. The civil revision application is, there fore, allowed and the plain tiff-petitioners' suit under Section 6 of the Act is here by decreed with all consequential reliefs. The petitioners shall also have their costs.

B. P. Jha — I agree

M. K. C. — Application allowed.

MISCELLANEOUS CRIMINAL

Before S.S.Sandhawalia, C.J. and Prem Shanker Sahay, J.

1985

January, 3

S.M.Abdur Rahim.

v.

The State of Bihar & Anr.

Code of Criminal Procedure, 1973 (Act 2 of 1974), Sections 210 and 319— scope and applicability of — case pending on a police report against some persons — complaint filed subsequently for the same occurance against some more persons — complaint case sent to the court under section 210 where Police case is pending — Magistrate, whether has power to issue processes against newly added accused persons..

If a complaint case is transferred under section 210 (2) of the Code before a Magistrate where a Police case is pending, the purpose of such transfer is both for enquiry and trial. In the instant case from the order it is clear that the Magistrate perused the petition of complaint and after applying his mind issued processes against the petitioner. He was perfectly justified in doing so in view of the provision of law contained in section 210 (2).

Held, therefore, that the contention that such power

*Criminal Miscellaneous No. 2425 of 1982. In the matter of an application under section 482 of the code of Criminal Procedure.

could be exercised after examining withnesses and only on fresh materials as required under section 319 of the Code cannot be accepted.

Chintamani Parida v. Jadumani and Ors. (1) relied on.

Application under section 482 of the Code of Criminal Procedure.

The facts of the case material to this report are set out in the judgment of P.S.Sahay, J.

Mr. Shabbir Ahmad for the petitioner.

Mr. G. P. Jaiswal, A.P.P. for the state

P. S. Sahay, J. The short point, which has to be decided in this case, is that when a case is pending on a police report against some persons, thereafter a complaint is filed for the same occurrence against some more persons and the complaint case is sent to the court where the police case is pending under section 210 of the Code of Criminal Procedure (hereinafter to be referred as the Code) whether the Magistrate has the power to issue processes against those newly added accused persons whose name do not find place in the police report.

2. The facts, giving rise to this application are that; on the basis of the Fardbeyan lodged by one Sheikh Shahid against Abdul Razak a case was registered and after investigation charge sheet was submitted against him on which cognizance was taken under section 279 and 304 A of the Indian Penal Code. Prior to that a complaint was filed by Mehrunnisa, wife of the deceased, against three more persons including the petitioner. A report was called for from the Police if any case was pending relating to the same occurrence and a report was received that charge sheet had

(1) (1981) Cr.L.J. 541

already been submitted against one person. The learned Magistrate, by his order dated 24.4.1976, transferred the case to the Court of the Magistrate where the Police case was pending. On receipt of the records of the complaint case the learned Magistrate after looking into the records, by his order dated 13.10.1977, issued process against the three accused persons under section 210 sub-clause (2) of the Code and further ordered that since both the cases relate to the same occurrence, it will be treated and proceed as a police case. Being aggrieved by the aforesaid order, the petitioner alone has moved this Court.

3. Learned counsel, appearing on behalf of the petitioner,has contended that the complaint case has been transferred to the Court where the Police case was pending and, the complaint case looses its identity and, therefore, the Magistrate has no right to summon the petitioner. He has, further, submitted that the summons could only have been issued on fresh materials, that is after examination of some witnesses, as envisaged under section 319 of the Code. Learned counsel, appearing on behalf of the State, has, on the other hand, submitted that cognizance is taken of the offence and not of the offenders, and, therefore, the Magistrate was fully justified in summoning the petitioner and others who are named in the petition of complaint because of the specific allegations made against them. When this case came up for hearing before me, I felt some difficulty as it was a case of first impression and, therefore, by order dated 19.6.1982 I referred it to Division Bench and that is how it has come before us.

4. Learned counsel, appearing on behalf of the petitioner, has placed reliance on a Bench decision of this Court in the case of *Harbans Singh Vrs. Daroga Singh* (1)

(1).(1962) A.I.R. (Pet.) 27.

where it has been held that when a complaint case is amalgamated with the case instituted on a charge sheet, the effect of such order is that the complaint case stands merged with the police case and loses its identity. That case was under Old Code, 1898, as amended in the year 1955 and the question arose in an appeal against acquittal under section 417(3) of that Code, on an objection raised by the respondents that the complainant had no locus standi to file the appeal after the merger of the complaint case with the Police case. But, in view of the new provision, section 210 of the Code, the position is now quite different. The reason for introducing this provision was that it was brought to the notice of the Joint Committee of the Parliament that some times when a serious case was being investigated by the Police some-one filed a petition of complaint and quickly got an order of acquittal either by collusion or otherwise with the result that the investigation of the Police case became infructuous, thus, leading to miscarriage of justice. In order to obviate this Position this new provision was enacted so that provision was enacted so that private complaint do not interfere with the course of justice. It will be useful to qucte section 210 of the Code which is as follows:

> "210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence:-
>
> (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of enquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject - matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such enquiry or trial and call for a report on the matter from the police officer cunducting the investigation.
>
> (2) If a report is made by the investigating police

officer under Sec. 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case. the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this code."

5. Learned counsel has also placed reliance on a decision of a single Judge of this Court in the case of *Ramchandra Prasad Vrs. Ramsharan Sharma* (1) in which two cases, one on police report and other on the complaint, were amalgamated and ordered to be tried together under section 210 sub-clause (2) of the Code and the complainant moved the Sessions Judge and the order of the learned Magistrate was set aside and it was ordered to be tried separately. Then the matter came to this Court and it was held that the order of the session Judge did not contravene the provisions of section 210 sub-clause (2) of the Code and, therefore, the case instituted on the complaint was not liable to be stayed under subsection (1) of the aforesaid section. This decision do not help the petitioner at all. In the case of *State Vrs. Har Narain* (2) it has been held that when a cognizance of an offence is taken against any person on the basis of police report the first ingredient of section 410(2) is satisfied. The second ingredient is that congnizance of an offence should be taken against any person accused in the complaint case. If both the ingredients are satisfied the result will be that both the cases will be taken as a case instituted on a police report. This decision instead of

(1) (1979) B.L.J.R. 520

(2) (1976) C.L.J. 562.

helping the petitioner goes against him, from plain reading of section 210 sub-clause (2) of the Code the following sentence is rather significant.

> "The Magistrate shall *inquire into or try together the complaint case* and the case arising out of the police report as if both the cases were instituted on a police report."
>
> (Underlined for emphasis by me.)

The word "inquiry" has been defined under section 2(g) of the Code which means every enquiry other than a trial conducted under this Code by Magistrate or Court. Police report has been defined under section 2(r) of the Code which means a Police report forwarded by a Police Officer to a Magistrate under sub-section (2) of section 173 of the Code. Therefore, if a complaint case is transferred under section 210(2) of the Code before a Magistrate where a police case is pending, the purpose of such transfer is both for *enquiry* and *trial*. From the order it is clear that the Magistrate perused the petition of complaint and after applying his mind issued process against the petitioner. He was perfectly justified in doing so in view of the provision of law mentioned above. The contention of the learned counsel that such power could be exercised after examining witnesses and only on fresh materials as required under section 319 of the Code cannot be accepted. In the instant case we are concerned only with the provisions laid down under section 210 and not under section 319 of the Code. I am supported by a decision of the Orissa High Court in the case of *Chintamani Parida Vr.Jadumani and others* (1) where his Lordship, after considering and discussing 1976 Criminal Law Journal 562, has held that persons who are not named in the police report but named in the petition of complaint can be proceeded against and both the cases should be tried together as a Police case. On a careful

(1) (1981) Cr.L.J. 541.

consideration, I am of the opinion that the learned Magistrate was perfectly justrified in summoning those persons, who were named as accused in the petition of complaint, after the case was transferred to him under section 210 of the Code.

6. Thus, there is no merit in this application and it is, accordingly, dismissed. The occurrence relates to the year 1975 and the Magistrate shall dispose of the same with utmost despatch. Let the lower court records be sent down at once.

S. S. Sandhawalia, C.J, I agree

M.K.C. Application dismissed.

CIVIL WRIT JURISDICTION

Before S.S.Sandhawlia, C.J. and P.S.Sahay, J.

1985

January, 3

Bameshwar Prasad & Others.

v.

The State of Bihar & Others.

Bihar State Universities Act, 1976 (Act XXIII of 1976), Sections 35 (2) and 72(3)— Scope and applicability of — persons appointed on posts neither sanctioned nor approved—termination of their services subsequently, whether gives them legal right to move under Writ Jurisdiction— provisions of section 35 (2) and 72(3)— nature of —Constitution of India, Article 226 and 227.

Sub-clause (2) of section 35 puts a complete ban to appoint any person on any post without the prior approval fo the State Government. In cases of urgency so that teaching of students do not suffer, relaxation has een made

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*Civl Writ Jurisdiction Cases No. 3529, 3530,3716,3878.4091 & 4149 & 4159 of 1984. In the matter of applications under Articles 226 & 227 of the Constitution of India.

C.W.J.C. 3530/1987...Siya Ram Mishra & Others..Petitioners

C.W.J.C. 3716/1984.... Tejnarayan Prasad Yadav & Others ..petioners

C.W.J.C. 3878/1984..Bhagirath Prasad Yadav & Other..Petitioners

C.W.J.C. 4091/1984..Umesh Prasad Shrivastava & Ors.

C.W.J.C. 4149/1984..Sarju Prasad Mahto & Ors..Petitioners.

C.W.J.C. 4159/1984..Rabindra Nath Singh & Ors...Petitioners.

only to appoint teachers and that also for a period of six months provided the persons hold requisite qualification.

Held, that in the instant cases it is difficult to accept the contention that the provision of section 35 (2) will not be attracted and section 72(3) of the Act will apply. Section 72 deals with the effect of transfer of colleges to the University and other provisions related or ancillary to such transfer.

It is a well recognised rule of the interpretation of the Statues that the expression used therein should ordinarily be understood in sense in to harmonize the best manner with the object of the statute, and which effectuato the object of the legislature. If an expression is susceptible by a narrow or technical meaning, as well as popular meaning, the court would be justified in assuming that the legislature used the expression inthe sense whicfh would carry out its object and reject that which renders the exercise of its power invalid.

Held, that considering the preamble of the Act and the object thereof the legislature intended that appointemnt should be made only in a regular manner and for that restrictions were put on the Institutions. The intention was to cure the evil and if it is held to be directory, the very purpose of the Act will be frustrated. Therefore, the directions are mandatory in nature.

Amrendra Kumar Thakur v. State of Bihar (1)—relied. *Sarwan Singh v. Kasturilal* (2) and *Lila Gupta v. Laxami Narain* (3) referred to.

Application under Articles 226 and 227 of the Constitution of India.

The facts of the case material to this report are set

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(1) (1984) P.L.J.R. 626.

(2) (1977) A.I.R. (S.C.) 263.

(3) (1978) A.I.R. (S.C.) 1351.

out in the judgment of P.S.Sahay, J.

M/s Basudeva Prasad, Anil Kumar, Vinod Kumar Kanth, Shyam Kishore Sharma, Shiva Kirti Singh, Amar Nath Deo, Rajendra Prasad Singh and Tej Bahadur Singh for the petitioner.

M/s Ram Balak Mahto, Additional A.C., with Harendra Prasad and Mahesh Prasad (in CWJC 4159/84), S. Rafat Alam (in CWJC 4091/84), S.K.P. Sinha (in CWJC 4149/84), Satya Narayan Prasad (in CWJC 3878/84) and Amar Nath Singh (in CWJC 3530/84). for the respondents.

P. S. Sahay, J. All these writ applications have been heard together and will be governed by this common judgment. the petitioners in these applications are class III and Class-IV employees of the different Colleges under Magadh University and have been working as Laboratory Incharge/Store Keeper/Clerks/Typists/ Peons and have moved this Court against the order of termination of their services by the University. In C.W.J.C. No 3878 of 1934 the petitioners have been working in Kanhailal Sahu college, Nawadah, and they were appointed on temporary basis by Annexure-2 on 17.2.1982 and have prayed for quashing the order of termination dated 20.6.1984, as contained in Annexure-10. In C.W.J.C. No.3530 of 1984 the petitioners have been working in Rohtas Mahila College of Sasaram and they were appointed on temporary basis in the year 1981-82 (Annexure-4) and their services have been terminated by 20.6.1984.The employees of B.S.College, Dinapore, are petitioners in C.W.J.C. No.4091 of 1984 and they were also appointed on temporary basis in anticipation of the sanction of their posts and they were appointed by Annexure-4 on 14.5.1981. Prayer has been made for quashing Annexure-1 dated 18.7.1984. In C.W.J.C. No.3716 of 1984 the petitioners have been working as Storekeepers in S.P.M. College, Uttantpuri, Biharsharif, and

they were appointed by Annexure-1 on 18.2.1982 on posts which were neither sanctioned nor approved and have prayed for the quashing of Annexure-8 and Annexure-9 dated 20.6.84 and 27.6.1984 respectively. The petitioners in C.W.J.C. No. 4159 of 1984 were working in J.L.N. College, Dehri-on-Sone and they were appointed on temporary basis in anticipation of the sanction on 23.3.1982,6.12.1979 and 20.4.1980 (Annexures-1 and 2 series respectively) and their services have been terminated by Annexure-5 dated 18.7.1984. The petitioners in C.W.J.C. No. 4149 of 1984 are also employaes of J.L.N. College, Dehri-on-Sone and they were appointed by Annexure-1 in anticipation of approval. Their services have been terminated by Annexure-3 dated 18.7.1984. In C.W.J.C. No 3529 of 19 the petitioners are employees of T.P.S. College, Patna, and they were appointed on 10.7.1980 by Annexure-2 and by Annexure-6 dated 28.8.1981 on temporary basis subject to the approval and their services have been terminated by Annexure-1 dated 5.7.1984.

2. The short facts, leading to these applications necessary to decide the controversy between the parties, are that the petitioners, in all these writ applications, have been working on different posts on the basis of appointments made by advertisements/Governing Body/Vice-Chancellor in different colleges and also have been drawing their salary. According to the petitioners, these appontments were on the basis of staffing pattern duly approved by the authorities after taking into into consideration the requirements of the employees according to the number of students studying in different colleges. But, suddenly their salary was stopped on the ground that they were not appointed on sanctioned posts and also without the approval of the university and for that a committee was constituted which ultimately submitted its report against these petitioners. The report has been seriously challenged by the

petitioners. On receipt of the report the university, by different letters, as mentioned above, terminated the services of all the petitioners. Being aggrieved by the order of termination the petitioners have moved this court.

3. Counter affidavite have been filed on behalf of the university and also by the State of Bihar and reply there to but I would like to refer only to the facts which are relevant for deciding these cases. In the counter affidavit filed on behalf of the university, which is common in all the cases, it is stated that under Magadh University there were four types of Institutions ;

(a) University Department,

(b) Constituent Colleges directly under the control and management of the University,

(c) Affiliated Colleges,

and (d) Private Colleges.

Institutions mentioned in (a) and (b) were directly controlled and managed by the university and the finance was allotted by the State Government. Affiliated colleges used to get grants from the State Government through the University. The colleges in category (d), namely, private colleges were managed, financed and controlled entirely by the management. It was brought to the notice of the Government that teachings were not up to the mark in affiliated and private colleges and then it was decided to have a proper control and thereafter the Bihar State Universities Act, 1976 (hereinafter to be referred as the Act) was enacted and by incorporation of section 35 no college affiliated to the University had the power to appoint any person on any post without prior approval of the State Government. This provision was deliberately introduced in order to check on the mass appointments made by the private colleges on extraneous consideration with out

considering whether the appointment was necessary and also without considering the merit of the persons concerned. After taking over, some funds were released for salary of the persons who were employed. But, it was brought to the notice of the University that a number of appointments were made on posts which were not sanctioned and also without prior approval of the State Government. The matter was thoroughly enquired into and, thereafter, the State Government, by its letter dated 7th July, 1983, directed that all appointments made on the posts which were not mentioned and on which state approval was not obtained, should be terminated at once and in that view of the matter, the letters of termination were issued, which are sought to be quashed in these applications, The fact that the petitioners of these writ applications have been validly appointed or their appointments have been approved by the university have been totally denied. On the other hand, it has been clearly asserted that the appointments have been made on extraneous consideration without following the norms and procedures. It has also been asserted that a number of persons were appointed when there was no necessity, for such appointments only to accommodate certain persons, In support of stand of the University a number of letters have been annexed along with the counter affidavit.

4. The State has also filed counter affidavit through the Special Secretary, Education department. It is stated that in order to have better standard of teaching and for creating better condition of service of teaching and non-teaching staff it was decided that affiliated colleges should be made constituent colleges and, there after, scheme was drawn up to implement the same phasewise depending upon the finance and other requirements. After such declaration such institutions are managed and controlled by the university and the finance is made in the shape of grant by the State

Government. It was also found that there were a number of surplus teachers and staff and in order to check and control the appointment on such posts section 35 of the Act was enacted putting restrictions that colleges shall not appoint any person or create any post without the prior approval ot the State Government. In spite of that it was brought to the motice that a number of illegal appointments had been made and, thereafter; the Government letter was issued after thorough enquiry on 7.7.1983. Regarding staffing pattern it is stated that it was only for the purpose of taking a decision by the State Government for creating posts, if and when occasion arose taking into consideration the facilities provided for the students in the shape of building, library, laboratory etc. etc. Staffing pattern was accepted in principle by the State Government but still posts had to be sanctioned and appointments had to be approved by the University. In short, the staffing pattern was simply a guideline for the government or the university and no appointments could be made even if the posts were necessary on the basis of such staffing pattern.

5. Sri Basudeva Prasad appeared in writ Applications 4159, 4149, 3878 and 3530 of 1984; Sri Vinod Kumar Kanth has appeared in C.W.J.C. No. 3529 of 1984; Sri Shiva Kirti Singh in C.W.J.C. No 3716 of 1984 and Sri Rajendra Prasad Singh in C.W.J.C. No. 4091 of 1984. The contention of the learned counsel for the petitioners, in all the cases, is that they have been appointed on posts which were vacant, in a regular manner and have worked for a number of years with the knowledge of the University authorities and now their services will be deemed to have been absorbed by the University and the order of termination is bad in law. Further they have contended that the appointments were made on the basis of staffing pattern as approved by the University, according to the strength of the students and, in this connection, reliance has been

placed on the report of the District Magistrates. Learned counsel. thus, urged that no question of sanctioning the posts or approval of their services arises. It has been vahemently argued on their behalf that section 35 of the Act has no application and even if this provision is attracted then it was merely directory and not mandatory. In some cases it has also been argued that the appointment has been made by the Vice-Chancellor who was empowered to do so under section 10(6) of the Act and now the University cannot challenge the same. Faintly, it was also argued that the law of promissory estoppel will also stare at the face of the University. In some cases additional points have been argued which will be dealt with separately.

6. Sri Ram Balak Mahto, Hearned counsel appearing on behalf of the University, has contended that the petitioners have no legal right to move this court under writ jurisdiction because they were not appointed on posts which were sanctioned nor their appointments have been approved by the University, He has submitted that all these appointments have been done in a most irregular manner in clear violation of the direction of the University and in the teeth of section 35 of the Act. He has submitted that the then Vice-Chancellor made some appointments on the eve of making over charge and some of the officers were also party to it. The University, therefore, was not bound by their illegal acts and the order of termination has been validly passed after due enquiry and should not be interferred with. Before considering the submissioins made at the Bar it will be better to give a background of these cases. Formerly, there were a number of Universities in the state but in order to establish and incorporate affiliating-cum-teaching Universities at Muzaffarpur, Bhagalpur, Ranchi, Gaya and Darbhanga the Bihar Universities Act, 1976 (Bihar Act XXIII of 1976) was enacted. Under section 3 the territorial jurisdiction of different universities were also defined and

under section 3(d) the Magadh University with headquarters at Bodh Gaya (Gaya) had territorial jurisdiction over the whole of Patna Division excluding the colleges falling whithin the territorial jurisdiction of the Patna University as defined in section 4 of the Patna University Act, 1976. It is the admitted position that the petitioners have been working in different colleges under Magadh University. From the pleadings it is also clear that some of the appointments have been made by advertisement, some by the order of the governing body and some by the order of the Vice-chanceller. But, counsel, appearing on behalf of the petitioners in all the cases, have not been able to satisfy that these appointmently were approved by the University. Learned counsel, appearing on behalf of the petitioners, has relied on two facts, namely, that the petitioners have drawn their salary under the direction of the officers of the University and from its fund and the appointments were made on the basis of staffing pattern. So far the first aspect of the matter is concerned; it is true that some letters support the contention of the petitioners and the University had been examining the matter and was having correspondence with different colleges from time to time. But that alone, in my opinion, will not confer any right on the petitioners. More so, when it is specifically alleged that even the Vice-chancellor and some of the officers were in hand in gloves with these petitioners, what has to be seen is whether the appointments were made on santioned posts or not and wherhter the appointments were approved by the University. Both these are completely absent even by implications and, therefore, cannot be presumed in favour of the petitioners, in absence of any specific order/direction by the competent authority.

7. Now, reading the submission regarding staffing pattern, it is just a guide line for the University and the State Government. No doubt, there were a number of students in these colleges, which will be apparent from the report of the

District Magistrates, but, unless the posts are sanctioned, no appointment can be made because the financial burden is on the University or the State Government and they are the persons to sanction the posts taking into consideration various factors. Another important condition is that even the appointments have to be approved by the university. Therefore, the staffing pattern of the different colleges, even if approved by the university, cannot come in aid of the patitioners unless the posts are sanctioned by the University. Now, I propose to consider another important submission regarding section 35 of the Act which, according to the learned counsel for the petitioners, will not apply to the case of the petitioners whereas according to the learned counsel for the university it will fully apply to the instant cases. It will be useful to quote the section :

> "35. No post for appointment shall be created without the prior sanction of the State Government :-
>
> (1) Notwithstanding anything contained in this Act, no university or any college affiliated to such a university, except such colleges :-
>
> (a) as is established, maintained or governed by the State Government: or
>
> (b) as is established by a religious or linguistic minority :
>
> (i) shall, after the commencement of this Act, create any teaching or non-teaching post involving financial liability :
>
> (ii) shall either increase the pay or allowance attached to any post, of sanction any new allowance:
>
> Provided that the State Government may, by an order, revise the pay-scale attached to such post of sanction any allowance:
>
> (iii) shall sanction any special pay or allowance or other

remuneration of any kind including ex-gratia payment or any other benefit having financial implication to any person holding a teaching or non-teaching post;

(iv) shall incur expenditure of any kind on any development scheme without the prior approval of the State Government.

(2) Notwithstanding anything contained in this Act, no college, other than one mentioned in clauses (a) and (b) of Sub-section (1), shall, after the commencement of this Act, appoint any person on any post without the prior approval of the State Government:

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher, for a period not exceeding six months, by a candidate possessing the prescribed qualification."

8. The opening lines of section 35 of the Act says that notwithstanding anything contained in this Act, no University or any College affiliated to such University except such Colleges ; and reading sub-clause (2) a complete ban has been put to appoint any person on any post without the prior approval of the State Government. In cases of urgency so that teaching of students do not suffer, relaxation has been made only to appoint teachers and that also for a period six months provided the persons held requisite qualification. On the face of these provisions, it is difficult to accept the contention that this provision will not be attracted. The contention of Mr. Basudeva Prasad that section 72 of the Act will apply in these cases also cannot be accepted. Section 72 of the Act deals with the effect of fransfer of colleges to the University and other provisions related or ancillary to such transfer. Sub-clause (3) of section 72 of the Act may be usefully quoted :

"(3) Not with standing anything contained in this act, when any college is transferred to the maintenance and control of the University by an order under sub-section (1),

the university shall :-

(a) employ, such teachers and others servants of the State Government as were serving in or attached to the said college immediately before the commencement of this Act, on such conditions, as may be determined by the State Government;

(b) consider the claim, in consultation with the State Government, of employment in its service, if such a claim is made for appointment against such vacancies in the University service by such teachers who are employed in other teaching institutions falling within or without the territorial jurisdiction of the University and are in government service immediately preceding such transfer, and if the filling up of vacancies, by appointment or promotion of University teachers who are in government service immediately before such transfer results in supersession of the claims of teachers of the referred educational institutions."

Relying on sub-clauses (a) and (b), extracted above, it has been contended that petitioners, who were working prior to 1976 their services will automatically be deemed to have been transferred and only the modalities have to be determined. This argument has been made only in C.W.J.C. No. 4149 of 1984 and it has been urged that the petitioners were appointed prior to the coming into force of the Act. But, in the counter affidavit filed on behalf of the University, the appointments of the petitioners of that writ application has been seriously challenged in paragraphs 17 and 18 of the counter affidavit and it has been stated that a committee had been appointed to enquire into the matter and the findings are against these petitioners. In view of the disputed question of fact it will be difficult for this Court in writ jurisdiction to adjudicate the matter. The remaining cases are all subsequent to the coming into force of the Act and it is difficult to accept that even if they were working without valid sanction and without prior approval, their services will also be deemed to have been transferred to the University

from the date of the taking over. According to the wordings of the section, in my poinion, the services of only those who have been validly appointed will only be transferred and not of all even if they have been working by virtue of illegal appointments by back door methods. From the manner in which the appointments have been made by no stretch of imagination can be said to be a normal procedure.

9. Learned counsel appearing on behalf of the university, has submitted that point regarding section 35 of the Act raised on behalf of the petitioners is concluded by the Bench decision of this court in the case *Amrendra Kumar Thakur vrs. State of Bihar* (1).

The employees of the Lalit Narain Mithila University had, in similar circumatances, challenged the termination of services and they moved this court and it was held that they were neither appointed on sanctionad post nor their appointment had been approved and, therefore, they were not entitled to any relief. This decision fully covers the main point urged on behalf of the petitioners. But, Mr. Basudeva Prasad has tried to distinguish that in those cases the approval of appointment was not pending and, therefore, that decision will not apply to the facts of these cases. But, the fact remains that they had also continued in service for some time by virtue of some appontments which was held by this court to be not valid. The case, therefore, in my opinion, fully supports the learned counsel appearing on behalf of the University. Another important submission by Mr. Basudeva Prasad is that under sections 35(2) and 72(3) of the Act, the opening words are "not with standing" and, therefore, the direction under those sections are merely directory and not mandatory. In this connection reliance has been placed in the cases of *Sarwan Singh vrs. Kasturi Lal* (1) and *Lila Gupta vrs. Laxmi Narain* (2) But, it is a well recognised rule ot the

(1) (1984) P.L.J.R. 626 (2) (1977) A.I.R. 265.

interpretation of the statutes that the expression used there in should ordinarily be understood in a sense in which the best harmonise with the object of the statute, and which effectuate the object of the legislature. If an expression is suceptible by a narrow or technical meaning, as well as popular meaning the court would be justified in assuming that the legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid. considering the preamble of the Act and the object there of it must be held that the legislature intended that appointment should be made only in a regular manner and for that restrictions were put on the Institutions. It has rightly been contended by Sri Mahto that the intention was to cure the evil and if it is held to be directory the very purpose of the Act will be frustrated. There fore, in my considered opinion, the directions are mandatory in nature. There is also no conflict between sections 35 and 72 and both, in my opinion, operate in different sphare. Mr. Prasad has placed reliance on section 4(1) of the Act which gives power to the university to enter into an agreement with other bodies or persons for promoting the purposes of this Act and to assume the management of any Institution under them and to take over its assets and liabilities. Therefore, it has been urged that after the University took over the Institutions the services of the petitioners, who were the employees, shall be deemed to be taken over. But, in my opinion, there is no substance because there is no agreement under which the Institution has been taken over. Moreover, under the second proviso of this very provision it has been clearly laid down that even after the taking over the University will have the power to review any decision which has not been made in accordance with the rules and procedure. Therefore, this provision is of no help to the petitioners. It has also been contended that in some cases the appointments have been made by the Vice Chancellor which must be held to be valid

in view of the power conferred on him under section 10(6) of the Act which runs as follows :

> "The Vice-Chanceller shall subject to the provisions of this Act, the statutes and the ordinances have power to make appointment to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and other servants of the university not being teachers and officers of the University and have control and full disciplinary powers over such staff and servants."

But, such appointments can only be made within the sanctioned strength and even if the Vice-Chanceller has made some appointments that cannot be held to be legal. Learned counsel for the petitioners, in all the cases, have submitted that it was no part of the petitioners duty to know whether the posts were sanctioned or not and it was also not necessary for them to know the details, and even if their appointments had not been done in a regular manner they should not be disturbed. This argument, in my opinion, is also devoid of any substance because the manner in which the appointments were made and the manner in which some of the petitioners have joined and, I may add, in such a hurried manner, it is difficult to accept that they were not aware of the legal position. Be that as it may, this court, while considering their legal rights to move this court can very well go into that question before issuing any direction in this regard.

10. Mr. Rajendra Prasad Singh, appearing in C.W.J.C. No. 4091 of 1984, has submitted that some persons, who were similarly appointed, have been retained and allowed to continue where as the petitioner's services have been terminated and this amounts to discrimination and, in this connection; reliance has been placed in the case of Manager, *Government Press and others Vrs. D.B. Belliappa* (1). The principle of law cannot be disputed but this fact has been seriously challenged in the counter affidavit filed on

(1) (1979) (1) S.L.R. 351

behalf of the university and, therefore, it will be difficult for this court to give any relief in this regard. Lastly, it has been submitted that the petitioners have been in service for a fairly long time and have also worked satisfactorily and some of them have become over-age, which will mean great hardship to them and, therefore, their services should not be terminated. In this connection reliance has been placed on a Bench decision of the Punjab High Court in the case of Gurbux Rai Sood & ors. Vrs. State of Punjab (*i*). In that case the petitioners had worked for eleven years and their termination was quashed because all the them had become over-age and there was a conflict between the regular appointees and promotees regarding seniority and in that situation it was held that it would lead to anomalous position and complications, which is not the position in the cases in hand. In paragraph 21 of the counter affidavit filed on behalf of the State it is stated as follows ;

> "That it is submitted that the State Government shall take into account of the experience of such persons at the time when fresh appointment is made after grant of sanction, for such posts."

In view of the stand of the State, no direction is necessary and it will be for authorities to consider their case sympathetically in future appointments. But, no writ can be issued in this regard.

11. The petitioners have failed to make out any case for interference by this court and, therefore, all the petitions are devoid of any merit and they are, accordingly, dismissed. But. in the facts and ciroumatances of the case, parties shall bear their own cost.

S. S. Sandhawalia, C.J. I agree

R.D. Application dismissed.

(*i*) (1984) S.L.R. 83

CIVIL WRIT JURISDICTION

Before Birendra Prasad Sinha, J.

1985

January, 4

*Ram Shankar Prasad Singh and Otheres.**

v.

Additional Member, Boardof Revenue & Others.

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land)Act,1961(Act XII of 1962), Section 16(3) — Scope and applicability of —two or more persons joining hands in filing application under section 16 (3)— necessary ingredient to be established.

It is well established by now that if two or more persons want to join hands in filing an application under section 16(3) of the Act, it is necessary for all the applicants to establish that all of them are either co-sharers or adjoining raiyats of all the vended plots. If any one of them cannot claim pre-emption separately it is not possible for them to claim pre-emption jointly.

Held, therefore, that in the instant case the Additional Collector having found that none of the petitioners are individually and jointly in the boundary of each of the plots in question, the claim of pre-emption could not be maintained and the learned Additional Collector has rightly disallowed the claim for pre-emption.

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*civil Writ Jurisdiction Case n. 1998 of 1980. In the matter of an application under Articles 226 & 227 of the constitution of India.

Sukhram Singh v. The State of Bihar (1) relied on.

Basudeo choudhary v. The State of Bihar (2)— distingusished.

Application under Articles 226 and 227 of the Constitution of India.

The facts of the case material to this report are set out in th judgment of Birendra Prasad Sinha, J.

Messrs Devendra Prasad Sharma, Ram Anugrah Pd. Singh and Umesh Lal Verma for the petitioner.

Messrs Rameshwar Prasad, Govt. Pleader IV with Mr. B.P. Gupta, Jr. counsel to Govt. Pleader IV. for the respondents.

Birendra Prasad Sinha, J. this is an application under Articles 226 and 227 of the Constitution of India. A prayer has been made for queashing the orders contained in Annexures 2 and 3 passed by the Additional Collector on 11.11.1978 in Case No.14/75-76 and by the Additional Member, Board of Revenue on 9.5.1930 in Case No. 444 of 1978 respectively.

2. Respondent no.5 Smt. Ram Lakshmibati Kumari (since dead) sold 2 bighas 10 kathas 17 dhurs of land situate in village Saidpur Dallo alias Pakra appertaining to khata No. 408, plot no. 720,952 and 956 to respondent no.4 Dinesh Prasad Chaudhary. The sale deed was executed on 9.5.1975 and was registered on 8.5.1975. On 6.8.1975 the petitioners filed an application under section 16(3) of the Land Reforms (Fixation of Ceiling Area and Acquisition of surplus Land)

(1) (1974) A.I.R (Pat) 24

(2) (1984) B.B.C.J.45

Act, (hereafter referred to as the Act)claiming pre-emption. They claimed that they were in the boundary of the vended land.Several objections seem to have been taken by the purchaser against the petitioners' claim for pre-emption. The learned Land Reforms Deputy Collector ultimately allowed the claim of pre-emtion in favour of petitioners 1,2 and 3 and rejected the claim of petitoner no.4 Ranjit Prasad Singh. According to him petitioner no.4 Ranjit Prasad Singh was the adjoining Raiyat of plot Nos.720 and 956 and not an ajoining Raiyat in respect of plot no. 952. According to the Land Reforms Deputy Collector in a case where a joint petition had been filed the pre-emption could be allowed in respect of some even though in respect of others it was found that he was not on the boundary of each of the plots. Respondent no.4 Dinesh Prasad Chaudhary filed an appeal and the Additional Collector by his order contained in Annexure-2 set aside the order passed by the Land Reforms, Deputy Collector. Accoridng to him unless it was found that all the petitioners were indivgidually, separately or jointly holding lands in contiguity of the vended lands, the claim of pre-emption could not be allowed.It may be mentioned here that petitioner no.4 Ranjit Prasad Singh had not filed any appeal against the order of the Land Reforms Deputy Collector nor had preferred any cross objection before the appellate court. The finding of the Land Reforms Deputy Collector so far Ranjit Prasad Singh is concerned, therefore, became final.

3. Learned counsel appearing on behalf of the petitioners has submitted that the learned Additional collector has failed to give any finding with respect to jointness of the petitioners and if the petitioners are found to be joint as claimed by them their claim could not be defeated. Learned counsel is not

correct. The learned Additional Collection has found that the petitioners have not been able to prove jointness. It is not possible for this Court to go against that finding.

4. It is well established by now that if two or more persons want to join hand in filing an application under section 16(3) of the Act it is necessary for all the applicants to establish that all of them are either co-sharers or ajoining raiyats of all the vended plots. If any one of them cannot claim pre-emption separately it is not possible for them to claim pre-emption jointly. I am supported by a Bench decision of this Court in *Sukhram Singh Vs. The State of Bihar*(1). So far the present case is concerned the matters are even worse. In this case four persons have jointly claimed pre-emfption. As stated above the claim of three of them namely, petitioners 1 to 3 was allowed by the Land Reforms Deputy Collector but the claim of petitioner no.4 became final as no appeal was allowed. The Additional Collector has found that none of the petitioners are individually and jointly in the boundary of each of the plots in question. That being so, claim of pre-emption could not be maintained and the learned Additional Collector has rightly disallowed his claim. Learned counsel for the petitioner relied upon a Bench decision of this Court in *Basudeo Chaudhary Vs. The State of Bihar* (2) and has submitted that a joint claim for pre-emption is maintainable and can be allowed. In this case both the pre-emptors were of the class and were entitled to equal shares. It is a not that a joint petition cannotbe allowed in any circumstance. If it is

(1) (1974) A.I.R. (Pat.) 24.

(2) (1984) B.B.C.J. 45.

found that all the persons joining the petitioner are in the boundary of each of the vended land separately or even jointly, their claim may be allowed but so for the present case is concerned the finding is otherwise and in this case the claim of the petitioners has been rightly disallowed. The result is that this application fails and is dismissed but without costs.

M.K.C. Application dismissed.

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