

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 54/2023

IN THE MATTER OF:-

Ratneshwar Jan Kalyan Samiti

...Applicant

Versus

State of Uttarakhand & Ors.

...Respondents

INDEX

N.D.H 10/5/2023

Sr. No.	Document	Page No.
1.	Counter Affidavit on behalf of Respondent No. 5, Mr. Rajiv Sarin and Respondent No. 6, Mr. Ajit Sarin with supporting affidavit	
2.	<u>ANNEXURE R-1</u> : Land records (Khatoni) of the subject land	
3.	<u>ANNEXURE R-2</u> : A Copy of the judgment of the Hon'ble Supreme Court titled <i>Rajiv Sarin & Anr. v. State of Uttarakhand & Anr.</i> reported at (2011) 8 SCC 708	
4.	<u>ANNEXURE R-3</u> : A photograph of the cottage made on the subject land	

5. VAKALATNAMA & AUTHORIZED LETTER.

MR.  ANIRUDH BHATIA(D/3476/2017)/ MR.  ROHAN TALWAR(D/4389/2019)

FILED BY:

[EMAIL -R.PRATAP.TALWAR@GMAIL.COM ;

ANIRUDHBHATIA13@GMAIL.COM];

[PHONE: 9871877755; 9810306655]

D-336, DEFENCE COLONY, NEW DELHI – 110024

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 54/2023

IN THE MATTER OF:-

Ratneshwar Jan Kalyan Samiti

...Applicant

Versus

State of Uttarakhand & Ors.

...Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 5, MR. RAJIV SARIN AND RESPONDENT NO. 6, MR. AJIT SARIN

1. The present Counter Affidavit is being filed by Respondent No. 5 (Mr. Rajiv Sarin) and Respondent No. 6 (Ajit Sarin) to the captioned Application. The contents of the captioned Application are denied *in toto* and nothing stated in the Original Application may be deemed to be admitted for want of a specific traverse.
2. The captioned Application is filed to allegedly get protection of a water body i.e., Benital Lake situated in the south-eastern part in Chamoli District of Uttarakhand from artificial cutting of banks resulting drying up of the lake ("**the Lake**"). It has been alleged in the captioned Application that "*...some persons including private respondent No. 5 & 6 with intention to use the land under Benital Lake commercially, are bend to made the water body as dry land*". Further, the Applicant has also alleged the illegal felling of trees and shrubs on the land around the Lake ("**subject Land**"). Thus, the Applicants, *inter-alia*, prayed that a committee be formed and data pertaining to the extent of Benital Lake and surrounding trees in last five years be placed on record. Insofar as the answering Respondents, who are the owners of the subject land, are concerned, a prayer has been sought to prohibit them from altering the nature and status of the Benital Lake and disturbing its natural status. (*prayer (d)*)
3. At the outset, it is submitted that the said allegations are completely baseless and entirely untrue. The answering Respondents have not made any cuts/drains to dry up the Lake nor have they engaged in any commercial development on the subject land or contracted with third parties for the same. Further, no illegal tree felling has been conducted. This becomes apparent from the fact that not a single piece of photographic or documentary material to substantiate such allegations has been provided in the subject Application, which is only based on bald, vague and

unsubstantiated allegations. Shockingly, the Applicants have not even provided a date or broad time period wherein such activities are alleged to have taken place.

4. This Hon'ble Tribunal, by way of its order dated 14.02.2023 constituted a committee comprising six members to analyse and verify the grievances raised in the captioned application ("**Expert Committee**" / "**Committee**"). The Expert Committee conducted a site visit on 06.04.2023 and submitted its Report ("**Report**") on 15.04.2023. By way of the said Report, the Expert Committee has clearly opined *inter alia* that:

- i. There is no artificial cutting or draining being undertaken by the answering Respondents, so as to dry up the Lake . (**Recommendation 12**)
- ii. *Prima facie*, there is no evidence of illegal tree cutting in the last five years and the Committee further highlighted that there is no evidence of any tea shrubs on the land. (**Recommendation 7**)
- iii. In fact, the Expert Committee noted that even the Applicants could not point out the presence of such shrubs same during the inspection, which have been "illegally felled" as per the Applicants. (**Recommendation 10**)

The Committee has also sought further time to calculate the exact number of trees on the subject land for which a separate Report will be submitted. The answering Respondent reserves its right to respond to the same, as and when such a Report is uploaded.

5. In other words, the very substratum of the Applicant's allegations have been categorically negated by the Expert Committee. Therefore, the entire case of the Applicant *qua* draining/cutting the Lake and using the dried up land for commercial purposes is a mere eye-wash.
6. The Applicants have baldly claimed that the answering respondents "*sold some land to local people, who are commencing constructions on hill side land*" and that "*the act of the respondent No. 5 & 6 to explore the Lake Pond commercially has brought havoc to whole area*". It is humbly submitted that this is nothing but a clear fabrication. No proof of any such sale or construction is stated/annexed in the captioned Application or was provided to the Committee. In fact, even during the inspection of the site by the Committee, nothing was pointed out by the Applicants herein regarding any such commercial exploitation. As a result, in Enclosure-1 to Report of the Committee, wherein details of constructions are noted, no such construction is mentioned.

Hence, the entire Application is based on unsubstantiated apprehensions, blatant falsehoods, conjectures and surmises without an iota of any supporting evidence. In fact, the falsities stated by the Applicants have also been clearly invalidated in the Report. It is respectfully submitted that on this ground alone, the captioned Application deserves to be dismissed.

Even otherwise, and without prejudice to the above, it is humbly submitted that the subject Land to the extent of approximately 21 ha. is private land belonging to the answering Respondents as per the revenue records, and the answering Respondents would not be in violation of any environmental laws or regulations by undertaking construction on their private, hill-side land.

7. As far as *prayer (d)* of the captioned Application is concerned, it is also submitted that the answering Respondents have not made any alteration to the Lake, which also stands affirmed by the Report. No artificial cuts/drains etc. have been found at any point. To the contrary, in 1973, the answering Respondents made a small wall/dam with stones to ensure that the water is not dried up.
8. The answering Respondents also have much to say regarding the *locus standi*, *bona fides* and the motivations of the Applicant herein. This is a classic case of an unscrupulous applicant/organisation filing an application for oblique and vested interests. The Applicant herein has no genuine concern for the environment. This can easily be demonstrated from the fact that in the land adjoining the answering respondents land, the government of Uttarakhand has recently felled hundreds of trees to create an observatory. No objection till date has been raised by the Applicant herein. Further, when persons from nearby areas routinely litter the subject land and the Lake and even hold major events –like melas - which puts a strain on the local ecology, not a single voice of concern is raised. In fact, in the Times of India News Article dated 06.07.2021 annexed to the Application, it is recorded that such large scale melas/events are held (*Pg. 38, Original Application*). Hence, this is nothing but a motivated litigation.
9. It is also not out of place to mention that the Applicants have failed to place on record any scientific material or primary evidence to substantiate any of their allegations. Hence, the captioned Application has no basis in fact or in law.
10. In fact it would be relevant to note that the present application is also hopelessly barred by limitation. A perusal of the said application would show that the

applicants here in have allegedly been aware of the said lake for many years. However, no explanation has been given for the inordinate delay in filing the Application. The only explanation gives in as follows,

“The application has been filed for preservation and restitution of the lake degraded due to act and omission of the respondents. At present also, existence of Benital Lake is under threat and immediate steps to preserve the same may save the lake and Flora & Fauna surrounding it. Hence, the application is made well within the period of limitation prescribed under section 14 and 15 of the NGT Act, 2010.”

Section 15(3) of the National Green Tribunal Act, 2010 (“Act”) prescribes a limitation of 5 years from the date on which the cause for compensation *first arose*. However, no justification is given regarding the delay in approaching this Hon’ble Tribunal nor has any date of knowledge been mentioned. Therefore, by way of clever drafting the applicants have sought to defeat the provisions of limitation which is an abuse of process. On this fundamental preliminary ground, the present Application may be rejected.

11. That before delving into the merits, the following background to the present case would be pertinent,

Factual Background

12. In 1945, the answering respondent’s father, Shri P. N. Sarin acquired proprietary right in an estate known as Beni Tal Fee Simple Estate situated in Pargana Chandpur, Tehsil Karan Prayag, District Chamoli, Uttarakhand. The entire parcel of land at that time measured approximately 1710 acres. This was sold to the Shri PN Sarin by a British individual. On the death of Shri P.N. Sarin in the year 1976, the answering Respondents succeeded to the property in question.
13. Out of the entire tract of land, approximately 1658 acres consisted of large tracts of forest land (“**forest land**”). The remaining parcel of land, which was non-forest land, admeasured approximately 21 hectares (52 Acres approx) (“**subject land**”), as demarcated and determined by local authorities. The present Application is only concerned with the latter category, i.e. the non-forest land. The Lake is situated in the heart of the subject land, and is surrounded on all sides by the land of the answering Respondents.

The ownership of the answering Respondents is verifiable from the land records (Khatoni) which are annexed herewith and marked as **ANNEXURE R-1**.

14. Insofar as the forest lands are concerned, they were acquired by the State Government in the following proceedings :-

- i. By a Gazette Notification dated 21-12-1977 under Section 4-A of the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (“**the KUZALR Act**”) as amended by U.R Act 15 of 1978, the rights, title and interest of every *hissedar* in respect of forest land situated in the specified areas ceased with effect from 1-1-1978 and the same were vested in the State Government.
- ii. Accordingly, a notice was issued by the Assistant Collector, Karan Prayag, District Chamoli, under Rule 2 of the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Rules, 1965 (“**the KUZALR Rules**”) to the answering Respondents intimating them that effective from 1-1-1978, the rights, title and interest of *hissedar* in respect of the property in question had vested in the State Government free from all encumbrances and it invited objections and statement, if any, relating to the compensation qua the property in question. Crucially, this dispute only pertained to the forest tracts admeasuring approximately 1658 acres.
- iii. Since the objections raised by the answering Respondents were rejected on 02.04.1979, the answering Respondents filed a writ petition in the Hon’ble High Court of Judicature of Allahabad questioning the legality and validity of the order rejecting the objections and also challenging the constitutional validity of Sections 4-A, 18(1)(cc) and 19(1)(b) of the KUZALR Act. This was dismissed by the Hon’ble High Court by the judgment dated 12-8-1997.
- iv. Against the above Order of rejection, the answering Respondents preferred a special leave petition in which leave was granted by the Hon’ble Supreme Court by order dated 11.9.1998. By an order passed on 11-8-2010, the said Appeal was directed to be listed before the Constitution Bench, *inter-alia*, to consider the issue of scope and extent of rights under Article 300-A of the Constitution of India. The Constitution Bench of the Hon’ble Apex Court passed its Judgment on 09.08.2011 titled *Rajiv Sarin & Anr. v. State of Uttarakhand & Anr.* reported at (2011) 8 SCC 708, wherein it was held that,

“86. In view of the above, the present appeal is partly allowed while upholding the validity of the Act and particularly Sections 4-A, 18(1)(cc) and 19(1)(b) of the KUZALR Act, we direct the second respondent i.e. the Assistant Collector to determine and award compensation to the appellants by following a reasonable and

intelligible criterion evolved on the aforesaid guidelines provided and in light of the aforesaid law enunciated by this Court hereinabove.

87. The appellants will also be entitled to interest @ six per cent per annum on the compensation amount from the date of dispossession till the date of payment provided possession of the forest was handed and taken over formally by the respondent physically and provided the appellant was totally deprived of physical possession of the forest.”

While adjudicating the above matter, the Constitution Bench of the Hon’ble Supreme Court also noted that the answering Respondents, who have maintained the forests instead of exploiting it, cannot be penalised for the same and observed as under :-

“80.[...]In fact, the persons who are maintaining the forest and preserving it for future and posterity cannot be penalised by giving nil compensation only because of the reason that they in fact chose to maintain the forest instead of exploiting it.”

A Copy of the judgment of the Hon’ble Supreme Court titled ***Rajiv Sarin & Anr. v. State of Uttarakhand & Anr.*** reported at (2011) 8 SCC 708 is annexed herewith and marked as **ANNEXURE R-2.**

15. Meanwhile, in 1973, the answering Respondents made a modest construction of a four-room cottage on the subject land using stones/mud, as is available on the land, in an ecological and environmentally sustainable manner. Thus, the subject land has been preserved and there is no “commercial project” on the subject land.

A photograph of the cottage made on the subject land is annexed herewith and marked as **ANNEXURE R-3.**

A photo of the same is also present in the Report of the Committee *at page 11.*

16. Suddenly, in 2023, the subject Application was filed alleging that the answering respondents have been cutting the lake so as to make it dry and use the land thereunder for commercial purposes.

17. The present Application is baseless, *inter-alia*, for the following reasons

(I) **THE ANSWERING RESPONDENTS HAVE NOT CUT/DRAINED THE LAKE, THIS IS A COMPLETELY CONCOCTED ALLEGATION**

18. The Applicants have made a unsubstantiated allegation stating that the answering Respondents are making cuts and drains in the lake and once the Lake is dried the answering Respondents will use the land beneath the lake for “commercial

development”. The applicants have also alleged that the subject land has been sold to “ *to local people, who are commencing constructions on hill side land*”. This allegation is entirely baseless. Not a single piece of evidence whether documentary or photographic has been produced in the application to substantiate these allegations. Further, no evidence of any sale or transaction vis-à-vis the subject land has even been alluded to in the subject application. Therefore, this entire allegation is a mere eyewash and deserves to be rejected.

19. In any case, in recommendation number 12 of the Report, the Expert Committee has unambiguously opined that there is no evidence of any man-made or artificial cutting in the Lake. Only minor cutting was seen due to soil erosion which is a natural phenomenon. Therefore, the inescapable conclusion is that the very premise of the present application stands negated and invalidated by the Expert Committee appointed by this Hon’ble Tribunal.

(II) NO TEA SHRUBS/TREES HAVE BEEN CUT ILLEGALLY

20. In the inspection conducted by the Expert Committee, the Committee found that illegal tree felling in the last five years could not *prima facie* be established (*recommendation 6 in the Report*). Only two trees near the lake which were dried were found to be withered (*recommendation 7 in the Report*). In fact, the Expert Committee opined that no tea shrubs were found on the subject land and even the applicant hearing could not point out the same during the inspection. (*recommendation 10 in the Report*).
21. The Expert Committee further stated that more time would be required for calculation of the exact number of trees, for which a separate Report will be submitted. (*recommendation 23 in the Report*)
22. Thus, even this allegation is completely false. Further a bear perusal of the caption application would establish that this is nothing but a vague allegation without any material particulars. In fact, as has been pleaded in detail in the foregoing paragraphs of this Counter-Affidavit, even the Hon’ble Supreme Court of India has found that Respondent No. 5 has preserved the forest around the Lake.

(III) NO ‘COMMERCIAL PROJECTS’ ARE BEING BUILT ON THE LAND ON WHICH THE LAKE IS SITUATED OR ELSEWHERE ON THE SUBJECT LAND

23. Insofar as commercial/unauthorized constructions on the subject land are concerned, it is firstly submitted that no such construction has been made. In the Report of the committee, as per the joint inspection, the following structures were found on the subject land which are neither commercial nor are they recently constructed :-

- i. Four Room cottage made by the answering respondents in the year 1973 (281.19 sq mtrs),
- ii. Small stone shelters/cow sheds of the staff made over 30 years back [3 in number – total 313.2 sq mtrs.],
- iii. Old Nanda Devi Temple from the year 1970s [72.9 sq mtrs.],
- iv. Water Tank made in the 1990s [3.06 sq mtrs]

Without prejudice to the above submission it is humbly submitted that the subject land is privately owned by the answering respondents. Thus, the applicants have no right to question the activities of the answering Respondents.

24. In any case, the above mentioned findings make it evident that the applicant has approached this Hon'ble Tribunal based on a false apprehension and with unclean hands.

Paragraph wise Reply

25. The contents of the Synopsis are denied *in toto*. The answering respondent seeks liberty to rely on paragraphs 1-11 and 18-24 above which are not being repeated for the sake of brevity.

It is denied that there is any impact on water availability on the nearby villages as a result of the lake. The Lake is at an altitude of 6800 ft. The nearest village is at a distance of approximately 2 km (Ghandiyal) which is at an altitude of approximately 5400 ft. In fact, even the Lake and the nearby village is separated undulating and hilly terrain. In light of the distance between the Lake and the nearest village, coupled with the altitude and terrain, it is impossible for the water availability in the nearby areas to be impacted by the Lake.

It is also denied that any substantial questions of law relating to the environment arise in the present petition. It is categorically denied that there is any development, let alone unsustainable which is In derogation of orders of any court or to statutory environmental norms. It is submitted that the applicants have failed to place on record any material evidence to substantiate their claims. It is reiterated

that no specific information, or data has been placed in the caption application which is only based on bald and vague allegations.

26. The contents of paragraph I,II are procedural in nature and do not require any response.
27. The contents of paragraph III are vehemently denied. The answering respondent seeks liberty to rely on paragraphs 18 to 24 above which are not being repeated for the sake of brevity.
28. The Contents of paragraph 1 are denied inasmuch as there is no illegal construction on the subject land. The applicants have made many such empty allegations which are scurrilous in nature against which they are put to strict proof.
29. The contents of paragraph 2 are denied. It is denied that any substantial question of law relating to the environment arises in the present application. Question (1) and (2) are wholly general in nature and display no application of mind. Further, Question (3) and (4) cannot be terms to be questions of law.
30. The contents of paragraph 3 are vehemently denied. The answering respondent seeks liberty to rely on paragraphs 18 to 24 above which are not being repeated for the sake of brevity.
31. The contents of paragraph 4(i) are denied. The answering respondent seeks liberty to rely on paragraph 8 above which are not being repeated for the sake of brevity.
32. The contents of paragraph 4(ii) and (iv) do not require a response.
33. The contents of paragraph 4(iii) are denied to the limited extent that the answering Respondents are not “bend to destroy the Lake to achieve their commercial goals”. The answering Respondents are legal owners of the subject land which can be seen from the land revenue (Khatoni) records which are annexed with the Report at pg. 29-32 and with the present Reply as Annexure R-3.
34. The contents of paragraph 4(v) are denied as being entirely baseless. The answering respondent seeks liberty to rely on paragraphs 20 to 22 above which are not being repeated for the sake of brevity.
35. The contents of paragraph 4(vi) for want of information.

36. The contents of paragraph 4 (vii) are denied. It is humbly submitted that the Expert Committee has taken water samples from the Lake which are being analysed at the present time (*recommendation 15 in the Report*) . Therefore, it may be premature to comment on the same. However, the answering respondent reserves its right to respond to the present allegation as and when the subsequent report of the expert committee is published.

However, it is pertinent to note that the water in the lake is definitely not of drinking quality and therefore the answering respondents have serious doubts regarding the veracity of the study mentioned in the present paragraph 4(vii). Lastly, it may be pertinent to note that the water sample for the said study seems to have been obtained without taking any consent of the answering respondents.

37. The contents of paragraph 4(viii) are a matter of record. However, the applicants have cleverly cherry-picked excerpts from the site article which narrate their version of events.

38. The contents of paragraph 4(ix) are denied. It is pertinent to note that no evidence of any such efforts taken up by the applicant have been mentioned or annexed which goes to show that the present application is filed with unclean hands and is an abuse of process.

39. The contents of paragraph 4(x) and 5 are denied.

40. The contents of ground A are denied. The answering respondent seeks liberty to rely on paragraphs 1-11 and 18-24 above which are not being repeated for the sake of brevity.

41. The contents of ground B are denied. Firstly, it is submitted that no evidence or scientific material to back up such a claim has been given in the present application. Further, this is not a case of a river but a Lake which is highly dependent on rainfall.

It is denied that there is any impact on water availability on the nearby villages as a result of the lake. The Lake is at an altitude of 6800 ft. The nearest village is at a distance of approximately 2 km (Ghandiyal) which is at an altitude of approximately 5400 ft. In fact, even the Lake and the nearby village is separated undulating and hilly terrain. In light of the distance between the Lake and the

nearest village, coupled with the altitude and terrain, it is impossible for the water availability in the nearby areas to be impacted by the Lake.

42. The contents of ground C are not directed against the answering Respondents herein.
43. The contents of ground D are denied. The Applicant's case regarding drying up of the Lake stands negated and therefore none of the legal provisions mentioned in the said ground have any applicability to the present case. The answering respondent seeks liberty to rely on paragraphs 3-4 and 18-19 above which are not being repeated for the sake of brevity.
44. The contents of ground E are denied as being inapplicable. The said case of ***HP Ranjanna v. UoU & Ors (Appeal No. 54/2018)*** pertains to buildings/commercial constructions in Bengaluru around water bodies. In the present case no such construction is there. In any case the said Judgement has been appealed to the Hon'ble Supreme Court in Civil Appeal No. 4845 of 2021 wherein an Order of *status quo* was passed on 4845 of 2021 (*Wonder Projects Development Pvt. Ltd. v. Union of India & Ors.*). The said Appeal is pending hearing before the Apex Court.
45. The contents of ground F are denied as being inapplicable.
46. The contents of ground G are denied as being inapplicable. It is submitted that in the case of ***Hinch Lal Tiwari v. Kamla Devi (2001) 6 SCC 496*** the Hon'ble Supreme Court disposed with the different question i.e.,

"6. The short question that arises for our consideration is whether the allotted land forms part of a pond (talab) and if so, can it be allotted under Section 122-C(1) of the Act. (UP Zamindari Abolition and Land Reforms Act, 1950"

Further as per the above act the land in question vested in the gram sabha and could only be allotted to certain categories of persons. In the present case the subject land belongs solely to the answering respondents and there is no dispute regarding the ownership of the same. Therefore the said decision has no applicability to the facts of the present case.

In the landmark Judgment of ***Padma Sundara Rao v. State of T.N.*** reported at **(2002) 3 SCC 533**, a Constitution Bench of the Hon'ble Supreme Court held,

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. [....]”

In light of the above, it is submitted that none of the decisions cited by the Applicant have any applicability to the facts of the present case.

It is further submitted that the applicants have relied on host of judgements wherein the ownership of the land in question has been doubted or nullified. In the present case no such challenge is raised. It is most respectfully submitted that in any case this would not be the forum to mount such a challenge and therefore reliance on such decisions is completely unfounded. As per section 14 and 15 of the NGT act 2010, this Hon’ble Tribunal has the jurisdiction to adjudicate substantial questions of law pertaining to the environment and arising out of the implementation of the enactments specified in Schedule I. Further, Section 15(1) provides that:-

“the Tribunal may, by an order, provide,—

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

Significantly, no enactments relating to ownership of land are mentioned in Schedule-I. Hence, any direct or indirect challenge to the ownership of the subject land, on which the Lake is present, cannot be raised before this Hon’ble Tribunal.

47. The contents of ground H are denied as being inapplicable. It submitted that the said case (*Jagpal Singh v. State of Punjab – (2011) 11 SCC 396*) pertained to individuals who were neither owners not tenants of the lands in question. That case pertained to trespassers who had illegally encroached on common village land / gram sabha land. It is in that context that the observations made by the Hon’ble Supreme Court. However, the subject land is not falling in the above mentioned category.
48. The contents of ground I are denied as being inapplicable. It submitted that the said case (*Jitendra Singh v. MoEF – (2019) SCC Online SC 1510*) pertained specifically to village commons and its illegal takeover. In the said case, the land was transferred after implementation of land ceiling legislation and related to lands which were recorded common village ponds under the revenue records, as

recorded in paragraph(s) 3 and 13 of in the Order of the Hon'ble Supreme Court. Thereafter, the said common land was sought to be alienated to an industry. However, the facts of the present case are completely distinct, inasmuch as the subject land was never transferred to the Government and was therefore never in question to be a village commons.

49. The contents of ground J are denied as being inapplicable. The said case (*Brigadier Paramjit Singh v. State of Haryana & Ors.- OA No. 391/2022*) pertained to a water body adjoining a colony in Gurgaon which was allegedly being used as a dump for construction waste and a commercial complex was sought to be developed around the said water body for which a tender was issued by the local municipal authority (Haryana Shahari Vikas Pradhikaran) . In the present case, no construction debris has ever been disposed of in the Lake nor is the lake sought to be commercialised.
50. The contents of ground K are denied. The answering respondent seeks liberty to rely on paragraphs 1-11 and 18-24 above which are not being repeated for the sake of brevity. Thus, no case for compensation has even been remotely made out.
51. It is humbly submitted that the captioned application is hopeless hopelessly barred by limitation for which the answering respondent places reliance on paragraph 10 above which is not being repeated for the sake of brevity.
52. In view of the above humbly submitted that the present application deserves to be dismissed with costs.

DATE: 04.05.2022

PLACE: NEW DELHI

  FILED BY:
MR. ANIRUDH BHATIA(D/3476/2017)/ MR. ROHAN TALWAR(D/4389/2019)

[EMAIL -R.PRATAP.TALWAR@GMAIL.COM ;

ANIRUDHBHATIA13@GMAIL.COM];

[PHONE: 9871877755; 9810306655]

D-336, DEFENCE COLONY, NEW DELHI – 110024

**BEFORE THE NATIONAL GREEN TRIBUNAL
(PRINCIPAL BENCH), NEW DELHI
ORIGINAL APPLICATION NO. 54 OF 2023**

IN THE MATTER OF:-

Ratneshwar Jan Kalyan Samiti ...Applicant
Versus
State of Uttarakhand & Ors. ...Respondents

AFFIDAVIT

I, Mr. Rajiv Sarin, son of Late Shri P.N. Sarin, aged about 70 years, residing at A-132, New Friends Colony, New Delhi – 110025 hereby solemnly affirm and declare as under:

1. That I am the Respondent No.5 herein and the authorized signatory on behalf of the Respondent No.6 by way of Authority Letter dated 03.05.2023. I am fully conversant of the facts and circumstances of the matter and am competent to swear this affidavit.
2. The contents of the accompanying Counter Affidavit true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and nothing materials has been concealed therefrom.

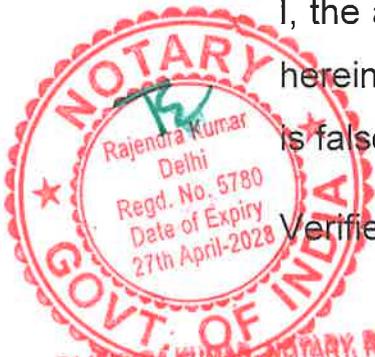


DEPONENT

VERIFICATION:

I, the above named deponent do hereby verify that the facts stated herein above are true to my knowledge and belief and no part of it is false and no material fact has been concealed therefrom.

Verified on this 04 day of May, 2023, at New Delhi.



RAJENDRA KUMAR, NOTARY, Reg. No. 5780
F No.-5(486)
EMPOWERED TO ADMINISTER THE OATH
SECTION 139 OF CMO 1989
SECTION 207 OF CMPO 1978
DELHI HIGH COURT RULES 1987
PART-6, CHAPTER XVIII-207
EVIDENCE BY AFFIDAVIT BEFORE NOTARY
SUPREME COURT RULES, 2013
ORDER IX-7

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT EXECUTIVE WHO IS SEEMED PERFECT TO
UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT
DELHI ON..... IDENTIFIED BY
04 MAY 2023
IDENTIFY THE EXECUTIVE / DEPONENT WHO HAS
SIGNED IN MY PRESENCE

IDENTIFIED

BEFORE ME
RAJENDRA KUMAR
NOTARY, DELHI-R-5780
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Pg./Sl. No.....
Mobile No.: 9899446209

DEPONENT

04 MAY 2023



उद्धरण खतौनी

खाता खतौनी क्रम संख्या ---- 1 ----	खातेदार का नाम / पिता पति संरक्षक का नाम/ निवास स्थान ----- 2 -----	भौमिक अधिकार प्रारम्भ होने का वर्ष ----- 3 -----	खाते के प्रत्येक गाटे की खसरा संख्या ----- 4 -----	प्रत्येक गाटे का क्षेत्रफल (हे.) ----- 5 -----	खातेदार द्वारा देय मालगुजारी या लगान ----- 6 -----	परिवर्तन सम्बन्धी आज्ञा या उसका सारांश उनकी संख्या तथा दिनांक सहित और आज्ञा देने वाले अधिकारी का पद ----- 7-12 -----	टिप्पणी ----- 13 -----
		1373	41	0.0360			
		1373	42	0.0080			
		1373	43	0.0310			
		1373	44	0.0300			
		1373	45	0.0450			
		1373	46	0.1430			
		1373	47	0.4060			
		1373	48	0.0160			
		1373	49	0.0440			
		1373	50	0.0060			
		1373	51	0.0390			
		1373	52	0.0480			
		1373	53	0.0110			
		1373	54	0.0330			
		1373	55	0.1480			
		1373	56	1.1270			
		1373	57	0.6880			
		1373	58	0.4410			
		1373	59	0.6650			
		1373	60	0.5860			
		1373	61	0.4390			
		1373	62	0.5290			
		1373	63	0.0680			
		1373	64	0.0450			
		1373	65	0.0800			
		1373	66	0.0830			
		1373	67	0.1730			
		1373	68	0.1250			
		1373	69	0.6460			
		1373	70	0.1910			
		1373	71	2.0060			
		1373	72	0.3190			
		1373	73	0.6320			
		1373	74	0.6920			
		1373	75	0.2090			
		1373	76	0.1540			



As
TRUE COPY



उद्धरण खतौनी

खाता खतौनी क्रम संख्या --- 1 ---	खातेदार का नाम / पिता पति संरक्षक का नाम/ निवास स्थान ----- 2 -----	भूमिक अधिकार प्रारम्भ होने का वर्ष ----- 3 -----	खाते के प्रत्येक गाटे की खसरा संख्या ----- 4 -----	प्रत्येक गाटे का क्षेत्रफल (हे.) ----- 5 -----	खातेदार द्वारा देय मालगुजारी या लगान ----- 6 -----	परिवर्तन सम्बन्धी आज्ञा या उसका सारांश उनकी संख्या तथा दिनांक सहित और आज्ञा देने वाले अधिकारी का पद ----- 7-12 -----	टिप्पणी ----- 13 -----
		1373 -	77	0.8510			
		1373	78	0.5540			
		1373	79	0.7570			
		1373	80	0.5740			
		1373	81	0.0750			
		1373	82	1.0430			
		1373	83	0.7480			
		1373	84	0.2190			
		1373	85	0.4640			
		1373	86	0.5440			
		1373	87	0.2460			
		1373	88	0.2810			
		1373	89	0.4210			
		1373	90	0.6550			
			86	21.1860			

कुल गाटे: आठ छ: कुल क्षेत्रफल: दो एक दशमलव एक आठ छ: कुल भू-राजस्व: नौ एक दशमलव पाँच पाँच

Data Digitally Signed by : RAKESH KUMAR



सक्षम अधिकारी : TEHSILDAR

तहसील : कर्णप्रयाग

जनपद : चमोली

दिनांक एवं समय : 18-01-2023 11:20:07 AM

As
TRUE COPY



उद्धरण खतौनी

ग्राम क्रमांक : 041480

ग्राम का नाम / परगना : वैनीताल(कर्णप्रयाग)

तहसील : कर्णप्रयाग

जनपद : चमोली

फसली वर्ष : 1427-1432 भाग : 1

5-2/पुरानी परती (परती कदीम)

खाता खतौनी क्रम संख्या ---- 1 ----	खातेदार का नाम / पिता पति संरक्षक का नाम/ निवास स्थान ----- 2 -----	भूमिक अधिकार प्रारम्भ होने का वर्ष ----- 3 -----	खाते के प्रत्येक गाटे की खसरा संख्या ----- 4 -----	प्रत्येक गाटे का क्षेत्रफल (हे.) ----- 5 -----	खातेदार द्वारा देय मालगुजारी या लगान ----- 6 -----	परिवर्तन सम्बन्धी आज्ञा या उसका सारांश उनकी संख्या तथा दिनांक सहित और आज्ञा देने वाले अधिकारी का पद ----- 7-12 -----	टिप्पणी ----- 13 -----
00002	जंगल//		1 2 3 37 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108	62.7860 44.4930 7.4820 0.3610 43.1290 51.5340 37.4320 27.3620 6.3590 12.1960 25.9570 35.4660 57.6120 52.5220 7.5620 30.3300 30.3300 24.4730 68.8460 33.7410 21.0220 16.4890	0.00		
			22	697.4840			

कुल गाटे: दो दो कुल क्षेत्रफल: छः नौ सात दशमलव चार आठ चार कुल भू-राजस्व: शून्य दशमलव शून्य शून्य

Data Digitally Signed by : RAKESH KUMAR



सक्षम अधिकारी : TEHSILDAR

तहसील : कर्णप्रयाग

जनपद : चमोली

यह उद्धरण खतौनी इलेक्ट्रॉनिक डिलीवरी सिस्टम द्वारा तैयार की गयी है तथा डाटा डिजीटल हस्ताक्षर द्वारा हस्ताक्षरित है।

दिनांक एवं समय : 18-01-2023 11:20:28 AM

As
TRUE COPY

ANNEXURE-R2



As
TRUE COPY

708

SUPREME COURT CASES

(2011) 8 SCC

(2011) 8 Supreme Court Cases 708

(BEFORE S.H. KAPADIA, C.J. AND DR. M.K. SHARMA,
K.S.P. RADHAKRISHNAN, SWATANTER KUMAR AND ANIL R. DAVE, JJ.)

RAJIV SARIN AND ANOTHER

.. Appellants;

Versus

STATE OF UTTARAKHAND AND OTHERS

.. Respondents.

Civil Appeal No. 4772 of 1998[†], decided on August 9, 2011

A. Constitution of India — Art. 300-A — Deprivation of property — Compensation — Entitlement to — “No compensation” distinguished from “nil compensation” — Held, compensation cannot be illusory

B. Constitution of India — Arts. 300-A and 19(1)(f) — Deprivation of property — Judicial review — Scope of, examined in light of fact that right to property is no longer a fundamental right

C. Tenancy and Land Laws — Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (17 of 1960) — Ss. 4-A (as amended by U.P. Act 15 of 1978), 12, 4 and 19 — Vesting of private forest lands in State due to agrarian reform — Compensation to intermediary — Entitlement, adequacy, manner of determination and criteria — S. 19 r/w S. 12 providing for compensation of 8 times average annual income from such forests — State’s stand of not paying any compensation to intermediary on ground of intermediary not having any income from forests concerned, held, is contrary to express provisions of KUZALR Act (Ss. 12, 4, 4-A & 19) — Income includes possible income in case of persons who have not exploited forest and have rather preserved it — Compensation cannot be illusory (even if payment of market value cannot be a condition precedent for acquisition and even if adequacy of compensation cannot be questioned in a court of law) — Acquisition and compensation are part of the same scheme and cannot be separated — Therefore, while upholding validity of KUZALR Act particularly Ss. 4-A, 18(1)(cc) and 19(1)(b), Assistant Collector directed to determine compensation by following reasonable and intelligible criterion evolved on guidelines and law stated and pay 6% interest from date of actual dispossession/physical handover of property — Constitution of India — Arts. 300-A, 14 and 21 — Words and Phrases — “Income” — Land Acquisition Act, 1894, S. 23

D. Tenancy and Land Laws — Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (17 of 1960) — Ss. 4-A (as amended by U.P. Act 15 of 1978), 12, 4 and 19 — Vesting of private forest due to agrarian reform — No compensation distinguished from nil compensation — Why average income should also include possible income — Land Acquisition Act, 1894 — S. 23 — Constitution of India, Art. 300-A

[†] From the Judgment and Order dated 12-8-1997 of the High Court of Judicature of Allahabad in WP No. 8927 of 1988

E. Land Acquisition Act, 1894 — S. 23 — Principle of just and reasonable compensation — Held, LA Act envisages payment of just and reasonable compensation, whether it is public purpose acquisition or acquisition for companies — Constitution of India, Art. 300-A

F. Tenancy and Land Laws — U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) — S. 39(1)(e)(ii) (as amended in 1978) — Effect of omission of S. 39(1)(e)(ii) in 1978, held, is of no consequence

In 1945, the appellants acquired proprietary right as intermediaries in a forest estate in Uttarakhand.

The U.P. Zamindari Abolition and Land Reforms Act, 1950 (UPZALR Act), intended to abolish zamindari and intermediaries and vest these lands in the State. The UPZALR Act was made applicable to the whole of the State of U.P. except the areas of Kumaun and Uttarakhand. Subsequently, on 2-8-1960 the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (KUZALR Act) was enacted, which introduced the above land reforms in respect of Kumaun and Uttarakhand. The original KUZALR Act, however, did not provide for vesting of private forests, and the definition of the word “land” in Section 3(10) thereof excluded forest.

After the commencement of the Constitution (Forty-second Amendment) Act, 1976 which came into effect from 3-1-1977 the subject “forests” was included in Schedule VII List III of the Constitution as Entry 17-A. The U.P. Zamindari Abolition Laws (Amendment) Act, 1978 was passed on 30-11-1977 whereby the KUZALR Act was amended. The original KUZALR Act had received the President’s assent on 10-9-1960 and the amendment had also received the President’s assent on 26-4-1976.

By a Gazette Notification dated 21-12-1977 under Section 4-A, KUZALR Act, as amended by U.P. Act 15 of 1978, the rights, title and interest of every intermediary in respect of forest land situated in the specified areas ceased with effect from 1-1-1978 and the same vested in the State Government.

The appellants were served with a notice under Rule 2, Kumaun and Uttarakhand Zamindari Abolition and Land Reform Rules, 1965 (KUZALR Rules) intimating them of the said vesting of their lands in the State with effect from 1-1-1978. The notice also invited objections and statement, if any, relating to the compensation qua the property in question.

In the present appeal, the appellants challenged the said notice and validity of the KUZALR Act, as amended by U.P. Act 15 of 1978. The appellants also challenged the impugned order of the High Court which, on the basis of Sections 18(1)(cc) and 19(1)(b), KUZALR Act and the fact that the appellants had not derived any income from the forests, held that the appellants were not entitled to any compensation.

Partly allowing the appeals, the Supreme Court.

Held :

Any law, which deprives a person of his private property for private interest, will be amenable to judicial review. Though the concept of public purpose has been given quite a wide interpretation, nevertheless, “public purpose” remains the most important condition in order to invoke Article 300-A of the Constitution.

(Para 68)

710

SUPREME COURT CASES

(2011) 8 SCC

The right to property being no more a fundamental right, a legislation enacted under the authority of law as provided in Article 300-A of the Constitution is not amenable to judicial review merely for alleged violation of Part III of the Constitution. However, the laws added to Schedule IX to the Constitution, by violating the constitutional amendments after 24-12-1973, would be amenable to judicial review on a ground like violation of the basic structure of the Constitution. (Paras 70 and 71)

I.R. Coelho v. State of T.N., (2007) 2 SCC 1, *relied on*

Right to property is no longer a fundamental right. In view of the aforesaid position the entire concept of right to property has to be viewed with a different mindset than the mindset which was prevalent during the period when the concept of eminent domain was the embodied provision of fundamental rights. But even now as provided under Article 300-A of the Constitution the State can proceed to acquire land for specified use but by enacting a law through State Legislature or by Parliament and in the manner having force of law. (Para 77)

With regard to claiming compensation, all modern Constitutions which are invariably of democratic character provide for payment of compensation as the condition to exercise the right of expropriation. (Para 69)

Acquisition of land and thereby deprivation of property is possible and permissible in accordance with the statutory framework enacted. The Land Acquisition Act mandates acquisition of land for public purpose or public use. The Land Acquisition Act also empowers acquisition of land for use of companies in the manner and mode stipulated. But, in case of both the aforesaid manners of acquisition of land, the Act envisages payment of compensation for such acquisition of land and deprivation of property, which is reasonable and just. (Para 76)

When the State exercises the power of acquisition of a private property thereby depriving the private person of the property, provision is generally made in the statute to pay compensation to be fixed or determined according to the criteria laid down in the statute itself. It must be understood in this context that the acquisition of the property by the State in furtherance of the directive principles of State policy was to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment of market value in lieu of acquired property is not a condition precedent or sine qua non for acquisition. It must be clearly understood that the acquisition and payment of amount are part of the same scheme and they cannot be separated. It is true that the adequacy of compensation cannot be questioned in a court of law, but at the same time the compensation cannot be illusory. (Para 78)

The stand taken by the State that the right, title or interests of a hissedar could be acquired without payment of any compensation, as in the present case, is contrary to the express provisions of the KUZALR Act itself (Sections 12, 4, 4-A and 19). (Para 79)

Rajiv Sarin v. State of U.P., WP (C) No. 8927 of 1988 order dated 12-8-1997 (All), *reversed on this point*

Section 19 itself prescribes that the compensation payable to a hissedar under Section 12 shall, in the case of private forest, be eight times the amount of average annual income from such forest. In the instant case, income also includes possible income in case of persons who have not exploited the forest and have rather preserved it. Otherwise, it would amount to giving a licence to owners/

As
TRUE COPY

a persons to exploit forests and get huge return of income and not to maintain and preserve it. The same cannot be said to be the intention of the legislature in enacting the aforesaid KUZALR Act. In fact, the persons who are maintaining the forest and preserving it for future and posterity cannot be penalised by giving nil compensation only because of the reason that they in fact chose to maintain the forest instead of exploiting it. (Para 80)

Ganga Devi v. State of U.P., (1972) 3 SCC 126, *distinguished on facts*

b A distinction and difference has been drawn between the concept of “no compensation” and the concept of “nil compensation”. As mandated by Article 300-A, a person can be deprived of his property but in a just, fair and reasonable manner. In an appropriate case the court may find “nil compensation” also justified and fair if it is found that the State has undertaken to take over the liability and also has assured to compensate in a just and fair manner. But the situation would be totally different if it is a case of “no compensation” at all. (Para 82)

c A law seeking to acquire private property for public purpose cannot say that “no compensation” would be paid. The present case is a case of payment of “no compensation” at all. In the case at hand, the forest land which was vested in the State by operation of law cannot be said to be non-productive or unproductive by any stretch of imagination. The property in question was definitely a productive asset. That being so, the criteria to determine possible income on the date of vesting would be to ascertain such compensation paid to similarly situated owners of neighbouring forests on the date of vesting. Even otherwise, the Revenue Authority can always make an estimation of possible income on the date of vesting if the property in question had been exploited by the appellants and then calculate compensation on the basis thereof in terms of Sections 18(1)(cc) and 19(1)(b) of the KUZALR Act. (Para 83)

d Awarding no compensation attracts the vice of illegal deprivation of property even in the light of the provisions of the Act and is therefore amenable to writ jurisdiction. (Para 84)

e That being so, the omission of Section 39(1)(e)(ii) of the UPZALR Act, 1950 as amended in 1978 is of no consequence since the UPZALR Act leaves no choice to the State other than to pay compensation for the private forests acquired by it in accordance with the mandate of the law. (Para 85)

f Therefore, while upholding the validity of the KUZALR Act and particularly Sections 4-A, 18(1)(cc) and 19(1)(b) thereof, the Assistant Collector is directed to determine and award compensation to the appellants by following a reasonable and intelligible criterion evolved on the aforesaid guidelines provided and in light of the aforesaid law enunciated. (Paras 86 and 87)

g **G. Constitution of India — Arts. 254, 246 and Sch. VII List II Entry 18 r/w List III Entry 42 and List III Entry 17-A — Repugnancy — KUZALR Act, 1960 (as amended in 1978) whether repugnant to Forest Act, 1927 — Test for repugnancy, restated and applied — S. 4-A, KUZALR Act (as amended in 1978) providing that rights, title and interest of every intermediary in respect of forest land situated in specified areas ceased with effect from 1-1-1978 and the same vested in State Government — Said Acts operate in different fields and in respect of distinct subjects and acquisition of forest land under them is also conceptually different — Forest Act, 1927 not created by Parliament as a superior code — Thus, KUZALR Act, held, not repugnant to Forest Act, 1927 — There was, therefore, no requirement of President’s assent under Art. 254(2) (although it was obtained) — For**

applicability of Art. 254 there must be direct conflict and both laws must be completely inconsistent or absolutely irreconcilable — For this superior legislation must be exhaustive, unqualified and cover the entire field — For this subject-matter of both legislations must be the same — This is not the case here — Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (17 of 1960) — S. 4-A (as amended by U.P. Act 15 of 1978), 18(1)(cc), 19(1)(b), 3(10), 6(1)(4), 4 and 8 — Forest Act, 1927 — Ss. 37, 36 and 84 — Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Rules, 1965, R. 41 (Paras 21 to 28, 33 to 42, 45, 47, 48 and 52 to 55)

H. Constitution of India — Arts. 254, 246 and Sch. VII — Repugnancy — Approach and manner of interpretation — Liberal construction and presumption of constitutionality in favour of State legislation, represcribed — Each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it — Constitutional Interpretation — Interpretation of particular provisions — Entries in Sch. VII (Paras 33 to 37, 41 to 48 and 52 to 55)

I. Constitution of India — Arts. 246, 254 and Sch. VII List III — Doctrine of pith and substance — Applicability to statutes relatable to Concurrent List — For finding out subject-matter of an enactment under List III, doctrine of pith and substance can be relied on and would apply — Constitution of Australia, S. 107 (Para 37)

J. Constitution of India — Arts. 246, 31-A and Sch. VII List II Entry 18 r/w List III Entry 42 — When can a legislation be treated as agrarian reform legislation — KUZALR Act considered as a whole, held, is an enactment dealing with agrarian reforms — Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Rules, 1965 — R. 41 — Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (17 of 1960), S. 4-A (as amended by U.P. Act 15 of 1978) (Paras 21 to 28)

K. Tenancy and Land Laws — Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (17 of 1960) — S. 4-A (as amended by U.P. Act 15 of 1978) and S. 8 — Object of amendment is to bring KUZALR Act on a par with UPZALR Act with regard to agrarian reforms (Para 23)

L. Constitution of India — Arts. 246, 254 and Sch. VII List II Entry 18 r/w List III Entry 42 and List III Entry 17-A — Legislative competence — Doctrine of pith and substance — Applicability and application — KUZALR Act, 1960 being an enactment for agrarian reforms, dealing mainly with land — Whereas Forest Act, 1927 dealing mainly with forests — KUZALR Act providing for statutory vesting of (forest) land — Whereas Forest Act providing for an acquisition based on principles of public purpose and compensation — When determining legislative competence, courts, reiterated, should try to ascertain pith and substance of enactment — In pith and substance Forest Act, 1927 is different from KUZALR Act and UPZALR Act — Though there are incidental encroachments, while considering repugnancy incidental encroachment is to be ignored — Legislation as a whole to be considered — True nature, character, object, scope and effect of enactment to be considered to find out whether enactment in question is genuinely referable to legislation allotted under constitutional scheme (Paras 21 to 28, 33 to 42, 45, 47, 48 and 52 to 55)

RAJIV SARIN v. STATE OF UTTARAKHAND

713

- M. Karunanidhi v. Union of India*, (1979) 3 SCC 431 : 1979 SCC (Cri) 691; *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899, *followed*
- a *Navinchandra Mafatlal v. CIT*, AIR 1955 SC 58; *State of Maharashtra v. Bharat Shanti Lal Shah*, (2008) 13 SCC 5; *Glanrock Estate (P) Ltd. v. State of T.N.*, (2010) 10 SCC 96; *State of Maharashtra v. Bharat Shanti Lal Shah*, (2008) 13 SCC 5; *M. Karunanidhi v. Union of India*, (1979) 3 SCC 431 : 1979 SCC (Cri) 691; *Hoechst Pharmaceuticals Ltd. v. State of Bihar*, (1983) 4 SCC 45 : 1983 SCC (Tax) 248; *Govt. of A.P. v. J.B. Educational Society*, (2005) 3 SCC 212; *Ranjit Singh v. State of Punjab*, AIR 1965 SC 632 : (1965) 1 SCR 82, *relied on*
- b *Rajiv Sarin v. State of U.P.*, WP (C) No. 8927 of 1988 order dated 12-8-1997 (All), *affirmed on this point*
- Zaverbhai Amaldas v. State of Bombay*, AIR 1954 SC 752 : 1954 Cri LJ 1822; *T. Barai v. Henry Ah Hoe*, (1983) 1 SCC 177 : 1983 SCC (Cri) 143, *cited*
- M. Constitution of India — Arts. 136, 32, 226, 31-A, 31-B and 31-C — Submission without pleading — Maintainability — There being no pleading either in High Court or in Supreme Court regarding applicability of**
- c **Arts. 31-A, 31-B and 31-C — Thus, issue as to protection of Arts. 31-A, 31-B and 31-C to KUZALR Act, as amended by U.P. Act 15 of 1978, held, not maintainable (Para 15)**
- N. Constitution of India — Art. 254(2) — Repugnancy sought to be removed by Presidential assent, whether to be specific or whether a general assent can serve purpose**
- d *Held :*
- The law as to the nature of the Presidents' assent under Article 254(2) may be stated as follows:
- (a) Article 254(2) contemplates 'reservation for consideration of the President' and also 'assent'. Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by Parliament and the contemplated State legislation and the reasons for having such law despite the enactment by Parliament.
- e (b) The word 'assent' used in clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.
- (c) In case where it is not indicated that 'assent' is qua a particular law made by Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.
- f (d) However, it is not necessary that in every case the assent of the President in specific terms had to be sought and given for special reasons in respect of each enactment or provision or provisions.
- (e) The assent sought for and given by the President in general terms could be effective for all purposes unless specific assent is sought and given in which event it would be operative only to that limited extent. Thus, if the assent is sought and given in general terms it would be effective for all purposes. (Paras 58 to 65)
- g *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.*, (2002) 8 SCC 182, *clarified and relied on*
- h *Gram Panchayat, Jamalpur v. Malwinder Singh*, (1985) 3 SCC 661; *P.N. Krishna Lal v. Govt. of Kerala*, 1995 Supp (2) SCC 187 : 1995 SCC (Cri) 466, *followed*

SS-D/48374/CV

As
TRUE COPY

714

SUPREME COURT CASES

(2011) 8 SCC

Advocates who appeared in this case :

K.K. Venugopal, Senior Advocate (E.C. Agrawala, Rishi Agrawala, Mahesh Agarwal, Shyam Mohan, Ms Neha Agarwal, Sunil Murarka and Ms Radhika Gautam, Advocates) for the Appellants; a

Parag P. Tripathi, Additional Solicitor General, S.R. Singh, Senior Advocate (Ms Rachna Srivastava, Kunal Bahri, Avneesh Arputham, Ms Mahima Gupta, Manoj K. Dwivedi and Gunnam Venkateswara Rao, Advocates) for the Respondents.

Chronological list of cases cited

on page(s)

- | | | |
|--|------------------------------------|---|
| 1. (2010) 10 SCC 96, <i>Glanrock Estate (P) Ltd. v. State of T.N.</i> | 722f-g | b |
| 2. (2008) 13 SCC 5, <i>State of Maharashtra v. Bharat Shanti Lal Shah</i> | 721f, 727f-g | |
| 3. (2007) 2 SCC 1, <i>I.R. Coelho v. State of T.N.</i> | 733c | |
| 4. (2005) 3 SCC 212, <i>Govt. of A.P. v. J.B. Educational Society</i> | 726a-b, 726b, 726f-g | |
| 5. (2002) 8 SCC 182, <i>Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.</i> | 730d, 731a, 731e-f | |
| 6. WP (C) No. 8927 of 1988 order dated 12-8-1997 (All), <i>Rajiv Sarin v. State of U.P.</i> | 714f, 715f-g | c |
| 7. 1995 Supp (2) SCC 187 : 1995 SCC (Cri) 466, <i>P.N. Krishna Lal v. Govt. of Kerala</i> | 728e, 729e-f | |
| 8. (1994) 3 SCC 569 : 1994 SCC (Cri) 899, <i>Kartar Singh v. State of Punjab</i> | 725f | |
| 9. (1985) 3 SCC 661, <i>Gram Panchayat, Jamalpur v. Malwinder Singh</i> | 728e, 728e-f, 729e-f, 729f, 731f-g | |
| 10. (1983) 4 SCC 45 : 1983 SCC (Tax) 248, <i>Hoechst Pharmaceuticals Ltd. v. State of Bihar</i> | 724g-h | d |
| 11. (1983) 1 SCC 177 : 1983 SCC (Cri) 143, <i>T. Barai v. Henry Ah Hoe</i> | 725e-f | |
| 12. (1979) 3 SCC 431 : 1979 SCC (Cri) 691, <i>M. Karunanidhi v. Union of India</i> | 724a-b, 724f, 725e-f, 726b | |
| 13. (1972) 3 SCC 126, <i>Ganga Devi v. State of U.P.</i> | 734a-b, 735f, 735f-g | |
| 14. AIR 1965 SC 632 : (1965) 1 SCR 82, <i>Ranjit Singh v. State of Punjab</i> | 719f-g, 729b-c | e |
| 15. AIR 1955 SC 58, <i>Navinchandra Majaital v. CIT</i> | 721f | |
| 16. AIR 1954 SC 752 : 1954 Cri LJ 1822, <i>Zaverbhai Amaldas v. State of Bombay</i> | 725e-f | |

The Judgment of the Court was delivered by

DR. M.K. SHARMA, J.— The present civil appeal emanates from the judgment and order dated 12-8-1997 passed by the High Court of Judicature of Allahabad in *Rajiv Sarin v. State of U.P.*¹ whereby the Division Bench of the High Court dismissed the writ petition filed by the appellants. Whether the High Court was justified in holding that the appellants were not entitled to any compensation even when their forest land is acquired by the Government, merely because the appellants had not derived any income from the said forest, is one of the several important questions of law which has arisen for consideration in the present appeal. f

2. The appellant's father Shri P. N. Sarin had in the year 1945 acquired proprietary right in an estate known as Beni Tal Fee Simple Estate situated in Pargana Chandpur, Tehsil Karan Prayag, District Chamoli, Uttarakhand (hereinafter referred to as "the property in question") which comprised of g

¹ WP (C) No. 8927 of 1988 order dated 12-8-1997 (All)

a large tracts of forest spanning in and around 1600 acres. On the death of Shri P.N. Sarin in the year 1976 the appellants succeeded to the property in question. By a Gazette Notification dated 21-12-1977 under Section 4-A of the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (hereinafter referred to as “the KUZALR Act”) as amended by U.P. Act 15 of 1978, the rights, title and interest of every hissedar in respect of forest land situated in the specified areas ceased with effect from 1-1-1978 and the same were vested in the State Government.

b 3. A notice issued by the Assistant Collector, Karan Prayag, District Chamoli, under Rule 2 of the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Rules, 1965 (hereinafter referred to as “the KUZALR Rules”) framed under the KUZALR Act was served upon the appellants intimating them that effective from 1-1-1978, the rights, title and interest of hissedar in respect of the property in question had vested in the State Government free from all encumbrances and it invited objections and statement, if any, relating to the compensation qua the property in question.

c 4. Assailing the aforesaid notice issued by the Assistant Collector, the appellants preferred a writ petition under Article 32 of the Constitution before this Court. On 13-12-1978 while disposing the aforesaid writ petition, this Court passed the following order:

d “We are of the opinion that it will be better if the petitioner files a petition under Article 226 of the Constitution in the High Court. This petition is therefore allowed to be withdrawn.”

e 5. Subsequently, on 2-4-1979 the appellants filed objections to the notice issued by the Assistant Collector challenging the vires of the KUZALR Act and also stating that no profit was being made from the property in question. By an order dated 11-4-1988, the Assistant Collector dismissed the objections of the appellants by observing that he had no jurisdiction to consider the legal validity of the KUZALR Act. With regard to the issue of compensation, the Assistant Collector held that since the KUZALR Act does not provide for a method to compute compensation in cases where no income has been derived from the forests, the appellants were not entitled to any compensation.

f 6. Feeling aggrieved, the appellants preferred a writ petition in the High Court of Judicature of Allahabad questioning the legality and validity of the order of the Assistant Collector and also challenging the constitutional validity of Sections 4-A, 18(1)(cc) and 19(1)(b) of the KUZALR Act. By the impugned judgment dated 12-8-1997¹, the High Court dismissed the writ petition.

g 7. Not satisfied with the judgment rendered by the High Court, the appellants preferred a special leave petition in which leave was granted by this Court by order dated 11-9-1998. By an order passed on 11-8-2010, this appeal was directed to be listed before the Constitution Bench. This matter was thereafter listed before the Constitution Bench along with other connected matters wherein also the issue of scope and extent of right under Article 300-A of the Constitution of India was one of the issues to be considered.

h

¹ *Rajiv Sarin v. State of U.P.*, WP (C) No. 8927 of 1988 order dated 12-8-1997 (All)

8. We heard the learned Senior Counsel appearing for the parties in respect of all the contentions raised before us. Before addressing the rival contentions advanced by the parties, it will be useful to throw some light on the relevant legal position which is intrinsically complex and requires a closer examination. a

9. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter to be referred as “the UPZALR Act”) was enacted in the year 1950 and the UPZALR Act was made applicable to the whole of the State of Uttar Pradesh except inter alia the areas of Kumaun and Uttarakhand. The object of the UPZALR Act as quite evident from its Statement of Objects and Reasons is: b

“to provide for the abolition of the zamindari system which involves intermediaries between the tiller of the soil and the State in Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition and to make provision for other matters connected therewith”. c

10. Subsequently, on 2-8-1960 the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 was enacted. The object of the KUZALR Act is to provide for the acquisition of the rights, title and interests of persons between the State and the tiller of the soil in certain areas of Kumaun and Garhwal Divisions and for the introduction of land reforms therein. It is important to notice that the original KUZALR Act did not provide for vesting of private forests, and the definition of the word “land” in Section 3(10) thereof excluded forest. d

11. Section 3(10) of the KUZALR Act reads as follows:

“3. (10) ‘land’ means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming but shall not include a forest;” e

12. However, after the commencement of the Constitution (Forty-second Amendment) Act, 1976 which came into effect from 3-1-1977 wherein inter alia the subject “forests” was included in the Concurrent List of the Seventh Schedule to the Constitution as Entry 17-A; the Uttar Pradesh Zamindari Abolition Laws (Amendment) Act, 1978 (U.P. Act 15 of 1978) was passed on 30-11-1977 whereby the KUZALR Act was amended. In the Preamble and Statement of Objects and Reasons necessitating the amendment, it is stated that the Amendment Act amends the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 also. It goes on to state that in the areas governed by the principal Act, namely, the Uttar Pradesh Zamindari Abolition and Land Reforms Act, the rights, title and interest of ex-intermediaries in respect of their private forests were abolished and vested in the State. It also states that in the areas to which the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 apply, the hissedars (intermediaries) continued to enjoy their rights in respect of their private forests and therefore it was necessary to remove the disparity as well by introducing an amendment in the nature of Section 4-A. Under the aforesaid amendment to the KUZALR Act, Section 4-A was added to the KUZALR Act and private forests were brought within its purview. f
g
h

718

SUPREME COURT CASES

(2011) 8 SCC

Constitution. It was further contended that the said Amendment Act would be invalid since the mere transfer of the private forests to the State would by itself not be a public purpose and, furthermore, non-grant/total absence of compensation to the appellants, while granting full compensation to other owners of private forests who have mismanaged the forests or clear-felled the forests, would be violative of Article 14 of the Constitution. a

19. Per contra Shri Parag P. Tripathi, learned Additional Solicitor General strenuously argued that that the entry “acquisition and requisitioning of property” which was earlier in the form of Schedule VII List II Entry 36 of the Constitution (which was subject to Schedule VII List III Entry 42 of the Constitution) and Schedule VII List I Entry 33 of the Constitution provided only the field of legislative power and did not extend to providing or requiring compensation. The requirement of compensation in the event of “taking” flows only from Article 31(2) of the Constitution, which was repealed by the Constitution (Forty-fourth Amendment) Act, with effect from 20-6-1979. b c

20. As far as the question of alleged discrimination i.e. giving compensation to other owners and nil compensation to the appellants herein is concerned, it was contended by the learned Additional Solicitor General that merely because there may be two compensation laws, which may be applicable, one of which provides for a higher compensation than the other, would not by itself make the provisions discriminatory or violative of Article 14 of the Constitution. d

21. It is settled law that agrarian reforms fall within Schedule VII List II Entry 18 read with List III Entry 42 of the Constitution.

22. In the instant case, it cannot be denied that the KUZALR Act, 1960 is a statutory enactment, dealing with the agrarian reforms. Section 4 of the KUZALR Act provides that in respect of non-forest land, the State Government may by notification take over the rights, title and interests of a hissedar. The land so released is then dealt with by giving bhumidhari rights/asami rights to the tillers and thereby effectuating the purpose of agrarian reforms. e

23. It is important to notice that Section 4-A introduced in the KUZALR Act by the U.P. Amendment Act, 1978 does not require any notification but it specifies the date i.e. 1-1-1978 and provides that the rights, title and interest of a hissedar in respect of forest land shall cease and vest by the application of the statute itself in the State Government. Section 8 of the KUZALR Act mandates that such “hissedar” becomes by operation of the statute a “bhumidhar”. The aforesaid amendment was introduced by way of amendment so as to bring the said Act in parity with the principal Act, namely, the U.P. Zamindari Abolition and Land Reforms Act wherein the rights, title and interest of an intermediary (hissedar) were abolished and vested with the State from the very inception of the said Act as such provision was part of the principal Act itself. f g h

24. Further, Rule 41 of the KUZALR Rules, 1965 framed under the KUZALR Act declares that the forests belonging to the State shall be managed
 a by “gaon sabha or any other local authority established” upon a notification issued by the State Government.

25. Rule 41 of the KUZALR Rules, 1965 reads as follows:

“41. Management of land and things belonging to State.—At any time after the appointed date, the State Government, may, by notification published in the Gazette, declare that as from the date to be specified, all or
 b any of the following things, namely—

(i) lands, whether cultivable or otherwise, except land for the time being comprised in any holding or grove,

(ii) forests,

(iii) trees, other than trees in a holding or in a grove or in abadi,

(iv) fisheries,

c (v) haats, bazaars and melas, except haats, bazaars and melas held on land referred to in Section 7 or which is for the time being comprised in the holding of a bhumidhar, and

(vi) tanks, ponds, ferries, water channels, pathways and abadi sites;

d belonging to the State, shall be managed by the gaon sabha or any other local authority established for the whole or part of the village in which the things specified in clauses (i) to (vi) are situate, subject to and in accordance with the provisions of Chapter VII of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, and the Rules made thereunder, as applicable to Kumaun and Uttarakhand Divisions:

e Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions or conditions as may be specified in the notification.”

26. This being so, it clearly brings out that the vesting of forest land under the KUZALR Act is directly linked with the agrarian reforms, as the land as also the forest are managed by the gaon sabha or any local authority dealing with the rights of villagers for betterment of village economy. So, where the land acquired by the State is to be transferred to a gaon
 f sabha/village panchayat for its management and use of land leading to betterment of village economy, the legislation is in the nature of agrarian reforms.

27. The aforesaid conclusions arrived at by us find support from the Constitution Bench decision of this Court in *Ranjit Singh v. State of Punjab*². In the said decision, the Constitution Bench has stated thus: (AIR p. 638,
 g para 13)

“13. ... The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few, on the other, but envisages also the raising of economic standards and bettering rural health and social conditions.
 h

Provisions for the assignment of lands to Village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds, etc. enure for the benefit of rural population and must be considered to be an essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of land to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the Village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands.”

28. It is true that Section 4-A of the KUZALR Act, 1960, as amended by the U.P. Amendment Act, 1978, provides that Chapter II and Chapter V of the KUZALR Act would apply mutatis mutandis and Rule 41 of the KUZALR Rules is relatable to Chapter IV of the KUZALR Act. However, the necessary consequence of Section 4-A of the KUZALR Act is that the forest land vests in the State and all that Rule 41 of the KUZALR Rules does is to provide how the lands vested in the State including forest and non-forest land is to be dealt with. Thus, Rule 41 of the KUZALR Rules clearly applies to forest lands as it has been specifically so mentioned in the said Rules as well which are vested in the State under Section 4-A of the KUZALR Act and therefore have become the land/property of the State, which would be managed by the gaon sabha.

Repugnancy and Article 254 of the Constitution

29. The learned Senior Counsel appearing for the appellants raised two contentions in the context of the interrelation of the Forest Act, 1927 and the KUZALR Act; firstly, the case of alleged discrimination inasmuch as the Central Act i.e. the Forest Act provides for compensation under the Land Acquisition Act, 1894, which is higher; and secondly, the case of alleged repugnancy.

30. It was submitted that the provisions of Section 18(1)(cc) read with Section 19(1)(b) of the KUZALR Act as amended by the U.P. Amendment Act, 1978 are repugnant to Section 37 and Section 84 of the Forest Act, 1927, insofar as no compensation is provided for under the U.P. Amendment Act, 1978 for private forests which are preserved and protected through prudent management, while a private forest which is neglected or mismanaged to which Section 36 of the Forest Act, 1927 applies, can be acquired under the Land Acquisition Act, 1894 by paying market value and solatium.

31. However, per contra the learned Additional Solicitor General appearing for the respondents contended that the issue of repugnancy does not arise at all in the instant case as there is in fact no repugnancy between the Central Act i.e. the Forest Act, 1927 and the KUZALR Act inasmuch as the Central Act and the KUZALR Act in pith and substance operate in different subject-matters.

32. It was submitted by the learned Additional Solicitor General that once the pith and substance of the aforesaid two legislations viz. the KUZALR Act and the Forest Act, 1927 is examined, the following picture would emerge: firstly, the KUZALR Act is an enactment under Schedule VII List II

a Entry 18 i.e. “land” read with List III Entry 42 of the Constitution. It was further submitted that at the highest, it can be said that the KUZALR Act is relatable to Schedule VII List II Entry 18 and List III Entry 42 of the Constitution and if at all, only incidentally trenches in the legislative field of Schedule VII List III Entry 17-A of the Constitution; and secondly, the Forest Act, 1927 on the other hand, is in pith and substance a legislation under Schedule VII List III Entry 17-A i.e. “forests” read with List III Entry 42 of the Constitution.

b **33.** It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule to the Constitution. Under Article 254 of the Constitution, a State law passed in respect of a subject-matter comprised in List III i.e. the Concurrent List of the Seventh Schedule to the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only in a situation if both the laws i.e. one made by the State Legislature and another made by Parliament cannot exist together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other and it is impossible without disturbing the other provision, or conflicting interpretations resulted into, when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by Parliament and of State Legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject-matter or different.

f **34.** It is by now a well-established rule of interpretation that the entries in the lists being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach. This Court in *Navinchandra Mafatlal v. CIT*³ and *State of Maharashtra v. Bharat Shanti Lal Shah*⁴ held that each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. In those decisions it was also reiterated that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature.

g **35.** As and when there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it would also be necessary for the courts to examine the true nature and character of the enactment, its object, its scope and effect to find out whether the enactment in question is

h ³ AIR 1955 SC 58

⁴ (2008) 13 SCC 5

genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme.

36. In the aforesaid context we now proceed to examine the nature and character of the KUZALR Act and examine and scrutinise the same in the context of the Central Act, namely, the Forest Act, 1927. a

37. As noted hereinbefore, Section 4-A was introduced in the KUZALR Act by an amendment in the year 1978 as a part of agrarian reforms and not by a separate enactment, as was done in the case of the U.P. Private Forests Act, 1948. Significantly, the agrarian reforms introduced by the UPZALR Act were not brought about by amending the U.P. Private Forests Act, 1948. It is to be noticed that the Forest Act, 1927 and the U.P. Private Forests Act, 1948 deal broadly with the same field of, inter alia conservation, regulation, etc. of forests. It is to be further noticed that the UPZALR Act and after the 1978 amendment, the KUZALR Act do not deal with conservation or regulation of forests but with agrarian reforms. In order to find out the subject-matter of an enactment, even in the context of enactments relatable to Schedule VII List III of the Constitution, passed by different legislatures, the doctrine of pith and substance can be relied upon and would apply. b

38. As discussed hereinbefore the KUZALR Act is a law principally relatable to Schedule VII List II Entry 18 (land) read with List III Entry 42 of the Constitution and only incidentally trenches upon “forests” i.e. Schedule VII List III Entry 17-A of the Constitution. This is so because it is an enactment for agrarian reforms and so the basic subject-matter is “land”. Since the land happens to be forest land, it spills over and incidentally encroaches on Entry 17-A i.e. “forests” as well. On the other hand, the Central Act i.e. the Forest Act, 1927 is relatable to Entry 17-A read with Entry 42, both of List III of Schedule VII to the Constitution. It is in pith and substance relatable to Entry 17-A, as it deals with “forests” and not with “land” or any other subject. It only incidentally spills over in the field of Entry 42, as it deals with “control over forest land and not property of the Government” and in that context Section 37, as an alternative to management of forests under Section 36 of the Forest Act, 1927, deals with the grant of power to acquire land under the Land Acquisition Act, 1894. c

39. This Court in *Glanrock Estate (P) Ltd. v. State of T.N.*⁵ observed in para 45 of the judgment as follows: (SCC p. 113) d

“45. ... we are of the view that the requirement of public purpose and compensation are not legislative requirements of the competence of legislature to make laws under Entry 18, List II or Entry 42, List III, but are conditions or restrictions under Article 31(2) of the Constitution as the said article stood in 1969. ... Lastly, in pith and substance, we are of the view that the Janmam Act (24 of 1969) was in respect of ‘land’ and ‘land tenure’ under Entry 18, List II of the Constitution.” e

40. It is quite clear that the KUZALR Act relates to agrarian reforms and therefore it deals with the “land”; however, the Central Act i.e. the Forest Act, f

1927 deals with “forests” and its management, preservation and levy of royalty/fees on forest produce. The KUZALR Act further provides for statutory vesting i.e. statutory taking over of the property of hissedar, which happens to be 1-1-1978 i.e. the statutorily fixed date. Therefore, this forest land becomes the property of the State Government and is dealt with like land, which is acquired under Section 4-A of the KUZALR Act. This emerges from a reading of Rule 41 of the KUZALR Rules itself. Further, the acquisition under the KUZALR Act is a case of “taking” upon payment of an amount, which is not intended to be the market price of the rights acquired. On the other hand, the power of acquisition under Section 37 of the Forest Act, 1927 i.e. the Central Act is an acquisition based on the principles of public purpose and compensation.

41. Thus, not only do the aforesaid Acts relate to different subject matters, but the acquisitions mentioned therein are conceptually different.

42. The Central Act i.e. the Forest Act, 1927 mainly deals with the management, preservation and levy of royalty on transmit of forest produce. The Forest Act, 1927 also incidentally provides for and empowers the State Government to acquire any land which might be required to give effect to any of the purposes of the Act, in which case such land could be acquired by issuing a notification under Section 4 of the Forest Act, 1927. This however is to be understood as an incidental power vested in the State Government which could be exercised for giving effect to the purposes of the Forest Act, 1927. While considering the issue of repugnancy what is required to be considered is the legislation in question as a whole and to its main object and purpose and while doing so incidental encroachment is to be ignored and disregarded.

43. In fact, it is the U.P. Private Forests Act, 1948, which is an enactment relatable to Schedule VII List III Entry 17-A i.e. forests, read with List III Entry 42 to the Constitution i.e. acquisition to the extent of “vested” forests. It is this Act which covers a field similar to that of the Central Act and therefore, sought and obtained the permission of the President under Section 76 of the Government of India Act.

44. Thus, in the State, there are two Acts, which are applicable viz. the U.P. Private Forests Act, 1948, which is in the same field as the Central Act i.e. the Forest Act, 1927 and the KUZALR Act, which is in respect of a different subject-matter.

45. For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a “repugnancy” between a Central and State Act; and secondly, the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intention of both the legislations and whether such dominant intentions of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract

the doctrine of repugnancy. In a nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject.

46. Repugnancy in the context of Article 254 of the Constitution is understood as requiring the fulfilment of a “triple test” reiterated by the Constitutional Bench in *M. Karunanidhi v. Union of India*⁶, which reads as follows: (SCC p. 444, para 24)

“24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.”

In other words, the two legislations must cover the same field. This has to be examined by a reference to the doctrine of pith and substance.

47. In the instant case, the KUZALR Act deals with agrarian reforms and in the context deals with the private forests, this vests with the State and would therefore be managed by the gaon sabha. The Forest Act, 1927 which is the existing Central law, has nothing to do with agrarian reforms but deals with forest policy and management, and therefore is in a different field. Further, there is no direct conflict or collision, as the Forest Act, 1927 only gives an enabling power to the Government to acquire forests in accordance with the provisions of the Land Acquisition Act, 1894, whereas the KUZALR Act results in vesting of forests from the dates specified in Section 4-A of the KUZALR Act. Consequently, it could be deduced that none of the aforesaid three conditions as mentioned in the decision of *M. Karunanidhi case*⁶ is attracted to the facts of the present case.

48. The only other area where repugnancy can arise is where the superior legislature, namely, Parliament has evinced an intention to create a complete code. This obviously is not the case here, as admittedly even earlier, assent was given under Section 107(2) of the Government of India Act by the Governor General to the U.P. Private Forests Act, 1948.

49. This Court succinctly observed as follows in *Hoechst Pharmaceuticals Ltd. v. State of Bihar*⁷, at p. 88: (SCC para 67)

“67. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law

⁶ (1979) 3 SCC 431 : 1979 SCC (Cri) 691

⁷ (1983) 4 SCC 45 : 1983 SCC (Tax) 248

with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is ‘repugnant’ to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the ‘same matter’. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together. (See *Zaverbhai Amaldas v. State of Bombay*⁸; *M. Karunanidhi v. Union of India*⁶ and *T. Barai v. Henry Ah Hoe*⁹.)”

50. Again a five-Judge Bench of this Court while discussing the said doctrine in *Kartar Singh v. State of Punjab*¹⁰ observed as under: (SCC p. 630, para 60)

“60. This doctrine of ‘pith and substance’ is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to

⁸ AIR 1954 SC 752 : 1954 Cri LJ 1822

⁶ (1979) 3 SCC 431 : 1979 SCC (Cri) 691

⁹ (1983) 1 SCC 177 : 1983 SCC (Cri) 143

¹⁰ (1994) 3 SCC 569 : 1994 SCC (Cri) 899

be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden.” a

51. Further, in *Govt. of A.P. v. J.B. Educational Society*¹¹ this Court while explaining the scope of Articles 246 and 254 of the Constitution and considering the proposition laid down by this Court in *M. Karunanidhi case*⁶ with respect to the situations in which repugnancy would arise, held as follows at pp. 219-20: (*J.B. Educational Society case*¹¹, SCC paras 9-11) b

“9. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union Legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State Legislature with respect to a matter enumerated in List II of the Seventh Schedule. c

10. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List. d

11. With respect to matters enumerated in List III (Concurrent List), both Parliament and the State Legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State Legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.” e

Thereafter, this Court, in para 12, held that the question of repugnancy between Parliamentary legislation and the State legislation could arise in the following two ways: (*J.B. Educational Society case*¹¹, SCC p. 220) f

“12. ... First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1). Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained the President’s assent, prevails in that State; g

11 (2005) 3 SCC 212

6 *M. Karunanidhi v. Union of India*, (1979) 3 SCC 431 : 1979 SCC (Cri) 691

a
b
c
d
e
f
g
h

As
TRUE COPY

this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation.”

- a **52.** The aforesaid position makes it quite clear that even if both the legislations are relatable to List III of the Seventh Schedule to the Constitution, the test for repugnancy is whether the two legislations “exercise their power over the same subject-matter...” and secondly, whether the law of Parliament was intended “to be exhaustive to cover the entire field”. The answer to both these questions in the instant case is in the negative, as the
- b Forest Act, 1927 deals with the law relating to forest transit, forest levy and forest produce, whereas the KUZALR Act deals with the land and agrarian reforms.

- c **53.** In respect of the Concurrent List under the Seventh Schedule to the Constitution, by definition both the legislatures viz. Parliament and the State Legislatures are competent to enact a law. Thus, the only way in which the doctrine of pith and substance can and is utilised in determining the question of repugnancy is to find out whether in pith and substance the two laws operate and relate to the same matter or not. This can be either in the context of the same entry in List III or different entries in List III of the Seventh Schedule to the Constitution. In other words, what has to be examined is whether the two Acts deal with the same field in the sense of the same
- d subject-matter or deal with different matters.

- e **54.** The concept of repugnancy does not arise as far as the American and Canadian Constitutions are concerned, as there is no Concurrent List there, nor is there any provision akin to Article 254 of the Constitution of India. Repugnancy arises in the Australian Constitution, which has a Concurrent List and a provision i.e. Section 107, akin to Article 254 of the Constitution of India.

- f **55.** In the Australian cases, the concept of repugnancy has really been applied in the context of criminal law where for the same offence, there are two inconsistent and different punishments, which are provided and so the two laws cannot coexist together. To put it differently, an area where the two Acts may be repugnant is when the Central Act evinces a clear interest to be exhaustive and unqualified and therefore, occupies the entire field.

56. In a Full Bench decision of this Court in *State of Maharashtra v. Bharat Shanti Lal Shah*^A this Court observed as follows at pp. 23-24: (SCC para 48)

- g “48. Article 254 of the Constitution succinctly deals with the law relating to inconsistency between the laws made by Parliament and the State Legislature. The question of repugnancy under Article 254 will arise when a law made by Parliament and a law made by the State Legislature occupies the same field with respect to one of the matters enumerated in the Concurrent List and there is a direct conflict in two laws. In other words, the question of repugnancy arises only in
- h connection with subjects enumerated in the Concurrent List. In such

situation the provisions enacted by Parliament and the State Legislature cannot unitedly stand and the State law will have to make way for the Union law. Once it is proved and established that the State law is repugnant to the Union law, the State law would become void but only to the extent of repugnancy. At the same time it is to be noted that mere possibility of repugnancy will not make a State law invalid, for repugnancy has to exist in fact and it must be shown clearly and sufficiently that the State law is repugnant to the Union law.”

57. In a nutshell, whether on account of the exhaustive code doctrine or whether on account of irreconcilable conflict concept, the real test is that would there be a room or possibility for both the Acts to apply. Repugnancy would follow only if there is no such room or possibility.

58. Having discussed the law as applicable in the aforesaid manner and upon scrutiny of subject-matters of both the concurrent Acts, it is crystal clear that no case of repugnancy is made out in the present case as both the Forest Act, 1927 and the KUZALR Act operate in two different and distinct fields as pointed out hereinbefore. Accordingly, both the Acts are legally valid and constitutional. That being so, there was no requirement of obtaining any Presidential assent. Consequently, Article 254(2) of the Constitution has also no application in the instant case. However, it would be appropriate to discuss the issue as elaborate argument was made on this issue as well.

Presidential assent and Article 254(2) of the Constitution

59. The issue argued was whether “general assent” can always be sought and obtained by the State Government. Reference was made to a Constitutional Bench decision of this Court in *Gram Panchayat, Jamalpur v. Malwinder Singh*¹² which was subsequently further interpreted and followed in *P.N. Krishna Lal v. Govt. of Kerala*¹³.

60. In *Jamalpur case*¹² the Constitution Bench observed as follows at pp. 670-71: (SCC paras 13-14)

“13. This situation creates a conundrum. The Central Act of 1950 prevails over the Punjab Act of 1953 by virtue of Article 254(1) of the Constitution read with Entry 41 of the Concurrent List; and, Article 254(2) cannot afford assistance to reverse that position since the President’s assent, which was obtained for a specific purpose, cannot be utilised for according priority to the Punjab Act. Though the law made by Parliament prevails over the law made by the State Legislature, the interest of the evacuees in the Shamlat-deh lands cannot be dealt with effectively by the Custodian under the Central Act, because of the peculiar incidents and characteristics of such lands. The unfortunate result is that the vesting in the Custodian of the evacuee interest in the Shamlat-deh lands is, more or less, an empty formality. It does not help the Custodian to implement the provisions of the Central law but, it excludes the benign operation of the State law.

¹² (1985) 3 SCC 661

¹³ 1995 Supp (2) SCC 187 : 1995 SCC (Cri) 466

a 14. The line of reasoning of our learned Brother, Chinnappa Reddy, J. affords a satisfactory solution to this constitutional impasse, which we adopt without reservation of any kind. The pith and substance of the Punjab Act of 1953 is 'Land' which falls under Schedule VII List II Entry 18 (State List) to the Constitution. That Entry reads thus:

b '18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonisation.'

c Our learned Brother has extracted a passage from a decision of a Constitution Bench of this Court in *Ranjit Singh v. State of Punjab*² which took the view that since, the Punjab Act of 1953 is a measure of agrarian reform, it would receive the protection of Article 31-A. It may be recalled that the Act had received the assent of the President as required by the first proviso to that article. The power of the State Legislature to pass laws on matters enumerated in the State List is exclusive by reason of the provision contained in Article 246(3). In a nutshell, the position is that Parliament has passed a law on a matter which falls under Entry 41 of the Concurrent List, while the State Legislature has passed a law which falls under Entry 18 of the State List.

d The law passed by the State Legislature, being a measure of agrarian reform, is conducive to the welfare of the community and there is no reason why that law should not have effect in its full amplitude. By this process, the Village Panchayats will be able to meet the needs of the village community and secure its welfare. Accordingly, the Punjab Act of 1953 would prevail in the State of Punjab over the Central Act of 1950, even insofar as Shamlat-deh lands are concerned."

e

61. Following the ratio of *Jamalpur case*¹² this Court in *P.N. Krishna Lal v. Govt. of Kerala*¹³ observed as follows at pp. 199-200: (*P.N. Krishna Lal case*¹³, SCC para 14)

f "14. In *Jamalpur Gram Panchayat case*¹² the facts were that specific assent of the President was sought, namely, Article 31 and Article 31-A of the Constitution vis-à-vis Schedule VII List II Entry 18 of the Constitution. The President had given specific assent. The Shamlat-deh lands in Punjab were owned by the proprietors of the village, in proportion to their share in the property of the lands held by them. After the partition, the proprietary interests in the lands of the migrants and proportionate to share of their lands vest in the Union of India. The question arose whether the Punjab Village Common Lands (Regulation) Act, 1953 prevails over the Evacuee Property Act, 1950. It was contended that in view of the assent given by the President, the State Act prevails over the Central Act. This Court in that context considered the scope of the limited assent. Chandrachud, C.J. speaking for majority,

g

h 2 AIR 1965 SC 632 : (1965) 1 SCR 82

12 *Gram Panchayat, Jamalpur v. Malwinder Singh*, (1985) 3 SCC 661

13 1995 Supp (2) SCC 187 : 1995 SCC (Cri) 466

730

SUPREME COURT CASES

(2011) 8 SCC

held that the Central Act, 1950 prevails over the Punjab Act, 1953 and the assent of the President which was obtained for a specific purpose cannot be utilised for according precedence to the Punjab Act. At SCR p. 42, placita 'B' to 'E', this Court held that: (SCC p. 669, para 12) a

‘12. ... The assent of the President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, *there is any special reason for doing so*. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise.’ (emphasis in original) b

Thus it is clear that this Court did not intend to hold that it is necessary that in every case the assent of the President in specific terms had to be sought and given for special reasons in respect of each enactment or provision or provisions. On the other hand, the observation clearly indicates that if the assent is sought and given in general terms it would be effective for all purposes. In other words, this Court observed that the assent sought for and given by the President in general terms could be effective for all purposes unless specific assent is sought and given in which event it would be operative only to that limited extent.” c

62. Further, in *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.*¹⁴ this Court made it clear that it was not considering whether the assent of the President was rightly or wrongly given; and whether the assent given without considering the extent and the nature of the repugnancy should be taken as no assent at all. It observed as follows at p. 204: (SCC para 27) d

“27. In this case, we have made it clear that we are not considering the question that the assent of the President was rightly or wrongly given. We are also not considering the question that—whether ‘assent’ given without considering the extent and the nature of the repugnancy should be taken as no assent at all. Further, in the aforesaid case, before the Madras High Court also the relevant proposal made by the State was produced. The Court had specifically arrived at a conclusion that Ext. P-12 shows that Section 10 of the Act has been referred to as the provision which can be said to be repugnant to the provisions of the Code of Civil Procedure and the Transfer of Property Act, which are existing laws on the concurrent subject. After observing that, the Court has raised the presumption. We do not think that it was necessary to do so. In any case as discussed above, the essential ingredients of Article 254(2) are: (1) mentioning of the entry/entries with respect to one of the matters enumerated in the Concurrent List; (2) stating repugnancy to the provisions of an earlier law made by Parliament and the State law and reasons for having such law; (3) thereafter it is required to be reserved for consideration of the President; and (4) receipt of the assent of the President.” e

f

g

h

63. It is in this context, that the finding of this Court in *Kaiser-I-Hind (P) Ltd.*¹⁴ at para 65 becomes important to the effect that “pointed attention” of the President is required to be drawn to the repugnancy and the reasons for having such a law, despite the enactment by Parliament, has to be understood. It summarises the point as follows at pp. 215-16 as follows:

“65. The result of the foregoing discussion is:

1. It cannot be held that the summary speedier procedure prescribed under the PP Eviction Act for evicting the tenants, sub-tenants or unauthorised occupants, if it is reasonable and in conformity with the principles of natural justice, would abridge the rights conferred under the Constitution.

2. (a) Article 254(2) contemplates ‘reservation for consideration of the President’ and also ‘assent’. Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by Parliament and the contemplated State legislation and the reasons for having such law despite the enactment by Parliament.

(b) The word ‘assent’ used in clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.

(c) In case where it is not indicated that ‘assent’ is qua a particular law made by Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.

3. Extending the duration of a temporary enactment does not amount to enactment of a new law. However such extension may require the assent of the President in case of repugnancy.”

64. If it is to be contended that *Kaiser*¹⁴ lays down the proposition that there can be no general Presidential assent, then such an interpretation would be clearly contrary to the observation of the Bench in para 27 itself where it states that it is not examining the issue whether such an assent can be taken as an assent.

65. Such an interpretation would also open the judgment to a charge of being, with respect, per incuriam as even though while noting the *Jamalpur case*¹², it overlooks the extracts in *Jamalpur case*¹² dealing with the aspect of general assent: (SCC p. 669, para 12)

“12. ... The assent of the President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, as in the instant case, the assent of the President

¹⁴ *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.*, (2002) 8 SCC 182
¹² *Gram Panchayat, Jamalpur v. Malwinder Singh*, (1985) 3 SCC 661

is sought to the law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it.”

Article 300-A of the Constitution and compensation

66. After passing of the Constitution (Forty-fourth Amendment) Act, 1978 which deleted Article 19(1)(f) and Article 31 from the Constitution and introduced Article 300-A in the Constitution, the Constitution (Forty-fourth Amendment) Act inserted in Part XII, a new chapter: “Chapter IV—Right to Property” and inserted a new Article 300-A, which reads as follows:

“300-A. *Persons not to be deprived of property save by authority of law.*—No person shall be deprived of property save by authority of law.”

67. It would be useful to reiterate paras 3, 4 and 5 of the Statement of Objects and Reasons of the Constitution (Forty-fourth Amendment) Act which reads as follows:

“3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be a fundamental right and become only a legal right. Necessary amendments for this purpose are being made to Article 19 and Article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice.

4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.

5. Property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law.”

68. The incident of deprivation of property within the meaning of Article 300-A of the Constitution normally occurred mostly in the context of public purpose. Clearly, any law, which deprives a person of his private property for private interest, will be amenable to judicial review. In the last sixty years, though the concept of public purpose has been given quite wide interpretation, nevertheless, the “public purpose” remains the most important condition in order to invoke Article 300-A of the Constitution.

69. With regard to claiming compensation, all modern Constitutions which are invariably of democratic character provide for payment of compensation as the condition to exercise the right of expropriation. The Commonwealth of Australia Constitution Act, the French Civil Code (Article 545), the Fifth Amendment to the Constitution of USA and the Italian Constitution provided principles of “just terms”, “just indemnity”, “just compensation” as reimbursement for the property taken, have been provided for.

70. Under the Indian Constitution, the field of legislation covering claim for compensation on deprivation of one’s property can be traced to Schedule VII List III Entry 42 of the Constitution. The Constitution (Seventh

a Amendment) Act, 1956 deleted Schedule VII List I Entry 33, List II Entry 36 and reworded List III Entry 42 relating to “acquisition and requisitioning of property”. The right to property being no more a fundamental right, a legislation enacted under the authority of law as provided in Article 300-A of the Constitution is not amenable to judicial review merely for alleged violation of Part III of the Constitution.

b 71. Article 31-A was inserted by the Constitution (First Amendment) Act, 1951 to protect the zamindari abolition laws. The right to challenge laws enacted in respect of the subject-matter enumerated under Articles 31-A(1)(a) to (g) of the Constitution on the ground of violation of Article 14 was also constitutionally excluded. Further, Article 31-B read with the Ninth Schedule to the Constitution protects all laws even if they are violative of Part III of the Constitution. However, it is to be noted that in the Constitutional Bench decision in *I.R. Coelho v. State of T.N.*¹⁵ this Court has held that the laws added to the Ninth Schedule to the Constitution, by violating the constitutional amendments after 24-12-1973, would be amenable to judicial review on the ground like basic structure doctrine.

c 72. It has been contended by the learned Senior Counsel appearing for the appellants that the action taken by the respondents must satisfy the twin principles viz. public purpose and adequate compensation. It has been contended that whenever there is arbitrariness by the State in its action, the provisions of Articles 14, 19 and 21 would get attracted and such action is liable to be struck down. It was submitted that the KUZALR Act does not provide for any principle or guidelines for the fixation of the compensation amount in a situation when no actual income is being derived from the property in question.

d e 73. It was further submitted that the inherent powers of public purpose and eminent domain are embodied in Article 300-A, and Entry 42, List III, “acquisition and requisitioning of property” which necessarily connotes that the acquisition and requisitioning of property will be for a public use and for compensation and whenever a person is deprived of his property, the limitations as implied in Article 300-A as well as Entry 42, List III will come into the picture and the Court can always examine the legality and validity of the legislation in question. It was further submitted that awarding nil compensation is squarely amenable to judicial review under Articles 32 and 226 of the Constitution of India.

f g h 74. It is the case of the State that the statutory scheme under the UPZALR Act, 1950 is provided in Section 39(1)(e) in respect of forests. The said section provides for two methods for computation of compensation, namely, the average annual income of the last 20 to 40 years as provided in Section 39(1)(e)(i) and the estimate of annual yield on the date of vesting as provided in Section 39(1)(e)(ii). It was further argued that in respect of the KUZALR Act, the same U.P. Legislature which had the example of Section 39(1)(e) deliberately dropped the second sub-clause and limited the compensation

734

SUPREME COURT CASES

(2011) 8 SCC

only to the average annual income of the last 20 years. From this it was argued that where there is no annual income, there would be no compensation. a

75. It had been further argued that since the expression “average annual income” under Section 39(1)(e)(i) has already been judicially interpreted in *Ganga Devi v. State of U.P.*¹⁶ to mean “actual” annual income and not an estimate, therefore, if the forest land is not earning any income, then in the statutory formula set out in the KUZALR Act, it would not be entitled to any compensation. b

76. The Government is empowered to acquire land by exercising its various statutory powers. Acquisition of land and thereby deprivation of property is possible and permissible in accordance with the statutory framework enacted. Acquisition is also permissible upon exercise of police power of the State. It is also possible and permissible to acquire such land by exercising the power vested under the Land Acquisition Act. This Act mandates acquisition of land for public purpose or public use, which expression is defined in the Act itself. This Act also empowers acquisition of land for use of companies also in the manner and mode clearly stipulated in the Act and the purpose of such acquisition is envisaged in the Act as not public purpose but for the purpose specifically enumerated in Section 40 of the Land Acquisition Act. But, in case of both the aforesaid manners of acquisition of land, the Act envisages payment of compensation for such acquisition of land and deprivation of property, which is reasonable and just. c

77. Article 31(2) of the Constitution has since been repealed by the Constitution (Forty-fourth Amendment) Act, 1978. It is to be noted that Article 300-A was inserted by the Constitution (Forty-fourth Amendment) Act, 1978 by practically re-inserting Article 31(1) of the Constitution. Therefore, right to property is no longer a fundamental right but a right envisaged and conferred by the Constitution and that also by retaining only Article 31(1) of the Constitution and specifically deleting Article 31(2), as it stood. In view of the aforesaid position the entire concept of right to property has to be viewed with a different mindset than the mindset which was prevalent during the period when the concept of eminent domain was the embodied provision of fundamental rights. But even now as provided under Article 300-A of the Constitution the State can proceed to acquire land for specified use but by enacting a law through State Legislature or by Parliament and in the manner having force of law. d

78. When the State exercises the power of acquisition of a private property thereby depriving the private person of the property, provision is generally made in the statute to pay compensation to be fixed or determined according to the criteria laid down in the statute itself. It must be understood in this context that the acquisition of property by the State in furtherance of the directive principles of State policy is to distribute the material resources of the community including acquisition and taking possession of e

16 (1972) 3 SCC 126 g

As
TRUE COPY h

private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment
 a of market value in lieu of acquired property is not a condition precedent or sine qua non for acquisition. It must be clearly understood that the acquisition and payment of amount are part of the same scheme and they cannot be separated. It is true that the adequacy of compensation cannot be questioned in a court of law, but at the same time the compensation cannot be illusory.

b **79.** Further, it is to be clearly understood that the stand taken by the State that the right, title or interests of a hissedar could be acquired without payment of any compensation, as in the present case, is contrary to the express provisions of the KUZALR Act itself. Section 12 of the KUZALR Act, 1960 states that every hissedar whose rights, title or interest are acquired under Section 4, shall be entitled to receive and be paid compensation.

c Further, Section 4-A of the KUZALR Act makes it clear that the provisions of Chapter II (acquisition and modifications of existing rights in land), including Section 12, shall apply mutatis mutandis to a forest land as they apply to a khaikhari land.

d **80.** Further, the intention of the legislature to pay compensation is abundantly clear from the fact that Section 19 itself prescribes that the compensation payable to a hissedar under Section 12 shall, in the case of private forest, be eight times the amount of average annual income from such forest. In the instant case, income also includes possible income in case of persons who have not exploited the forest and have rather preserved it. Otherwise, it would amount to giving a licence to owners/persons to exploit forests and get huge return of income and not to maintain and preserve it.

e The same cannot be said to be the intention of the legislature in enacting the aforesaid KUZALR Act. **In fact, the persons who are maintaining the forest and preserving it for future and posterity cannot be penalised by giving nil compensation only because of the reason that they in fact chose to maintain the forest instead of exploiting it.**

f **81.** We are of the considered view that the decision of this Court in *Ganga Devi*¹⁶ is not applicable in the present case inasmuch as this Court in *Ganga Devi*¹⁶ never dealt with a situation of unexploited forest and the interpretation of actual income was done in the peculiar facts and circumstances of the said case. The said case does not deal with a situation where there could be such income possible to be derived because it was unexploited but there could be no income derived immediately even if it is used or exploited. Therefore, the said case is clearly distinguishable on facts.
 g

82. A distinction and difference has been drawn between the concept of “no compensation” and the concept of “nil compensation”. As mandated by Article 300-A, a person can be deprived of his property but in a just, fair and reasonable manner. In an appropriate case the court may find “nil compensation” also justified and fair if it is found that the State has
 h

¹⁶ *Ganga Devi v. State of U.P.*, (1972) 3 SCC 126

736

SUPREME COURT CASES

(2011) 8 SCC

undertaken to take over the liability and also has assured to compensate in a just and fair manner. But the situation would be totally different if it is a case of “no compensation” at all.

83. As already held a law seeking to acquire private property for public purpose cannot say that “no compensation” would be paid. The present case is a case of payment of “no compensation” at all. In the case at hand, the forest land which was vested in the State by operation of law cannot be said to be non-productive or unproductive by any stretch of imagination. The property in question was definitely a productive asset. That being so, the criteria to determine possible income on the date of vesting would be to ascertain such compensation paid to similarly situated owners of neighbouring forests on the date of vesting. Even otherwise, the Revenue Authority can always make an estimation of possible income on the date of vesting if the property in question had been exploited by the appellants and then calculate compensation on the basis thereof in terms of Sections 18(1)(cc) and 19(1)(b) of the KUZALR Act.

84. We therefore find sufficient force in the argument of the counsel for the appellants that awarding no compensation attracts the vice of illegal deprivation of property even in the light of the provisions of the Act and is therefore amenable to writ jurisdiction.

85. That being so, the omission of Section 39(1)(e)(ii) of the UPZALR Act, 1950 as amended in 1978 is of no consequence since the UPZALR Act leaves no choice to the State other than to pay compensation for the private forests acquired by it in accordance with the mandate of the law.

86. In view of the above, the present appeal is partly allowed while upholding the validity of the Act and particularly Sections 4-A, 18(1)(cc) and 19(1)(b) of the KUZALR Act, we direct the second respondent i.e. the Assistant Collector to determine and award compensation to the appellants by following a reasonable and intelligible criterion evolved on the aforesaid guidelines provided and in light of the aforesaid law enunciated by this Court hereinabove.

87. The appellants will also be entitled to interest @ six per cent per annum on the compensation amount from the date of dispossession till the date of payment provided possession of the forest was handed and taken over formally by the respondent physically and provided the appellant was totally deprived of physical possession of the forest. However, we would like to clarify that in case the physical/actual possession has not been handed over by the appellants to the State Government or has been handed over at some subsequent date i.e. after the date of vesting, the interest on the compensation amount would be payable only from the date of actual handover/physical possession of the property in question and not from the date of vesting. In terms of the aforesaid findings, the present appeal stands disposed of. No costs.

As
TRUE COPY

ANNEXURE-R3



As
TRUE COPY

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO.54 OF 2023

IN THE MATTER OF:
Ratneshwar Jan Kalyan Samiti

...Applicant

Versus

State of Uttarakhand & Ors.

...Respondents

VAKALATNAMA

KNOW ALL to whom these presents shall come that I Mr. Ajit Sarin, S/o Shri Prem Nath Singh aged about 74 years am the Respondent No.6 herein and I do hereby appoint **MR. ANIRUDH BHATIA (D/3476/2017) AND MR. ROHAN TALWAR (D/4389/2019)** [email -r.pratap.talwar@gmail.com ; anirudhbhatia13@gmail.com]; [Phone: 9871877755; 9810306655] at the address D-336, Defence Colony, New Delhi – 110024; hereinafter called the Advocate to be My/our Advocate's in the above noted case and authorise him :

To act, appear and plead in the above noted case in this court in any other court in which the same may be tried or heard and also in the appellate courts.

To sign, file, verify and present pleading, applications, appeals, cross-objections or petitions for execution, review, revision, withdrawal, compromise or other petition, replies, objections affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents.

To withdraw, or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take out execution proceedings.

To deposit, draw and receive moneys, cheques and grant receipts therefor and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner authorising him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on my/our behalf.

And I/we the undersigned do hereby agree to ratify and confirm acts done by the Advocate or his substitute in the matter my/our own acts as if done by me/us to all intents and purposes.

And I/we undertake that I/we or my/our authorised agent would appear in the court on all hearings and will inform the Advocate for appearance when the case is called.

And I/we the undersigned do hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing, or for any negligence of the said Advocate or his substitute.

And I/we the undersigned do hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. If any costs are allowed for an adjournment, the Advocate would be entitled to the same.

IN WITNESS WHERE OF I/we do hereunto set my/our hand to these presents of which have been understood by me/us this 06 day of May 2023.

ACCEPTED:

D/4389/19 
(ROHAN TALWAR)(ANIRUDH BHATIA)
Advocates
D-336, Defence Colony,
New Delhi – 110024
D/3476/19


CLIENT



BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO.54 OF 2023

IN THE MATTER OF:

Ratneshwar Jan Kalyan Samiti

...Applicant

Versus

State of Uttarakhand & Ors.

...Respondents

VAKALATNAMA

KNOW ALL to whom these presents shall come that I Mr. Rajiv Sarin, S/o Shri Prem Nath Sarin aged about 70 years, am the Respondent No.5 herein and I do hereby appoint **MR. ANIRUDH BHATIA(D/3476/2017) AND MR. ROHAN TALWAR (D/4389/2019)** [email - r.pratap.talwar@gmail.com ; anirudhbhatia13@gmail.com]; [Phone: 9871877755; 9810306655] at the address D-336, Defence Colony, New Delhi - 110024; hereinafter called the Advocate to be My/our Advocate's in the above noted case and authorise him :

To act, appear and plead in the above noted case in this court in any other court in which the same may be tried or heard and also in the appellate courts.

To sign, file, verify and present pleading, applications, appeals, cross-objections or petitions for execution, review, revision, withdrawal, compromise or other petition, replies, objections affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents.

To withdraw, or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take out execution proceedings.

To deposit, draw and receive moneys, cheques and grant receipts therefor and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner authorising him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on my/our behalf.

And I/we the undersigned do hereby agree to ratify and confirm acts done by the Advocate or his substitute in the matter my/our own acts as if done by me/us to all intents and purposes.

And I/we undertake that I/we or my/our authorised agent would appear in the court on all hearings and will inform the Advocate for appearance when the case is called.

And I/we the undersigned do hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing, or for any negligence of the said Advocate or his substitute.

And I/we the undersigned do hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. If any costs are allowed for an adjournment, the Advocate would be entitled to the same.

IN WITNESS WHERE OF I/we do hereunto set my/our hand to these presents of which have been understood by me/us this 04 day of May 2023.

ACCEPTED:

D/4389/19 Rohan Talwar
Anirudh Bhatia
(ROHAN TALWAR)(ANIRUDH BHATIA)
Advocates
D-336, Defence Colony,
New Delhi - 110024
D/3476/17

Rajiv Sarin
CLIENT



03.05.2023

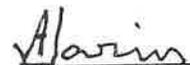
To whomsoever it may concern,

I, Mr. Ajit Sarin, aged about 74 years, son of Late Shri P.N. Sarin residing at B-14, Friends Colony (West), New Delhi – 110065 do hereby authorize Mr. Rajiv Sarin, aged about 70 years, son of Late Shri P.N. Sarin residing at A-132, New Friends Colony, New Delhi – 110025 to undertake the following acts, deeds, things or matters on my behalf in Original Application No. 54 of 2023 pending before the Ld. National Green Tribunal, Principal Bench, New Delhi due to my old age, illnesses and loss of mobility. I am the Respondent No. 6 in the abovementioned Original Application No. 54 of 2023.

Mr. Rajiv Sarin, is authorized to undertake the following acts, deeds, things or matters on my behalf in Original Application No. 54 of 2023 pending before the Ld. National Green Tribunal, Principal Bench, New Delhi :-

- a. To sign any documents including pleadings, affidavits, petitions, complaints, written statements, memoranda of appeals, applications and/or all other papers which may be required;
- b. To engage and appoint any solocitors, advocates, barristers, counsels or other legal practitioners for any proceedings filed on behalf of the Executant;
- c. To depose and give any statement on my behalf in such proceedings;
- d. To compromise, compound or withdraw any petition/ application / appcal / revision / execution / application / agreement / settlement deed, etc. upon such terms and conditions, as may be expedient and necessary;
- e. To file and receive back documents from the Tribunal, and to deposit and withdraw money from the Tribunal and to grant receipt thereof in any such proceedings;

- f. To apply to the Tribunal for certified copies of paper, documents, orders, judgments etc. which may be required for any such proceedings;
- g. To apply for and inspect the records of the Tribunal;
- h. To admit and deny any document including the signature alleged signature of the Executant on such document filed in any such proceedings;
- i. To file process for issue of any summons or notice against any person for appearance or for production of the document in any such proceedings and to accept service of any summons or notice issued against me in or in connection to any such proceedings;
- j. To deposit / receive any sum of money due to the Executant under any decree judgment, order or assessment made by the Tribunal or Authority in any such proceedings;
- k. Generally to do all such acts, deeds or things that may be necessary and expedient in any such proceedings;
- l. To do all or any of the above-mentioned acts, deeds, or things described in Clauses 1(a) to 1(l) for defending any counter proceedings/actions by way of petitions/application/appeals/ revision/ execution application etc. that may be initiated against the Executant arising from or forming part of any such proceedings in relation to the pending litigation.



Mr. Ajit Sarin



Mr. Rajiv Sarin