IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

INDEX

IN

CIVIL MISC. WRIT PETITION (P.I.L) NO. ……....OF 2020

(Under Article 226 of the Constitution of India)

District- Allahabad

Ashwin Duggal and ORS. ….. **Petitioners**

Versus

State of U.P. and ANR. ..… **Respondents**

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Dated: [13/07/2020]

[SHASHWAT ANAND] [ANKUR AZAD]

Advocates

A

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

DATES AND EVENTS

IN

CIVIL MISC. WRIT PETITION (P.I.L) NO. ……....OF 2020

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District- Allahabad

Ashwin Duggal and ORS. ….. **Petitioners**

Versus

State of U.P. and ANR. ..… **Respondents**

S. No.	**Dates**	**Events**
1.	09/03/2020	This Hon'ble Court taking *suo moto* cognizance of the action of the State of U.P. arbitrarily putting up of name-and-shame banners of 50 and odd persons accused of vandalising the public and private properties and causing damages to the same in the month of December, 2019, in full public view along major roadsides and in various public places, seeking compensation from such persons and confiscation of their property upon failure to pay the same, in PIL No. 532 of 2020, **In-Re Banners Placed On The Roadside In The City Of Lucknow**, directed removal of such things forthwith and further directed the State of U.P. not to place such name-and-shame banners on roadside or in other public places. (**Annexure No. 1**)
2.	12/03/2020	Aggrieved, the State of U.P. preferred a Special Leave

		Petition being SLP (Civil) No. 6286/2020, State of U.P. versus High Court of Judicature at Allahabad, wherein the two-Judge Bench of Hon'ble Supreme Court refused to stay the operation of the Order passed by the High Court and directed the matter to be placed before the Hon'ble CJI for constitution of a larger Bench to hear and decide the matter, in the week commencing 16/03/2020. (**Annexure No. 4**)
3.	15/03/2020	In the meantime, on 15/03/2020, in retaliation to the aforesaid developments, in utter haste, the Governor, State of U.P., promulgated the Uttar Pradesh Recovery of Damage to Public and Private Property Ordinance, 2020 (U.P. Ordinance No. 2 of 2020) which is arbitrary, discriminatory and violative of Articles 14, 21 and 254 of the Constitution of India, 1950, the principle of natural justice (*audi alteram partem*) and the Judgment of the Hon'ble Supreme Court in the Adhaar Case (Right to Privacy; Justice K.S.Puttaswamy (Retd.) v. Union of India & ORS.; AIR 2017 SC 4161) and the Right to Live With Human Dignity, and the same is unconstitutional and void.
4.	13/07/2020	Hence, this writ petition.

Dated: [13/07/2020]

[SHASHWAT ANAND] [ANKUR AZAD]

Advocates

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. (URGENCY) APPLICATION NO. …….....OF 2020

(Under Chapter XXII, Rule 1, read with Section 151 of C. P. Code)

OF

Ashwin Duggal and ORS. ….. **Petitioners/Applicants**

IN

CIVIL MISC. WRIT PETITION (P.I.L) NO. ……....OF 2020

(Under Article 226 of the Constitution of India)

District- Allahabad

1. Ashwin Duggal
2. Prashant Kumar
3. Surya Pratap Singh
4. Vikas Bhadauria
5. Sagar Kushwaha

…..PETITIONERS

VERSUS

1. State of U.P., through the Principal Secretary (Home), Ministry of Home Affairs, Secretariat – Lucknow.
2. Ministry of Law and Justice, through the Secretary, Secretariat – Lucknow.

..…RESPONDENTS

APPLICATION FOR URGENT LISITING

TO,

THE HON'BLE THE CHIEF JUSTICE AND

HIS LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE COURT, AFORESAID.

THE HUMBLE APPLICATION ON BEHALF OF THE APPLICANTS ABOVE-NAMED,

MOST RESPECTFULLY, RUNS AS UNDER:

1. That, full facts and circumstances in support of this application have been given in the accompanying writ petition and the affidavit filed in support thereof.

2. That, the Hon'ble Court is drawing its attention on similar writ petitions, wherein notice has been issued to the respondents to file counters, being W/PIL No. 547/2020, W/PIL No. 552/2020, W/PIL No. 566/2020 and other connected matters, fixed for hearing on 16/07/2020, in the Bench of Hon'ble Chief Justice and Hon'ble Saumitra Dayal Singh, JJ. Accordingly, this matter also deserves to be heard and decided by the said Bench in the same hearing, together with other similar petitions listed before it, to avoid multiplicity of proceedings and possibility of inconsistent judgments.

3. That, in the circumstances, this petition is very urgent, in that the dictates of justice clamour its hearing with the other similar petitions, for the reasons aforesaid.

4. That, under the facts and circumstances of the case, it is expedient and necessary in the interests of justice: to allow the matter to be listed on or before 16/07/2020 as Fresh Case in the Bench of Hon'ble Chief Justice and Hon'ble Saumitra Dayal Singh, JJ, so as to be heard and decided with other similar petitions, otherwise the petitioners shall greatly be prejudiced and shall be put to great hardships and irreparable loss; And/or to pass such other and further order(s), in addition to or in substitution for, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer

It is, therefore, humbly prayed that this Hon'ble Court may be graciously be pleased to: Allow the matter to be listed on or before 16/07/2020 as Fresh Case in the Bench of Hon'ble Chief Justice and Hon'ble Saumitra Dayal Singh, JJ, so as to be heard and decided with other similar petitions, otherwise the petitioners shall greatly be prejudiced and shall be put to great hardships and irreparable loss; And/or to pass such other and further order(s), in addition to or

in substitution for, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Dated: [13/07/2020]

[SHASHWAT ANAND] [ANKUR AZAD]

Advocates

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. (INTERIM) APPLICATION NO. …….....OF 2020

(Under Chapter XXII, Rule 1, read with Section 151 of C. P. Code)

OF

Ashwin Duggal and ORS. ….. **Petitioners/Applicants**

IN

CIVIL MISC. WRIT PETITION (P.I.L) NO. ……....OF 2020

(Under Article 226 of the Constitution of India)

District- Allahabad

1. Ashwin Duggal
2. Prashant Kumar
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…..PETITIONERS

VERSUS

1. State of U.P., through the Principal Secretary (Home), Ministry of Home Affairs, Secretariat – Lucknow.
2. Ministry of Law and Justice, through the Secretary, Secretariat – Lucknow.

..…RESPONDENTS

TO,
THE HON'BLE THE CHIEF JUSTICE AND
HIS LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE COURT, AFORESAID.

THE HUMBLE APPLICATION ON BEHALF OF THE APPLICANTS ABOVE-NAMED,

MOST RESPECTFULLY, RUNS AS UNDER:

1. That, full facts and circumstances in support of this application have been given in the accompanying writ petition and the affidavit filed in support thereof.

2. That, under the facts and circumstances of the case, it is expedient and necessary in the interests of justice: to deem and read the term "Ordinance" as "Act," in the event, the impugned Ordinance becomes an Act, during the pendency of instant writ petition, so as to minimize the wastage of paper and rationalize the usage thereof, in order to avoid the additional hassle of filing amendment application(s) to amend the word "Ordinance" and substitute "Act" in place thereof, and the impugned Act/Ordinance may accordingly be declared unconstitutional and void, otherwise the entire society and the petitioners shall be put to great hardships and irreparable loss; And/or to pass such other and further order(s), in addition to or in substitution for, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer

It is, therefore, humbly prayed that this Hon'ble Court may be graciously be pleased to: to deem and read the term "Ordinance" as "Act," in the event, the impugned Ordinance becomes an Act, during the pendency of instant writ petition, so as to minimize the wastage of paper and rationalize the usage thereof, in order to avoid the additional hassle of filing amendment application(s) to amend the word "Ordinance" and substitute "Act" in place thereof, and the impugned Act/Ordinance may accordingly be declared unconstitutional and void, otherwise the entire society and the petitioners shall be put to great hardships and irreparable loss; And/or to pass such other and

further order(s), in addition to or in substitution for, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Dated: [13/07/2020]

[SHASHWAT ANAND] [ANKUR AZAD]

Advocates

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL MISC. WRIT PETITION (P.I.L) NO. ……....OF 2020

(Under Article 226 of the Constitution of India)

District- Allahabad

1. Ashwin Duggal
2. Prashant Kumar
3. Surya Pratap Singh
4. Vikas Bhadauria
5. Sagar Kushwaha

…..PETITIONERS

VERSUS

1. State of U.P., through the Principal Secretary (Home), Ministry of Home Affairs, Secretariat – Lucknow.
2. Ministry of Law and Justice, through the Secretary, Secretariat – Lucknow.

..…RESPONDENTS

WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, 1950 CHALLENGING THE CONSTITUTIONAL VALIDITY OF THE UTTAR PRADESH RECOVERY OF DAMAGE TO PUBLIC AND PRIVATE PROPERTY ORDINANCE, 2020 (U.P. ORDINANCE NO. 2 OF 2020) AND SEEKING A WRIT, ORDER OR DIRECTION, FOR DECLARING THE SAME AS UNCONSTITUTIONAL AND VOID.

TO,
THE HON'BLE THE CHIEF JUSTICE AND
HIS LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE COURT, AFORESAID.

THE HUMBLE PETITION OF THE
PETITONERS ABOVE-NAMED,

MOST RESPECTFULLY SHOWETH:

1. That, this is the first writ petition of the petitioners, filed pro bono publico in this Hon'ble High Court with regard to the cause of action or matter(s) contemplated and the reliefs claimed herein.

2. That, the petitioners have not received any notice of caveat in this matter, lodged by the respondents, jointly or severally, and sent by them directly or on their behalf through their counsel(s).

3. **That, by means of this writ petition, the petitioners are, *inter alia*, challenging:**

The constitutional validity of the Uttar Pradesh Recovery of Damage to Public and Private Property Ordinance, 2020 (U.P. Ordinance No. 2 of 2020) (hereinafter 'name-and-shame Ordinance,' for short) promulgated by the Governor, State of U.P., dt. 15/03/2020, by which the State of U.P. seeks to establish Claims Tribunal, as well as, legal machinery for recovery of damages from the alleged wrongdoers, for destruction/damaging of public and private property, and also provides for publication of personal details (name, address, photograph, etc.), and seeking a writ, order or direction, for declaring the same as unconstitutional and void. A photo copy of the impugned Ordinance dt. 15/03/2020 is germane and the same is being filed herewith and marked as **Annexure No. 1** to this petition.

4. That, the petitioners 1 to 3 are practicing Advocates of this Hon'ble Court, the petitioner no. 4 is a Journalist, while, petitioner no. 5 is a Social Activist, and as such, they are well aware of their rights and duties as public spirited citizens of India and are concerned with the rights of the public generally. The ID Proofs of the petitioners 1 to 4 is **Annexure No. 2** to the instant petition.

5. That, this is a Public Interest Litigation, inasmuch as, the petition is bona fide and purports to genuinely espouse the cause of the public at large, and is in the interest(s) of the public generally, as there are no personal or private interests of the petitioners, of any sorts, involved in the matter(s) contained in the instant writ petition.

Further, there is no authoritative pronouncement by the Supreme Court or High Court on the question(s) raised herein and the result of the litigation shall not lead to any undue gain to the petitioners or anyone associated with them, or any undue loss to the respondents or any person(s), body of persons or the State, or any prejudice to the public at large.

6. **That, the historical and chronological background, of the impugned Ordinance is being succinctly encapsulated as follows:**

6.1. This Hon'ble Court taking *suo moto* cognizance of the action of the State of U.P. arbitrarily putting up of name-and-shame banners of 50 and odd persons accused of vandalising the public and private properties and causing damages to the same in the month of December, 2019, in full public view along major roadsides and in various public places, seeking compensation from such persons and confiscation of their property upon failure to pay the same, in PIL No. 532 of 2020, **In-Re Banners Placed On The Roadside In The City Of Lucknow**, directed removal of such things forthwith and further directed the State of U.P. not to place such name-and-shame banners on roadside or in other public places.

A true copy of the order of the High Court dt. 09/03/2020 is germane and the same is filed herewith and marked as **Annexure No. 3** to instant petition.

6.2. Aggrieved, the State of U.P. preferred a Special Leave Petition being SLP (Civil) No. 6286/2020, State of U.P. versus High Court of Judicature at Allahabad, wherein the two-Judge Bench of Hon'ble Supreme Court refused to stay the operation of the Order passed by the High Court and directed the matter to be placed

before the Hon'ble CJI for constitution of a larger Bench to hear and decide the matter, in the week commencing 16/03/2020.

A true copy of the Order of the Supreme Court dt. 12/03/2020 is germane and the same is being filed herewith and marked as **Annexure No. 4** to this writ petition.

6.3. In the meantime, on 15/03/2020, in retaliation to the aforesaid developments, in utter haste, the Governor, State of U.P., promulgated the impugned name-and-shame Ordinance which is arbitrary, discriminatory and violative of Articles 14, 21 and 254 of the Constitution of India ('the Constitution,' for short), the principle of natural justice (*audi alteram partem*) and the Judgment of the Hon'ble Supreme Court in the Adhaar Case (Right to Privacy; Justice K.S.Puttaswamy (Retd.) v. Union of India & ORS.; AIR 2017 SC 4161) and the Right to Live With Human Dignity, and the same is unconstitutional and void.

7. That, before harping on the *vires* of the impugned Ordinance, with reference to its Title, Preamble and Sections 2(f), S. 6, S. 7, S. 8(7), S. 13, S. 17, S. 19(2), S. 21(1), S. 22, S. 27(4) and S. 28, it is submitted, that in regard to the matter of prevention of damage to public property, the field is already covered by The Prevention of Damages to Public Property Act, 1984 ('1984 Act,' for short), which provides provisions for punishment for the same. Accordingly, the impugned Ordinance is repugnant to the 1984 Act, and as such is void to the extent of repugnancy under Article 254 of the Constitution.

A true copy of the 1984 Act is germane and the same is filed herewith and marked as **Annexure No. 5** to instant petition.

8. That, apart from above, S. 357, S. 357A and S. 357B of the Code of Criminal Procedure, 1973 ('CrPc,' for short), lay down a detailed scheme for

payment of compensation to the victims of the offences, under the Indian Penal Code, 1860 ('IPC,' for short), *inter alia*, the offences mentioned under the head of 'rioting,' being S. 146, S. 148 and S. 152, and the head of 'mischief,' being S. 423, S. 431, S. 436, S. 440, all quoted below for convenience and ready reference:

CrPC:

*"**357. Order to pay compensation:***

***(1)** When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-*

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

***(2)** If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.*

(3) *When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.*

(4) *An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.*

(5) *At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."*

"357A. Victim compensation scheme:

(1) *Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.*

(2) *Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).*

(3) *If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.*

(4) *Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.*

(5) *On receipt of such recommendations or on the application under*

sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
(6) *The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.*

"357B. Compensation to be in addition to fine under Section 326A or Section 376D of Indian Penal Code:

The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A, 376AB, section 376D, 376DA, 376DB of the Indian Penal Code."

IPC:

*"**146. Rioting.**—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."*

*"**148. Rioting, armed with deadly weapon**.—Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

*"**152. Assaulting or obstructing public servant when suppressing riot, etc**.—Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be*

punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

*"**423. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.**—Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

*"**431. Mischief by injury to public road, bridge, river or channel.**—Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."*

*"**436. Mischief by fire or explosive substance with intent to destroy house, etc.**—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

*"**440. Mischief committed after preparation made for causing death or hurt.**—Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."*

Manifestly, with regard to compensation as to public/private property also and punishment for offences such as rioting and mischief, the field of the impugned Ordinance is already occupied by the aforesaid sections of CrPc and IPC. Accordingly, the impugned Ordinance is void, owing to its repugnancy to the said sections under IPC and CrPC.

9. That, it is appropriate to spill some ink over the Preamble and Sections or/and relevant portions thereof, quoted below, of the impugned Ordinance, for convenience and ready reference:

PREAMBLE:

"An Ordinance to deal with all such acts of violence at public places and to control its persistence and escalation and to provide for Recovery of damage to public or private property during hartal, bundh, riots, public commotion, protests or thereof, in respect of property and constitution of claims tribunal to investigate the damages caused and to award compensation related thereto."

SECTIONS:

*"**S. 2(b) "Claims Tribunal"** means a Claims Tribunal constituted under this Ordinance;"*

*"**S. 2(c) "Damages"** means loss, injury, or deterioration, caused by any act or omission by any person to another person or property thereof;"*

*"**S. 2(d) "Mischief"** shall have the same meaning as in Section 425 of the Indian Penal Code;"*

*"**S. 2(e) "Person"** shall have the same meaning as in Section 11 of the Indian Penal Code;"*

*"**S. 2(f) "Private Property"** means a movable or an immovable property owned and controlled by any religious body, society or trust or waqf, which is not public property under clause (f) of section 2 of this Ordinance, or firms over which their owners have exclusive and absolute legal right."*

*"**S. 2(g) "Public Property"** means any property, whether movable or immovable and includes any machinery which is owned by, or in the possession of, or under the control of-*

(I) Central Government; or

(II) State Government; or

(III) any Local Authority; or

(IV) any corporation or a company as defined in Companies Act, 2013, established by, or under, a State Act; or

(V) any institution, concern or undertaking which the State Government may, by notification in the Gazette, specify in this behalf:

Provided that, ..."

*"**S. 6 "Claim petition for private property"** Private property owners, whose property had also been damaged in such incident, after getting a copy of such report from the SHO/SO concerned in such manner **as per rules** to file their Claim petitions for compensation.*

*"**S. 7 "Constitution of Claims Tribunal" (1)** The State Government by notification in the Gazette, constitute one or more damage to property Claims Tribunal hereinafter referred to as Claims Tribunal for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of damages to any public property or private property or both and to perform the functions assigned to it under this Ordinance.*

(2) Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment to Claims Tribunal unless he has been –

(i) A Retd. District Judge (as a Chairman), or

(ii) an officer of Additional Commissioner Rank (as a Member).

(4) ....."

*"**S. 8 "Function and powers of the Claims Tribunal" (7)** The Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.*

The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

*"**S. 9 "Application/Claim Petition for Compensation" (1)** Every application/Claim Petition for compensation shall be filed within three months be accompanied by a fee of rupees twenty five in the form of court-fee stamps."*

*"**S. 13 "Notice to Parties"** The Claims Tribunal shall send to the respondents a copy of application together with a notice of the day on which it will hear the application.*

The tribunal shall proceed ex party against the respondent who failed to appear before the tribunal and the tribunal shall attach the property and direct the authorities to publish the name, address along with photograph with a warning for public at large, not to purchase the property of the respondent."

*"**S. 14 "Appearance of Parties and filing of written statement"** The respondents at or before the first hearing or within such further time as the Claims Tribunal may allow, which shall not be later than thirty days from the date of service of notices, file a written statement dealing with the damages claimed in the claim petition and any such written statement shall form part of the record.*

*"**S. 17 "Adjournment of hearing"** The Claims Tribunal may, for reasons to be recorded, on application of a party or otherwise, adjourn the hearing from time to time. When adjournment is granted on application the Claims Tribunal may, make such order, as it thinks fit, with respect to the costs occasioned by the*

adjournment. In any case not more than three adjournments shall be given to a party:

Provided that the Claims Tribunals shall decide the claim petition expeditiously and in any case within one year of the framing of the issues."

*"**S. 19 "Judgement and Award of compensation" (2)** When compensation is awarded to two or more person, under sub-section (1) the Claims Tribunal shall also specify the amount payable to each of them.*

As soon as the order of recovery is passed the property of the respondent to be attached and authorities shall be directed to publish the name, address along with photograph with a warning for the public at large not to purchase property attached."

*"**S. 21 "Principles relating to assess the amount of damage to property and its liability" (1)** The Principles of absolute liability shall apply once the nexus with the event that precipitated the damage is established.*

*"**S. 28 "Repeal and Savings" (1)** With the promulgation of this Ordinance any other existing law or Government orders corresponding to this Ordinance are hereby cancelled and declared ineffective:*

Provided that ....."

10. That, the impugned Ordinance in the Preamble, *supra*, professes to deal with 'acts of violence at public places and to control its persistence and escalation,' however, contains no provision apart from ones dealing with 'Recovery of damage to public or private property during hartal, bundh, riots, public commotion, protests or thereof, in respect of property.' In the body of the Ordinance, there is no such provision as would purport to 'deal with acts of violence at public places and to control its persistence and escalation'.

11. That, the impugned Ordinance primarily deals with providing for the mechanism for recovery of compensation for damage to public or private

property during hartal, bundh, riots, public commotion, protests or thereof, in respect of property, an exercise which by no stretch of imagination would be a deterrent and/or cause or aid in de-escalation of violence.

It is submitted, that the whole premise upon which the Ordinance is based, i.e., to curtail and stifle acts of violence at public places, is imaginary, sham and illusory, and the said Ordinance is sterile and manifestly arbitrary and deserves to be declared unconstitutional and void.

12. That, the impugned Ordinance has delimited its ambit and scope to the consideration of damages/destruction, in the wake of mob violence, to certain qualified public and private properties, and has left out of its purview, the damages causing bodily injury or death to a person or persons without any reasonable cause, for such classification. Accordingly, the impugned Ordinance arresting the cascading effect of the damages in a narrow sphere is arbitrary, unjust, improper, discriminatory and offensive of Article 14 of the Constitution, and hence void.

13. That, further the impugned Ordinance is discriminatory as it does not include private individual, natural person, Hindu Undivided Family (HUF) and joint family property within the definition of "Private Property" under Section 2(f), quoted *supra*, in the body of the said Ordinance.

In this above context, it is submitted that since the private individuals, natural persons, HUF and joint families are not covered in the said definition, they shall be deprived of their right(s) to claim any compensation and filing Claim petitions under the impugned Ordinance, which is highly unfair, unjust, discriminatory and derogatory of the provisions of Article 14 of the Constitution and the same deserves to be struck down as violative of Art. 14 and declared as unconstitutional and void.

14. That, in addition to the above, the S. 2(f), *supra*, uses the term 'religious' to refer to body, society, trust, waqf, firms, etc., which shows that the impugned Ordinance is further discriminatory against secular and non-religious bodies, societies, trusts, firms, etc., without any rhyme or reason which is contrary to the provisions of Art. 14 of the Constitution and antithetical to the secular basic structure, nature and spirit of the Constitution, and the same deserves to be struck down and declared unconstitutional and void.

15. That, impugned Ordinance looks at damages, which is transcendental of religion, through the prism of religion, i.e. "property owned and controlled by religious body,..." is against the secular ethos of our Constitution and its basic structure.

16. That, the impugned Ordinance, as is clear from its Title, has been designed, *inter alia*, to assess damages caused to the public and private property during riots, bunds, hartals, etc. by wrongdoers and award compensation, related thereto, to the person(s) wronged. Further, the Preamble to the impugned Ordinance, in no ambiguous terms, amongst other things, declares that the impugned Ordinance is a piece of document for assessment and recovery of damages caused to public or private property, during such incident, without any qualification.

On the contrary S.2(f) of the Ordinance which has defined "private property," charged with the vice of religious fervour, as a movable or immovable property owned by any religious body, of one part, and by Society, Waqf or Trust, or Firm, of the other one, exclusive of the property owned and controlled by any irreligious or non-religious owners of property, without there being any intelligible differentia, i.e., behind such a classification. Significantly, damages, occasioned in the same transaction, are damages and damages alone,

they cannot be dichotomized, in relation to and for the purposes of recovering them, notwithstanding the nature of property whether public or private, religious or irreligious, unless there is an admissible legal formula. In this view of the matter, impugned Ordinance, muchless, S. 2(f) thereof is arbitrary, discriminatory and violative of Arts. 14, 15 and also against the secular ethos of Constitution, and as such is unconstitutional and void.

17. That, S. 3, quoted *supra*, of the impugned Ordinance enjoins the Govt. authorized official to take steps to file a claim petition for compensation before the Claims Tribunal, preferably, within three months of the date of causing of the damage to the public property on the basis of the report of the concerned Circle Officer which is based on the First Information Report of the incident and other information gathered in the meantime, while as per S. 6 of the impugned ordinance, private property (S. 2(f)) owners may file claim petitions for compensation on the basis of such report having been obtained from the SHO/SO. However, these benefits are not available to the rest of the public generally, whose property has been vandalized and destroyed by act of outraged mob, referred to in the Preamble. Manifestly, the said Sections are discriminatory, unreasonable and arbitrary without any lawful excuse or differentia and as such offensive of Art. 14 of the Constitution.

18. That, by S. 7, quoted *supra*, of the impugned Ordinance, the legislature has conferred uncanalized power on the State Govt. to constitute Claims Tribunal, consisting of two or more members, without fixing maximum number of members, one of them being its Chairman who must be a Retd. District Judge and the remaining ones must be officers of the Additional Commissioner rank, giving an undue opportunity to the Executive to hold its dominance over the Claims Tribunal which is a substitute, or an alternative of Civil Court. Apparently, S. 7(2) is designed in such a way so as to trench upon the field of

the judiciary which is against the doctrine of separation of powers which is basic structure of our Constitution. Accordingly, S. 7(1) and S. 7(2) which are against the doctrine of separation of powers of our Constitution are liable to be struck down.

19. That, further, the setting up of the Tribunal in the manner, *supra*, constitutes a direct contravention of the basic structure doctrine of separation of powers, as laid down in Keshvananda Bharti v. State of Kerela, and also being an encroachment on the judicial domain, is not permissible in law as laid down by the decision of the Supreme Court in **Roger Matthew v. South Indian Bank Ltd.** (2019 SCC Online SC), the relevant portion of which reads as:

> *"163. We are in agreement with the contentions of the Learned Counsel for the petitioner(s), that the lack of judicial dominance in the Search-cum-Selection Committee is in direct contravention of the doctrine of separation of powers and is a encroachment on the judicial domain. The doctrine of separation of powers has been well recognized and re-interpreted by this Court as an important facet of the basic structure of the Constitution, in its dictum in Keshvananda Bharti v. State of Kerela, and several other decisions. The exclusions of the Judiciary from the control and influence of the Executive is not limited to traditional Courts alone, but also includes Tribunals since they are formed as an alternative to Courts and perform judicial functions."*

20. That, in addition to above, upon a bare perusal of the name-and-shame Ordinance it is deducible that there is no intelligible differentia behind the constitution of a separate Tribunal under the said Ordinance, when all the requisite powers of dealing with the situation(s) are well within the domain of the Civil and the Criminal Courts, and as such no specific or defined class of offences has been made out for the Tribunal to be constituted to deal with,

along with there being no distinguished need or emergent situation for the creation of such Tribunal, for instance, speedy disposal (to be dealt with hereinafter at appropriate place(s)), etc.

Thus, the impugned Ordinance is untenable in law, owing to having no intelligible differentia and as such being violative of Article 14, and being arbitrary, unconstitutional and void.

21. That, S. 8(7), *supra*, of the impugned Ordinance confers discretionary power on the tribunal to follow such summary procedure, subject to rules, as it thinks fit, while, S. 14 lays down provision for filing written statement on or before the first hearing or within such further time as the Claims Tribunal may allow, which shall not be later than thirty days from the date of service of notice; that, S. 17, empowers the Claims Tribunal to adjourn the hearing of the claims from time to time and in any case decide the claim petition, in any case, within one year of the framing of the issue; The S.19 mandates the Claims Tribunal to record concisely in Judgment the reasons for the finding on each of the issue framed and the reasons for such findings. Manifestly, the impugned Ordinance contemplates two procedures, being (1) Ordinary Procedure, and the (2) Special Procedure, namely Summary Procedure to be followed by the tribunal in its discretion which is arbitrary and discriminatory, in that the Ordinance itself has not laid down any policy in this regard. Accordingly, the two procedures cannot co-exist and the same are arbitrary.

22. That, further, the S. 13, *supra*, of the name-and-shame Ordinance provides for the provision of 'Notice to Parties,' wherein it is provided that the tribunal shall proceed ex-parte in case a respondent fails to appear before the tribunal, and the tribunal shall attach the property of the respondent.

In the above context, it is submitted that the impugned Ordinance contains no provision whatsoever for setting aside of the ex-parte order upon

appearance and showing of sufficient case for such non-appearance, which is violative of the principles of natural justice and the legal maxim of *audi alteram partem* (Both sides must be heard) and the same is liable to be declared arbitrary, unconstitutional and void.

Further, the impugned Ordinance making provision for the attachment becoming absolute, *supra*, goes against the letter and spirit and is in complete derogation of the provisions of Order XXXVIII, Rules 6-13 of the Code of Civil Procedure, 1908, Attachment before Judgment, and the same repugnant as per the provisions of Article 254 of the Constitution and is liable to be struck down and declared unconstitutional and void.

23. That, S. 13 of the name-and-shame Ordinance is more dangerous, stringent and against all canons of justice, than the direct mob/action, apart from being arbitrary and in defiance of the principle of natural justice, in that it lays down that on the day fixed for hearing in the notice if the respondent fails to appear, the Tribunal shall proceed *ex patre* as against the respondent and attach his property and direct authorities to publish his name, address along with photograph, with a warning to the public generally to restrain from purchasing his property so attached. The provision for setting aside order to proceed *ex parte* on sufficient/reasonable ground(s) is absent from the setting of the impugned Ordinance which is against the very idea of civilized democratic society/set-up and against the principle of natural justice and as such is violative of Art. 14 of the Constitution.

24. That, the name-and-shame Ordinance provides for publication of names, photographs and addresses of persons under S. 13 and S. 19(2), quoted *supra*, which is an unwarranted assault on the individual’s right to live with basic human dignity and the right to privacy and further is like an invitation to lynch.

In the above context, it is submitted that the provisions providing for name-and-shame publications of the persons concerned directly goes against the Right to Privacy and the Right to Live with Human Dignity guaranteed by the Article 21 of the Constitution and is also derogatory to the law as laid down by the Supreme Court in the Adhaar Case (Justice K.S. Puttaswamy (Retd.) vs Union of India & ORS.), and the same is liable to be declared unconstitutional as violative of Art. 21 and the judgment in Adhaar Case, arbitrary and void.

25. That, a conjoint reading of Sections 9, 14 and 17 of the said Ordinance makes it clear that the claims proceedings, under the impugned ordinance, have following four stages, namely: (1) filing of claim petition within three months from the date of accrual of cause of action for damages to the public/private property, (2) filing written statement at or before the first hearing or within such further time as the Claims Tribunal may allow, (3) date of first hearing, i.e., date of framing of issues and (4) date of hearing: which is against the idea of disposal of matter by summary procedure. What is more, the entire CPC is applicable on the matter(s) silent in the impugned Ordinance.

26. That, the name-and-shame Ordinance has made provision, under S. 17, for the grant of adjournment during the course of hearing to a party which may not be more than three adjournments, and in any case the tribunal would decide the claim petition within one year of the framing of the issues, which shows that it is not meant to provide a speedy remedy but rather only to usurp the field already occupied by laws, *supra*, and without any rationale or justification, unwarrantedly.

27. That, the Section 21 of the name-and-shame Ordinance provides for Absolute Liability to be attracted in all cases "*once the nexus with the event that precipitated the damage is established.*" It is pertinent to mention, that the provision laying down for application of the principle of Absolute Liability as

against 'unknown persons,' muchless, 'a faceless mob,' and what is more, without any guidelines and principles to fasten such liability, is arbitrary, misconceived and unwarranted in both law and fact.

Notably, the principle of Absolute Liability as evolved by the Supreme Court in M.C. Mehta v. Union of India (AIR 1987 SC 1086), which is not subject to any of the exceptions under the rule of Strict Liability (Rylands v. Fletcher), presupposes the existence of a certain tortfeasor, on whom such absolute liability rests. However, under the impugned Ordinance a wide misuse of power has been conferred upon the tribunal by dint of S. 21, as the absolute liability is purported to be applied against unknown persons and a faceless mob, which would, within its sweep, cover several innocent persons who were somehow caught in the midst of the rioting and the same would spell insurmountable injustice to be perpetrated by the legislative machinery upon the meek citizens, muchless, in the absence of any guidelines and principles of saddling with such liability.

28. That, furthermore, the application of absolute liability creates an irrebuttable presumption, which is against the principle of natural justice and also against the Supreme Court judgment in the matter of **In Re: Destruction of Public & Private Properties** (Writ Petition (Criminal) No. 77 of 2007), the relevant portion of which reads as: "Where persons, whether jointly or otherwise, are part of a protest which turns violent, results in damage to private or public property, the persons who have caused the damage, or were a part of the protest or who have organized will be deemed to be strictly liable for the damage so caused, which may be assessed by ordinary courts or by any special procedure created to enforce the right."

29. That, the impugned Ordinance in S. 22 provides for finality of award and no further remedy of appeal against the same. The Ordinance further provides

for no provision for the review/recall of the awards or any order of the Claims Tribunal.

In this context, it is submitted, that this would only compel aggrieved parties to approach the High Courts in the Writ Jurisdiction, thus, inviting a barrage of litigations from dissatisfied parties and increasing the multiplicity of proceedings which would do more harm than good.

In view of the above, it is significant to state that the impugned Ordinance is hastily drafted and misconceived and is arbitrary and liable to be declared unconstitutional and void.

30. That, by means of S. 27(4) of the impugned Ordinance, quoted below, entire C.P. Code has been extended to any subject of proceeding before the Tribunal excepting to publish the name, address and photograph of the respondent and keep the citizens whose property has been damaged from the benefit of the impugned Ordinance arbitrarily and unjustly: "(4) **Where this Ordinance is silent on any subject of proceeding before tribunal, the provisions of civil procedure code shall apply on the same.**"

31. That, S. 28 (Repeal and Savings) lays of the impugned Ordinance lays down that other existing laws or Government orders corresponding to the Ordinance shall be thereby cancelled and declared ineffective.

In this context, it is clear that the name-and-shame Ordinance attempts to corrupt and usurp the realms of Central laws being the Indian Penal Code, 1860, *inter alia*, providing for rioting (S.146, S. 148, S. 152), mischief (S. 425, S. 431, S. 436, S. 440), etc., and the Code of Criminal Procedure, 1973, which provides for the Award of Compensation under Ss. 357 & 357A, and the Prevention of Damage to Public Properties Act, 1984, all of which cover the field, and hence the Ordinance is repugnant as per Article 254 of the

Constitution on account of the field already occupied, and the same is liable to be struck down as unconstitutional and void.

32. That, to sum up, from the submissions hereinbefore made, it is manifest that the Ordinance is manifestly arbitrary, mischievous, misconceived, discriminatory, unfair, unjust and unwarranted in both law and fact and the same does more harm than good, and in a way promotes incidents of violence by leaving out individual property like homes, restaurants, shops, gyms, etc. out of the definition of "Private property" in S. 2(f) of the same.

33. That, claim for unliquidated damages by claims' petition is the heart and soul of the impugned Ordinance, which has been calculated thoughtlessly, as being fulcrum to deal with mob violence in public places and stall its escalation. It is a mere figment of imagination that the damages would constitute a deterrence for future mob violence and its escalation. There is no research on this psychological aspect of the matter that flurry of mob frenzy which suddenly erupts on account of social and political reasons can be contained by threat of damages as a punitive measure. Thus, the very basis of impugned Ordinance is misplaced and arbitrary. Notably, measures of damages in law of torts in India includes restituto in interregnum and exemplary damages.

34. That, it is a commonplace fact that the impugned Ordinance is the by-product of pro(Government-backed)-CAA and anti-CAA protest which broke out in the aftermath of the Assam NRC in which some 14 Lakh Hindus and 5 Lakh Muslims were excluded from NRC, and it was hurriedly brought out, *inter alia*, with an avowed policy of publishing the names, addresses and photographs of the protesters, if they fail to appear on the day of hearing, fixed in the notice, which has no substantial purpose, need or bearing with the non-appearance.

35. That, impugned Ordinance is arbitrary, discriminatory and offensive of Art. 14, 15 and 21 of the Constitution. Further, the name-and-shame legislation is a veiled encroachment in the sphere of Judiciary which in effect amounts to violation of the doctrine of separation of powers of our Constitution and its basic structure.

36. That, the impugned Ordinance has delegated excessive power to the executive, without laying down the policy and guidelines to contain the executive dominance in the sphere of Judiciary.

37. That, the impugned has been framed in a hurry, thoughtlessly, and is seriously flawed, and cannot be given effect to.

38. That, under the facts and circumstances of the case, it is expedient and necessary in the interests of justice: to allow the matter to be listed on or before 16/07/2020 as Fresh Case in the Bench of Hon'ble Chief Justice and Hon'ble Saumitra Dayal Singh, JJ, so as to be heard and decided along with other similar petitions, wherein notice has been issued to the respondents to file counters, being W/PIL No. 547/2020, W/PIL No. 552/2020, W/PIL No. 566/2020 and other connected matters.

Accordingly, this matter also deserves to be heard and decided by the said Bench in the same hearing, together with other similar petitions listed before it, to avoid multiplicity of proceedings and possibility of contradictory orders/judgments, otherwise the petitioners shall greatly be prejudiced and shall be put to great hardships and irreparable loss.

39. That, further, under the facts and circumstances of the case, it is expedient and necessary in the interests of justice: to deem and read the term "Ordinance" as "Act," in the event, the impugned Ordinance becomes an Act, during the pendency of instant writ petition, so as to minimize the wastage of paper and rationalize the usage thereof, in order to avoid the additional hassle

of filing amendment application(s) to amend the word "Ordinance" and substitute "Act" in place thereof, and the impugned Act/Ordinance may accordingly be declared unconstitutional and void, otherwise the entire society and the petitioners shall be put to great hardships and irreparable loss.

40. That, in view of the facts and circumstances and submissions adumbrated hereinbefore, it is only picturesque: that the U.P. Ordinance No. 2 of 2020, called the Uttar Pradesh Recovery of Damage to Public and Private Property Ordinance, 2020 promulgated by the Governor of the State of U.P. on 15/03/2020, deserves to be declared as unconstitutional and void; further, that Sections 2(f), S. 6, S. 7, S. 8(7), S. 13, S. 17, S. 19(2), S. 21(1), S. 22, S. 27(4) and S. 28 of the impugned Ordinance deserve to be declared unconstitutional and void.

41. That, the instant petition is based upon the information/documents which are well within the public domain and it is in the pleasure of this Hon'ble Court to take a judicial notice thereof.

42. That, the petitioners have no other equally efficacious and alternative remedy except to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution by filing the instant writ petition in public interest, inter alia, on the following grounds: –

GROUNDS

a. **Because,** the impugned Ordinance, as is clear from its Title, has been designed, *inter alia*, to assess damages caused to the public and private property during riots, bunds, hartals, etc. by wrongdoers and award compensation, related thereto, to the person(s) wronged. Further, the Preamble to the impugned Ordinance, in no ambiguous terms, amongst other things, declares that the impugned Ordinance is a piece of document for assessment and recovery of damages caused to public

or private property, during such incident, without any qualification. On the contrary S.2(f) of the Ordinance which has defined "private property," charged with the vice of religious fervour, as a movable or immovable property owned by any religious body, of one part, and by Society, Waqf or Trust, or Firm, of the other one, exclusive of the property owned and controlled by any irreligious or non-religious owners of property, without there being any intelligible differentia, i.e., behind such a classification.

b. **Because,** significantly, damages, occasioned in the same transaction, are damages and damages alone, they cannot be dichotomized, in relation to and for the purposes of recovering them, notwithstanding the nature of property whether public or private, religious or irreligious, unless there is an admissible legal formula. In this view of the matter, impugned Ordinance, muchless, S. 2(f) thereof is arbitrary, discriminatory and violative of Arts. 14, 15 and also against the secular ethos of Constitution, and as such is unconstitutional and void.

c. **Because,** the impugned Ordinance attempts to corrupt and usurp the realms of Central laws being the Indian Penal Code, 1860, *inter alia*, providing for rioting (S.146, S. 148, S. 152), mischief (S. 425, S. 431, S. 436, S. 440), etc., and the Code of Criminal Procedure, 1973, which provides for the Award of Compensation under Ss. 357 & 357A, and the Prevention of Damage to Public Properties Act, 1984, all of which cover the field, and hence the Ordinance is repugnant to Article 254 of the Constitution on account of the field already occupied, and the same is liable to be struck down as unconstitutional and void.

d. **Because,** the impugned Ordinance has delimited its ambit and scope to the consideration of damages/destruction, in the wake of mob violence, to certain qualified public and private properties, and has left out of its purview, the damages causing bodily injury or death to a person or persons without any reasonable cause, for such classification. Accordingly, the impugned Ordinance arresting the cascading effect of the damages in a narrow sphere is arbitrary, unjust, improper, discriminatory and offensive of Article 14 of the Constitution, and hence void.

e. **Because,** claim for unliquidated damages by claims' petition is the heart and soul of the impugned Ordinance, which has been calculated thoughtlessly, as the fulcrum to deal with mob violence in public places and stall its escalation. It is a mere figment of imagination that the damages would constitute a deterrence for future mob violence and its escalation. There is no research on this psychological aspect of the matter that flurry of mob frenzy which suddenly erupts on account of social and political reasons can be contained by threat of damages as a punitive measure. Thus, the very basis of impugned Ordinance is misplaced and arbitrary. Notably, measures of damages in law of torts in India includes restituto in interregnum and exemplary damages.

f. **Because,** the impugned Ordinance looks at damages, which are transcendental of religion, through the prism of religion, i.e. "property owned and controlled by religious body,..." is against the secular ethos of our Constitution and its basic structure.

g. **Because,** damages with regard to personal injury are not covered by this Ordinance.

h. **Because,** it is a commonplace fact that the impugned Ordinance is the by-product of pro(Government-backed)-CAA and anti-CAA protest that broke out in the aftermath of the Assam NRC in which some 14 Lakh Hindus and 5 Lakh Muslims were excluded from NRC, which was hurriedly brought out, *inter alia*, with an avowed policy of publishing the names, addresses and photographs of the protesters, if they fail to appear on the day of hearing, fixed in the notice, which has no substantial purpose, need or bearing with the non-appearance.

i. **Because,** S. 3 of the impugned Ordinance enjoins the Govt. authorized official to take steps to file a claim petition for compensation before the Claims Tribunal preferably within three months of the date of causing of the damage to the public property on the basis of the report of the concerned Circle Officer which is based on the First Information Report of the incident and other information gathered in the meantime, while as per S. 6 of the impugned ordinance, private property (S. 2(f)) owners may file claim petitions for compensation on the basis of such report having been obtained from the SHO/SO. However, these benefits are not available to the rest of the public generally, whose property has been vandalized and destroyed by act of outraged mob, referred to in the Preamble. Manifestly, the said Sections are discriminatory, unreasonable and arbitrary without any lawful excuse or differentia and as such offensive of Art. 14 of the Constitution.

j. **Because,** by S. 7 of the name-and-shame Ordinance, the legislature has conferred uncanalized power on the State Govt. to constitute Claims Tribunal consisting of two or more members, without fixing maximum number of such members, such that one of them being its Chairman who must be a retd. District Judge and the remaining ones must be

officers of the Additional Commissioner rank, giving an undue opportunity to the Executive to hold its dominance over the Claims Tribunal which is a substitute, or an alternative of Civil Court. Apparently, S. 7(2) is designed in such a way so as to trench upon the field of the judiciary which is against the doctrine of separation of powers which is basic structure of our Constitution. Accordingly, S. 7(1) and S. 7(2) which are against the doctrine of separation of powers of our Constitution are liable to be struck down.

k. **Because,** there is no intelligible differentia behind the constitution of a separate Tribunal under the said Ordinance, when all the requisite powers of dealing with the situation(s) are well within the domain of the Civil and the Criminal Courts, and as such no specific or defined class of offences has been made out for the Tribunal to be constituted to deal with, along with there being no distinguished need or emergent situation for the creation of such Tribunal, for instance, speedy disposal, etc. Thus, the impugned Ordinance is untenable in law, owing to having no intelligible differentia and as such being violative of Article 14, and being arbitrary, unconstitutional and void.

l. **Because,** the setting up of the Tribunal in the manner, *supra*, as constituting a direct contravention of the basic structure doctrine of separation of powers, as laid down in Keshvananda Bharti v. State of Kerela, and also being an encroachment on the judicial domain, is not permissible in law as laid down by the decision of the Supreme Court in Roger Matthew v. South Indian Bank Ltd. (2019 SCC Online SC).

m. **Because,** S. 8(7) of the impugned Ordinance confers discretionary power on the tribunal to follow such summary procedure, subject to rules, as it thinks fit, while, S. 14 lays down provision for filing written

statement on or before the first hearing or within such further time as the Claims Tribunal may allow, which shall not be later than thirty days from the date of service of notice; that, S. 17, empowers the Claims Tribunal to adjourn the hearing of the claims from time to time and in any case decide the claim petition, in any case, within one year of the framing of the issue; The S.19 mandates the Claims Tribunal to record concisely in Judgment the reasons for the finding on each of the issue framed and the reasons for such findings. Manifestly, the impugned Ordinance contemplates two procedures, being (1) Ordinary Procedure, and the (2) Special Procedure, namely Summary Procedure to be followed by the tribunal in its discretion which is arbitrary and discriminatory, in that the Ordinance itself has not laid down any policy in this regard. Accordingly, the two procedures cannot co-exist and the same are arbitrary.

n. **Because,** S. 13 of the impugned Ordinance is more dangerous, stringent and against all canons of justice, than the direct mob/action, apart from being arbitrary and in defiance of the principle of natural justice, in that it lays down that on the day fixed for hearing in the notice if the respondent fails to appear, the Tribunal shall proceed *ex patre* as against the respondent and attach his property and direct authorities to publish his name, address alongwith photograph with a warning to the public generally to restrain from purchasing his property so attached. The provision for setting aside order to proceed *ex parte* on sufficient/reasonable ground(s) is absent from the setting of the impugned Ordinance which is against the very idea of civilized democratic society/set-up and against the principle of natural justice and as such is violative of Art. 14 of the Constitution.

o. **Because,** a conjoint reading of Sections 9, 14 and 17 makes it clear that the claims proceedings, under the impugned ordinance, have following four stages, namely: (1) filing of claim petition within three months from the date of accrual of cause of action for damages to the public/private property, (2) filing written statement at or before the first hearing or within such further time as the Claims Tribunal may allow, (3) date of first hearing, i.e., date of framing of issues and (4) date of hearing: which is against the idea of disposal of matter by summary procedure. What is more, the entire CPC is applicable on the matters silent in the impugned Ordinance.

p. **Because,** impugned Ordinance has made provision, under S. 17, for the grant of adjournment during the course of hearing to a party which may not be more than three adjournments, and in any case the tribunal would decide the claim petition within one year of the framing of the issues, which shows that it is not meant to provide a speedy remedy but rather only to usurp the field already occupied by laws, *supra*, without any rationale or justification, unwarrantedly.

q. **Because,** the Section 21 of the name-and-shame Ordinance provides for Absolute Liability to be attracted in all cases "*once the nexus with the event that precipitated the damage is established.*" It is pertinent to mention, that the provision laying down for application of the principle of Absolute Liability as against 'unknown persons,' muchless, 'a faceless mob,' and what is more, without any guidelines and principles to fasten such liability, is arbitrary, misconceived and unwarranted in both law and fact.

r. **Because,** the principle of Absolute Liability as evolved by the Supreme Court in M.C. Mehta v. Union of India (AIR 1987 SC 1086),

which is not subject to any of the exceptions under the rule of Strict Liability (Rylands v. Fletcher), presupposes the existence of a certain tortfeasor, on whom such absolute liability rests. However, under the impugned Ordinance a wide misuse of power has been conferred upon the tribunal by dint of S. 21, as the absolute liability is purported to be applied against unknown persons and a faceless mob, which would, within its sweep, cover several innocent persons who were somehow caught in the midst of the rioting and the same would spell insurmountable injustice to be perpetrated by the legislative machinery upon the meek citizens, muchless, in the absence of any guidelines and principles of saddling with such liability.

s. **Because,** by means of S. 27(4) of the impugned Ordinance, quoted below, entire C.P. Code has been extended to any subject of proceeding before the Tribunal excepting to publish the name, address and photograph of the respondent and keep the citizens whose property has been damaged from the benefit of the impugned Ordinance arbitrarily and unjustly.

t. **Because,** impugned Ordinance is arbitrary, discriminatory and offensive of Art. 14, 15 and 21 of the Constitution.

u. **Because**, the impugned has been framed in a hurry, thoughtlessly, and is seriously flawed, and cannot be given effect to.

v. **Because,** impugned legislation is a veiled encroachment in the sphere of Judiciary which in effect amounts to violation of federal structure and the doctrine of separation of powers of our Constitution.

w. **Because,** the impugned Ordinance has delegated excessive power to the executive, without laying down the policy and guidelines to contain the executive dominance in the sphere of Judiciary.

PRAYER

It is, therefore, Most Respectfully prayed that this Hon'ble Court may graciously be pleased to:

i. Issue a writ, order or direction, declaring the U.P. Ordinance No. 2 of 2020, called the Uttar Pradesh Recovery of Damage to Public and Private Property Ordinance, 2020 (the U.P. Ordinance No. 2 of 2020) promulgated by the Governor of the State of U.P. on 15/03/2020, as unconstitutional and void;

ii. Deem and read the term "Ordinance" as "Act," in the event, the impugned Ordinance becomes an Act, during the pendency of instant writ petition, and the same may accordingly be declared unconstitutional and void; And/or

iii. Pass such other and further order(s) in addition to or in substitution for, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; And/or

iv. Award the costs of the writ petition.

Dated: [13/07/2020]

[SHASHWAT ANAND] [ANKUR AZAD]

Advocates

Drawn By:
Faiz Ahmad, Adv.
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