HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE
DIVISION BENCH : HON'BLE SHRI JUSTICE S. C. SHARMA
& HON'BLE SHRI JUSTICE SHAILENDRA SHUKLA

Writ Appeal No.92/2014

State of Madhya Pradesh & Others

Versus

Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore & Others

Writ Appeal No.135/2014

State of Madhya Pradesh & Others

Versus

Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore & Others

Writ Petition No.11234/2020

Vipin Dhanaitkar

Versus

State of Madhya Pradesh & Others

Counsel for the Parties	**:**	Shri A.K. Chitle, learned senior counsel along with Shri Kartik Chitle, Shri Kapil Sibal, learned senior counsel along with Shri Abhinav Malhotra, Shri Shyam Diwan, learned senior counsel along with Shri Abhinav Malhotra and Ms. Sugnadha Yadav and Shri Manoj Manav and Shri Milind Phadke Shri A.S. Garg, learned senior counsel along with Ms. Poorva Mahajan, Shri S.C. Bagadia, learned senior counsel along with Shri Vivek Patwa and Shri Rohit Saboo, Shri Shekhar Bhargava, learned senior counsel along with Ms. Anika Bajpai, Shri V.K. Jain, learned senior counsel along with Shri Vaibhav Jain, Shri Kapil Sibal, learned senior counsel along with Shri Abhinav Malhotra , Shri Shyam Diwan, learned senior counsel along with Shri Abhinav Malhotra and Ms. Sugnadha Yadav and Shri Manoj Manav and Shri Milind Phadke.
Whether approved for reporting	**:**	Yes

Law laid down	**:**	1. The dispute, as to whether a particular property was or was not recognized as private property of the Ruler, is itself a dispute arising out of the terms of the Covenant, and therefore, not adjudicable in light of Article 363 of the Constitution of India. 2. The Khasgi (Devi Ahilya Bai Holkar Charities) Trust, Indore does not have title of the Trust properties, as keeping in view the covenant signed by the erstwhile Ruler of Holkar State and order passed by the Government of India, the title was transferred to Madhya Bharat and now lies with the State of Madhya Pradesh. The Trust does not have any power of whatsoever kind to alienate the Trust properties in any manner. The original trust deed in respect of Khasgi Trust and the settlement of claim by Government of India in Khasgi properties makes it very clear that the Khasgi properties and the income from Khasgi shall be treated as lapsed for all time to the Madhya Bharat Government, and therefore, any subsequent trust deed amending the original trust deed providing for sale of Khasgi properties is null and void. 3. The letter dated 13.06.1969, which is allegedly the permission granted by the State Government / decision of the State Government, is nothing but a D.O. letter of the then Chief Secretary and as per the Business Allocation Rules, any decision of the Government for sale of property has to be issued in the name of Governor of the State of Madhya Pradesh. 4. It is settled proposition of law that fraud vitiates everything. Fraud vitiates every solemn proceedings and no right can be claimed by a fraudster on the ground of technicalities.
Significant paragraph numbers	**:**	84 to 90, 115 to 116, 120 to 127 & 133 to 135.

O R D E R

(Delivered on this **5th day of October, 2020**)

(S.C. SHARMA)
J U D G E

(SHAILENDRA SHUKLA)
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Shri P.K. Saxena, learned senior counsel along with Shri Rishi Tiwari, learned counsel for the appellants / State in Writ Appeals and for respondent No.1 in Writ Petition.

Shri Kapil Sibal, learned senior counsel along with Shri Abhinav Malhotra, learned counsel for respondent No.1 in Writ Appeals.

Shri Shyam Divan, learned senior counsel along with Shri Abhinav Malhotra and Ms. Sugandha Yadav, learned counsel for respondent No.2 in Writ Appeal No.92/2014.

A.K. Chitale, learned senior counsel along with Shri Kartik Chitale, learned counsel for respondents No.1 and 2 in W.A. No.92/2014 and for respondents No.6 to 9 in Writ Petition.

Shri S.C. Bagadia, learned senior counsel along with Shri Vivek Patwa, learned counsel for respondent Nos.1-A, 1-B and 1-D in W.A. No.135/2014.

Shri A.S. Garg, learned senior counsel along with Ms. Poorva Mahajan, learned counsel for respondent No.4 in W.A. No..92/2014 and for respondent No.5 in Writ Petition.

Shri Sameer Saxena, learned counsel for Intervenor in all cases.

Shri Ashish Joshi, learned counsel for Intervenor in all cases.

Shri Milind Phadke, learned Additional Solicitor General along with Shri Manoj Manav, learned counsel for Union of India.

Shri Rohit Sharma, learned counsel for the petitioner in Writ Petition (PIL).

Shri V.K. Jain, learned senior counsel along with Shri Vaibhav Jain, learned counsel for respondents No.11 to 13 in Writ Petition.

Shri Shekhar Bhargav, learned senior counsel along with Ms. Anika Bajpai, learned counsel for respondent No.3 in W.A. No.135/2014.

All parties have been served in the both the Writ Appeals.

O R D E R
(Delivered on this 5th day of October, 2020)

Per : S.C. Sharma, J:

Regard being had to the similitude in the controversy involved in the present case, these cases were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Appeal No.92/2014 are narrated hereunder.

The appellant before this Court has filed this present Writ Appeal being aggrieved by the order dated 28.11.2013 passed by the learned Single Judge in W.P. No.11618/2012 [The Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore & Another v/s The State of Madhya Pradesh & Others]. The writ petition was preferred before the learned Single Judge against the order (note-sheet) passed by the Collector, Indore, by which, the Collector, Indore has directed the revenue authorities to enter the name of State of Madhya Pradesh in all properties of the Trust to ensure that the properties of the Trust are not sold to other persons.

02. It was stated in the writ petition that the petitioners /

Trust therein is a religious and charitable trust constituted on 27.06.1962. It was further stated in writ petition that the Trust and its activities were initiated by the erstwhile Ruler of Holkar State from the year 1761 – 1948, and thereafter, on account of merger, the Holkar State merged into Madhya Bharat.

03. The petitioners / Trust therein came up before the learned Single Judge with a case that on account of covenant executed by the parties, the private property, as per the schedule appended to the covenant, became the exclusive properties of the Maharaja, the other properties became the exclusive properties of Madhya Bharat (State of Madhya Pradesh) and a third species of property, which was not the State's property or the personal property of the Rulers of Holkar State, were the Trust's properties and in those backdrop, a Trust was constituted on 27.06.1962.

04. It has been further contended that in order to provide various checks and balances to ensure the public character of the Trust, the trust deed provided various safeguards including appointment of six trustees out of which three were government / public nominees. It has been contended that various recitals of the trustees also records that in the budget of Holkar State for the year 1947 – 48, a provision was made for Rs.2,91,952/- for maintenance of Khasgi Charities and the State Government has also issued a gazette notification on 27.07.1962 regarding the setting up of the Khasgi Trust and handing over the Khasgi properties to the Trust.

05. It was further contended by the petitioners / Trust in the writ petition that the covenant, which Maharaja

Yashwant Rao Holkar had entered into with Government of India and other Rulers of the princely State of Central India to form the United State of Madhya Pradesh, did not deal specifically with the Khasgi properties and there was only a general provision contained in Article VII (2)(c) for dealing with the properties like the Khasgi properties and the same reads as under:-

> "Subject to any directions or instructions that may form time to time be given by the Government of India in this behalf, the authority -
> (a) xxxxxxxxxxx
> (b) xxxxxxxxxxx
> (c) to control the administration of the fund in Gwalior known as the Gangajali Fund and / or any other existing fund of a similar character to any other Covenanting State."

06. The petitioners before the learned Single Judge have further stated that for Gangajali Fund of Gwalior State an act called Gangajali Fund Trust Act, 1954 (Madhya Bharat Act No.11 of 1954) was enacted by the Madhya Bharat Legislature and was repealed later, however, for the Khasgi Charties and religious endowment in the Holkar State, a tripartite instrument was entered into between Government of India, Government of Madhya Pradesh and Maharaja Yashwant Rao Holkar on 07.05.1949. The Trust has categorically stated in the writ petition that petitionerss / Trust do not have a copy of said instrument.

07. It has been further stated that as per the trust deed of Khasgi (Devi Ahilyabai Holkar Charities) Trust, there are 246 charities of diverse nature such as 138 temples, 18 Dharamshalas, 34 Ghats, 12 Chhatries, 24 Bagichas, Kund and other miscellaneous properties. They are situated in Varanasi, Ayodhaya, Nemisharanya, Allahabad, Haridwar, Pushkar, Omkareshwar, Pandharpur, Choundhi, Gokaran,

Rameshwar, Vrindavan, Burhanpur, Trayambkeshwar, Amarkantak, Nashik, Chandwad Wafgaon, Sambalgaon, Sansthan Chhatri Maheshwar, Indore City and Indore District, Manasa, Rampura, Bhanpura, Alampur, Tarana, Maheshwar and other places.

08. It has been further stated that grant of Rs.2,91,952/- was inadequate to maintain the properties and for the purposes of generating income, a need arose to dispose of the trust property. It has been stated that in the year 1969, Shri S.V. Kanoongo, the then nominee of the Central Government of the Board of Trustees, sought a clarification from the State Government vide letter dated 09.05.1969 in respect of sale of properties and the then Chief Secretary, Shri M.P. Shrivastava, vide letter dated 13.06.1969, has informed the Trust that the Government does not come into picture in respect of sale of properties.

09. It has been further stated by the Trust that based upon the letter of the Chief Secretary, Shri M.P. Shrivastava, the trust deed was amended by executing a supplementary deed of trust on 08.03.1972, which provided a clause for sale of the Trust properties and the same reads as under:-

> "The Trustees have always had and shall have the power to alienate not only the income but any item of the corpus of the Trust property, movable or immovable, for the necessity or benefit to the objects of the Trust and / or for the convenient or more beneficial administration of the religious and charitable endowments mentioned in the Deed of Trust dated 27th June, 1962."

10. It has been further stated by the Trust that the Trust was enjoying special status, it was duly recognized by the Registrar, M.P. Public Trust, Indore and the Registrar has

granted exemption to the Trust form the applicability of the M.P. Public Trust Act, 1956 by treating it as a Trust administered by an agency acting under the control of the State Government.

11. It has further been contended by the Trust that it was carrying out thankless job, duty and responsibility of management of Trust and was also looking after upkeep of the Khasgi properties including temples, dharamshala, ghats etc. and it was autonomous institution. It has been contended by the Trust that the Collector, Indore has got no power to interfere and intervene or assert any right in respect of the properties vested in the Trust by claiming the same to be the State Government's properties.

12. It has further stated by the Trust that one of the property i.e. Ghats at Haridwar was to be sold and a resolution was passed by the trustees in the meeting which took place on 05.06.2008 in respect of Haridwar properties. It has been stated that the resolution was passed to sell the Haridwar property, as it was in the interest of the Trust and the property was sold for Rs.50,00,000/-. The money was deposited in the Khasgi Trust Account in the State Bank of India, Prince Yashwant Road Branch, Indore,

13. It has further been contended by the Trust that the Haridwar property was the property of the Trust and it was not the property of the State Government, and therefore, it was rightly sold by the Trust. It has been further stated that scandalous stories were published in respect of sale of the Trust property and Smt. Sumitra Mahajan, the then Member of Parliament wrote a letter to the Chief Minister on 18.04.2012 raising the issue of sale of Haridwar property

and requested that the matter be investigated.

14. The Trust has further stated that on account of the letter written by Smt. Sumitra Mahajan, the then Member of Parliament, Indore, a chain of knee-jerk reactions were followed at different level of the hierarchy in the State Government and the letter was forwarded by the Principal Secretary, Chief Minister Office on 08.05.2012 to the Collector, Indore as well as to the Registrar, Public Trust, Indore. The Registrar, Public Trust issued a notice to the petitioners on 05.06.2012 and the Trust did submit a reply on 20.05.2012 stating that the property in question is the property of the Trust and not under the ownership of the State Government, and therefore, there was no reason to continue with the illegal and *malafide* inquiry into the issue of sale.

15. It has further been contended by the Trust that the Collector, Indore, thereafter, issued an order in respect of the Trust properties dated 05.11.2012, wherein he has directed the revenue authorities to mutate the name of State Government in the revenue record and to inform all the Collectors throughout the country to ensure that the Trust property is not sold to private individuals or to any other person.

16. The petitionerss / Trust has contended before the learned Single Judge that the order passed by the Collector suffers from *malafide* and was issued in colourable exercise of power and is without jurisdiction.

17. It has further been stated by the Trust that another order was passed on 05.12.2012 by the Registrar, Public Trust and a prayer was made for quashment of both the

orders passed by the Collector as well as by the Registrar, Public Trust. The petitioners / Trust has contended before the learned Single Judge that grant of Rs.2,91,952/- was inadequate to manage the Trust, and therefore, a necessity arose for sale of Trust property and an action was initiated against the Trust with an oblique and ulterior motive.

18. The petitioners / Trust has raised various grounds before the learned Single Judge challenging illegality and validity of orders dated 05.11.2012 passed by the respondent No.2 / Collector in the writ petition and order dated 05.11.2012 passed by the Registrar, Public Trust by stating that the orders were illegal, arbitrary and unconstitutional. It was also contended before the learned Single Judge that the Collector does not have jurisdiction in the matter to pass such an order and the Trust property was sold for the benefit of the Trust.

19. Another ground was raised by the Trust stating that the entire action was based upon the letter of Member of Parliament with an oblique an ulterior motive and the Collector, Indore is having no power in respect of property situated in Haridwar.

20. Another ground taken by the Trust is that after the establishment of petitioner / Trust in the year 1962, all the Khasgi properties mentioned in schedule appended to the trust deed vested in the Trust and they are not the properties of the State Government, at no point of time, they became the properties of Madhya Bharat, and therefore, the action of the Collector was bad in law.

21. Another ground was raised before the learned Single Judge stating that earlier in the year 1969, the State

Government has informed the Trust that the properties do not belong to the State Government and the then Chief Secretary has written a letter categorically to that effect, and therefore, once the properties were not under the ownership of the State Government, the Collector and the Registrar could not have passed the impugned orders.

22. It has further been contended that the Collector has ignored the vital fact about the membership of the nominees of the State and Central Government in the Trust and the property was sold by passing a resolution, hence, the orders of the Collector and Registrar are bad in law.

23. It has further been stated in the writ petition that there are as many as 246 charities of diverse nature including temples and ghats and if the State Government wants to takeover the control of such properties, it can only be done by enacting an act by the competent legislature and not by the order of Collector. It has been contended that the order passed by the Collector and Register, Public Trust are violative of principles of natural justice and fair play and at the best, the Principal Secretary to the Hon'ble Chief Minister could have directed an investigation in the matter through the Divisional Commissioner, Indore.

24. Another ground has been raised before the learned Single Judge stating that the Registrar, Public Trust has got no authority in light of the covenant signed at the time of merger to take any action against the Trust.

25. Another ground was raised in respect of jurisdiction and the applicability of the M.P. Land Revenue Code, 1954 in the matter. In the writ petition, the petitioners / Trust has prayed for quashment of order / note-sheet dated

05.11.2012, order dated 30.11.2012 as being void, illegal and opposite to law.

26. Appellant No.3 / Registrar has filed a caveat in the matter raising preliminary objections and it has been stated in the reply that as per the covenant executed between the parties, a Trust was formed on the basis of claim made by His Highness Maharaja Yashwant Rao Holkar of Indore concerning Khasgi properties and covenant provides that the Khasgi properties and income from Khasgi shall be treated as lapsed for all time to the Madhya Bharat Government. In lieu thereof several guarantees were given subject to conditions. It was decided that the Madhya Bharat Government shall in perpetuity set aside annually its revenue. A sum of Rs.2,91,952/- being the amount provided in the Holkar State Budget for the year 1947 – 48 for charities and the amount shall be funded and put under a permanent trust for the said charities including the charities of her highness Maharani Ahilyabai Holkar. The power and function of the Trust shall be subject to such legislation as the Central Government or Madhya Bharat Government may enact generally for the purposes of regulating such Trust, except that the composition of Trust and the manner of its formation, as stated above, shall not be liable to any modification or change by such legislation.

27. It has further been stated that the Trust property vested in the Madhya Bharat Government and the Trust was formed only for maintenance of the properties and the Trust is certainly governed under the provisions of M.P. Public Trust Act, 1951. It has further been contended by the Registrar that the Trust in its reply dated 20.06.2012 has

admitted the aforesaid situation. He has stated that on 10.08.1971 on an application of the Trust, the Trust was categorically informed that the property in question is owned and controlled by the State of Madhya Pradesh, and therefore, exemption was provided only in respect of registration of Trust. The Registrar has further contended that the provisions of M.P. Public Trust Act, 1951 are very much applicable to the Khasgi Trust and the State Government has issued a letter to the Trust dated 17.04.1997 to take prior permission under Section 14 of the M.P. Public Trust Act, 1951 for transfer of Trust property, if any.

28. It has further been contended by the Registrar that the representative of the State Government i.e. the Commissioner, Indore has issued a letter dated 26.07.2000 to the Secretary of the Trust to take prior permission under Section 14 of the M.P. Public Trust Act, 1951 in case of transfer of Trust property, however, this letter has been suppressed by the Trust while filing the writ petition.

29. The Registrar has further stated in its reply / caveat that the petitioners / Trust is fully governed and controlled by the State Authority and the State Authority has issued a letter dated 15.05.2012 with a direction to Collector, Indore to inquire the transfer of properties of the Trust, which are vested in the State Government and the Collector has initiated an inquiry through the Registrar, Public Trust after granting an opportunity of hearing to the petitioners / Trust in consonance with the provisions of M.P. Public Trust Act, 1951.

30. An Intervention Application was filed i.e. I.A.

No.5493/2012 by one Jagdeependra Singh Holkar and it has been stated that the petition has been filed on the premises that disputed properties (Trust properties) were the properties of late Maharaja Yashwant Rao Holkar, who died in 1961 and was recognized as Maharaja of the erstwhile Holkar State and after the death of Maharaja Yashwant Rao Holkar, his daughter Usha Devi has created the trust of the properties. The intervenor has stated that as per the terms of covenant entered into between late Yashwant Rao Holkar and Union of India, Usha Devi could not have succeeded as heir of Yashwant Rao Holkar as the Ruler.

31. It has been further stated that as per the terms of covenant, if the Ruler dies without a sign, the rulership will devolve as per the custom prevailing in the Holkar Dynasty and the custom prevailing in the Holkar Dynasty provided that after the death of Ruler, his nearest male heir will succeed as a Ruler in absence of a sign.

32. The intervenor has further contended that at the time of death of late Yashwant Rao Holkar, Malhar Rao Holkar, father of the intervenor, was the nearest surviving male in the family, he was cousin of Maharaja Yashwant Rao Holkar, late Yashwant Rao Holkar had no brother living at the time of his death except the father of the intervenor and in those circumstances, a civil suit has been filed i.e. Civil Suit No.15/1973 claiming declaration of title and possession of property. It has been stated that after the death of Malhar Rao Holkar, the intervenor, being his eldest son, has been brought on record and the suit was dismissed by the trial Court vide judgment and decree dated 21.04.2003. A first appeal was also preferred i.e. F.A. No.264/2003, however,

it was dismissed as withdrawn, and thereafter, a SLP was preferred i.e. S.L.P. No.205/2009 and the Hon'ble Supreme Court has granted liberty to move a restoration application and accordingly, a restoration application was filed i.e. M.C.C. No.417/2011 and the same is still pending before the High Court of Madhya Pradesh, Bench at Indore. The intervenor has stated that he is also an interested party in the matter and he should also be heard.

33. There was another Intervention Application i.e. I.A. No.5552/2012 filed by Anshuman Rao Holkar and Gautam Rao Holkar. They are also claiming themselves to be the members of Holkar Dynasty. It has been stated by them that intervenors are the actual legitimate owner of the property in respect of which, the Collector, Indore has passed an order, they are having right over the property and Smt. Usha Devi Holkar has given false and fabricated assurance to the intervenors and is disposing of the property of the Trust illegally and arbitrarily that too without any authority to dispose of such property.

34. A rejoinder has been filed to the reply filed by the Registrar, Public Trust and it has been reiterated that the orders have been passed by the Registrar and the Collector without jurisdiction and it is a sheer abuse of process of law. It has been stated in the rejoinder that the State Government is not the owner of the property and the property was rightly sold by the Trust. It has been stated that the order passed by the Collector is a nullity and the properties are not at all under the control of the State Government. It has been stated that the orders have been passed without jurisdiction and the dispute can be resolved

by approaching Civil Court. Reference to trust deed has also been made in the rejoinder and in nutshell, great emphasis has been laid upon the fact that the property does not belong to the State Government and the Trust has every right to dispose of the Trust property at their sweet will keeping in view the terms and conditions of the trust deed and a prayer was made for quashment of the orders passed by the Collector and the Registrar.

35. Reply to Intervention Application has also been filed denying the claim of intervenor in respect of property in question.

36. The learned Single Judge, after hearing the parties at length, has allowed the writ petition. Paragraphs – 24 to 32 of the order passed by the learned Single Judge reads as under:-

> "**24.** The broad purport of the impugned order of the Collector and the Registrar of Public Trusts is that the Government owns the Khasgi Endowments, the State Government should have control over the affairs of the trust, the name of the State Government should be entered in the revenue and municipal records and the properties comprised in the Khasgi Endowments should not be alienated.
>
> **25.** In the opinion of this Court, the Collector, Indore, the Registrar of Public Trusts, Indore and the State Government cannot and should not undertake the task of management of the Khasgi Endowments on account of its substantially extra- erritorial nature and the large number, age and condition of the Khasgi Endowments. This task is quite different from normal governmental functions. The impugned orders of the Collector and the Registrar do not substitute for the Khasgi Trust any system of management of the Khasgi Endowments superior to the Khasgi Trust. In fact they create a vacuum and a state of uncertainty in the management of the Khasgi Endowments. Record reveals that after the death of Shri K.A. Chitale, who was the trustee and passed away on 15/11/82, Shri Ranjeet Malhotra S/o Shri Satish Malhotra was appointed as Trustee, who resigned on 03/01/13. Thereafter Hon'ble Justice

P.D. Muley (Retd.) was appointed as trustee vide resolution passed in October, 2013. So far as representative of Central Government is concerned, initially Mr. SV. Kanungo, Member of Public Service Commission of India was the Trustee. After him Mr. PS. Bapna was appointed as Trustee and thereafter Mr. BJ. Heerji is the Trustee in the capacity of representative of Union of India. Thus, at present following persons are the Trustee:-

i. Maharani Usha Devi
ii. Shri Satish Malhotra
iii. Hon'ble Justice P.D. Mule, (Retd.)
iv. Revenue Commissioner, Ex- officio
v. Superintendent Engineer (Road & Building), Ex-officio
vi. Mr. BK. Heerji (representative of Central Government)

26. Considering the totality of the above facts, in the opinion of this Court, Khasgi Trust should continue to manage the Khasgi Endowments subject to the directions contained in this order.

27. For making permanent arrangement for the administration of the Khasgi Endowments, this Court directs as under:

PARLIAMENTARY LEGISLATION:

In view of the fact that the Trust Endowments are not confined to the District of Indore or even the State of Madhya Pradesh and most important endowments are outside the State, the Central Government, which has been impleaded as respondent No. 4 in the present case, is requested to consider a Parliamentary Legislation. For this legislation, the respondent No. 8, who is nominee of the Union of India and the Member of Parliament upon whose complaint impugned orders were passed, are requested to take the initiative.

STATE LEGISLATION:

If the Central Government is not in a position to initiate the process of enactment of a Parliamentary statute within the period of one year, the State Government may initiate steps for enactment of legislation by the State Legislature

MANAGEMENT OF KHASGI TRUST IN THE MEANTIME:

28. In the meantime, until an Act of the Central or the State Legislature is enacted, this Court issues following directions:

1. The Khasgi (Devi Ahilyabai Holkar Charities) Trust, as constituted by the Trust Deed dated 27.06.1962, shall continue to function as in the past but subject to the directions contained in this order.
2. The Khasgi Endowments are Temples,

Dharamshalas, Ghats, Chhatries, Bagichas, Kunds and miscellaneous properties. They are situated in different parts of the country. They are essentially religious in nature. As such, they are in public domain and shall continue to remain in the public domain. Neither Maharani Usha Devi nor any other Trustee nor the State Government shall claim ownership of the Khasgi Endowments.

3. The Trustees of the Khasgi Trust shall, as a body, manage the Khasgi Endowments.

4. Maharani Usha Devi shall, as in the past, have the liberty to nominate two persons as trustees of the Khasgi Trust. At present her two nominees Mr. Satish Malhotra and Hon'ble Justice P.D.Mule (Retd.) are the Trustee.

5. In addition to the trustees appointed under the Trust Deed dated 27.06.1962, His Excellency the Governor of Madhya Pradesh is requested to be the Patron and is further requested to appoint two eminent non-political and non-governmental citizens of Indore with unblemished record of public service as trustees.

6. This Court appoints Smt. Sumitra Mahajan, Member of Parliament, Lok Sabha in person and not ex-officio Shri A.K. Chitale, Senior Advocate, Shri Yashwant Rao s/o Prince Richard @ Shivajirao Holkar and Shri Ranjeet Malhotra S/o Shri Satish Chandra Malhotra as trustees, subject to their accepting responsibilities of this office and for effective working of the trust Collector, Indore in place of Superintending Engineer(Building & Roads) as Nominee of the State Government. Thus, after reconstitution the Board of Trustees subject to their acceptance shall be as under:-

(I) Smt. Usharaje Malhotra – President.
(ii) Shri Satish Chandra Malhotra.
(iii) Hon'ble Justice P.D. Mule, (Retd.).
(iv) Shri AK. Chitale, Senior Advocate.
(v) Smt. Sumitra Mahajan, Member of Parliament, Indore.
(vi) Shri Yashwantrao S/o Prince Richard @ Shivajirao Holkar.
(vii) Revenue Commissioner, Indore, Ex-officio.
(viii) Collector, Indore.
(ix) Shri B.J. Heerji, Representative of Union of India.

7. Henceforth the named trustees by majority shall be at liberty to appoint trustee in case vacancy arises.

8. The religious properties comprised in the Khasgi Endowments shall never be sold.

9. If there is pressing need of selling or leasing any part of the Khasgi Endowments which is not being used or which is not capable of being used for actual religious purpose (hereinafter called "general properties") it may be sold or leased only by a unanimous resolution of the Trustees. The procedure followed for the sale shall be transparent and shall be laid down by a resolution of the Trustees passed at a formal meeting of the Trust at which the proposed sale shall be a specific item of the agenda.

10. Maharani Usha Devi and Shri Satish Chandra Malhotra have been providing financial support to the Khasgi Trust in the past. They are free and are requested to continue to provide such financial support as they wish, in future also.

11. Clause 10 of the Trust deed provides that the Settlor in her capacity as president of the Trust shall be entitled to appoint any person as her duly constituted Attorney, to do all acts, deeds and things of ministerial nature. The Trustees may appoint a Secretary by a special resolution and confer on him such powers and authorities as the Trustees may deem fit. 12. The State Government has so far been providing a fixed sum of Rs.2,91,000/- per year to the Khasgi Trust. This amount was fixed on the basis of Budget of Holkar State of the year 1947-48 for charities. This amount is now no longer adequate. The State Government shall henceforth shall make a provision in the budget for Khasgi Trust which should not be less then one crore every year keeping in view the maintenance of valuable properties of the trust and the fact that a sum of Rs.2.91 lac was fixed in the year 1947-48. This payment must be made well before 31st March of every year. 13. Though the fixed annuity of the State Government is only of Rs.2,91,000/-, the State Government has appointed a retired State Government Officer on a monthly remuneration of Rs.30,000/-, that is Rs.3,60,000/- per year, as Officer on Special Duty. This remuneration is being paid from funds of the Khasgi Trust. This payment by the Khasgi Trust must be and is stopped by the end of this year. This office of the Officer on Special Duty and the payment may be continued only if (a) the State Government bears the financial burden and assigns specific duties and responsibilities to the Officer on Special Duty and (b) the trustees of Khasgi Trust accept such an Officer on Special Duty.

14. Since the issue has been raised by the Member of Parliament, a hope is expressed that she will provide at least Rs.5,00,000/- per year to the Khasgi Trust well before 31st March of every year from the funds of Member of Parliament. A copy of this order may be sent by the Registrar to her.

15. The revenue and municipal records regarding the Khasgi Endowments may be got corrected and entered in the name of the Khasgi Trust. 16. The Trustees may request the Indian Institute of Management, Indore to study the present system of management of the Khasgi Endowments and suggest improvements.

17. The earlier transactions of transfer by the Trust which were supported by proceedings of the trustees shall not be reopened.

18. Audit of the accounts of the Khasgi Trust shall be got done by the present auditors Messrs R.D. Joshi & Company. The State Government may get a second audit conducted by independent recognized chartered accountants but their fee and cost shall be borne by the State Government.

19. The meeting of the Trust shall be held on regular basis and at least once in three months. To give immediate effect, Collector, Indore is requested to hold the first meeting at his Office forthwith. So that reconstituted Board of Trustees of petitioners Trust become functional and consent can be obtained from the Trustees appointed under the orders of this Court.

29. For safety, preservation and management of jewellery and ornaments in temples and other places of the Khasgi Trust, the following directions are given:

1. Detailed lists may be made of gold, silver and precious stone jewellery, ornaments, Puja implements, Murtis and ancient idols and things, monuments and sculptures in temples and other places in Khasgi Endowment (hereinafter called the "Khasgi Trust Precious Articles");

2. These lists may be converted into proper bound and paged register/s;

3. For preparing these lists and the register/s, the Secretary or his representative and a responsible officer of Khasgi Trust should visit the various places where the Khasgi Trust Precious Articles are kept.

4. Panchnamas may be made of the Khasgi Trust Precious Articles at every place, dated and attested by at least two Panchas, one

of whom should be a Government approved jewellery valuer;

5. The Collector in whose jurisdiction the Khasgi Trust Precious Articles are located may be requested to depute an officer of his Collectorate to be present at the time of preparation of the Panchnama. If a Collector outside Madhya Pradesh does not, cannot or refuses to depute an officer, the procedure indicated earlier may nevertheless be carried out.

6. Valuation may be done of the Khasgi Trust Precious Articles by the government approved jewellery valuer.

7. After the Panchnamas are made, the Khasgi Trust Precious Articles may be kept in a bank locker or in a Godrej Safe embedded in the temple or other places at a safe location not accessible to public.

8. Access to the Khasgi Trust Precious Articles may be provided only jointly to (a) the local Pujari or Manager of the temple or other place and (b) a person specially authorized by the Trustees and only on the occasion of Pujas, ceremonies or other occasions according to past practice.

9. Lists of the Khasgi Trust Precious Articles may be placed before the trustees and their further resolutions for safety, preservation and management the Khasgi Trust Precious Articles may be obtained and followed at all times.

10. The Trustees may lay down proper procedure and pass resolutions in order to facilitate the removal of the Khasgi Trust jewellery on special occasions for Pujas and ceremonies and putting them back safely.

11. Photographs of every individual item of Khasgi Trust Precious Articles at appropriate angles may be taken and put in the safes where the Khasgi Trust Precious Articles would be kept and in the permanent record about the Khasgi Trust Precious Articles. These photographs may be signed by the person making the Panchnamas and the Panchas and put in sealed covers and the sealed covers may be similarly signed and dated.

12. This exercise shall be completed within three months.

30. Properties of Khasgi Trust are situated at a large number of locations. Some of these properties may be capable of yielding income or higher income. The Trustees may carry out inspection of the properties and make a report about better exploitation of their potential for earning maximum

possible income. The trustees of the Khasgi Trust should thereafter take all possible steps for increasing income, without selling the properties.

31. So far as two impugned orders concerned, this Court finds are as under:-

(a) these two officers do not have any judicial power;

(b) they have purported to exercise judicial power in passing the impugned orders;

(c) the impugned orders have been passed without compliance with principles of natural justice;

(d) section 26 of the Madhya Pradesh Public Trusts Act contemplates a reference to the court in the event of a dispute requiring adjudication;

(e) the impugned orders were never communicated to the petitionerss and the other trustees.

32. Since the impugned orders Annexure P/1 & P 23 are without jurisdiction, therefore, the same stand quashed. Petition stands allowed with the direction herein above. Parties are given liberty to seek directions of this court in case of need. Copy of the order be given to the parties for immediate compliance."

The aforesaid judgment delivered by the learned Single Judge is under challenge in the present writ appeal.

37. In the connected writ appeal i.e. W.A. No.135/2014, the order dated 03.12.2013 passed in W.P. No.5372/2010 is under challenge. The order dated 03.12.2013 reads as under:-

"Petitioner by G.M. Chaphekar, senior advocate with Shri V. Bhargav, advocate.

Respondents by Smt. Vinita Phaye, Government advocate.

The prayer in the petition is to direct the respondents to correct revenue entries by deleting the name of the Collector as manager and entering the name of the petitioner / trust as Bhumiswami of the lands of the Temples and the Devsthan in the list Annexure P-4.

The grievance of the petitioner / trust is that in the revenue record the name of the Collector has been mentioned as manager of the lands and Temples which is owned by the petitioner / trust. Since, the detailed direction has been issued by this Court in W.P. No.11618/2012 decided on

> 28.11.2013 wherein this Court has directed that the petitioner / trust shall remain owner of the trust for better management.
>
> In view of this, this petition is allowed with a direction to the revenue authorities to correct the record as directed by this Corut vide order dated 28.11.12013 in W.P. No.11618/2012.
>
> With the aforesaid, petition stands disposed of."

Both the writ appeals are connected writ appeals arising out of same cause of action and in the Public Interest Litigation Writ Petition also subject matter is same and a prayer has been for conducting an investigation by the Central Bureau of Investigation besides other reliefs.

38. Heard learned counsel for the parties at length and perused the record. The appellant before this Court, the State of Madhya Pradesh, is aggrieved by the order dated 28.11.2013 passed by the learned Single Judge in W.P. No.11618/2012.

39. Shri P.K. Saxena, learned senior counsel along with Shri Rishi Tiwari, advocate has argued before this Court that the learned Single Judge has erred in law and facts in setting aside the order dated 05.11.2012 passed by the Collector as well as the order dated 30.11.2012 passed by the Registrar, Public Trust on the ground that the principles of natural justice and fair play were not followed. He has also argued that the learned Single Judge has erred in law and facts in holding that that the Khasgi properties were private properties and the State Government did not lay its claim even in the year 1949 when the letter dated 06.05.1949 was written settling the claim of Maharaja for inclusion of Khasgi endowment in the inventories of private of properties submitted in pursuance to Article 12 of the Madhya Union Covenant wherein the Trust has

categorically stated that it was formed only to administer the properties, which has already lapsed for all times in the State Government (Madhya Bharat Government thereafter the M.P. Government). He has further contended that appointment of trustees by Maharaja do not in any way change the nature of the right qua Khasgi properties.

40. Shri Saxena has also argued that the learned Single Judge has erred in law and facts in wrongly holding that the trustees were empowered for leasing or otherwise transferring the title of the Trust properties. He has also argued that the Writ Court has also taken into account the letter dated 16.06.1969 and has wrongly held that the Trust is having power to transfer the Trust properties. He has further argued that the Writ Court has not considered the reply of the State Government in respect of the aforesaid aspect wherein it was categorically stated that the letter dated 13.06.1969 was only a D.O. letter, which do not in any way give recognition of the Government with respect to the sale of the properties because the properties were under the absolute ownership of the Government and a cabinet decision was required for transferring the properties.

41. It has further been contended that Shri M.P. Shrivastava was also a trustee, and therefore, such kind of D.O. letter authorizing the sale of land by the Trust itself was contrary to the various clauses of trust deed and was having no legal sanctity. It has been contended that the learned Single Judge has failed to consider that the Trust was formed only for maintenance, upkeep and preservation of the Trust properties more particularly, as described in Part – B, the trustees were not entitled to sell the Trust

property not even by virtue of any resolution and the net effect is that all deeds of transfer are void *ab initio*.

42. Another ground has been raised stating that the Writ Court has miserably failed to consider that the Trust was validly created, and therefore, founder as well as the trustees were bound to act as per the intention of the Trust and any deviation from the declared purpose of the Trust amounted to breach of the Trust and it was an act of treason, and therefore, the Collector was justified in taking action in accordance with law in respect of sale of Trust properties.

43. It has been further argued that the Writ Court has failed to consider that the Covenant of 1948 and the Instrument of 1949 and before formation of trust deed in the year 1962, the M.P. Land Revenue Code, 1954 came into force and as per Section 57 of the M.P. Land Revenue Code, 1954, all the properties vested in the State Government, and therefore, as per the covenant and the M.P. Land Revenue Code, 1954, the properties were the exclusive properties under the ownership of the State and no sale of any kind could have taken place in the matter as has been done by the Trust. Shri Saxena has further contended that the learned Single Judge has failed to consider that it is a settled principle of law that once the trust is created with certain objects, no one has the power to delete any of its objects. In the present the Supplementary Deed of 1972 has the effect of deleting the main object of the Trust, and therefore, the action of the learned Single Judge in validating the sale, which took place in the matter, is certainly bad law.

44. It has been further contended that the learned Single Judge has failed to see that the supplementary trust deed had no sanctity in the eyes of law. The trust deed was not permitted by any Civil Court, and therefore, as in the original trust deed there was no power of sale, by taking shelter of the supplementary trust deed, sale could not be effected specially in light of the fact that the property in question was the property under the exclusive ownership of the State of Madhya Pradesh. It has been contended that the Supplementary Trust Deed of 1972 is in fact not a supplementary trust deed because it changes the basic nature of the original deed of 1962, and therefore, the supplementary deed was invalid having no legal sanctity nor any legal character in the eyes of law.

45. It has been further argued that the trustees could not have sold the property of the Trust keeping in view Section 47 of the Indian Trust Act, 1882. In the Trust Deed of 1962 or the Amendment of 1972 does not provide for delegation of power and in the present case, the power was delegated to a stranger to dispose of the property of the Trust and the learned Single Judge has erred in law and facts in allowing the writ petition by quashing the order the passed by the Collector. It has been contended that the Khasgi endowments are of religious nature and are heritage properties, and therefore, the State Government has every right and power to interfere with the sale transactions as the trustees were not acting as per the duties so bestowed upon them and as per the Trust Deed of 1962.

46. It has been further contended by Shri Saxena that the findings arrived at by the learned Single Judge in paragraph

– 25 are perverse and they are beyond the jurisdiction of the Writ Court, and therefore, deserves to be set aside. He has further argued that the learned Single Judge has given a finding that Khasgi Trust shall continue to manage Khasgi endowments. He has stated that the same was not the subject matter of the dispute, the dispute was that certain heritage properties were being sold away in shady and unlawful manner and a third party right was being created and in those circumstances, the Collector came into picture and has directed that the name of the State Government be written in the *Bhumiswami* column of the revenue record with a clear endowment of non-transferable, and therefore, the learned Single Judge has erred in law and in facts in fact drafting a trust deed which not the prayer made in the original writ petition. He has further argued that the learned Single Judge was jurisdictionally incompetent to draft a trust deed and to constitute Board of Trustees. He has argued that keeping in view the power of the Registrar, as per Section 25 of the M.P. Public Trust Act, 1951 by no stretch of imagination, a trust deed can be drafted by a Writ Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

47. It has also been argued that the learned Single has failed to take notice of the fact that earlier also the Trust has applied for grant of permission under Section 14 of the M.P. Public Trust Act, 1951 for sale of properties and the permission was rejected vide order dated 14.12.2005. The order dated 14.12.2005 was not challenged before any forum which impliedly means that the Trust has accepted that the provisions of M.P. Public Trust Act, 1951 are

applicable and in those circumstances, the transactions made by the Trust in respect of the heritage properties were certainly bad in law. The learned Single Judge has ignored this vital aspect of the case. Learned senior counsel has argued that the Writ Court has erred in law and facts in holding that there was adequate administrative set up in the Trust and on the basis certain reports, which were filed before the learned Single Judge without there being pleadings in support of the same or the amendment to writ petition, the reports prepared by the petitioner were believed, and therefore, the learned Single Judge has erred in law and facts in delivering the judgment contrary to the pleadings.

48. It has been further contended that the learned Single Judge has taken into account the documents filed along with the list of the documents showing the expenditure and income of the Trust. It has been stated that the documents were being scrutinized by the Registrar, Public Trust which were prepared by private auditor and without waiting for the proceedings to be completed before the Registrar, the documents prepared unilaterally by the Trust were accepted by the learned Single Judge, hence, the judgment delivered by the learned Single Judge is bad in law and deserves to be set aside. It has been argued that the learned Single Judge has given a finding that the State Government cannot and should not undertake the task of management and the manner of the formation of the Trust and the Trust shall not be liable for any modification and change by any legislation so made by the Central Government or the State Government. He has stated that the learned Single Judge

himself has constituted a fresh trust deed by incorporating several clauses which was beyond the scope and jurisdiction conferred upon the Court by virtue of Article 226 of the Constitution of India. It has been stated that the direction of the learned Single Judge that the State Government shall not claim ownership of Khasgi endowment is also bad in law because it is the State of Madhya Pradesh which having title of the property in question. The Khasgi properties had lapsed for all time in the State Government (United State of Madhya Bharat) thereafter, in the Madhya Pradesh with the signing of the covenant in the year 1948 itself and till creation of the Trust in the year 1962, the same was managed by the Religious Endowment Department of the Government. It has been stated that the Trust was formed with the purpose to maintain, upkeep and preservation of the Khasgi endowment. The trust deed also made it very clear that endowment in the Trust Deed of the year 1962 was very clear on the subject that the Trust Could not have sold the properties by subsequent resolution / subsequent amendment.

49. It has further been argued that the Writ Court has failed to consider that only the Civil Court has power to direct changes in the trust deed in the spirit of Doctrine of *Cy près*, which implies that the original intents of the founder should not fail. It has been contended that the directions given by the learned Single Judge for appointment of various persons as trustees is bad in law and is beyond the jurisdiction so vested under Article 226 of the Constitution of India as it has virtually changed the nature

of the trust deed. It has been argued that the directions with respect to sale of property or leasing out any part of the Khasgi endowment by way unanimous resolution in bad in law because it runs counter to the very moto for which the Trust was formed i.e., to upkeep, preserve and maintain the Khasgi endowment..

50. It has further been argued that the direction given by the learned Single Judge to appoint a Secretary and to confer power upon him and the authority, as deems fit, also runs counter to the trust deed particularly Clause – 10 of the trust deed. Clause – 10 of the Trust Deed provides that it is the Settlor who has to appoint any person as the duly constituted attorney to do ministerial act, there is no provision in the trust deed for appointment of any Secretary, and therefore, such a direction given by the learned Single Judge is bad in law.

51. It has further been contended that it is the cardinal principle of law that original registered trust deed cannot be washed of by subsequent change in the trust deed which was not intended in the original trust deed. It has been aruged that the directions given by the learned Single Judge to the State of Madhya Pradesh for making a provision of rupees one crore for maintenance of the properties of the Trust is bad in law as the same runs counter to the trust deed and the learned Single Judge was not having jurisdiction to pass such an order which runs counter and disturbs the very essence of the trust deed. It in fact amounts to unwarranted exercise of power conferred under Article 226 of the Constitution of India.

52. Shri Saxena has also argued before this Court that a

letter was written by Smt. Sumitra Mahajan, Ex Member of Parliament, to the Chief Minister of the State of Madhya Pradesh informing him about the sale of the Trust properties and the office of the Chief Minister has directed the Commissioner, Indore and the Collector, Indore to take action in accordance with law. He has argued that Smt. Sumitra Mahajan was not the party to the writ petition and the learned Single Judge has directed the Member of Parliament to pay a sum of Rs.5,00,000/- per year to the Trust before 31st March every year from the funds of the Member of the Prliament. Such a direction passed against a person without making him party to the *lis* is certainly bad in law.

53. It has further been argued that the direction given by the learned Single Judge that the name of Khasgi endowment be recorded in the revenue and municipal record is bad in law as the same could not have been done without there being a judgment and decree from any Civil Court. The Trust is certainly not the titleholder of the properties and it is the State of Madhya Pradesh which is having title of the properties, and therefore, the direction given by the learned Single Judge is absolutely against all canons of law.

54. It has also been argued that direction given by the learned Single Judge for non-opening of all earlier transaction of sale made by the Trust is bad in law because by giving the aforesaid direction all illegal proceedings which were undertaken by the trustees and the various officers acting on behalf of the Trust have been legalized. It has been contended that such a direction is bad in law as it

completely overlooks the proceedings which were pending before the Registrar regarding the transactions made by the representatives of the Trust. It has been stated that such a finding, being beyond the record, is bad in law and deserves to be set aside.

55. Shri Saxena has also argued before this Court that the direction of the learned Single Judge that the audit of the account of the Trust shall be done by the auditor of the Trust is bad in law. He has stated that the Writ Court has completely overlooked the fact that the audit of the account was already being carried out by the Joint Director, Tresury and Account Office, and therefore, issuing a direction for carrying out audit by private auditor is bad in law and such an arbitrary order deserves to be set aside by this Court.

56. It has been argued that the learned Single Judge has given a direction regarding preservation and management of jewellery of the temple of the Khasgi Trust and such direction indicates that the learned Single Judge did not appreciate the real controversy which was before him. The real controversy was that the Trust is on a selling spree and is selling out Trust properties. He has argued that directions given in paragraph – 29 are perverse and are in exercise of such jurisdiction which was not the subject matter of *lis* before this Court.

57. Another ground has been raised by the State of Madhya Pradesh stating that the findings of the learned Single Judge that the Collector and Registrar do not have any judicial power or power so as to pass the impugned orders is bad in law because the order was passed by the Collector as Head of the District Administration and the

Registrar has passed the order as competent authority under the M.P. Public Trust Act, 1951. The orders were passed after following the principles of natural justice and fair play. The order were in consonance with the statutory provisions and they were as measure to protect the properties from being alienated. He has also argued that the learned Single Judge ought to have held that the Trust and the trustees were responsible towards the State Government to explain the deeds and action undertaken by the trustees and were duty bound to participate in co-operating with the inquiry which was being held in the matter, however, on the contrary, the Writ Court has passed an order treating the orders passed by the Collector and Registrar as final orders, and therefore, the order passed by the learned Single Judge deserves to be set aside.

58. It has also been argued that in light of various directions given by the learned Single Judge, it appears that the learned Single Judge usurped the power and jurisdiction not vested in him and has acted as a Registrar as provided under Section 25 of the M.P. Public Trust Act, 1951 and also the jurisdiction of the Civil Court, as provided under Section 27 of the M.P. Public Trust Act, 1951. Shri Saxena has argued that the Trust property was sold by the trustees for peanuts, for personal gains by playing a fraud and the matter deserves a probe by Economic Offences Wing by registering a First Information Report. He has also argued that a committee should be constituted for the purposes of conducting an inquiry into the affairs of the Trust under the Chairmanship of the Chief Secretary and it is bounden duty of this Court to save the historical monuments like temple,

ghats and other properties which are under the absolute ownership of the State of Madhya Pradesh.

59. Shri Saxena has placed reliance upon a judgment delivered in the case of ***The State of Madhya Pradesh v/s Maharani Usha Devi*** *reported in* ***(2015) 8 SCC 672***. Heavy reliance has been placed upon paragraphs – 27, 29 and 31. He has argued before this Court that property in question, prior to the covenant, was under the ownership of the Ruler but once a covenant is entered into, the Government has taken over all the properties except those which the Government recognizes as the private properties of the Ruler. In case of properties under the Khasgi Trust, the State of Madhya Pradesh, being the successor State, is the titleholder of the properties and in light of judgment delivered by the Hon'ble Supreme Court, the learned Single Judge was not having power to decide the writ petition keeping in view the specific bar as provided under Article 363 of the Constitution of India.

60. He has also placed reliance upon a judgment delivered in the case of ***Draupadi Devi & Others v/s Union of India & Others*** *reported in* ***(2004) 11 SCC 425***. Paragraph – 43 and 44 of the aforesaid judgment read as under:-

> "43. The rule that cession of territory by one State to another is an act of State and the subjects of the former State may enforce only those rights which the new sovereign recognises has been accepted by this Court. [See in this connection: M/s Dalmia Dadri Cement Co. Ltd. V. The Commissioner of Income-tax (supra); Jagannath Agarwala v. State of Orissa (supra); Promod Chandra Deb and Others v. The State of Orissa and Others and The State of Saurashtra v. Jamadar Mohamad Abdulla and Others (supra).
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> 44. Applying the law as laid down in Vora Fiddali (supra) it appears to us that the contention of the State

of Punjab and the Union of India must be upheld. The Maharaja of Kapurthala was an independent sovereign Ruler. To merge or not to merge with the Dominion of India was a political decision taken by him and the instrument of accession dated 16.8.1947 was, without doubt, an act of State. So was the covenant dated 5.5.1948. By the covenant all rights, authority and jurisdiction of the erstwhile Rulers were vested in the Patiala and East Punjab States Union and all assets and liabilities of the covenanting States became the assets and liabilities of the Union, PEPSU. It is only Article XII which ensured certain rights to the Ruler with regard to full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of the State to the Raj Pramukh. Consequently, he was also required to furnish to the Raj Pramukh, before the deadline, an inventory of all the immovable properties, securities and cash balances held by him as such private property. This was obviously done so that the Government of India could ascertain the correctness of the claim. No doubt, clause (3) of Article XII provides that a dispute arising as to whether any item of property was the private property of the Ruler or State property was referable to a nominee of the Government of India and such nominee's decision would be final and binding on all the parties concerned, provided that such dispute was to be referred by the deadline of 31.12.1948. Interpreting this clause, the learned Single Judge took the view that under the treaty the Government of India could not unilaterally refuse to recognise any property as private property of the Ruler, and, if it did, it was obliged to refer it to the person contemplated by clause (3). Failure to do so would imply recognition of the claim as to private property. In our view, this reasoning of the learned Single Judge was erroneous on two counts. In the first place, this interpretation ignores the true nature of the covenant. The covenant is a political document resulting from an act of State. Once the Government of India decides to take over all the properties of the Ruler, except the properties which it recognises as private properties, there is no question of implied recognition of any property as private property. On the other hand, this clause of the covenant merely means that, if the Ruler of the covenanting State claimed property to be his private property and the Government of India did not agree, it was open to the Ruler to have this issue decided in the manner contemplated by clause (3). Clause (3) of Article XII does not mean that the Government was

> obliged to refer to the dispute upon its failure to recognise it as private property. Secondly, the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out of the terms of the covenant and, therefore, not adjudicable by municipal courts as being beyond the jurisdiction of the municipal courts by reason of Article 363 of the Constitution of India. ”

His contention is that in light of the aforesaid judgment, once as per the covenant the property was not the private property of the Maharaja and it was declared to be the property of the Madhya Bharat State (now State of Madhya Pradesh), the writ petition was certainly not at all maintainable.

61. Shri Saxena has also placed reliance upon a judgment delivered in the case of ***Manohar Lal v/s Ugrasen & Others*** *reported in* ***(2010) 11 SCC 55***. Paragraphs – 30 to 34 of the aforesaid judgment reads as under:-

> “30. In Messrs. Trojan & Co. Vs. RM.N.N. Nagappa Chettiar AIR 1953 SC 235, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:
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> > "It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."
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> 31. A similar view has been re-iterated by this Court in Krishna Priya Ganguly etc.etc. Vs. University of Lucknow & Ors. etc. AIR 1984 SC 186; and Om Prakash & Ors. Vs. Ram Kumar & Ors., AIR 1991 SC 409, observing that a party cannot be granted a relief which is not claimed.
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> 32. Dealing with the same issue, this Court in Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi & Ors., AIR 2010 SC 475 held:
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> > "Though the Court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even

prayed for by the petitioner."

33. In Fertilizer Corporation of India Ltd. & Anr. Vs. Sarat Chandra Rath & Ors., AIR 1996 SC 2744, this Court held that "the High Court ought not to have granted reliefs to the respondents which they had not even prayed for."

34. In view of the above, law on the issue can be summarised that the Court cannot grant a relief which has not been specifically prayed by the parties. The instant case requires to be examined in the light of the aforesaid certain legal propositions."

The contention of learned senior counsel is that the learned Single Judge has granted relief, which was not prayed for and by no stretch of imagination, a relief could have been granted to a party without a prayer that too without proper pleadings. He has argued that the learned Single Judge has granted various reliefs which were never prayed for, the learned Single Judge has drafted a fresh trust deed which was not the matter of dispute, and therefore, the order passed by the learned Single Judge deserves to be set aside.

62. Reliance has also been placed upon a judgment delivered in the case of ***Janardha Reddy & Others v/s The State of Hyderabad & Others*** *reported in* ***AIR (38) 1951 SC 217***. Paragraph – 26 of the aforesaid judgment reads as under:-

"26. It is well settled that if a court acts without juris- diction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdic- tion, i.e., an appeal would lie to the court to which it would lie if its order was with jurisdiction. [See Ranjit Misser v. Ramudar Singh (1); Bandiram Mookerjee v. Purna Chandra Roy C); Wajuddi Pramanik v. Md. Balaki Moral (3); and Kalipada Karmorkar v. Sekher Bashini Dasya(4)]. There- fore, the High Court at Hyderabad had jurisdiction to hear and decide the appeal in this case. In view of this fact, the deprivation of life or liberty, upon which the case of the petitioners is founded, has been brought about in accordance with a procedure established by law,

and their present detention cannot be held to be invalid."

63. Reliance has also been placed upon a judgment delivered in the case of ***Puran Singh & Others v/s State of Punjab & Others*** *reported in* ***(1996) 2 SCC 205***. Paragraphs – 5, 6, 10, 11 and 12 read as under:-

> 5. The question with which we are concerned is as to whether the aforesaid provisions made under Order 22 of the code are applicable to proceedings under Articles 226 and 227 of the constitution. Prior to the introduction of an explanation by Civil Procedure code (Amendment) Act 1976, Section 141 of the Code was as follows:
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> > "141. Miscellaneous proceedings - The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction."
>
> The explanation which was added by the aforesaid Amending Act said:
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> > "Explanation - In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution."
>
> There was controversy between different courts as to whether the different provisions of the Code shall be applicable even to writ proceedings under Articles 226 and 227 of the Constitution. Some High Courts held that writ proceedings before the High Court shall be deemed to be proceedings "in any court of civil jurisdiction" within the meaning of Section 141 of the Code. (Ibrahimbhai v. State, AIR 1968 Gujarat 202; Panchayat Officer v. Jai Narain, AIR 1967 All. 334; Krishanlal Sadhu v. State, AIR 1967 Cal. 275; Sona Ram Ranga Ram v. Central Government, AIR 1963 Punjab 510; A. Adinarayana v. State of Andhra Pradesh, AIR 1958 Andhra Pradesh 16). However, in another set of cases, it was held that writ proceeding being a proceeding of a special nature and not one being in a court of civil jurisdiction Section 141 of the Code was not applicable. (Bhagwan Singh v. Additional Director Consolidation, AIR 1968 Punjab 360; Chandmal v. State, AIR 1968 Rajasthan 20; K.B.Mfg.Co. v. Sales Tax Commissioner, AIR 1965 All. 517; Ramchand v. Anandlal, AIR 1962 Gujarat 21; Messers Bharat Board Mills v. Regional Provident Fund Commissioner and Others, AIR 1957 Cal. 702).
>
> 06. Even before the introduction of the explanation to Section 141 of the Code, this Court had occasion to examine the scope of the said Section in the case of

Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and others, AIR 1974 SC 2105 = (1975)2 SCR 71. It was said:

> "It is not necessary for this case to express an opinion on the point as to whether the various provisions of the Code of Civil Procedure apply to petitions under Article 226 of the Constitution. Section 141 of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any court of civil jurisdiction as far as it can be made applicable. The words "as far as it can be made applicable" make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the court must take into account the nature of those proceedings and the relief sought. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Court to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petition, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226."

It can be said that in the judgment aforesaid, this Court expressed the view that merely on basis of Section 141 of the code it was not necessary to adhere to the procedure of a quit in writ petitions, because in many cases the sole object of writ jurisdiction to provide quick and inexpensive remedy to the person who invokes which jurisdiction is likely to be defeated. A Constitution Bench of this Court in the case of State of U.P. vs. Vijay Anand, AIR SC 1963 946 said as follows:-

> "It is, therefore, clear from the nature of the power conferred under Art.226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Art.226 of the Constitution exercises original jurisdiction, though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may, for convenience, be described

as extraordinary original jurisdiction."

10. On a plain reading, Section 141 of the Code provides that the procedure provided in the said Code in regard to suits shall be followed "as far as it can be made applicable, in all proceedings". In other words, it is open to make the procedure provided in the said Code in regard to suits applicable to any other proceeding in any court of civil jurisdiction. The explanation which was added is more or less in the nature of proviso, saying that the expression "proceedings" shall not include any proceeding under Article 226 of the Constitution. The necessary corollary thereof shall be that it shall be open to make applicable the procedure provided in the Code to any proceeding in any court of civil jurisdiction except to proceedings under Article 226 of the Constitution. Once the proceeding under Article 226 of the Constitution has been excluded from the expression "proceedings" occurring in Section 141 of the Code by the explanation, how on basis of Section 141 of the Code any procedure provided in the Code can be made applicable to a proceeding under Article 226 of the Constitution? In this background, how merely on basis of Writ Rule 32 the provisions of the Code shall be applicable to writ proceedings? Apart from that, Section 141 of the Code even in respect of other proceedings contemplates that the procedure provided in the Code in regard to suits shall be followed "as far as it can be made applicable". Rule 32 of Writ Rules does not specifically make provisions of Code applicable to petitions under Articles 226 and 227 of the Constitution. It simply says that in matters for which no provision has been made by those rules, the provisions of the Code shall apply mutatis mutandis in so far as they are not inconsistent with those rules. In the case of Rokyaybi v. Ismail Khan, AIR 1984 Karnataka 234 in view of Rule 39 of the Writ Proceedings Rules as framed by the Karnataka High Court making the provisions of Code of Civil Procedure applicable to writ proceedings and writ appeals, it was held that the provisions of the Code were applicable to writ proceedings and writ appeals.

11. We have not been able to appreciate the anxiety on the part of the different courts in judgments referred to above to apply the provisions of the Code to Writ Proceedings on the basis of Section 141 of the Code. When the constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which

such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227 itself. No useful purpose will be served by limiting the power of the High Court by procedural provisions prescribed in the Code. of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. It need not be impressed that different provisions and procedures under the Code are based on well recognised principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, it cannot be disputed that many procedures prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to a person who pursues such remedies. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to be not only reasonable but also expeditious.

12. As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At

> the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final."

Learned senior counsel has argued that the learned Single Judge has exercised jurisdiction in the matter as if he was acting as a Civil Court and deciding a title suit. He has stated that under Article 226 of the Constitution of India while dealing with the writ petition, the Code of Civil Procedure is not applicable for deciding a title, and therefore, the judgment delivered by the learned Single Judge deserves to be set aside.

64. Reliance has also been placed upon a judgment delivered in the case of State of ***Uttar Pradesh & Others v/s Dr. Vijay Anand Maharaj*** *reported in* ***AIR 1963 SC 946***. Paragraphs – 8 and 9 of the aforesaid judgment reads as under:-

> 8. Even so, the appellants would not be entitled to succeed, unless we hold, differing from the High Court, that s.11 of the Act confers a right on the appellants to have the order of Mehrotra, J., reviewed. We have already extracted the provisions of a. 11. Section 11 is in two parts: the first part of the section confers a right on a party to the proceedings under the Principal Act to apply to the court or authority for a review of the proceeding in the light of the provisions of the Act within 90 days from the commencement of the Act, and the second part issues a statutory injunction on such a court or authority to review the proceedings accordingly and to make an order as may be necessary to give effect to the provisions of the Principal Act, as amended by ss.2 and 4 of the Act. The first question, therefore, is whether the order of Mehrotra, J., in an application under Art. 226 of the Constitution was in any proceeding under the Principal Act. Obviously a petition under Art. 226 of the Constitution cannot be a proceeding under the Act: it is a proceeding under the Constitution. But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p, 68, and in Crawford on

"Statutory Construction' at p. 492, that it is the duty of the Judge "to make such construction of a statute as shall suppress the mischief and advance the remedy," and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p.68 of his book:

> "The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature. The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature. So construed, there cannot be two possible views on the interpretation of the first part of the section. Learned counsel suggested that we should read the relevant portion of the first part thus: "in any proceedings to set aside any assessment made on the basis of the Principal Act". To accept this argument is to rewrite the section. While the section says that the order sought to be reviewed is that made in a proceeding under the Principal Act, the argument seeks to remove the qualification attached to the proceeding and add the same to the assessment. The alternative argument, namely, that without changing the position of the words as they stand in the section, the expression ,on the basis of" may be substituted for the expression "under" does Dot also yield the results expected by the learned counsel. It cannot be held with any justification, without doing violence to the language used, that a proceeding under Art. 226 of the Constitution is either one under the Principal Act or on the basis of the Principal Act, for it is a proceeding under Art. 226 of the Constitution to quash the order on the ground that it was made in violation of the Act. An attempt is then made to contend that a proceeding under Art. 226 of the Constitution is a continuation of the proceedings before the Additional Collector and, therefore, the said proceedi- ings are proceedings

under the Act. This leads us to the consideration of the question of the scope of the proceedings under Art. 226 of the Constitution.

09. Article 226 confers a power on a High Court to issue the writs, orders, or directions mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. This is neither an appellate nor a revisional jurisdiction of the High Court. Though the power is not confined to the prerogative writs issued by the English Courts, it is modeled on the said writs mainly to enable the High Courts to keep the subordinate tribunals within bounds. Before the Constitution, the chartered High Court, that is, the High Courts at Bombay, Calcutta and Mad- ras, were issuing prerogative writs similar to those issued by the King's Bench Division, subject to the same limitations imposed on the said. writs. In Venkataratnam v. Secretary of State for India(1), (1) (1930) I.L.P.. 53 Mad. 979. A division Bench of the Madras High Court, consisting of Venkatasubba Rao and Madhavan Nair, JJ,; held that the jurisdiction to issue a writ of certiorari was original jurisdiction. In Ryots of Garabandha v. The Zamindar of Parlakimedi (1), another division Bench of the same High Court, consisting of Leach, C. J., and Madhavan Nair J., considered the question again incidentally and came to the same conclusion "and held that a writ of certiorari is issued only in exercise of the original jurisdiction of the High Court. In Ramayya v. State of Madras (2), a division Bench, consisting of Govinda Menon and Ramaswami Oounder, JJ,, considered the question whether the proceedings under Art. 226 of the Constitution are in exercise of the original Jurisdiction or revisional jurisdiction of the High Court, and the learned Judges held that the power to issue writs under Art. 226 of the Constitution is original and the jurisdiction exercised is original jurisdiction. In Moulvi Hamid Hassan Nomani v. Banwarilal Boy (3), the Privy Council was considering the question whether the original civil jurisdiction which the Supreme Court of Calcutta possessed over certain classes of persons outside the territorial limits of that jurisdiction has been inherited by the High Court. In that context the Judicial Committee. observed.

> "It cannot be disputed that the issue of such writs is a matter of original jurisdiction"

The Calcutta. High Court, in Budge Budge Municipality v. Mangru(4) came to the same conclusion, namely, that the jurisdiction exercised under Art. 226 of the Constitution is original as distinguished from appellate or revisional jurisdiction;

> but the High Court pointed out that the jurisdiction, though original, is a special jurisdiction and should not be confused with ordinary civil jurisdiction under the Letters Patent. The Andhra High Court in Satyanarayanamurthi v. 1. T. Appellate Tribunal (1) described it as an extraordinary original jurisdiction. It is, therefore, clear from the nature of the power conferred under Art. 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Art. 226 of the Constitution exercises original jurisdiction, though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may. for convenience, be described as extraordinary original jurisdiction. If that be so, it cannot be contended that a petition under Art. 226 of the Constitution is a continuation of the proceedings under the Act.

Taking shelter of the aforesaid judgment, he has argued before this Court that the High Court does not have any power to decide a civil suit as it was not exercising original writ jurisdiction to deal with a civil case, and therefore, the learned Single Judge has erred in law and facts in holding that the Trust is the titleholder of the property. Shri Saxena has prayed for dismissal of the writ petition. He has further prayed that the writ appeals be allowed and the cost be imposed upon the Trust.

65. In the present case, Shri A.K. Chitle, learned senior counsel along with Shri Kartik Chitle, Shri A.S. Garg, learned senior counsel along with Ms. Poorva Mahajan, Shri S.C. Bagadia, learned senior counsel along with Shri Vivek Patwa and Shri Rohit Saboo, Shri Shekhar Bhargava, learned senior counsel along with Ms. Anika Bajpai, Shri V.K. Jain, learned senior counsel along with Shri Vaibhav Jain, Shri Kapil Sibal, learned senior counsel along with Shri Abhinav Malhotra , Shri Shyam Diwan, learned senior

counsel along with Shri Abhinav Malhotra and Ms. Sugnadha Yadav and Shri Manoj Manav, learned counsel for the Union of India have appeared in the matter and have argued the matter at length.

Intervenors have also been represented by Shri Sameer Saxena and Shri Ashish Joshi.

66. Shri Kapil Sibal, learned senior counsel and Shri Shyam Diwan, learned senior counsel have vehemently argued before this Court that the Collector, Indore was having no jurisdiction to pass the order dated 05.11.2012 and the Registrar, Public Trust was also jurisdictionaly incompetent to pass the order dated 30.11.2012.

67. Reliance have been placed upon several judgments delivered in the cases of ***T.C. Basappa v/s T. Nagappa*** *reported in* ***AIR 1954 SC 440***, ***Hari Vishnu Kamath v/s Syed Ahmad Ishaque*** *reported in* ***AIR 1955 SC 233***, ***Syed Yakoob v/s K.S. Radhakrishnan*** *reported in* ***AIR 1964 SC 477***, ***Vimla Ben Ajit Bhai Patel v/s Vatslaben Patel*** *reported in* ***(2008) 4 SCC 649*** and ***Jilubhai Khachar v/s The State of Gujrat*** *reported in* ***(1995) Supp. (1) SCC 596***.

68. Learned counsel for the respondents in the writ appeal have also argued before this Court that by orders dated 05.11.2012 and 30.11.2012, the Collector and Registrar of the State of Madhya Pradesh have held that the property in question is under the ownership of the State of Madhya Pradesh and the Collector has decided the issue of title without granted opportunity of hearing to the Trust and trustees. Reliance has been placed upon judgments delivered in the cases of ***A.K. Kraipak v/s Union of India*** *reported in* ***(1969) 2 SCC 262***, ***S.L. Kapoor v/s Jagmohan***

reported in ***(1980) 4 SCC 379***, ***Sahara India (Firm) (1) v/s CIT*** *reported in* ***(2008) 14 SCC 151*** and ***Kanachur Islamic Education Trust v/s Union of India*** *reported in* ***(2017) 15 SCC 702***.

69. It has also been argued that the letter of the Chief Secretary is the decision of the State Government, and therefore, keeping in view the letter dated 13.06.1969, the State is estopped by its deed and conduct in disapproving the sale which took place in the matter. Reliance has also been placed upon judgments delivered in the cases of ***Motilal Padampat v/s The State of UP*** *reported in* ***(1979) 2 SCC 409***, ***Union of India v/s Godfrey Philips*** *reported in* ***(1985) 4 SCC 369*** and ***State of Bihar v/s Sunny Prakash*** *reported in* ***(2013) 3 SCC 559***.

70. It has also been argued that Article 363 of the Constitution of India has no applicability in the present case and reliance has been placed upon judgments delivered in the cases of ***Madhav Rao Jivaji Rao Scindia v/s Union of India*** *reported in* ***(1971) 1 SCC 85*** and ***State of M.P. v/s Usha Devi*** *reported in* ***(2015) 8 SCC 672***.

71. It has also been argued before this Court that the Registrar, Public Trust and the Collector were not competent to decide the question of title keeping view the M.P. Public Trust, 1951 and no jurisdiction vested in the Registrar to decide the ownership of immovable properties, and therefore, findings given by the learned Single Judge in paragraph – 31 are correct. Reliance has also been placed upon judgments delivered in the cases of ***State of Maharashtra v/s Chanderkant*** *reported in* ***(1977) 1 SCC 257***, ***Seth Chand Ratan v/s Pandit Durga Prasad*** *reported*

in ***(2003) 5 SCC 399***, ***Shri Ram Mandir Trust v/s State of M.P.*** *reported in* ***(2011) SCC OnLine MP 275***, ***State of Gujrat v/s Patil Raghav*** *reported in* ***(1969) 2 SCC 187*** and ***Rohini Prasad v/s Kasturchand*** *reported in* ***(2000) 3 SCC 668***.

72. It has also been argued before this Court that Union of India is a necessary party and it should also be heard in the matter.

73. Reference has also been made to the White Paper on Indian States published by the Government of India, Ministry of States and it has been argued that the property in question is a Trust's property and it is not the property of the State Government.

74. Reference has also been made to the book written by Shri V.P. Menon titled as 'The Story of Integration of the Indian States' published in 1956 First Edition, Chapter – 11 and the judgment delivered by the Hon'ble Supreme Court in the case of ***Marthanda Varma v/s The State of Kerela*** *reported in* ***2020 SCC OnLine 569***.

75. Lastly, it has been argued that power to manage Trust's properties inherently includes the power to sale and the trustees are entitled to sell the properties for the objective of the Trust. Reliance has been placed upon a judgment delivered in the case of ***Chairman Madappa v/s M.N. Mahantha Devaru*** *reported in* ***AIR 1966 SC 878***.

76. Lastly, it was argued that Maharani Usha Devi and her husband Shri S.C. Malhotra are respectable citizen and they have contributed a lot towards public, social and charitable causes in the township of Indore, they have donated huge amount from time to time to Khasgi Trust,

and therefore, the learned Single Judge was justified in quashing the orders passed by the Collector and Registrar, Public Trust.

77. It has been vehemently argued that the Chief Secretary of the State of Madhya Pradesh has written a letter dated 13.06.1969 permitting the Trust to go ahead with the sale of the property, and therefore, the State Government is estopped from taking a contrary stand in the matter that there was no permission of the State in respect of sale of the property.

78. It has been vehemently argued by Shri Kapil Sibal and Shri Shyam Diwan, learned senior counsel that the Registrar was not having any power under the M.P. Public Trust Act, 1951 in the matter to pass any order.

79. While the matter was argued, a specific question was put to Shri Shyam Diwan, learned senior counsel i.e., whether the Indian Trust Act, 1882 and / or M.P. Public Trust Act, 1951 and / or any other law relating to Trust shall apply in the matter or not ? He was fair enough in stating before this Court that the provisions of M.P. Public Trust Act, 1951 shall be applicable in the matter. Later on Shri Kapil Sibal, after the arguments were over, has stated before this Court that neither the Indian Trust Act, 1882 nor the M.P. Public Trust Act, 1951 is applicable in respect of the Trust in question.

80. Heard learned counsel for the parties at length and perused the record. The matter is being disposed of finally with the consent of the parties.

81. At the time of Indian independence in 1947, India was divided into two sets of territories, one under direct

British rule, and the other under the suzerainty of the British Crown with control over their internal affairs remaining in the hands of their hereditary rulers. There were 562 Princely States, having different types of revenue sharing arrangements with the British, often depending on their size, population and local conditions. At the time of independence, there were several colonial enclaves controlled by France and Portugal.

82. The integration of Indian States into Union of India was a herculian job and the events took place from 1947 to 1951. Shri V.P. Menon in his book titled as 'The Story of Integration of the Indian States' has dealt with the historical aspect of integration of Indore State in the Indian Union. Under the chapter Madhya Bharat, the issue of integration of Indore State has been dealt with. The relevant extracts, which are necessary to deal with the issue involved in the present case are reproduced as under:-

> "Indore, the other Important State, was founded by Malhar Rao Holkar. He was born in 1694. his soldierly qualities brought him into prominence under th e Peshwa. The territories acquired by Malhar Rao at one time stretched from the Deccan to the Ganges. He was succeeded by his grandson, Male Rao, who had no issue, and when he died his mother Ahalyabai came to the throne. She was reputed to be not only an exemplary ruler but also a model of Hindu pety. Her temple occupies a commanding position on the crags of Maheshwar overlooking the Narmada river. She was succeeded by Tukoji Rao Holkar. His son, Jaswant Rao, in 1805, concluded a treaty of peace and amity with the British Government. But further disturbances caused and in 1718 Malhar Rao II entered into another treaty, called the Treaty of Mandsaur, which till the transfer of power continued to define the relations of the State with the British Government. There had been lond spells of minority administration under British officials by which the State had greatly benefited.
>
> The present Maharajah, SirYeshwant Rao

> Holkar, started very well indeed and was noted for his progressive views. I recall his having written a letter to the President of the United States during the second World War stressing the imperative need of satisfying nationalist demand in India. This got him into his shell. Later he went to the other extreme and joined the group which tried to evolve a 'Third Force' out of the State. During out negotiations for accession on three subjects, the Maharajah was certainly not helpful, but he did ultimately accede the thereafter fully played his part. He is the only ruler, other than the Nizam, who had the foresight to create a trust of all his properties. After the integration of the State, he requested the States Ministry to recognize his only daughter, Ushadevi, as his heir. In view of his uniformly good relations with the Government of India after his accession to the Indian Union, and in accordance with the precedent of a former ruler Ahalyabai, the President (on the advice of Sardar and the Prime Minister) recognized the daughter as heir-apparent.
>
> The future relations between Gwalior and Indore depended largely on the choice of the capital. The Maharajah of Gwalior, backed by his ministers, pressed the claims of Gwalior. The Maharajah of Indore along with his ministers insisted on Indore. In the end we decided that the summer capital should be at Indore and the winter capital at Gwalior. The controversy over the question of the capital is not yet settled; but for the time being at any rate, both parties have accepted Nehru's award that the capital shall be at Gwalior for six-and-a-half months and at Indore for five and-a-half months.
>
> The covenant was signed by practically all the rulers on 22 April 1948. There remained only a few estates and these were subsequently integrated by means of agreements between the Chiefs concerned and Rampramukh.
>
> The Madhya Bharat Union, the largest we had formed up to that time, comprising an area of 17,000 square miles, with a population over 70 lakhs and a revenue of about Rs 8 crores, was inaugurated by Nehru on 28 May 1948."

83. The Government of India, Ministry of States published a White Paper on Indian States printed in media by the Manager, Government of India Press, New Delhi and published by the Manager of Publications, Delhi, 1950. Part – VII deals with the settlement of Rulers' private properties.

Paragraphs – 156 to 159 reads as under:-

> "156. The Instruments of Merger and the Covenants establishing the various Unions of States, are in the nature of over-all settlements with the Rulers who have executed them. While they provide for the integration of States and for the transfer of power from the Rulers, they also guarantee to the Rulers privy purse, succession to gaddi, rights and privileges and full ownership, use and enjoyment of all private properties belonging to them, as distinct from State properties. The position about the privy purses guaranteed or assured to the Rulers is set out in details in Part XI. The provisions of the Constitution bearing on the rights, privileges and dignities of Rulers and their succession to their respective gaddis are also explained in that Part. So far as their Private properties are concerned, the Rulers were required to furnish by a specified date inventories of immovable property, securities and cash balances claimed by them as private property. The settlement of any dispute arising in respect of the properties claimed by a Ruler was to be by reference to an arbitrator appointed by the Government of India.
>
> 157. In the past the Rulers made no distinction between private and State property; they could freely use for personal purposes any property owned by their respective States. With the integration of States it became necessary to define and demarcate clearly the private property of the Ruler. The settlement was a difficult and delicate task calling for detailed and patient examination of each case. As conditions and customs differed from State to State, there were no precedents to guide and no clear principles to follow. Each case, therefore, had to be decided on its merits. The Government of India were anxious that the new order in States should be ushered in in an atmosphere free from any controversies or bitterness arising from any unhappy legacy of the past. A rigid and legalistic approach would have detracted from the spirit of good-will and accommodation in which the political complexion of the States had been so radically altered. By and large the inventories were settled by discussion between the representatives of the Ministry of States, the Rulers concerned and the representatives of the Governments of the Province or the Union as the case may be. The procedure generally adopted was that after the inventories had been received and scrutinised by the Provincial or the Union Government concerned and after the accounts of the States taken over had been examined, the inventories were discussed across the

table and settled in a spirit of give and take. In all discussions with the Rulers of the States forming Unions, the Rajpramukhs were associated; the private properties of Rajpramukhs were settled by the Government of India in informal consultation with the Premiers of the Unions. This method made it possible to settle these properties on an equitable basis within a remarkably short period and without recourse even in a single case to arbitration. The settlements thus made are final as between the States and the Rulers concerned.

158. The settlements made in regard to private properties of the Rulers were arrived at as a compromise between the claims of the Rulers and the counter-claims of the Governments, and with due regard to the paramount need of safeguarding public interests. In the nature of things it was not possible to lay down or follow any strict or uniform standards; nevertheless certain broad principles were observed. These are indicated below:—

(i) *Palaces and other Residential Buildings.*—These were allocated on the basis of previous use and the needs of the Ruler and the administration. The Ruler's palace with houses used for his private guests and personal staff were treated as his private property. The Rulers were also allowed to retain one or two houses outside the State, for example, at a hill station or a sea-side resort.

(ii) *Farms and Gardens.*—Rulers who were interested in farming or horticulture have been allowed to retain reasonable areas of land already in their possession. These lands, will be held subject to the ordinary revenue laws and to the payment of assessment.

(iii) The Rulers have also in a number of cases been allowed to retain grazing areas; the land so held is liable to assessment. Generally, no forest areas have been given to Rulers, though limited rights of grazing and obtaining fuel have been recognised in some cases. Shooting rights of the Rulers have been recognised in defined areas subject to the laws in force and authorised working plans.

(iv) As the privy purse is intended to cover all the expenses of the Ruler and his family including expenses on account of his personal staff, maintenance of residences, marriages and other ceremonies, Rulers have not been allowed to add to this income directly or indirectly. New jagirs or grants of villages made to the consorts or children of the Rulers have not been recognised as private property. Likewise all other rights enjoyed and claimed by Rulers in respect of land such as customary

right to enjoy the fruit of trees on common lands, superior proprietary rights over agricultural areas, proprietorship of service jagirs, etc., have been extinguished. The Rulers have surrendered their jagirs and where their proprietary rights over lands has been recognised, it has been done mainly on the ground that many of them have the resources and time to undertake modern and mechanical farming and to bring new areas under cultivation. As already stated, the position of the Rulers in respect of these areas will be the same as that of a private land-holder and they will be subject to revenue laws and assessment.

(v) *Investments and Cash Balances.*—The opening balances which, according to the books of the States, belonged to the States, have been handed over to the successor Governments. Only such investments and cash to which the States could lay no claim have been recognised as private property of the Ruler.

(vi) *Ancestral Jewellery and Regalia.*—In a large number of cases, ancestral jewellery has been treated as heirloom to be preserved for the Ruling family. In the case of the States having valuable regalia, such articles are to remain in the custody of the Ruler for use on ceremonial occasions and they will be subject to periodical inspection by the Governments concerned.

(vii) *Civil List Reserve Fund.*—The Rulers had created Civil List Reserve Funds according to the advice given by the Chamber of Princes. The fund was intended to relieve the State of the expenditure in connection with marriages etc. in the Ruler's family. The amount standing to the credit of these funds has therefore been allowed to be retained by the Rulers. Generally, additions to the fund made after the date of integration have not been treated as private property.

(viii) *Temples and Religious Funds.*—Excepting the temples situated within the palaces, temples and properties attached to them have been constituted into Trusts. The right of the public to worship at these temples has been maintained.

(ix) The Rulers will preserve for the nation objects of historical importance like rare manuscripts, paintings, arms etc. Even though treated as private property these objects will be preserved in Museums inside the States concerned. Where any of them are kept in private custody, scholars, students and others interested will have access to them under

proper regulations.

(x) A number of Rulers have houses in New Delhi. Most of these were constructed on plots of land allotted on special terms and conditions when New Delhi was built. The Rulers have claimed these houses but the question whether these houses should be treated as the Rulers' private property or State property is still under consideration as also the question of their acquisition for use by the Government of India.

159. Some of the special arrangements made for management of important properties in States may be mentioned:

(i) *Indore Ahalyabai's Charities.*—The Khasgi properties of His Highness the Maharaja of Indore and the income from Khasgi which had been hitherto utilised for Maharai Ahalyabai's Charities all over India and for the maintenance of allowances to the senior Maharani of Indore, were made over to the Madhya Bharat Government and in return the Madhya Bharat Government undertook to pay annually from the revenues of the properties a sum of Rs. 291,952 for charities. The amount has been funded and placed under a permanent Trust consisting of the Ruler of Indore, two nominees of the Ruler, one nominee of the Government of India and two nominees of the Madhya Bharat Government. This Trust will also administer the charities of Her Highness Maharani Ahalyabai Holkar.

(ii) His Highness the Nawab of Rampur has agreed to set up a Trust in respect of his famous library which contains over 12,000 rare manuscripts and several thousands of Moghul miniature paintings.

(iii) His Highness the Maharaja Gaekwar has agreed to create a Trust with a corpus of Rs. 20 millions, the income from which will be available for works of public utility in the rural areas of the erstwhile Baroda State and for the advancement of education. The new Baroda University will be amongst the institutions which will benefit from these Trusts.

(iv) *Gangajali Fund.*—This fund, which has a corpus of Rs. 16,237,000 was created by the Scindias as a special reserve fund for use during grave emergency such as famine. His Highness the Maharaja of Gwalior has made this fund available for public benefit. Subject to any instructions or directions from the Government of India, the authority to control and administer the fund is vested in the Rajpramukh of Madhya Bharat."

84. The political integration of aforesaid territories in India was a herculean task as already stated earlier and Sardar Vallabhbhai Patel and V.P. Menon played a great role to convince the rulers of the various princely states to accede to India. The process of accession / immigration / merger took in various steps to accede to India and various instruments of accession and covenant were signed by the rulers / states.

85. In this backdrop, a covenant was published on 07.10.1948 in respect of Holkar State and it clearly states that all the assets and liabilities of the covenanting states shall be the asset and liability of the United State (Madhya Bharat). It further provided for entitlement of private properties to the ruler, thus, all the properties, which were not the private properties of the ruler, became the properties of United State (Madhya Bharat). The relevant extracts of the covenant dated 07.10.1948 reads as under:-

> "THE COVENANT
>
> Entered into by the Rulers of Gwalior, Indore and certain other
> States in Central India
> for the formation of
> THE UNITED STATE OF GWALIOR, INDORE AND MALWA
> (MADHYA-BHARAT)
>
> ---
>
> We the Rulers of Gwalior, Indore and certain other States in Central India, BEING CONVINCED that the welfare of the people of this region can best be secured by the establishment of a State comprising the territories of our respective States, with a common Executive, Legislature and Judiciary;
>
> AND HAVING resolved to entrust to a Constituent Assembly consisting of elected representatives of the people the drawing up of a democratic Constitution for the State within the framework of the Constitution of India, to which we have already acceded, and of this Covenant;

DO HEREBY, with the concurrence and guarantee of the Government of India, enter into the following Covenant–

ARTICLE I.

.....

ARTICLE II.

.....

ARTICLE III.

.....

ARTICLE IV.

.....

ARTICLE V.

.....

ARTICLE VI.

(1) The Ruler of each Covenanting State shall, as soon as may be practicable, and in any event not later than the 15th April, 1948, make over the administration of his State to the Raj Pramukh : and thereupon–

(a) all rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental, to the Government of the Covenanting State vest in the United State and shall hereafter be exercisable only as provided by the Covenant or by the Constitution to be framed thereunder;

(b) all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the United State and shall be discharged by it;

(c) all the assets and liabilities of the Covenanting State shall be the assets and liabilities of the United State; and

(d) the military forces, if any, of the Covenanting State shall become the military forces of the United State.

(2) When, in pursuance of any such agreement of merger as is referred to in clause (b) of paragraph (1) of Article II, the administration of any other State is made over to the Raj Pramukh, the provisions of clauses (a), (b), (c) and (d) of paragraph (1) of this Article shall apply in relation to such States as they apply in relation to a Covenanting State."

86. By virtue of the covenant, which was published in official gazette of the Madhya Bharat State, the erstwhile Maharaja became the absolute owner of the properties

mentioned in the schedule. It is noteworthy to mention that the properties under the Khasgi Trust were not at all included in the personal properties of the Maharaja.

87. The erstwhile ruler of the Holkar State His Highness Maharaja Yashwant Rao Holkar, Indore made a claim over the Khasgi properties and vide letter dated 06.05.1949, he was informed about the settlement of the claim in respect of Khasgi properties. The letter dated 06.05.1949 of the Government of India, Ministry of States, New Delhi, reads as under:-

> "Ministry of States,
>
> New Delhi,
> (camp) Indore
> May 6, 1949
>
> Subject : Claim made by His Highness Maharaja Yeshwant Rao Holkar of Indore concerning Khasgi in the inventories of his private properties submitted in pursuance of Article XII of the Madhya Bharat Union Covenant.
>
> --
>
> Your Highness,
>
> With reference to the claim made by Your Highness concerning the above subject, I write to inform Your Highness that this claim has been finally settled on the basis stated in the enclosure to this letter.
>
> Yours Sincerely,
> Sd/ V. P. Menon.
>
> His Highness Maharaja Yeshwant Rao Holkar,
> Maharaja of Indore,
> Indore"

88. The settlement of claim by Government of India in respect of Khasgi properties is reproduced as under:-

> "Settlement of the claims made by His Highness
> Maharaja Yeshwant Rao Holkar of Indore concerning Khasgi
> ---
>
> The Khasgi properties and the income from Khasgi shall be treated as lapsed for all time to the

Madhya Bharat Government. In lieu thereof the following guarantees are given subject tot he conditions mentioned below :-

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

The Trust shall consist of the following :

1. Ruler of Indore who will always be the President of the Trust.
2. Two nominees of the Ruler.
3. One nominee of the Government of India.
4. Two nominees of the Madhya Bharat Government.

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

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

The aforesaid settlement makes it very clear that the Khasgi properties, as they were not the personal properties of the Maharaja, became the exclusive properties of the Madhya Bharat Government and the Madhya Bharat Government was to pay Rs.2,91,952/- for upkeep of the properties and the amount so funded by the Madhya Bharat Government was to be placed under a permanent trust for the charities of Her Highness Maharani Ahilyabai Holkar. The Government of India also provided constitution of a trust, which included the nominees of the Madhya Bharat Government.

89. The Government of India, vide letter dated

07.05.1949, informed His Highness Maharaja Yashwant Rao Holkar about the private properties as per Article 12 of the covenant governing Madhya Bharat and this was the final settlement made on the subject and the same reads as under:-

"Annexure 'A'

The following of the list of private properties etc. as claimed by His Highness Maharaja Yeshwant Rao Holkar of Indore and accepted as such.

General Note: In the case of building claimed, claimed, reference to these includes reference to their contents including furniture, out-house, compound etc.

Immovable property in the State :

1.(a) Manik Bagh Palace together with all the buildings and outhouses and the Manik Bagh annex and its out-house.

(b) Along with the Place and the Annex, the surrounding area as indicated below is also included:

The area bounded by the Railway line from the level-crossing of Bhorkuwa Road up to the level-crossing at the Martand Bagh Road, then by the Martand Bagh Road from the Railway Crossing to its junction with the Bombay – Agra Road; then by the Bombay Agra Road from that point to the Bhorkuwa Cross Roads and from there by the Bhorkuwa road up to the Railway level – crossing but excluding the area that is vested in the Municipality.

The area of the Land surrounding the Manik Bagh Palace etc. as claimed in His Highness is indicated on the enclosed map (Encl. No. 1) signed by His Highness. This shall be Acquired by Government and handed over to Highness as expeditiously as possible on payment by His Highness of due compensation and will become His Highness Private Property thereafter.

2. Yeshwant Niwas Palace together with its out-house and part of the land to the east of the palace between the Yeshwant Club Road and the Yeshwant Niwas Road as shown on the plan (signed by His Highness, encl. No.2) including the land where the Police Station and water reservoir are constructed. The land as claimed is shown by lands ABCDEFGH on the plan.

3. The old place, Indore.

3. Note: High Highness agrees to allow

Government to continue to use, a part of this palace, as at present, for Government Officers without charging any rent, therefore in return for which Government shall be liable to maintain the whole of the palace.

4. The Sukhniwas Ramna area including the Sukhnivas Palace, out-house and gardens attached to it, the Hava Bungalow with its compound and the unfurnished Kothi, known as Phuti Kothi but excluding the Sirpur Tanks.

There are of the Sukhniwas Homes, Sukhniwas palace, Hava Bungalow and the unfurnished Kothi, known as Phuti Kothi is shown on the enclose map signed by His Highness (Encl. 3)

5. The lal Bagh Palace, Indore.

6. The Daryao Mahal, Barwaha.

(i)Such part of the Maheshwar Fort as includes (1) the Palace, i.e. the Bada, (2) The State Chhatries, and (3) temples including the palace State Chhatries and the temples.

Note: There would be no objection to the stops leading to the Ghats through the Bada being used by the public provided the privacy, as at present, of the inner sanctions of the Bada is maintained.

8. The Kothi as Bhesle (Rampura - Bhanpura)

9. Bedar Berchha Bir. This Bir will belong to His Highness subject to his paying regular assessment on the Bir fixed in accordance with the principles of soil classification and circle rates. The details of the Bir as claimed are shown on the enclosed map (signed by His Highness, encl. No.4)

Immovable property outside the State.

10. The properties in the Deccan:

(a) Chandwad Estate at present under the management off the Gumasta, Chandwad Estate, including the following:

(1) Lands measuring 3702.12 acres held on ordinary ryotwari tenure spread over in 41 villages of different district of the Bombay Province as per details given in the State attached hereto (Signed by the Personal Advisor to His Highness) (encl. No. 5).

(2) Inam lands totalling about 1205.25 acres in 6 villages of the Bombay Province and the Hyderabad State as per details given in the Statement attached hereto (signed by the Personal Advisor to His Highness) (encl. No. 6).

(3) Palace at Chandwad and other houses at various places as per Statement (signed by the Personal Advisor to His Highness) (Encl. No. 7).

(4) Inami lands at Jejuri and Hol villages as per details given in Statement (signed by the Personal Advisor to His Highness (encl. No. 8) together with Jejuri temple, the fort and the Malhar Tank.

(b) The Holkar Bada in Poona as well as the lands in that City.

The Properties in France including Shanti Vilas and Usha Vilas.

Miscellaneous :

12. Broad-gauge and Meter gauge railway saloons.

13. Bench Craft Aeroplane.

14. All properties under the administrative control of the Household Department of the Holkar State except such of the aforementioned property with the household Department as has already been transferred to the two guest houses at Indore viz., the one situated in the building which was known as the Indore Hotel and the other in Rajendra Bhawan on the Bombay Agra Road.

The above properties claimed consist, in the main of the following:

(a) Miscellaneous articles including Gold, Silver, Brass and Copper articles in use and required for ceremonial occasions and functions. The gold and silver articles are kept in the Jawahirkhana.

(b) Furniture including Bichhayat, articles, canopies, crockery, cutlery.

(c) Carriages, old gun, palanquins, 'ambaries' and 'Howdas' with equipment.

(d) Animal including horses and 3 elephant with equipment.

(e) Articles in the Shilekhana.

(f) The following buildings :

1. Imam Bada.
2. Lakkad Khana.
3. Ambari Khana.
4. Bhoi Khana,
5. Khasbardar Lines.
6. Bunglow with the Officer I/c. Stables.
7. Camp Stores godown with the buildings attached thereto.

Note : The waiting room at the Indore Railway Station shall continue to be

maintained, as at present, by Government for use of the Ruler and other distinguished persons.

Note : His Highness shall may on the King over the above mentioned properties, a sum of Rs.1,25,000/- (Rupees One lac and twenty five thousand only) to the Madhya Bharat Government towards the cost of maintenance of the above properties by the Government since the 16th June 1948.

Jeweler and Gold:

All the jeweler and gold at present in the Huzur Jawahirkhana at Indore except the following items which shall be treated as Crown (dynastic) jewellery:

(1) Sirpech Note: All these are worn by the Ruler at first-class Darbards.

(2) Pearl necklaces

(3) Ceremonial belt.

(4) Ceremonial sword.

Note : The above mentioned items of Crown (dyniastic) jewellery shall be kept by His Highness (subject to the right of inspection by Government) for use by Rulers of Indore on ceremonial occasions as in the past.

16. Silver kept in the Jawahar Khana. This includes all utensils and also melted silver.

The preserves at Burwaha; Rampura-Bhanpura, Rathar; Mohadi, Matakhodra, Ralamandal, Kanchla and Nahar Zabua in the Indore District; Ranigaon range, Kantaphod range and Satwas range in the Nemawar District. In these preserves His Highness the Maharaja of Indore will have exclusive shooting rights.

The Burwaha preserve is intended to include the following :-

1. Burwaha Ramna.
2. The circuit road from Bavi to the Burwaha Ramna and
3. Asapura, Tarania and Jamnia.

Note : The Ruler's rights over the above mentioned preserves shall be regulated be the general formula that may be approved as regards such preserves.

18. The exclusive rights in spot in the tank of Badagaon, Depalpur (Indore District) and Choli near Maheshwar (Nimar District)

19. **Income from Alampur Mahal**

Whatever is the annual income from land revenue of the village comprised in this Mahal at the time when the Holkar State joined the Madhya Bharat Union is

accepted as the income in Perpetuity of the Ruler of Indore for the purpose of being utilised for the Chhatri at Alampur of the Founder of the House of Holkers. This annual income shall, with effect from June 16, 1948, on which the date the Holkar State joined the Madhya Bharat Union, be found and kept separately under permanent Trust which shall be empowered to deal with this fund for the above mentioned purpose. Trust shall consist of the following :

1. Ruler of Indore who will always be the President of the Trust.
2. Two nominees of the Ruler.
3. One nominee of the Government of India.

Two nominees of the Madhya Bharat Government.

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

The powers and functions of the Trust shall be subject to such legislation as the Central or Madhya Bharat Government may enact generally for purposes of regulating such trusts, except that the composition of the Trust and the manner of its formation as stated above shall no be liable to any modification or change by such legislation.

20. **General Note:**

The Madhya Bharat Government shall take immediate steps to hand over such of the properties mentioned in this list as may be with the Madhya Bharat Government to His Highness Maharaja Yeshwant Rao Holkar of Indore or any person duly authorised by His Highness in this behalf."

Thus, a clear distinction was drawn between the private properties and the properties vested in the State of Madhya Pradesh in the year 1948 – 49 itself and in respect of the properties, which were part of the Trust, they also became absolute property of the State of Madhya Bharat.

90. A trust deed was executed on 27.06.1962 in respect of Khasgi properties and relevant extracts of the trust deed dated 27.06.1962 reads as under:-

"THIS DEED OF TRUST is made this 27th day of June 1962 between Her Highnes Maharani Usha Devi of Indore, daughter and successor of

Major General His Highness Maharaja Yashwantrao Holkar of Indore, G.C.I.E., LL.D., (hereinafter called as the Settlor" which expression shall, where the context to admits, include her heirs, executors and administrator) of the one part and Her Highness Maharani Usha Devi of Indore, daughter and successor of MAJOR GENERAL HIS HIGNNESS MAHARAJA YESHWANT RAO HOLKAR OF INDORE G.C.I.E., LL.D., Shri K.A. Chitale, Senior Advocate, Indore and Shri S.C. Malhotra, Indore nominees of the Settlor, Shri S.V. Kanungo, nominee of the President of India, the Commissioner, Indore Division, Indore and the Superintending Engineer (Building and Roads), Public Works Department, Indore nominees of the State of Mahdya Pradesh appointed in consultation with the Settlor (hereinafter called the Trustees" wich expression shall, where the context, so admits, include their survivors or survivor of them and the heirs executors and administrators of the last surviving trustee or their or his assign) of the other part.

WHEREAS MAJOR GENERAL HIS HIGNESS MAHARAJ YESHWANT RO HOLKAR of Indore, who as the Ruler of the Holkar State had entered into a Covenant to unite and integrate the territories of the Holkar State with and into the United State of Madhya Bharat in terms of the covenant made and executed on 22nd Aprial, 1948, and in pursuance thereof is sas agreed between him, the Government of India and the United State of Madhya Bharat under an Instrument dated the 7th May 1949 that the Khasgi properties and the income from Khasgi shall lapse for all times to the Madhya Bharat Government and in lieu thereof the Madhya Bharat Government shall in perpetuity set aside annually from its revenue a sum of Rs.2,91,952/- (Rupees two lacs ninety one thousand nine hundred fifty two) only with effect from 16.06.1948 for expending a charities and religious endowments provided in the budge of the Holkar State for 1947 inclusive of charities founded by Her Highness Maharani Devi Ahilya Bai Holkar AND FURTHER that said sum of Rs.2,91,952/- (TWO LACS NINETY ONE THOUSAND NINE HUNDREN FIFTY TWO ONLY) shall be funded and put under a permanent Trust constituted in the manner hereinafter specified, for the maintenance, upkeep and preservation of the said charities and religious endowments.

AND WHEREAS as a result of the reorganisation of the States, the rights and facilities of the Government of the former State of Madhya

Bharat haven ot developed on the Government of Madhya Pradesh.

AND WHEREAS Major General His Highness Maharaja Yeshwant Rao Holkar of Indore passed away on or about the 5th December, 1961, succeeded by Her Highness Maharani Usha Devi who has been recognised by the President as the successor and Ruler of Indore.

AND WHEREAS in pursuance of the aforesaid agreement Major General His Highness Maharaja Yeshwant Rao Holkar of Indore was desirous and the Settlor is also desirous of creating a Trust of the annuity of Rs.2,91,952/- (Rupees two lacs ninety one thousand nine hundred fifty two) only, in perpetuity of the purpose of maintenance, upkeep and preservation of the charities and religious endowment provided in the budget of the Holkar State for the year 1947 – 48, inclusive of the charities founded by late Her Highness Maharani Devi Ahilya Bai Holkar (hereinafter referred to as "the said Charities and Religious Endowments", more particularly described in part 'A' of the Schedule, which forms part of the indenture) and for the management and maintenance of the properties appurtenant thereto hereinafter referred to as the Trust Properties, more particularly described in part ' B' of the Schedule hereto annexed, which forms part of this indenture.

AND WHEREAS Major General His Highness Maharaja Yeshwant Rao Holkar of Indore after he had approved of the Deed of the Trust passed away before formally executing the Trust Deed and on his demise and in terms of the Trust Deed the party of the Ist part is the Settlor.

AND WHEREAS the trusttes have accepted the office and have become first Trustees of these present as is testified by their being parties to and executing these presents.

NOW THEREFORE, THIS INDENTURE WITNESSETH AS FOLLOWS:-

(1) The Settlor shall be the President of the Trust.

(2) The Settlor hereby agrees to accept the following persons as trustees namely:-

(i) two persons to be nominated by the Settlor.

(ii) two persons to be nominated from time to time by the State Government in consultation with the Settlor.

(iii) One person to be nominated from time to time by the Government of India in consultation with the Settlor.

(3) The settlor hereby transfers the Trust

properties to the trustees who shall hold the same upon trust and shall be responsible for the maintenance, upkeep and preservation of the said Charities and Religious Endowments.

(4) The Trustees shall held and possess the annuity of Rs.2,91,952/- (Rupees two lacs ninety one thousand nine hundred fifty two) only payable with effect from 16th June 1948 by theState Government of Madhya Pradesh from and out of the consolidated fund of the State and or its successor Government to the Settlor in perpetuity who for that purpose shall have the power to grant a valid discharge on the receipt of the said annuity.

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

(6) The Trustees shall, in the first instance pay and discharge out of the gross receipts, inclusive of the aforesaid sum or Rs.2,91,952/- (Rupees two lacs ninety one thousand nine hundred fifty two only) and the income of the Trust Properties, all charges and expenses of collection and recovery of the income and all taxes, rates, dues, assessments and other charges, if any, in respect thereof.

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

(8) The Settlor hereby covenants with the Trustees that , notwithstanding anything herein contained, if any person claiming through or under the Settlor or any other person, shall at any time make any claim or demand against the Trustees of any of them on account of any payment made by the Trustees of any part of the income or the corpus of the Trust Properties to any person whosoever in pursuance of the provisions of the these presents or on account of any act, deed or thing done or executed or caused or suffered to be done in pursuance of these presents or on the strength hereof, then the Settlor shall indemnify and keep indemnified and harmless the Trustees against all such claims and demands and against any loss,

damages, costs, charges and expenses, which the Trustees or any of them may suffer or incur by reason or in consequence of any such payment having been made by them or any such act, deed or thing done or exceeded or caused or suffered to be done or executed by them or any of them and the Settlor shall make good and reimburse to any such Trustees on Trustee all losses, damages, costs, charges or expenses which such Trustees or trustees shall suffer, incur or be called upon or liable to pay on account of any person making any such claim or demand as aforesaid.

(9) The Settlor hereby further covenants with the Trustees that notwithstanding any act, ded, matter or thing whatsoever by the Settlor or any person or persons lawfully or equitably claiming from under or in Trust for her made done, omitted or executed or willingly or knowingly suffered to the contrary, the Settlor shall have absolute power to grant, release convey and assume the Trust Properties and subject to the Trust hereof, it shall be lawful for the Trustees from time to time and at all times hereafter peaceably and quietly to hold, posses and enjoy the Trust properties hereby granted with their appurtenances and receive the rents and profits thereof without any lawful eviction, interruption, claim and demand whatsoever from or by the Settlor or from or by any other person or persons lawfully or equitably claiming through her or in trust for her and that the Trust Properties are free and clear and freely and clearly and absolutely, acquitted, exonerated, released and for ever discharged or otherwise by the Settlor well and sufficiently saved, defended and kept harmless and indemnified of, from and against all estates, charges and encumbrances whatsoever either already or to be hereafter made, executed occasioned and suffered by the Settlor or by any other person or persons lawfully or equitably claiming through her or in trust for her and further that the Settlor and all persons having or lawfully or equitably claiming any estate, right, title or interest at alw or in equity in the Trust Properties hereby granted or nay part thereof , by, from, under or in Trust for her shall and will from time to time and at all times hereafter at the request of the Trustees but at their cost do and execute or cause to be done and executed all such further and other lawful and reasonable acts, deed, things, matters and assurances whatsoever for further and more perfectly and absolutely granting and assuring the Trust Properties hereby transferred into the aforesaid Trustees as shall or may be reasonable

required.

(10) The Settlor in her capacity as president of the Trust shall be entitled to appoint any Person as her duly constituted Attorney, to do all acts, deed and things of ministerial nature.

(11) The Trustees shall keep and maintain regular and accurate accounts in respect of the income and expenditure of the Trust Property and shall, when so required by the Settlor make them available or inspection by the Chartered Accountants.

(12) The Settlor hereby authorises the Trustees to invest the Trust fund in accordance with the provisions of the Indian Trust Act, 1882 (11 of 1882) (hereinafter referred to as the said Act) and the Trustees shall transact their business in accordance with such regulations not inconsistent with the said Act, in conformity with the provisions of the said Act.

(13) In the event of a vacancy occurring among the Trustees due to death, retirement resignation or any other cause, it shall be filled in :

(a) in the case of Settlor, by the successor as the Ruler or Indore : and

(b) in other cases by a person nominated in the manner provided in clause (2) above.

(14) The accumulated savings under the Trust which in the opinion or the Trustees are surplus to the requirement of the Trust may be utilised by the Trustees for any public purpose approved by the State Government and not inconsistent with the provisions of the Indian Trusts Act, 1882.

(15) The Trustees shall exercise the powers and discharge the duties hereunder in accordance with the provisions of the said Act and subject to each legislation as the Central Government or the Government of Madhya Pradesh may make generally for purposes of regulating such Trusts.

(16) The expenditure already incurred by the erstwhile Government of Madhya Bharat from 16.06.1948 upto 31.10.1956 and thereafter, by the Government of Madhya Pradesh from 01.11.1956 to the date of handing over the Trust Properties to Trustees for the maintenance, upkeep and preservation of the said charities and religious endowments and / or management and maintenance of the Trust Properties shall adjusted from the income, if any, derived from the Trust Properties and from the amount or security payable by the State Governmetn of Mahdya Pradesh hereunder to the Trust.

(17) It is hereby declared that the Trustees have accepted the Trust and that the Trust Properties and the relevant title deeds have been made over to the

> Trustees and vested in the them for purposes of the Trust.
>
> In witness whereof the parties hereto have signed this INDENTURE on the date or mentioned in each case."

The aforesaid trust deed makes it very clear that as per the instrument dated 07.05.1949 executed in accordance with the covenant dated 22.04.1948, the Khasgi properties and the income from the Khasgi properties shall lapse for all time to the Madhya Bharat Government and in lieu thereof the Government shall in perpetuity set aside annually from its revenue a sum of Rs.2,91,952/-. The trust deed also makes it very clear that the properties will not be sold, the Trust shall hold and possess the Trust properties and have the power to manage the said properties only.

91. Another important aspect of the case is that the trust deed was also executed by Maharaja Yashwant Rao Holkar in favour of Princess Usha Devi in respect of the personal properties of Maharaja on 10.04.1950 and the trust deed dated 10.04.1950 did not include the Khasgi properties.

92. The Madhya Bharat Government issued a notification empowering the Commissioner and Collector in respect of *Maufi* land. As already stated earlier, a Trust was constituted in respect of Khasgi (Devi Ahilyabai Holkar Charities) Trust on 27.06.1962 and a gazette notification was issued on 27.07.1962 by the Divisional Commissioner. The Trust in fact is misconstruing notification dated 27.07.1962. As per the notification dated 27.07.1962, it was issued only for the purpose of upkeep and maintenance of the trust properties by the Trust as earlier on account of notification dated 28.12.1954, they were required to be maintained by *Maufi* section of Madhya Pradesh

Government.

93. Shri M.N. Jagdale, the Secretary of the Trust, in the year 1969 i.e. on 08.05.1969, wrote a letter to the Chief Secretary of the State of Madhya Pradesh admitting categorically that there is no provision for sale of Trust properties, and therefore, sanction be accorded by the State of Madhya Pradesh for sale of Trust properties i.e., Nagwa Bagicha. The letter of Secretary of the Trust is reproduced as under:-

> "8th May 1969.
>
> Dear Shri Shrivastava Saheb,
>
> In their meeting held on 20th April 1969 the Trust Deed of the Khasgi (Devi Ahilyabai Holkar Charities) Trust resolved that sanction of the Madhya Pradesh Government may be sought to sell the Nagwa Bagicha, an open piece of land measuring 2.56 acres at Varanasi, belonging to the Khasgi Trust.
>
> 2. In this connection I am to refer to Resolution dated 4th May 1968 of the Trustees in which it was decided to create a building fund by appropriation of annual savings, if any, and of the sale-proceeds f lands, buildings and other properties which are not of religious, charitable or historical importance. This became imperative for the simple reason that the main income of the Trust is the annuity from the Madhya Pradesh Government which is based on the expenditure of the Charitable Department of the then Holkar State as provided in the budget of the year 1947-48. As you are aware, prices particularly of articles required for Pooja, Archa, Naivedya and materials required for maintenance of buildings have now gone up phenomenally high so that it is wellnigh impossible to maintain the properties from this income. Hence the need of disposal of buildings and other properties which are no longer of any religious significance and which do not come within the real objects of "the charities" of the Trust.
>
> 3. The case of Nagwa Bagicha has been examined from the point of view mentioned in the foregoing paragraph. The Bagicha served a definite purpose in ancient times in providing a resting place to pilgrims going to Pachkroishi yatra of Varanasi. Now the Bagicha is auctioned for about Rs.500/- to persons who grow some vegetables or cereals there.

This property comprising of an open piece of land measuring 2.56 acres with a small hut and a 'pucca' well can now be sold for a very good price. Already there is an offer of Rs.1,60,000/-. The only alternative for the Trustees is to develop this land for putting up building, etc. This, however, is not a practical proposition.

4. There is no express provision in the Trust Deed (copy enclosed) empowering the Trustees to sell the Trust properties although by implication it is felt that they should be able to do as the object of the sale is to find ways and means of maintaining and preserving the charities as such. The case has been examined fully from the legal point of view by the Trustees, Shri K. A. Chitale and his opinion is enclosed. In the light of this opinion it has been decided to refer the case to the Government for sanction.

5. I may add that this land was under acquisition by the Varanasi Municipal Corporation. Fortunately it has now been released. There is however, the apprehension that the Housing Board may step in place of the Municipal Corporation to acquire this land like may other similar lands. Hence the urgency for taking quick action.

In the circumstances of this case it will be very much appreciated if Government sanction could be obtained and communicated to the Trustees as early as possible.

Yours sincerely,
Sd/-.
(M. M. Jagdale)
Secretary

Shri M. P. Shrivastava,
Chief Secretary,
Madhya Pradesh Government,
Vallabh Bhawan,
B H O P A L."

94. The Chief Secretary of the State of Madhya Pradesh, in response to the letter of the Trust, wrote a D.O. letter to the Secretary on 13.06.1969 and the same reads as under:-

"The 13th June 1969.
23 Jyaistha 1891.

My dear Shri Kanungo Sahib,

Kindly refer to the letter no. 200/Gen dated the 9th May 1969 from the Secretary, Khasgi Trust, Shri M. M. Jagdale, The Law Department was

consulted in the matter and, according to their opinion, Government do not come into the picture and, therefore, the question of according any sanction for the intended transfer by sale of any item of Trust Property does not arise.

Yours
Sincerely,

(M P SHRIWASTVA)

Shri S V Kanungo,
Ravindranath Tagore Marg,
INDORE."

Though the aforesaid letter refers to some opinion from the Law Department, however, it was never placed by the either side on record. Otherwise also, the letter of the Chief Secretary is mere D.O. letter and the property of the Government cannot be sold by issuance of a D.O. letter without a cabinet decision.

95. Another important aspect of the case is that Shri M.P. Shrivastava, The Chief Secretary was also one of the trustees, thus his D.O. letter dated 30.06.1969 does not have any legal sanctity.

96. The Trust on 23.06.1969 submitted an application under Section 35(1)(a) of the Madhya Pradesh Public Trust Act, 1956 to the Registrar of Public Trust, Indore seeking a decision whether the Trust was within exemption from the operation of Madhya Pradesh Trust Act, 1951. In the aforesaid letter also in paragraph – 2, it was admitted that as per the trust deed the properties have lapsed in the State of Mahdya Pradesh, meaning thereby, the properties are absolutely the properties of the State Government. Paragraphs – 2 and 6 of the application reads as under:-

"2. The Trust was constituted under a Deed of Trust dated 27th June 1962 executed after the demise of His late Highness by Her Highness Maharani Usha Devi, the daughter and successor of

> His late Highness, as the Settlor, in favour of herself and five others as Trustees. A copy of the said Deed is annexed herewith marked 'ANNEXURE 'B' will be apparent from the said Deed of Trust that in .. of lapse of property called Khasgi properties and the .. from Khasgi property to the Government, the Government ... undertook to earmark annually in perpetuity the sum of Rs.2,91,952/- from the revenue of the Government for .. expending on charities and religious endowment including charities founded by Maharani Devi Ahilyabai Holkar.
>
> 6. The charities and religious endowments were initially under the management of the erstwhile Holkar State. The management and possession was, after the merger of the Holkar State with the United States of Madhya Bharat taken over by the Government of the United States of Madhya Bharat and remained in the hands of the said Government and its successor Government until it was delivered to the Trustees pursuant to the Trust Deed. The actual management and possession was transferred by the Government on 16-7-1962 and was subsequently notified by a Notification dated 27-7-1962. The report evidencing the delivery of the management and possession by the Governor to the Trust is annexed and marked 'C' and a copy of the notification is annexed and marked 'D'."

The Trust itself has admitted in paragraph – 2 that the properties are the State Government's properties and in paragraph – 6, it has been admitted by the Trust that the charities and the religious endowments were under the Management of Holkar State earlier, and subsequently, they have been taken over by the State of Madhya Pradesh.

97. The Trust in question kept on writing letter to various authorities for sale of Trust properties and the Under Secretary, General Administration Department, State of Madhya Pradesh issued a letter to the Commissioner stating categorically that the Khasgi Trust will have to seek permission under Section 14 of the M.P. Public Trust, 1951 from the Registrar in case of sale of any of the Trust properties. This letter was duly served to the Trust and the

Trust, at no point of time, took any objection in the matter.

98. On 10.08.1971, the Registrar, Public Trust, Indore, passed an order exempting Khasgi (Devi Ahilyabai Holkar Charities) Trust from its registration only.

99. Section 36(1)(a) of the M.P. Public Trust Act, 1951 reads as under:-

> "Section 36. Exemption – (1) Nothing contained in this Act shall apply to –
>
> (a) A public Trust administered by any agency acting under the control of the State or by any local authority....."

For exemption under the M.P. Public Trust, 1951, a notification is mandatory under Section 36(2) of the M.P. Public Trust Act, 1951 and in the present case, no such notification has been placed on record. Thus, the order passed by the Registrar does not give any exemption to the Trust.

100. The most unfortunate thing, which happened, was execution of supplementary trust deed on 08.02.1972. A supplementary trust deed was executed by the trustees and it was mentioned in the fourth paragraph that the power to sell immovable properties of the Trust has not been expressly stated in the original trust deed but it was implied. It was declared that the trustees always had and shall have the power to alienate the property of the Trust for benefit of the Trust. Relevant extracts of the supplementary trust deed reads as under:-

> "Supplementary Deed Of Trust
>
> AND WHEREAS in the administration of the Trust, the Trustees have realised that some items of immovable property have to be sold for the benefit of the religious and charitable endowments which are the objects of the Trust.
>
> AND WHEREAS the power to sell such items is implied in the Deed of the Trust but has not been

expressly stated.

AND WHEREAS it is deemed expedient expressly to confer on the Trustees the power to alienate any items of the corpus of the Trust properties and / or the imcome thereof when it is necessary and for the benefit of the charitable endowments to do so.

NOW, THEREFORE, THIS INDENTURE WITNESSETH AS FOLLOWS.

For the removal of any doubt, the Settlor declares that the Trustees have always had and shall have the power to alienate not only the income but any item of the corpus of the Trust property, movable or immovable, for the necessity or benefit to the objects of the Trust and / or for the convenient or more beneficial administration of the Religions or Charitable endowments mentioned in the Deed of Trust dated 27th June 1962.

IN WITNESS WHEREOF the parties hereto have signed this indenture on the date and year mentioned in each case."

The aforesaid amendment is certainly a nullity as it is without authority. It is contrary to the spirit of the original trust deed which was for the maintenance, upkeep and preservation of the properties and the same is also the object of the State Government behind formation of the Trust. The title of the properties had lapsed in perpetuity with the State of Madhya Pradesh (Madhya Bharat) and it was never transferred to the Trust. Thus, the Trust could not have sold the properties and no such sale was approved by the Registrar, Public Trust, Indore.

101. It is pertinent note that various civil suits have been filed in respect of the properties belonging to erstwhile Maharaja Yashwant Rao Holkar and one such civil suit was filed i.e., Civil Suit No.15/1973 by Shriman Malhar Rao Holkar against Princess Usharaje Holkar and others. A written statement was filed on 18.02.1974 on behalf of the Trust and other defendants in the aforesaid civil suit and the Trust has admitted before the trial Court in the aforesaid civil suit that Khasgi Trust properties are not the personal properties. It has been categorically stated on affidavit by

the trustees that the trust deed dated 27.06.1962 creating Khasgi Trust and Alampur Trust are not the joint family properties or ancestral properties or personal properties. It has also been stated in the written statement that the Trust properties vested in the United State of Madhya Bharat up to 1956 after 1948 and after 1956 into the State of Madhya Pradesh. Thus, in respect of various litigation, the trustees have admitted before this Court also (F.A. No.264/2003) that the ownership of the Trust properties lies with the State of Madhya Pradesh.

102. The trustees on 07.02.2005 made an application to the Registrar, Public Trust seeking permission for grant of lease of Trust properties and this fact establishes that the trustees were well aware that the Trust in question is a public Trust governed by M.P. Public Trust Act, 1951. The applications made by the trustees were rejected on 14.12.2005. The Trust in question, in spite of the fact that the State of Madhya Pradesh is the titleholder of the Trust properties, kept on leasing out various properties for peanuts. On 28.07.2007, the Secretary of the Trust leased out the property of Ganpati Mandir, South Tora, Zuni, Indore admeasuring 1800 sq.ft. for a period of 30 years to one Abdul Rehman for Rs.720/- per year. The meager amount of Rs.720/- per year shows that *malafides* involved in the transaction.

103. On 05.06.2008, a resolution was passed by the trustees authorizing trustees Shri S.C. Malhotra and Shri K.S. Rathore to finalize sale of Trust property situated at Haridwar i.e. Kusha Ghat admeasuring 11931 sq.ft. Kusha Ghat is a Ghat of great historic importance and in Haridwar

all *Mundan Sanskars* take place at Kusha Ghat. It is being used since time immemorial by the believers of Hindu faith and it is open to public at large and in respect of this particular property, which is a Ghat and shops, a resolution was passed by the Trust authorizing the trustees to dispose it off.

104. Section 47 of the Indian Trust Act, 1882 reads as under:-

> "47. Trustee cannot delegate.—A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless
> (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation. Explanation.—The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion is not a delegation within the meaning of this section. Illustrations
> (b) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies, C may bequeath the trust property to D and E upon the trusts of A's will.
> (c) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.
> (d) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents. Comments No trustee can delegate his powers and duties to another transtee and any agreement to do so would be illegal and void and would not be covered by any of the exceptions in section 47; H.E.H.: The Nizam's Jewellery Trust (in re:), AIR 1980 SC 17."

As per the aforesaid statutory provision of law, a trustee cannot delegate power unless at least any one of the four conditions mentioned thereunder is fulfilled.

105. The most shocking aspect of the case is that the resolution was passed on 05.06.2008 and the sale agreement was already executed on 08.02.2007, meaning thereby, after

executing the agreement, without there being any authority from the trustees, subsequent resolution was passed authorizing two of the trustees to finalize sale of the property. It makes it very clear that the agreement was executed without there being any authority from the trustees. At the time of execution of agreement to sell dated 08.02.2007, there was an interim order against the transfer of the property or creation of any rights passed by this Court in F.A. No.264/2003.

106. As already stated earlier, the property of Kusha Ghat is of great religious importance and finds a mention in *Scandapuran* which is one of the oldest scriptures in Hinduism. Hindi translation of the relevant portion of the scripture is quoted as under (Annexure-R/19):-

> ".....क्योंकि यहां पर गंगा ने अपने भंवर मे मेरे कुशो को धारण किया, इसलिये यह कुशावर्त नाम से प्रसिद्ध तीर्थ होगा। धन्य मानव यहां स्नान तथा पितृ तर्पण करेंगे ..... महातीर्थ कुशावर्त में दिया हुआ दान कोटि गुण अधिक होगा ....."

107. After passing a resolution on 05.06.2008, Shri S.C. Malhotra one of the trustees on 05.09.2008 executed a Power of Attorney appointing one Raghvendra Sharma as Trust duly appointed attorney with respect to the property situated at Kusha Ghat (Haridwar) admeasuring 13370 sq.ft. (Annexure-R/16). It is pertinent to note that the resolution of the Trust dated 05.06.2008 did not authorize Shri S.C. Malhotra to execute further a Power of Attorney for sale of property, however, on his own he executed a Power of Attorney in favour of Raghvendra Sharma who was totally a stranger to dispose of Kusha Ghat which is of great religious importance as it finds place in *Scandapuran* also.

108. It is also pertinent to note that Shri S.C. Malhotra was only authorized by the Trust for the property

admeasuring 11931 sq. ft., however, he executed a Power of Attorney with respect to property admeasuring 13370 sq.ft.

109. The validity of power of Attorney dated 05.06.2008 came to an end and a fresh Power of Attorney was executed by Shri K.S. Rathore in respect of Shri Raghvendra Sharma on 05.06.2009. Shri K.S. Rathore was not a trustee and he had no power to execute the Power of Attorney. Shri Raghvendra Shrama on the basis of Power of Attorney executed by Shri K.S. Rathore on 02.09.2009, sold out the Trust properties situated at Kusha Ghat (Haridwar) to one Smt. Nikita W/o Shri Raghvendra Sharma (his own wife) and Shri Aniruddh Kumar. Shri Raghvendra Sharma also leased out the land admeasuring 653 sq.m. to Shri Aniruddh Kumar for a period of 29 years.

110. The trustees of the Khasgi Trust, knowing fully well that they are not the owner of the property in question, entered into sale of Trust properties and sold Ghat property of great religious importance and as they were aware of the fact that they are not the owner of the Trust properties, preferred a writ petition before this Court i.e. W.P. No.11618/2012 against the State of Madhya Pradesh & three others for quashment of order dated 05.11.2012 and order dated 30.11.2012.

111. The order passed the Collector dated 05.11.2012 and order dated 30.11.2012 passed by the Registrar dated 30.11.2012 are reproduced as under:-

"न्यायालय कलेक्टर, जिला इन्दौर, म.प्र.

प्रकरण क्रमांक 12/बी–113/2012–13

:: आदेश ::

(पारित दिनांक 5/11/2012)

आयुक्त, इन्दौर संभाग, इन्दौर कार्यालय से माननीय सांसद

महोदय द्वारा प्रेषित पत्र प्राप्त हुआ जिसमें उल्लेखित किया गया कि खससगी देवी अहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर की सम्पत्तियां ऐतिहासिक धरोहर है तथा अत्यंत मूल्यवान है। उक्त ट्रस्ट का गठन खासगी सम्पत्तियों के संधारण हेतु किया गया था, किन्तु ट्रस्ट द्वारा हरद्विार स्थित कूशावर्त घाट अवैधानिक रूप से विक्रय किया गया है। यह अत्यंत गंभीर विषय है। भविष्य में खासगी सम्पत्तियों का अवैधानिक विक्रय रोकना एवं उनको सुरक्षित करना अत्यंत आवश्यक है।

खासगी देवी अहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर के गठन के पूर्व क्षेत्र, संस्थान, कारखाने, देवस्थान छत्रीज भवन एवं उसकी सम्पत्तियों का रख रखाव माफी आफिस, आयुक्त कार्यालय इंदौर संभाग की देखरेख में किया जाता था। पंजीयक, लोक न्यास इन्दौर प्र0 क0 5/बी/113/66–67 पुराना एवं नया नंबर 13/बी/113/70–71 में आदेश दिनांक 10/8/1971 से खासगी देवी अहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर को पंजीयन से छूट दिए जाने का आदेश दिया गया है। उक्त आदेश में उल्लेखित किया गया है कि खासकी सम्पत्ति के राज्य शासन में विलयन होने के पश्चात ..... रू. 2,91,952/– प्रतिवर्ष राशि के व्यवस्थापन्न करने हेतु नियुक्त किया गया था और इसी लिए यह ट्रस्ट बनाया गया है। जिसका विस्तृत उल्लेख भारत शासन एवं इन्दौर के पूर्व शासकों के मध्य निष्पादित Settlement Of Claim दिनांक 6/5/1949 में किया गया है। मूल ट्रस्ट डीड का निम्न अंश विशेष रूप से पठनीय है WHEREAS MAJOR GENERAL HIS HIGHNESS MAHARAJA YESHWANT RAO HOLKAR of Indore, who as ruler of the Holkar State has entered into a Covenant to unite and integrate the territories of the Holkar State with and into the United State Of Madhya Bharat in terms of the Covenant made and executed on 22nd April 1948, and in pursuance thereof is was agreed between him, the Government of India and United State Of Madhya Bharat under an Instrument dated the 7th May 1949 that the Khasgi properties and the income from Khasgi shall lapse for all times to the Madhya Bharat Government and in lieu thereof the Madhya Bharat Government shall perpetuity set aside annually from its revenue a sum of Rs.2,91,952/- (Rupees two lakhs, ninety one thousand, nine hundred an fifty two only), With effect from 16-6-1948 for expending on charities and religious endowment provided in the budget of the Holkar State for 1947-48 inclusive of charities founded by Her Highness Maharani Devo Ahilya Bai Holkar AND FURTHER that the said sum of Rs.2,91,952/-(RUPEES TWO LACS NINETY ONE THOUSAND NINE HUNDRED FIFTY TWO only) Shall be Funded And put under a permanent Trust constituted in the manner hereinafter specified, for the maintenance upkeep and preservation of the said charities and religious endowments.

ट्रस्टडीड के उक्त अंश के परीक्षण से यह स्पष्ट होता है कि भारत की स्वतंत्रता के उपरांत जब विभिन्न रियासतों का

भारतवर्ष में विलय हुआ तब इन्दौर के महाराजा यशवन्तराव होल्कर उस समय होल्कर स्टेट के शासक थे। रियासत का तत्कालीन मध्यभारत (पश्चातवर्ती मध्यप्रदेश) में विलय का विलेख दिनांक 22 अप्रैल 1948 को लिखा गया तथा इस विलेख के आधार पर राजा तथा मध्य भारत सरकार (मध्यप्रदेश) व भारत सरकार के बीच दिनांक 7 मई, 1949 को एक विलेख निष्पादित हुआ जिसमें उभयपक्षों के बीच सहमति हुई कि Khasgi properties and the income from Khasgi shall lapse for all times to the Madhya Bharat Government and in lieu thereof the Madhya Bharat Government shall in perpetuity set aside annually from its revenue a sum of Rs.2,91,952/- (Rupees two lakhs, ninety one thousand, nine hundred an fifty two only), With effect from 16-6-1948 for expending on charities and religious endowment provided in the budget of the Holkar State for 1947-48 inclusive of charities founded by Her Highness Maharani Devi Ahilya Bai Holkar AND FURTHER that the said sum of Rs.2,91,952/-(RUPEES TWO LACS NINETY ONE THOUSAND NINE HUNDRED FIFTY TWO only) Shall be Funded And put under a permanent Trust constituted in the manner hereinafter specified, for the maintenance upkeep and preservation of the said charities and religious endowments. इससे यह तात्पर्य निकलता है कि 7 मई 1949 के पश्चात खासगी प्रापर्टीज के रूप में अंकित समस्त सम्पत्ति व उससे होने वाली आय मध्य भारत सरकार/म0प्र0 सरकार में निहित हो गई थी और इस प्रकार यह सम्पत्ति 7 मई 1949 के पश्चात मध्य प्रदेश सरकार में निहित शासकीय व सार्वजनिक सम्पत्ति की श्रेणी में आइ गई थी। मध्य भारत सरकार/मध्यप्रदेश सरकार ने इस सम्पत्ति के maintenance upkeep व preservation के लिए रू. 2,91,952/– की एन्युटी स्वीकृत की है। स्वीकृत की गई इस धनराशि के सदुपयोग निमित्त इस ट्रस्ट का निर्माण 27 जून, 1962 को ट्रस्टडीड से किया गया तथा इस धनराशि का प्रयोग ट्रस्टीज की देख रेख में मध्यप्रदेश सरकार में निहित प्रापर्टीज के maintenance upkeep व preservation के लिये किया जाना निर्धारित है।

अतः यह तथ्य स्पष्ट है कि प्रश्नाधीन सभी संपत्तियां राज्य शासन में निहित है। कोवनेंट 1949 एवं प्रथम ट्रस्टीडीड 1962 में यही लिखित है कि खासगी सम्पत्तियों का संधारण करना ट्रस्ट का दायित्व है लेकिन ट्रस्ट को सम्पत्तियों के विक्रय का अधिकार कतई उद्भूत नही होता है। पश्चातवर्ती पूरक डीड 1972 में ट्रस्ट द्व ारा शासन की पूर्वानुमति के बिना ट्रस्ट सम्पत्ति के विक्रय का अधिकार प्राप्त करने की अनाधिकृत चेष्टा की गई है जो कि अवैधानिक है।

खासगी देवी अहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर की न्यासडीड अनुसार राज्य शासन में विलयित अचल सम्पत्तियां पूरे भारत वर्ष के अलग–अलग प्रदेशों में स्थित है। अचल सम्पत्तियां का अवैधानिक रूप से अंतरण रोकने के उद्देश्य से उक्त अचल सम्पत्तियों का इंद्राज राजस्व अभिलेखों में मध्य प्रदेश राज्य शासन के भूमि स्वामी स्वत्व पर अंकित किया जाना आवश्यक है।

अतः राज्य शासन की सम्पत्ति का अवैधानिक अंतरण पर रोक लगाने के दृष्टिकोण से आदेशित किया जाता है कि न्यास को

मात्र व्यवस्था के लिए सौंपी गई समस्त अचल सम्पत्तियों पर राज्य शासन का भूमि स्वामी स्वत्व भू अभिलेखों के भूमि स्वामी स्वत्व के रूप में अंकित किया जावें एवं स्पष्टतः अहस्तांतरणीय लिखा जायें। चूंकि भारत के अन्य प्रदेशों में भी उल्लेखित राज्य शासन की संबंधित अनेक सम्पत्ति है। अतः उन प्रदेशों के संबंधित कलेक्टर को आदेश की प्रति क्रियान्वयन हेतु भेजी जावें।

इन्दौर जिले के संबंधित सभी अनुविभागीय अधिकारी, इंदौर एवं तहसीलदार एवं आयुक्त नगर पालिक निगम, इंदौर निर्देशानुसार इंद्राज कराकर तत्काल पालन कराया जाकर पालन प्रतिवेदन इस न्यायालय में तत्काल भेजें ।

कलेक्टर"

न्यायालय पंजीयक, लोक न्यास, जिला इन्दौर, म0प्र0

कोर्ट रूम नं0 216 प्रशासनिक संकुल, जिला कलेक्टर कार्यालय, इन्दौर

क्रमाक /लोक न्यास/2012 इन्दौर,दिनांक 30/11/2012

प्रति,

सयुक्त संचालक
कोष एवं लेखा,
इन्दौर, म.प्र.

विषयः– खासगी देवी आहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर का विशेष अंकेक्षण करने बाबद।

खासगी देवी आहिल्याबाई होल्कर चेरिटीज ट्रस्ट, इन्दौर को म0प्र0 राज्य शासन द्वारा न्यास की सम्पत्ति के रख–रखाव हेतु राशि रू 2,91,952/– प्रतिवर्ष प्रदान की जा रही है। न्यास द्वारा देश के विभिन्न स्थलों पर स्थिति मंदिर, देवालय, धर्मशालाओं, घाट एवं अन्य सम्पत्तियों के रख रखाव से प्राप्त आय एवं व्यय का सुव्यवस्थित अंकक्षण किया जाना है।

शासन नियंत्रित होने के कारण आपकों न्यास का विशेष अंकेक्षक नियुक्ति किया जाता है। अतः आप दो माह की अवधि में न्यास के आय–व्यय एवं प्राप्ति–भुगतान तथा अन्य वित्तीय स्थितियों का अंकेक्षण न्यास गठन से वर्ष 2011–12 तक सुनिश्चित कर अंकक्षण प्रतिवेदन मय आय–व्यय पत्रक के इस कार्यालय को अवगत कराना सुनिश्चित करें।

पंजीयक
लोक न्यास, इन्दौर, म.प्र.

क्रमांक 623/लोक न्यास/2012 इन्दौर, दिनांक 30/1122012

112. In the considered opinion of this Court, as the properties in question are exclusively the properties of the State of Madhya Pradesh, the trustees have got no right to dispose of Kusha Ghat properties. The learned Single Judge has allowed both the writ petitions by a common order and has held that all previous transactions done by the Trust will not be looked into. This Court really fails to understand as

to how the stamp of approval has been accorded by the learned Single Judge in respect of transfer of properties of the State of Madhya Pradesh by the Khasgi Trust. The learned Single Judge could not have preempted the State of Madhya Pradesh from taking action in the matter in respect of the properties over which the State of Madhya Pradesh is having exclusive title. The judgment delivered by the learned Single Judge reflects that the learned Single Judge has drafted a new trust deed altogether and he has gone to the extent in setting aside the orders passed by the Collector and Registrar, Public Trust.

113. The order passed by the Collector reflects that the Collector was justified in passing an order to protect the interest of the State of Madhya Pradesh as the Trust was on a selling spree of the Trust properties for peanuts without there being any authority to sell the Trust properties. Various technical grounds have been raised by the learned senior counsel arguing the matter in respect of power and jurisdiction of the Collector.

114. This Court will not enter into technicalities especially when it is crystal clear that it is the State of Madhya Pradesh, which is the titleholder of all Khasgi Trust properties.

115. The issue in respect of covenant signed by the Ruler (Maharaja of Holkar) was subjected to judicial scrutiny before the Hon'ble Supreme Court in the case of ***The State of Madhya Pradesh v/s Usha Devi*** *reported in* ***(2015) 8 SCC 672*** and paragraphs – 24 to 40 of the aforesaid judgments reads as under:-

> 24. Before adverting to the various arguments advanced by the learned counsel on both side and

the findings recorded by the Courts below, we would deem it appropriate to extract Article 363 of the Constitution of India, which reads as under:

> 363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.: (1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, Covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, Covenant, engagement, sanad or other similar instrument.

A plain reading of Clause (1) of Article 363 emphatically gives the impression that no Court in this country, including this Court shall have jurisdiction to deal with any dispute arising out of treaties, agreements etc., entered into between the Rulers of erstwhile Indian States and the Government of India.

25. Coming to the facts of the present case, on 16-06-1948 through the Covenant that is exhibit P-79 Maharaja of Holkar along with other Princely States agreed to merge with the dominion of India. According to Article 12 of the Covenant, the Ruler can enjoy the rights over his personal properties which are included in the Covenant for which purpose a list of his personal properties was required to be submitted to the Government. The said Article reads thus:

> (1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh.
> (2) He shall furnish to the Raj Pramukh before the first day of August, 1948 an inventory of all immovable properties, securities and cash balance held by him as such private property.
> (3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to

> such person as the Government of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned.
> ...No such dispute shall be referable after the first day of July, 1949.

26. As per article 12(2) of the Covenant, the Maharaja of Holkar has furnished the details of the properties under different Heads. He furnished the details under the Heads as immovable properties comprising of the properties inside the State, outside the State, miscellaneous and at clause 14

> "certain properties under the administrative control of the Household Department of the Holkar State except such of the afore mentioned property with the Household Department as had already been transferred to the two guest houses at Indore viz the ones situated in the building which was known as the Indore hostel and the other in Rajender Bhavan on the Bombay-Agra road".

27. The Suit scheduled properties which are in possession of the plaintiff finds no mention in the entire list of properties, but the plaintiff derives his title to the property from Clause 14 of the list of properties which speaks about all properties under the control of the Household Department. The plaintiff to substantiate her case that the Suit schedule properties are private properties is relying upon clause 14 of the list of properties, the taxes paid by her and her father in respect of these properties, the communication dated 07-05-1948 and letter dated 30-01- 1956 wherein the Suit scheduled properties were retransferred to the Household Department. Though lot of evidence was adduced on behalf of the plaintiff about paying taxes to substantiate her case that the Suit scheduled properties are the private properties of the Ruler, the core issue that requires to be adjudicated is whether it is the personal property of the Ruler or the property was belonging to the State. To give any finding with regard to the ownership of the property invariably we have to look at the Covenant for the reason the Covenant is the source of title for the plaintiff. At any stretch of imagination, we cannot agree with the finding of the appellate Court that the right of the plaintiff is a pre- existing right. By all means the right of the plaintiff flows from the Covenant by virtue of which the plaintiff claims title over these properties, which according to her are declared as private properties of the Ruler.

28. A bare perusal of Article 363 and the relief sought by the plaintiff in the Suit in unequivocal

terms attracts the bar contained in Article 363 of the Constitution of India. The Court below distinguished the judgment in Draupadi Devi's case that it is not applicable to the facts of the present case. We are of the considered opinion that the rule of law laid down in that case applies to the case on hand. This Court in the case of Draupadi Devi held:

> 44. "… …The Covenant is a political document resulting from an act of State. Once the Government of India decides to take over all the properties of the Ruler, except the properties which it recognises as private properties, there is no question of implied recognition of any property as private property. On the other hand, this clause of the Covenant merely means that, if the Ruler of the Covenanting State claimed property to be his private property and the Government of India did not agree, it was open to the Ruler to have this issue decided in the manner contemplated by clause (3). Clause (3) of Article XII does not mean that the Government was obliged to refer to the dispute upon its failure to recognise it as private property. Secondly, the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out of the terms of the Covenant and, therefore, not adjudicable by municipal courts as being beyond the jurisdiction of the municipal courts by reason of Article 363 of the Constitution".

29. The above ratio laid down by this Court makes one to understand that prior to Covenant, the ownership of all the properties remain vested with the Ruler, but once the Covenant is entered into, the Government takes over all the properties except those which the Government recognises as private properties of the Ruler. This court had categorically held that there cannot be any implied recognition of the property as private property at any later stages when an opportunity had already been granted to raise this issue in terms of clause (3) of Article 12 before defined period. In the case on hand also, similar clause existed where a dispute to recognise a property as private property could be raised only before 1st July, 1949. A dispute whether a property was recognised as private property or not was held to be a dispute arising out of the terms of Covenant, thereby barring the Courts to adjudicate the same in view of Article 363 of Constitution.

30. Also in Madhav Rao Jivaji Rao Scindia (supra), this Court while interpreting Article 363 of the Constitution, observed that a dispute relating to

the enforcement, interpretation or breach of any treaty etc., is barred from the Courts' jurisdiction. The bar comes into play only when the dispute is arising out of the provisions of a treaty, Covenant etc., as in the present case. This Court held that Article 363 has two parts. The first part relates to disputes arising out of Agreements and Covenants etc. The jurisdiction of this Court as well as of other Courts is clearly barred in respect of disputes falling within that part. Then comes the second part of Article 363 which refers to disputes in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any agreement, Covenant etc. It was specifically mentioned that right as mentioned in Article 363 signifies property.

31. In yet another case, Karan Singh (Dr.) vs. State of J&K, (2004) 5 SCC 698, while examining the applicability of Article 363 of the Constitution to the disputes arising out of a treaty, Covenant etc., this Court observed that all Courts including the Supreme Court is barred to determine any right arising out of a Covenant . The correspondence exchanged between the Ruler and the Government would amount to agreement within the meaning of Article 363.

32. In view of our above discussion and as settled by this Court in the above judgments, Covenant was an act of State and any dispute arising out of its terms cannot form the subject matter in any Court including the Supreme Court, and there cannot be any implied recognition of the property as private property at any later stages when an opportunity had already been granted to raise issue in terms of clause 3 of Article 12 before defined period; above all, the properties do not find place in the Covenant. The plaintiff is trying to interpret the Covenant that all properties which are in the custody of the Household Department are the personal properties of the Ruler. We feel that such interpretation and implied recognition is impermissible as held by this Court in Draupadi Devi. Hence the Court below erred in entertaining the Suit without properly taking into consideration the judgments and the proposition of law laid down by this Court in catena of cases. Hence we are of the view that the relief in the Suit falls within the ambit of Article 363 of the Constitution of India and the Suit is not maintainable. Accordingly first issue is answered in favour of the appellant/State and against respondent/plaintiff.

33. Once we have given our finding on the maintainability of the Suit, we need not to go into the other issues. But in view of the alternative argument advanced by the counsel, we are of the view that we should throw some light on those issues. It is the finding of the Trial Court that the lands were retransferred to the Holkar State in the year 1951, and re- transferring is without any authority and it is bad. The Trial Court held that though it is the specific case of the plaintiff that they are paying Tauzi, there is no evidence to show that they have paid Tauzi prior to 1951 and the correspondence of the plaintiff and her father shows that the Suit scheduled properties were not included in item no 14 of the list of properties and further held that Suit scheduled properties were allotted to the Forest Department. First coming to the issue of transfer of land to Forest Department, it is settled law that parties are governed by their pleadings and the burden lies on the person who pleads to prove and further plaintiff has to succeed basing on the strengths of his case and cannot depend upon the weakness of the defendant's case. The State having alleged several things, has failed to mark any document to show that the properties were transferred to the Forest Department and the retransfer in the year 1951 was without any authority of law. Though the State has filed certain documents before us, but as they are not part of the evidence, we are not inclined to look at those documents.

34. The appellant State as defendant in the Suit has marked two documents. While remanding the appeals preferred by the defendant and the plaintiff, the appellate Court gave a categorical finding that the Trial Court should not permit any of the parties to adduce further evidence. The remand order of the appellate Court was not questioned by the State. After the remand, the Suit was dismissed by the Trial Court wherein a finding was recorded that no evidence is produced before the Court to show that the property was transferred to the Forest Department. This finding has become final as no cross appeal is preferred by the appellant/State. Hence we are not inclined to look into these documents.

35. The plaintiff by marking the voluminous documentary evidence and by examining PW 5 and PW 7 established that they were in continuous possession of property till 1960, except for a short period when the Suit scheduled properties were given to the Army Department. Tauzi was also paid

by Maharaja and later by the plaintiff. The finding of the Trial Court in this regard that the plaintiff has failed to adduce any evidence to show that Tauzi was paid prior to 1951, is contrary to the material on record. In spite of all these factors that the Maharaja and the plaintiff were in continuous possession of property and paid Tauzi for the properties, however long the plaintiff's possession may be and paying of the taxes will not give her any right seeking declaration of ownership when these properties are part of a Covenant and calls for an interpretation of the Covenant. In addition to this, the plaintiff wrote a letter to the Additional Chief Secretary, Government General, Administrative Department, Bhopal, dated 1st October 1962, wherein she requested for a declaration of the Suit scheduled properties as the private properties as declared by the Maharaja of Holkar which clearly shows that the whole cause of action and the reliefs sought for in the Suit are based on the Covenant and the rights flown from the Covenant.

36. We are not inclined to go into the discussion whether the re-transfer of land is without authority or not, whether these properties are under the control of Household Department as it amounts to deciding the dispute arising out of the Covenant, which is barred under Article 363 of the Constitution of India. Even assuming for a minute that these properties are under the control of the Household Department, still the plaintiff cannot succeed for the reason that Maharaja of Holkar in the list of properties furnished has failed to mention these properties specifically, and interpretation of Covenant is not permissible as per settled law.

37. The other finding which we are not able to accept is that the Maharaja is the owner as well as the tenant of the property. All the rights whichever pleaded by the plaintiff are the rights flown only from the Covenant. As provided under clause 12(1) of Covenant, admittedly by the letter dated 29-9-1962 the respondent/plaintiff claimed the title by way of Covenant and not by any such tenancy rights. Hence, the respondent plaintiff cannot claim any right of tenancy over the Suit schedule properties and such plea is misconceived and she is estopped from raising such a plea.

38. Now we would like to deal with the other issue i.e., applicability of Section 158(2) of the Madhya Pradesh Land Revenue Code, 1959. The said Section came into force with retrospective effect from October 2, 1959 and reads thus:

> 158(2): A Ruler of an Indian State forming part of the State of Madhya Pradesh who at the time of coming into force of this Code, was holding land or was entitled to hold land as such Ruler by virtue of the Covenant or agreement entered into by him before the commencement of the Constitution, shall, as from the date of coming into force of this Code, be a Bhumiswami of such land under the Code and shall be subject to all the rights and liabilities conferred and imposed upon a Bhumiswami by or under this Code.
>
> As per Section 158(2) in order to confer the rights of Bhumiswami a Ruler should be holding land or he should have been entitled to hold land as such Ruler by virtue of a Covenant or agreement entered into by him.
>
> 39. The plaintiff/respondent cannot seek the status of Bhumiswami independent of the Covenant because the rights under Section 158(2) arise out of the Covenant itself. The source to hold the land arises by virtue of a Covenant. When the right so claimed by way of Covenant is disputed and the relief of settling these disputes is barred under Article 363 of the Constitution, in our considered view, one cannot claim to be "Bhumiswami" under Section 158(2) of the Madhya Pradesh Land Revenue Code, independent of the Covenant. Accordingly, this issue is held in favour of appellant/State and against the respondent/plaintiff. Hence we are of the considered opinion that the Suit filed by the plaintiff for declaration and injunction is barred under Article 363 of the Constitution of India and the plaintiff is not entitled for any relief under Section 158(2) of the Madhya Pradesh Land Revenue Code claiming the rights of Bhumiswami.
>
> 40. For all the foregoing reasons, we allow these appeals by setting adie the impugned judgments of the High Court and consequently the suit is dismissed. However, there shall be no order as to consts."

In light of the aforesaid judgment delivered by the Hon'ble Supreme Court, it is crystal clear that as per the stipulation in the covenant concerned falling under Article 326, Ruler (Maharaja Holkar) furnished specific entries of immovable properties falling under administrative control of household department of Holkar State. The property, which was not included in that inventory and which also did

not form part of the private property of the Ruler, vested in the State Government and after merger, keeping in view Article 363, the Ruler cannot file a civil suit or even approach this Court claiming title of the property that it was the property not included in the personal property of the Ruler, there cannot be any claim of implied recognition of private property of Ruler at a later stage.

116. In the present case also, the Trust's properties are certainly not at all private properties of the Ruler, the property is vested in the State of Madhya Pradesh and it is the State of Madhya Pradesh, which is the titleholder of the properties and by no stretch of imagination, the learned Single Judge could have decided the writ petition there being a specific bar under Article 363 of the Constitution of India.

117. Undisputedly, the title in respect of Khasgi properties lies with the State of Madhya Pradesh and once the State of Madhya Pradesh is the titleholder, the learned Single Judge has erred in law and facts in delivering the judgment and quashing the order of the Collector by which he has simply directed the authorities to enter the name of State of Madhya Pradesh in the revenue record in respect of Khasgi Trust properties. Illegal sales could not have been ignored by the learned Single Judge as he has observed that transfer prior to the judgment will not be looked into.

118. This Court has carefully gone through the judgment relied upon by learned counsel for the parties in depth. The property in question on account of covenant signed at the time of merger was certainly not at all private properties of Maharaja. Undisputedly the property vested in the State of

Madhya Bharat and after enactment of Madhya Pradash Reorganization Act and creation of Madhya Pradesh being the successor State, the property vested in the State of Madhya Pradesh. The Collector has not at all decided the issue of title. The Collector by an order dated 05.11.2012, as the property was the exclusive property of the State of Madhya Pradesh, has passed an order in respect of property of the State of Madhya Pradesh. The Trust, in case, it was claiming title of the property in question, should have file the civil suit or should have availed any other remedy available under the law. The property, as per the covenant after creation of Madhya Bharat State and State of Madhya Pradesh, became the property of the State Government, and therefore, the question of granting an opportunity of hearing to the trustees does not arise. The record reveals that a proper notice was issued and the Trust did file a reply before the Collector in the matter, hence, violation of principles of natural justice does not arise.

119. It has been vehemently argued that the Chief Secretary of the State of Madhya Pradesh has written a letter dated 13.06.1969 permitting the Trust to go ahead with the sale of the property, and therefore, the State Government is estopped from taking a contrary stand in the matter that there was no permission of the State in respect of sale of the property.

120. The letter dated 13.06.1969 was merely a D.O. letter and had no legal sanctity as such. From a bare perusal of the subject document it is apparent that on top right hand side corner the serial number has been mentioned as, 'DO No. 193/CS/69'. The format of the letter is also unmistakably

that of a DO Letter. Moreover, the subject letter nowhere mentions that the government has accorded sanction for transfer of the Trust Property. The relevant portion of the letter states that- **"……*the question of according any sanction for the intended transfer by sale of any item of Trust Property does not arise*."** A careful examination of the aforesaid content suggests that Shri M P Shrivastava clearly mentioned that there was no question of according sanction for transfer of Trust Property.

121. Shri M P Shrivastava had no authority to give sanction for alienation of government property. The property of government could not be given away by a DO letter without a cabinet decision. Furthermore, Shri M.P Shrivastava was one of the trustees, thus he was not in a position to accord any sanction to the Trust on behalf of the State Government.

122. As per the Rules of Business of the Executive Government of Madhya Pradesh, framed in exercise of the powers under clauses (2) and (3) of Article 166 of the Constitution of India, proposals involving the alienation either temporary or permanent, by way of sale, grant or lease of Government property exceeding Rs. 10 lac in value shall have to be placed before the Council of Ministers and dealt with only in accordance with the procedure laid down in supplementary instruction 18 under rule 13. No such procedure was ever followed for alienation of the property. Obviously the subject letter does not amount to a sanction of the Council of Ministers as mentioned above. Relevant portion of the rules is reproduced below:

"The following cases shall be brought before the

> Council, subject to the proviso that if the Chief Minister considers any case to be so urgent as to necessitate the immediate issue of orders, he may direct the issue of orders at once, and when orders have been issued, the papers shall, without avoidable delay, be circulated and brought, before a meeting of the Council in accordance with the procedure laid down in supplementary instruction 18 under rule 13:-
> (i)…
> (ii)...
> (vi)(a) Proposals involving alienation either temporary or permanent, by way of sale, grant or lease of Government property exceeding Rs. 10 lac in value, but such cases shall not be Council cases if such alienation is by way of auction or under the normal rules of Government of under any scheme approved by Government."

123. The subject letter was not issued by or in the name of the Governor of Madhya Pradesh. The decision to accord sanction to alienate government property is a policy decision which needs to be taken by the government and the same cannot be replaced by a DO Letter of an officer of the State Government.

124. The subject letter refers to the opinion of the law department however the same was not on record and there is no mention regarding the content of such opinion.

125. This aspect has been pleaded in para No. 04 of the grounds in the appeal memo by the appellant. The effect of the subject letter was also mentioned in the synopsis dated 01.09.2020 submitted by the appellants before this Hon'ble Court on 05.09.2020.

126. More so, the orders of the State Govt. are always issued in the name and on behalf of Hon'ble Governor it is the statutory requirement Under Article 166(i) of the Constitution of India and unless the order is issued in the name and on behalf of the Hon'ble Governor it cannot be considered to be the decision of a State Govt. Following are

the citations :

> **Jaipur Development Authority Vs. Vijay Kumar Data –(2011) 12 SCC 1994 :–**
> "49. It is trite to say that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be (Articles 77(1) and 166(1). Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in such manner as may be specified in the rules to be made by the President or the Governor, as the case may be (Articles 77(2) and 166(2).
> 53. It is us clear that unless an order is expressed is the name of the President or the Governor and is authenticated is the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. A reading of the Letter dated 6.12.2001 shows that it was neither expressed in the name of the Governor nor was it authenticated in the manner prescribed by the rules. That letter merely speaks of the discussion made by the Committee and the decision taken by it. By no stretch of imagination the same can be treated as a policy decision of the Government within the meaning of Article 166 of the Constitution."
> **In the case of Lallaram Vs. Jaipur Development Authority -(2016) 11 SCC 31 :–**
> "It has been observed that the compliance of article 166 is directory in nature meaning that if substantial compliance is present than the order issued would not be a nullity. However, in the present case the file has not being sent to the concerning Minister nor to the Governor and thus even substantial compliance is not there."

In light of the aforesaid, by no stretch of imagination, it can be said that letter dated 13.06.1969 is the permission granted by the State Government or it was a decision communicated by the State Government.

127. The so called letter dated 13.06.1969 is a D.O. letter and any decision as per the Business Allocation Rules of the State of Madhya Pradesh in respect of a sale of property has to be issued in the name of the Governor of the State of Madhya Pradesh. The Chief, Secretary is nobody to write a

letter in respect of property of the State of Madhya Pradesh as has been done in the present case.

128. Another shocking aspect of the case is that the then Chief Secretary was also one of the trustees and he has acted as a Judge in his own cause, and therefore, the arguments canvassed by learned counsel for the Trust and the trustees do not help them in any manner.

129. The facts of the case make it very clear that the properties, though managed by the Trust, had in fact vested in the State Government upon merger and do not form part of property settled with the outgoing proprietor / Holkar State, and therefore, as the property was the property of the State of Mahdya Pradesh it was a public trust, permission should have been obtained from the Registrar, Public Trust while disposing of the property or from the State of Madhya Pradesh.

130. So far as opportunity of hearing to Union of India is concerned, Shri Manoj Manav, learned counsel has appeared in the matter and has argued at length stating categorically that the property exclusively belongs to State of Madhya of Madhya Pradesh and does not belong to the Ruler or to the Trust. He has stated that the Trust was constituted only to manage the affairs of the Trust and the Trust, at no point of time, was the titleholder of the property. He has stated that the State Government was justified in taking action in the matter and same has been done in accordance with law.

131. In the case of Chairman Madappa (supra), it has certainly been held that power to manage Trust properties inherently includes the power to sale only in case the

properties are sold for the objective of the Trust.

132. In the present case, the properties have not been sold for objective of the Trust, they have sold with an oblique and ulterior motive. In case, there was insufficiency of fund in managing the affairs of the Trust, in all fairness, a request should have been made to the State of Madhya Pradesh to provide grant or the Trust should have approach this Court or should have availed other remedy for issuance of a direction to the State of Madhya Pradesh to provide funds. The inaction on the part of the Trust in respect of the aforesaid issue speaks volume about the conduct of the trustees and about their oblique and ulterior motive.

133. Much has been argued in respect of so called permission of the State Government to proceed ahead with the sale of the properties i.e., letter dated 13.06.1969 of the Chief Secretary as well as the subsequent amendment in the trust deed which provides for a clause to sell the property.

134. In the present case a fraud has taken place and the note-sheet of the Chief Secretary has not no value *[see: The State of Bihar v/s Kripalu Shankar reported in AIR 1987 SC 1554]*.

It is a settled proposition of law that that fraud vitiates everything *[see: (1991) 1 SCC 354, AIR 1994 SC 853 & (1996) 5 SCC 550]*.

Fraud vitiates every solemn proceedings and no right can be claimed by a fraudster on the ground of technicalities *[see: (2012) 11 SCC 574, (2018) 1 SCC 656 & (2019) 14 SCC 449]*.

135. This Court has not reproduced the law laid down in the aforesaid cases, however, is reproducing certain

paragraphs only in respect of the last judgment on the subject delivered in the case of ***Satluj Jal Vidyut Nigam v/s Taj Kumar Rajinder Singh*** *reported in* ***(2019) 14 SCC 449***. Paragraphs – 65 to 81 of the aforesaid judgment read as under:-

> 65. The question in the instant case is as to whether an incumbent can be permitted to play blatant fraud time and again and court has to be silent spectator under the guise of label of the various legal proceedings at different stages by taking different untenable stands whether compensation can be claimed several times as done in the instant case and its effect. Before the land acquisition had been commenced in 1987, the land more than 1000 bighas had been declared a surplus in ceiling case and compensation collected, which indeed disputed land at Jhakari, it would be a perpetuating fraud in case such a person is permitted to claim compensation for same very land. Fraud vitiates the solemn proceedings; such plea can be set up even in collateral proceedings. The label on the petition is not much material and this Court has already permitted the plea of fraud to be raised. Moreover, Appeal arising out of 72 awards is still pending in the High Court in which Reference Court has declined compensation on the aforesaid ground.
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> 66. Reliance has also been placed on the observations made in *Meher Rusi Dalal v. Union of India*, (2004) 7 SCC 362, in which this Court has dealt with the issue of apportionment of compensation for which claim was raised by the Union of India, not in the capacity of the owner but as a protected tenant. The claim of tenancy was not put forth before the LAO, though represented in the acquisition proceedings. This Court observed that in such a case it could reasonably be inferred that no right was being claimed and it ought to have been made before the LAO if it had any such claim in respect of preexisting right. The LAO was not under a duty to make an enquiry. The claim of tenancy at the belated stage was an afterthought to frustrate the payment. The decision has no application to the instant case as the LAO in the awards passed, noted the factum of ceiling proceedings as such the effects of the same can always be considered.
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> 67. In *Ahad Brothers v. State of M.P.,* (2005) 1 SCC 545, this Court observed that question of the title of the State over the acquired land, cannot be decided under Section 18 of Land Acquisition Act,

1894. This Court considered that when an award has been passed and the appellant was recorded as owner in the revenue papers, he was entitled to receive compensation. There is no dispute in the aforesaid proposition, however, in the instant case facts are different and a person cannot be permitted to receive the compensation of vested land in State under the Abolition Act and when the land had been declared surplus and compensation paid on wrong entry continued. The same wrong entry could not have been permitted to be utilised for award of compensation to a person under the LA Act. In the instant case, there had been earlier proceedings which makes it clear that Rajinder Singh was not entitled to claim compensation under the LA Act. It is apparent that there was no subsisting right, title or interest left with Rajinder Singh or his LRs., thus, they could not be permitted to obtain the compensation.

68. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of appellants, reliance has been placed on the definition of fraud as defined in the Black's Law Dictionary, which is as under:

> "Fraud means: (1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime. (2) A misrepresentation made recklessly without belief in its truth to induce another person to act. (3) A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. (4) Unconscionable dealing; esp., in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."

69. Halsbury's Law of England has defined fraud as follows:

> "Whenever a person makes a false statement which he does not actually and honestly believe to be true, for purpose of civil liability, the statement is as fraudulent as if he had stated that which he did know to be true, or know or believed to be false. Proof of absence of actual and honest belief is all that is necessary to satisfy the requirement of the law, whether the representation has been made recklessly or deliberately, indifference or reckless on the part of the representor as the truth or falsity of the representation affords merely an instance of absence of such a belief."

70. In KERR on the Law of Fraud and Mistake, fraud has been defined thus:

> "It is not easy to give a definition of

> what constitutes fraud in the extensive significance in which that term is understood by Civil Courts of Justice. The Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. Fraud is infinite in variety… Courts have always declined to define it, … reserving to themselves the liberty to deal with it under whatever form it may present itself. Fraud … may be said to include property all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another. Al surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled too."

71. In *Ram Chandra Singh v. Savitri Devi,* (2003) 8 SCC 319, wherein it was observed that fraud vitiates every solemn act. Fraud and justice never dwell together and it cannot be perpetuated or saved by the application of any equitable doctrine including resjudicata. This Court observed as under:

> "15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud, as is wellknown, vitiates every solemn act. Fraud and justice never dwell together.
>
> 16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.
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> 17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.
>
> 18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.
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> 23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception aresynonymous.

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25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including resjudicata." (emphasis supplied)

72. In *Madhukar Sadbha Shivarkar v. State of Maharashtra*, (2015) 6 SCC 557, this Court observed that fraud had been played by showing the records and the orders obtained unlawfully by the declarant, would be a nullity in the eye of law though such orders have attained finality. Following observations were made:

"27. The said order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records have been destroyed and fabricated to substantiate their unjustifiable claim by playing fraud upon the Tehsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid subleases are made and they are accepted by them in the proceedings Under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sublessees Under Section 6 of the Act. The plea urged on behalf of the State Government and the defacto complainantsowners, at whose instance the orders are passed by the State Government on the alleged ground of fraud played by the declarants upon the Tehsildar and appellate authorities to get the illegal orders obtained by them to come out from the clutches of the land ceiling provisions of the Act by creating the revenue records, which is the fraudulent act on their part which unravels everything and therefore, the question of limitation under the provisions to exercise power by the State Government does not arise at all. For this purpose, the Deputy Commissioner of Pune Division was appointed as the Enquiry Officer to hold such an enquiry to enquire into the matter and submit his report for consideration of the Government to take further action in the matter. The legal contentions urged by Mr. Naphade, in justification of the impugned judgment and order prima facie at this stage, we are satisfied that the allegation of fraud in relation to getting the land holdings of the villages referred to supra by the declarants on the alleged ground of destroying original revenue records and

> fabricating revenue records to show that there are 384 subleases of the land involved in the proceedings to retain the surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of law though such orders have attained finality, if it is found in the enquiry by the Enquiry Officer that they are tainted with fraud, the same can be interfered with by the State Government and its officers to pass appropriate orders. The landowners are also aggrieved parties to agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and therefore, we accept the submission to justify the impugned judgment and order of the Division Bench of the High Court." (emphasis supplied)

73. In *Jai Narain Parasrampuria v. Pushpa Devi Saraf,* (2006) 7 SCC 756, this Court observed that fraud vitiates every solemn act. Any order or decree obtained by practicing fraud is a nullity. This Court held as under:

> "55 It is now well settled that fraud vitiated all solemn act. Any order or decree obtained by practicing fraud is a nullity. [See (1) Ram Chandra Singh v. Savitri Devi and Ors., (2003) 8 SCC 319 followed in (2) Vice Chairman, Kendriya Vidyalaya Sangathan, and Anr. v. Girdhari Lal Yadav, (2004) 6 SCC 325; (3) State of A.P. and Anr. v. T. Suryachandra Rao, (2005) 6 SCC 149; (4) Ishwar Dutt v. Land Acquisition Collector and Anr., (2005) 7 SCC 190; (5) Lillykutty v. Scrutiny Committee, SC & ST Ors., (2005) 8 SCC 283; (6) Chief Engineer, M.S.E.B. and Anr. v. Suresh Raghunath Bhokare, (2005) 10 SCC 465; (7) Smt. Satya v. Shri Teja Singh, (1975) 1 SCC 120; (8) Mahboob Sahab v. Sayed Ismail, (1995) 3 SCC 693; and (9) Asharfi Lal v. Koili, (1995) 4 SCC 163.]" (emphasis supplied)

74. In *State of A.P. v. T. Suryachandra Rao*, (2005) 6 SCC 149, it was observed that where land which was offered for surrender had already been acquired by the State and the same had vested in it. It was held that merely because an enquiry was made, the Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud. Following observations were made:

> "7. The order of the High Court is clearly erroneous. There is no dispute that the land which was offered for surrender by the respondent had already been acquired by the

State and the same had vested in it. This was clearly a case of fraud. Merely because an enquiry was made, Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud.

8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit, and injury to the person deceived. The injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a noneconomic or nonpecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See Dr. Vimla v. Delhi Administration, 1963 Supp (2) SCR 585 and Indian Bank v. Satyam Febres (India) Pvt. Ltd., (1996) 5 SCC 550] 9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu v. Jagannath, (1994) 1 SCC 1.) 10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable

principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors., (2003) 8 SCC 319.)

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13. This aspect of the matter has been considered recently by this Court in Roshan Deen v. Preeti Lal, (2002) 1 SCC 100, Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education, (2003) 8 SCC 311, Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319 and Ashok Leyland Ltd. v. State of T.N. and Anr., (2004) 3 SCC 1.

14. Suppression of a material document would also amount to a fraud on the court, (see Gowrishankar v. Joshi Amba Shankar 54 Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1).

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud it can be evidence of fraud; as observed in Ram Preeti Yadav, (2003) 8 SCC 311.

16. In Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702, Lord Denning observed at pages 712 & 713: (All ER p. 345C) "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment, Lord Parker LJ observed that fraud “vitiates all transactions known to the law of however high a degree of solemnity”. (emphasis supplied)

75. In *A.V. Papayya Sastry v. Govt. of A.P.*, (2007) 4 SCC 221, this Court as to the effect of fraud on the judgment or order observed thus:

19. Now, it is wellsettled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; Fraud avoids all judicial acts, ecclesiastical or temporal.

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and nonest in the eye of law. Such a judgment, decree or order by the first Court or by the final Cour thas to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal,revision, writ or even in collateral proceedings.

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38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order. 39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is nonexistent and nonest and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as nonest by every Court, superior or inferior.

Supervisory jurisdiction of the court can be exercised in case of error apparent on the face of the record, abuse of process and if the issue goes to the root of the matter.

76. In *S.P. Chengalvaraya Naidu v. Jagannath,* (1994) 1 SCC 1, this Court noted that the issue of fraud goes to the root of the matter and it exercised powers under Article 136 to cure the defect. The Court observed:

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether, in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an

> engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court must come with clean hands. We are constrained to say that more often than not, the process of the court is being abused. Propertygrabbers, axevaders, bankloandodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegalgains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.
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> 6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B1S) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Nonproduction and even nonmentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellantsdefendants could have easily produced the certified registered copy of Exhibit B15 and nonsuited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

77. In *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573, it was observed that one of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him.

78. Learned counsel for the respondent has

placed reliance on the decision rendered in *Ujjagar Singh v. Collector, Bhatinda,* (1996) 5 SCC 14, wherein this Court examined the effect of coming into force of Punjab Land Reforms Act, 1972 and vesting of the surplus area in the State. In this case, the area in possession of landlord was declared surplus under the Pepsu Act, but possession had not been taken by the State. It was held that area did not vest finally as the surplus area under the Pepsu Act, owing to coming into force of the new Act, the ceiling area must be determined afresh under the new Punjab Act. In the instant case, the order was passed in ceiling matter in the year 1980 and the adjudication order of Collector (Ceiling) was not questioned nor the order of remand to declare land as surplus and then the additional land was declared surplus in 1993. It was not the case of reopening of the case. In fact, the land has vested in the State under the Abolition Act. Thereafter, compensation has been obtained, obviously once land has vested in the State, the possession of such land/open land is deemed to be that of the owner. In any view of the matter, in the facts and circumstances of the instant case, compensation could not have been claimed.

79. In *State of H.P. v. Harnama,* (2004) 13 SCC 534, this Court observed that possession of land was not taken and the tenant was in occupation of the land and had acquired ownership rights before the land was declared surplus as against the landlord. It was further observed that the land in question had been notified as surplus and the fact that the original owner of the land had been paid compensation, would be of no avail to the State if before the date of 58 actual vesting nonoccupant tenant in possession of the land had acquired ownership rights. It is totally distinguishable and cannot be applied to the instant case.

80. Learned counsel on behalf of the respondent has referred to the decision rendered in *Madan Kishore v. Major Sudhir Sewal*, (2008) 8 SCC 744, wherein question arose with respect to entitlement of subtenant to apply under Section 27(4). It was held that the expression in Section 27(4), such tenant who cultivates such land, does not entitle a subtenant either to claim proprietary rights or apply for the same under Section 27(4). It was held that he was not a subtenant. The decision is of no help to the cause espoused on behalf of LRs. of Rajinder Singh. In the peculiar facts projected in the case the principle fraud vitiates is clearly applicable it cannot be ignored and overlooked under the guise of the scope of proceedings under Section 18/30 of the LA

> Act.
> 81. In the peculiar facts projected in the case the principle fraud vitiates is clearly applicable it cannot be ignored and overlooked under the guise of the scope of proceedings under Section 18/30 of the LA Act.

In light of the aforesaid judgment, as fraud vitiates everything and in the present case, trustees have played a fraud upon the State Government, the sale deeds executed by the Trust in respect of the properties of the State Government are null and void and stands vitiated. Hence, the Collector was justified in passing the impugned order and the Registrar, Public Trust was also justified in passing the impugned order.

136. In the humble opinion of this Court, as the property in question was not the property of the Maharaja, Article 363 of the Constitution of India also comes into play and the learned Single Judge could not have drafted the trust deed which has been done by passing the impugned order. The petitions in fact were not at all maintainable in respect of the property which came to the share of the State Government though managed by the Trust, and therefore, the order passed by the learned Single Judge deserve to be set aside.

137. Shri S.C. Bagadia, learned senior counsel has argued before this Court in the connected writ appeal i.e., W.A. No.135/2014 that the order passed by the Registrar, Public Trust and the Collector are bad in law and there is a process provided under the law for mutation of name of the State Government. Once this Court has arrived at a conclusion that a fraud has been played upon in the matter and the property of the State Government has been sold, the

orders passed by the Collector and Registrar, Public Trust do not suffer from any perversity or illegality, hence, they do not warrant any interference by this Court.

138. Learned counsel appearing for the Trust has also drawn the attention of this Court towards the judgment delivered in the case of Marthanda Varma (supra). In the aforesaid case, the issue was in respect of Shebaitship and the Hon'ble Supreme Court has held that covenant signed by the covenanting state cannot be subjected to judicial scrutiny keeping in view the bar provided under Article 363 of the Constitution of India.

139. In the present case the issue involved is altogether different. The issue involved is whether the Khasgi Trust and its trustees can sell the property, which is exclusively the property of the State of Madhya Pradesh, or not ? The trustees have certainly sold the property of the State of Madhya Pradesh and they have violated the terms and conditions of the trust deed.

140. The most astonishing aspect of the case is that the learned Single Judge has virtually drafted a fresh trust deed by passing the impugned judgments. New trustees have been appointed new-new conditions have been incorporated in the trust deed and it has been held that the Trust properties will not be sold with the permission of the State Government and after holding that the Trust properties will not be without the permission of the Government it has also been observed that earlier sales will not be looked into. This itself is a contrary view and cannot be sustained. The religious and charitable trust have been established by erstwhile ruler with a very pious and noble object with an

aim and object to help a common man and for the welfare of a common man.

141. Religious and charitable trusts are found to exist, in some shape or the other, in almost all the civilized countries and their origin can be traced primarily to the instincts of piety and benevolence which are implanted in human nature.

142. Religious and charitable trust means a trust created for the purposes of religion or charity. Religion is absolutely a matter of faith with individuals or communities, and it is not a necessarily theistic.

143. Religious purpose means that the purpose or object is to secure the spiritual well being of a person or persons according to the tenets of the particular religion in which he / they believe in.

144. Charity means benevolence and in its wide and popular sense it comprehends all forms of benefit, physical, intellectual, moral, ethical or religious, bestowed upon persons who are in need of them.

145. In Halsburg's Laws of England (Halsburg, 2nd Addition, Volume – 33, Page – 87), a trust has been defined as a confidence reposed in a person with respect to property of which he has possession or over which he can exercise power, to the intent that he may hold the property or exercise the power for the Benefit of some other person or object.

146. Hindu Religions and Charitable acts have been from the earliest time classified under two heads, *viz*., *Istha* and *Purtta*. These two words are often used conjointly, and they are as old as *Rigveda*.

147. *Istha* means *Vedic* sacrifices, and rites and gifts in connection with the same; *Purtta* on the other hand means and signifies other pious and charitable acts which are unconnected with any *Strouta* or *Vedic* Sacrifice.

148. A trust has to function for the welfare of the society at large. In the ancient period wells, ponds, lakes, ghats, Dharamshala were established as public trust and performance of trust during ancient period is ensured by the following texts:-

> गणद्रव्यं हरेधस्तु संविदं लंघयेच्च यः ।
> सवस्वहरणं कृत्वा तं राष्ट्राद् विप्रवासयेत् ।।
> व्यवहाराध्याय 187
>
> He who steals communal wealth or violates the rules of a trust should be exiled from the country after being deprived of all wealth.
> (Yajnavalkya, Vyavaharadhyaya 187)
>
> यो ग्रामदेशसंधानां कृत्वा सत्येन संविदम् ।
> विसंवेदन्नरो लोभात्तं राष्ट्राद् विप्रवासयेत् ।। (81219)
> (स्मृतिचन्द्रिका संविद् व्यतिकम)
>
> He who, having truthfully undertaken a trust for the village, the country or community, violates it out of greed should be exiled from the country.
> (Manu, quoted in Smritichandrika, violation of undertaking)

149. To protect the public trust property various safeguards have been provided under the statutory provisions and it is the divine and pious duty of a trustee to ensure that the trust property is kept safe, intact and useful for the generations to come. In the present case, as the State of Madhya Pradesh is the titleholder of the property, it is the duty of the State to protect and preserve the property

150. In light of the aforesaid, this Court is of the considered opinion that the orders passed by the learned Single Judge dated 28.11.2013 in W.P. No.11618/2012 and

03.12.2013 in W.P. No.5372/2010, which are contrary to the constitutional mandate, as provided under Article 363 of the Constitution of India, deserve to be quashed and are accordingly, quashed.

151. Shri Saxena, learned Senior Counsel has argued before this Court that doctrine of *Cy près* is applicable present case.

> **"**Doctrine of *Cy près* means "following as nearly as possible the intention of the donor."
>
> Sheridan and Delany,
> The *Cy près* Doctrine (1959)."

152. From early times the religious and charitable Institutions in the country came under the protection of the ruling authority. The *Smriti* writers make it a duty on the part of the King to uphold the customs and usages of the land unless they are contradictory to revelation; and the *Mitakshara*, in commenting upon a passage of *Yajnavalkya* relating to the enforcement of customs, expressly refers to customs in connection with management of temples [See: *Ghar Pure's Mitakshara,* P.329]. The duty of protecting endowments is one of the primary duties of the King as mentioned in *Shukraniti* and other treaties. [G. Iyer's Law of Endowments, 2nd Edition, P.23-25].

153. In the case of ***Rajah Muttu Ramalinga Setupati Vs. Perinayagum Pillai, L.R.1, I.A. 209 at 233***, it was observed by the Privy Council that there could be little doubt that this Superintending authority over temples and religious endowments was exercised by the old rulers.

154. Keeping in view the doctrine of *Cy près*, earlier it was a duty of the erstwhile ruler to protect the property and after the Covenant was signed, as the property mentioned in

the trust deed became absolute property of the State of Madhya Pradesh, it is the duty of the State of Madhya Pradesh to protect and preserve all religious and charitable institutions and other properties which finds place in the Trust Deed, especially in light of the fact that title lies with the State of Madhya Pradesh, keeping in view the intention of the donor who has created the charities for public at large.

155. It has been vehemently argued on behalf of the Trust and the Trustees that entire action was initiated in the matter only because the then Member of Parliament from Indore Mrs. Sumitra Mahajan wrote a letter to the Chief Minister. This Court really appreciates the concern shown by Member of Parliament in the matter. In fact she was the one who has brought it to the notice of the Government in order to save the Trust property, which includes 12000 acres of land including Temples, Ghats, Dharamshalas, Rest Houses, etc.

156. On the basis of letter written by the Member of Parliament, the Chief Secretary / Chief Minister directed an inquiry in the matter and the then Principal Secretary to the Chief Minister Mr. Manoj Kumar Shrivastava, IAS submitted a very detail and exhaustive report on 02/12/2012. The report is on record and it has been filed by Mr. Vijay Pal Singh, Intervener in Writ Petition No.135/2014. The report refers to Covenant dated 22/04/1948 and notification dated 07/05/1949 on account of which the Khasgi properties and the income from the Khasgi Trust vested in the State of Madhya Bharat. The report further reflects that the State of Madhya Pradesh

came into existence w.e.f. 01/11/1956 and the Khasgi properties thereafter, vested in the State of Madhya Pradesh. This fact has also been admitted on 27/06/1962.

157. The then Principal Secretary to the Chief Minister after taking into account the Covenant and the case law on the subject has strongly recommended for preservation and protection of Khasgi properties and thereafter, action was taken by the Collector, Indore in the matter.

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

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

160. The Committee so constituted shall inquire in respect of the properties sold by the Trust and shall take all

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

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

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

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

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

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

(e) Collector, Indore (Secretary).

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

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

actions of any authority, it is expected that appropriate action should be taken by the said Wing. Hence, no positive direction to register a First Information Report is required.

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

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

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

165. This Court on 23.04.2014 has directed the parties to maintain *status quo* and it has been informed by learned counsel for the State of Madhya Pradesh that some construction has taken place by the private parties.

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

Commissioner, Indore. The Collector, Haridwar shall assist the Divisional Commissioner, Indore in the matter and the Divisional Commissioner, Indore shall ensure that Kusha Ghat as well as other properties are again, which are meant for public charities are made available to public at large. The aforesaid direction is not only in respect of present property but in respect of other properties also. The State of Madhya Pradesh shall ensure by taking appropriate steps in accordance with law that no further sale takes place in respect of such properties and they shall maintain the properties for the generations to come keeping in view their historic importance. The Collector, Indore shall be free to take action in accordance with law pursuant to the order passed by him dated 05.11.2012 and the Registrar shall also be free to take appropriate action in accordance with law pursuant to the order passed by him dated 30.11.2012.

With the aforesaid, the present Writ Appeal stands allowed and connected Writ Appeal also stands allowed.

As this Court has already allowed both the writ appeals, Writ Petition No.11234/2020 stands disposed of and the order passed in the writ appeals shall govern the writ petition also.

Certified copy, as per rules.

(S.C. SHARMA)
J U D G E

(SHAILENDRA SHUKLA)
J U D G E

Ravi