MAY 2022

CJA e-NEWSLETTER

Monthly Newsletter of
Chandigarh Judicial Academy of Punjab & Haryana High Court
For circulation among the stakeholders in Judicial Education

VOLUME : 07
ISSUE : 05

In this Issue:

FROM THE DESK OF CHIEF EDITOR

THE COURT CRAFT OF JUDGES

It was during the month of May, 2022, two judges of the top court retired. The Supreme Court Bar Association on both occasions organized farewell events. It was on May 9, 2022 that **Justice Vineet Saran** was given a warm send off. Justice Saran, while responding said, the court craft was necessary not only for the lawyers. Equally, for the judges also. He was happy to share his own court craft. He would sometimes appear to be angry during the hearings. In reality, he would not be. May I say, this was a meaningful court craft. I asked myself, why should a judge appear to be angry? Many a time, a judge does not like, how the lawyer was conducting his case. May be, the judge feels that he was wasting the time of the court. May be that he was repeating or digressing. How to stop the lawyer? If you politely tell him, it may not make any difference. In such a situation, a judge is required to show his annoyance. Not anger. This is court craft. It would achieve the desired result. Shakespeare has said, he is a fool who cannot get angry. He is wise who will not. The lawyer must not think that he can take the judge for a ride. The annoyance of the judge in such a situation is desirable. Also understandable. This would be a good recipe. It does not amount to losing temper. Also not disturbing the cordial environment of the court. It is only to make the lawyer realize that he must assist the court appropriately. The lawyer may also feel that he knows that the judge is actually not angry. Why take note of the annoyance of the judge? This attitude of the lawyer would make the judge really angry. Therefore, this must be avoided under all circumstances. Let us understand, the court craft is a two way traffic.

The second event took place on May 20, 2022 to bid farewell to **Justice L.Nageswara Rao**. He was the 7th lawyer who was directly appointed to the Supreme Court on May 13, 2016. During this event, senior advocate, Mr.Pardeep Rai revealed that Justice Rao has starred as a policeman in a Hindi film: Kanoon Apna Apna alongwith Sanjay Dutt and Anupam Kher among others. While speaking on this occasion, Justice Rao shared that he was in theatre in college. His cousin was a director. Accordingly, he got a short role in a movie. That was all. He never wanted to become an actor. Lawyers act in court. He added: Judges also do. Whenever there is heat between the lawyers, judges try to bring truce. He went on to say: 'acting is part of the profession'. This is also court craft. The task of a judge is difficult. He is to find the Truth and do complete justice. My experience at the Bar tells me, it is not all that easy to read the mind of the judge. While arguing, I felt that the judge was totally against me. He was countering every argument of mine. In-spite of my best effort to be persuasive. Rational and reasoned. When the counsel on the other side started arguing, equally the judge was countering him tooth and nail. In fact, I so felt that the judge was only acting when I was arguing. Ultimately, my petition was allowed. This was real court craft on the part of the judge. The judge must be able to extract the best from both the lawyers. This too, without unfolding his mind till the end. So that ultimately, the truth prevails. Justice is done. If in the beginning of the case itself, the judge gives his mind, he would fail to get the best possible assistance from the Bar. Resultantly, it is understandable and desirable if some 'acting' is done by the judge. This is real court craft.

Justice M.C.Chagla was elevated as a judge of Bombay High Court on August 4, 1941. He became the first Indian Chief Justice of Bombay High Court on August 15, 1947. He resigned as Chief Justice in September, 1958 to take over as India's Ambassador to Washington. Justice Chagla was quick in perception. Broad in vision. Fresh in approach. He was unique. He would never read petitions beforehand. He never liked the idea of forming impression/opinion about the cases. He was a blend of courtesy and speed. His court craft was, he would allow the advocate to complete his arguments without interruption. He would rephrase the arguments in words better than the counsel. He would ask, if that was the point that he was making. This would leave no scope for repetition. No further elaboration. Extremely courteous. Equally, firm. On completion of arguments, he would dictate the judgment in the open court. Even in the most complex cases. In his 17 years of judicial journey in Bombay High Court, he

reserved judgment only in two cases. There was difference of opinion. The judgment was reserved only to bring unanimity in their opinion. He was such a fine mix of court craft. With his court craft, he made huge contribution. He expired on February 9, 1981. But he continues to live. His court was a temple of justice for the litigant. An academy of judicial education for judges.

Justice S.S.Sandhawalia was a judge of Punjab & Haryana High Court from 1968 to 1977 and Chief Justice from 1978 to 1983. Thereafter, he remained Chief Justice of Patna High Court from 1983 to 1987. What a beautiful judicial journey spreading over almost two decades. When I joined the Bar, I was told he was a most polished and cultured judge. Graceful too. Even when he dismissed the petition (which he did more often), he would not let you feel. A smile on his face, he would say, I wish I could accept your argument. May be that you would be able to persuade me in your next matter. I assure you, you have done your very best. Sorry. Resultantly, you would come out of the court as if nothing had happened. You may have lost a case involving high stakes. This was his court craft. I joined the Bar in early 1991. I never had the opportunity of appearing before him. I wanted to experience Sandhawalia flavor. After retirement, he became President of Haryana Consumer Commission. I got the opportunity. I argued before him. I was heard without interruption. I was told, Dr.Gupta, we used to hear you in Panjab University. What a pleasure to have you before us. Of course, with a smile on his face. His insignia. I thought, my matter was going to be dismissed. It was allowed. I bowed and came out. It was a pleasant experience. What court craft! Very few can imbibe the same. Coupled with this, he would write his judgments beautifully. The lucidity of his language. Reading the same, one enjoyed Sandhawalia language too. Such judges with such court craft are rare.

The court craft and the court management go together. A judge must be able to extract the maximum from the members of the Bar. This helps both ways. Good assistance from the Bar means good judgments from the Bench. The court craft of judges is something extra. In fact, court craft is the creativity of a judge. Courtesy and Patience are integral to court craft. Courteous demeanor should be part of personality of a judge. Sobriety in behavior is the hallmark of a judge. It is essential for sustaining public confidence in the institution of judiciary. The court craft is a gift of a judge. From senior judges to younger judges. May I also say, it begins from the Trial Court. Moves upwards. It is judicial creativity.

Balram K. Gupta

THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022

On 18th April 2022 The Criminal Procedure (Identification) Act, 2022 received the assent of the President of India and the identification of Prisoners Act, 1920 was repealed. The Act authorises the Police, from the rank of head constable to the station house officer, to take measurements of convicts and other persons for the purpose of identification and investigation in criminal matters and to preserve the records. The term "*measurements*" has been introduced in sub clause (b) in section 2 and includes finger impressions, foot print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination referred to in Section 53 or section 53-A of the Code of Criminal Procedure Code, 1973.

The physical and biological samples have not been explained but it can include blood, semen, saliva etc. Similarly behavioural attributes have not been defined in the Act but it is to be understood as a range of motives, traits, skills and knowledge. It includes range of individual characteristics that can be measured and can be shown to differentiate effective and ineffective performances.

Section 4 authorises the National Crime Records Bureau, in the interest of prevention, detection, investigation and prosecution to collect the record of measurements, store , preserve and destroy the same. The said record shall be retained in digital or electronic form for a period of **seventy five years** from the date of collection of such measurement. However if the offender has not been previously convicted and he has been released without trial or discharged or acquitted by the court, in that event after exhausting all legal remedies, all records of measurements pertaining to that person shall be destroyed unless otherwise directed by the court.

The Act has expanded the set of persons whose data can be collected and includes :

- any person convicted for any offence; or
- who has been arrested in connection with any offence punishable under any law for the time being in force ;or
- detained under any preventive detention law ;or
- Ordered to give security for his good behaviour ; or

- Maintaining peace under Section 117 of Code of Criminal Procedure Code, 1973 for a proceeding under sections 107 to 110 of the said code.

As per Section 3 such a person shall, if so required, allow his measurements to be taken by a police officer or prison officer who shall not be below the rank of Head warder. Under section 5 the Magistrate is empowered to direct any person to give his measurements to expedite the investigation or proceedings under the Code of Criminal Procedure, 1973.

Except in the case of arrest in certain offences described in the Proviso to section 3 where the person concerned is not obliged to allow taking his biological samples , any resistance to or refusal to allow the taking of measurements under the Act shall be deemed to be an offence under Section 186 of the Indian Penal Code.

The Criminal Procedure (Identification) Act,2022 gives vast powers to the Police and to the court to collect the measurements of the offenders and is certainly more effective than the Identification of Prisoners Act 1920. With the expansion of the data which the Police can collect now, the identification of criminals is likely to become easier. The storing of the same in Central database shall provide quick access to the law enforcing agency. In order to allow the collection of data ,Magistrate of the first class or Metropolitan Magistrate is only to record his satisfaction that the same is required for the purpose of expediting the investigation or proceedings under the Code of Criminal Procedure, 1973.

Though the Act has been criticized for infringing upon the right of privacy of the individual but it is too early to accept this criticism. No doubt it is said that the greater the power, the more dangerous is the abuse but there are safeguards enumerated in the Act itself which can be put to effective use.

Madhu Khanna Lalli
Additional District & Sessions Judge,
-cum-Faculty Member

LATEST CASES: CIVIL

"*To meaningfully arrest the problem of declining tree cover, civil society must also be placed with the responsibility to carry out reafforestation activities. While the Court cannot ignore the importance of governmental responsibility in materialising the goals of sustainable development through reafforestation, the Court strongly endorse the idea of collective responsibility towards ensuring a sustainable future. The engagement, inclusion and participation of citizens and perhaps more significantly, the ownership of the sustainable development agenda by empowered citizens and community-level actors will contribute in a significant manner to achieving the economic, social and environmental pillars of the sustainable development agenda*."

- *B.V. Nagarathna, J. in T.N. Godavarman Thirumulpad, In re v. Union of India, (2022) 4 SCC 289, para 32*

Ankush Rawat V Guru Nanak Education Trust and Another: CM-5976-CII-2022 in CR-1310-2022 d.o.d. 19.05.2022 - **HELD-** The parties are bound by the statements made by their counsel in Court. Observing that it is not the case of the applicant that the counsel was not authorized to to make the statement and infact the only ground of review is that there is an error apparent on the record as the real facts were not put before this Court, the Honble court dismissed the application for being sans merit and imposed exemplary costs of Rs.20,000/- to be deposited with the Chandigarh Legal Aid Society. Hon'ble Court relied on Supreme Court's judgment in Om Parkash Vs. Suresh Kumar ,2020(13) SCC 188 and T.N.Electricity Board & Anr. Vs. N. Raju Reddiar & Anr 1997(9) SCC 736 and observed that the Supreme Court of India has repeatedly deprecated the conduct of the parties of changing their counsels and filing review petitions. In the present case, review application was not filed by the counsel who was neither the filing counsel nor the arguing counsel nor was he present at the time of passing of the impugned order.

Munni Devi Alias Nathi Devi (D) vs Rajendra Alias Lallu Lal (D)- 2022 SCC OnLine SC 643- **HELD-** "Hindu woman's right to maintenance is a tangible right against the property which flows from the spiritual relationship between the husband and the wife. Such right was recognized and enjoined under the Shastric Hindu Law, long before the passing of the 1937 and the 1946 Acts. Where a Hindu widow is found to be in exclusive settled legal possession of the HUF property, that itself would create a presumption that such property was earmarked for realization of her pre-existing right of maintenance, more particularly when the surviving co-parcener did not earmark any alternative property for recognizing her pre-existing right of maintenance. The word "possessed by" and "acquired" used in Section 14(1) are of the widest amplitude and include the state of owning a property. It is by virtue of Section 14(1) of the Act of 1956, that the Hindu widow's limited interest gets automatically enlarged into an absolute right, when such property is possessed by her whether acquired before or after the commencement of 1956 Act in lieu of her right to maintenance"

Sudhir Ranjan Patra (D) vs Himansu Sekhar Srichandan: 2022 SCC OnLine SC 629 - **HELD-**Referring to Sangram Singh Vs. Election Tribunal, Kotah and another AIR 1955 SC 425 and Arjun Singh Vs. Mohindra Kumar and others AIR 1964 SC 993, the Hon'ble Apex Court held : "When an ex-parte decree is set aside and the suit is restored to file, the defendants cannot be relegated to the position prior to the date of hearing of the suit when he was placed ex-parte. He would be debarred from filing any written statement in the suit, but then he can participate in the hearing of the suit inasmuch cross-examine the witness of the plaintiff and address arguments."

Further, observing that in the present case, by filing the CMA under Order IX Rule 13, appellants herein – original defendant Nos. 2 and 3 not only prayed to set aside the ex-parte decree but also prayed to allow them to file written statement and that there was no order and/or decision by the learned Trial Court on the second prayer, namely, to allow defendant Nos. 2 and 3 to file written statement or not, it was held that it should have been left to the learned Trial Court to consider the prayer of defendant Nos. 2 and 3 whether to allow them to file written statement or not.

Thus held: "Under the circumstances, the impugned judgment and order passed by the High Court to the extent of observing that defendant Nos. 2 and 3 cannot be permitted to file their written statement is unsustainable and

the issue/question whether defendant Nos. 2 and 3 may be allowed to file their written statement or not, shall have to be remanded to the learned Trial Court." Accordingly, the impugned judgment and order passed by the High Court to the extent of observing that though the ex-parte decree is set aside, defendant Nos. 2 and 3 cannot be permitted to file their written statement was quashed and set-aside.

KC Laxmana vs KC Chandrappa Gowda: 2022 SCC OnLine SC 471 –HELD- Article 58 of the Second Schedule to the Limitation Act provides for the period of limitation to file a suit to obtain any other declaration. The period of limitation under this article is three years from the date when the right to sue first accrues. It is a residuary article governing all those suits for declaration which are not specifically governed by any other articles in the Limitation Act. Article 109 is the special Article to apply where the alienation of the father is challenged by the son and the property is ancestral and the parties are governed by Mitakshara law. Generally, where a statute contains both general provision as well as specific provision, the later must prevail. Therefore, Article 58 has no application to the instant case.

Azgar Barid v. Mazambi: AIR 2022 SC 1304 - **Can some of the parties who had not challenged the judgment and decree of the trial court before the first appellate court prefer second appeal?-HELD-**In the case at hand, the First Appellate Court had reversed the findings recorded by the trial court which were based upon correct appreciation of evidence. The High Court has given sound and cogent reasons as to why an interference with the findings of the First Appellate Court was required. It was also found that the First Appellate Court had failed to take into consideration the voluminous oral as well as documentary evidence, on the basis of which the trial court had recorded its findings. The findings as recorded by the First Appellate Court are based on conjectures and surmises. As such the court is of the considered view that the perverse approach of the First Appellate Court in arriving at the findings would give rise to a substantial question of law, thereby justifying the High Court to interfere with the same in accordance to section 100 of the C.P.C.

Shenbagam v. K.K. Rathinavel: 2022 SCC OnLine SC 71 - **What all are the factors to be reckoned to prove "readiness and willingness" to perform a contract under Sec. 16(c) of Specific Relief Act? 2. What are the factors that the courts should be cognizant of while deciding whether to grant the remedy of specific performance under Sec. 20 of the Specific Relief Act (as it stood before the amendment)?-HELD-**Section 16 of the Specific Relief Act provides certain bars to the relief of specific performance. These include, inter alia, a person who fails to aver and prove that he has performed or has always been „ready and willing" to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented and waived by the defendant. In JP Builders v. A Ramadas Rao (2011) 1 SCC 429, a two-judge Bench of this Court observed that Section 16(c) mandates "readiness and willingness" of the plaintiff and is a condition precedent to obtain the relief of specific performance. The Court further observed that „readiness" refers to the financial capacity and "willingness" refers to the conduct of the plaintiff wanting the performance. Even assuming that the respondent was willing to perform his obligations under the contract, we must decide whether it would be appropriate to direct the specific performance of the contract in this case. In Zarina Siddiqui v. A. Ramalingam, (2015) 1 SCC 705, a two-judge Bench of this Court while dealing with a suit for specific performance of a contract regarding the sale of immovable property observed that the remedy for specific performance is an equitable remedy and Section 20 of the Specific Relief Act confers a discretion on the Court. In the context of the discretion under Section 20 of the Specific Relief Act, several decisions of this Court have considered whether it is appropriate to direct specific performance of a contract relating to the transfer of immovable property especially given the efflux of time and the escalation of prices of property. Time is not of the essence in an agreement for the sale of immoveable property. In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault.

Karuna Sharma
Faculty Member

LATEST CASES: CRIMINAL

"*The rhetoric surrounding merit obscures the way in which family, schooling, fortune and a gift of talents that the society currently values aids in one's advancement. Thus, the exclusionary standard of merit serves to denigrate the dignity of those who face barriers in their advancement which are not of their own making. But the idea of merit based on "scores in an exam" requires deeper scrutiny. While examinations are a necessary and convenient method of distributing educational opportunities, marks may not always be the best gauge of individual merit. Even then marks are often used as a proxy for merit. Individual calibre transcends performance in an examination. Standardised measures such as examination results are not the most accurate assessment of the qualitative difference between candidates*."

- *Dr D.Y. Chandrachud, J. in Neil Aurelio Nunes (OBC Reservation) v. Union of India, (2022) 4 SCC 1, para 35*

Prabha Tyagi Vs. Kamlesh Devi: 2022 SCC OnLine SC 607-Whether the consideration of Domestic Incident Report is mandatory before initiating the proceedings under D.V. Act, in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act; Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levelled at the point of commission of violence; Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed?-HELD-Hearing a Criminal Appeal passed in a matter under the provisions of the Protection of Women from Domestic Violence Act, 2005, the Hon'ble Supreme Court has held that Section 12 does not make it mandatory for a Magistrate to consider a Domestic Incident Report filed by a Protection Officer or service provider before passing any order under the D.V. Act. It has been clarified that even in the absence of a Domestic Incident Report, a Magistrate is empowered to pass both ex parte or interim as well as a final order under the provisions of the D.V. Act.

The Hon'ble Supreme Court has further held that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, to actually reside with those persons against whom the allegations have been levelled at the time of commission of domestic violence. If a woman has the right to reside in the shared household under Section 17 of the D.V. Act and such a woman becomes an aggrieved person or victim of domestic violence, she can seek reliefs under the provisions of D.V. Act including enforcement of her right to live in a shared household.

The Hon'ble Supreme Court has further held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-a -vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic

relationship, is entitled to file an application under Section 12 of the D.V. Act.

Rekha Jain Vs. State of Karnataka & Anr.: 2022 SCC OnLine SC 585- Prosecution under section 420 of Indian Penal Code?-HELD-Hearing a Criminal Appeal aggrieved from not quashing the criminal proceedings for the offence under Section 420 of Indian Penal Code, the Hon'ble Supreme Court has held that there must be a dishonest inducement by the accused.

The Hon'ble Supreme Court has further held that to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person.

Dilip Hariramani Vs. Bank of Baroda: 2022 SCC OnLine SC 579-Vicarious liability under Section 141 of the NI Act?-HELD-Hearing a Criminal Appeal aggrieved from conviction under Section 138 of the NI Act , the Hon'ble Supreme Court has held that the provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished.

The Hon'ble Supreme Court has further held that such vicarious liability arises only when the company or firm commits the offence as the primary offender.

Ravinder Singh @ Kaku Vs. State of Punjab, 2022 SCC OnLine SC 541- Whether the call records produced by the prosecution would be admissible under section 65A and 65B of the Indian Evidence Act, given the fact that the requirement of certification of electronic evidence has not been complied with as contemplated under the Act?-HELD-Hearing a Criminal Appeal aggrieved from conviction under Section 302 read with 120B IPC, the Hon'ble Supreme Court has held that the electronic evidence produced should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law.

The Hon'ble Supreme Court has further held that oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law.

Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) & Anr., 2022 SCC OnLine SC 513- Whether summons and trial notice should have been quashed on the basis of factual defences?-HELD-Hearing a Criminal Appeal aggrieved from the judgment and order dismissing the application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the summoning order and the order framing notice issued under Section 138 of the Negotiable Instruments Act, 1881, the Hon'ble Supreme Court has held that to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not be judicious.

The Hon'ble Supreme Court has further held that when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.

Amrinder Singh Shergill
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: LAND ACQISITION

"At best, an examination can only reflect the current competence of an individual but not the gamut of their potential, capabilities or excellence, which are also shaped by lived experiences, subsequent training and individual character. The meaning of "merit" itself cannot be reduced to marks even if it is a convenient way of distributing educational resources. When examinations claim to be more than systems of resource allocation, they produce a warped system of ascertaining the worth of individuals as students or professionals."

— Dr D.Y. Chandrachud, J. in Neil Aurelio Nunes (OBC Reservation) v. Union of India, (2022) 4 SCC 1, para 37

Bhag Singh v. Union of India: 2022 SCC OnLine SC 553-Can market value be determined retrospectively based on the market value of land acquired two years later? -HELD-that the same was not permissible. In the present case, the notification dated 26.10.1990 was published intending to acquire 32 acres 6 kanal and 3 marlas of land in Village Sohana and 90 acres 7 kanal and 18 marlas of land in Village Lakhnaur. The said notification was followed by a notification dated 6.11.1991 issued under Section 6 of the Land Acquisition Act, 1894. The Land Acquisition Collector awarded compensation of Rs.1,75,000/- per acre. Aggrieved by the market value determined by the Land Acquisition Collector, the land owners sought reference under Section 18 of the Act. The Reference Court awarded compensation of Rs.4 lakhs per acre apart from the compensation for super-structures. The said award of the amount of compensation was based upon a judgment dated 11.10.2002 by the Reference Court pertaining to the same notification in respect of land situated in Village Lakhnaur.

It is important to note that the land situated at Village Sohana was also acquired vide notification dated 11.11.1993. The Reference Court awarded Rs.6,96,000/- per acre. However, the High Court has awarded compensation @ Rs.8 lakhs per acre. It was hence argued before the Supreme Court that suitable deduction should be made from such determination of the market value of the land acquired vide notification dated 26.10.1990.

The Court, however, noticed that, in the case at hand, when the later notification is issued, the development activities had already been taken place in view of the earlier two notifications. Therefore, it was not the percentage of increase in the market value but increase due to the development which has taken place on account of earlier notifications.

The Court, hence, held that the market value of the land cannot be based upon the land acquired vide notification dated 11.11.1993 i.e., more than two years later of the notification in question and when there were other notifications intervening on 26.10.1990 and 25.7.1991.

Agricultural Produce Marketing Committee v. State of Karnataka : 2022 SCC OnLine SC 342-Land owners cannot claim acquisition proceeding is lapsed u/s. 24(2) of Right to Fair Compensation Act where stay was obtained by them vide interim orders: -HELD-reversed the impugned judgment of Karnataka High Court holding that land owners who approach the acquisition proceedings and obtain interim orders in their favour cannot take benefit under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Bench noted that there has been a trend of land owners filing fresh cases seeking lapse of acquisition on the basis of Section 24(2) of the Act, 2013, although such land owners may have earlier unsuccessfully filed writ petitions challenging the acquisition notifications. The Bench opined that such land owners may have had the benefit of interim orders of stay of further proceedings in the acquisition process or dispossession resulting in a delay in the making of the award and payment/deposit of the compensation and consequently in taking over possession of the acquired land.

Consequently, there being a delay in the passing of the award owing to interim orders granted by the High Court where suits may have been filed against acquiring bodies. The Bench held that the land owners cannot now take advantage of the same so as to contend that no award has been made and consequently there has been no payment or deposit of the compensation and that possession of the acquired land continues with them. The Bench remarked,

"The land owners having had the benefit of interim orders granted in their favour in proceedings initiated by them against the acquisition cannot take benefit under Section 24(2) of the Act, 2013."

Hence, the Bench directed that the High Court or the civil courts which may have granted interim orders in favour of the land owners, ought to

consider the aforesaid aspect before applying Section 24(2) of the Act, 2013 in favour of the land owners.

In the backdrop of above, the impugned common judgment and order of the High Court declaring that the acquisition proceedings had lapsed under subsection (2) of Section 24 of the Act, 2013 was held to be unsustainable for being in the tooth of decision in *Indore Development Authority v. Manoharlal*, (2020) 8 SCC 129, and was set aside.

The matters were remitted to the Single Judge to decide and dispose of the writ petitions afresh and in accordance with law and on their own merits. Additionally, the Bench directed the Single Judge to adjudicate all other issues which were framed and pronounce the judgment on all the points framed for consideration.

Sukh Dutt Ratra v. State of Himachal Pradesh: 2022 SCC OnLine SC 410-"State cannot hide behind delay & laches to evade it's responsibility after acquiring land. There cannot be a 'limitation' to doing justice" - HELD- While the right to property is no longer a fundamental right, it is pertinent to note that at the time of dispossession of the subject land, this right was still included in Part III of the Constitution. The right against deprivation of property unless in accordance with procedure established by law, continues to be a constitutional right under Article 300-A.When it comes to the subject of private property, this court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State.

The Court considered the facts of the present case that revealed that the State has, in a clandestine and arbitrary manner, actively tried to limit disbursal of compensation as required by law, only to those for which it was specifically prodded by the courts, rather than to all those who are entitled. This arbitrary action, which is also violative of the appellants' prevailing Article 31 right (at the time of cause of action), undoubtedly warranted consideration, and intervention by the High Court, under its Article 226 jurisdiction.

The State was directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the reference court dated 04.10.2005 and to consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f 16.10.2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment, i.e. 12.09.2013.

Given the disregard for the appellants' fundamental rights for decades after the act of dispossession, the Court also directed the State to pay legal costs and expenses of ₹ 50,000 to the appellants.

U.P. Avas Evam Vikas Parishad v. Noor Mohammad : 2021 SCC OnLine SC 1266- Notification to exempt land from acquisition under LA Act is not a quasi-judicial order; will not confer any vested rights to the landowner- HELD- On the reliance placed by the respondent on *Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. v. CIT,* (2018) 4 SCC 494, to contend that power under Section 21 of the General Clauses Act is not available after an enforceable right has accrued under the notification or order, the Bench stated that Section 21 has no application to vary or amend or review a quasi-judicial order but a proceeding under section 48(1) of the Land Acquisition Act is administrative in nature. Therefore, the Bench opined that reliance on the decision in *Industrial Infrastructure Development* was misplaced.

The Bench clarified, the essence of a quasi-judicial order is that it is preceded by an opportunity of hearing to the party affected thereby. A notification under Section 48(1) does not warrant any notice or opportunity of hearing, to the original land owners. If at all any person will be aggrieved by the Notification under Section 48(1), it will be the beneficiary of the acquisition, which in the case at hand was the Parishad, and not the land owners. Therefore, the Bench rejected the argument that a Notification under Section 48(1) is a quasi-judicial order.

Coming to the argument that the Notification under Section 48(1) had created a vested right and that the same could not be taken away unilaterally by a subsequent Notification for cancellation, the Bench emphasised that the first Notification was secured by the respondents by false representations and by playing fraud as when the respondents wanted to ward off the acquisition, they claimed that there were cemeteries of their forefathers, but after the first notification was issued, they started selling the land to third parties, who could not and did not share the same religious sentiments with the respondents. Therefore, the withdrawal of such an illegal notification, which was secured by fraud, could not be found fault with. Accordingly,

all the contentions of the respondents were rejected and the appeals were allowed. The impugned orders of the High Court were set aside and since the acquisition had been completed in all respects the Parishad was granted to proceed to implement the public purpose for which the land was acquired.

Special Land Acquisition Officer v. N. Savitha: 2022 SCC OnLine SC 339: **Consent award cannot be the basis to determine compensation in other acquisition, especially, when there are other evidences on record-** **HELD**-The Court was dealing with a case relating to a land acquired for improvement of Ranganathittu Bird Sanctuary. The Land Acquisition Officer passed an award fixing the market value of the acquired land @ Rs.21,488/- per guntha. The Reference Court enhanced the amount of compensation to Rs.30,49,200/- per acre, i.e., Rs.76,230/- per guntha. The original claimant preferred first appeal before the Karnataka High Court seeking enhancement of the amount of compensation. Relying on a consent award and thereafter on "guesswork", by the impugned judgment and order the High Court enhanced the amount of compensation to Rs.40 lakhs per acre with all consequential statutory benefits.

The Supreme Court noticed that the consent award relied upon by the High Court was in respect of the property acquired in the year 2011 and which was acquired for a different purpose, namely, for formation of double line railway broad gauge between Bengaluru and Mysore City. However, in the present case, Section 4 notification was issued in the year 2008, i.e., three years before the land acquired in the consent award in question.

Hence, it was held that the High Court ought not to have relied upon the same while determining the market price of the land acquired in 2008 considering the market price determined for the lands acquired in the year 2011 and on the basis of some "guesswork".

Even otherwise, the Court held that the consent award ought not to have been relied upon and/or considered for the purpose of determining the compensation in case of another acquisition.

"In case of a consent award, one is required to consider the circumstances under which the consent award was passed and the parties agreed to accept the compensation at a particular rate. In a given case, due to urgent requirement, the acquiring body and/or the beneficiary of the acquisition may agree to give a particular compensation."

Kolhapur Municipal Corporation v. Vasant Mahadev Patil: 2022 SCC OnLine SC 179-**No Corporation/Planning Authority can be compelled to acquire an unusable or unsuitable land and be compelled to pay compensation to landowners–HELD-** that when land is found to be unsuitable and unusable for the purposes for which it has been reserved, Corporation cannot be compelled to pay a huge compensation for such a useless and unsuitable land. It was, hence, held that no Corporation and/or the Planning Authority and/or the Appropriate Authority can be compelled to acquire the land which according to the Corporation/Planning Authority is not suitable and/or usable for the purposes for which it is reserved. Any other interpretation would lead to colourable and fraudulent exercise of power and cause financial burden on the public exchequer.

Under the Act of 2013, the Corporation was required to pay a huge sum of Rs. 77,65,12,000/- by way of compensation under the Act of 2013. According to the Corporation, when the entire annual budget for acquisition was Rs. 21 crores, it was beyond their financial position and/or budgetary provision to pay such a huge compensation, that too, for the land which is not suitable and/or useable for the purposes for which it has been reserved.

In such circumstances, the Court observed that while under MRTP Act, the financial constraint cannot be the sole consideration to acquire the land for the purposes for which it has been reserved namely public purposes, however, at the same time, *when such a huge amount of compensation is to be paid and there would be a heavy financial burden, which as such is beyond the financial capacity of the Corporation, such a financial constraint can be said to be one of the relevant considerations, though not the sole consideration before embarking upon reservation of a particular extent of land for development.*

The Court also held that a landowner is entitled to TDR in lieu of compensation with respect to the land reserved provided the land to be acquired is suitable and/or usable by the Corporation. However, *once it is found that the land is not usable and/or suitable for the purposes for which it has been reserved, the Corporation cannot still be compelled and directed to acquire the land and grant TDR in lieu of amount of compensation*.

Mahima Tuli
Research Fellow

NOTIFICATION

Income–tax (Fifteenth Amendment) Rules, 2022 : The Central Board of Direct Taxes notified Income–tax (Fifteenth Amendment) Rules, 2022 to amend the Income-tax Rules, 1962.

Key points:

- Rule 114BA relating to transactions for the purposes of Section 139A (1) (vii) shall be inserted: "114BA. **Transactions for the purposes of clause (vii) of sub-section (1) of section 139A**.— The following shall be the transactions for the purposes of clause (vii) of sub-section (1) of section 139A:
  (a) cash deposit or deposits aggregating to twenty lakh rupees or more in a financial year, in one or more account of a person with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act) or a Post Office;
  (b) cash withdrawal or withdrawals aggregating to twenty lakh rupees or more in a financial year, in one or more account of a person with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act) or a Post Office;
  (c) opening of a current account or cash credit account by a person with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act) or a Post Office.";
- Rule 114BB shall be inserted providing **Transactions for the purposes of sub-section (6A) of section 139A and prescribed person for the purposes of clause (ab) of Explanation to section 139A**:
  "114BB. Transactions for the purposes of sub-section (6A) of section 139A and prescribed person for the purposes of clause (ab) of Explanation to section 139A:
  (1) Every person shall, at the time of entering into a transaction, quote his permanent account number or Aadhaar number, as the case may be, in documents pertaining to such transaction, and every person specified in column (3) of the said Table, who receives such document, shall ensure that the said number has been duly quoted and authenticated.

Sl. No.	Person	Manner of furnishing return of income
(1)	(2)	(3)
1.	Individual, or Hindu undivided family or a firm or limited liability partnership or an association of persons or a body of individuals, whether incorporated or not, or a local authority or an artificial juridical person in whose case accounts are required to be audited under section 44AB of the Act or a Company or a political party required to furnish a return in Form ITR-7.	Electronically under digital signature.
2.	Individual, or Hindu undivided family, or firm, or limited liability partnership, or an association of persons or a body of individuals, whether incorporated or not, or a local authority or an artificial juridical person, or a person required to file a return under sub-section (4A) or sub-section (4B) or sub-section (4C) or sub-section (4D) of section 139, other than a person mentioned in column (2) of Sl. No. (1) above.	(A) Electronically under digital signature; (B) Transmitting the data electronically in the return under electronic verification code.

(2) The permanent account number or Aadhaar number alongwith demographic information or biometric information of an individual shall be submitted to the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) or the person authorised by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) with the approval of the Board, for the purposes of authentication referred to in section 139A.

(3) Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) shall lay down the formats and standards along with procedure for authentication of permanent account number or Aadhaar number."[1]

[1] https://www.incometaxindia.gov.in/Communications/Notification/Notification-No-53-2022.pdf

EVENTS OF THE MONTH

- A group of 23 Trainee Judicial Officers started their Foundation Training for one year on August 2, 2021 through online medium. The combination of Institutional Training and Court Attachment continued till April 21, 2022. As the situation improved, the TJOs reported in CJA for physical training w.e.f. April 22, 2022. The TJOs were addressed by Hon'ble Mr. Justice Fateh Deep Singh, President BoG, CJA. They were advised to give due attention to physical fitness through Yoga exercises every morning. Equally, to ward off judicial stress, they were advised to give some time every day to meditation. They have continued with CJA till May 31, 2022. During this period, the TJOs were specifically given exposure to Mock Trials, Revenue Training and Quiz Exercises. In the remaining, reflective sessions were taken by the Faculty Members. They would be reporting back for Court Attachment w.e.f. June 1, 2022.
- A group of 49 Trainee Judicial Officers from Maharashtra Judicial Academy for Knowledge Sharing and Exposure came to the Chandigarh Judicial Academy from May 17 to May 24, 2022. They were accompanied by their Additional Director, Mr.N.M.Jamadar. During their stay, the academic sessions were organized for two days which were taken by Dr.Balram K Gupta, Director (Academics) and the Faculty Members. They were also taken to visit the High Court, Amritsar (Golden Temple), Jalianwala Bagh & Wagha Border, Kasouli as also local sightseeing. A cultural evening was also organized in which the TJOs from both CJA and MJA enthusiastically participated. It was on the afternoon of May 23, 2022 that the valediction function was organized. Both the Directors of CJA spoke on this occasion. The TJOs from MJA were given the certificates and mementos. Mr.N.M.Jamadar was also felicitated on this occasion. In turn, the TJOs from MJA appreciated the effort put in by the staff of CJA as also the faculty members. Both the Directors as also the Faculty Members and the Research Fellow were given books.
- Chandigarh Judicial Academy organized one day online Refresher Programme on Cyber laws – Handling and Appreciation of Digital Evidence for Additional Sessions Judges and Judicial Magistrate First Class of the states of Punjab, Haryana and UT Chandigarh on May 28, 2022. Dr.Balram K Gupta, Director (Academics), CJA, gave the opening remarks as also the overview of the programme. This programme was divided into four sessions which were taken by: Mr.Nisheeth Dixit, Advocate & Cyber Law Consultant, Supreme Court of India, Mr.Gurcharan Singh, Cyber Forensic Expert, Central Detective Training Institute, Chandigarh and Ms.Harshali Chowdhary, Master Trainer, Cyber Crimes and Digital Evidence, ADJ-cum-Faculty Member, CJA.