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FROM THE DESK OF CHIEF EDITOR

What is Judicial Communication! Judges communicate through their orders and judgements. Therefore, does it mean that 'Judicial Communication' is limited only to the orders and judgments of courts? Recently, I was taking a session with the newly promoted Additional District and Sessions Judges from the State of Punjab on 'Judicial Communication'. It is during the course of the session, some of the contours of judicial communication were discussed. Judges in courts communicate with lawyers, litigants and witnesses. The judgments are also not limited to the parties involved. The Trial Court judgments deal extensively in civil and criminal matters with the appraisal of evidence, the points of law and their application to the final factual canvas. The judgments of the High Courts and the Summit Court settle different issues of Law as also Constitutional Law. In this process, the judgments are not limited to the parties. The judgments concern the larger audience. The legal and judicial coparcenary. The Legislators. The Academia in Law. Different Sections of Society. This list is only illustrative. In this view of the matter, judicial communication encompasses a wider domain.

Our courts are open houses. The litigants and other members of public attend the court proceedings. The entire judicial conduct in court reflects the mind-set of a judge. Even when the judge is listening and not speaking, the same is demonstrative of judicial training of a judge. The judicial communication including the body language of the judge exhibits to the different stakeholders the judicial independence of a judge. It is through judicial communication that the trust and confidence of the public is built in the Institution of Judiciary. Judges are players. Judicial Communication speaks of judges-in-action. It would not be wrong to say that to maintain public confidence, judicial communication must be of the highest quality. Mature, balanced, impartial and fair. Probably, one would add many more to this catalogue.

There is a maxim : "Justice should not only be done, it should be manifestly and undoubtedly seen to be done". Much of what is 'seen' depends on the communicative skills of the judge. If justice is seen to be done, it must be apparent, understandable and digestive. In short, judicial communication must be in easy language. Judges and lawyers are the two components of the Institution of Judiciary. It is a matter of common knowledge that many a time, lawyers get aggressive in court. Lose their temper. In turn, judges also lose their cool. Lose their temper. They get provoked. This is an important element of Judicial Communication. I wish to share an incident to illustrate my point. V.K. Krishna Menon, the former Defence Minister was a lawyer. In 1960s, he came to argue a full Bench matter before the Punjab and Haryana High Court. The judges were hearing the arguments with patience. Mr. Menon was repeating the argument. He was politely reminded that he can proceed further. Mr. Menon's response was rather sharp. He said, My Lords, I am obliged to repeat and repeat till my Lords understand it. The Presiding Judge summed up his argument in two sentences. This is an example of Judicial restraint in communication. Mr. Menon was made to realise that he was wrong. Judicial Communication can go a long way in building up the trust and confidence of the Public in the Institution of Judiciary. Our judges must master the art of Judicial Communication. Judicial Communication is the vehicle through which Justice flows. Lot more can be said in support of this. Let that be for some other occasion.

Balram K. Gupta

CASE COMMENT

42nd Amendment to the Constitution of India was introduced in the year 1976. Vide this amendment, Article 39-A was added in Part IV of the Constitution which deals with Directive Principles of State Policy. Article 39-A calls upon the State to ensure establishment of such legal system which promotes justice and provides free legal aid. Another change was brought by the 42nd Amendment was that : "Administration of Justice" became 'concurrent' subject, having been included as Entry 11A in List III of Schedule 7 of the Constitution. The vires of Section 76 of Kerala Court Fees and Suits Valuation Act, 1959 came to be challenged before the Apex Court in the case of **Cardamom Marketing Corporation and Anr. versus State of Kerala and Ors.** reported in (2017) 5 SCC 255. Section 76 (2) of the Act provides:

> "There shall be constituted a Legal Benefit Fund to which shall be credited – the proceeds of the additional court fees levied and collected under Sub-Section (1)."

Further, Section 76 (3) provided :

> "The fund constituted in Sub-Section (2) shall be applied and utilized for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession."

In short, Section 76 authorized State Government to issue a Notification to levy additional court fee by Tribunals and other Appellate Authorities. Keeping in view the Notification issued u/s 76, the Constitutional Provisions particularly Article 39-A, the Summit Court held the Notification to be intra vires the provisions of Section 76 of the Act. The argument against the Notification was that the additional court fee collected from the assesses is used for the benefit of advocates and that no benefit accrued to the litigants who paid the additional court fee. The Supreme Court repelled the argument that no benefit was accruing to the litigants. One of the purpose for which the Fund was to be utilized was for providing efficient legal services to the people of the State. The other purpose was also for the benefit of the public at large. The Summit Court held :

> "When we talk of sound and stable system of administration of justice, all the stakeholders in the said legal system need to be taken care of. Legal community and advocates are inseparable and important part of robust legal system and they not only aid in seeking access to justice but also promote justice. Judges cannot perform their task of dispensing justice effectively without the able support of advocates."

Further held :

> "It is no small service to be called upon to prosecute and enforce the rights of a litigant through the court of law and in that sense the legal profession is treated as service to the justice seekers. It is, therefore, by contributing an essential aid to the process of the administration of justice that the advocate discharges a public duty of the highest utility."

It leaves nothing to doubt that providing **social security** to the legal profession became the essential part of any legal system which has to be effective, efficient and robust to enable it to provide necessary service to consumers of justice. It needs to be understood that the legal profession is to be treated as "Service" to the seekers and consumers of justice. Ultimately, the benefit goes to the litigants. The litigants are consumers of justice. The litigants, the legal profession and the courts constitute the coparcenary for Administration of Justice. Each component of the coparcenary is important. If a Fund is created for the social security of the members of legal profession, the litigants are not divorced from the legal profession. The legal profession serves the cause of the litigant through the medium of courts. Equally, the courts also serve the cause of the consumers of justice by rendering 'service'. Doing justice or removing injustice is the best 'service' that can be rendered.

Balram K. Gupta

LATEST CASES: CIVIL

"No court, however high, has jurisdiction to give an order unwarranted by the Constitution."

Sabyasachi Mukharji, J. in A.R. Antulay vs. R.S. Nayak; (1988) 2 SCC 602

Shivaji Shamrao Patil (since Deceased) by his LR Ranjana Shivaji Patil & Ors. vs. The Special Land Acquisition Officer: MANU/SC/0628/2017: The deposit of compensation in treasury cannot be considered as payment – The acquisition award in this case was dated 05.02.1988 and no compensation was paid. Therefore, it squarely falls under the provisions of lapse under Section 24(2) of The Right to Fair Compensation and Transparency in *Land Acquisition, Rehabilitation and Resettlement Act*, *2013*, as no compensation has been paid to the appellants despite passing of the award five years prior to 01.01.2014, when the Act came into force, despite compensation is lying in the Revenue deposit. Referring to ***Pune Municipal Corporation & ors. v. Harakchand Misirimal Solanki & Ors.,* (2014) 3 SCC 183**, the court observed that the deposit made in treasury will not save the lapse covered under Section 24(2) unless the compensation is actually paid to the land owners or deposit in terms of Section 31 of the Land Acquisition Act, 1894.

Jage Ram (D) through LRs. vs. Union of India & Anr.: 2017 (6) SCALE 78 – Flat Rate Escalation on Sale Price of Sale Deed on Yearly Basis and Discarding Subsequent Sale Deeds – The reference court and High Court in appeal answered the reference under Section 18 of Land Acquisition Act, 1894 against the claimants/appellants and in this matter; none of the parties have led oral evidence in support of their respective cases. However, certified copies of the two Sale Deeds were available on record which came to be produced by the parties before the Reference Court, one dated 24.01.1974 relied upon by the appellants depicting the selling price of Rs.7000/- per bigha, the other the certified copy of Sale Deed dated 19.03.1971 relied by respondents showing the selling price to be Rs. 2,000/- per bigha. Taking into consideration the facts and circumstances of the matter, the apex court determined compensation relying upon the Sale Deed dated 19.03.1971 as there was no other reliable material on record. Since the land under the said Sale Deed dated 19.03.1971 was valued at a sum of Rs. 2,000/- per bigha, and as the land in question was acquired in the year 1973, the compensation was determined by adding 15% of the value of the sale consideration per year keeping in mind the escalation in price of the lands day by day since normally 15% escalation is taken, per year by this Court in recent times while quantifying compensation.

State of Haryana and Another vs. Ved Kaur: 2017 (5) SCALE 502 – The LRs of dismissed deceased convicted employee whose co-accused was acquitted for an offence involving moral turpitude having same role, are entitled to service benefits. (*Pawan Kumar v. State of Haryana and another* (1996) 4 SCC 17 relied) – One Dharam Singh (since deceased and represented by his widow (respondent herein) was working as JBT teacher in Education Department in State of Haryana. He and two others were convicted under Section 304 Part-II IPC and were sentenced to undergo rigorous imprisonment for four years. On the basis of said conviction and sentence, he was dismissed from service, without holding any enquiry. While the appeal preferred against the judgment of conviction and sentence was pending, Dharam Singh expired and his appeal stands abated. Subsequently the appeal of the co-accused was partly allowed and they were acquitted of the offence under Section 304 Part II IPC. After the acquittal of the co-accused, the respondent called upon to set aside the order of dismissal of her husband in the light of the finding recorded by the appellate court and to release all the service benefits to which her deceased husband was entitled. It was held by the court that in the present case by the time the benefit of acquittal of the co- accused was pressed in service and claim was raised by the respondent, Dharam Singh had already expired. In the circumstances, we direct that the respondent shall be entitled to all the benefits in terms of the judgment under appeal except the payment of back wages. All the other consequential benefits be computed and released to the respondent within two months from the date of this Judgment. With the aforesaid modification, the appeal stands disposed of.

Bhagu Ram vs. Smt. Sugani widow (deceased) through her LR and others RSA No.1185 of 2017 DoD : 16.05.2017 (P&H) – In view of the provisions of law contained in Section 5(2) of the Punjab Tenancy Act,

plaintiffs are bound to plead and prove that they had been paying the land revenue either to the owners or to the State. The element of threat from defendants qua injunction was also not proved.

Gajraj and another vs. Ravi Kumar: MANU/PH/0505/2017 – Power of Attorney and binding nature of precedents – In a regular second appeal before the Hon'ble Punjab and Haryana High Court, the concurrent findings of trial court decreeing the suit of the plaintiff and affirming the findings of trial court by the first appellate court were under challenge. The power of attorney executed by plaintiff was found to be void being executed when he was minor. The citations referred by the appellant defendants contesting the claim on the basis of bonafide purchaser and adverse possession before the Hon'ble High Court were distinguished by taking into consideration of concept of binding nature of judgments. The court observed that **i**t is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judge made law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference and power of attorney executed by minor was held to be void and all the consequential transactions on that basis were liable to be set aside.

Gurpreet Singh vs. Gurinder Singh and others : MANU/PH/0491/2017 – *Alternative* Relief of Refund of Earnest Money in an Agreement to Sell – The Plaintiff approached the High Court by way of regular second appeal against the impugned judgment passed by the learned District Judge, whereby first appeal filed by the defendants against the judgment and decree of the learned trial court decreeing the suit for specific performance and declaration, was allowed and alternative relief was granted to the plaintiff-appellant for recovery of earnest money, along with reasonable rate of interest. The defendants established that executant of agreement to sell was drunkard and was in a habit to obtain loans. It was observed while dealing with the alternative relief of payment of earnest money that It is the settled proposition of law that even if an agreement to sell is proved on record by the plaintiff, it would not mean that decree of possession by way of specific performance has to follow automatically, in every given fact situation. The legislature, in its wisdom, itself has carved out some exceptions in Section 20 of the Specific Relief Act on the grounds of equity and justice.

Pritam Singh vs. Bhagirath Ram and others: MANU/PH/0492/2017 – The denial of signatures of defendant on demarcation report implies unauthorized possession –In the said case, the demarcation of land was conducted by the revenue official but defendant had denied appending his signatures. It is thus observed by the High Court that the demarcation was conducted in the presence of many respectable persons and adverse inference was taken against the defendant. Accordingly, the demarcation report is admissible and defendant was found to be in illegal possession.

United India Insurance Company Ltd. vs. Shanti & Ors. FAO-2752-2017 (O&M) DoD: 01.05.2017 (P&H) – The deceased had not died in the course of employment; Section 53 of the ESI Act does not bar the claimants to claim compensation under the Motor Vehicles Act – In a claim petition the deceased while going to workplace died in an accident and thus as per the finding of the Tribunal, his death did not occur during the course of his employment. As per Section 53 of the ESI Act, there is a clear-cut bar against receiving of compensation/ damages under any other law and an insured person/ his dependent shall not be entitled to receive/recover, (neither from his employer or from any other person), any compensation/damages under the Workmen Compensation Act, 1923 or any other law for the time being in force or otherwise. It was observed that the deceased had not died in the course of employment therefore Sec. 53 of the ESI Act is not a bar to claim compensation under the Motor Vehicles Act. He had not reached at the place of work and the accident was caused on the way and there is no application of the doctrine of notional extension of premises.

Krishnawanti vs. Rakesh Kumar:CR No.2517 of 2017 (O&M) DoD: 23.05.2017 (P&H) – The rent petitions on personal necessity to be disposed off within 6 months –Relying upon the directions given in ***Sandeep Ghai v. Neeraj Malhotra 2010 (1) RCR (Rent) 166*** the court observed that in cases of personal necessity where the matters are pending for long that the whole process should not be allowed to be defeated. It was, accordingly, directed that such petitions should be disposed of within a period of 6 months.

LATEST CASES: CRIMINAL

"Dowry death is a great social evil practised against woman of this country for centuries… therefore, this provision must be given a fair, pragmatic, and common sense interpretation so as to fulfill the object sought to be achieved by Parliament."

Rohinton Fali Nariman, J. in Rajinder Singh vs. State of Punjab; (2015) 6 SCC 477

Chandrasekar and Ors. vs. State and Ors.: MANU/SC/0660/2017 – The fact that the witness may be related to the deceased by marriage, cannot be sufficient reason to classify him as a related and interested witness to reject his testimony – Held – Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm Swaroop v. State of U.P (2011) 6 SCC 288 observing as follows:"Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone." The fact that the witness may be related to the deceased by marriage, cannot be sufficient reason to classify him as a related and interested witness to reject his testimony. It may only call for greater scrutiny and caution in consideration of the same.

Balakram vs. State of Uttarakhand and Ors. : 2017 (5) SCALE 220 – Criminal – Police diary –Production of pages–Validity of permission - The entries in the police diary are neither substantive nor corroborative evidence, and that they cannot be used against any other witness than against the police officer that too for the limited extent. The right of the Accused to cross-examine the police officer with reference to the entries in the police diary is very much limited in extent and even that limited scope arises only when the Court uses the entries to contradict the police officer or when the police officer uses it for refreshing his memory. In case if the Court does not use entries for the purpose of contradicting the police officer or if the police officer does not use the same for refreshing his memory, then the question of Accused getting any right to use entries even to that limited extent does not arise.

V. Shantha vs. State of Telangana and Ors.: MANU/SC/0659/2017– Preventive Detention – Held – An order of preventive detention, though based on the subjective satisfaction of the detaining authority, is nonetheless a serious matter, affecting the life and liberty of the citizen Under Articles 14, 19, 21 and 22 of the Constitution. The power being statutory in nature, its exercise has to be within the limitations of the statute, and must be exercised for the purpose the power is conferred. If the power is misused, or abused for collateral purposes, and is based on grounds beyond the statute, takes into consideration extraneous or irrelevant materials, it will stand vitiated as being in colourable exercise of power.

Anjan Kumar Sarma vs. State of Assam: MANU/SC/0656/2017 – S.302 IPC – The Appellants were charged for committing offences u/s 302, 376 (2)(g), 201 read with S. 34 of the IPC, 1860 – Held – It is no more res integra that suspicion cannot take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and the legal proof. At times it can be a case of "may be true." But there is a long mental distance between "may be true" and "must be true" and the same divides conjunctures from sure conclusions. Further Held – It is settled law that inferences drawn by the court have to be on the basis of established facts and not on conjectures. The circumstance of last seen together cannot by itself form the basis of holding the accused guilty of the offence. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction.

State and Ors. vs. K.S. Palanichamy and Ors.: 2017 (6) SCALE 298– The Government has the suo motto power to initiate proceedings and pass an order of

ad-interim injunction to protect the interest of innocent investors – Held – Section 3 of Tamil Nadu Protection of Interests of Depositors Act 1997 provides that whenever complaints are received from a number of depositors against a Financial Establishment, which defaults or fails to return the deposits or fails to provide services for which the deposits have been made by the depositors, then the State Government is empowered to initiate proceedings by passing ad-interim order for attachment of the properties of the Financial Establishment or any other persons as mentioned there under. The Government has the suo motto power to initiate proceedings and pass an order of ad-interim injunction. Thereafter the Government is at liberty to transfer the control of the aforesaid money or property to the competent authority. It is because the statute protects the interest of innocent investors.

Kumaran vs. State of Kerala : 2017 (2) RCR (Crl.) 879 (SC) – S.138 – NI Act – S.437 Cr.P.C. – When compensation is ordered as payable for an offence committed u/s 138 of NI Act, and in default thereof, a jail sentence is prescribed and undergone – Held – compensation is still recoverable. As per the precedents, compensation under the old Code of Criminal Procedure was always recoverable as a part of fine, and that even after default imprisonment having been undergone, a fine could still be collected in the manner provided by Section 386. The requirement of special reasons was introduced by the amending Act of 1923.

State of Uttar Pradesh vs. Sunil & Ors. : 2017 (5) SCALE 489 – Direction to accused to provide his fingerprints or footprints for corroboration of evidence cannot be considered as violation of the protection guaranteed under Article 20(3) of the Constitution of India. Further Held – Non-compliance of such direction of the Court may lead to adverse inference, nevertheless, the same cannot be entertained as the sole basis of conviction.

Avtar Singh vs. State of Punjab: CRM-M No. 11273 of 2017: DoD 02.06.2017 (P&H) – **S.437 (6) Cr.P.C.** – An application u/s 437 (6) Cr.P.C. was filed before the Magistrate on 10.08.2016, on the ground that the trial has not been concluded within the prescribed period of 60 days from the first date fixed for recording of the evidence. Judicial Magistrate Ist Class, dismissed the application on the ground that the petitioner is accused of the offence of heinous nature. The order was upheld by the revisional Court on the same premise. Held- It is true that an application under S. 437 (6) Cr.P.C. can be declined by the Magistrate for the reasons to be recorded in writing. In a case triable by the Magistrate, the trial of a person of any non-bailable offence, if not concluded within a period of 60 days from the first date fixed for taking evidence, then such person shall be released on bail to the satisfaction of the Magistrate, unless for the reasons to be recorded in writing the Magistrate otherwise directs. The aforesaid direction is couched in a mandatory tenure, however, with a reservoir for dismissal of the prayer, in case the order is followed by reasons. The trial Court while rejecting the prayer has only recorded that the offence is serious in nature. In Manoranjana Sinh @ Gupta vs. CBI, 2017 (1) R.C.R. (Crl.) 1025, Hon'ble Apex Court has observed that seriousness of the charge can be one of the relevant considerations, but the same is not the only test. The trial Court is under legal obligation to examine the application of bail as per requirement and seriousness of the offence is not the only criteria on which the right of accused is to be tested. The grant or denial of privilege in favour of the petitioner is regulated to a large extent by the facts and circumstances of the case and the seriousness of the offence should not be made the only criteria for declining the prayer in question.

Ashok vs. State (Govt. NCT of Delhi): MANU/DE/1635/2017 – Dowry Death – Held – "Section 304B IPC does not contemplate that the harassment should be within minutes or hours or few days of the time since death but a reasonable period prior to the death when deceased is subjected to cruelty is sufficient to show the live link which in the present case is proved as two days prior to the death, specific demand from the brother of deceased was made. In view of the above position, the Court found no illegality in the impugned judgment of conviction and order on sentence. Appeal was dismissed.

LATEST CASES: REVENUE

"The necessity for wide ranging radical land reforms in order to improve our rural economy was acutely realised when, on attaining independence we became free to mould our destinies. With that end in view, immediately after independence, the legislatures of the country started enacting laws for bringing about agrarian reform as a part of the process of socio-economic reconstruction."

P. N. Bhagwati, J. in Dattatraya Govind Mahajan vs. State of Maharashtra; (1977) 2 SCC 548

Shyam Lal vs. Deepa Dass Chela Ram Chela Garib Dass: AIR 2016 (SC) 3243 – **The operation of Section 116 of the Transfer of Property Act would confer legitimacy to the possession of the tenant even after the termination or expiration of the deemed period of the lease so as to confer on him a status akin to that of a statutory tenant and hence protection from eviction as envisaged by the provisions of the Act of 1953.** Held – Section 107 of TPA, 1882 which has been made applicable to the State of Punjab and Haryana requires annual leases of immovable property to be made by a registered instrument. Though Sec 117 of the TPA, 1882 makes the provisions of Chapter V, which includes Sec.107, inapplicable to agricultural leases, Section 117 has not been made applicable to the State of Punjab. Therefore, the provisions of Section 107 of the TPA, 1882 would apply to all leases of immovable property including agricultural leases in the State of Punjab and Haryana. Continuance even after expiry of the deemed period of the lease under Section 106 of the TPA, would clothe the occupant with the status of a tenant under the Act in view of Section 116 of the TPA which deals with the consequences of holding over.

Jitender and others vs. Gram Panchayat Kalyaka and others : 2016 (3) RCR (Civil) 661 – **the land reserved for common purpose whether utilized or not shall vest in the Gram Panchayat, even though in the column of ownership, the entries may be Jumla Mustarka Malkan Wa Digar Hakdaran Hasab Rasad Arazi Kheat etc.** – Held – It is that the petitioners who had initiated the proceedings under Section 13A of the Village Common Lands Act, 1961 before the collector, were under obligation to discharge the initial burden to prove about their nature of possession and claim for ownership. It has been held by the court that the land reserved for common purpose whether utilized or not shall vest in the Gram Panchayat, even though in the column of ownership, the entries may be Jumla Mustarka Malkan Wa Digar Hakdaran Hasab Rasad Arazi Kheat etc. Thus, within the meaning of Section 2(g) of the Act of 1961, such a land is shamlat deh and vest in the Gram Panchayat.

Pardeep Singh and others vs. Ram Rattan and others : 2016 (2) PLR 660 – Held – While interpreting the provisions of Rule 21-A of the Punjab Village Common Lands (Regulation) Rules, 1964, this court held that the collector shall, follow a procedure akin to the procedure adopted by a civil court for deciding a suit. The Court further expressed its concern that the Executive Officers conferred with the powers of collector under the Act follow the binding precedents and procedure prescribed by Rule 21-A of the 1964 Rules more in breach than in compliance. It has nowhere been held that all the provisions of CPC would be applicable to the proceedings under Section 11 of the Act.

Gurdev Singh and Ors. vs. State of Punjab & Ors. : 2016(4) RCR (Civil) 675 – In the event of its acquisition of shamlat land, it is the Gram Panchayat which alone is entitled to seek compensation.

Om Parkash and another vs. Commissioner, Ambala Division, Ambala and others : 2016(1) RCR (Civil) 613 – Held – The right to create a "Dholi" flows from custom but the terms and conditions of a Dholi are settled by private covenant, leaving it to each settler to prescribe his particular set of conditions. The recipient of a Dholidari grant is required to discharge, in return, certain religious, social or charitable obligations. A Dholi may be temporary but subsists only so long as the "Dholidar" continues to perform his obligation. A Dholi tenure is inalienable but whether it is heritable and in what manner, depends upon the terms & conditions of a Dholi.

Usha and others vs. State of Haryana and others: 2016 (2) RCR (Civil) 807 – In a direct conflict between Section 8(2) of the Central Act, (the Administration of Evacuee Property Act, 1950) and Section 3 of the 1953 Act, on the question of vesting of evacuee property the State Law shall prevail namely, that such land vests in the Gram Panchayat.

Mohar Singh vs. DC-cum-Collector and others: 2016 (2) LAR 190 – **Definition of 'shamlat deh' as contained in Section 2(g)(4) of the 1961** – Held – The Assistant Collector, Ist Grade mis-construed the definition of 'shamlat deh' as contained in Section 2(g) (4) of the 1961 Act as according to this clause the lands 'used' or 'reserved' for the benefit of village community including 'streets', 'lanes' etc are included in Shamlah Deh. There is no material alteration made in the said definition w.e.f. 12.02.1981 vide Haryana Act No.02 of 1981. Only clause 4(a) was added whereby 'vacant land situated in Abadi Deh or Gorah Deh not owned by any person' was also included within the ambit of Shamlat Deh. Thus mis-conceived and erroneous approach led the Assistant collector Ist Grade to believe that the house constructed on a public street prior to 12.02.1981 was exempted or excluded from the definition of Shamlat Deh.

Sukhdev Singh vs. Director, Land Records–cum–Director Consolidation, Punjab & Ors. : 2016 (2) LAR 241 – **The consolidation Authorities have no power to decide the title dispute between petitioners or the Department of Rehabilitation** – Held – The petition filed by the petitioners was liable to be dismissed out rightly on the ground of delay and laches. Furthermore it was stated that the consolidation Authorities have no power to decide the title dispute between petitioners or the Department of Rehabilitation.

M/s Competent Automobiles Co. Ltd. vs. Union of India and others: 2015 (2) LAR 173 – Held – The right conferred to the land holders/owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid sub-Section without giving retrospective effect to the same

The working Friends Co-operative House Building Society Ltd. vs. State of Punjab & Ors. : 2015 (9) JT 357 – **basis of the principle against retrospectivity is the principle of "fairness"** Held – The issue of retrospectivity of the Ordinance can also be considered as per the principle laid down in **Commissioner of Income Tax vs. Vatika Township Pvt. Ltd. (2015) 1 SCC 1:** which observed that the "The obvious basis of the principle against retrospectivity is the principle of "fairness" which must be the basis of every legal rule" Thus, legislation which modify accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clear to give the enactment a retrospective effect. Therefore the Ordinance which purported to take away an accrued right would have to be treated as prospective unless the legislative intent was clearly to give it retrospective effect.

Duli Chand vs. State of Haryana and another: 2013 (1) RCR (Civil) 1010 – **the order of the collector appointing a Lambardar can only be set aside if the order suffers from illegality or perversity** – Held – The order of the District Collector has been set aside by the Commissioner on the ground that petitioner is working at Faridabad which is at a distance of 25 kilometers from the village and this fact has not been considered by the District Collector. This cannot be a ground to hold the order of the district collector illegal. Being non-resident of the village does not amount to perversity (Rule 15 of the Lambardari Rules).

Surender Kumar vs. FC, Haryana and Ors. : 2016 (1) LAR 143 – **Punjab Security of Land Tenures Act, 1953, Section 14A; Punjab Tenancy Act, 1887, Section 84 (3); Eviction of tenant due to non-payment of Batai** – Held – Repeated, persistent and deliberate non-deposit of the assessed amount of rent – eviction order upheld.

Smt. Sharda vs. The State of Haryana and others: 2016 (2) LAR 254 – **Punjab Land Revenue Act, 1887, Sections118 and 121; Non-challenge to Mode of partition of land** – Held – Since the petitioner was satisfied with the mode of partition and no appeal was filed by her against it, though it is provided under Section 118(2) of the Punjab Land Revenue Act, 1887, therefore, she had no right to challenge the Sanad Taqsim.

Kirpal Singh and others vs. Financial Commissioner (Revenue) Punjab and others: 2016 (1) RCR (Civil) 623–**Punjab Land Revenue Act, 1961, Sections 3(1) 34, 38 and 39; Limitation for making application for entering mutation of transfer** – Held–Though there is a provision for making such application within three months and for penalty on delayed applications, there is no provision that after acquisition of right, mutation cannot be sanctioned after the lapse of three months period – An application for entering a mutation on the basis of a civil court decree, particularly where the decree is declaratory, cannot be refused on the ground of delay.

NOTIFICATIONS

Ministry of Environment, Forest and Climate Change, Notification No.: GSR494(E), Date of Notification: 23.05.2017, Date of Publication: 23.05.2017. Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017:

In exercise of the powers conferred by sub-sections (1) and (2) of section 38 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960), the Central Government hereby makes the following rules:

Salient Rules are :

14. Prohibited practices that are cruel and harmful.— The following cruel and harmful practices shall be prohibited, namely:-

(a) animal identification methods such as hot branding and cold branding;
(b) shearing and painting of horns, bishoping in horses and ear cutting in buffaloes;
(c) casting animals on hard ground without adequate bedding (during farriery);
(d) use of any chemicals or colors on body parts of animals;
(e) sealing teats of the udder using any material such as adhesive tapes to prevent the calf from suckling;
(f) any person forcefully drenching any fluids or liquids or using steroids or diuretics or anti-biotics, other than by a veterinarian for the purpose of treatment;
(g) forcing animals to perform any unnatural acts, such as dancing;
(h) putting any ornaments or decorative materials on animals;
(i) use of any type of muzzle to prevent animals from suckling or eating food;
(j) injecting Oxytocin into milch animals;
(k) castration of animals by quacks or traditional healers;
(l) nose-cutting or ear slitting or cutting by knife or hot iron marking for identification purposes other than by veterinarian;
(m) castration of equines by quacks;
(n) tying rope around penis;
(o) tying nose bags as feeding troughs.

15. Protection of animals from injury or unnecessary pain or suffering.—(1) No person shall cause or permit any injury or unnecessary pain or suffering to an animal in an animal market.

(2) It shall be the duty of the person in charge of an animal in an animal market to ensure that the animal is not, or is not likely to be, caused injury or unnecessary pain or suffering by reason of—

(a) the animal being exposed to the weather;
(b) inadequate ventilation being available for the animal;
(c) the animal being hit or prodded by any instrument or other thing; nose ropes or nose pegs or bits are pulled, yanked and jerked, causing immeasurable pain and suffering or any other cause;
(d) being tethered on a short rope for an unreasonable period;
(e) thirst or starvation.

(2) No person shall drive or lead any animal over any ground or floor, the nature or condition of which is likely to cause the animal to slip or fall.

The Punjab Prevention of Damage to Public and Private Property Act, 2014. (Punjab Act No. 4 of 2017) : Notification dated 12th June, 2017, No.6-Leg./2017 :

Salient Provisions of the Act are :

4. Whoever commits any damaging act in respect of any public or private property, shall be punished with imprisonment for a term, which may extend to one year and shall also be liable to fine, which may extend to one lakh rupees.

5. Whoever commits any damaging act by fire or explosive substance, shall be punished with imprisonment for a term, which shall not be less than one year, but which may extend to two years and shall also be liable to fine, which may extend to three lakhs rupees: Provided that the court may, for special reasons, to be recorded in writing in the judgment, award a sentence of imprisonment for a term of less than one year.

6. (1) Whoever is found guilty of doing any damaging act, shall, in addition to the sentence imposed, be also liable to make payment of an amount, equivalent to the loss, caused to the public or private property, as determined by the competent authority. (2) While determining the loss or damage, the competent authority, shall make assessment of damage, caused to the public or private property, and cause to recover the same from the organizer and the participants of the damaging act, found guilty, as arrears of land revenue.

EVENTS OF THE MONTH

1. **Revenue Training for HCS (EB) and Fresher IAS Officers** from the State of Haryana was conducted from June 02-04, 2017. The Resource Persons included HMJ S.S. Saron, HMJ Rajesh Bindal, Justice Rajive Bhalla (Retd.) and Justice Paramjit Singh Dhaliwal (Retd.), Dr. Balram K. Gupta, Director (Academics) and Mr. B.M. Lal, Faculty, CJA. Out of total 29 officers 25 officers attended the Three Day Training spread over twelve different sessions covering various aspects relating to Revenue Training.

2**. The First Meeting of the Committee on Civil Aspects of International Child Abduction Bill, 2016** was held on 03.06.2017 under the Chairmanship of HMJ Rajesh Bindal, Judge, Punjab and Haryana High Court. Some Members of the Committee attended the same from Delhi and the two venues remained connected through video-conferencing facility. It was resolved that after the Concept Note and the Issues to be flagged are finalized, for inviting objections and suggestions, the same shall be uploaded on the different websites. Wide publicity shall be given through media to enable the stakeholders to participate in the process by submitting their suggestions/ objections.

3. **Video-Conferencing** for all ADJs, Punjab (133) was held on June 03, 2017 to sensitize them regarding "Sanction to Prosecute Public Servants" by Shri Pradeep Mehta, Faculty Member, Chandigarh Judicial Academy from 2:00 to 4:00 p.m.

4. **Refresher-cum-Orientation Course** for Civil Judges of Haryana, Punjab and Chandigarh was held on June 10, 2017. This one day programme covered: Dishonour of Cheques – Substantive and Procedural Aspects, Sentencing – Law and Procedural Aspects. A visit to the Paperless Court – A Guided Tour and Mock Demonstration was also organized. 41 Civil Judges participated in the course.

5. Seven Additional and District Sessions Judges (on promotion) from the State of Punjab underwent **one month Induction Training Programme** at Chandigarh Judicial Academy from May 14, 2017. On completion of the same, Valedictory Function was organized on June 13, 2017. On this occasion, Dr. Balram K. Gupta, Director (Academics) and Mr. Inderjeet Mehta, Director (Administration) addressed the ADJs. They were told that they had entered the second stage of their Judicial career and that now they belong to the Punjab Superior Judicial Service. They were urged to perform their higher responsibility with commitment and dedication. They were told that they are the Alumni of CJA. Take pride in this fact. They could always look forward to any guidance which they needed from CJA and its Faculty.

FORTHCOMING EVENTS

1. **Refresher-cum-Orientation Course** to sensitize the Civil Judges of Punjab and Haryana will be organized on July 08, 2017. During this one day programme the different aspects will be covered including:(i) Attachment and Sale of Property in Execution; (ii) Execution – Speedy and Expeditious Disposal; (iii) Mediation – Sensitization of Referral Judges – I, II (2 sessions). Besides this a Guided Tour and Mock Demonstration of Working of Paperless Court will also be conducted.

2. **A Workshop on Sensitization on Family Court Matters** for Family Court Judges will be organized on July 22, 2017 at ADR Center, Rohtak. There would be five sessions covering – (i) Challenges in Implementation of Family Courts Act ; (ii) Alternate Dispute Resolution; (iii) Marriage and Divorce;(iv) Maintenance of Wife and Children and (v) Child Custody and Visitation Rights. There would be presentations by Family Court Judges in different sessions. The presentations would be followed by inter-active sessions. The Panelist for the inter-active session would be – Shri Sant Parkash, District & Sessions Judge, Rohtak and Prof. Virendra Kumar, former Director (Academics), CJA.