[2008 (63) AIC 961 (JHAR, H.C.)]

(JHARKHAND HIGH COURT)

M.Y. EQBAL, AND D.G.R. PATNAIK, JJ.

F.A. Nos. 45 and 46 of 1991 (R)

December 6, 2007

Between

STATE OF BIHAR

and

CHINIBAS MAHTO and another

Human Rights—Delay and non-payment of the rightful and legitimate compensation—Deprived of their livelihood because of dispossession from their lands—Violation of not simply legal right—Violation of Human Rights.

[Paras 10 to 13]

More than 10,000 families who are the members of the Scheduled Castes, Scheduled Tribes and other communities were dispossessed from agricultural lands 45-60 years back under the provisions of Land Acquisition Act when their lands were acquired in the year 1959-62 for the purpose of 4th Steel Plant at Bokaro for erection of Iron and Steel, ancillary works and industries and on the said land Bokaro Steel Plant of Steel Authority of India Ltd. was established and possession of the said land was given by State to the Bokaro Steel Plant in 1964. Unfortunate part is that those raiyats and land losers have still not been paid their rightful and legitimate compensation amount so enhanced by the Land Acquisition Judge because of the fact that the State of Bihar, now Jharkhand have challenged those Awards passed by the Land Acquisition Judge by filing these appeals before these Courts which are pending for last 16 years.

About 46 appeals and 10312 applications under section 28-A are still pending and those persons are waiting for payment of compensation. It is not only violation of their legal rights, but human rights also.

Court shocked and surprised to take notice, of the fact that for the last 50 years those land losers who were deprived of their livelihood because of dispossession from their lands could not be paid their legitimate and rightful compensation.

ADR Mechanism—High time for poor land losers to get compensation—Dispute to be settled through Alternative Dispute Redressal Forum—Intensive persuasion by the Court—Numerous efforts taken to settle the dispute amicably so that land losers waiting since 1960-61 for compensation could be paid their claims—Settlement reached— Respondents SAIL for whose purpose the land acquired agreed to pay compensation and the State was to execute the formal deed of conveyance—All pending litigations finally about to be disposed off—In the meantime a letter of Revenue Minister to return surplus land— Government adamant to drag poor land losers into litigations—Conduct of the authorities mala fide amount to lower the authority of this Court and obstruct the administration of Justice Tantamount to

contempt— However, subsequent admission of innocence led to drop the proceeding— State of Jharkhand behaved like ordinary litigant and raised unnecessary objections.

It is high time the dispute be settled though Alternative Dispute Redressal Forum so that those poor land losers could get compensation for their lands.

Section 89 was inserted by Code of Civil Procedure (Amendment) Act, 1999 with effect from 1st July, 2002 and provision was made enabling the Court to find out, if there, exists element of settlement, which may beacceptable to the parties, to formulate the terms of settlement and give them to the parties for their observation and after receiving the observation of the parties, to formulate the term of a possible settlement and to refer the same for settlement: through alternative; forum for resolution (Alternative Dispute Resolution ADR).

The Jharkhand High Court Legal Services Committee has intended to hold a Lok Adalat on 7th May, 2006. To find out whether appeals, pending against the orders, passed in Land Acquisition Cases, can settled outside the Court in Lok Adalat step was taken under section 89 of the Code of Civil Procedure.

Public interest being involved and as the State spends the money for fighting out litigations and if the case is not decided immediately and ultimately the case is lost, the State is to cough huge amount, which ultimately "burdens the public exchequer, so the case was referred by learned Single Judge to Division Bench for hearing and the Chief Secretary, Revenue Secretary, Finance Commissioner, Secretary, Water Resources Development Department, Government of Jharkhand, Ranchi, as also the Agriculture Secretary were directed to appear before the Court to answer as to why they be not ready to comply with the mandate of the Parliament, as contemplated under section 89 of the Code of Civil Procedure, and the similar mandate of the Supreme Court. The aforesaid officers appeared today but shown inability for settlement outside the Court.

When the matter is in the final stage of the matter of settlement-letter issued under the signature of Hon'ble Revenue Minister, Government of Jharkhand addressed to the Managing Director, Bokaro Steel Plant directing the Managing Director to return the surplus land."

Prima facie the conduct of the Minister and the Secretary shows that the manner in which they had conducted themselves clearly tended to lower the authority of this Court and obstruct the administration of justice. It is well settled that any act done or writing published calculated to obstruct or interfere with the due course of justice or law process of Court is a contempt of Court. Relied upon:—

T.N. Godavarman, Tirumulpad (102) v. *Ashok Khot* and another[1]"

This Court, after much persuasion made the Company agrees to pay the entire compensation and for that purpose a Committee was constituted by this Court headed by the Law Secretary, Government of Jharkhand. In the report submitted by the Committee it has been said that about more than ten thousand cases are pending in different forums and approximately 65 crores of rupees is to be paid to the claimants. The respondent-

1. 2006 (42) AIC 3 (SC)=2006 (55) ACC 598=2006 (5) SCC 1.

Company, after holding meetings of the Board of Directors and with the consultation of the Minister of Steel, Government of India, ultimately agreed to pay the entire compensation amount. For the purpose of giving, finality to the dispute the respondent State was directed to submit a draft deed of conveyance. At that stage the Secretary, Revenue Department, made an application putting some conditions to the effect that some more lands may be required for the use of different departments of the Government of Jharkhand. The respondent-Company agreed even to those conditions saying in the affidavit that if any portion of the land is required for Government offices, the same shall be provided to the Government. Inspite of the above agreement by the respondent-SAIL the deed of conveyance has not been filed till date by the respondent State.

It is crystal clear that the conduct of the authorities of the State of Jharkhand, the Revenue Minister and Revenue Secretary is wholly mala fide inasmuch as the Steel Authority of India for whose purpose ,the land was acquired, is ready to pay the entire compensation, but the Government of adamant to drag the poor land losers into litigations and thereby deprived the land losers to get their due compensation.

The respondent Steel Authority of India Ltd. now agreed to pay the entire compensation amount to the land losers on the conditions that the State of Jharkhand shall immediately transfer the acquired land in favour of Bokaro Steel Plant. But unfortunately, the State of Jharkhand is behaving like an ordinary litigant and raising unnecessary objections.

However, since the Hon'ble Minister in his so cause has stated that he had no intention to interfere with the Court proceeding and he has issued letter in question innocently and bona fide, we do not want to proceed any further in the contempt matter.

Writ of Mandamus—Even inaction on part of authorities of the Government—Wholly arbitrary, capricious and unjustified—A writ of mandamus can be issued. **[Para 14]**

This Court after considering the entire facts of the case issued direction in the nature of mandamus directing the appellant-State for the performance of the statutory duties.

The primary concern of this Court is that those raiyats who have been dispossessed from the lands 50 years ago, should get their due compensation with both the State of Jharkhand and the Steel Authority of India are legally bound to pay.

It is well settled that a writ of mandamus will be issued in appropriate cases directing the Government to perform its statutory duty. Where a public officer has refused to perform its statutory duty, a writ of mandamus can be issued to compel him to perform those duties. Even in such cases where this Court finds that inaction on the part of the authorities of the Government is wholly arbitrary, capricious and unjustified, a writ of mandamus can be issued compelling the authorities of the Government to perform their duties.

[Para 14]

Land Acquisition Act, 1894—Section 4—Land acquired for public purposes at public expenses—Applicability of Part II and Part VII— Purpose of Lands acquired under Part VII and Part II different—Lands acquired by the Government for public purpose for setting up Steel Plant wholly owned by Central Government having 100%

share through President of India—Rules for acquisition of lands by companies under Part VII and procedure of acquisition of land for Government companies entirely distinct. **[Paras 22, 23, 25 and 26]**

Bokaro Steel Ltd. was Incorporated fully owned by the Central Government because 100% shares were held by President of India and the Company started erection and construction of iron and steel plant from 1961 with assistance and in collaboration with the Government of the then U.S.S.R. It is, worth to mention here that the Central Government through Bokaro Steel Plant deposited the entire amount as agreed for the acquisition of the land and the possession of the entire land as also the lands subsequently acquired by the State Government were handed. State of Bihar under section 4 of the Land Acquisition Act issued notifications for the acquisition of the land for public purposes at public expenses. It is, therefore, manifestly clear that lands were acquired under Part II of the Act for public purposes and at public expenses.

The Lands have not been acquired under Part VII of the Act for the company, rather it was acquired under Part II of the Act for the public purpose. Provisions of Part VII shall not apply in the present case, Moreover, section 44-B of the Act makes it clear that no land shall be acquired under Part VII for Government Companies likes Bokaro Steel Plant of Steel Authority of India Ltd.

Different procedure is to be adapted for acquisition of Land for public purposes under Part II and acquisition of land for Companies under Part VII of the Act.

Relied upon:—

Devinder Singh and others v. State *of Punjab and others*[1]: *[Para 26]*

Land Acquisition Act, 1894—Section 16—'Vesting* of acquired Land—Land acquired and taken into possession by Collector—Vests, absolutely with the Government.—Word 'vest' is a word of variable import—term "vesting" be given the meaning in accordance with the context—Vesting completed and effective in the Central Government Company namely: Steel Authority of India Ltd., Bokaro. **[Paras 28, 29 and 33]**

The land on being acquired and taken possession by the Collector vests in the first instance absolutely in the Government under section 16 of the Act. In the case of acquisition for Company, where the provisions of sections 38 to 42 are applied. Government transfers the land by a deed of transfer stipulating the term on which the transfer is made.

As a matter of fact, vesting of such property is only for the purpose of executing any improvement scheme which it has undertaken and not with a view to clothing it with complete title. The term "vesting" has a variety of meaning which has to be gathered from the context in which it has been used. It may mean full ownership or only possession for a particular purpose or clothing the authority with power to deal with the property as the agent of" another person or authority. Once the Collector makes his award under section 11 of the Act and takes possession of the land, two consequences follow, i.e. (i) the acquired land absolutely vests in the Government, and (ii) such vesting is free from all

1. AIR 2007 SCW 6692

encumbrances! By virtue of section 16 of the Act, the acquired land has vested absolutely in the Government free from all encumbrances. The vesting is equally effective and complete in the case of acquisition undertaken by the Government for the purpose of selling up steel plant at the instance of the Central Government so as to vest the property in the Central Government Company namely: Steel Authority of India Limited.

The word "vest" is a word of variable import. The word vest has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have used in a particular piece of legislation.

Referred:

Black's Law Dictionary, Wharton's Law Lexicon and Law Lexicon by Ramanath Aiyer referred.

Maxim *Lex injusta non ext lex* explained—A statute must be construed justly—An unjust law is no law at all—Interpretation of the provisions of Land Acquisition Act—Lands acquired by State Government for general public purpose at public expenses for establishing a Central Government Company under Part II—Lands given in possession of the Company—By legal fiction—Lands vested in respondent company. [Para36 and 40]

Cardinal principle of interpretation of statute that the words of a statute must pc understood in their natural ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. It must bconsistent with the intention of the legislature and object of the statute.

Land was acquired by the State Government under Part II of the Act for public purpose says and at public expenses for setting up iron and steel industry in the name of Bokaro Steel Plant and possession of entire land was given to the respondent company, I shall have no hesitation in holding that by legal fiction, the entire acquired land vested in respondent-company, namely; Bokaro Steel Plant of Steel Authority of India Ltd. free from all encumbrances, I further hold that the provision contained in Part VII of the Act is not applicable in the present case, as a result of which the formality of the execution of deed of conveyance by the State in favour of the respondent-company as contemplated under section 41 doest not arise. The vesting of land in the respondent SAIL became effective and complete.

Relied upon:

Union of India and others v. *Filip Tiago De Gama of Vedem VascoDe* Gama[1] and *Kailash Chandra* v. *Dharma Das.*[2]

---

1. AIR 1990 SC 981.
2. 2005 (30) AIC 83 (SC)=2005 (59) ALR 764=(2005) 5 SCC 375.

Protracted litigation—Worst sufferers—Parties and State—Lack of positive and responsive attitude—Development affected—Vision and positive steps required. [Para 43]

As a result of the protracted litigation, the worst sufferers are the persons whose lands have been acquired without payment of any compensation to them. Equal sufferer is the industry for whose purpose the land was acquired, since despite the acquisition, the lands could not be utilized fully for expansion of the industry. It is ironical that despite the State being one of the richest States in the country with its rich resources of mines and minerals including iron are, yet the State has not flourished in comparison to other Status with lesser resources. One of the reasons far the lack of development in the State which can reasonably he inferred is the total apathy and lack of a positive and sponsive attitude of the Government. It is high time that the persons who are at the helm of affairs in the Government should broaden their vision and take all positive steps to facilitate the growth of the industries including iron and steel plants in the State.

Counsel for the Appellant/State: S.B. Gadodia and Shamim Akhtar. Counsel for the Respondents: V. Shivnath, O.K. Prasad and Rajiv Ranjan.

JUDGMENT

M.Y. EQBAL, J.—More than 10,000 families who are the members of the Scheduled Castes, Scheduled Tribes and other communities were dispossessed from their agricultural lands 45-50 years back under the provisions of Land Acquisition Act when their lands were acquired in the year 1959-1962 for the purpose of construction of 4th Steel Plant at Bokaro for erection of Iron and Steel, ancillary works and industries and on the said land Bokaro Steel Plant of Steel Authority of India was established and possession of the said land was given by the State to the Bokaro Steel Plant in 1964. Unfortunate part is that those raiyats and land losers have still not been paid their rightful and legitimate compensation amount so enhanced by the Land Acquisition Judge because of the fact that the State of Bihar, now Jharkhand have challenged those awards passed by the Land Acquisition Judge by filing these appeals before this Court which are pending for the last 16 years.

2. About 46 appeals and 10,312 applications under section 28-A are still pending and those persons are waiting for payment of compensation. It is not only violation of their legal right, but human right also. On 1.5.2006, these appeals were taken up by the learned Single Judge and the same was referred to the Division Bench. While referring the matter to the Division Bench, learned Single Judge, considering the provisions of section 89 of the C.P.C. and the Mandate of the Supreme Court, expressed his feelings that it is high time the dispute be settled through Alternative Dispute Redressal Forum so that those poor land losers could get compensation for their land.

3. When the matter was placed before the Division Bench, this Court shocked and surprised to take notice of the fact that for the last 50 years those land losers who were deprived of their livelihood because of dispossession from their lands could not be paid their legitimate and rightful compensation. We were, therefore, compelled

to direct the Chief Secretary, Revenue Secretary, Finance Commissioner, Secretaries; of the Water Resources and Agriculture Department to appeal before the Division Bench. Accordingly, on 2.5.2006 the matter was heard by the Division Bench and the following order was passed:

"Heard in part.

Both the appeals have been preferred by the State against the judgment dated 21st September, 1998 and the award dated 3rd November, 1990, passed by the Land Acquisition Judge, Chas, in L.A. Reference Case Nos. 360 of 1976 and 1 of 1989.

The lands, in question, were acquired by the State in the yearf 1960-61 in favour of the Bokaro Steel Plant, Bokaro. A number or awards were prepared in favour of different claimants and many of them, being dissatisfied with the award amount, moved for reference under section 18 of the Land Acquisition Act. On similar issues; judgments having already been delivered by Division Bench of this Court (Ranchi Bench of Patna High Court), following those judgments, the Land Acquisition Judge answered the two reference in favour of the claimants and held that the claimants are entitled for compensation at the rate of Rs. 8,000/- per acre for paddy land and Rs. 6,000/- per acre for Gora land. The judgment of the Division Bench, on the basis of which references were answered, related to some other lands, acquired by the State for same purpose in favour of the Bokaro Steel Plant, at that relevant point of time. The Division Bench's judgment, not having been challenged by the State before the Supreme Court, has already reached finality. The appeals, which are pending before the High Court for about fifteen years, could not be taken up due to pendency of large number of cases and shortage of Judges.

Before division of the State of Bihar, a decision was taken that where compensation amount does not exceed Rs. 25,000/-, no appeal should be preferred by the state and the appeal(s), already preferred, should be withdrawn. After creation of the State of Jharkhand, similar decision was taken by the State of Jharkhand from its Water Resources Development Department vide letter No. 14/03-OA- 43/2002 : 3002, Ranchi dated 19th September, 2002. The: State of Jharkhand also decided not to prefer any appeal where compensation amount does not exceed Rs. 25,000/- and to withdraw me appeal(s), if preferred against such judgment(s) and award(s). Such decision were been taken in public interest.

Section 89 was inserted by Code of Civil Procedure (Amendment) Act, 1999 with effect from 1st July, 2002 and provision was made enabling the Court to find out, if there exists element of settlement, which may be acceptable to the parties, to formulate the terms of settlement and give them to the parties for their observation and after receiving the observation of the parties, to formulate the terms of a possible settlement and to refer the same for settlement through alternative forum for resolution (Alternative Dispute Resolution- ADR).

The Jharkhand High Court Legal Services Authority has intended to hold a Lok Adalat on 7th May, 2006. To find out whether; appeals, pending against the orders, passed in Land Acquisition Cases, can be settled outside the Court in Lok Adalat, step was taken under section 89 of the Code of Civil Procedure by the learned jingle Judge (one of us

M.Y. Eqbal, J.), it having come to the nptiee'of the Court that there are large number of cases where lands were acquired about 40-45 years back and the matter has not yet been settled because of large number of appeals, preferred by the State, irrespective of the quantum of compensation amount, awarded to the claimants-land losers. Considering the fact that the lands were acquired in the year, 1961-62 and the Land Acquisition Judge, besides determining the compensation amount also directed to pay additional compensation at the rate of 12% on the market value from the date of notification, issued about fifty years back i.e. on 10th August, 1956 and the solatium at the rate of 30% on the market value as also the further interest at the rate of 9% and 15%, as provided under section 23 (2) of the Land Acquisition Act, the learned ingle Judge was of the view that the matter should be settled before the Lok Adalat.

Public interest being involved and as the State spends the money for fighting out litigations and if the case is not decided immediately and ultimately the case is lost, the State is to cough huge amount, which ultimately burdens the public exchequer, so the case was referred by learned Single Judge to Division Bench for hearing and the Chief Secretary, Revenue Secretary, Finance Commissioner, Secretary, Water Resources Development Department Government of Jharkhand, Ranchi, as also the Agriculture Secretary were directed to appear before the Court to answer as to why they be not ready to comply with the mandate of the Parliament, as contemplated under section 89 of the Code of Civil Procedure, and the similar mandate of the Supreme Court. The aforesaid officers appeared today but shown inability for settlement outside the Court.

One of us (M.Y. Eqbal, J.) while referring the appeals to the Division Bench noticed that the present matter Is pending for last 45 years and in the event, the appeals fail, the State will have to pay ten times more than the amount of compensation, assessed by the Land Acquisition Judge. This fact was brought to the notice of the State authorities, who are present in the Court, and it was suggested to compromise the matter and to withdraw the appeals in cases, where compensation amount has been awarded up to Rs. 1,00,000/-, which may ultimately be in the financial interest of the State. It was brought to their notice that even if the Appellate Court interferes with the order, passed by the Land Acquisition Judge, the total compensation amount will not be set aside and, at best, the compensation amount may be brought down and above 70 to 80 percent of the compensation amount may have to be paid. In that case also, if the State contests the cases ana they remain pending for about 45 years and 70 to 80 percent of the awarded compensation is paid with additional compensation, solatium and Interest, as provided under section 23 (2), in such case after about 40 to 45 years, the State will have to bear much more amount than the amount, if the original compensation amount would have been paid 45 years back, without contesting the cases.

Inspite of the aforesaid discussions, no co-operation having been made by the State authorities and as the learned Advocate General also failed to pursue the State authorities and did not agree for settlement, we are of the view that apart from decision of the cases on merit, it may be determined "whether in public interest the State should contest the case up to appellate stage, if the amount of compensation does not exceed Rs. 1,00,000/- and if the matter remains pending for more .than five years in a Court of law?"

Parties should be ready for hearing on merit and in the issue, as framed above.

Let both the cases be listed for further hearing under the heading for orders' on 12th May, 2006."

4. The matter was again heard and adjourned. On 12.9.2006, the learned Counsel appearing for the Bokaro Steel Plant informed that about 7000 applications are pending under section 28-A of the Acquisition Act before the Collector-cum-Land Acquisition Officer, Bokaro. Learned Counsel further informed that the Steel Authority of India Ltd. is interested to settle all the claims so that State of Jharkhand could finally transfer those lands in favour of the Company by executing a deed of conveyance. It was submitted that all cases shall be settled with the help of Lok Adalats. After hearing the parties, this Court constituted a Committee consisting of Conciliator appointed by State Legal Services Authority, Mr. Sandip Tula, A.G.M. (Personnel), Managing Director, Secretariat Bokaro Steel Plan, SAIL and Mr. M.P. Sinha, A.G.M. (Project) Bokaro Steel Plant, SAIL, Mr. Rajiv Ranjan, Advocate and the Director (Project) Land and Rehabilitation, Bokaro. The Law Secretary, Government of Jharkhand was nominated as Convener of the Committee and was directed to submit detailed report as to .number of cases pending before the Land Acquisition Officer and the amount which the company is ready to pay.

5. In compliance of the aforesaid order a preliminary report was submitted on 27.10.2006 by the Committee constituted by this Court consisting of Law Secretary, State of Jharkhand, Conciliator, State Legal Services Authority, A.G.M. (Personnel), Bokaro Steel Plant, A.G.M. (Project), Bokaro Steel Plant, Director (Project), Land and Rehabilitation, Bokaro and the Secretary, Department of Law and Justice. Government of Jharkhand stating therein, *inter alia*, that about 46 First Appeal and 10 cases under section 18 of the Land Acquisition Act and altogether, 10167 applications under section 28-A of the Act relating to 19 villages are pending before the Special Land Acquisition Officer, Bokaro. The Committee sought two months' more time for submitting final report. Ultimately, the Committee submitted final report on 28.11.2006. In the said report it was mentioned that about 10,312 applications under section 28-A of the Act are pending and tentative compensation amount likely to be paid in the event the applicants succeed, shall be about Rs. 54,05,79.042/-. The Committee, after deliberations and discussions, came to the conclusion that approximately about Rs. 65,12,10,475/- shall be the total liability. In the said report it was also mentioned that the SAIL/Bokaro Steel Plant is ready to pay the entire liability in the event/deed of conveyance is executed by the State in favour of the Company.

6. For better appreciation, final report of the Committee is reproduced herein below:—

'The Hon'ble Jharkhand High Court vide order dated 12.9.2006 in F.A. No. 45/1991 (R) and 46/1991 (R) has constituted a committee consisting of Conciliator, State Legal Services Authority Mr. Sandip Tula, A.GTM. Personnel, Bokaro Steel Plant, Mr. M.P. Sinha, A.G.M. (Project), Bokaro Steel Plant, Mr. Rajiv Ranjan, Advocate, Jharkhand High Court and Director (Project), Land and Rehabilitation, Bokaro,

Secretary, department of Law and justice, Government of Jharkhand and has been made convener of me said committee. The Hon'ble Court had directed the committee to submit a detailed report as to the number of cases pending before the Hon'ble High Court, Land Acquisition judge, Bokaro and before the Land Acquisition Officer, Bokaro and the amount for which the Bokaro Steel Plant is ready to pay.

In view of the direction of Hon'ble High Court the Committee had held four meetings on 21.9.2006, 14.10.2006, 25.11.2006 and 28.11.2006 and made detail deliberation with respect to the reference made before the committee.

It is pertinent to mention that from the year 1956 to 1982, various lands in the present district of Bokaro had been acquired for Bokaro Steel Plant and earlier some compensation had also been paid to the land owners by the State Government from the revolving fund of the Bokaro Steel Plant. However, being dissatisfied with the amount of compensation, some of the land owners had filed cases before the Land Acquisition Judge, Bokaro. It is also pertinent to mention that some of the cases which relates to land acquisition notification No. 9059 dated 9.8.1956 had been decided by the Land Acquisition judge, Bokaro in the year 1987 and after the said judgment different applicants belonging to 19 villages had filed altogether 10,312 cases before the Special Land Acquisition Officer, Bokaro under section 28-A of the Land Acquisition Act. The details of aforesaid applications village wise along with the name of applicants and oilier details has been compiled by Special Land Acquisition Officer, Bokaro on the instruction of the committee. Special Land Acquisition Officer had submitted photostat copy of the said details before the committee on 12.11.2000, the said details are annexed herewith alongwith this report and marked as Annexure-1 series being enclosed separately.

On the instruction of the committee, the Special Land Acquisition Officer, Bokaro also submitted tentative compensation amount which is required to be paid to different applicants who filed application under section 28-A of the Land Acquisition Act. From perusal of aforesaid statement, the committee found that Rs. 4,05,79,042/- is required to be paid as against 10,312 applications under section 28 (a), the details of the calculation of aforesaid (sic) submitted by Special Land Acquisition Officer is annexed herewith and marked as Annexure-2 with this report.

It is relevant to mention that in course of deliberation a statement signed by Sri A.K. Singh, Land Acquisition Judge, Bokaro has been produced to Director (Project), Land and Rehabilitation for perusal of committee. From perusal of aforesaid statement it appears that at present 10 cases under section 18 of Land Acquisition Act are pending before the Land Acquisition Judge, Bokaro. The photo copy of the statement is issued under the signature of Sri A.K. Singh, Land Acquisition Judge, Bokaro dated 26.9.2006 is annexed herewith and marked as Annexure-3.

During the deliberation, Director (Project) Land and Rehabilitation had stated that in the aforesaid cases pending before the Land Acquisition Judge, Bokaro approximately about Rs. 96.30.756/- may be required to be paid presently to different petitioners, if the cases are decided in their favour. It is further pointed out that if the cases pending before the Land Acquisition Judge, Bokaro is decided then in all probability, other villagers who

are covered by the Land Acquisition Notification in the aforesaid 10 cases may file applications under section 28 of the Land Acquisition Act before the Special Land Acquisition Officer, Bokaro for enhancing the compensation amount and in that cases the liability to pay compensation may further increase.

During the deliberation a list of altogether 46 first appeals had been produced by Special Land Acquisition Officer which shows that at present 46 first appeals are pending in the Hon'ble High Court in relation to Land Acquisition cases of Bokaro Steel Plant.

The photostat copy of aforesaid list furnished by Land Acquisition Officer, Bokaro is annexed herewith and marked as Annexure ^ 4 to this report.

It is not out of place to mention that during the deliberation it has been brought to the notice of committee that as per the Direction of the Hon'ble Supreme Court Rs. 8,87,50,984.80 had been deposited by the State Government in the Court against the various decreetal amount. The aforesaid amount is still to be reimbursed by the Bokaro Steel Plant.

It is further brought to the notice that Special Land Acquisition Officer, Bokaro had already disposed 104 cases under section 28-A in which an award of Rs. 1,32,49,632/- have been passed, out of which the State Government had deposited Rs. 42,49,632/- and the rest amount i.e. Rs. 90,00,000/- is still required to be paid to the different land owners.

Thus, from perusal of Annexure 2 and also after considering the money deposited by the State Government in the Court and also taking into account that Rs. 90,00,000/- is required to be paid to different Land owners against the award passed by Special Land Acquisition Officer, Bokaro under section 28-A, the committee comes to the conclusion that at present approximately Rs. 65,12,10,415/- is the total liability as against the aforesaid cases. However, it is made clear that the committee at present had not taken into account while assessing aforesaid amount the possibility of filing of different applications under section 28-A if the aforesaid 10 cases pending before Land Acquisition judge, Bokaro ultimately decided in favour of land owners.

It is relevant to mention that on 25.11.2006 as per the decision of the committee the views of Managing Director SAIL/Bokaro Steel Plant has been solicited as to whether SAIL/Bokaro Steel Plant is ready to pay the aforesaid tentative compensation amount or not. The letter addressed to Managing Director SAIL/Bokaro Steel Plant dated 25.11.2006 is annexed herewith and marked as Annexure-5.

In response to aforesaid letter the Managing Director SAIL/Bokaro Steel Plant vide his letter No. MD/5693 dated 27.11.2006 has informed the committee that SAIL/Bokaro Steel Plant is ready/agree to pay the entire above liability subject to the conditions mentioned in the said letter. The original letter of Managing Director SAIL/Bokaro Steel Plant dated 27.11.2006 is annexed herewith and marked as Annexure-6 with this report.

It is worth to mention that for Bokaro Steel Plant some lands had been acquired at Bhawnathpur, Garhwa. for captive mines. During the deliberation two letters have been produced by Assistant General Manager (Personnel), Bokaro Steel Plant before the committee written by Sri Akhileshwar Prasad, Government Pleader, Daltoonganj and

Munni Tiwari, Government Pleader, Garhwa addressed to Director (Project) Land and Rehabilitation, Bokaro respectively and : the perusal of the same shows that no case relating to land acquisition of Bokaro Steel Plant as pending either in Civil Court, Daltonganj or Civil Court, Garhwa. The photo copy of aforesaid letters is annexed herewith and marked as Annexure-7 series.

Before parting with this report the committee acknowledges .the full co-operation rendered by Director (Project) bind and Rehabilitation and Special Land Acquisition Officer as well as all their office staff. The committee also appreciate the co-operation given by Bokaro Steel Plant in providing infrastructure and others facilities to the committee is well as Special Land Acquisition Officer for compiling the details of the various cases.

This report is being submitted before the Hon'ble High Court for kind consideration.

The meeting ended with thanks.

Sd/- (Prashant Kumar) Secretary, Law Government of Jharkhand	Sd/- (A.B. Shekhar) Conciliator, State Legal Service Authority	Sd/- (Mrs. Mukta Sahay) Director, Land and Rehabilitation, Bokaro
Sd/- (Rajiv Ranjan) Advocate, Jharkhand High Court	Sd/- (Sandeep Tula) A.G.M. (Pers.) MD's Office SAIL, SAIL BSL.	Sd/- (M.P. Sinha) A.G.M. (Project) SAIL BSL.

7. After hearing the parties and after perusal of the report, this Court directed the Revenue Secretary to file affidavit. After much persuasion one affidavit was filed by the Revenue Secretary, Government of Jharkhand. For better appreciation, I would like to reproduce the entire affidavit filed by the Revenue Secretary which reads as under:—

"1. That I am at present working and posted us the Principal Secretary, Revenue and Land Reforms, Government of Jharkhand at Ranch! and, as such I am well acquainted with the facts and circumstances of the instant case.

2. That the deponent is swearing this affidavit as per the directions of this Hon'ble Court of the Steel Authority of India Ltd., agreeing to undertake the entire liability with regard to payment of compensation to the land looser arising out of the acquisitions made for the establishment of Bokaro Steel Plant, Bokarao and also with relation to such agreeing of Steel Authority of India Ltd., (hereinafter to be referred to as the SAIL) for execution of a Deed of conveyance by the State Government in favour of the SAIL (Bokaro Steel Plant).

3. That, the deponent states and submits that the SAIL (Bokaro Steel Plant) should unequivocally agree and undertake that it would pay to the land-loosers whatsoever

amount of compensation is determined for payment in the pending proceedings in any Court and also it should agree and undertake that it would pay all such compensation to the claimants, if so determined in due proceedings to be initiated in future.

4. That, the SAIL (Bokaro Steel Plant) should also agree and undertake that whatsoever amount if the State Government has so far paid in the previous proceedings to the land-loosers from the State Exchequer and has not been returned or paid by the SAIL (Bokaro Steel Plant) to the State Government, the SAIL (Bokaro Steel Plant) shall also pay the entire such amount to the State Government without any pre-conditions(s).

5. That this way the SAIL (Bokaro Steel Plant) should undertake that the entire liability which has accrued in past proceedings and are to be determined in the pending proceedings and/or further to determined, if fresh proceedings in some future time are levied and initiated, the total liability which is fixed and determined in this regard would be that of the SAIL (Bokaro Steel Plant) and the State Government in no way would be liable to make payment of any amount whatever.

6. That the SAIL (Bokaro Steel Plant) should also agree that the lands, which are inoccupation of the State Government for the use of local administration and different offices and arms of the state Government, shall not be asked to be handed over to the SAIL (Bokaro Steel Plant) nor any compensation for those lands should be asked to be borne by the State Government. The liability of payment of compensation in respect of those lands shall also be that of the SAIL (Bokaro Steel Plant). This concession the SAIL (Bokaro Steel Plant) is required in view of the facts that approximately 3600 acres Government lands and 778 acres of forest land had been given to the SAIL (Bokaro Steel Plant) free of cost. Further whatever expansion of Government offices is done in future at Bokaro it is possible only when SAIL provides lands free of cost as there is hardly any Government land left there. Therefore, SAIL shall show utmost consideration to this fixture demand of land far the Government use without asking for any monetary compensation. Further, SAIL (Bokaro Steel Plant) shall not claim any special or otherwise right or privilege over those lands under the occupation of the State Government.

7. That if SAIL (Bokaro Steel Plant) agrees to fulfil the abovementioned propositions solely at their own cost, the State Government shall have no objection/hesitation in executing a Deed of Conveyance in favour of the SAIL (Bokaro Steel Plant).

8. That, the State Government only wants that no financial liability in any form in any case at any point of time in respect of payment of compensation of the acquired lands should be asked to be borne or shared by the State Government.

9. That, the SAIL (Bokaro Steel Plant) should also undertake that whatsoever compensation is determined in any proceeding in favour of raiyats, the raiyats concerned will be paid their amount; of compensation by the SAIL (Bokaro Steel Plant) and the raiyats shall not be subjected to prolonged litigation. This protection

the SAIL (Bokaro Steel Plant) is required to provide to the raiyats so that at no point of time the State Government may be required to interfere in any such matter. The State Government does not want henceforth any interference in the management of such lands or in any matter with regard to compensation to the raiyats.

10. That, as per the report of the committee the esteemed liability with regard to pending 28-A applications has been determined around Rs. 65 Crores which does not include the amount of compensation involved in 46 (forty six) First Appeals pending in the High Court, 10 (Ten) cases under section 18 pending before the Land Acquisition Judge, Bokaro and the amount of liability to be determined in prospective future proceedings, as such by way of good gesture the SAIL (Bokaro Steel Plantf should deposit substantial money with the Department for payment of raiyats and for adjustment of accounts with regard to the amount paid by the Government previously to raiyats /Land-loosers.

11. That, the lands had been acquired decades ago and with the acquisitions of the land the entirelands had been handed over to the then Hindustan Steel Ltd. (HSL), now the SAIL (Bokaro Steel Plant) and accordingly Bokaro Steel Plant was established. The entire acquired lands since the time of such acquisitions are under the management and control of the SAIL (Bokaro Steel Plant) and the State Government has no role in any such management and control of such acquired lands. The SAIL (Bokaro Steel Plant) now cannot ask or Insist the State Government to put it in possession of any particular piece of land including the so called 24,855 acres of land given in the BSP/SAIL affidavit in view of the fact that the lands- have already been put under the possession of the SAIL (Bokaro Steel Plant) or are under their deemed possession and if there has been any encroachment/illegal occupation by any one, it had occurred while it was under the management and control of SAIL (Bokaro Steel Plant) and, as such, the State Government cannot give any undertaking that it would put the SAIL (Bokaro Steel Plant) in possession of any such land(s) which have been occupied by local persons(s). However, the State Government shall provide help and assistance to the SAIL (Bokaro Steel Plant) in evictingjthem in due proceedings at the initiative of SAIL (Bokaro Steel Plant), but that would be only on the request of the SAIL (Bokaro Steel Plant).

12. That there are number of First Appeals pending in the Hon'ble High Court filed by the State Government which appeals shall be withdrawn in due course if the SAIL (Bokaro Steel Plant) agrees and undertakes to pay to the raiyats/land-loosers the liability in respect of the acquired lands and State Government is absolved from all financial liabilities in respect of payment of compensation of the acquired lands."

8. In reply to the State Government's affidavit, the respondents-Steel Authority of India Limited filed affidavit whereby they agreed to abide by all the conditions mentioned in their affidavit. Paragraphs 4 to 7 of the affidavit filed by Steel Authority of India Limited is also reproduced herein below:—

"4 .That in response to paragraphs 2, 3, 4, 5, 8 and 9 of the affidavit of Principal

Secretary, Revenue and Land Reforms, Government of Jharkhand, Ranchi filed on 31.1.2007, the SAIL/BSP undertakes to pay the entire liability with respect to the past payment already made by the Government as well as with respect to the pending cases as detailed in the final report of the committee constituted by the Hon'ble Jharkhand High Court vide order dated 12.9.2006 in F.A. Nos. 45/91 (R) and 46/91 (R).

5. It is further stated that the final report of the committee clearly indicates that the total liability of the compensation comes to around Rs. 65,12,10,415 (approx) which the SAIL /BSP is ready to pay. The committee has also indicated that it has not taken into consideration while assessing the aforesaid amount the possibility of filing different application under section 28-A in case the 10 cases pending before Land Acquisition Judge, Bokaro as disclosed in Annexttre-3 of the final report which may be ultimately decided in favour of the land owners and in that regard the SAIL also undertakes to pay such future liabilities.

6. That in response to paragraph 6, SAIL/BSP agrees and admit the same.

7. That the State Government may execute the Deed of Conveyance within a time frame of one month."

9. When the Steel Authority of India Limited agreed to the conditions imposed by the State of Jharkhand, this Court by order dated 9.2.2007 directed the Counsel for the State to submit a draft deed of conveyance, so that all these pending litigations could be finally disposed of. When the matter reached the final stage of settlement an affidavit was filed by Steel Authority of India Limited annexing copies of the letter issued under the signature of Sri Dulal Bhuian, Hon'ble Revenue Minister, Government of Jharkhand addressed to the Managing Director, Bokaro Steel Plant directing the Managing Director to return surplus land alleging that the Bokaro Steel Plant had agreed to produce 10 Million tones of Steel whereas it is producing only 4 million tones of Steel. This Court after hearing the parties, by order dated 7.3.2007, was constrained to issue show cause notice to the Revenue Minister as to why contempt proceeding be not initiated against him for issuing such letter and thereby interfering with the Court's proceeding. Relevant portion of order dated 7.3.2004 is quoted herein below:—

"11. From the facts narrated herein above, it is clear that the matter was at the final stage of settlement after the respondent SAIL agreed to pay the entire compensation amount for the lands acquired and the State was to execute the formal deed of conveyance. It is at this stage and when the Court was in seisin of the matter, a letter dated 27.2.2007 was issued under the signature of one Mr. Dulal Bhuiyan, the Revenue Minister, Government of Jharkhand addressed to the Managing Director, Bokaro Steel Plant. In the said letter it is mentioned that as per agreement with the State the, respondent Bokaro Steel Plant had agreed to produce 10 million tones steels whereas Bokaro Steel Plaint is producing only 4 million tones steels. Hence the Revenue Minister directed the Managing Director Bokaro Steel Plant to return the surplus land which is the subject matter before this Court to the Government. A

copy of the said letter has been annexed as annexure 1 to the supplementary affidavit.

12. Prima facie, we are of the view that it is a direct interference by the Revenue Minister in the Court's proceeding. When the Principal Secretary filed affidavit, who is the head of the Revenue department, Government of Jharkhand putting condition which has been complied with by the respondent SAIL and only the draft deed of conveyance was to be approved by the Government then there was no occasion for the Revenue Minister to issue the aforesaid letter.

13. Prima facie the conduct of the Minister and the Secretary shows that the manner in which they had conducted themselves clearly tended to lower the authority of this Court and obstruct the administration of justice. It is well settled that any act done or writing published calculated to obstruct or interfere with the due course of justice or lawful process of Court is a contempt of Court. Recently the Supreme Court, dealing with a case of contempt against a Minister in the case of *T.N. Cfodavarman Thirumulpad (102) v. Ashok Khot and another*[1], observed:—

"Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Courts orders are to be followed and complied with."

14. In the background of the aforesaid facts we are constrained to issue notice to the Revenue Minister to show cause as to why a contempt proceeding be not initiated against him for issuing the said letter interfering with the Court's proceeding. Let notice of contempt be also issued against the Principal Secretary, Revenue Department, Government of Jharkhand as to why he has not complied with the direction issued by this Court within the time-frame. Show cause must be filed on or before 16th March, 2007. Put up this case on 19th March, 2007. Let a copy of this order be handed over the Counsel for the State-appellant."

10. In response to the said notice, the Revenue Minister filed show cause stating that he had no intention to interfere with the Court's proceeding and he had issued letter in question innocently and bona tide. This Court kept the contempt matter pending for final disposal. In the meantime, the Steel Authority of India Limited was persuaded by this Court to settle all those matters so that land losers who have been waiting since 1960-61 for compensation could be paid their claims, Respondent-Company after holding meeting of the Board of Directors and with the consultation of Ministry of Steel, Government of India ultimately agreed to pay entire

1. 2006 (42) AIC 3 (SC)=2006 (55) ACC 598=2006 (5) SCC 1.

compensation amount for giving finality to the dispute. Once again by order dated 19.3.2007 the State of Jharkhand was directed to submit draft deed of conveyance. Curiously enough, instead of submission of deed of conveyance, another affidavit was filed by the Secretary, Revenue Department Government of Jharkhand putting the same condition to the effect that some more lands shall be required for the use of different departments of the Government of Jharkhand. Respondent-Company even agreed to those conditions by stating in the affidavit that even any portion of land is further required for Government Office the same shall be provided by the Company.

11. On 19.3.2007, this Court took notice of all the aforesaid facts and events. On that day, Mr. S.B. Gadodia, learned Advocate General prayed for some more time for filing draft deed of conveyance. As requested by learned Advocate General, four weeks' more time was allowed for filing draft deed of conveyance. The order dated 19.3.2007 is worth to be quoted herein below:—

"Heard learned Advocate General and perused the show cause filed by the Revenue Minister and the Cabinet Secretary. Although the Revenue Minister, in his show cause, has stated that he had no intention to interfere with the Court's proceeding and he issued the letter in question innocently and *bona fide*, let me show cause be considered at the time of passing final order in these appeals. As noticed above, the lands were acquired in 1956 and the land losers have not yet been paid their due compensation. The compensation amount finally assessed by the Land Acquisition Judge has been challenged by the respondent-State by filing these first appeals. To us it appears that filing of these appeals perhaps is on the apprehension of the State that in the event any enhanced compensation is required to be paid, the State shall be "burdened with extra amount of compensation. It appears that at no point of time during the last 50 years the respondent-State raised any objection with regard to utilization of the land by the respondent-Bokaro Steel Plant (SAIL). This Court, after much persuasion made the Company agrees to pay the entire compensation and for that purpose a Committee was constituted by this Court headed by the Law Secretary, Government of Jharkhand. In the report submitted by the Committee it has been said that about more than ten thousand cases are pending in different forums and approximately 65 crores of rupees is to be paid to the claimants. The respondent-Company, after holding meetings of the Board of Directors and with the consultation of the Minister of Steel, Government of India, ultimately agreed to pay the entire compensation amount. For the purpose of giving finality to the dispute the respondent-State was directed to submit a draft deed of conveyance. At that stage the Secretary, Revenue Department, made an application putting some conditions to the effect that some more lands may be required for the use of different departments of the Government of Jharkhand. The respondent-Company agreed even to those conditions saying in the affidavit that if any portion of the land is required for Government offices, the same shall be provided to[1] the Government inspite of the above agreement by the respondent-SAIL the deed of conveyance has not been filed till date by the respondent-State.

To-day Mr. Gadodia, learned Advocate General prays for some more time for filing the draft deed of conveyance. If the Government of Jharkhand, department of Revenue, has no any *mala fide* intention then they must submit the draft deed of conveyance within a very short time. As requested by the learned Advocate General, four weeks time is allowed for filing the draft deed of conveyance failing which appropriate order shall be passed by this Court. We may reiterate that the poor villagers have been deprived of their legitimate compensation for the last 50 years and its expected that the State will not take any such step which may frustrate the entire efforts of this Court for getting the due compensation paid to the claimants-land losers. Puv up this again under the same heading on 23rd April, 2007."

12. From the facts narrated herein above, it is crystal clear that the conduct of the authorities of the State of Jharkhand, the Revenue Minster and the Revenue Secretary is wholly *malajide*, inasmuch as the Steel Authority of India for whose purpose the land was acquired, is ready to pay the entire compensation, but the Government is adamant to drag the poor land losers into litigations and thereby deprive the land-losers to get their due compensation.

13. At this stage, it would be proper to refer the decision of this Court delivered in L.PA No. 187 of 2002 and analogous appeals. In those cases also, lands of different villages were acquired by the Government for construction of Iron and Steel Plant at Bokaro and to that effect, notifications were issued in 1956 and 1964. The award was given by the Land Acquisition Judge on the reference under section 18 of the Land Acquisition Act and the judgment was put in execution by the awardees for recovery of awarded amount. The State of Bihar was arrayed as judgment-debtor who filed objection against the attachment of properties. Bokaro Steel Plant denied the liability and stated that they were not responsible to pay the higher amount of compensation. Those objections were dismissed and thereafter, the State of Bihar filed Misc. Appeal before this Court. In those cases, it was mentioned that after the Bhilai Steel Plant and Rourkela Steel Plant came into existence, the State of West Bengal prevailed on the Central Government and the 3rd Steel Plant, namely Durgapur Steel Plant was erected in the State of West Bengal in the name of Hindustan Steel Limited. The State of Bihar, thereafter, approached the Central Government for 4th Steel Plant with such offers, assurances and promises. About 44000 acres of land was acquired by issuing notification under section 4 of the Land Acquisition Act for erection of Iron and Steel Plant for public purposes at the public expenses. Ultimately, the Central Government agreed to the assurances and promises of the State Government and agreed to set up 4th Steel Plant at Bokaro, namely, Bokaro Steel Plant It was mentioned in the correspondences that in order to minimize the burden, of cost of acquisition of land the Central Government agreed to pay ceiling price or Rs. 1900/ - per acre as, a cost of acquisition Tor the lands already acquired in the year 1956 and for subsequent acquisitions, but "the Central Government agreed to pay and fix the ceiling prices of Rs. 3800/- per acre. It was specifically clarified that any amount over and above the minimum ceiling price fixed will have to be borne by the State Government and not by the Central Government. Inspite of aforesaid assurance,

and promises made by the State of Bihar (now State of Jharkhand) to pay the compensation amount, the respondent-Steel Authority of India Limited now agreed to pay the entire compensation amount to the land losers on the conditions that the State of Jharkhand shall immediately transfer the acquired land in favour of Bokaro Steel Plant. But unfortunately, the State of Jharkhand is behaving like an ordinary litigant and raising unnecessary objections.

14. The matter was again heard at length on 23.4.2007 and this Court after considering the entire facts of the case, issued direction in the nature of mandamus directing the appellant-State for the performance of statutory duties. Paras 10, 10-A, 11, 12 and 13 of the order reads as under—

10. The primary concern of this Court is that those raiyats who have been dispossessed from the lands 50 years ago, should get their due compensation which both the State of Jharkhand and the Steel Authority of India are legally bound to pay.

10-A. Therefore, the question that falls for our consideration is as to whether it is a fit case where mandamus can be issued against the State Government to transfer the entire lands acquired for the purpose of Bokaro Steel Plant. Section 41 of the Land Acquisition Act makes it clear that if the land is acquired by the State Government then the State Government, on payment of entire compensation amount, shall transfer the land in favour of the company.

11. It is well settled that a writ of mandamus will be issued inappropriate cases directing the Government to perform its statutory duty. Where a public officer has refused to perform his statutory duty, a writ of mandamus can be issued to compel him to perform those duties. Even in such cases where this Court finds that inaction on the part of the authorities of the Government is wholly arbitrary, capricious and unjustified, a writ of mandamus can be issued compelling the authorities of the Government to perform their duties.

12. However, Mr. S.B. Gadodia, learned Advocate General very fairly submitted that two months' time may be allowed to the respondent State for transferring the land in favour of Steel Authority of India. Learned Advocate General further submitted that he would persuade the Government to perform their statutory duty so that, those poor villagers, tribals and other land losers could get their compensation at least even after 50 years of the their dispossession from the lands.

13. We appreciated the submission of the learned Advocate General. We adjourn this case to first week of July, 2007. In the meantime, we passed the following order which must be complied within the time frame specified in the direction given below:—

(i) The Steel Authority of India/Bokaro Steel Plant shall deposit a sum of Rs. 70 Crores by 10th June, 2007.

(ii) The respondent-State shall execute the deed of conveyance transferring the

entire acquired land in favour of the Company on or before the date fixed.

15. When this matter was again taken up on 12.6.2007, the respondents-Company, namely, Steel Authority of India, Bokaro Steel Plant presented a cheque of Rs. 70 Crores (Seventy Crores) drawn in favour of Registrar General, Jharkhand High Court. We after hearing the Advocate General passed the following orders:—

"In compliance of the order dated 23.4.2007, the Steel Authority of India Limited, Bokaro Steel Plant through its lawyer Mr. Rajiv Ranjan presented a cheque of Rs. 70 Crcres which has been drawn in favour of Registrar General, Jharkhand High Court.

Learned Advocate General is of the view that cheque should be drawn in favour of Deputy Commissioner as because ultimately the compensation amount to be disbursed to the real land losers whose land have been acquired through the Deputy Commissioner.

We are partly agreed until the view expressed by the learned Advocate General. In our view, instead of depositing the amount in the account of Deputy Commissioner, it would be more appropriate to draw a cheque of the aforesaid amount in favour of District Judge, Bokaro who shall keep the said amount in a separate account. The amount of compensation shall be disbursed to the real persons as and when required through the Deputy Commissioner or any of the officers who may be entrusted by subsequent orders passed by this Court. Needless to say that District Judge, Bokaro shall supervise at the time of disbursement of amount to the real land losers in the manner that may be directed by this Court after hearing Counsel for the SAIL and learned Advocate General.

So far compliance of the order by the State Government Is concerned, leaned Advocate General submitted that draft conveyance deed is being prepared and it shall be approved by the Cabinet before .....the date fixed by this Court. 62

It is desirable that before the draft is placed before the Cabinet, it shall be placed before this Court until, a copy to the Counsel for the other side so that the draft could be finalized before it is placed before the Cabinet.

Since there is a specific direction to the State Government to execute the deed of conveyance before the 1st week of July, 2007, we direct the State to file draft sale-deed by 1st of July, 2007.

Let this case be listed on 2nd of July, 2007.

In the meantime, respondent-SAIL shall deposit a fresh cheque drawn in favour of District Judge, Bokaro within ten days from today.

Let a copy of this order be handed over to the learned Counsel appearing for the parties."

16. Again the matter was taken up on 2.7.2007 and at the request of the Advocate General, one month's more time was allowed for submitting a draft deed of conveyance after getting it finalized with the respondent-Company. The matter was listed on 7.8.2007 and it was again adjourned for a month for finalization of deed of

conveyance.

17. It would be useful to mention about the affidavit filed by the Principal Secretary, Revenue and Land Reforms Department, Government of Jharkhand on 23.4.2007. In that affidavit, It was stated that as per direction, the Deputy Commissioner, Bokaro prepared and submitted a draft deed of conveyance which was examined and approved by the deponent and was placed before the Hon'ble Minister of the Department for approval. The Hon'ble Minister approved the draft deed of conveyance submitted by the deponent with some further modifications. It was stated that after approval granted by the Hon'ble Minister, the file containing the draft deed of conveyance will be sent to the Law Department for examination and after that, the file will be sent to the Finance Department and the Industry Department for their approval and then it will be sent to the Chief Secretary, Jharkhand. It was further stated that after the approval by the aforesaid authorities, the file will be sent to the Hon'ble Chief Minister and thereafter it will be placed before the Cabinet for final approval. In the said affidavit, it was slated that for completing the entire formalities, at least 3-4 months' time may be granted.

18. Inspite of mandamus issued by this Court by order dated 23.4,2007 and also by subsequent orders the State Government failed to comply the direction by executing deed of conveyance in favour of the respondent-Company. Because of the non-compliance of the mandate for the State issued by this Court, the amount of compensation of Rs. 70 crores deposited by the Company is lying with the District Judge and more than 10,000 cases could not be disposed of.

19. In the aforesaid background of the facts, now the question that arose for consideration as to what shall be the consequences for non-compliance and what should be the further order that may be passed by this Court.

20. Before passing final order, we would first like to mention the history of acquisition and the background of establishment of a big Steel Plant called Bokaro Steel Plant of Steel Authority of India.

21. As noticed above, in the year 1955 the then State of Bihar through its Secretary, Development (Industries) Department offered to the Central Government several facilities, concession, assurance and promises, etc. for erection of 3rd Steel Plant either at Bokaro or Sindri. Those facilities, *inter alia* were providing fifty square miles of land for the requirement of the Steel Plant, associated projects and the township as required for the Steel Plant, water facilities, guarantee of price claim on unleased mining concessions, etc. Inspite of the aforesaid promise, the State of West Bengal prevailed on the Central Government and the 3rd Steel Plant namely; Durgapur Steel Plant was established in the State of West Bengal in the name of Hindustan Steel Limited. The State of Bihar, thereafter, approached the Central Government for the 4th Steel Plant offering the same assurances and promises. For the aforesaid purpose, the Central Government agreed to the said offer. The State of Bihar acquired 44000 acres of land by issuing notification under section 4, part II of the Land Acquisition Act for erection of an Iron and Steel Plant for public

purposes at the public expenses. The Central Government ultimately agreed to the concessions, assurances and promises of the State Government and agreed to set up 4th Steel Plant at Bokaro in the State of Bihar (now Jharkhand). Series of negotiations and correspondences exchanged between the Central Government and the State Government and joint meetings were held, where it was agreed that 4th Steel Plant at Bokaro shall be set up and in order to minimize the burden of cost of the acquisition of land, the Central Government agreed to pay a ceiling price of Rs. 1900/- per acre for the land acquired in 1956 and for subsequent acquisitions after 1961 onwards, the Central Government agreed to pay and fix a ceiling price at Rs. 3800/- per acre. It was specifically clarified that any amount over and above the minimum ceiling price fixed will have to borne by the State Government and not by the Central Government. In this way, the Project work for establishment for Iron and Steel Plant at Bokaro started in the year 1960 onwards through Hindustan Steel Limited. Later on, Bokaro Steel Limited was incorporated fully owned by the Central Government because 100% shares were held by the President of India and the Company started erection and construction of Iron and Steel Plant from 1961 with the assistance and in collaboration with the Government of the then USSR. It is worth to mention here that the Central Government through Bokaro Steel Plant deposited the entire amount as agreed for the acquisition of the land and the possession of the entire land as also the land subsequently acquired by the State Government were handed over to the Bokaro Steel Plant.

22. For better appreciation, it would be most appropriate to reproduce one of the notifications issued under section 4 of the Land Acquisition Act acquiring 15883.94 acres of land. Copy of this said notification is filed in the Court below and marked Ext. 8. The notification' reads as under:—

"Government of Bihar

Revenue Department

Notification 9059 R dated 9.8.1956

Whereas it appears to the Government of Bihar that land is required to be taken by Government at the public expenses for a public viz. for erection of Iron and Steel Plant in the village Panchora No. 1" Baidhmara No. 2, Kanfatta No. 3, Maheshpur No. 4, Kairakundi No. 5, Mahuar No. 6, Nohra No. 7, Asansol (part) No. 3, Tilabani (part) No. 11, Harila (part) No. 12, Jolhabandh No. 13, Patharkata No. 14, Chakpandedi No. 16, Angjuri No. 1; Pindergoria No. 18, Bharra No. 19. Ranipokhar No. 30, Bhatua No. 21 Dhandabara No. 22, Thata Zila Manbhum is hereby notified that the above purposes a piece of land measuring more or less 15883.94 acres bounded on the:—

North	—	By the Demodar River
East	—	By the Graga Nala.
South	—	By the Maraphari to Chas Road,
West	—	By the Thana Boundary of Thana Paterwar District Hazaribagh.

It is required within the aforesaid villages of Panchora No. 1, Baidhmara No. 2 Kanfatta No. 3. Maheshpur No. 4, Kairakundi No. 5, Mahuar No. 6, Nohra No. 7, Asansol (part) No. 3, Tilabani (part) No. 11, Harila (part) No. 12, Jolhabandh No. 13, Patharkatta No. 14, Chakpandedi No. 16, Angjuri No. 17, Pindergoria No. 18, Bharra No. 19, Ranipokhar No. 20, Bhatua No. 21, Dhandabara No. 22,

This notification is made, under the provision of section 4 of Act 1 of 1894 as amended by Act XXXVIII 1923 to all whom it may concern.

Objection to the acquisition, if any, filed under section 5-A but any persons interested within the meaning of that section on or (sic) before the Land Acquisition Officer, Ranchi will be considered.

Sd/-Land Acquisition Officer
Palamau-cum-Ranchi

Sd/- Dy. Commissioner
Purulia (Manbhum)"

23. Similar notifications were time to time issued by the State of Bihar under section 4 of the Land Acquisition Act for the acquisition of land for public purposes at public expenses. It is, therefore, manifestly clear that lands were acquired under Part II of the Act for public purposes and at the public expenses. In spite of that, whatever compensation originally awarded by the Collector was paid by the respondent-Bokaro Steel Plant of Steel Authority of India Limited. Thereafter, several reference cases were filed under section 18 of the Act and in those cases, amount of compensation have been enhanced by the Land Acquisition Judge. Against those judgments and awards passed by the Land Acquisition Judge, the appellant State of Bihar (now Jharkhand) preferred, appeals for the reasons or with the apprehension that enhanced amount of compensation or the compensation over and above agreed by the Central Government shall have to be paid by the Central Government.

24. As noticed above, by reason of various orders passed by this Court, respondent-Company ultimately agreed to pay the entire compensation amount so enhanced by the Land Acquisition Judge. The respondent-Company also agreed to pay compensation to the applicants whose applications under section 28-A are pending.

25. As stated above, the lands have not been acquired under Part VII of the Act for the Company, rather it was acquired under Part II of the Act for the public purpose. Provisions of Part VII shall not apply In the present case. Moreover, section 44-B of the Act makes it clear that no lands shall be acquired under Part VII for Government companies like Bokaro Steel Plant of Steel Authority of India Limited.

26. Recently, in the case of *Devinder Singh and others* v. *State of Punjab and others*[1], the Supreme Court observed that different procedure is to be adopted for acquisition of land for public purposes under Part II and acquisition of land for the companies under Part VII of the Act. Their Lordships observed: —

"When a request is made by wing of the State or a Government company for acquisition of land for a public purpose, different procedures are adopted. Where, however, an application is filed for acquisition of land at the instance of a 'company',

1. AIR 2007 SCW 6692.

the procedures to be adopted therefore are laid down in Part VII of the Act. Although it may not be decisive but the conduct of the State as to how it intended to deal with such a requisition, is a relevant factor. The action of the State provides for an important condition to consider as to whether the purpose wherefor a company requests it for acquisition of land is a public purpose and /or which could be made at public expenses either as a whole or in part, wherefor evidently provisions laid down in Part II shall be resorted to. On the other hand, if the State, forms an opinion that the acquisition of land at the instant of the company may not be for public purpose or, therefore the expenses to be incurred therefore either in whole or in part shall not be borne by the State, the procedures laid down in Part VII thereof have to be resorted to. The procedures laid down under Part VII of the Act are exhaustive. Rules have been framed prescribing the mode and manner in which the State vis-a-vis the company should proceed. It provides for previous consent of the Appropriate Government, execution of the agreement, previous inquiry before a consent is accorded, publication of the agreement, restriction on transfer, etc. It also provides for statutory injunction that no land shall be acquired except for the purpose contained in clause (a) of sub-section (1) section 40 of the Act for a private company which is not a Government company. For the purpose of section 44-B of the Act, no distinction is made between a private company and a public limited company."

27. So far acquisition of land is concerned, it is not the case of the State of Bihar or the State of Jharkhand that lands were acquired in 1956 and subsequent thereto not for public purposes at public expenses nor is the case of the State that acquisition was made under Part VII of the Act and for that purposes, respondent executed an agreement before the acquisition of the land as contemplated under Part VI of the Land Acquisition Act.

28. The land on being acquired and taken possession of by the Collector vests in the first instance absolutely in the Government under section 16 of the Act. In the case of acquisition for company, where the provisions of sections 38 to 42 are applied. Government transfers the land by a deed of transfer stipulating the terms on which transfer is made. In case acquisition of land is made for local authorities, the only thing need to be done is to ordinarily making over the land and the terms are governed by the limitations in the Acts relating to the Constitution, powers and functions of such authorities. Some of these Acts, however, contain specific provisions of vesting on payment of the cost of the acquisition, but here also the power derived from such "vesting" are governed by the provisions relating to constitution powers and functions of such authorities, in the respective Acts.

29. As a matter of fact, vesting of such property is only for the purpose of executing any improvement scheme which it has undertaken and not with a view to clothing it with complete title. The term "Vesting" has a variety of meaning which has to be gathered from the context in which it has been used. It may mean full ownership or only possession for a particular purpose or clothing the authority with power to deal with the property as the agent of another person or authority. Once the Collector makes his award under section 11 of the Act and takes possession of the land, two

consequences follow, i.e. (i) the acquired land absolutely vests in the Government, and (ii) such vesting is free from all encumbrances. By virtue of section 16 of the Act, the acquired land has vested absolutely in the Government free from all encumbrances. The vesting is equally effective and complete in the case of acquisition undertaken by the Government for the purpose of setting up steel plant at the instance of the Central Government so as to vest the property in the Central Government Company namely, Steel Authority of India Limited.

30. In Black's Law Dictionary, the word "vest" means to confer ownership of property upon a person, to invest a person with full title to the property, to put a person into possession of a land.

31. In Wharton's Law Lexicon (fourteenth edition), the word "vest" means either to place in possession, to make possession of or to give absolute interest in property.

32. In Law Lexicon by P. Ramanath Aiyer, the word "vest" has been defined in same way to place in possession, to take possession of, to take an interest in property.

33. The word "vest" is a word of variable import. The word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation.

34. The Maxim *lex injusta non ext lex* has to be applied which means a statute must be construed justly. An unjust law is no law at all.

35. While interpreting a statute the Supreme Court in the case of *Kailash Chand v. Dharam*Doss[1], observed:—

"We find it difficult to accept the construction placed on the third proviso, in para 14 of the judgment in *Molar Mal* case, (2004) 4 SCC 285. In *Rakesh Wadhawan* v. *Jagdambi Industrial* Corpn.[2], this Court has held that a statute can never be exhaustive. The legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances. The scope is always therefor the Court to interpret the law with pragmatism and consistently with the demands of varying situations. The construction placed by the Court on statutory provisions has to be meaningful. The legislative intent has to be found out and effectuated.

'Law is part of the social reality.'

(see Law in the Scientific Era by justice Markandey Katju, 2000 Edn. p.33).

"Though law and justice are not synonymous they have a close relationship, as pointed out by the American jurist Rawls. Since one of the aims of the law is to provide order and peace in society, and since order and peace cannot last long if it is based on injustice, it follows that a legal system that cannot meet the demands of

1. 2005 (30) AIC 83=2005 (59) ALR 764=(2005) 5 SCC 375.
2. 2002 (48) ALR 66 (SC)=(2002) 5 SCC 440.

justice will not survive long. As Rawlssays:—"Laws and institutions no matter how efficient and well arranged, must be reformed or abolished if they are unjust." (ibid, p. 72)

Clearly, law cannot be so interpreted\as would cause oppression or be unjust."

36. It has been well settled by the Supreme Court that cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. It must be consistent with the intention of the legislature and object of the statute.

37. In the case of *Union of India and others* v. *Filip Tiago De Gama of Vedem Vasco De Gama*[3], the Supreme Court while interpreting section 23 (2) of the Land Acquisition Act as amended in 1984 observed:—

"16. The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as piece of prose, without reference to its nature of purpose. A statute is neither a literary text nor a divine revelation. "Words are certainly not crystals, transparent and unchanged" as Mr. Justice Holmes has wisely and properly warned. *Towne v. Eishei*[4]. Learned Hand, J., was equally emphatic when he said:—Statutes should be construed not as theorems of Euclid, but with some imagination of the purposes which lie behind them". *Lenigh Valley Coal Co.* v. *Yensavage*[5]."

38. Their Lordships further observed:—

"17. Section 30 (2) provides that amended provisions of section 23 (2) shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court between 30 April, 1982 and 24 September, 1984, or to an appellate order therefrom passed by the High Court or the Supreme Court. The purpose of these provisions seems to be that the awards made in that interregnum must get higher solatium inasmuch as to awards made subsequent to 24 September, 1984. Perhaps it was thought that awards made after the commencement of the Amending Act 68 of 1984 would be taken care of by the amended section 23 (2). The case like the present one seems to have escaped attention by innocent lack of due care in the drafting. The result would be an obvious anomaly as will be indicated presently. If there is obvious anomaly in the application of law the Court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature. That could be done, if necessary even by modification of the language used see: *Mahadeolal Kanodia* v. *The Administrator General of West Bengal*[1]. The Legislators do not always

3. AIR 1990 SC 981.

4. (1918) 245 US 418, 425.

5. 218 FR 547 at 553.

deal with specific controversies which the Courts decide. They incorporate general purpose behind the statutory words and it is for the Court to decide specific cases. If a given case is well within the general purpose of the legislature but not within the literal meaning of the statute, then the Court must strike the balance."

39. As noticed above, the Revenue Secretary, Government of Jharkhand, in the affidavit, as brought hereinabove, very categorically admitted that possession of the entire land was handed over to the then respondent-company. Para 11 of the affidavit is reproduced again which reads as under:—

> 11. That, the lands had been acquired decades ago and with the acquisitions of the land the entire lands had been handed over to the then Hindustan Steel Ltd. (HSL), now the SAIL (Bokaro Steel Plant) and accordingly Bokaro Steel Plant was established. The entire acquired lands since the time of such acquisitions are under the management and control of the SAIL (Bokaro Steel Plant) and the State Government has no role in any such management and control of such acquired lands. The SAIL (Bokaro Steel Plant) now cannot ask or insist the State Government to put it in possession of any particular piece of land including the so called 824.855 acres of land given in the BSP/SAIL affidavit in view of the fact that the lands have already been put under the possession of the SAIL (Bokaro Steel Plant) or are under their deemed possession and if there has been any encroachment/illegal occupation by any one, it had occurred while it was under the management and control of SAIL (Bokaro Steel Plant) and, as such, the State Government cannot give any undertaking that it would put the SAIL (Bokaro Steel Plant) in possession of any such land(s) which have been occupied by local person(s). However, the State Government shall provide help and assistance to the SAIL (Bokaro Steel Plant) in evicting them in due proceedings at the initiative of SAIL (Bokaro Steel Plant), but that would be only on the request of the SAIL (Bokaro Steel Plant).

40. Considering the fact that the entire land was acquired by the State Government under Part II of the Act for public purposes and at the public expenses for setting up iron and steel industry in the name of Bokaro Steel Plant and possession of the entire land was given to the respondent-company, I shall have no hesitation in holding that by legal fiction, the entire acquired land vested in respondent-company, namely Bokaro Steel Plant of Steel Authority of India Limited free from all encumbrances. I further hold that provisions contained in Part VII of the Act is not applicable in the present case, as a result of which the formality of execution of deed of conveyance by the State in favour of the respondent-company as contemplated under section 41 does not arise. The vesting of the land in the respondent-SAIL became effective and complete.

41. Having regard to the entire facts and circumstances of the case particularly the tact that the respondent Bokaro Steel Plant (SAIL) deposited Rs. 70 Crores and the entire land vested in the said company,, we dispose of these appeals with the following directions:—

---

1 (1950) 3 SCR 578=A1R 1960 SC 936.

(i) the enhanced compensation awarded by the Land Acquisition Judge against which 46 appeals are pending shall be paid to the claimants of these appeals together with interest and other benefits.

(ii) the Land Acquisition Officer before whom 10,312 cases under section 28-A are pending, is directed to take up all those cases and dispose of the same by passing reasoned order or preferably through the alternative forum like Lok Adalat. The amount so assessed/settled shall be paid to them out of the amount deposited by the respondent Company.

(iii) If any further amount is required for payment by way of compensation to the land losers whose lands have been acquired, the same shall be paid by the respondent-Steel Authority of India Limited.

(iv) As agreed by the respondent-SAIL the lands in occupation of the State of Jharkhand For the use of local authorities and different offices of the State Government shall continue to be occupied by the Government and shall not be asked to be handed over to the Bokaro Steel Plant (SAIL). Further whatever expansion of Government Offices is done in future at Bokaro (SAIL) shall provide land to the Government free of cost.

42. So far contempt notice issued against the Hon'ble Revenue Minister for his letter asking the respondent-SAIL to return surplus lands alleging that the Bokaro Steel Plant had agreed to produce 10 million tones steel, are producing only 4 million tones of steel, we seriously deprecate issuance of such kind of letter by the Minister. However, since the Hon'ble Minister in his show cause has stated that he had no intention to interfere with the Court proceeding and he had issued letter in question innocently and bona fidely, we do not want to proceed any further in the contempt matter.

43. As a result of the protracted litigation, the worst sufferers are the persons whose lands have been acquired without payment of any compensation to them. Equal sufferer is the industry for whose purpose the land was acquired, since despite the acquisition, the lands could not be utilized fully for expansion of the industry. It is ironical that despite the State being one of the richest States in the country with its rich resources of mines and minerals including iron ore, yet the State has not flourished in comparison to other States with lesser resources. One of the reasons for the lack of development in the State which can reasonably be inferred is the total apathy and lack of a positive and responsive attitude of the Government. It is high time that the persons who are at the helm of affairs in the Government should broaden their vision and take all positive steps to facilitate the growth of the industries including Iron and Steel Plants in the State.

44. With the aforesaid directions and observations, these appeals are disposed of.

Appeals Disposed of.

❑❑❑

[2008 (65) AIC 327 (KER, H.C.)]

(KERALA HIGH COURT)

KURIAN JOSEPH and HARUN-UL-RASHID, JJ.

Writ Petition (C) No. 36610 of 2007 (S)

January 29, 2008

Between

VINEED T.

and

MANJU S. NAIR

Civil Procedure Code, 1908—Section 89—Matrimonial disputes-Easy access to judicial fora encourages multiplicity of litigation—Courts should adopt a conciliatory approach—One case settled ami-cably prevents numerous other litigations between the parties. **[Para 1]**

Matrimonial Disputes—Special Marriage Act, 1954—Section 28—Family Courts Act, 1984—Section 9—Even where parties to a marriage do not wish to continue the bond of matrimony—A conciliatory approach adopted by the Court can bring about an end to matrimonial bond without a feeling of acrimony—And connected civil and criminal litigation can be brought to an end—Advocates have a great role to play in the conciliatory process—Dispute relating to custody of child settled while granting a *decree* of dissolution of marriage by mutual consent—Parties also agreed to withdraw criminal cases filed— Registry directed to communicate a copy of the judgment to the Family Court, Nedumangad as also to the Peroorkada and Medical College Police Stations, Thiruvananthapuram and to Judicial First Class Magistrate Court It, Thiruvananthapuram—Petition disposed* of as above. **(Paras 3 to 5)**

Counsel for the Petitioner: K.B. Pradeep.

Counsel for the Respondent: J. Jayakumar, Lisha M.G., Shajin S. Hameed and Sasthamangalam S. Ajithkumar.

JUDGMENT

KURIAN JOSEPH, J.—"My joy was boundless. I had learnt the true practice of law. I had learnt to fjnd out the better side of human nature and to enter men's hearts. I realized that the true function of a Lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my prac-tice as a Lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby—not even money, certainly not my soul." (M.K. Gandhi-An Autobiography or The story of My Experiments with Truth (page 133)).

Motivated and inspired, we have also realized that by settling one case in this Court, quite a few litigations between the parties and their families before various other Courts or forums can also be either closed or settled. The recent litigation trend in matrimonial disputes indicates that a matrimonial dispute between the parties could generate at least

half-a-dozen cases. Access to Justice shall not be a handle to multiplica-tion of litigations by taking recourse to all possible legal remedies before all available forums. Easy access to the remedies shall not be permitted to be used as a weapon for harassing the other party. The attempt and ef-fort should be to avoid a possible litigation. But unfortunately, the trend seems to be as to how to multiply the litigation between the parties. The case we are dealing with is a classic example for the same. Within one year, there were eleven litigations before various forums. Unless we had arrested that unhealthy competition, at this pace and by this time they would have been parties to at least another eleven cases. We have also re-alized that one case settled is ten cases avoided because in settlement, peace is purchased and both parties part as friends. Attempt for alternate redressal is hence not only the statutory obligation of the Court under section 89 of the Civil Procedure Code, but it is their duty to the public also; since being judicial officers they have the expertise in peacemak-ing. Once the parties to .litigations are objectively able to realize the strength and weakness of their cases, get a fairly realistic picture of the legal position, and when they also realize that what is morally wrong cannot be legally right, they would normally opt for settlement. In the process, as Mahatmaji said,....".....both sides are happy and they rise in the public estimation."

2. The petitioner married the respondent on 20.6.1995. It was a love marriage against the stiff opposition of the parents. A child was born to them on 14.5.1999. The parties continued their studies and sought em-ployment in different places. The initial infatuation, it appears, slowly faded and the relationship got strained, leading to OP 642/07 filed by the respondent before the Family Court, Nedumangad seeking permanent custody of the child Adithya. The respondent also filed OP 641/07 before the said Court for dissolution of marriage alleging matrimonial cruelty. She filed a criminal complaint before Judicial First Class Magistrate Court-II, Thiruvananthapuram under section 23 of the Protection of Women from Domestic Violence Act, as MC 26/07. Yet another com-plaint was filed before the police alleging offence under section 498-A of the Indian Penal Code. Thereafter, the petitioner filed OP 744/07 before the Family Court, Nedumangad for declaring him as permanent guardian and custodian of the child Aditya V. Nair born to the petitioner in the respondent. The respondent filed OP 799/07 before the Family Court, Nedumangad for recovery of gold ornaments, cash etc. She also filed OP 1071/07 before the Family Court, Nedumangad for permanent prohibitory injunction. In turn, the petitioner filed OP 1126/07 before the Family Court praying for recovery of money and articles. At the in-stance of both parties, the following complaints were registered by the police: (1) FIR 258/07 of Peroorkkada police station, (2) FIR 355/07 of Peroorkkada police station, (3) FIR 555/07 of Peroorkkada Police Station, (4) FIR 603/07 of Medical college police station and (5) FIR 553/07 of Peroorkkada police station. The mother of the petitioner filed a complaint before the Kerala Women's Commission. The mother of the respondent also filed a complaint before the same Commission.

3. It is in the above mentioned litigating mood of the parties, the pe-titioner approached this Court aggrieved by an order passed by the Family Court, Nedumangad. As per

the said order, the custody of the child was given to the petitioner/father for two hours on all Saturdays except second Saturdays. In the interim application, the prayer was for custody of the minor at least for 8 hours on Saturdays or Sundays. On go-ing through the pleadings, we felt that instead of treating the symptoms, we should catch at the root cause. We issued a direction to the parties to be present before this Court on 17.12.2007. On that day, we appointed Advocate. Smt. Prabha R. Menon as conciliator. After an initial round of talk with the conciliator and after elaborate discussions with the par-ties, we felt that the entire litigations between the parties are to be and can be put an end to. The case was again posted on 21.1.2008, 22.1.2008, 23.1.2008 and finally to this day. In the light of the discussions the Court and the conciliator had between the parties and thanks to the coopera-tion extended by the learned Counsel appearing on both sides, it is heart-ening to note that peace could be purchased not only between the parties to the marriage, but also between the families of both parties. True, they have agreed to disagree. But we could convince them that on disagree-ment also, the parties to the marriage can still be friends. For the only reason that the matrimonial bond is terminated and the marriage is dis-solved, the parties to the marriage need not be strangers and enemies; they can still continue to be friends, and they have to continue as good friends in this case for the additional reason that they have a child. The husband loses the wife and wife, the husband in a dissolution. But the child does not lose either father or mother. He has only one father and one mother, and he is entitled to have love, care and protection of both parents. The parents in such situation should educate the child that difference of opinion and the inevitable parting between the parties to the marriage shall not in any way affect the status of the child. The child should be taught and trained to acknowledge, respect and love both the father and mother.

4. We are happy to note that both parties have mutually agreed to settle the disputes with regard to the custody of the child also. After several rounds of discussions, we directed the parties to reduce the terms of compromise to writing and file a compromise petition; Accordingly, they have filed IA 1215/08 incorporating the terms of compromise. We have recorded the terms of compromise. In terms of the compromise. OP Nos. 641/07, 642/07, 799/07, 1071/07, 744/07 and 1126/07 are struck off from the files of the Family Court. Nedumangad. FIR Nos. 258/07, 355/07, 555/07 and 553/07 of Peroorkkada police station are also quashed. Since peace has been purchased between the parties, we are of the view that for securing the ends and in the interests of justice, the pro-ceedings in FIR 603/07 of Medical College Police Station, Thiruvananthapuram and the proceedings in MC No. 26/07 before the JFCM Court-II, Thiruvananthapuram are to be quashed. Ordered accordingly.

As part of the settlement, the parties have filed a petition under sec-tion 28 of the Special Marriage Act, 1954. We are convinced that the said interlocutory application satisfies all the ingredients of section 28 of the Special Marriage Act, 1954. In the background of the long pending dis-putes between the parties we are of the considered opinion that a further lie over period is not necessary or required in this case. Therefore, we al-low IA 1216/08 and the marriage between the petitioner and the respon-dent is dissolved by a

decree of divorce on mutual consent. IA Nos. 1215 and 1216 of 2008 will form part of this judgment. Registry is directed to communicate a copy of this judgment to the Family Court. Nedumangad and also to the Peroorkada and Medical College Police Stations, Thiruvananthapuram and JFCM-II, Thiruvananthapuram.

5. Before we part, we would like to mention that. Advocates have a great role and a vital role too in the process of settlement of the cases. But for the sincere cooperation of the Advocates on both sides, we could not have succeeded in settling these cases. To a great extent, it is for them to convince their parties that it is in their better interest to go for a settle-ment and give a quietus to the litigations. In the process they are in fact conciliators and mediators. By settling a case they do not lose anything. They gain the goodwill and appreciation also of the opposite side, since both sides go with the satisfaction that they have not lost but won their case. We also record our appreciation for the earnest efforts taken JBy Smt. Prabha R: Meon as conciliator in this case.

Petition Disposed Of.

❑❑❑

AIR 2008 PATNA 13

RAMESH KUMAR DATTA, J.

Baleshwar Singh v. Smt. Shanti Kumari.

C. R.. No. 918 of 2004, D/- 11-7-2007.

Civil P. C. (5 of 1008), O. 10, Rr. 1, 2(2) — Ascertainment whether allegations In pleadings are admitted or denied—Power under O. 10, Rr. 1, 2 cannot be exercised after framing of issues — Correct procedure after issues are framed for Court is move on to provisions of O. 18 and proceed with recording of evidence in the case.

Order 10 is essentially to be utilised for the purpose of obtaining clarity regarding the material questions of facts in controversy in suit, so that the various issues of fact and law may be correctly framed by Court. Once issues are framed then barring exceptional circumstances, it is not expected of Court to again, after framing of issues, go back to exercise the power conferred u/O. 10, R. 2, although same is not totally prohibited by Code. The correct procedure after issues are framed is for Court to move on to provisions of O. 18 and proceed with recording of evidence in the case.

The trial Court if it intended to proceed in matter even after framing of issues to go back to provisions of O. 10, R. 2 then it was expected of it to have recorded its reasons as to what impelled it to go back even after the issues have been framed. No such reasons were found either in impugned order, which; was a cryptic order without assigning any reason or even in order passed upon review in which Court had merely considered fact that it has .power to orally examine even after issues were framed and has not given reasons as to what impelled it to go back upon provisions of O. 10 when issues have already been framed by it. Said orders being totally non-speaking orders and contrary to scheme of Code, are no orders in the eye of law and therefore liable to be set aside.

AIR 1962 All 447, AIR 2001 Delhi 363, Rel. on. (Paras 21, 22, 23)

Cases Referred: Chronological Paras

AIR 2003 SC 2434	17
AIR 2001 Del 363 (Rel. on)	13
1989 PLJR 426 (Pat)	16
AIR 1968 All 259	15
AIR 1962 All 447 (Rel. on)	11
AIR 1931 PC 175	11,12,15,19

Shashi Shekhar Dwivedi, Sr. Counsel Ravi Shankar Dwivedi, for Petitioner; V. Nath, Ashok Kumar for Opp. Party.

ORDER :— Both the civil revision applications relates to the same issues and they have, accordingly, been heard together and are now being disposed of by this common order.

2. Civil Revision No. 918 of 2004 has been filed against the order dated 4-12-2003 passed by the Subordinate Judge-IV, Begusarai in T.S. No. 85 of 2001, by which the application of the opposite party under Order 10. Rules 1A. 2, 3 and 4 of the Code of Civil Procedure has been allowed.

3. Civil Revision No. 908 of 2004 has been filed against the order dated 16-4-2004 passed by the Subordinate Judge-IV, Begusarai in the said Title Suit No. 85 of 2001, by which he has rejected the application of the defendant-petitioner under Order 47, Rule 1 under Section 161 of the Code of Civil Procedure for review and recall of the order dated 4-12-2003.

4. The facts relevant to the determination of the controversy involved herein are that the plaintiff opposite party filed Title Suit No. 85 of 2001 for specific performance of contract directing the defendant to execute a sale deed in terms of Mahadanama (Agreement for sale) dated 29-11-1999 with regard to schedule-1 land of the plaint after receiving balance consideration amount of Rs..35,000/-. The case of the plaintiff-opposite party was that the defendant-petitioner, being in need of money, had after negotiation, agreed to a price of Rs, 96,000/-for sale of the land in question, out of which an amount of Rs. 61,000/- was paid by the plaintiff on 29-11-1999 and the Mahadanama was executed in her favour. Further the parties agreed that the remaining amount of Rs. 35,000/- will be paid at the time of execution of sale deed latest by 31-7-2000, which was subsequently ex-, tended to 31-3-2001 after legal notice was sent by the plaintiff. However, when the plaintiff failed to execute the sale deed, the suit was filed.

5. The defendant-petitioner after appearing in the suit filed his written statement in which he denied that the Mahadanama was ever executed by him or he has to sell the land or he had negotiated to sell the disputed land for the said sum of Rs. 96,000/-or for any amount and further took the plea that on account of constant harassment by his daughter-in-law and in order to get rid of her and only to create a document without receiving any amount, he had signed a series of blank papers and taking undue advantage of which, the opposite party manufactured the Mahadanama and filed the false case.

6. Thereafter, the issues proposed by the parties were considered and the same were also framed. The plaintiff was required to lead her evidence first. At that stage an application was filed on 30-6-2003 by the opposite party under Order 10, Rules 1A.

2, 3 and 4 of the Code of Civil Procedure to ascertain from the petitioner whether he admits or denies the allegations made in the plaint as well as in the said petition and the proceedings of the Rules under Order 10-B adopted and the defendant be orally examined under Order 10, Rule 2 of the Code. The defendant-petitioner filed the rejoinder petition stating that in the written statement, the defendant has clearly and categorically denied the facts mentioned in the plaint and the allegations made regarding Mahadanama, and there was no ambiguity or vagueness in making the denial and further controverted each and every allegation made in the petition and, thus, nothing remains to be ascertained by the Court at-this stage of the suit making preposterous conclusion without full-fledged hearing of the suit.

7. By the impugned order dated 4-12-2003, the Court below without assigning any reason directed the defendant-petitioner to be personally present in Court so that he may be questioned by the Court under the provisions of Order 10. Thereafter the petitioner filed the petition for review on 11-2-2004 under Section 47, Rule 1 and under Section 151 of the Code for reviewing the said order, which was also rejected by the impugned order dated 16-4-2004.

8. Learned counsel for the petitioner submits that the provisions of Order 10, Rules 1 and 2 could not have been invoked in the manner and at the stage as they have been done in the present matter, after the issues had already been framed and the matter was pending for leading of evidence by the plaintiff. It is submitted that the trial must proceed in a forward manner and it is not expected of the trial Court to go back once the issues are framed under Order 14 of the Code of Civil Procedure. After that stage, the Court must proceed under Order 18 for hearing of the suit and examination of the witnesses. The Court at that stage cannot be permitted to go back to ascertain whether allegations in the pleadings are admitted or denied under Rule 1, Order 10, which is done at the first hearing of the suit and evidently before the issues are framed; it can act under Rule 2 where the Court may orally examine at the first hearing of the suit such of the parties to the suit appearing in person or present in Court, as it deems fit; and may orally examine any person, able to answer any material question relating to the suit, by whom any such party or Pleader is accompanied. It is further submitted that Order 10, Rule 2(2) permits the Court to orally examine any party appearing in person or present in court or any person able to answer any material question, who is accompanying such party, and not subsequent thereto for the same. The said power is meant to be exercised only before the issues are framed and not subsequently. Once the issues are framed then the matter can only be decided on the basis of the evidence led by the parties and not by oral examination of the parties.

9. Learned counsel further submits that it is evident from the written statement filed by the petitioner that the entire allegations made in the plaint have been denied specifically and nothing remains in the said written statement which requires elucidation. Moreover th$_e$ Court Itself had no confusion in the. matter either in the first hearing or subsequently before the issues were framed regarding the matters in dispute between the parties. The power even under Order 10, Rule 2 can only be exercised before framing of the issues, and after the issues have been framed, there was no further question ,of going back to this provision of the Code.

10. Learned counsel further submits that the orders in question are no orders at all as the first order is totally non speaking merely directing the defendant-petitioner to be personally present in Court for answering the question whereas the second order is in greater detail, but it does not give any reason as to why examination and the oral ' examination of the defendant was required at such a belated stage.

11. In support of the aforesaid contentions, learned counsel for the petitioner relies upon a decision of the Allahabad High Court in the case of Mt. Mango v. Prem Chand, AIR 1962 Allahabad 447 in Paragraph No. 11 of which it has been held as follows :

"11. Learned counsel for the respondent relied upon the authority of Manmohan Das v. Mt. Ramdei, AIR 1931 PC 175 and contended that the statement under O. 10, R. 2 C.P.C. is intended only for the purpose of clarification of plcadings relating to the suit and should not be allowed to supersede the evidence".

12. Learned counsel further relies upon the aforesaid Privy Council decision in the case of Manmohan Das and others v. Mt. Ramdeo and another, AIR 1931 Privy Council 175, wherein it has been held as follows:

"Before considering the case on the merits their Lordships desire to draw attention to the procedure which has been adopted in the taking of the evidence. At the trial before the Subordinate Judge the evidence first recorded is that of the defendant. Behari Lal, who is described as a "Court-witness" and appears to have been called into the witness-box by the Judge himself. The record before their Lordships discloses no justification for this unusual proceeding. No doubt under O. 10, R. 2, any party present in Court may be examined orally by the Court at any stage of the hearing and the Court may if it thinks fit put in the course of such examination questions suggested by either party. But this power is intended to be used by the Judge only when he finds it necessary to obtain from such party information on any material questions relating to the suit and ought not to be employed so as to supersede the ordinary procedure at trial as prescribed in O. 18.

13. Learned counsel also relies upon a decision of the Delhi High Court in case of Pritpal

Singh Kohli v. Smt. Surjit Kaur and another, AIR 2001 Delhi 363, in Paragraph No. 7 of which it has been held as follows :

"7. The issues were framed. Till that stage, the plaintiff did not insist on recording of the statement by the defendant No. 1 on this question. After the issues are framed and even the evidence of the plaintiff has started, Provisions of Order 18 CPC would come into play. At this stage, it will not be appropriate to direct the defendant No. 1 to give her statement as demanded by the plaintiff in this application. The object of the examination under Order 10, Rule 2, CPC is to ascertain the matters in dispute and not to take evidence or ascertain what is to be the evidence in the case. Thus examination under this rule is not intended to be a substitute for a regular examination on oath."

14. Learned counsel for the opposite party, on the other hand, supports the impugned order. It is submitted that the Court has power under Order 10, Rule 2 (2) of the Code, at any stage of the case, to orally examine any party and, thus, the same can be done even after framing the issues and the discretion of the Court in this regard was rightly exercised and ought not to be interfered with. It is submitted that in the written statement, the petitioner has denied having received legal notice and execution of Mahadanama, but accepts that he has obtained permission of the Court to sell the land in question and, therefore, there is vagueness in the statement of the defendant which the Court has rightly asked him to reply.

15. In support of the aforesaid proposition, learned counsel for the opposite party relies upon a decision of the Allahabad High Court in the case of Balmiki Singh v. Mathura Prasad and others, AIR 1968 Allahabad 259, in paragraph No. 10 of which the Court has considered the applicability of Order 10, Rule 2 in the following words :

"Evidently, it does not relate merely to the allegations in the pleadings. It provides for oral examination of the party or companion of the party able to answer any material questions relating to the suit. There is no limitation in this rule that the questions must be limited to the allegations specifically made in the pleadings. Even the phrase "any material questions" has only been used in connection with the ability of the companion of the party to answer it and the rule says that the party or such a companion may be examined orally by the Court. I agree with the learned counsel for the respondents that this examination cannot take the place of evidence. As held by their Lordships of the judicial Committee in AIR 1931 PC 175 (supra) the Court would go wrong if under this provision it chose to examine any person as a witness. These provisions are not meant to take the place of Order XVIII. At the same time it would be incorrect to say that the oral examination by the Court would be limited to the admission or denial of the specific allegations in the pleadings. Nor does the

decision of their Lordships of the Privy Council lay down any such proposition".

16. Learned counsel also submits that against the impugned order the Civil Revision is not maintainable, since the order cannot be considered as a case decided, as no right of the party has been decided by the impugned order. In support of the same. Learned counsel relies upon a decision of this Court in the case of Kamla Prasad Roy and others v. Binod Kumar Roy, 1989 PLJR 426, in paragraph No. 13 of which the said proposition has been considered.

17. Further, he relies upon a decision of the Supreme Court In the case of Shiv Shakti Co-op. Housing Society v. M/s. Swaraj Developers and others, AIR 2003 SC 2343 for the said proposition.

18. On a consideration of the rival submissions and the various cases cited by the parties, it is evident that the Court below has not acted in the mariner as provided in Order 10 of the C.P.C. So far as the application of Rule 1 of Order 10 of the Code is concerned, the same is clearly confined to elucidating from each party or his Pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement of the other side and as are not expressly or by necessary implication admitted or denied by the parties against .whom they are made. Thus, it is evident that under Order 10, Rule 1, the Court is only required to record the admission and denial of the parties with respect to such allegations of fact whether in the plaint or the written statement of the other side, which have not been specifically admitted or denied by the parties concerned.

19. So far as the application of Rule 2 is concerned, sub-rule (1) thereof evidently relates to the first hearing of the suit in which the Court may orally examine the party to the suit appearing in person or present in Court or any person accompanying the party or his Pleader for the purpose" of elucidating the matter in controversy. Sub-rule (2) of Rule 2 may, of course, be utilised by the Court to orally examine any party appearing in person or present in Court or any person accompanying him or his Pleader who is available to answer material question relating to the suit. Thus sub-rule (2) also does not confer any jurisdiction upon the Court to direct a party to appear in order to answer the question. It is evident from the scheme of Order 10, as also held by the Privy Council, AIR 1931 PC 175 and subsequent decisions cited above that the same is not meant to take the place of evidence of the parties on oath before the Court and are merely meant for elucidating the matter in controversy and to clarify the view that may exist in the mind of the Court. Under Rule 2 the Court has been given the discretion to orally examine any party appearing in person or present in Court or any person able to answer any material question relating to the suit by whom such party or his Pleader is accompanied.

20. It does not appear that the Court below took any action to examine any party, who had. appeared in Court or any person able to answer material questions or even the Pleader of the party in question in order to elucidate the matter in controversy. The power of the Court to call a party to appear and answer material question only arises where the Pleader of any party, who appears, or any such person accompanying a Pleader as referred to in Rule 2, refuses or is unable to answer any material question relating to the suit and the Court is of the opinion that the party, whom the represents, ought to answer the material question. Only under such circumstances, the Court may exercise its power to direct the party to appear in person and answer -the question of the Court as provided by Rule 4 of Order 10. It is evident from the facts of the present matter that straightway on the application made by the plaintiff, the Court has directed the defendant-petitioner to personally appear and answer questions without complying with the ^ provisions of Rule 4 of the Code, which could have been done by the Court below. In the said circumstances, it has to be held that the Court below has not complied with the precondition for the exercise of power under Rule 4.

21. Moreover, it is evident from the Scheme of Orders 10, 14 arid 18 pf the Code that normally the power under Order 10 is i expected to be exercised before framing of the issues under Order 14. The said position is evident from sub-Rule (5) of Rule 1 of Order 14, which provides that at the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 of Order 10 and after hearing the parties or their Pleaders, ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. It is, thus, evident from the Scheme of the Code that Order 10 is essentially to be utilised for the purpose of obtaining clarity regarding the material questions of facts in controversy in the suit, so that the various issues of fact and law may be correctly framed by the Court. Once the issues are framed then barring exceptional circumstances, it is not expected of the Court to again, after framing of the issues, go back to exercise the power conferred under Order 10, Rule 2, although the same is not totally prohibited by the Code. As held by the Privy Council and the decisions relied upon by the petitioner as well as by the opposite party, the correct procedure after the issues are framed is for the Court to move on to the provisions of Order 18 and proceed with the recording of evidence in the case.

22. The Court below if it intended to proceed in the matter even after framing of issues to go back to the provisions of Order 10, Rule 2 then it was expected of it to have recorded its reasons as to what impelled it to go back even after the issues have

been framed. No such reasons are found either in the impugned order dated 4-12-2003, which is a cryptic order without assigning any reason or even in the order dated 16-4-2004 passed upon review in which the Court has -merely considered the fact that it has the power to orally examine even after issues are framed and has not given reasons as to what impelled it to go back upon the provisions of Rule 10 when issues have already been framed by it.

23. In the aforesaid facts and circumstances and the position of law as considered above, this Court is of the view that impugned orders dated 4-12-2003 and 16-4-2004 being totally non-speaking order and contrary to the scheme of the Code, are no orders in the eye of law. Both the said orders are, accordingly, set aside and the revision applications are allowed.

Revision allowed.

❑❑❑

Civil Revision No. 339 of 2005

(S.N. Hussain, J.)

(22.9.2005)

Sri Rajan Kumar Verma & Anr ....Petitioners

vs.

Sri Sachchidanand Singh ...Opp. Party

For the Petitioners : M/s Yogendra Mishra, Uma Kant Tiwary.

For the Opp. Party : M/s R.B. Mahto. O.K. Sinha, Deoeshwar Pd. Singh.

Arbitration and Conciliation Act, 1996—Sections 5 and 8 and Sections 3 and 8 of Arbitration Act, 1940—differences—in the old Act, powers of court to appoint Arbitrator was limited to a few instances only, but in the new Act, power of judicial authority has been widened empowering the courts to refer the parties to Arbitration, in all circumstances, with the only rider that an arbitration clause is included in the agreement—as per earlier enactment (Act, 1940) even when there was no provision for reference to arbitration in any agreement, it shall be deemed to include the said provision, but in the new Act judicial intervention is barred except where provision for reference to Arbitration is expressly provided in the agreement. **(Paras 11 and 12)**

AIR 2003 SC 2881; AIR 1973 SC 76—**Referred to.**

Arbitration and Conciliation Act, 1996—Section 85(2)(a)—when an Act is repealed, it must be considered as if it had never existed and every one is estopped from taking any step in accordance thereof and no relief can legally be granted on its basis—repeal is a matter of substance and not of form—when earlier Act of 1940 has been repealed with a particular intention not finding the earlier enactment to be sufficient for the purpose of law, Section 85(2)(a) of the new Act would not keep the old Act alive for the enforcement of the agreement executed much after repeal of the old Act and enforcement of the new Act of 1996— parties cannot take help of exception provided in Section 85(2)(a) of new Act. **(Paras 13 and 14)**

(1999)9 SCC **334—Relied upon.**

Code of Civil Procedure, 1908—Section 89—appointment of an arbitrator— prayer for—dispute as to breach of agreement—cannot be decided at this stage and can only, be decided after considering the evidence on record as well as the final arguments between the parties. **(Para 18)**

Practice and. Procedure Filing of suit or proceeding against breach of agreement—limitation—any suit or proceeding can only be filed after expiry of the period fixed in the agreement for completing a certain work, and if filed before, it would clearly be premature. **(Para 19)**

Order

Heard learned counsel for the parties. The. petitioners are defendants of Title Suit No. 2(18 of 2003, which was filed by the plaintiff-opposite party for declaration that the plaintiff was entitled to realise Rs. 50,000/- per month from the defendants-petitioners as compensation since 11.3.2003 according to the terms of agreement dated 10.3.2000 and

29.5.2001 executed by defendant no. 1 and for directing them to go on paying the compensation at the said rate each month to the plaintiff till handing over possession of the plaintiff's portion of the apartment constructed by the defendants.

2. The defendants-petitioners are aggrieved by order dated 17.12.2004 passed in the aforesaid suit, by which learned Subordinate Judge-VIII, Patna rejected their petition filed under Section 5 read with Section 8 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996' for the sake of brevity) for referring the suit to the Arbitrator for final adjudication.

3. Learned counsel for the defendants-petitioners has submitted that the plaintiff-opposite party is the land owner, whereas the defendants-petitioners are the Developers and they entered into a Development Agreement on 10.3.2000 with respect to the land of the plaintiff. He has further stated that the said agreement was modified by another agreement dated 29.5.2001, which was to be part of the earlier agreement, for extension of the time of 2 and 1/2 years agreed in the previous agreement by further six months and if by that time the land owner's constructed portion is not handed over to him, then the Developer will have to pay Rs. 50.000/- per month to the land owner until such possession is given to him. The arbitration clause was included in paragraph-33 of the original agreement and it was stated that in case of any doubt or dispute between the land owner and the Developer, they would solve the said problem by appointment of an Arbitrator under the provisions of Arbitration Act, 1940 (hereinafter referred to as 'the Act of 1940' for the sake of brevity). Hence he averred that if there was any dispute or dissatisfaction the land owner should have referred the matter to an Arbitrator and there was no occasion for him to file the instant suit.

4. Learned counsel for the petitioners further submitted that even .according to the case of the plaintiff-opposite party the construction works were to be completed within three years from the first agreement i.e. by 10.3.2003 and the construction was completed within the said prescribed time but due to the further demand of the land owner for additional facilities in his portion worth more than rupees one lac, possession was not taken by him. Hence he stated that there is no delay on the part of the Developer and he is not liable to pay any compensation as mentioned above. He also submitted that the Apex Court in the case of **Hindustan Petroleum Corpn. Ltd. vs. M/s Pinkcity Midway Petroleums** reported in AIR 2003 Supreme Court 2881 has specifically held that in such cases civil court had no jurisdiction and the matter should have been referred to the Arbitrator. Hence he submitted that the suit in question was not maintainable and all the questions raised were to be decided in Arbitration.

5. The claim of the defendants-petitioners is also that the learned court below passed the impugned order on the frivolous assumption that since the agreement was executed on 10.3.2000 and even if the period added by modification is counted it was valid till 10.3.2003 i.e. within three years, hence its clauses were not effective after that date and were not binding upon the parties and that since the dispute arose after expiry of the said fixed period, there was no occasion for Arbitration and the civil court had jurisdiction to decide such matters. In this connection learned counsel for the petitioners referred to Sections 5 and 8 of the Act of 1996 in which it

is provided that in matters governed by that Part, no judicial authority shall intervene except where so provided in that Part of the Act and that a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

6. Learned counsel for the petitioners also averred that the petitioners appeared and filed their written statement alongwith petition for referring the matter to the Arbitrator under the aforesaid provision of Section 8 of the Act of 1996, which was rejected by the impugned order, although there is no finding that there is no arbitration clause and hence if there is such a clause, then the matter has to be referred to the Arbitrator, as no such limitation of time was prescribed in the agreement in question. He further submitted that the assumption of the learned court below on which it passed the impugned order is absolutely frivolous as it was only after the expiry of the period fixed in the agreement that any of the party could raise the question with regard to non-compliance of any term of the agreement within the time prescribed and before the expiry of the said period neither any cause of action arose, nor any party could have any reason to go for Arbitration as it would have been pre-mature.

7. Learned counsel for the petitioners also averred that Section 85 of the Act of 1996 specifically provided that the provisions of the Act of 1940 shall apply in relation to arbitral proceeding which commenced before the Act of 1996 came into force unless otherwise agreed by the parties, but the Act of 1996 shall apply in relation to arbitral proceeding which commenced on or after this act came into force. Hence he stated that the arbitration clause in the agreement in question for preferring the dispute for arbitration under the Act of 1940 was valid and proper as there is not much difference in the two Acts with respect to arbitration and the intention of the parties was clear to refer the matter to the Arbitrator in case of any doubt or dispute. He further submitted that Sections 32 to 36 of the Act of 1940 specifically provided bar to suits contesting arbitration agreement and the power to stay such illegal proceedings and the effect of illegal proceedings of arbitration. Hence, according to, him, there is no escape from the clause for arbitration as both the parties agreeing to it had signed the .agreement and the provision of bar to any such suit is present in both the Acts of 1940 and 1996, hence such matters cannot be decided in a civil suit. In this connection he relied upon a decision of the Hon'ble Apex Court in the case of **Thyssen Stahlunion GMBH vs. Steel Authority of India Ltd.**, reported in (1999)9 Supreme Court Cases 334. He thus submitted that in these circumstances, the impugned order of the learned court below is illegal, arbitrary and perverse and is fit to be set aside.

8. On the other hand, learned counsel for the plaintiff-opposite party has submitted that the Act of 1940 was repealed by Section 85 of the Act of 1996 and according to the said section the Act of 1940 can be made applicable only to those proceedings, which were pending from before the said repeal and that too when .both the parties agreed to it, but in the instant case admittedly the agreement in question was executed in the year 2000 i.e. much after coming into force of the Act of 1996. He further submitted that clause-33 of the said agreement specifically provided for Arbitration under the provision of Arbitration Act 1940, which having been repealed

much earlier in 1996 itself there existed no legal, valid or effective clause of arbitration in the agreement in question.

9. Learned counsel for the opposite party further stated that when the Act of 1940 was repealed nothing of it remains and becomes non-existent and the words "unless otherwise agreed by the parties" used in Section 85 of the Act of 1996 was with respect to applicability of the Act of 1996 to the proceeding pending from before and not with respect to the applicability of the Act of 1940 to a proceeding on the basis of agreement entered into much after the Act of 1996 came into force. In the said circumstances, he again averred that the Act of 1940 having been repealed, no arbitration can be done on its basis and hence the arbitration clause-33 of the agreement was clearly inoperative, ineffective and non-existent and the civil court cannot legally create a new agreement for Arbitration as per the new Act of 1996 and hence in substance the impugned order of the learned court below is correct and suffers from no jurisdictional error. He, thus, submitted that in such circumstances, there is no occasion for this Court to interfere in the impugned order as has been held by the Hon'ble Apex Court in the case of **The Managing Director(MIG) Hindustan Aeronautics Ltd., Balanagar, Hyderabad and Anr. vs. Ajit Prasad Tarway** reported in AIR 1973 Supreme Court 76.

10. Considered the arguments raised by the parties, the materials on record as well as the provisions of law including the case laws. The Arbitration Act, 1940 came into force on the 1st day of July, 1940 and it continued to be effective till the Arbitration and Conciliation Act, 1996 came into force on 22.8.1996 *vide* G.S.R. 375(E). The enactment of this Act of 1996 was felt expedient by the lawmakers to make a comprehensive law respecting arbitration and conciliation taking into account the Model Law and Rules on Commercial Arbitration by the United Nations Commission on International Trade Law (UNCITRAL) in the year 1985, for the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in commercial relations.

11. It is also apparent that due to subsequent developments at national and international levels it was found expedient to bring into existence a new enactment substantially different from the earlier Act of 1940, specially with regard to the matters of arbitration and conciliation. Section 3 of the Act of 1940 provided that an arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions of reference to arbitration, whereas Section 8 of the said old Act of 1940 provided that in cases where an agreement provided reference to arbitration by the consent of the parties, but they could not concur in the appointment of any Arbitrator and where an appointed Arbitrator neglects or refuses or becomes incapable or dies, the Court had the powers to appoint an Arbitrator only in such circumstances. But in the new act, namely, Arbitration and Conciliation Act, 1996 the extent of judicial intervention was very clearly defined in Section 5 which provided that notwithstanding anything contained in any other law for the time being in force, in matters governing arbitration, no judicial authority shall intervene except where so provided. Furthermore, by Section 8 of the new Act of 1996 it was also... provided that a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to

arbitration.

12. From reading of the aforesaid provisions of law and also from comparing the provisions of the new Act of 1996 with provisions of the old Act of 1940, it is quite apparent that as per the earlier enactment even when there was no provision for reference to arbitration in any agreement, it shall be deemed to include the said provision, if no different intention is expressed in that agreement, but in the new Act the judicial authority has been barred from intervening in such matters except where the provision for reference to Arbitration is expressly provided in the agreement. Furthermore, in the earlier enactment of 1940 the power of court to appoint Arbitrator was limited to a few instances only, but in the new Act of 1996 (he power of judicial authority was widened and the courts were empowered to refer the parties to Arbilration, in all circumstances,, with the only rider that an arbitration clause is included in the agreement.

13. By Section 85 of the Act of 1996, the earlier Act of 1940 was repealed and the only exception is provided in subsection (2) of the said section where a proceeding which had commenced when the Act of 1940 was in force and continued even after coming into force of the new Act of 1996 and all the parties thereto agree that the old Act of 1940 shall apply to the said proceeding. But here in the instant case admittedly the agreement was of the year 2000, whereas the suit was filed in the year 2003 when the Act of 1940 had already been repealed by the new Act in 1996. Hence, any of the parties cannot take help of the exception provided in subsection (2) of Section 85 of the Act of 1996.

14. When an act is repealed, it must be considered as if it had never existed and every one is stopped from taking any step in accordance thereof and no relief can legally be granted on its basis. It may also be noted that repeal is a matter of substance and not of form. Here also it is quite apparent that earlier Act of 1940 has been repealed by the legislature with a particular intention not finding the earlier enactment of 1940 to be sufficient for the purposes of law. Hence, as per the provisions of the new Act of 1996 it is not possible to agree to the submissions of the petitioner that Section 85(2)(a) of the new Act of 1996 would keep the old Act of 1940 alive for the enforcement of the agreement executed much after repeal of the old Act in 1996 and enforcement of the new Act of 1996.

15. The Hon'ble Supreme Court has Vjjefd in its decision in the case of **Thyssen Stahlunion GMBH** *(supra)* reported in (1999)9 Supreme Court Cases 334 that new Act of 1996. .would be applicable in relation to all arbitral proceeding commenced on or after the said new act came into force and expression "unless otherwise agreed" used in Section 85(2)(a) of the Act of 1996 cannot legally be applicable to any agreement or proceeding after the commencement of the Act, otherwise it is likely to create a great deal of confusion with regard to making reference for Arbitration.

16. It is not in dispute that the development agreement between the parties was dated 10.3.2000 which was modified by another agreement dated 29.5.2001, which was to form part of the earlier agreement and in paragraph-33 of the agreement it was provided that in case of any doubt or dispute between the Developer and the land owner with respect to the agreement, the dispute/doubt would be removed by appointment of Arbitrator by both the parties under the provision of Arbitration

Act, 1940 and if the parties do not agree to one Arbitrator, then both the parties appoint their own Arbitrators and the award of the said two Arbitrators would be binding upon the said parties.

17. It is, thus, apparent that the said clause of the agreement provided arbitration under the provisions of the old Act of 1940 but it is also quite apparent that the said Act of 1940, having already been repealed in 1996 itself, has to be considered as if it had never existed and no proceeding or arbitration can commence or continue on its basis in a proceeding initiated much after 1996. Hence the provisions of the Act of 1940 not being enforceable, the said arbitration clause 33 in the agreement cannot legally be deemed to be enforceable. Furthermore, the civil court cannot legally assume that the said clause in the agreement was for reference to Arbitrator under the provision of the new Act of 1996 as it had no jurisdiction to create a new agreement for arbitration as the parties had never agreed for any reference under the provisions of the new Act of 1996, which are quite different from the provisions of the old Act of 1940.

18. Hence, in the aforesaid circumstances, arbitration clause 33 in the agreement between the parties is clearly ineffective as per the specific provisions of law and the learned court below was quite justified in refusing to send the matter to the Arbitrator for arbitration. So far the dispute between the parties as to who was responsible for the delay in handing over possession of his portion to the land owner is concerned, it. cannot be decided at this stage and it can only be decided after considering the evidence record as well as the final arguments between the parties.

19. So far the assumption of the learned court below in its impugned order with respect to the delay in filing of the suit after expiry of the period fixed in the agreement is concerned, it is made clear that neither any limitation of time is provided in law, nor has been prescribed in the agreement in question. Furthermore, the cause of action could only arise when the date fixed in the agreement for doing a work had expired and the concerned party to the agreement had not complied with the specific term of the agreement. Hence, any suit or proceeding can only be filed after, expiry of the period fixed in the agreement for completing a certain work, otherwise any suit or proceeding if filed before it would clearly be premature.

20. In the said facts and circumstance, it is held that there was no occasion for the learned court below to refer the matter to the Arbitrator and the learned court below was quite justified in rejecting the petition filed by the defendants-petitioners for the said purpose under the provision of Section 5 read with Section 8 of the Act of 1996. However, the questions as to whether the suit was barred by the law of limitation or any other law and also as to who was responsible for the delay caused in handing over the possession to the land owner of his portion of the premises as per the agreement, has to be considered and decided at the time of final decision of the suit.

21. Accordingly, this civil revision is dismissed with the aforesaid directions/ observations.

❑❑❑

AIR 2007 (NOC) 233 (KER.)

R. BASANT J.

M/s. Afcons Infrastructure Ltd. & Anr. v. M/s Cherian Varkey Construction Co. (P) Ltd., Kochi & Ors.

C.R.P. No. 1219 of 2005, D/- 11-10-2006.

(A) Civil P. C. (5 of 1908). S. 89 (as inserted w.e.f. 1-7-2002) — Settlement of dispute out side Court—Alternative dispute resolution method (ADRS) — Arbitration is also settlement.

The language of S. 89 unmistakably conveys that the Legislature has reckoned arbitration also as one of the four methods of ADRs available to the Courts. The language of S. 89 must also disabuse any confusion whether as to it is a method of settlement. Taking note of the language on S. 89, can be taken note of which conveys that all the four methods are alternative dispute resolution methods contemplated by S. 89 and they are methods of settlement also.

(B) Civil P. C. (5 of 1908), Ss. 89, 9 — Constitution of India, Art. 21 — Settlement outside Court — Arbitration is not beyond ken of Court — Court can compulsorlly refer parties to arbitration even without their consent and against their volition — Private Judge concept is giving way to concept of Arbitrator as competent personal resolver of disputes — Merely because resort to the procedures for dispute resolution under 8. 9, CPC is not available, law cannot be held to be not fair, Just and reasonable, nor fanciful, whimsical or arbitrary.

Depending on the nature of the case, its facts, the contentions and the possible resolution, it is open to the Court to come to the conclusion that even If the parties do not agree, they can be referred to "one or the other modes of the said modes" of dispute resolution, one of the modes undoubtedly is arbitration. What applies to the goose must apply to the gander also, contends the counsel. If S. 89 can be read to conclude that compulsory reference for mediation, conciliation and judicial settlement is possible without the consent of the parties, nothing can stand In the way of the Court adopting an interpretation that arbitration is not beyond the ken to S. 89. ——

Arbitration is not any more the mere choice of a private Judge or surrender to the wisdom and good intentions of the chosen benevolent patriarch. How an Arbitrator can be chosen even when parties disagree, what procedure he has to follow, his obligation to remain non biased, his obligation to give reasons, his liability to be changed even pending arbitration, the avenues of challenge of his decisions are all prescribed by law. The winds of change and transformation in the concept of Arbitration cannot be ignored. It is no more the mere choice of a mere private Judge. It is the answer to the perceived need for an Alternative Dispute Resolution Mechanism, accepted and encouraged by the State which will ensure professional, competent, legal and lawful resolution of disputes between parties.

Further no person under S. 9 of the Code has any invariable right to resolution of dispute by adjudication by regular Courts. Instances are legion where in modern legislations compulsory reference of certain disputes to specified authorities other than regular Courts is Insisted. It is not the law that the law cannot stipulate alternative procedures for dispute resolution taking them out of the main stream of adjudication by regular Civil Courts. Merely because resort to the procedure for dispute resolution under S. 9, C.P.C., is not available, the law cannot be held to be not fair, just and reasonable, nor fanciful, whimsical or arbitrary. Consequently, it cannot be urged that such Interpretation cannot pass the test of Art. 21 of the Constitution.

Legislature has prescribed the four methods of dispute resolution under S. 89 and the purpose is clear and evident — Taking away the burden on the system and eliminating laws delays.

(C) Civil P. C. (5 of 1908). 8s. 89(2)(a), (l)(e) — Arbitration and Conciliation Act (26 of 1996), 8. 8 — Alternative dispute resolution method — Settlement outside Court — Arbitration contemplated under 8. 89(l)(a) and 89(2)(a) is not a reference under 8. 8 of the 1996 Act and hence the words "as if" are used in 8. 89(2)(a).

(D) Civil P.C. (S of 1908), 8.89 — Settlement outside Court — Four alternative dispute resolution method envisaged under Section 89 — 8. 89 does not treat arbitration method to be different from other three methods of conciliation, reference to adalath and mediation.

Section 89 uses such language that it does not distinguish at all between the four methods of ADR available. It would be artificial to read into the selection any distinction between method (a) relating to arbitration and the other three methods of conciliation, judicial settlement and mediation. The language of S. 89(1) treats all the four dispute resolution mechanisms identically. It cannot be accepted that Legislature would have prescribed arbitration also as one of the methods unaware or ignorant about the distinction between these four methods of disputes resolution. It is clear as day light that Arbitration is different from the other three modes. In Arbitration, adjudication by the Arbitrator takes place. In all the other three methods the party autonomy in the matter of final decision is retained. It would. be imprudent to assume that the legislature was unaware of this distinction when all the four were dealt with Identically — In the matter of compulsory reference without the consent, of the contestants. Consciously they were Included in one category. This distinction obviously was considered by the legislature to be irrelevant for the purpose of categorisation — the purpose of which evidently was to spare the regular system of Its burden to tackle all cases that comes to it and to provide alternative mechanism to reduce the burden on Courts. Except by holding S. 89 to be constitutionally "unsustainable by judicial review — distinguishing arbitration from other methods by interpretation does not appear to be permissible or possible.

(E) Civil P. C. (5 of 1908), 8. 89, O. 10, Rr 1-A, 1-B, 1-C — Alternative dispute resolution — Compulsory reference to arbitration against volition and without consent of parties — Permissible even though Rules 1A to 1C do not speak about same — Rules cannot be given undue importance.

If the substantive provision In the Code confers a power in the Courts to make a reference, it would be improper and impermissible to argue against such provision In the

statute with the help of the rules framed or not framed. That certainly cannot be the law.

A careful reading of Rules l-A to 1-C of Order 10 must leave one with the unmistakable impression that the rule making authority had not considered the possibility of the parties not agreeing for any one of the four methods available under S. 89. The rules do not contemplate the procedure that is to be followed by the Court in the event of disagreement between parties. Order 10, Rules 1-A to 1-C do not cover the entire gamut of possibilities, which may arise under S. 89(1). It would, therefore, be "myopic to come to any conclusion on the basis of Order 10, Rule 1-A to 1C about the power of the Court to make reference in the latter eventuality where the parties do not agree for any of the four courses. That Rules 1-A to_1-C do not speak of a compulsory reference against the voliation and without consent of the parties to any one of the modes .cannot be given any undue importance as those rules do not speak of compulsory reference for conciliation, Judicial settlement and mediation also.

(F) Civil P. C. (5 of 1908), S. 89 — Legal Services Authority Act (39 of 1987), 8. 22(c) — Settlement of dispute outside Court — Reference under S. 89 can only to be Lok Adalat or deemed Lok Adalath and not to Permanent Lok Adalat — After amendment of Legal Services Act Permanent Lok Adalat is invested with power of adjudication.

(G) Civil P. C. (5 of 1008), 8. 80 — Settlement outside Court — Power* of Court under S. 89 to refer any of four methods of ADR — Not fettered, in absence of Rules to work out such power,

Even if the rules are not framed that cannot act as a letter against the exercise of substantive powers available under the Statutes. In these circumstances even when Order 10, Rules 1-A to 1-C do not specifically refer to the manner in which such powers under S. 89(1) if available is to be exercised and even when the model rules are not enforceable and are not available to Court, it cannot detract against the power of the Court to invoke the Jurisdiction under S. 89(1) if such a power be available.

(H) Constitution of India, Art. 141 — Precedent — Observations made by Supreme Court in different paras of judgement —There is apparent difficulty posed by statements in different portions of same judgment — Court can resort to exercise of harmonising different portions —Any observations made different paragraphs must therefore be understood in context in which they are made.

(I) Civil P. C. (6 of 1908), 8,80 — Settlement of dispute outside Court — Power of Court to compel parties to go for arbitration without their consent — Is only after ascertaining whether there are elements of settlement and whether such el-. entente may .be acceptable to parties — Court has again got to consider peculiar nature of dispute as also nature of par-ties to dispute — Cannot therefore be assumed that Court will make indiscreet reference leading to anarchy, injustice.

The Legislature was advisedly conferring jurisdiction on properly constituted regular Civil Courts with the authority and responsibility to identify cases which would necessitate or warrant reference to the four methods of alternative dispute resolution. To say that the Court will not be able to identify the appropriate case for the appropriate track is to betray want of confidence in the wisdom and maturity of the Courts. S. 89(1) in its opening passage clearly says that the Court must identify whether there exists elements of a settlement. The Court must further ascertain whether such elements of settlement may

be acceptable to the parties. The section does not stipulates that the Court must be satisfied that the elements of settlement which it identifies are/or must be acceptable to the parties. That is why very carefully the permissible expression "may be acceptable to the parties" is used. It is only thereafter that the Court can take a decision — in the event of the par lies not agreeing for any one of the courses, as to which stream of track of ADR must be chosen by the Court. In these circumstances the contention that unbridled conferment of the powers under S. 89(1) to the Courts might lead to anarchy and injustice is found to be not sustainable. The said argument does not also lead Court to take a view that no such power is conferred by the statute under S. 89(1) to the Court to make a reference without consent of all the contestants.

Further, any reference for arbitration made under S. 89(1) will bring the suit to a termination before that Court and such decision will certainly be amenable to challenge in revision even under the amended S. 115 of the Code. Reasons will have to be given and such reasons can be considered by superior Courts discharging revisional and supervisory jurisdiction.

(J) Civil P. C. (5 of 1008), 8. 80—Arbitration and Conciliation Act (26 of 1096). 8. 8 — Settlement of dispute outside Court — Power of Court to refer parties for arbitration would and must necessarily include, imply and inhere in it the power and jurisdiction to appoint the Arbitrator also.

Sections 89(1) (a) and 89(2) (a) do refer to reference of a dispute for arbitration and does not specifically refer to any reference to the Arbitrator. The counsel expresses a doubt as to whether this means and implies that reference can be made for arbitration as indicated in S. 8 of 1996 Act. Going strictly by the language of Ss. 89(1) (a) and 89(2)(a) such a doubt certainly arises. But an interpretation cannot be resorted to divorced of the context and the purpose which has to be served under S. 89. If High Court were to make a reference only for arbitration without specifying any Arbitrator, it would necessarily involve a further dispute regarding the identity of the Arbitrator obliging the parties to go before the Chief Justice under S. 11 to get the Arbitrator appointed. Such procedure instead of contributing to expedition in the settlement of dispute and" disposal of case would contribute to further unnecessary delay and protraction. So, such a construction which would oblige the parties to go before the Chief Justice again to get the Arbitrator appointed under S. 11, after a compulsory reference against their volition is made under S. 89, must certainly be avoided. The power for reference for arbitration and conciliation which appears in S. 89(l)(a) and (b) and 89(2)(a) must hence certainly be interpreted to inhere in It the power and the Jurisdiction of the Court to refer the parties to a specified Arbitrator or Conciliator.

M. Ramesh Chander, for Petitioner; K. L. Varghese, Smt. Santha Varghese, B. S. Krishnan (Sr.), SC, Port Trust, for Respondents.

❑❑❑

AIR 2005 KERALA 64

K. PADMANABHAN NAIR. J.

I. Basheer and others, Petitionerv.,Kerala State Housing Board, Thiruvanathapuram Respondent.

C.R.P. No. 1364 of 2003 (E), D/- 18-11-2004.

Civil P.C. (5 of 1908), S. 89, O. 10, R. 1A (as inserted by Act of 1999) — Settlement of dispute outside Court — Provision as to — Applicability — Termination of contract — Suit by party filed in year 1991 for declaration that termination of contract was unauthorized — Connected suit was filed in 1993 — Issues were framed as early as on 5-1-1993 — Prayer made to refer case for settlement by way of arbitration in terms of S.89 — Provisions of S. 89 and O. 10, R. 1A which came into force on 1-7-2002 have not retrospective effect and have therefore no application — Order rejecting prayer for settlement outside Court — Is proper. (Para 13)

Cases Referred : Chronological Paras

Sulaikha Clay Mines v. Alpha Clays, (2004) 3 KLT 192 : (2004) 2 Ker LJ 484 12

Salem Advocate Bar Association v. Union of India, AIR 2003 SC 189 : 2002 AIR SCW 4627 : (2003) 1 SCC 49 11

ONGC Ltd. v. Saw Pipes Ltd., AIR 2003 SC 2629 : 2003 AIR SCW 3041 : (2003) 5 SCC 705. 12

GCDA v. Harisons Malayalam Ltd., ILR (2002) 2 Kerala 551 : (2000) 2 Ker LT 152 12

M.V. Elisabeth v. Harwan Investment and Trading P. Ltd., AIR 1993 SC 1014: 1993 AIR SCW 177 : (1993) 2 SCC (Supp) 433 12

K.L. Varghese and Smt. Santha Varghese for Petitioners: T.R. Harikumar, Standing Counsel, for Respondent.

Order : — The plaintiff of O.S. No. 722 of 1991 on the file of Subordinate Judges Court. Parur is the revision petitioner. The Civil Revision Petition is filed challenging an order passed by the Court below dismissing. an application filed by the petitioner to refer the dispute arising for consideration in the suit for arbitration under Section 89 of the Code of Civil Procedure. During the pendency of the Civil Revision Petition, the petitioner died and his legal representatives Were impleaded as additional petitioners 2 t67.

2. The original plaintiff was a contractor He entered into an agreement with the respondent Kerala State Housing Board for the construction of two blocks of EE7 and 2 blocks of CF6 type flats. The contract was terminated and the work was awarded to another contractor . The plaintiff filed the suit for a declaration that the termination of the contract by the defendant was unlawful and unsustainable and the forfeiture of security deposited was also unlawful. There was a prayer for recovery of an amount of Rs. 4,61,502.19 due under the final bill and additional amount of Rs. 1,44,908/- as loss of profit or gains prevented. The respondent

appeared and filed a written statement contending that the plaintiff was a defaulter and the defendant was compelled to terminate the contract and awarded the work at the risk and cost of the plaintiff. It was contended that the plaintiff was not entitled to get any amount, but amount were due to the Housing Board. The Housing O.S. 624 of 1993 against the original plaintiff for realisation of an amount of Rs. 1,50,279 The deceased revision petitioner appeared in that suit and filed a written statement denying his liability and reiterating his case in the suit filed by him. Both the suits are pending trial.

3. The. deceased original revision-petitioner filed I.A. 272 1 of 2002 under Section 89 of the Code of Civil Procedure stating that the dispute can be settled by appointing an Arbitrator. He had also filed a terms of reference proposed for settlement and prayed that the Court may be pleased to formulate of the terms settlement and refer the case for settlement of the issues in the suit by arbitration under Section 89 of the Code of Civil Procedure. The respondent opposed that prayer. It was contended that it was a matter to be decided after taking evidence and in case the disputes were referred to arbitration, that will cause irreparable loss and injury to the defendant-Housing Board. The learned Sub-Judge dismissed that application. The following is the order : —

Heard both sides. The other side is objecting this application. I find that elements of settlement which are acceptable to both sides are lacking in this case. Hence I.A. dismissed".

The original plaintiff had filed this Civil Revision Petition challenging that order.

4. The learned counsel appearing for the petitioners has argued that the deceased petitioner filed O.S. 722 of 1991 against the respondent for realisation of the amount due under the final bill and also the loss of profit or gains prevented and for other incidental reliefs. It is argued that the respondent filed O.S. 24 of 1993, which is a cross suit, for realisation of damages because the work had to be retendered. The petitioner was examined in part as P.W. 1 about 5½ years ago and the chance of the Court taking up the matter is very remote. It is also contended that a large number of documents are to be marked and oral evidence is also to be adduced and the Court may not get time to complete the trial of the case in the near future. It is argued that Section 89 was incorporated in the C.P.C. for alternate resolution of the dispute and the Section makes it obligatory and had clothed the Court with power to formulate the terms of settlement which can be acceptable to both sides and refer the same for arbitration/conciliation/ judicial settlement/mediation. It is argued that a statutory duty is cast upon the Court to consider the request and pass appropriate orders.

5. The learned counsel appearing for the respondent has contended that in view of the serious dispute involved in this case, it is only just and proper that the case be tried and decided by, the- civil Court itself. It is argued that the crucial question to be considered in this case is who committed the breach and the definite stand taken by

the respondent is that it was the petitioner and that is a matter which requires evidence. It is contended that a party to the litigation has no right to file a petition praying that the matter in issue in a suit may be referred for arbitration and if at all the provisions are applicable, it is for the Court to consider and decide which of the four modes is to be adopted in a given case. It is contended that since the suit was filed long prior to the amendment of Section 89 of the Code of Civil Procedure, the provisions contained in Section 89 have no application to the facts of this Case.

6. Section 89 of Chapter V of the Code of Civil Procedure, 1908 before it was-repealed by Section 49(1) of the Arbitration Act, 1940 contained provisions for settlement of disputes outside the Court. Repealed Section 89 contained provisions for arbitration. It was provided that all proceedings shall be governed by the provisions contained in the Second Schedule to the C. P. Code. Section 89 was repealed by Arbitration Act, 1940 (10 of 1940). The law regarding arbitration has been consolidated in that Act. Section 89 was reintroduced in the parent Act by C.P.C (Amendment) Act, 1999, which came into force on 1-7-2002. In view of the reintroduction of the Section, it is now obligatory for the Court to refer the dispute after issues are framed for settlement either by way of Arbitration, Conciliation, judicial settlement including Lok Adalat or mediation.

7. Section 89(1) reads as follows:— ;"Sf89'rSettlement of disputes outside the Court. Where It appears to the Court that there exists elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms .of a possible settlement and refer the same for—

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation".

A reading of Section 89(1) of the Code of Civil Procedure shows that a duty Is cast upon the Court to refer the dispute either by way of arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation if it appears to the Court that there exists elements of settlement. If it is referred to arbitration, the case will be transferred from the file of the Civil Court itself. So far as the three other modes are concerned, in case the parties failed to get the dispute settled, then the suit can be proceeded further in the Court. Clause (d) of sub-section (2) of Section 89 empowers the Government and the High Courts to make rules to be followed in mediation proceedings to effect the compromise between the parties. In this connection the amendments to Order X of Code of Civil Procedure are also relevant. Order X, Rule 1 of the Code of Civil Procedure provides that at the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement of the opposite party. Rules 1A, IB and 1C have been inserted after

Rule 1 in Order X by the C.P.C. (Amendment) Act, 1999 with effect from 1-7-2002. These rules were inserted in view of the amendment of Section 89(1) making it obligatory upon the Court to refer the dispute for settlement by way of arbitration, conciliation, etc. Rule 1A reads as follows :—

"After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of settlement outside the Court as specified in sub-section (1) of Section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties".

Rule IB of Order X provides that where a suit is referred under Rule 1A. the parties shall appear before such forum or authority for conciliation of the suit.

8. Rule 1C of Order X is also very relevant. It reads as follows :—

"R. 1C. Appearance before the Court consequent to the failure of efforts of conciliation .— Where a suit is referred under Rule 1A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court: and direct the parties to appear before the Court on the date fixed by it".

Rule 1C provides that if the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with matter further, then he shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by him. So, it is evidently clear that in view of the present amendment, a is cast upon the Court to consider whether it is possible to refer the parties for a settlement as provided under Section 89 of the Code of Civil Procedure.

9. Section 89(1) of; the Code of Civil procedure does not contemplate an application by any of the parties to the suit invoke the power conferred on the Court under thatSection. Section 89 of the Code of Civil Procedure does not confer any right to the parties to choose any mode alone and make request to the Court to compel the other party to agree for such a proposal. If the parties are not able to agree regarding the forum, the Court shall apply its mind, take a decision as to which of the four modes is suitable to the facts of the case at hand and refer the dispute to that forum. Of course, the parties to the suit may also make a request to the Court to refer the dispute. A reading of Order X, Rule 1A of the Code of Civil Procedure shows that it is made obligatory on the part of the Court after recording the admission and denials to direct the parties to the suit to opt either modes of settlement as provided in Section 89(1) of the Code of Civil Procedure. So, even if the parties do not file any petition the Court has to discharge the duty cast upon it under Rule 1A of Order X of the Code of Civil Procedure. It is clear from a reading of Section 89(1) read with Order X, Rule 1A that the Court shall apply its mind and if it is of the opinion that there exist elements of a settlement which ; may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations. It is true that Rule 1A of Order X of the Code of Civil Procedure provides that the Court shall direct the parties to opt either mode of settlement outside the Court as

specified in Section 89(1). But, the rule is silent silent as what is the procedure to be followed in case both sides fail to reach at a consensus regarding the mode of settlement. But the wording of Section 89(1) is very clear. It provides that the Court may reformulate the terms of possible settlement and refer the same. So, it is for the Court to decide which of the four methods should be adopted and no party can claim, as a matter of right, that his case shall be dealt with in any particular mode provided under Section 89 of the Code of Civil Procedure.

10. The learned counsel appearing for the petitioner relied on an Article written by Honourable Mr. Justice J. L. Gupta, former Chief Justice of this Court, regarding the need for reforms published in I.C-A. Arbitration Quarterly (October-December, 2003). The learned counsel also relied on two articles written on the same subject; one by Honourable Mr. Justice K. A. Abdul Gafoor and another one by Senior Advocate Sri T. P. Kelu Nambiar. He also relied on another Article written by Honourable Mr. Justice B. K. Somashekara and published in the India Arbitrator Magazine (October, 2003) about the need to take recourse to arbitral clauses. The counsel appearing for the petitioner invited my attention to the two Articles written by him on this point in the above said journals. He also relied on an Article appearing in the Journal Section of AIR 2004 Journal, 193, wherein the speech delivered by Honourable Mr. Justice Satya Brata Sinha, Judge, Supreme Court of India is reported. His Lordship has opined that the Indian Courts are attuned to resolving conflicts between the parties based on the pleadings presented by them. It is also observed that there needs to be a decentralisation of justice-oriented judicial activism right' down to the lower Court in the country. Mis Lordship has also opined that it must be ensured that in developed countries most of the cases are resolved by Alternative Dispute Resolution (ADR) mechanism by conciliation, mediation and arbitration.

In Salem Advocate Bar Association v. Union of India ((2003) 1 SCC 49) : (AIR 2003 SC 189) the Apex Court had considered Section 89 of the Code of Civil Procedure. It was held as follows : —

The purpose of Section 89, CPC, as inserted by Act 46 of 1999, is to try and see that all the cases which are filed in Court need not necessarily be decided by the Court itself. Keeping in mind the law's delays and the limited number of Judges which are available, it has now become imperative that resort should be had to alternative dispute resolution mechanism with a view to bringing to an end litigation between the parties at an early date. The Alternate Dispute Resolution (ADR) mechanism as contemplated by Section 89 is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation. If the parties agree to arbitration, then the provisions of the Arbitration and Conciliation Act, 1996 will apply and that case will go outside the stream of the Court but resorting to conciliation or judicial settlement or mediation with a view to settle the dispute would not ipso facto take the case outside the judicial system. All that this means is that effort has to be made to bring about an amicable settlement between the parties but if conciliation or mediation or judicial settlement is not possible, despite efforts being made,

the case will ultimately go to trial".

The Apex Court further noticed that Section 89 of the Code of Civil Procedure is a new provision and even though arbitration or conciliation has been in place as a mode for settling the disputes, this has not really reduced the burden on the Courts. The Apex Court had constituted a Committee for devising a model case management formula as well as rules and regulations which should be followed while taking recourse to the ADR referred to in Section 89 of the Code of Civil Procedure.

12. The learned counsel appearing for the petitioner has argued that the fact that no rules have been made so far is not a ground to deny the benefit conferred on the litigant under Section 89 of the Code of Civil Procedure. He relied on the decision reported in ONGC Ltd. v. Saw Pipes Ltd. ((2003) 5 SCC 705) : (AIR 2003 SC 2629) in which it was held that it is the well-settled principle of law that the procedural law cannot fail to provide relief when substantive law gives the right. In the decision reported in M. V. Elisabeth v. Harwan Investment and Trading (P) Ltd. (1993 Supp (2) SCC 433) : (AIR : 1993 SC 1014) the Apex Court held as follows (para 66) :—

"..... Where substantive law demands Justice for the party aggrieved and the statute has not provided the remedy, it is the duty of the Court to devise procedure by drawing analogy from other systems of law and practice".

The principle laid down in this case was followed in Sulaikha Clay Mines v. Alpha Clays (2004 (3) Ker LT 192). In GCDA v. Harrisons Malayalam Ltd. (ILR 2000 (2) Kerala 551) (FB). According to me, that question need not be considered in this case.

13. The difficulty in this case is not the absence of any rule. It is, to be noted that one of suits was filed in the year 1991 and the connected suit by the respondent was filed in the year 1993. The issues in O.S. 722 of 1991 were framed as early as on 5-1 -1993. A reading of Section 89 and Order X of the Code of Civil Procedure shows that the provisions of SectiorT89—bawe_ap retrospective effect. Section 32 of Act 46 of 1999 deals with repeal and savings. Section 32(2)(e) reads as follows :—

"(e). Section 89 and Rules 1A, IB and 1C of Order X of the first Schedule, as inserted in the principal Act by Sections 7 and 20 of this Act, shall not affect any suit in which issues have been settled before the commencement of Section 7; and every such suit shall be dealt with as if Sections 7 and 20 had not come into force".

Since the issues were already settled before the commencement of Sections 7 and 20 of the Amendment Act, the provisions of Section 89 and Order X of the Code of Civil Procedure can have no application to this case. So, the order passed by the learned Sub-Judge dismissing the petition filed by the plaintiff to refer the matter for arbitration is correct and does not call for any interference.

In the result, the Civil Revision Petition is dismissed. I. A. No. 494 of 2003 shall stand dismissed.

Petition dismissed.

❑❑❑