

Arjun Singh and anr. Vs. Asstt. Direction of Income Tax and ors.

Arjun Singh and anr. Vs. Asstt. Direction of Income Tax and ors.

SooperKanoon Citation : sooperkanoon.com/509983

Court : Madhya Pradesh

Decided On : Nov-23-1998

Reported in : (2000)159CTR(MP)53

Appeal No. : Writ Petn. No. 2593 of 1997 23 November 1997

Appellant : Arjun Singh and anr.

Respondent : Asstt. Direction of Income Tax and ors.

Advocate for Pet/Ap. : Kapil Sibbal & B.L. Nema with Ravindra Srivastava, *for the Petitioners* Tankha & JP. Sanghi, *for the Respondent*

Judgement :

ORDER

D.P.S. Chouhan, J.

Threatened with the invasion of their rights, the petitioners, in these two writ petitions, numbered 2593/1997 and 1723/1998, approached this Court invoking jurisdiction under Article 226/227 of the Constitution, seeking protection against illegal and arbitrary action against them which on being heard together are decided conjointly.

2. The controversy in these petitions centres round the construction of the house known as 'Dev Shree' and in that regard, the following facts are' relevant .

(1) Shri Arjun Singh and his wife Smt. Saroj Singh, who are petitioners in Writ Petition No. 2593/1997, and Shri Ajay Singh, their son, who is petitioner in Writ Petition No. 1723 of 1998, after purchasing an agricultural land near Kerwa Dam in village Mandora, Tahsil Huzur, District Bhopal, constructed a house over a portion thereof, named as 'Dev Shree' and which being in the vicinity of Kerwa Dam, was also known as 'Kerwa House' (hereinafter referred to as 'the house'), the construction of which commenced in the month of July, 1984 and completed in the month of July, 1984 and completed in the month of March, 1987.

(2) Shri Arjun Singh, who was having income from the source other than agriculture also, was assessed to income-tax by the Income Tax Officer 'B' Ward, Bhopal under section 143(3) read with section 144A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the financial years, 1985-86, 1986-87 and 1987-88 (GIR No. S1225) vide order dated 28-9-1987, and also for the wealth-tax by the Asstt. CWT, Additional Circle, Bhopal under section 16(3) of the Wealth Tax Act, 1957, (for brevity, hereinafter referred to as the Wealth Act) for the assessment years 1981-82, 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91 and 1991-92 (PAN 18-100-PT-0292) vide assessment order dated 3-4-1992. Smt. Saroj Singh was having income only from agriculture, which was non-taxable. Shri Ajay Singh, who was having income from the source other than agriculture also, was assessed to income-tax by the Income Tax Officer 'B' Ward, Bhopal under section 143(3) of the Act (GIR No. VIII-S-65) for the assessment year 1987-88 vide order dated 28-9-1987, as well as for wealth-tax by the Wealth Tax Officer, B Ward, Bhopal under section 16(3) of the Wealth Tax Act, vide order dated 28-9-1987. These assessments included the valuation relating to the land as well as the cost of construction of the house. The Income Tax Officer before making assessments, made a reference to the Inspecting Assistant Commissioner, Bhopal Range-1, who, after receipt of answer, completed the assessment proceedings and relying on the same, the Wealth Tax Officer also completed the proceedings for wealth tax. The said reference was made in the background of hue and cry by the media in regard to the cost of the said land purchased by the petitioners as well as the cost of construction of the house. The Inspecting Assistant Commissioner, while answering the reference, found that the land was purchased at the rate of Rs. 8,000 per acre without paying

any amount over and above the sale price to the vendor as alleged in the press reports and the claim of the assessee Shri Arjun Singh and his family members, in regard to agricultural income and its investment in the construction of the house, was found genuine and the cost of construction of the house, as supported by the report of the authorised valuer, was found fair and reasonable and any reference to the valuation cell was found unnecessary. It was also found that all the assets owned by the assessee and his family members were acquired out of the known sources of income, negating the media cry regarding acquisition of assets out of income from undisclosed sources.

3. Shri Mun Singh, a political leader having held important positions, such as Chief Minister of State of Madhya Pradesh (which office he held twice), Cabinet Minister in the Central Government (which office he held twice), the office of Governor of State of Punjab & Haryana and office of Vice President in the organisational set up of the Congress (I) Party, to which he belonged, had his political antagonists, who were after him.

4. Shri Kailash Joshi, one of his political rival, belonging to as Bhartiya Janta Party (for brevity hereinafter referred to 'the BJP') having held the office of the Chief Minister of the State as well as the office of Vice President of the State in the organisational set up of his party, approached this Court by way of Public Interest Litigation through Misc. Petn. No. 3909/1987 (Shri Kailash Joshi v. State of MP & Ors.), which related to the affairs of Churhat Children Welfare Society and the matter of lottery run by it, alleging hypothetically, that the society which earned a guaranteed profit of one crore of rupees may be only at the surface and the loss of crores of income to the State went to the promoters and agents unnoticed and unaccounted for and also making personal allegations against Shri Arjun Singh and his family members regarding investment and cost of construction of the house nearabout the time or after it, & the lotteries were conducted by the said society. The petition was decided on 20-1-1989, directing that an enquiry be made by a high power agency into the affairs of the Churhat Children Welfare Society and how the share of its profits derived from the draws had been utilized and, in a casual way, observations were made concerning Shri Arjun Singh that he owes an explanation to the nation to show at what costs/sources he has constructed the

Kerwa House. Before the pronouncement of this decision, the Income Tax Officer, while completing the assessments in relation to the income and investment in the Purchase of the land and construction of the house under section 1430 read with section 144A of the Act on 28-9-1987, found that the assessee and his family members did not pay any amount over and above the sale price to the vendor and the cost of construction of the house, supported by the report of the authorised valuer, was found fair and reasonable and the assets were found to have been acquired by them out of known source of income, negating the media cry regarding acquisition of assets out of income from undisclosed sources. In view of the above decision, an Enquiry Commission was set up by the State Government for enquiring into certain issues relating to the affairs of the Churhat Children Welfare Society and conduct of lottery which subsequently, on coming into power the BJP Government in the State in the year 1990, was modified and enlarged by the State Government vide Notification dated 29-3-1990, mainly with a view to enquire as to at what cost the house was constructed which, on being challenged by Shri Arjun Singh by means of Misc. Petn. No. 1681/1990 before this Court, was struck down on 4-3-1992 finding that there was no material, at all, with the State Government to direct such an enquiry in the aforesaid aspect of construction of house 1992 NTLJ 693. Against it, the State Government went in appeal to the Supreme Court where the judgment of this Court was maintained with the observation that it will not preclude the State Government from appointing any Commission of Enquiry according to law after applying its mind to any fresh or further material placed before it : AIR 1993 SC1239 , but, since there was no fresh or further material before the State Government in regard to the aforesaid aspects of the matter relating to the construction of the house, no step. in this regard, for setting up any Commission of Enquiry was taken and the matter relating to the purchase of the land and construction of the house stood foreclosed. The matter obviously, may be for political reasons, did not rest here and in efforts to resuscitate the concluded issue, it was activated by one of the Members of Rajya Sabha belonging to the BJP on the floor of the House inviting statement from the Union Government in relation to enquiry in the wake of aforesaid observations of the High Court in relation to construction of the house whereon the Union Government through Ministry of Finance, was called upon to reply the question

which, as per the established practice and procedure, was replied by making following statement at the floor of the House on 10-3-1992 the Minister of State (Finance) after gathering all necessary facts, making necessary enquiries and having clearance from the highest authority under the department of Income-tax. 'The High Court of Madhya Pradesh in its judgment dated 20-1-1989, in the case of Kailash Joshi v. State of Madhya Pradesh & Ors. had made certain observations regarding building constructed near Kerwa Dam, Bhopal, by the former Chief Minister of Madhya Pradesh, Shri Arjun Singh. The cost of construction and sources of investment in the said building were examined by the Income Tax department in the course of relevant assessment proceedings and it was found that the sources of investment were satisfactorily explained and the cost declared in the return was also reasonable. '

5. Though the above statement before the Rajya Sabha, the Sovereign body, clinched and concluded the controversy relating to the investment in the land and construction of the house as well as sources of income for all times to come, but on account of CBI investigation of Crime Case No. RC-5(S)/1991SIU(V)/CBI, New Delhi, under section 120B IPC, sections 3 & 4 TADA (P) Act, 1987 and section 56 read with section 8(1) of FERA, 1973, which was taken over by it from P.S. Chandni Mahal, Delhi on 20-4-1991 (for brevity hereinafter referred to as 'the Hawala case') where two diaries (for brevity hereinafter referred to as 'the Jain diaries') and two files were recovered, during searches, on 3rd May, 1991, from the residence of the accused J.K. Jain besides some other articles, files which contained entries about various payments amounting to Rs. 65.47 crores during the year 1988 to 1991 to 115 persons who included political leaders, some of whom were working as public servants during the relevant period, certain officials of the Government and other public sector organisations, companies, employees and friends of J.K Jain and others and a major portion of the said amount was found to have been illegally transferred from abroad to India through Hawala channels and the entries recorded in the Jain diaries contained the names of the persons in an abbreviated form, a new turn took place. During the course of investigation of the aforesaid case, one Shambhudayal Sharma, a Hawala Agent of Delhi, who on being interrogated, disclosed the names of several recipients of various Hawala amounts and the investigation disclosed that during the years 1988 to 1991, the

accused S.K. Jain, J.K. Jain, B.R. Jain and NX Jain, entered into a criminal conspiracy among themselves with the object to receive unaccounted money and to disburse the same among themselves and also to their companies, friends, close relatives, and various other persons including the public servants and political leaders.

6. On the basis of the charge-sheet, as filed by CBI before the Special Judge, Delhi against Madhav Rao Scindia, Arjun Singh, Narayan Datt Tiwari and R.K. Dhawan, cases CC No. 12/1996 CC No. 16/1996, CC No. 42/1996 and CC No. 43/1996 were registered against them respectively. Case CC No. 16/1996 related to Arjun Singh where charge-sheet was under section 120B IPC and section 5(2) read with section 50(d) of the Prevention of Corruption Act, 1947 and sections 7,11, 12 and 130 read with section 13(l)(d) of the Prevention of Corruption Act, 1988 containing allegations that Arjun Singh was also one of the recipients who worked as a public servant in the capacity of Chief Minister of Madhya Pradesh from 13-2-1988 to 23-1-1989, and Member of Legislative Assembly (MP) from June, 198-8 to June, 1991 and the Jain diaries and files seized from the residence of accused J.K. Jain showed the payment of Rs. 10.5 lacs to him during the period from April, 1988 to March, 1990 and August, 1990 as per Diary (MR 71/1991). Small Note Book (MR 70/1991), File MR 72/1991) and File (MR 73/1991) and it had nothing to do so far as assessment year 1987-88 was concerned. During the course of investigation in the Hawala case, public interest litigation was brought before the Supreme Court by means of writ petition registered as Writ Petition (Criminal) Nos. 340-343 of 1993, alleging failure of the Government agencies in the performance of their duties and discharge of their obligations, as they failed to properly investigate the matters arising out of the seizure of the Jain diaries, wherein Supreme Court on 30-1-1996 passed the following order at the stage when some charge-sheets were filed before the Special Judge Delhi

'The true scope of this writ petition has been indicated during the earlier hearings. At this stage, when some charge sheets have been filed in the Special Court and there is considerable publicity in the media regarding this matter, with some speculation about its true scope, it is appropriate to make this order to form a part of the record.

The gist of the allegations in the writ petition are that Government agencies, like the CBI and the Revenue authorities, have failed to perform their duties and legal obligations inasmuch as they have failed to properly investigate matters arising out of the seizure of the so-called 'Jain Diaries' in certain raids conducted by the CBI. It is alleged that the apprehending of certain terrorists led to the discovery of financial support to them by clandestine and illegal means by use of tainted funds obtained through 'Hawala' transactions; that this also disclosed a nexus between several important politicians, bureaucrats and criminals, who are all recipients of money from unlawful sources given for unlawful considerations-, that the CBI and other Government agencies have failed to fully investigate into the matter and take it to the logical end-point of the trial and to prosecute all persons who have committed any crime; that this is being done with a view to protect the persons involved, who are very influential and powerful in the present set up; that the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation; that probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power set up.

The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all Government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet -of rule of law; 'Be you ever so high, the law is above you'. Investigation into every accusation made against each and every person on a reasonable basis irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the Government agencies.

In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty

by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law

In case of persons against whom a prima facie case is made out and chargesheet is filed in the competent Court, it is that Court which will then deal with that case on merits, in accordance with law

However, if in respect of any such person the final report after full investigation is that no prima facie case is made out to proceed further, so that the case must be closed against him, that report must be promptly submitted to this Court for its satisfaction that the concerned authorities have not failed to perform their legal obligations and have reasonably come to such conclusion. No such report having been submitted by the CBI or any other agency now in this Court, action on such a report by this Court would be considered, if and when that occasion arises. We also direct that no settlement should be arrived at nor any offence compounded by any authority without prior leave of this Court.

We may add that on account of the great public interest involved in this matter, the CBI and other Government agencies must expedite their action to complete the task and prevent pendency of this matter beyond the period necessary. It is needless to observe that the results achieved so far do not match the available time and opportunity for a full investigation ever since the matter came to light. It is of utmost national significance that no further time is lost in completion of the task.'

(Emphasis, italicised in print, supplied)

On the basis of charge-sheet so filed against Shri Arjun Singh Case CC No. 16 of 1996 was registered but no charges were framed and he was discharged honourably on 28-5-1997, as there was no material against him, obviously even prima facie, it could not have (sic-been) established that any Hawala money was disbursed to him or in anyway he was recipient of Hawala money.

7. Heard the learned counsel for the petitioners S/Shri Kapil Sibbal, B.L. Nema, Senior Advocates and Ravindra Srivastava, Advocate and for respondents Nos. 1

to 6 in Writ Petition No. 2593/1997 and respondents in Petn. No. 1723 of 1998, Shri V.K. Tankha and Sbri J.P. Sanghi for respondent No. 7 in Writ Petition No. 2593/1997.

At the outset, Shri V.K. Tankha raised a preliminary objection in regard to territorial jurisdiction of this Court qua the maintainability of Writ Petition No. 2593/1997 as stood prior to its amendment consequent upon issuing of notice dated 31-3-1998 against the petitioners under section 148 of the Act and 17 of the Wealth Tax Act, saying that this Court may not have jurisdiction to adjudicate the matter involved in the petition, as both the petitioners permanently reside at Delhi where the following order for investigation/enquiry under section 131(1-A) of the Act was passed by the Asstt. Director Income-tax (Inv.) Unit-I, New Delhi (for brevity hereinafter referred to as 'the ADIT (Inv.) Delhi') requiring the District Valuation Officer Income-Tax, Bhopal (for brevity hereinafter referred to as 'the Valuation Officer') for determining the cost of construction of the house :

'You are requested to determine the cost of construction of the property completed on 31-3-1987, you are also requested to find out the cost of construction, improvements, additions, alterations, etc. made, if any, after 31-3-1987, specially during period 1-4-1987 to 31-3-1993. '

The Valuation Officer, exercising power under section 131(l)(d) of the Act issued conjoint notices dated 30-5-1997 and 9-6-1997 to the petitioners for the determination of cost of construction of the house, requiring for filing of the documents with details along with parawise reply to the various queries and for providing necessary facilities for inspection of the house to Shri D.P. Sahu, Junior Engineer- cum- assessor authorised for inspecting the property, and to support the allegation, submission was advanced that the petitioners, in the writ petition, have given their permanent address as '10-Canning Lane, New Delhi' and, on this basis that since both the petitioners and the basic agency which took the task of investigation enquiry according to him, were in Delhi where the cause of action arose, the Delhi High Court had the jurisdiction and the impugned notice issued from Bhopal for the determination of valuation of the house by the Valuation Officer was only consequential subordinate action to give effect to the basic

investigation/enquiry commenced under section 131(IA) of the Act at Delhi in pursuance to the aforesaid order of Supreme Court dated 30-1-1996, in Writ Petri. (Criminal) Nos. 340-343 of 1993 Vineet Narayan & Ors. v. Union of India & Anr. which could be executed anywhere including Bhopal where the property and assets were located and under such circumstances petitioners are not free to approach this Court for relief against consequential action, thwarting the basic investigation enquiry initiated under the order of the Supreme Court. It contained nothing for execution as it related to the Hawala case only. Though, consequent upon passing of the aforementioned, order under section 148 of the Act and 17 of the Wealth Tax Act and amendment of the petition, the objection lost its significance but it is dealtwith as it was raised.

The submission of the learned counsel for the petitioners was that the so-called preliminary objection is devoid of substance and deserves to be rejected. The impugned notices, which were, without jurisdiction, issued in the joint names of the petitioners by the Valuation Officer from Bhopal purporting to exercise power under section 131(1)(d) of the Act for the purpose of determination of the valuation of the house, are by way of positive action so far as the petitioners are concerned and which has given rise to the cause of action, so far as petitioners are concerned. The permanent address of the petitioners is not of Delhi but is of Bhopal, as the petitioners in the description of their address in the array of the petitioners in the writ petition clearly stated their address as r/o Dev Shree, Near Kerwa, Bhopal, which is their permanent address and '10, Canning Lane' New Delhi' was shown as present address as Shri Arjun Singh is a Member of Parliament. In view of it, it ill comes from the mouth of the respondents that the permanent address of the petitioners is of Delhi, and as such, this Court has no territorial jurisdiction. Further various orders relating to assessment for the income-tax and wealth-tax, as aforesaid, and also the impugned notices issued by the Income Tax Officer under section 148 of the Act and the Wealth Tax Officer under section 17 of the Wealth Tax Act indicate the permanent address of the petitioners, which, undisputedly, is within the jurisdiction of this Court. Thus, the objection regarding residence criteria, as submitted by the respondents for the purpose of territorial jurisdiction of this Court fails and so far as the action undertaken by the valuation officer by issuance of notices is concerned, it is not

consequential/subordinate action as the order of ADIT (Inv.) Delhi only equipped the Valuation Officer though illegal, with the authority for exercising power under section 131(1)(d) of the Act, which, he, otherwise under the facts and circumstances of the present case, not possessed of. It cannot, in any manner, be the factor for the ouster of territorial jurisdiction of this Court as, so far as the matter relating to the order of reference by the ADIT (Inv.) Delhi issuing direction to the Valuation Officer is concerned, it was between them and not between the petitioners and the ADIT(Inv.) Delhi as the order of the ADIT(Inv.) support the allegation, submission was advanced that the petitioners, in the writ petition, have given their permanent address as '10-Canning Lane, New Delhi' and, on this basis that since both the petitioners and the basic agency which took the task of investigation enquiry according to him, were in Delhi where the cause of action arose, the Delhi High Court had the jurisdiction and the impugned notice issued from Bhopal for the determination of valuation of the house by the Valuation Officer was only consequential subordinate action to give effect to the basic investigation/enquiry commenced under section 131(1A) of the Act at Delhi in pursuance to the aforesaid order of Supreme Court dated 30-1-1996, in Writ Petri. (Criminal) Nos. 340-343 of 1993 Vineet Narayan & Ors. v. Union of India & Anr. which could be executed anywhere including Bhopal where the property and assets were located and under such circumstances petitioners are not free to approach this Court for relief against consequential action, thwarting the basic investigation enquiry initiated under the order of the Supreme Court. It contained nothing for execution as it related to the Hawala case only. Though, consequent upon passing of the aforementioned, order under section 148 of the Act and 17 of the Wealth Tax Act and amendment of the petition, the objection lost its significance but it is dealtwith as it was raised.

The submission of the learned counsel for the petitioners was that the so-called preliminary objection is devoid of substance and deserves to be rejected. The impugned notices, which were, without jurisdiction, issued in the joint names of the petitioners by the Valuation Officer from Bhopal purporting to exercise power under section 131(1)(d) of the Act.for the purpose of determination of the valuation of the house, are by way of positive action so far as the petitioners are concerned and which has given rise to the cause of action, so far as petitioners are

concerned. The permanent address of the petitioners is not of Delhi but is of Bhopal, as the petitioners in the description of their address in the array of the petitioners in the writ petition clearly stated their address as r/o Dev Shree, Near Kerwa, Bhopa which is their permanent address and '10, Canning Lane' New Delhi' was shown as present address as Shri Arjun Singh is a Member of Parliament. In view of it, it ill comes from the mouth of the respondents that the permanent address of the petitioners is of Delhi, and as such, this Court has no territorial jurisdiction. Further various orders relating to assessment for the income-tax and wealth-tax, as aforesaid, and also the impugned notices issued by the Income Tax Officer under section 148 of the Act and the Wealth Tax Officer under section 17 of the Wealth Tax Act indicate the permanent address of the petitioners, which, undisputedly, is within the jurisdiction of this Court. Thus, the objection regarding residence criteria, as submitted by the respondents for the purpose of territorial jurisdiction of this Court fails and so far as the action undertaken by the valuation officer by issuance of notices is concerned, it is not consequential/subordinate action as the order of ADIT (Inv.) Delhi only equipped the Valuation Officer though illegal, with the authority for exercising power under section 131(1)(d) of the Act, which, he, otherwise under the facts and circumstances of the present case, not possessed of. It cannot, in any manner, be the factor for the ouster of territorial jurisdiction of this Court as, so far as the matter relating to the order of reference by the ADIT (Inv.) Delhi issuing direction to the Valuation Officer is concerned, it was between them and not between the petitioners and the ADIT(Inv.) Delhi as the order of the ADIT(Inv.) Delhi was neither addressed to nor was served or communicated to the petitioners nor its cause was effected at Delhi with which they have no direct concern. The concern of the petitioners arose on the basis of the notices issued by the Valuation Officer, which, in fact, so far as the petitioners are concerned, gave rise to the cause of action to them. The preliminary objection, in view of the above, is sans substance and is rejected and it is held that, so far as the petitioners are concerned, the cause of action to them has arisen within the territorial jurisdiction of this Court in regard to which this Court has jurisdiction.

Learned counsel for the respondents in the same breath, while raising the question of territorial jurisdiction of this Court, developed the argument relating to

the question of jurisdiction of convenience for ouster of territorial jurisdiction of this Court, which argument centres round the fact that the investigation wing of Income Tax department, which is looking into the allegations relating to the Hawala money and its investment in the house, is at Delhi and the starting point for investigation/enquiry is by virtue of order of Supreme Court dated 30-1-1996 passed in Writ Petri. (Criminal) Nos. 340-343 of 1993 (Vineet Narayan & Ors. v. Union of India & Anr.) (supra).

The order of the Supreme Court dated 22-2-1996, obviously, relates to curbing the. multiplicity of similar public interest litigation petition in the Supreme Court as well as in the various High Courts so to save the time. The Para III of the said order dated 22-2-1996, which is relevant in the context is as extracted below :

'III. In view of the fact that this matter has been entertained in public interest and the role assigned to Sri Anil Diwan is in substance of an *amicus curiae*, we direct that no other matter however described, pertaining to the subjectmatter of this proceeding would be entertained in this Court or in any other Court. This direction is necessary to avoid any overlapping proceeding which would not be conducive to public interest, since one proceeding in public interest is sufficient to cover the entire scope of the subject-matter of this proceeding. Multiplicity of proceedings or parties would delay the progress of this matter and tend to diffuse the focus on the significant aspects of the case which is not conducive to the large public interest.'

(Emphasis, italicised in print, supplied)

This order did not stop any individual from approaching the High Court or the Supreme Court qua his individual grievances or invasion of or attempt for invasion of personal rights. Apart from it, the said PIL petition in the Supreme Court does not deal with the rights of an individual and no probe in the matter was made or to be made by the Supreme Court except to direct for proper investigation of the crime in the Hawala case by CBI. The order is directed against investigation and prosecution and the said criminal case, however, did not direct or permit for reopening of the closed chapter of finalised assessment or for making an investigation enquiry blindly under section 131(1-A) of the Act in relation to the matter in respect of which, as stated above, assessment was completed long back

and as per charge-sheet in CC No. 16/1996, Hawala money was alleged to have been disbursed during the period April, 1988 to RIMIRM March, 1990 and August, 1990 whereas the construction of the house was completed much anterior to this period i.e. in March, 1987 and the income-tax assessment wherein investment in and cost of construction of the house was also involved, completed on 28-9-1987 wherein all the allegations, including the allegations about the investment of unaccounted money were considered by the Inspecting Assistant Commissioner on a reference from Income Tax Officer under section 144A of the Act which were found false and finding was recorded that there was no truth in the allegations against the assessee that he has acquired huge assets out of the income from undisclosed sources.

So far as the High Court is concerned, it is a creation of the Constitution and its jurisdiction cannot be made dependent upon the convenience of any person or authority, however, high or low, and its jurisdiction cannot be excluded for the purpose of convenience that the Investigation Wing of the Income Tax department which is at New Delhi is also looking into the complaint. The principle that the jurisdiction of a Constitutional Court cannot, in any manner, be made subservient to the convenience of any party, however, high or low it may be including the Government or its department to the lis; and it can also not be ousted on the basis of the convenience so to create, in such a situation, a new type of jurisdiction called the jurisdiction of convenience.

Supreme Court in its said order dated 22-2-1996 stopped all the High Courts from entertaining PIL petitions in relation to the Hawala case in which, in fact, the direction was for avoiding the overlapping proceedings in the name of the public interest litigation.

Thus, this subsidiary submission in regard to ouster of territorial jurisdiction of this Court on the plea of jurisdiction of convenience is sans substance and is rejected, holding that, in the facts and circumstances of the case, there cannot be jurisdiction of convenience for the respondents to the detriment of the petitioners for curtailment of their rights.

8. Learned counsel for the petitioners next submitted that the impugned notice dated 30-5-1997 (Annexure P-5 to the petition) jointly issued to Shri Arjun Singh and his wife Smt. Saroj Singh, under section 131(1)(d) of the Act by the Valuation Officer, on the basis of reference made to him by the ADIT (Inv.) Delhi for determination of the cost of construction of the house as on construction period, requiring them for submitting documents and parawise replies to the various queries, is without jurisdiction which, under the law, could not be issued for the purpose of fishing out the material for reopening the assessment completed and foreclosed long back having attained finality.

The submission was that the power under sub-section (1) of section 131 of the Act is the power, co-extensive with that of civil Court trying a suit under section 30 read with ss. 12, 14 and 15 of Order 11 of the CPC, 1908, which empowers the authorities mentioned therein to act for the purpose of the Act and the same is available only during the course of pending proceedings and in this regard the reliance was placed on the case of Dvidjendralal Brahmchari v. New Central Jute Mills : [1978]112ITR568(Cal) . The authorities who are empowered to exercise power under sub-section (1) of section 131 are assessing officer, Deputy Commissioner (Appeals), Deputy Commissioner , Commissioner (Appeals) and Chief Commissioner or Commissioner, who are vested with the authority in regard to judicial proceedings under sub-section (1) or (2) of section 120 of the Act or any other provision of the Act in itself indicates that the power under sub-section (1) of section 131 of the Act, in fact, is exercisable as adjunct to judicial power available during pendency of judicial proceedings, before him against an assessee, and cannot be exercised merely for obtaining documents/information in the manner of fishing enquiry and/or to ascertain, if any, action, if at all, be taken in future or merely exploring the possibility, if any, of reopening of the concluded ssessment and the authorities as mentioned therein are other than those mentioned in sub-section (I-A) of section 131, whereas the authorities mentioned in sub (1-A) of section 131 of the Act, i.e. the Director General or Director or Deputy Director Asstt. Director or authorised officer, are the authorities not included in sub-section of section 131 of the Act and the comparison of the two provisions i.e. sub-section (1) sub-section (1A) of section 131 leads to irresistible inference that the officers ntioned in sub-section (1) of section 131 of the Act can exercise power thereunder

only if proceeding for assessment is pending before him against an assessee but the authorities mentioned in sub-section (1A) viz. Director General or Director or Deputy Director or Asstt. Director or authorised officer, exercise such power notwithstanding that no assessment proceedings for assessment are pending, where he has reason to suspect that any income has been concealed or is likely to be concealed by any person or class of persons obviously other than the assessee against whom assessment proceedings are pending or for him the power is already available under sub-section (1). So far as this proposition is concerned, the matter is no more *res integra*.

9. The case of the respondent No. 1 ADIT (Inv.) Delhi was that the power was exercised by him under the aforesaid order of Supreme Court dated 30th Jan., 1996, under sub-section (1A) of section 131 of the Act. In para 10 of preliminary reply filed on behalf of respondent No. 1 ADIT (Inv.) Delhi and respondent No. 2 Valuation Officer dated 10-7-1997, it is clearly stated that the starting point of the present investigation/enquiry is by virtue of public interest petition filed before Supreme Court in respect of S.K. Jain Hawala case and the bench of it is monitoring the investigations and enquiries in the Jain Hawala case conducted by CBI, and in order to file status report, the Income Tax authorities have to conduct investigation/enquiries as permitted by law in respect of the alleged Hawala recipients to meet the direction of Supreme Court issued on 30-1-1996. Section 131(0A) is as extracted below :

(1A) If the Director General or Director or Deputy Director or Asstt. Director, or the authorised officer referred to in sub-section (1) of section 132 before he takes action under cls. (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the Income Tax authorities referred to in that subsection, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other Income Tax authority.'

Learned counsel for the respondent No. 1 submitted that the power under sub WMM~ (1A) was available to the authorities as mentioned therein by virtue of non obstante clause, notwithstanding that no proceeding with respect to person or class of persons was pending before him or any other authority for assessment. According to him, mention of the words 'person or class of persons' in the non obstante clause by the legislature gives an indication that it relates to the person other than the assessee also. The purpose of the power under sub-section (1) of section 131 of the Act is in aid of some power for action under some provision under the Act and it is well settled principle of law that all statutory bodies must act for the purpose of statute even though the term 'for the purpose of the Act' be not expressly stated. The purpose for exercise of power under subs. (1) end sub-section (1A) is not the same, as the power under sub-section (1) operates in the field where the person is an assessee and the proceedings are pending against him; whereas, the power under sub-section (1A) operates in the field where there is no proceeding for assessment pending and the enquiry/investigation is necessary against any such person or class of persons, for the purpose of making any enquiry/investigation on the basis of having reason to suspect about concealment or likelihood of concealment of income by such person or class of persons.

Learned counsel for the petitioners submitted that in the present case, the petitioners come under the category of assessee within the meaning of sub-section (7) of section 2 of the Act and section 147 of the Act empowers the assessing officer, if he has reason to believe that any income chargeable to tax as to any assessment year, has escaped assessment, then he may, subject to the provisions of sections 148 to 153, assess or reassess income-tax and also any other income chargeable to tax which has escaped assessment and which came to his notice subsequently in the course of proceedings under d2is section i.e. section 147 and in view of this, the order of the ADIT(Inv.) Delhi which is as disclosed in the counter- affidavit and is extracted earlier, passed under sub-section (1A) as well as the impugned notice dated 30-5-1997, issued thereupon under section 131(1)(d) by the Valuation Officer, are without jurisdiction.

Learned counsel for the petitioner submitted that by Direct Tax Laws (Amendment) Act, 1987, amendments were made inter alia in sections 131 and 132 of the Act and the scope and effect of these amendments have been elaborated in the departmental Circular No. 551, dated 22-1-1990, which reflected department's stand that under the old provisions of sub-section (1A) of section 131, the power of a civil Court in certain matter like enforcing attendance of witnesses and examining them on oath, compelling the production of books of account and documents, etc. which are normally exercised by the assessing officers and appellate or revisionary authorities under the provisions of sub-section (1) were also conferred on an Asstt. Director of Inspection who generally deals with searches and seizure and enabled him to exercise the powers even when no proceedings were pending. However, these powers were not available to the Directors and Deputy Directors who are generally associated with investigation of cases and intelligence work in connection with searches and seizures under section 132. Another difficulty felt was that an authorised officer could record a statement on oath only during the course of search under the provisions of section 132(4). Sometimes it becomes necessary to record a preliminary statement before the commencement of the search for proper investigation. This was not possible, as the Courts held that such a preliminary statement before the commencement of the search could not be recorded under the provisions of section 132(4). To overcome these difficulties, the amendment Act, 1987 has amended the said sub-section (1A) to extend similar power to the Director General or Director. As per the new definition of 'Director General or Director' in s 2(21) the term also includes Deputy Director or Asstt. Director.

Thus, the powers have been extended to the Director-General, Deputy Director and the Asstt. Director. The Amendment Act, 1987, has further extended the powers to an authorised officer under sub-section (1) of section 132 before he takes search and seizure action under cls. (i) to (v) of that sub-section.

The Finance Act, 1988 further amended the sub-section (1A) to specifically mention Deputy Director and Asstt. Director also in sub-section, eliminating any doubt in the matter and in view of it, it is not necessary to trace out the history of amendment, beginning to end.

10. Learned counsel for the petitioners next submitted in regard to the jurisdiction of the ADIT (Inv.) Delhi that he has no jurisdiction to issue any such order in respect of finding out the cost of the house situated in Bhopal in the State of Madhya Pradesh, beyond his territorial jurisdiction and, as such, the basic order of the ADIT (Inv.) Delhi as extracted above, as well as the impugned notices suffer from infirmity and are bad in law, as the ADIT(Inv.) Delhi had no jurisdiction in respect to or over the property i.e. the house situated in the District of Bhopal.

The petitioners in Para 5.8 of the petition have clearly stated that the respondent No. 1 is neither the assessing officer nor has any jurisdiction to make a reference to the respondent No. 2 for any purpose under the provisions of the Act. This statement has not been denied specifically by the respondent No. 1 in the counter-affidavit filed by him and it has not been disclosed that he had been conferred the jurisdiction for the purpose of making enquiry or investigation throughout the territory of India or throughout the territory of State of Madhya Pradesh. Sub-s. (1A) of section 131 of the Act clearly speaks for the jurisdiction in regard to the authority/officer who has reason to suspect that any income has been concealed or likely to be concealed by person or class of persons within his jurisdiction and, as such, the concealment must exist within the jurisdiction of the authority/officer who has reason to suspect. Firstly, the valuation of the house, the construction of which was completed in the month of March, 1987 and subsequent thereto, no additions or alterations were made could not, in the circumstances of the present case, come within the meaning of concealment of income or likelihood of concealment. In the present case, the entire allegation is that the income as invested in the house was not disclosed to the Income Tax authorities at Bhopal. Even in view of it, the ADIT (Inv.) Delhi had no jurisdiction to issue any such direction to the Valuation Officer at Bhopal for determining the valuation of the house as on construction period and even subsequent thereto.

11. The other requirement, which, under sub-section (1A) of section 131 of the Act is that the authorities/officers mentioned therein in whose jurisdiction, the income as alleged to have been concealed or is likely to be concealed, must have reason to suspect which, in fact, is a condition precedent for the exercise of power and such reason or suspicion must be based on tangible material on the record and

legally cognizable and not merely some hearsay accusation, conjectures and surmises. In the present case, the respondent No. 1 has stated that he had the reason to suspect on account of the order of the Supreme Court dated 30-1-1996, passed in Writ Petitions (Criminal) 340-343 of 1993 of (Vineet Narayan & Ors. v. Union of India & Anr.) (supra) but the perusal of the order of the Supreme Court clearly indicates that it has not, at all, given any such reasons which may, in any case, form reasons to suspect against Shri Arjun Singh and/or against his wife Smt. Sarbj Singh or any other person against whom the criminal investigation proceeded on the basis of Jain diaries wherein even the name of Smt. Saroj Singh did not, at all, find mention and in its order dated 30-1-1996, Supreme Court clearly stated without any ambiguity, to the following effect

'In this proceeding, we are not concerned with the merits of the accusation or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law,'

(Emphasis, italicised in print, supplied)

Thus, it is found that the said order of the Supreme Court cannot be treated under section 131(1A) and the respondent No. 1 had no reason to suspect on the basis of any material on the record what to say to tangible material legally cognizable and the allegations which find place in the charge sheet in the Hawala case falls in the category of say accusation based on conjectures and surmises, as the special Court Delhi, not finding them even prima facie material, discharged Shri Arjun Singh in CC No. 16 of 1996 on 28-5-1997.

Thus the investigation in the aforesaid Hawala case wherein on the basis of Jain diaries, seized during investigation, charge-sheet filed after investigation before Special Judge, Delhi on the basis whereof Case No. CC No. 16/1990 was registered, cannot constitute reason to suspect for respondent No. 1 under section 131(1A), as it was only the investigation stage and on charge-sheet being filed before the Special Judge, Delhi, no material was found even for the purpose of framing any charge against Shri Arjun Singh, as a consequence whereof,

discharged him as there was no tangible material and under the circumstances, the shelter under the order of the Supreme Court for the purpose that the ADIT (Inv.) Delhi had reason to suspect, is misfounded as the Supreme Court even did not consider the aspect of disbursement of any money to Arjun Singh, what to say of concealment or likelihood of concealment and did not express its opinion in either way, which, establishes beyond doubt that the respondent No. 1 had no reason to suspect that any income has been concealed or is likely to be concealed by the petitioner No. 1 Arjun Singh and his wife Smt. Sarol . Singh. Sub-s. (1A) has provided the manner and it is well settled principle of law that either the thing should be done in the manner provided or not at all. The charge-sheet filed on the basis of Jain diaries contained no material, what to say of tangible material and at that time, there was no such material before the ADIT (Inv.) Delhi on the record, except bald accusation founded on some entries in Me Jain diaries, which contained the names in abbreviated form on the basis of which the CB1 filed the charge-sheet before the Special Judge, Delhi who after considering the matter on merit, did not consider the same as material even for the purpose of framing the charge-sheet against Shri Arjun Singh who was discharged and for the purpose of reason to suspect it could, at all, not be the material. Thus, the position boils down that whatever may be the interpretation of sub-section (1A) of section 131 of the Act in regard to its scope, it is held that the ADIT (Inv.) Delhi had no tangible material on his record for the purpose of reasons to suspect before passing the said order directing the Valuation Officer for valuing the cost of the house and the order passed by him was without jurisdiction.

(Emphasis, italicised in print, supplied)

Apart from this, the expression 'has reason to suspect that any income has been concealed or is likely to be concealed' clearly refers to a pre-assessment stage and in the present case, where true and full facts and particulars and material facts were duly disclosed as regards the cost of construction of the house and source of income and its investment, there could arise no question of concealment of income or likelihood of concealment could arise and it was not even the case of the respondent No. 1 that the income has been concealed by the petitioner No. 1 Shri Arjun Singh.

12. Learned counsel for the petitioners next submitted that the power under section 131(1A) of the Act is not the independent power but is the power exercisable in aid of proceedings under section 132 of the Act which relate to the undisclosed income of property by any person or class of persons and the impugned action/notice admittedly not being in reference to and in accordance with the requirement of section 132 of the Act, is null and void.

Learned counsel for the respondent No. 1 submitted that the impugned action was taken in pursuance to the direction of the Supreme Court in the case of Vineet Narain & Ors. v. Union of India & Anr. (supra) wherein the Supreme Court said that the authorities failed to discharge their statutory duties and obligations and on the basis of which, the respondent No. 1 took the impugned action for finding out, on the basis of the CBI Investigation in Hawala case against J.K. Jain wherein Arjun Singh was suspected to have been disbursed the Hawala money, and he in the same breath, also submitted that the enquiry under section 131(1A) of the Act is independent of section 132 and there has not yet reached the stage of issuance of notice for action under section 147 or 148 of the Act. Thus, according to the case of respondents the stage for issuance of notice for action under section 147 or section 148 of the Act had not arisen yet as no enquiry under 131(1A) has yet been completed.

13. So far as the order of the Supreme Court is concerned, it has not said anything on merit about Hawala money, its disbursement or its recipients as the order was passed by the Supreme Court out of the anxiety for proper investigation in the Hawala case (Crime Cases No. RC-5(S)/1991-SIU(V)/CBI New Delhi) by the CBI wherein the Jain diaries disclosed the names of various Categories of persons, inter alia, the politicians who were alleged to have been recipients of Hawala money, placed check on the investigation authority herein in regard to the submission of final report. The charge-sheet against Arjun Singh was submitted in the said case by the CBI in the Court of Special Judge Delhi that Shri Arjun Singh along with others was also alleged one of the recipients of Hawala money during the period April, 1988, to March, 90, and August, 1990. It was stated in the charge-sheet by the CBI that according to the entries in the Jain diaries and files seized from the residence of accused J.K. Jain that a payment of Rs. 10.5 lacs was made

to Arjun Singh during April, 1988 to March, 1990 and August, 1990 as per Diary (MR 71/1991), small note book (MR 70-1991) File (MR 72/1991) and file (MR 73/1991) on the basis of which a case being CC No, 16/1996 was registered wherein he was discharged as there was no material, whatsoever against him even for framing of the charge-sheet. In view of it, it cannot be said that the charge-sheet in the Hawala case or the order of the Supreme Court, in anyway, be the material for reason to suspect by ADIT (Inv.) Delhi that Shri Arjun Singh and his wife Smt. Saroj Singh have concealed the income or even income is likely to be concealed by them.

14. For the purpose of the controversy as to whether the power under section 131(1A) of the Act was exercisable independently or in aid of the proceedings under section 132 of the Act, it is relevant to extract out the provisions of section 131(1A) and section 132 of the Act :

131(1A).If the Director General or Director or Deputy Director or Asstt. Director, or the authorised officer referred to in sub-section (1) of section 132 before he takes action -nder cls. (i) to (v) of that sub-section has reason to suspect that any income as been concealed, or is likely to be concealed, by any person or class of IN is s, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the Income Tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or ss of persons are pending before him or any other Income Tax authority.'

132. Search and seizure,-(1) Where the Director General or Director of the Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in is behalf by the Board, in consequence of information in his possession, has reason to believe that-

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income Tax Act, 1922 (11 of 1922), or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other

documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to any proceedings under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be disclosed for the purposes of the Indian Income Tax Act, 1922 (11 of 1922) or this Act(hereinafter in this section referred to as the undisclosed income or property).

then,-

(A) the Director General or Director or the Chief Commissioner or Commissioner , as the case may be, may authorise any Deputy Director, Deputy Commissioner , Asstt. Director, Assistant Commissioner, Income Tax Officer, or

(B) such Deputy Director or Deputy Commissioner , as the case may be, may authorise any Asstt. Director, Assistant Commissioner or Income Tax Officer.

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to-

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iia) search any person who has got out of, or is about to get into, or is in the place, vessel, vehicle or aircraft, if the authorised officer has reason to that such person has secreted about his person any such books of account, other documents money, bullion, jewellery or other valuable article or thing;

(iii) seize any such books of account, other documents, moneys, bullion, jewellery or other valuable article or thing found as a result of such search;

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing :

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause W is within the area of jurisdiction of any Chief Commissioner or Commissioner, but such Chief Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then notwithstanding anything contained in section 120, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the Chief Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the Revenue :

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii).

(1A) Where any Chief Commissioner or Commissioner , in consequence of information in his possession, has reason to suspect that any books of account,

other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Director General or Director or any other Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in this behalf by the Board to take action under cls. (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Chief Commissioner or Commissioner may, notwithstanding anything contained in section 120, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government or of both, to assist him for all or any other purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the persons who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

Explanation. : For the removal of doubts, it is hereby declared that serving of any order as aforesaid under this, sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act.

Explanation. : For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act.

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of accpgnt and other - documents are true, and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com